

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 29, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:04 a.m. on Friday, March 29, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Senatorial District No. 8
Senator Michael Roberson, Senatorial District No. 20
Assemblyman Elliot T. Anderson, Assembly District No. 15

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Chuck Callaway, Las Vegas Metropolitan Police Department
Donald Hoier, Sergeant, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Allan Smith, Religious Alliance in Nevada

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Mark Thierman, Wild Orchid Gentlemen's Club
Yvonne Murphy, Wild Horse Saloon; Mustang Ranch Brothel
Vanessa Spinazola, American Civil Liberties Union of Nevada
Kristin Erickson, Nevada District Attorneys Association
Ben Graham, Administrative Office of the Courts; Nevada Supreme Court
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General;
Advisory Council for Prosecuting Attorneys
Chris Frey, Washoe County Public Defender's Office
Marlene Lockard, Retired Public Employees of Nevada; Nevada Women's Lobby
M. Max Del Real
S. Rowan Wilson, Americans for Safe Access, Northern Nevada Chapter
Stephen Frye, M.D.
William J. Baker
Diana Lee
John George
Joseph H. Low
Jennifer Solas, Wellness Education Cannabis Advocates of Nevada
Craig Anthony Rodgers
Julie Raye
Steve Yeager, Clark County Public Defender's Office
Vicki Higgins, Wellness Education Cannabis Advocates of Nevada
Corey Finnegan
Keith McKinney
Cindy Brown
Kurt Duchac, Wellness Education Cannabis Advocates of Nevada
Mike Higgins, Wellness Education Cannabis Advocates of Nevada
Ryan Kraft, Detective, Las Vegas Metropolitan Police Department
Perry Hitechew
James Spinoza
Julie Monteiro, R.N.
Rick Brown
Mason Webb

Chair Segerblom:

I will open the hearing of the Senate Committee on Judiciary with Senate Bill (S.B.) 413.

SENATE BILL 413: Prohibits the employment of certain persons at adult entertainment establishments. (BDR 15-1046)

Senator Barbara K. Cegavske (Senatorial District No. 8):

I brought this legislation forward because in 2002 I was called by a mother about her daughter's best friend and some things that had changed her life. After that, I started investigating whether this was a State issue. I have submitted my written testimony explaining the bill ([Exhibit C](#)).

Chair Segerblom:

You have been working on this for 11 years?

Senator Cegavske:

Yes. Looking at it and not knowing exactly what to do. Over the years, I have talked to parents who have come to me because they were aware I knew about some of these stories and events. I will have some witnesses today, but there are others too intimidated and fearful to come forward.

Chair Segerblom:

Does your bill specify that women in the adult entertainment business should be 21 years of age?

Senator Cegavske:

The proposal is to raise the age from 18 to 21 if the woman is performing completely naked.

Chuck Callaway (Las Vegas Metropolitan Police Department):

We support this bill. In southern Nevada, especially in Clark County, we have problems with exploitation of young children, sex trafficking and prostitution. We hear testimony in other committees on other bills about the juvenile mind and differing maturity levels, especially when it comes to the incarceration of juveniles. The same thing applies to this issue. We see a benefit in raising the age to 21.

Chair Segerblom:

Does State law prohibit Clark County or the City of Las Vegas, or any other community from adopting the 21 age limit on its own?

Donald Hoier (Sergeant, Las Vegas Metropolitan Police Department):

I think it could happen at a local level. In Las Vegas, you can dance completely naked at the age of 18 but you have to be 21 to work in a topless establishment. That is because alcohol is served at those locations.

Clark County has one location grandfathered in from the old ordinance. That business is completely nude, serves alcohol and has dancers who are aged 18. All other similar businesses are 21 and older where alcohol is served.

Chair Segerblom:

Why do you think it would be appropriate to raise the age from 18 to 21?

Sgt. Hoier:

Let me give you two examples from my 12 years assigned to vice. The first girl was 14 and groomed by a pimp. She was placed into a strip club as part of that grooming process. She was able to obtain a fake ID and fake birth certificate to make her appear to be 18. She went from being a naked dancer at one of our completely nude places and then on to an escort service. She is still prostituting today as an adult.

The second case was a 16-year-old girl who was influenced by an 18-year-old high school friend who happened to be working in a nude establishment. The younger girl looked up to the older friend. She obtained all the ID items needed to secure a job dancing nude and was ultimately turned out by a pimp who frequented that business. As a result, she became a prostitute until we were able to rescue her.

When you think about it, an 18-year-old could still be in high school. I know the counterarguments about 18 being the age a person can vote or go off to war, but the only difference between 17 and 18 is one day. At 18, and potentially still in high school, people do not have the life experience to make good, long-reaching decisions. Couple that with the fact that strip clubs are a hotbed for pimps to recruit from, and you open the door to further exploitation of these girls. There is a difference between taking off your clothes and dancing and being exploited by someone to have sex with strangers.

Chair Segerblom:

Do other states restrict this activity to the age of 21 and older?

Sgt. Hoier:

I am not sure.

Senator Cegavske:

I am not either; we were just looking at Nevada.

Senator Jones:

Senator Cegavske, I see you have excluded brothels. Why would we allow an 18-year-old girl to be paid for sex and not paid for dancing?

Senator Cegavske:

That was written in by the Legal Division. I was advised that it would be easier if brothels were not a part of this. My preference would be to include everything, but it was the way I was encouraged to proceed.

Senator Jones:

I would encourage including brothels also. Regarding the definition of adult entertainment establishment, would this include some of the nightclubs in Las Vegas like TAO and PURE, where there are scantily clad dancers? An argument could be made that some of those places might fit into the definition of adult entertainment establishment, even though that may not be your intent. We may want to clean up the language to clarify that this bill does not take in some of those highly profitable nightclubs on the Las Vegas Strip.

Senator Cegavske:

I do not know about those nightclubs, but I have seen their billboards. I am open to work with anyone on this to hone the language. My biggest concern is bringing this issue out in the public to generate a discussion. If you have ever received a call from a mother or father that their 18-year-old daughter is in this business and they can do nothing about it, you know what this issue is about. That is how this issue came to me. The only avenue to help that I have right now is this bill. I have gone to City Council members and asked for regulations to be changed. That effort did not go anywhere, so here is S.B. 413.

Senator Hutchison:

Sergeant Hoier, we had a big hearing on A.B. 67, the sex trafficking bill, where we heard testimony describing the exploitation of individuals in this situation.

ASSEMBLY BILL 67: Revises provisions relating to crimes. (BDR 3-403)

Your testimony seems to indicate there is a companion business potential between the dancing establishments and prostitution. These young girls can dance naked; the pimps are there, and the girls get recruited. Do you see a nexus between what is going on here with 18-year-olds because there is no

alcohol, and some of the concerns and the heartbreaking testimony we heard regarding sex trafficking in A.B. 67?

Sgt. Hoier:

There is definitely a connection between the two activities. There are 27 strip clubs in the Clark County area, and the pimps recruit from them all. Think about how a pimp goes about recruiting young girls, say, the 18-year-olds who are working in a strip club. The girls are halfway there if they have already taken off their clothes and are dancing on or around a patron. It is not a big leap to go a step further. That is all part of the grooming process. Pimps would rather recruit girls who already have a foot in the door.

Runaway juveniles you heard about from testimony in the hearing for A.B. 67 might engage in sex to survive. Those individuals are doing it already. It is not hard for a pimp to convince a girl to do that for him because now he will give her a place to stay and he will reap the benefits of her already working. It is the same thing with a dancer. Couple that with the competitive nature of what happens in a strip club where a number of girls are competing for the same limited dollars. Some of these girls are already setting themselves apart by dabbling in prostitution. Add a pimp into the scene, and it is not hard for him to convince her to take those next steps into full-time prostitution.

Senator Hutchison:

It sounds like this is an involuntary action—these girls are not necessarily voluntarily engaging in this activity. We heard all that with A.B. 67, with the influence, the violence and the threats. That may be a distinguishing characteristic for those who would argue that people who are 18 can vote and go off to war, but that is voluntary. When you are sucked into the sex trade, that is rarely voluntary. Do you agree?

Sgt. Hoier:

I agree 100 percent.

Chair Segerblom:

How many of the 27 clubs in Clark County have dancers who are 21 and over?

Sgt. Hoier:

The majority of them are 21 and older because the clubs are mostly topless with a liquor license. I think only three or four clubs are completely nude. The

remaining clubs sell alcohol and are topless. The Palomino Club has been grandfathered in. That establishment serves alcohol, and the girls there are completely nude.

Senator Cegavske:

For the record, I am willing to work with anyone to see how we can make improvements in this arena.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):

We support this bill.

Chair Segerblom:

Do you know how many of the clubs in Washoe County take 18-year-olds?

Lt. Spratley:

I do not.

Chair Segerblom:

If you could find that out, it would be helpful.

Allan Smith (Religious Alliance in Nevada):

We support this bill. It is interesting that we have laws forbidding people under 21 to remain or loiter around places that serve alcohol; yet we are allowing people under 21 to perform at these places.

