MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 3, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 8:07 a.m. on Wednesday, April 3, 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

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Senatorial District No. 8

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

A.G. Burnett, Chair, State Gaming Control Board
Joe Asher, CEO, William Hill US Holdco, Inc.
Lee Amaitis, President, CEO, Cantor Gaming
Pete Ernaut, Nevada Resort Association
Lorne Malkiewich, Nevada Resort Association
Barry Lieberman, Chief Development Officer, Gaughan South LLC

Jeff Rodefer, Vice President, Legal Affairs, Boyd Gaming Corporation
John Griffin, Independent Gaming Operators Coalition
Stephen Ascuaga, Chief Operating Officer, John Ascuaga's Nugget
Yvanna Cancela, Culinary Workers Union Local 226
Peter C. Bernhard, Chair, Nevada Gaming Commission
Gregory R. Gemignani, Cantor Gaming
Sean Higgins, Nevada Restricted Gaming Association; Golden Gaming, LLC
Blake Sartini, Chair, Nevada Restricted Gaming Association; Owner and CEO, Golden Gaming, LLC
Scott Scherer, American Wagering, Inc.
Linda Marie Bell, District Judge, Department 7, Eighth Judicial District
James Scally, Correctional Manager, Department of Corrections
James G. (Greg) Cox, Director, Department of Corrections
Tom Standish
Steve Yeager, Clark County Public Defender's Office
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys

Chair Segerblom:
Senate Bill (S.B.) 75 will not be heard during the work session today.

SENATE BILL 75: Establishes a cause of action for persons who become addicted to a prescription drug. (BDR 3-98)

We will start the hearing with Senate Bill 418.

SENATE BILL 418: Revises provisions relating to pari-mutuel wagering. (BDR 41-1106)

Senator Tick Segerblom (Senatorial District No. 3):
Senate Bill 418 seeks to allow betting on federal elections in Nevada. This occurs regularly in the United Kingdom (UK) where hundreds of millions of dollars are bet on our own U.S. elections. The bill allows Nevada's sports books to offer odds on elections if they choose to do so. This would bring a lot of money and notoriety to the State. I would like A.G. Burnett to testify.

A.G. Burnett (Chair, State Gaming Control Board):
For the record, the State Gaming Control Board does not have a position one way or the other regarding S.B. 418. The Board does not have any formal objections, but I suggested to Senator Segerblom that the State exercise

caution when entering into these types of markets. Nevada has a long history of standing on its own regarding gaming regulations in the State. If an issue, scandal or some kind of event puts the federal spotlight upon Nevada, the State would have to fight that negative publicity.

Senator Hutchison:
Would there be any regulatory changes if this bill passes?

Mr. Burnett:
I do not anticipate any necessary or immediate changes to our regulatory scheme. However, should the bill pass, my staff and I would review the need for any changes. It would be up to the Nevada Gaming Commission to enact any new regulations.

Senator Hutchison:
Is there anything to worry about regarding betting on Nevada elections? Sometimes there is a reticence to not host certain professional sporting events in the State because Nevada allows betting on those events.

Mr. Burnett:
This bill only addresses federal elections which would alleviate some of that concern.

Senator Jones:
Would there be an exclusion for betting on U.S. Senate or Congressional races in Nevada?

Mr. Burnett:
The Gaming Commission would want to review that exception.

Senator Segerblom:
I invite some of the operators to share their experiences in England.

Joe Asher (CEO, William Hill US Holdco, Inc.):
William Hill supports S.B. 418. Betting on elections has occurred for quite some time in the UK. I was in London last fall when betting took place on the U.S. Presidential election. I do not understand why I must go to the UK to make that bet rather than making it in a Las Vegas sports book. I do not see the need to have any exclusions, but ultimately that will be up to the Nevada Gaming

Commission. Betting on Presidential elections will generate a tremendous amount of publicity for Las Vegas and the entire State.

There are already lines in the UK on who will win the Democratic and Republican nominations for U.S. President as well as who will be elected President in 2016. People can bet on a number of other things in the UK besides political elections, such as award shows, reality television (TV) shows, current affairs, the royal family and celebrities.