Mark Thierman (Wild Orchid Gentlemen's Club):

I represent the Keshmiri brothers, the owners of the Wild Orchid Gentlemen's Club in Reno. We are against this bill. Dancing is expression, and expression is protected by the First Amendment to the *U.S. Constitution*. There are cases of 18-year-olds being excluded from dancing—every time, those cases go down legally. The reason for this is that you cannot have a rule saying 18-year-olds cannot express themselves. The constitutional argument should be briefed, and you should have a fair idea how to word it if you are going to survive a challenge, which I am sure will come.

If this is such a great idea, why not make the limit 35 years old? You are telling stories about three cases of hearsay about girls aged 14 and 16, which is illegal under present statutes, and now you want to discriminate against everyone who is 18 to 21. What kind of women's rights argument is that? Do these

women need to be mothered by the State? Give them some credit. Some are out there earning a living and supporting children. If a person is 18 or older, he or she has the right to work in any lawful occupation.

There should be no discrimination based on whether the person is 18 or 21. The sole exception is alcohol, which has a unique constitutional history ever since Prohibition. Other than that, the idea behind this bill is paternalistic and chauvinistic, and it will lead to lawsuits on First Amendment grounds. It will not stand up.

Washoe County has five strip clubs, and they are all in Reno. All serve alcohol and none are all nude. If you are worried about the pimps, go in and arrest them for pandering. It is illegal. Do not bother the strip clubs or the people who want to work there legitimately. As Senator Jones said, the way this bill is worded applies to every casino with a floor show.

Chair Segerblom:

There has been testimony that the counties offering brothels limit the age of their legal prostitutes to 21. Is that unconstitutional? How do those counties get away with limiting the age to 21?

Mr. Thierman:

Maybe they have not been challenged. I do not know. That is not First Amendment expression. That is not dancing. There is a difference.

Yvonne Murphy (Wild Horse Saloon; Mustang Ranch Brothel):

I represent the brothels in Storey County and think it would behoove the State to look at the Storey County model. We do not have this issue of dancers being underage because our ladies are required to obtain sheriff's cards which includes fingerprinting, background investigation and age verification. The women who dance in the Wild Horse Saloon also work in the Mustang Ranch. I have spoken to Senator Cegavske about this bill and am willing to work with her. To me, it is more of an enforcement issue. We need to enforce the laws already on the books instead of creating something specifically to cause financial hardship on the women working in the industry. These women are obeying the rules and paying their taxes. I have submitted my written testimony with more information ([Exhibit D](#)).

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Senator Hutchison:

Is alcohol served in all these establishments?

Mr. Thierman:

In Washoe County, all the clubs we are talking about serve alcohol.

Senator Hutchison:

So this bill does not apply to you.

Mr. Thierman:

It does. If you read the bill, it mentions bar servers, who are people who serve alcohol, as not allowed to be under 21.

Senator Hutchison:

You are okay with the idea that those under 21 and not dancing can be in a place where they serve alcohol?

Mr. Thierman:

We have dancers who are 18 years old.

Senator Hutchison:

Where you serve alcohol?

Mr. Thierman:

Yes, and we have had that for years.

Senator Hutchison:

Were you here for the testimony with A.B. 67?

Mr. Thierman:

No.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

Freedom of expression does include exotic dance. If you reach the age of majority, 18, that means you have a right to free expression. The reason states have a right to regulate to the age of 21 is because of the Twenty-first Amendment to the *U.S. Constitution*, which allows regulations on alcohol and gaming for the protection of public safety.

Chair Segerblom:

Do you have cases specific to the age of 18 and dancing as expression?

Ms. Spinazola:

Yes, *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000) is one example. The case talks about the effects of exotic dancing as opposed to attempts to outright regulation. The State should look at less restrictive options like outreach programs or sex education in schools.

Chair Segerblom:

I will close the hearing on S.B. 413 and open the hearing on S.B. 365.

[SENATE BILL 365](#): Establishes the crime of stolen valor. (BDR 15-155)

Senator Greg Brower (Senatorial District No. 15):

Senate Bill 365 is about stolen valor and makes it illegal under State law for a person to fraudulently represent himself or herself to be the recipient of certain military decorations for the purpose of obtaining some benefits such as money or property.

Chair Segerblom:

Will you explain why this beats the Supreme Court test?

Senator Brower:

In *United States v. Alvarez*, 132 S.Ct. 2537 (2012), the U.S. Supreme Court struck down as unconstitutional the original federal Stolen Valor Act of 2005 on the grounds that it violated the First Amendment protection of free speech. That original Act essentially criminalized the mere saying that one was a recipient of an award. In a divided opinion, the Court said it violates the First Amendment to outlaw a speech of that nature. Congressman Joe Heck from Nevada introduced a revised version of the federal law earlier this year that is pending in the U.S. Congress.

This bill, S.B. 365, is the State version of that federal bill. Both require that it is not enough to simply lie about one's military record to be in violation; it must be done with the intent of obtaining some benefit. Based on the plurality of the opinion written by Justice Anthony Kennedy of the U.S. Supreme Court in the federal case, that change will allow the bills to withstand constitutional scrutiny.

The point of both the federal and the State bill is to protect the honor and integrity of certain awards and decorations received by ordinary people for doing extraordinary things under extraordinary circumstances in the defense of our Country.

Assemblyman Elliot T. Anderson (Assembly District No. 15):

This bill creates a narrow crime. It does not refer to someone falsely saying he or she was in the military. It focuses on specific and important awards, which are listed in the bill. It is not enough to say you are in the military to get a free buffet at a casino; you have to say you have a Congressional Medal of Honor or a Combat Action Badge, etc. These awards are important to people in the military. The bill is narrowly tailored to those awards and creates a gross misdemeanor penalty, which is the lowest in the State.

Chair Segerblom:

If someone walks into a restaurant and says "I am a Congressional Medal of Honor winner; help me out with a free breakfast," would it be a gross misdemeanor if that was not true?

Assemblyman Anderson:

That may already be considered fraud.

Senator Brower:

Technically, that hypothetical example might be a violation of the law. Here is an example of the type of thing this bill is intended to prevent. In North Carolina, there was a case in which a person falsely called herself a U.S. Air Force veteran who had served in Iraq and Afghanistan. Her purpose in claiming that was to obtain more than \$40,000 in education benefits. That is the type of nontrivial fraud that has occurred and should be prosecuted.

Chair Segerblom:

Would that act come under this bill?

Senator Brower:

The point in that case was that the person said she was a combat veteran and a recipient of certain decorations like the Combat Action badge.

Senator Jones:

How do the penalties of this bill compare with the federal legislation? Also, since the U.S. Supreme Court decision came out last year, how does this bill compare with other states that have implemented similar legislation?

Senator Brower:

I am not aware of any other states that have implemented this. The bill compares favorably with federal law. With the Legislative Counsel Bureau's assistance, we tried to write it so it mirrored the pending federal legislation.

Assemblyman Anderson:

We do have State benefits to protect. I do not know if the federal legislation would protect our State benefits. Senate Bill 365 makes it clear we are going to protect our tax exemptions.

Senator Brower:

While we anticipate we will have a federal law, there is no law right now. In Nevada there is no federal or State prohibition on someone fraudulently misrepresenting his or her military background to obtain a benefit. We hope to have the federal law, but it is not here yet. If we do get the federal law, it would be useful to have both to capture the entirety of this fraudulent conduct.

Senator Ford:

I support this bill, but I have a question. In section 1, subsection 1, paragraph (b) of the bill says "obtains money, property or another tangible benefit." What form of intangible benefit would not be covered?

Senator Brower:

One example I can think of would be obtaining a Purple Heart designation on a Nevada license plate.

Kristin Erickson (Nevada District Attorneys Association):

I support this bill.

Mr. Callaway:

The Las Vegas Metropolitan Police Department supports this bill.

Ms. Spinazola:

Service to our Country is definitely commendable, but we object to this bill because it is a First Amendment issue about protected speech. The core of the First Amendment is that speech is protected whether we find it detestable or not. Lying is actually protected too. There is defamation and perjury, and those serve particular purposes. Perjury serves the purpose for the government to have truth in our justice system. Defamation is a particularized tort injury against another person that causes actual harm. However, lying—fortunately or unfortunately—is free expression and protected.

Our other objection to this bill is that there is no limit—the speech could be in the privacy of a bedroom or in the noise of a bar. For First Amendment content restrictions, the government must prove a compelling interest. There is an interest in protecting the integrity of these medals, but the First Amendment jurisprudence of the Supreme Court has typically looked at the value of counterspeech. In the *United States v. Alvarez* case, this individual spoke out at a water board commission hearing and lied about his U.S. Marine Corps service. As soon as people learned the truth, there were social media protests. Mr. Alvarez was removed from his job, and this typically happens in these types of situations where there is lying.

A less restrictive option by the government would be to establish a Website that lists people who are actual medal holders. Our other concern with S.B. 365 is the language regarding the tangible benefit that Senator Ford mentioned. This is so broad, it reaches the point where it may be vague—it could be a glass of wine, an intimate relationship, thousands of dollars—there is no monetary benefit outlined in statute.

We do have fraud and false representation already written in statute: *Nevada Revised Statutes* (NRS) 205.330 through NRS 205.460 cover most of the instances that would apply to this bill.

The Nevada Attorneys for Criminal Justice asked me to register their opposition to this bill.

Senator Ford:

You mentioned we have statutes that would already cover fraud and false personation. What makes this different relative to the lie someone would tell and the benefit he or she would get based on that lie?

Ms. Spinazola:

My understanding of the fraud statutes is that it causes particularized harm to other people.

Senator Ford:

Particularized harm to a restaurant is that I just gave away some free food. Is that a particularized injury as well?

Ms. Spinazola:

It is not a compelling government interest, which is the test we use under the First Amendment. It has not been deemed by the U.S. Supreme Court that giving away free food speaks to a compelling government interest.

Senator Ford:

I still do not understand the difference between this statute and the fraud and fraud inducement-type statutes.

Ms. Spinazola:

Part of the fraud statutes limit monetary amounts. For example, they are particularized because some of them will say that above a certain amount is a felony, etc., because a certain amount of money is specifically taken from another person. That causes fraud specifically to the other person. I understand what you are saying about the restaurant case, but that is not protected speech because it is a crime and one person is affected.

My understanding is that S.B. 365 is intended to protect the integrity of the medals outlined in the bill's language. However, the way the bill is written, it does not achieve that result because of the fact that people will typically engage in counterspeech. You cannot point to a specific person who has won one of those medals who can say his or her medal has been diminished because another person falsely claimed to have one. There is not a causal link like the one we see under the fraud statutes.

Senator Brower:

This would have been a great presentation with respect to the original federal bill which was declared unconstitutional. This version, like the new federal version, undercuts all the arguments. It has been illegal under federal law for a long time, with no successful constitutional challenge, to fraudulently wear military decorations without authorization. It seems to me that if wearing the

medals fraudulently is against the law, then prohibiting the speech about the authorization to wear such medals for a fraudulent purpose is well beyond constitutional challenge.

Ms. Spinazola:

In the *United States v. Alvarez* decision, the Supreme Court left open whether wearing a medal was actually protected speech or not.

Chair Segerblom:

I recall that the fraud statutes say if a person takes something worth more than \$250, it is a misdemeanor. The problem with this statute is that if you take something worth \$1, it is a gross misdemeanor. There is no dollar value of what you are getting in relationship to the fraud and the crime.

Senator Ford:

Are we saying that if we put in some delineations like that, we are okay with the statute?

Chair Segerblom:

At least we would be talking about obtaining a benefit that is tangible in relationship to the crime.

Ms. Spinazola:

It is possible, but there is still an issue of what constitutes a tangible benefit. It is not defined and is also very vague and broad.

Assemblyman Anderson:

There is always a compelling interest in regulating the wearing of the uniform. These uniforms are authorized under the Geneva Conventions requiring uniforms and medals to be controlled. We make sure we control the way we send out uniforms and decorations so they do not get into the wrong hands, allowing people to falsely represent themselves as American military members. For example, I cannot take out my uniform from the time when I was in the U.S. Marines and use it to represent the U.S. Department of Defense.

Senator Brower:

I recognize that the plurality in the *Alvarez* case struck down the original law as unconstitutional. We have adjusted the State version accordingly. I want to read an excerpt from U.S. Supreme Court Justice Samuel Alito's dissent:

By holding that the First Amendment nevertheless shields these lies, the Court breaks sharply from a long line of cases recognizing that the right to free speech does not protect false factual statements that inflict real harm and serve no legitimate interest.

I think that is what we are talking about here. When you add the fraud requirement as we have in this bill, that makes it constitutionally sound.

Chair Segerblom:

I will close the hearing on S.B. 365 and open the hearing on S.B. 463.

SENATE BILL 463: Provides for the implementation of the Court of Appeals.
(BDR 1-1197)

Ben Graham (Administrative Office of the Courts; Nevada Supreme Court):

This bill is an implementation of a measure you passed in February, Senate Joint Resolution 14 of the 76th Session.

SENATE JOINT RESOLUTION 14 OF THE 76th SESSION: Proposes to amend the Nevada Constitution to create an intermediate appellate court.
(BDR C-1013)

We have submitted an amendment to section 9 ([Exhibit E](#)) which deals with the formula for the salary, bringing us in line with other elected State judges. I have submitted my written testimony explaining this bill ([Exhibit F](#)).

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 463.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:

I will close the hearing on S.B. 463 and open the hearing on S.B. 297.

SENATE BILL 297: Revises provisions relating to certain crimes against older or vulnerable persons. (BDR 15-1005)

Senator Michael Roberson (Senatorial District No. 20):

This is a simple but important bill. Statute provides for additional penalties to be imposed for certain crimes committed against persons 60 or over or against vulnerable persons. For the purposes of this bill, the term “vulnerable person” is defined to mean “an adult with certain physical or mental limitations.” This bill adds an attempt of conspiracy to commit such crimes to the list of crimes against older or vulnerable persons. It also increases the minimum term of imprisonment for such an additional penalty from 1 year to 2 years.

According to the U.S. Department of Justice, America’s growing senior population is uniquely vulnerable to a broad range of exploitation and abuse. Financial crimes in particular are targeted at seniors with alarming frequency and are all too often successful. I am proposing this legislation to create a greater deterrent for these crimes as well as to punish more harshly the crimes where the victims are selected due to their age and perceived vulnerability.

In section 1, subsection 1, paragraphs (a) through (j), existing statute lists several serious crimes—murder, attempted murder, assault, etc., under NRS 193.167—that are punishable against older or vulnerable persons. We have added subsection (k) to this list, which states: “Attempting or conspiring to commit an offense listed in paragraphs (a) to (j), inclusive,” and we also increased the minimum term from 1 year to 2 years.

Chair Segerblom:

Are you saying these are already crimes, but if they happen to someone over 60 or to a vulnerable person, there is an enhanced penalty?

Brett Kandt (Special Deputy Attorney General, Office of the Attorney General; Advisory Council for Prosecuting Attorneys):

There is a flaw in the statute. Take this theoretical scenario: a victim—a senior citizen or vulnerable person—is wheeled into a bank by the perpetrator, a self-appointed caretaker. This caretaker could be a family member or someone else. The caretaker hands a withdrawal slip to the bank teller, instructing the teller to empty the victim’s bank account.

A few years ago, the bank teller may not have asked any questions or had any interaction with the victim. The teller would have completed the transaction, handed over the money to the caretaker, who would have wheeled the victim out of the bank. However, because of the efforts of our banks and lending institutions, there is a higher public awareness of the problem of the exploitation of vulnerable adults.

Through the fraud prevention efforts of these institutions, today that teller would hopefully ask some questions and attempt to determine whether the victim really intended to empty out the bank account. If the teller was concerned about the legitimacy of the transaction, he or she could not complete it, perhaps call the authorities and we might stop that. The flaw in this statute is in that scenario, the elder enhancement does not apply because the crime was not completed.

Imagine an elderly woman in a store parking lot who is targeted by a purse snatcher. She fights back and a Good Samaritan comes over and helps, so the crime does not go to completion. The purse snatcher does not face the enhancement because the crime was not completed. That is the flaw in the statute. If a perpetrator is caught in the attempt, he or she escapes liability for the enhancement. If two or more persons conspire to exploit a senior or vulnerable adult and they take steps in furtherance of the conspiracy but are caught before completing the crime, they escape liability for the enhancement. This bill will remedy this situation.

Chair Segerblom:

Does this just apply automatically if a victim or potential victim is over 60? Or, does it apply if the perpetrator is preying on the victim because he or she is over 60 or vulnerable?

Mr. Kandt:

It applies because of age of the victim, or that the victim falls under the statutory definition of vulnerable person.

Senator Hutchison:

That is true of all other senior abuse statutes—it applies because of the age, right?

Mr. Kandt:

Yes. This proposal to expand the statute to include attempting conspiracy was endorsed by Nevada District Attorneys Association, The Nevada Sheriffs' and Chiefs' Association and the Office of the Governor's Nevada Crime Commission.

Chris Frey (Washoe County Public Defender's Office):

We oppose one component of this bill—the elevation of the minimum term from 1 year to 2 years for the elder enhancement. Under this bill, the judge would be restricted from exercising discretion to impose a sentence on the enhancement that matches the sentence on the underlying offence. For example, an individual goes to trial for larceny from a person not amounting to a robbery and is unsuccessful in the trial. The perpetrator is then convicted of a Category C felony, which carries a minimum term of 1 year to 5 years. If the judge deemed the crime was not egregious enough to award the maximum, the person would be looking at 20 months to 30 months.

Under this statute, the sentencing enhancement would be a mandatory 2 years. It would not be a match. So the perpetrator's sentence would be tripled. If the underlying offense carried a term of 12 months to 30 months, the perpetrator would be looking at an additional 2 years. This ties the hands of the sentencing judge. At the State level, the trend in our sentencing scheme is to maximize judicial discretion to fit the sentence to the crime and to the person. We see this bill as an erosion of judicial discretion, which we oppose.

The existing statute is designed to maximize judicial discretion. It directs the sentencing judge to consider mitigating evidence and other factors. The range of possible penalties starts at probation and goes to 20 years, so the spectrum before the judge is wide.