Senator Ford:
Are there any exceptions to what people can bet on in the UK, such as local elections?

Mr. Asher:
I have not focused on exceptions at the lower levels in the UK.

Senator Ford:
Have any unintended consequences resulted from betting on elections in England?

Mr. Asher:
I am not aware of any scandals or negative effects.

Senator Hutchison:
Do you have any projections as to how much revenue Nevada could expect?

Mr. Asher:
I am reluctant to give you a specific number, but I guess the handle would be in the tens of millions of dollars once it ramped up and people were aware they could bet. Sports books generally win around 6 percent of the amounts wagered.

Lee Amaitis (President, CEO, Cantor Gaming):
The turnover on one of the London exchanges for the 2004 Presidential election was $27 million. The estimated handle on the total election was about ten times that number when including all the private bookmakers. The handle generally depends on the opponents and whether the race is hotly contested. Although not required, bookmakers generally offer odds on most anything that patrons

request. My experience tells me that wagering on the federal level and tight races could generate quite a bit of revenue and publicity for Nevada.

Senator Ford:
Since no one in Carson City or Las Vegas wishes to testify either for, against or neutral on the bill, I will close the hearing on S.B. 418.

Chair Segerblom:
I will now open the hearing on Senate Bill 416.

SENATE BILL 416: Revises provisions governing gaming. (BDR 41-1104)

This Committee bill was introduced at the behest of the Nevada Resort Association.

Pete Ernaut (Nevada Resort Association):
I am here on behalf of the 70 members of the Nevada Resort Association (NRA). Two specific matters of public policy are before you today: (1) clarifying the bright line between nonrestricted and restricted policy in gaming licensees, and (2) codifying the minimum quality standards for restricted gaming licenses. Senate Bill 416 seeks to address these issues through two changes to the *Nevada Revised Statutes* (NRS).

Section 1 of the bill makes the definition of restricted license consistent with the definition of nonrestricted license regarding the number of slot machines, any other game or gaming device, race book or sports pool. Fifteen slot machines and no other game or gaming device is the current limitation on restricted licensees. Section 1 adds the term race book and sports pool to the list of items prohibited to remain a restricted licensee. Sections 2 and 4 prohibit sports book kiosks in restricted locations and require licensure elsewhere. Sections 3 and 5 seek to adopt a Clark County standard for minimum requirements for bars to get licenses and apply those standards throughout Clark and Washoe Counties. The grandfather clause parallels that regulation adopted in Clark County. This bill is important because the Nevada Legislature sets rules and standards in statute for appropriate competition in the gaming industry, which represents the single, biggest revenue source for the State's General Fund.

A number of other industries have experienced unintended consequences and damage that can occur when competition between different classes of licensees

is allowed on an unlevel playing field. Years ago, when mobile telephones entered the market, no rules regarded competition with existing phone companies. The State required the phone companies to provide major investments in landlines, fiber optics and wires. No such amenities were required from the mobile companies. Phone companies lost 40 percent of their market share before the Legislature stepped in and made the comprehensive changes necessary to level the playing field.

Cable TV experienced the same situation. Cable TV is highly regulated and required by the State to provide infrastructure. Yet, when satellite TV burst onto the scene, the cable TV industry lost over 25 percent of its market share before the Legislature acted to place order and fairness in that marketplace. Since Nevada has faced these issues in other industries, the NRA is asking the Legislature to act now to avoid the mistakes of the past in the gaming industry where the stakes are much higher.