We do not have a position on the addition of attempting conspiracy, section 1, subsection 1, paragraph (k).

Senator Brower:

The federal system has determinate sentencing. The same concept works because under the federal sentencing guidelines, the age of the victim works into the sentencing formula and generally leads to a longer sentence. Since we do not have determinate sentencing, the intent of the bill is very important. Conspiracy charges are aimed at stopping the crime before it occurs but at the point that it is clear the crime would have occurred if it were not for the

intervention of law enforcement. We do not want the elderly or vulnerable person to be assaulted before we can bring charges.

Chair Segerblom:

This is doubling the penalty for all the crimes, not just conspiracy. This bill does two things: it adds conspiracy and it also doubles the penalty for the existing crimes. Why double the penalty?

Senator Roberson:

Maybe it is a difference of philosophy. I am not sure it is a bad thing to limit a judge's discretion. I agree with Senator Brower that we need more determinative sentencing. Do not commit the crime if you cannot pay the penalty.

Senator Jones:

The way I read section 1, you are not doubling the penalty for misdemeanors or gross misdemeanors—only for felonies. Which of the enumerated categories from section 1, subsection 1, paragraphs (a) through (k) in the bill are not felonies?

Senator Roberson:

Misdemeanors are typically up to 1 year in a county jail.

Senator Jones:

When you say you are doubling the penalties, for which of these 11 crimes does this apply, or does it apply to all of them?

Mr. Frey:

This change would mandate a 2-year minimum term for all the enumerated felonies. Certainly, there are misdemeanor varieties of battery—a simple battery would be a misdemeanor and punishable not by a year, but up to 6 months in jail. For a misdemeanor and gross misdemeanor, there is a mandatory cap. This enhancement sentence is capped in parity with the sentence on the underlying offense.

If I am sentenced to 6 months in jail for a simple battery and there is an elder enhancement that attaches, then that sentence could be up to that term. It would be equal and consecutive. It would be 6 months and 6 months. If it was a felony variety of a battery—for example a battery causing substantial bodily

harm, which is a Category C felony—with extenuating facts and I received a minimum term of 12 months to 30 months, I would be facing an additional 2 years on top of that initial sentence.

We are asking this Committee to consider preserving judicial discretion so the judge can sentence an individual to 12 months—12 months in the right case. This language removes that option. I trust our judges to make the right call. When there is an egregious case, the judge has a powerful tool to send someone away for a long time—8 years to 20 years, which is the maximum in the range of 1 year to 20 years and a sufficient deterrent.

Senator Jones:

Can I clarify that we are not tacking on 2 years, but we are saying the minimum term is 2 years, right?

Mr. Frey:

That is correct. If there is an elder enhancement and a finding of guilt, the sentence cannot be lower than 2 years for a felony.

Chair Segerblom:

Right now the law is for a 1-year minimum?

Mr. Frey:

Yes.

Chair Segerblom:

I do not understand the concept that it could triple.

Mr. Frey:

There is a scenario where it can triple. Imagine an individual received a minimum term of 12 months to 30 months for a Category C felony and was adjudicated guilty on the elder enhancement. The elder enhancement must be a 2-year term, so you would have 12 months plus 24 months. Under existing statute, it could be 12 months plus 12 months.

Chair Segerblom:

This law just adds to the underlying crime. Whatever the punishment to the underlying crime, we are going to add 2 years, right?

Mr. Frey:

Yes, this would add 2 years, whereas under statute, it could be 1 year if the judge deemed it worthy of a lesser punishment.

Senator Jones:

That is what I just asked. I am confused. Are we tacking on 2 years or is it just minimum 2 years?

Mr. Frey:

The way I read the bill, it would be an additional 2 years added to the sentence on the underlying offense. Under statute, it would be an additional year if the judge decided to impose 12 months on the elder enhancement, in addition to the 12 months to 30 months on the underlying offense.

Senator Brower:

That is the point of enhancement.

Chair Segerblom:

I understand why we need conspiracy in the bill because it is not in the books. However, I do not understand why we need to raise the 1 year to 2 years. Has there not been enough penalty for people abusing the elderly?

Mr. Kandt:

I think the sponsors of the bill felt that as public policy, this crime should face a greater penalty than is currently on the books. I wanted to illustrate for you the imports of adding attempt and conspiracy. In my mind, it is a flaw in the enhancement statute.

Senator Ford:

This is comparable to us making a policy decision. We protect vulnerable groups throughout our statutes in several different ways. Statutory rape is a prime example, and we had a hearing on hate crimes the other day. The question is do we think this group of people protected in the bill should be afforded additional protections beyond what is already in statute? Is this is a policy decision?

Mr. Kandt:

Yes.

Chair Segerblom:

This bill both adds protection and adds penalty.

Marlene Lockard (Retired Public Employees of Nevada; Nevada Women's Lobby):

Both the organizations I represent strongly support S.B. 297.

Chair Segerblom:

Why do they want to raise the penalty from 1 year to 2 years?

Ms. Lockard:

We think the more enhanced penalties are better for crimes against seniors.

Chair Segerblom:

Do you know if there have been any prosecutions to date on the existing law?
Has there been a problem with perpetrators getting off too easy?

Ms. Lockard:

I do not know the answer to that.

Ms. Erickson:

As our aging population increases, so do crimes against them. We are seeing increases in crimes against the elderly.

Chair Segerblom:

We understand the purpose of the bill; that we are adding conspiracy. The question is why do you want to go from 1 year to 2 years?

Ms. Erickson:

This segment of the population deserves and needs protection.

Chair Segerblom:

Have there been prosecutions where the people were not punished enough?

Ms. Erickson:

We do have a case where an elderly man was knocked down and suffered injuries. The crime was thwarted before he was robbed.

Chair Segerblom:

That is the conspiracy part of the bill where you double the punishment, the enhancement. Here we have a low-level felony that already gets a 1-year minimum sentence, and you add on another year. Two years in prison is a lot of time, and now you want to make it 3 years in prison.

Ms. Erickson:

I am not personally aware of any cases. I do find it worthy to note that this case, even with the enhancement, is probation-eligible, so a sentence could be probation, not just prison.

Mr. Callaway:

We support the bill.

Lt. Spratley:

We support the bill.

Chair Segerblom:

I am not ready to move forward on this yet because of that little dispute.

Senator Roberson:

I have confidence in the Committee to make the right decision. If you want to amend the bill, I am sure the outcome would be satisfactory.

Chair Segerblom:

I will close the hearing on S.B. 297.

Senator Kihuen:

I will open the hearing on S.B. 374.

SENATE BILL 374: Provides for the registration of nonprofit dispensaries authorized to dispense marijuana and products containing marijuana to persons authorized to engage in the medical use of marijuana. (BDR 15-89)

Senator Tick Segerblom (Senatorial District No. 3):

This bill was my initial attempt to comply with the constitutional mandate; that this Legislature provide a mechanism whereby people with medical marijuana cards can obtain medical marijuana. The bill was designed after the law in

Arizona, which I was somewhat familiar with. I thought it would be a good model for us for several reasons. If people can do it in Arizona, we ought to be able to do it in Nevada. Having been to Arizona to look at that state's medical marijuana operation, Senator Hutchison and I made several observations that we brought back. We met with our Committee Counsel, Nick Anthony, and we have proposed some of them.

Nick Anthony (Counsel):

We do have a proposed conceptual amendment to this bill ([Exhibit G](#)) that was in response to some concerns brought up from law enforcement and other interested parties. The amendment deletes the nonprofit requirement in the bill; establishes various inventory control procedures; addresses law enforcement concerns; raises the fees for establishing a dispensary from \$5,000 to \$20,000 in section 20; and changes the renewal from \$1,000 to \$5,000. The amendment also adds a nonrefundable application of \$5,000 and requires medical marijuana to be treated similarly to the way prescription drugs are treated in the State, which would require control and oversight by the State Board of Pharmacy.

Senator Hutchison:

These are conceptual amendments, and we do have work to do. The visual we want for this project is to create a dispensary that feels like a pharmacy or medical office, not a Jerry Garcia concert. These conceptual amendments are aimed at controlling the process to make this system pharmaceutical. The purpose of this bill is to fulfill a medical, medicinal promise. Lest anyone forget, we are here because in 2000, the voters in this State went through the complicated initiative process and amended the *Nevada Constitution* to provide medical marijuana for our residents. It is now a constitutional right according to Article 4, section 38, of the *Nevada Constitution* to possess and use medical marijuana for medicinal purposes.

Senator Segerblom:

I came away from our recent investigative trip to Arizona realizing that the faster we can get this process moving, the better. It took Arizona 2 years to get its process on board—Arizona has only one facility after 2 years. I do not think we need to wait that long.

Making it a for-profit situation can attract some of the businesses from around the Country. We want a tight process that is well-regulated. If we can attract

businesses from out of state, especially those who know how to start it up and run it right, that will be the best for us.

We went from having hearings to determine what to do, and now we are going right for it with a lottery that would provide for ten dispensaries in Clark County. We still have not figured out where the marijuana will come from. Initially, it might be current caregivers and growers who donate their product to a facility, or maybe the dispensary could partner with another facility. We have not exactly figured that out yet.

Senator Hutchison:

This has been completely transparent. We have invited and welcomed law enforcement comments and input from others. The initial inventory will be obtained in a legal manner. We are committed to that.

Senator Kihuen:

Thank you for clarifying that this is a constitutional right. That is not up for debate. The bill is about how we dispense the medical marijuana to patients.

Senator Hutchison:

This is not a debate about legalizing marijuana for recreational purposes. This is just medicinal, pharmaceutical marijuana for people who have been prescribed it for medical purposes.

Senator Segerblom:

Our main concern here is to find out the best way to start a dispensary and get one open in a year.

Senator Kihuen:

This constitutional amendment was overwhelmingly supported and passed in 2000. Why has it taken so long to implement the dispensaries?

Senator Segerblom:

I think it has just been politics. Right after the *Nevada Constitution* was amended, there were several attempts to get something in legislation, but Legislators could not get a majority to do it. Now, given the mood in the Country, it is not the political bugaboo it once was. I hope people are willing to say that this is our requirement and the Constitution makes us do it. This is a states' rights issue. Other states have done it. In addition, as we have seen in

Arizona, it can be done in an efficient, open process so people with pain can get a prescription and get the medical marijuana to improve their quality of life. I was very impressed with the Arizona process, which was, I believe, modeled after Colorado.

Senator Ford:

I commend you and Senator Hutchison for doing this. It is laughable that we have waited 13 years. We have been told to do this, and it is courageous for you both to continue to press this.

Senator Segerblom:

Senator Hutchison is the one who is courageous. My base loves this.

Senator Hutchison:

My base should love this, too, because one of the fundamental tenets of this Country and this State is the rule of law. I did not vote for this amendment back in 2000, but I think both parties will agree that we should uphold the rule of law. Because we voted an amendment to the *Nevada Constitution*, it is a constitutional right for Nevadans to have and to use medical marijuana.

I think the reason it has been so long is that a dispensary method put into the initial statute is now before the Nevada Supreme Court and pending cases imply some unconstitutionality because the statute is not effective enough. We have some criminal cases being dismissed because the current system is inadequate. I hope we can make this as safe and effective and as constitutional as we can and as we are required to do.

Senator Segerblom:

There is an emergency now to get this in place because of the district court case pending before the Nevada Supreme Court. The whole law could be thrown out and we would only have random marijuana. At least this law will give us some control.

Senator Hammond:

I agree it was constitutional and part of the rule of law. This is important. We need to implement this law as best we can, and that has not taken place. We went to Arizona to see the accountability, transparency and inventory of the product from cultivation to shipment, and it was there. We can do it correctly.

Senator Brower:

I agree that this should not be political. We still have the problem of the federal law. How do we deal with the practical problem in the State while we have the reality of the federal law prohibiting any possession for any purpose?

Senator Segerblom:

In Arizona, the governor and the district attorney sued, saying they cannot implement their law. They went to federal and state court, and the state court said you have to implement this law. They tried to argue federal preemption; the federal court threw them back in the state court. They tried to use federal preemption and did not get away with it. There are other states where this has come up. One of the reasons we want to go to a for-profit system is that there is some risk here. I do not think the federal government would come in and close the dispensaries down, but they might. The courts have universally held that the federal preemption does not apply to other states that are doing it.

Senator Brower:

My concern remains that we put Nevadans in a Catch-22 situation because even through the Bush and Obama Administrations both said they will not target dispensaries, technically, they could.

Senator Segerblom:

I believe we are stuck between the federal and the State Constitutions. In Arizona, the state employees said we cannot do this because we might be making a federal felony. The state judge said they had to do it. The federal court said they should listen to the state judge. There is no way to guarantee what will happen.

Senator Jones:

We are not putting Nevadans into the Catch-22; we are enabling them to take action because they have a constitutional mandate to do so. If they want to put themselves into a Catch-22, it is their right.

Senator Segerblom:

In most states, banks will not accept proceeds from these dispensaries because of their concern under federal law. In Nevada, we can take cash to a casino and get chips, so we have a solution to the problem of what to do with cash.

Senator Ford:

The initial law passed in 2000?

Senator Segerblom:

It passed in 1998 and then in 2000.

Senator Ford:

Ultimately, people in Nevada have already determined that, notwithstanding what the federal government has said about marijuana, we still think it is important to authorize medical use of marijuana. That is why we put it in our Constitution.

Senator Segerblom:

Back in 2000, 60 percent of the voters supported it. Today, 80 percent are in support.

Senator Ford:

We are just enabling this. If people want to open a dispensary with the risk of federal prosecution hanging over their heads, they are welcome to do so.

Senator Kihuen:

What would be the economic impact on the State?

Senator Segerblom:

Right now, there are around 3,500 medical marijuana cards in the State. Arizona has around 35,000, and experts there are projecting that number to almost triple. I would reasonably anticipate we would have maybe 35,000 cards and at \$150 each, that could generate more than \$5 million. After that, the sales will generate monies and there will be jobs created, energy used, etc. It will not make or break the State, but it will definitely have a positive impact.

Senator Hutchison:

One other indication of the intent of this legislation is that we have committed to the idea that whatever revenue raised would sufficiently fund the regulatory and law enforcement side of this.

Senator Jones:

Since we have many tourists coming to the State, would we have reciprocity with other states for their residents with medical marijuana cards?

Senator Segerblom:

I am not sure. There was some hearsay that California would recognize Nevada.

Senator Hammond:

In the Arizona system, a patient walks in to the dispensary and hands the receptionist his or her card. The card is swiped, and the patient's name comes up with information about the person including whether the card is current, the patient is eligible, etc. When the patient goes back to the dispensary and the product is brought forward for purchase, the database indicates when the last purchase was made by this patient and how much the purchase was for. We did inquire about the databank, and we do not know if we have access to Arizona's databank or that of any other state, but this is just a small stumbling block. We can work this out as time goes on.

Senator Segerblom:

If a tourist with a medical marijuana card from California came to the State with marijuana in his or her possession and got stopped by the police, if he or she showed the card, the police would not be able to arrest the person if we recognize the card.

M. Max Del Real:

This is a historic day for Nevada. I am a national consultant on medical cannabis issues. Nevada has done an injustice to patient communities—those who need and have a legal right to this medicine.

This is a billion-dollar industry. There are 20 states with medical cannabis on the books. These states have the full support of law enforcement and the business communities. You have an opportunity to infuse money at the state and local levels. I have submitted the Medical Cannabis Ordinance from the City of Sacramento ([Exhibit H](#)). That city has a 4 percent gross excise tax for 39 medical dispensaries. That 4 percent last year brought in \$3.5 million to the City, money that was allocated for public safety. We have the full support of the City of Sacramento Police Department.

I encourage you to act on the amendments. Colorado has a for-profit medical cannabis system. It makes sense. I am a business advocate. The fees are justifiable, and the increases will be paid by those applicants. I served as a consultant for the State of Arizona when officials were establishing the medical marijuana system. It is a great model, but the Nevada model could go

further and farther. I am an advocate of reciprocity programs. Nevada is a great State; it is a fun State. We could recognize the regional partnerships that exist between Nevada and Washington, Oregon, Montana, Colorado, Arizona and New Mexico. There will be people in the next few years coming from Florida, New York, Massachusetts and other states. In addition to the 20 states with medical cannabis, there are 15 with pending legislation. I encourage you to open your borders to cannabis patients. You will see a significant increase in revenues at the State and local levels.

Senator Hutchison:

We will never be Venice Beach, California. People are walking down the boardwalk, being sucked into facilities where doctors write prescriptions for medical marijuana. California, to me, is a nightmare in terms of what we want to do, and we will never follow that with my support. I know you are not advocating that, but you did speak to the economic impact and reciprocity. How do you control the reciprocity when you may not have all the data on an out-of-state patient?

Mr. Del Real:

Patient reciprocity programs from state to state can include databases that could be accessed with the click of a mouse. At the facility, you could call up other state programs and inquire about registered patients. We have the technology to do this. You do an injustice to Grandma Dorothy in New Jersey who uses medical cannabis when she comes to Reno to see her grandson graduate and cannot get her medical cannabis here. It is an injustice. You can write that into your law—to use a database to access the information about a tourist patient.

Senator Hammond:

The technology may be there to determine if people have the right to purchase the medical marijuana in their own state. However, with variances in state laws, that could be more than just a small obstacle. A patient may be allowed to have a certain amount in his or her state, but in another state the laws may be different. How do you deal with that?

Mr. Del Real:

What you do is to trust your own laws. Raise the bar to qualify at a certain level that recognizes best practice. Nevada does not have to reinvent the wheel on medical cannabis. We have 20 other states including Arizona that have viable

and effective regulations in place. You cherry-pick success and then create an opportunity to build on that success. Medical cannabis as a driver of economic development is real in this century; this is a new and emerging market, and there is money to be made. God bless America; I say yes to business.

Senator Ford:

You used an important key term: regulation. We can authorize the medical marijuana in statute and leave it to our administrative agencies to figure out the best way to implement the reciprocity program. Regulation is another thing.

Mr. Del Real:

I worked closely with the Arizona Department of Health on its program. I think it was genius for you to take the trip to Arizona to look at that system. I wanted to join you but was in Washington, D.C., testifying on a similar bill. For the record, there are dispensaries three blocks from the White House. There were 556 dispensary applicants who paid \$5,000 up front. That is \$355 million. Arizona funded the program for 2 years on those application fees alone. I represent dispensary owners and operators across the Country, and we fully support Senator Hutchison's statement that these facilities need to be medical and secure. I have evidence from the Sacramento Police Department that crime has been reduced in and around these secure facilities over a period of 2 years.

Senator Kihuen:

Have there been any Nevada-specific studies on the potential economic impact?

Mr. Del Real:

I am working on that and will have it available within the next 2 weeks. I will make it available to the Committee. I have submitted a letter to the Committee ([Exhibit I](#)), and a copy of the City of Sacramento Medical Marijuana Dispensary Application for your information ([Exhibit J](#)).

S. Rowan Wilson (Americans for Safe Access, Northern Nevada Chapter):

I am a medical marijuana patient, and the Wilson in the federal case about guns and marijuana: *Wilson v. Holder*, No. 11-1679 (D. Nev. filed Oct. 18, 2011).

I am neutral on this bill but thank you for bringing about something that should have happened 13 years ago. One person who testified on the medical marijuana bill in 2011 cannot be here today. This man is in his 30s, has cerebral palsy and is in a wheelchair. He is worried about testifying for fear of having his

disability payments yanked. He testified in 2011 that Marinol—also known as the generic dronabinol, the pill form of marijuana, did not work for him.

Many people do not have their medical marijuana cards. Look at <http://www.weedmaps.com>; we know what is going on. I have a problem with all this overregulation. Sacramento has closed dispensaries. A recent study published in <http://www.mmjbusinessdaily.com> found that most dispensaries are losing money. I applaud the amendment to make the Nevada system one for profit, but many of these people are not even breaking even. Hearing your amendments this morning, you mentioned raising the fees to \$20,000, but that is onerous on the businesses.

I agree with removing the criminal element. In renewing my card recently, my physician pointed out the criminal element is removed by legalizing marijuana. Does Grandma want to have to get her medicine off the street? I volunteer at Renown Hospital in Reno and have seen problems with methamphetamines, heroin and alcohol, but I have never seen a problem with marijuana.

I submitted a large document informally called Granny's list, which outlines all the uses for medical marijuana and also explains some of the science of cannabis ([Exhibit K](#)). This information will help head off the misinformation that it is a so-called gateway drug. If we are truly following the capitalist path with this in Nevada, I encourage you to get away from the overabundance of law enforcement. I do not see law enforcement people testifying against Prohibition here today. I am for certain measures, neutral on others and completely against an onerous fee which would place such a burden on businesses.

Senator Hutchison:

I only have the Arizona model to go on, but when we talked to entrepreneurs in Arizona—dispensary owners and potential owners—we asked how much money the dispensaries made per month. Between \$100,000 and \$700,000 per month is what they told us. I welcome any contrary evidence to the \$20,000 fee being onerous, but this is a business that will make a lot of money, and we need to attract serious business people with serious investments who are serious about the process. As Mr. Del Real said, we will have many people applying because of the potential to make a lot of money. It cannot be a \$500 fee.

Ms. Wilson:

I agree. I encourage you to look at an article on the for-profit model in Colorado at <<http://www.mmjbusinessdaily.com>>. You will see that most businesses, particularly restaurants, fail within the first year because they are not properly capitalized, because of the onerous burdens specific to this industry. Should we have something on every street corner like in Los Angeles? No, but should we also only have only one dispensary that is legally open like in Arizona right now? Get on <<http://www.weedmaps.com>> and see how many people are delivering to hotel rooms in Las Vegas with reciprocity. Look at their reviews, and you can bet they are not just delivering Girl Scout cookie marijuana.

Stephen Frye, M.D.:

I am a medical doctor and former professor at the University of Nevada, Reno, School of Medicine. I have been involved with the medical side of marijuana since 1997 when Proposition 215 passed in California legalizing medical marijuana. In Sonoma County, California, I was a medical director. I also owned a private practice and prescribed more medical marijuana than all the other doctors in town combined. It is amazing to me that we have let people suffer tremendously for 13 years in this State who benefit from this medication.

I want to differentiate between medication and a drug. Marijuana is the safest medication there is. You cannot die from marijuana use, unless someone from the U.S. Drug Enforcement Administration (DEA) shoots you. That is not a pharmacological death; that is a drug war death. You can die from aspirin, acetaminophen and ibuprofen, but you cannot die from marijuana. There is no lethal dose. There are no drug interactions. I have been to many California and Oregon medical marijuana dispensaries. We can certainly facilitate doing things here very quickly. I understand Senator Segerblom's motivation to go to Arizona and thank him for finally getting this bill so we can legalize this medically. The State of Oregon is well established in this field. In California, medical marijuana dispensaries send their people to Oaksterdam University in Oakland to be trained in how to grow, process, document and more. I am a member of the American Association of Cannabis Physicians. This is miraculous medication. The latest studies we have indicate that marijuana kills cancer cells in six kinds of cancer, including breast and prostate cancer.

Senator Ford:

We are not debating the utility of marijuana. All we are talking about is getting a dispensary in place. We will get that done because we are supposed to do that. I do not think your testimony right now is pertinent to that effort.

Dr. Frye:

I am just saying that I am happy to help facilitate setting up dispensaries in the State. I have lived here 13 years and am connected to the people who run the dispensaries in Colorado and California, and I will help however I can.

William J. Baker:

I am a retired autoworker and disabled American. I moved to Nevada in 2004 and became a cannabis patient. Because of not having dispensaries here, I had to let my license expire. I was disabled and unable to grow my own marijuana, and there was no place to buy it. It is debilitating and humiliating to see all these raids taking place. It is nice to know there is a place to go and safely get this medicine.

I have a few suggestions. If I get a prescription for a year, the State gives me a license for a year. I am a retired person and like to visit my grandchildren out of state in the summer. I only want to grow one or two crops a year. There is no place for me to buy it when I am out of the medicine. Otherwise, I have to take other medicines—pain pills, muscle relaxants—which I choose not to take. I would rather take the medical cannabis. I would like to grow one or two crops a year. Twelve plants a year is not much for chronic patients like me. I would like to get more and to donate or sell my excess crop to a dispensary and maybe draw out what I need. Then I could go to another state on vacation and come back and get my medicine or donate the excess. I do not want to punish the plants for producing more than 2.5 ounces per plant in a 14-day period. That yield from a plant, which is the new limit in the law in section 22, subsection 3, paragraph (b), subparagraph 1 of S.B. 374, is not quite fair because an average plant produces about 2 ounces. I want to be a good and productive farmer and share the excess with patients who need it or at least make a little profit off it to help me pay for the next crop.

I would also suggest that a patient advisory committee be formed. It could partner with Desert Research Institute, the great entity the State created to do scientific research and bring business models together. We could have citizens

on the advisory committee and physicians like Dr. Frye, and we could build a great model for the Nation and learn from all the other states.

Diana Lee:

I am a Las Vegas resident and senior citizen. I was diagnosed with ovarian cancer during a hysterectomy more than a year ago. I have many side effects from that surgery and am immune to pain medication. For more than a year, on my bad days, I lay in bed and suffered. While I was in the hospital getting chemotherapy, I insisted my door be closed so I would not disturb my fellow patients. I have no farming ability or room to grow my own marijuana plants in my small rental home.

Senator Hammond:

I totally understand where you are coming from. The voters have already spoken and told us they want us to implement medical marijuana in the State. It is in the State Constitution. We need to figure out how to implement this.

Ms. Lee:

One of my concerns is to make a short-term medical marijuana card available to those who may need pain relief for something like a root canal or an injury. Cancer patients like me may need an ongoing card. This is not a one-size-fits-all approach. I want to see this process made easy for patients and caregivers. There were times I could not go out in public. If I could have gotten medical marijuana, I would have had to have sent my caregiver, my husband. Please make it easy and take the liability out of this process for caregivers, doctors, insurance companies and other medical providers.

John George:

I am an attorney who represents persons who want to apply for a registration certificate. I have submitted some suggestions for this bill ([Exhibit L](#)).

Senator Kihuen:

We want to know how to implement this system. We are not debating whether cannabis is effective. This is a constitutional right.

Joseph H. Low:

I am a federal constitutional lawyer. Here are some ideas on how to implement reciprocity and honor other state cards. What if Nevada had a list of all other states that would have reciprocity? What would you have to do to get on that

list? Those other states would have to participate in that database. That technology would have to be in place, and you would have to have full access to other states' data and they would need full access to your data. This is important because you could verify the legitimacy and identification of the patient. Dispensary personnel could also see how much product the patient used in recent history and if he or she was truly due to fill a prescription.

If the dispensaries are to make large amounts of money, they should be responsible. States that refused to participate in the database exchange would be excluded from reciprocity with Nevada.

One other question that came up in discussing reciprocity is the difference in state allowances. What if Nevada has a 2.5-ounce rule per plant for 12 plants a year, but another state has a lesser allowance? The rule should be that people from out of state are responsible to follow Nevada laws when they are here.

On products sold at the dispensary, the specific, measured amount of tetrahydrocannabinol (THC) should be clearly marked on each package. This is the principal psychoactive component of the cannabis plant. It is important for patients to know this so they can dose themselves. A dispensary should be required to label what amount of THC is in each product and to regulate and verify the accuracy of that content over time.

There should be time limits on prescriptions. We should not honor open cards that say the patients can have as much pot as they want for as long as they want it, because that is not real. Even cancer patients have to go back to see their doctors to get their prescriptions updated, as they would for other medications. We need to make sure the medical community stays behind the idea of medical marijuana. Someone needs to be directly responsible for abuses, and that should be the prescribing physician.

Finally, require that a percentage of the money made by the dispensaries be put into cancer research and possibly medical marijuana research to investigate further uses for this plant.

Jennifer Solas (Wellness Education Cannabis Advocates of Nevada):

I represent a nonprofit in Las Vegas. I have submitted a compilation of financial benefits of reciprocity ([Exhibit M](#)). I also have some good information Websites for the Committee ([Exhibit N](#)). My concern is that the residents of Nevada profit

from this system. The lottery system should allow Nevadans the majority of dispensary slots so our business stays within the State. I am for this bill, but do not want to see out-of-state people take over all the dispensaries.

Craig Anthony Rodgers:

If it was not for Cannabis Science, Inc., I would not be here talking to you right now. I have the worst brain tumor. I am the fifty-first person in the Country to get off the operating table. Seven years ago, I went through walking and speaking therapy to relearn how to walk and speak after my surgery. I am considered Stage 4 right now. After my first year, I was going to take my own life.

A friend of mine who also had brain surgery told me to inhale some marijuana, and I have been doing it ever since. To get anything close to the medical dose I need, I make my own cannabinoids. I did not smoke weed when I was young. I do not call it weed or marijuana, I call it cannabinoids. Everyone on the planet has natural cannabinoids in his or her body. Right now in the State, with what is legal for me to grow, I cannot even get close to what I need to survive. I support this bill.

Julie Raye:

I am an attorney in Las Vegas representing Nathan Hamilton and Leonard Schwingdorf in *State of Nevada v. Hamilton and Schwingdorf*, No. C-11-276187-1,2 (Nev. Dist. Ct. February 29, 2012), a case currently in front of the Nevada Supreme Court. I met Nathan Hamilton a few days after his medical marijuana shop was raided. He told me he wanted the case to go all the way to the Supreme Court. He wanted to take a stand and change the laws. He was under incredible stress, facing multiple life sentences for this case. What many people do not know is that he took his life a few months ago. I am glad this Legislation is coming forward. It is time for it to become law. I represent many clients in active litigation for growing and dispensing marijuana. Many of these clients live under incredible stress from the fear of facing life in prison. They will no longer have to do that because they are complying with the laws. I think Nathan Hamilton would be proud of this legislation. I support this bill.

Steve Yeager (Clark County Public Defender's Office):

We support this bill to help clarify the criminal laws. I am personally in support and am willing to work with anyone on this bill.

Vicki Higgins (Wellness Education Cannabis Advocates of Nevada):

I support this bill and am a medical cannabis patient. I have had brain surgery and malnutrition issues. I think dispensary operators should be required to be residents of the State to prevent large corporations from taking over our local businesses. If there are outrageous fees, licensing and restrictions imposed on dispensary options, it could eliminate many Nevada businesspeople. By keeping the fees comparable to other states, dispensary ownership could potentially be within the reach for the average Nevadan. The alternative is to have big corporations and large companies coming in from out of state, overtaking our communities.

The taxes are a little extreme, but if collected, those monies should be put back into educating people and law enforcement about medical marijuana and its use. The profits should be kept in Nevada. Law enforcement sources commonly state that one cannabis plant consistently yields 1 pound of marijuana. One pound on hand for a patient is not unreasonable, and if that patient is a good grower, often a plant can produce more than a pound. This excess medicine should be taken back to dispensaries and sold, helping patients stay within the guidelines of the law and giving them extra money they might need.

Federal issues are changing about medical marijuana. I feel they will be cleared up soon. There has been a patent filed for medical cannabis, acknowledging the medical benefits of this important drug. I do have a letter with the patent information and data about cannabis and its uses, plus suggestions for this bill ([Exhibit O](#)).

Corey Finnegan:

My comments relate to creating protections for providers. My fiancée Vera, is a survivor of ovarian cancer and a patient in California. Despite having a license to grow marijuana and complying with the laws in California and being a wonderful mother, her son was taken away by California Child Protective Services (CPS) after a disgruntled babysitter misrepresented her as a drug dealer.

Vera's son is a low-functioning and nonverbal child with autism. She raised him alone while working two jobs, one of which was as a county nurse. Ironically, by selling extra marijuana to the local dispensaries, she was able to cut back to just one job and spend more time with her son. He progressed rapidly as a result of the extra time with her.

Sadly, the CPS caseworker had little knowledge of autism and verbally likened Vera growing pot to the manufacturing of methamphetamine, which is insane. So her son was taken away from his loving mother and given over to his father, who is, in my opinion, an unfit parent.

It is important that you make protections so CPS in Nevada cannot take kids away from their parents through this kind of misunderstanding. Having reciprocity with other states is also something we should definitely incorporate into our State system.

Keith McKinney:

I support this bill and applaud your investigatory trip to Arizona. I know you have to start somewhere, but \$400 to \$500 an ounce is too much for marijuana to be sold in Nevada. You will put us right back on the street to get it.

How do we get the product from growers to the dispensaries? A college in Garberville, California—707 Cannabis College—is supported by the teacher's union to become a 2-year accredited college. I have talked with people at the university to see if they would come to southern Nevada to open a campus to teach the proper process of growing, processing and dispensing marijuana. Arizona was a courageous place to start, but why not go to Humboldt County, California, and talk to the fourth- and fifth-generation growers, to chefs and cooks and to people who dispense the cannabis to patients? They are willing to show us where they made mistakes so we could learn from them. If you have growers in Nevada but wait a year to grow, it will be too late. You should start growing now and learn from the experts in California.

Cindy Brown:

I would like a little clarification on this bill. There is a limit of 2.5 ounces per patient every 2 weeks. I can understand that amount for a dispensary, but this does not work for a home grower. We can get 1 pound per plant, and Metro qualifies each plant as 1 pound if they make an arrest.

I would also like to see the records cleared and cases dropped for patients and caregivers who have been arrested and prosecuted over the past 12 years. You can hear from the applause in this room that this is a concern here. Clear their records. Let these people get their jobs and their lives back. We have suffered greatly to access this product and have the health and benefit it provides us. We need help.

We would like patients to be consulted on this bill. It seems like it is just big business that wants to take over and tell us what to do. We are the ones who have been doing this for years.

Regarding the reasonable licensing fees, \$20,000 is ridiculous; it is gouging. It will restrict smaller people from doing something. A compounding pharmacy only pays around \$4,900 a year for their fees. I think you should cut fees for the patient cards. It is \$150 now and requires a doctor visit. In other states, it is as little as \$20. I also suggest you work in conjunction with the Americans with Disabilities Act of 1990 so employers cannot discriminate and terminate employees because of their participation in a State medical marijuana program without further cause. You can hear by the clapping in this room that others have dealt with this issue too.

My final point is that if we grow for ourselves at home and sometimes yield more product than we need for ourselves, we want to have the option to sell it to a dispensary. It is a for-profit business. Why should we give that to someone else to make a profit when we furnished the water, electricity and care to grow the plants?

Kurt Duchac (Wellness Education Cannabis Advocates of Nevada):

I am a patient, and I support this bill. My concern is that ten dispensaries for the State are not enough. We have way more patients than you know. They do not opt to get their cards because they are afraid of the law. What is the benefit of having a card? I cannot grow it myself and there is no dispensary, so why do I want to apply for a card and give the State my money?

I understand we do not want dispensaries on every corner like Starbucks in Venice Beach. Why not put the dispensaries in a business park, out of the mainstream? I also agree that small business operators should have the ability to start up dispensaries so we can keep the money in Nevada.

Senator Hutchison:

Just to clarify, ten dispensaries was the starting point, ultimately allowing for 10 percent of the number of pharmacies in Nevada. In the end, the Health Division in the Department of Health and Human Services would make the final decision on how many dispensaries we operate.

Mike Higgins (Wellness Education Cannabis Advocates of Nevada):

I am a patient and advocate. You were asking how the dispensaries would be supplied. In Colorado, the growers are licensed with \$2,000 application fees and \$6,000 licensing fees every 2 years. Dispensaries fees are \$2,000 and their application fees are \$5,000 every 2 years. Producers who make tinctures, oils, edibles, etc., are charged \$2,000 application fees and \$6,000 licensing fees every 2 years.

For the product supply, licensed growers would need to grow 99 plants or less, which would keep the sentence under 5 years for licensed manufacturers or growers. No matter what you grow, you will still be against federal law. I support this bill.

Senator Kihuen:

We appreciate everyone who has testified in support of this bill. We will not be taking any more testimony from Las Vegas in support. Please raise your hand if you are in support of this bill. It looks like most people in the room are raising their hands. I do have a letter of support from Robert Walker in Las Vegas who may be in the audience ([Exhibit P](#)).

Ms. Spinazola:

We support S.B. 374 because it provides a rational way to obtain medical marijuana for those who are legally registered to use it. We wrote an amicus brief on the aforementioned case involving Nathan Hamilton that I have submitted ([Exhibit Q](#)) so you can view the constitutional violations. This bill addresses those violations.

Senator Kihuen:

I will take opposition testimony now.

Mr. Callaway:

I represent Metro, and we oppose the bill. We understand the fact that medical marijuana is voter-approved in the State and that there are constitutional challenges. The proposed amendment helps address our concerns, but we still have logistical concerns about how this bill, if implemented, could impact public safety and law enforcement. I would ask this Committee consider that last Session we brought forth S.B. No. 256 of the 76th Session, which made it through the Senate but died in the Assembly. That bill would have increased the penalty for cultivating marijuana. If this bill, S.B. 374, moves forward and

dispensaries were established in the State, we would recommend this Committee look at that earlier bill. People growing outside the law are a problem for us. We think stricter penalties should be in place for those who grow the plants outside the law.

Senator Hammond:

Can we get written testimony on this? We would appreciate a list from all the testifiers who have copious amounts of information on this subject because we are all trying to process it and distill the best suggestions from each of you.

Ryan Kraft (Detective, Las Vegas Metropolitan Police Department):

Our main concern is with the distribution of the marijuana. The underlying problem is that the U.S. Food and Drug Administration (FDA) approves drugs as safe and effective. Their processes are well controlled with clinical trials and other tests.

The U.S. Federal Food, Drug and Cosmetic Act requires that new drugs meet certain standards before they can be marketed to consumers.

Controlled substances are scheduled under a federal law called the Controlled Substances Act (CSA), which evaluates the risk and benefit of the drug. Marijuana is classified as a Schedule I drug, meaning it has high potential for abuse. Marijuana is not an approved medication and cannot be legally prescribed by a doctor or dispensed by a pharmacy or business. Organizers behind the medical marijuana movement have not dealt with ensuring the drug meets the standards of modern medicine, including quality, safety and effectiveness. There is no standard composition or dosage; no appropriate prescribing information; no quality control or accountability for the product; no way to measure its effectiveness; and no insurance coverage.

Years ago, when NRS 453 on controlled substances was drafted, legislators fashioned Nevada's program in a manner which left matters of supply to the participants. The decision to pursue the current model was based on the examination of the experiences of California and Oregon. We have all seen how California has become a huge problem—after almost 20 years, the state still does not have it together.

The U.S. Supreme Court has made it clear that since marijuana is a Schedule I controlled substance, human use outside FDA-approved,

DEA-registered research is prohibited. For the same reasons, it is unlawful to manufacture, distribute or dispense marijuana.

The issuance of a medical marijuana card does not exempt holders from federal prosecution. Although the U.S. Department of Justice (DOJ) has said it will not go after seriously ill individuals who use marijuana as part of medically recommended treatment in compliance with state law, it has drawn the line when it comes to sanctioning a network of drug trafficking such as businesses that market and sell marijuana. The DOJ clearly stated it would enforce the CSA vigorously against these individuals and organizations that participate in the unlawful manufacture and distribution of marijuana.

In 2010, we witnessed problems with these types of storefronts. Ultimately, we conducted more than 42 criminal investigations targeting 57 illegal storefronts distributing marijuana. This huge problem has been repeated all across the Country. A recent article in *The Wall Street Journal* reported that Colorado cannot even pay to hire staff to monitor these businesses because they have not generated enough revenue.

Senator Hutchison:

We want law enforcement to participate in this and help us through the process. We want to balance a constitutional right, the federal challenges and the dispensing mechanism in our State. One of the benefits will be that you will get more money to go after the bad guys.

Lt. Spratley:

We oppose this bill as written and not covered by the proposed amendment. As these dispensaries become reality, we want safety, security, legitimacy and professionalism. We want really secure locks on the doors and will work with the Committee. I have submitted my written testimony ([Exhibit R](#)).

Ms. Wilson:

I spoke as neutral before and am now speaking in opposition to a few items. If this is going to be regulated like the big pharmacy industry, I have a problem. Look into the laws governing compounding pharmacies. It is different from what we ask big drug manufacturers. This should be regulated like vitamins.

My second concern is with law enforcement. We do not want officers constantly breathing down one's neck and feeding a police state. Look at the compounding pharmacy model.

Senator Hutchison:

Vitamins are not a Schedule I controlled substance under federal law. So it is more than just growing an herb or vitamin supplement; marijuana is a drug.

Ms. Wilson:

There are applications to have marijuana reclassified. There are also drugs high in cannabidiol content and low in THC, which is the psychoactive component.

Senator Segerblom:

I was present when Governor Brian Sandoval's Crime Commission discussed this issue. Clark County Sheriff Douglas C. Gillespie said Metro was not taking a position on medical marijuana because it is in the *Nevada Constitution*. We want to work with law enforcement to make sure the process is as tight as it can be and nothing illegal happens.

I have received two exhibits from Chris Ferrari to submit. One is a proposed amendment ([Exhibit S](#)) and the other is an informational document with some suggestions ([Exhibit T](#)).

Senator Kihuen:

I am closing the hearing on S.B. 374 and opening the floor for public comment.

Ms. Higgins:

Police departments are saying this will create more problems. By structuring safe access for patients—not a walk-through like in California—with checks and balances, it can be made safe. With quality control and regulation control, we can take problems off the street. This task should go to a qualified, educated person who can process and handle the medicine for Nevada patients.

Perry Hitechew:

I am a patient and ready for this to happen. I am not opposed to the fees you have proposed. If patients want to have shops, they can form cooperatives and pool their resources. That is what businesses do. My grandfather was the cofounder and vice chair of Wynn Gaming Corporation, and he taught me a lot about doing business. If you had an application for me to pay today, I would

pay it at this very moment. There is a lot of money in this. I volunteered in a very small shop in Las Vegas, The Happiness Consultant, and we saw \$6,000 to \$7,000 in gross sales every day. On a good day, we would make up to \$12,000.

Ms. Raye:

My father was diagnosed with Stage 4 tongue cancer and is currently awaiting his medical marijuana card. He wanted me to give a copy of this DVD, "What if Cannabis Cured Cancer?" to all of the Committee members ([Exhibit U](#)).

James Spinoza:

People act different when they are on marijuana.

Julie Monteiro, R.N.:

I am a legal professional in Nevada and a registered nurse. I am here on behalf of my patients. We the people put this law in place 13 years ago. You need to get your laws together. I have patients dying because things are not in order.

Rick Brown:

I am a patient in Las Vegas. With the dispensary situation as it is now, we are forced to go places we really do not want to go to. I am not a gang member or part of a drug cartel. I am 64 and I need cannabis. I have to go to areas to purchase this that I do not want to go to. It is wrong.

Senator Segerblom:

Where do you live? We will put one on your street corner. We want to make it so you can buy it in your neighborhood.

Mason Webb:

I am a veteran and have been a medical cannabis patient in Nevada in compliance with the law for the last 5 years, growing my own product. The police have been to my house and attacked my anonymity. What is not addressed in the bill are the benefits we can get for people with diabetes, cancer and multiple sclerosis from distilling down several pounds of marijuana and extracting oils, which are terpenoids, flavonoids and cannabinoids. This has not been addressed; this bill is not progressive enough or concurrent with science as we know it.

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Chair Segerblom:

I am closing the hearing of the Senate Committee on Judiciary at 11:52 a.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	11		Attendance Roster
S.B. 413	C	2	Senator Barbara K. Cegavske	Testimony
S.B. 413	D	3	Yvonne Murphy	Testimony
S.B. 463	E	1	John McCormick	Proposed Amendment
S.B. 463	F	1	Ben Graham	Testimony
S.B. 374	G	3	Senator Tick Segerblom and Senator Mark Hutchison	Proposed Conceptual Amendment
S.B. 374	H	10	M. Max Del Real	City of Sacramento Medical Cannabis Ordinance
S.B. 374	I	1	M. Max Del Real	Letter
S.B. 374	J	3	M. Max Del Real	City of Sacramento Medical Marijuana Dispensary Application
S.B. 374	K	1013	S. Rowan Wilson	Granny Storm Crow's MMJ Reference List and Index, January 2013
S.B. 374	L	1	John George	Suggestion List
S.B. 374	M	5	Jennifer Solas	Marijuana Information Packet
S.B. 374	N	6	Jennifer Solas	Marijuana Information Packet
S.B. 374	O	4	Vicki Higgins	Marijuana Information email
S.B. 374	P	1	Robert Walker	Letter of Support
S.B. 374	Q	28	Vanessa Spinazola	Amicus Brief
S.B. 374	R	4	Eric Spratley	Testimony
S.B. 374	S	1	Chris Ferrari	Proposed Amendment
S.B. 374	T	2	Chris Ferrari	Information Sheet
S.B. 374	U	NA	Julie Raye	DVD, "What if Cannabis Cured Cancer"