Much has been said about competition in S.B. 416 and that the bill is anticompetitive. When I say public policy, I really mean competition. Since 1967, Nevada's public policy has recognized no competition between nonrestricted and restricted licensees, thus the reason for the designation. Think of it this way, the resorts and the bars are at the same poker table, and the State requires the resorts to ante $100 when the bars only have to ante $1, but yet they both play for the same pot. The matter of minimum standards for restricted licensees frames itself. To ensure that the gaming experience for Nevada is appropriate, the State must be clear on the minimum standards of quality for all bars and taverns that have gaming. The competition must be waged on a level playing field. Without an appropriate standard, a race to the bottom is created where bars are then allowed to figure out the absolute minimum possible to qualify for those 15 machines. Competition is good as long as it is fair, appropriate and standard between the same level of players. The NRA does not shy away from competition. Casino gaming and tourism is one of the most fiercely competitive industries in the world. However, the level of investment required to compete is not even close between nonrestricted and restricted licenses.

The entire premise of the opposition to this bill is based on a business model of the proliferation of kiosks. The handle may only be $600,000 today in 180 or 200 locations, but consider what might happen in 2 or 4 years if there are 2,000 locations with a $15 million handle. I know none of you relish the

thought of shutting these kiosks down, but I contend that if this decision is not made, the situation will only become more complicated. I was a Legislator at one point, and I remember those slippery slope arguments. In this case, the slippery slope is an absolute certainty that the business model is the proliferation of these kiosks. If it is determined that sports book kiosks in bars are not a problem today, will a blackjack table or a virtual poker room be okay in another 2 years? If kiosks are allowed in bars, what will stop them from being put in a Starbucks, a Walmart or a movie theater?

Entrepreneurs like risks. They put up their capital, compete and push the envelope. William Hill, Cantor Gaming and Golden Gaming are good companies. Like the NRA, they are on the cutting edge in a time when technology and innovation are redefining the gaming industry. Pushing the envelope is what we all do. However, as policy makers, the Legislature must decide what the edges of that envelope look like in order to make the playing field level and competition fair. Given the difference in the level of investment and all that is at stake, the situation will continue to grow and become more complicated if a decision is not made today.

Our regulators will tell you that innovation and technological advances in gaming are happening on a daily basis. They are inundated with applications for the next mobile gaming vehicle or kiosk function. The rapid advance of technology in gaming requires legislative action to set the rules and decide the standards before the industry is overwhelmed with new loopholes, new challenges and more regulatory erosion.

In 2 years, the kiosk will be outdated like an eight-track tape. The problem is not the kiosk but what it represents. The kiosk is the catalyst that brings this public policy to your doorstep. Restricted licenses are allowed 15 machines. That is the law. If the door is opened just a crack, kiosks will be the first of 1,000 things that this Senate Judiciary Committee and the Nevada Gaming Commission will vet. Sound public policy that sets rules and standards should stand the test of time and technology. The Nevada Resort Association is of the opinion that a sound policy already exists today, but the policy has eroded and needs to be strengthened by S.B. 416.

I have heard the argument that a kiosk is the same as a cell phone, but there are two major differences. The first difference is that with a kiosk, you have to set up your account in a brick-and-mortar casino. That is today's law in our mobile

gaming statutes. The second difference is the cell phone does not spit out a ticket that can be cashed in with a bartender. Both mobile account creation and cashier functions are as much enforcement issues as competitive issues. The State does not allow mobile account creation. For 25 years, Nevada has believed that determining the true identity of the bettor is important to ensure the State can combat underage gaming, problem gaming and identify theft. Nevada is only one of two states in the Country that allow sports book betting. The Wire Act applies specifically to sports book gaming, and it is imperative that the State determine a bettor is actually a resident of Nevada.

Mr. Ernaut:
Nevada has the highest level of scrutiny in the gaming industry in nonrestricted locations that perform cashier functions. Yet, with kiosks, every bartender in the State now becomes deputized to perform those same functions. You do not have to be an expert in gaming policy to understand that the handling of cash is the absolute bone marrow of gaming regulation, operation integrity and enforcement. Allowing kiosks to pay significantly dilutes the most important enforcement matter in all of gaming—handling money. Cashiering functions strike at the heart of competitive issues. The reason for investment in gaming is the action. It is not just the bet; it is the cashiering. When money is taken out of a casino, all the benefit is exported, which is the reason for investment. Absent the revenue-sharing agreements that some of the nonrestricted and restricted licenses have, I imagine the kiosk owners would not be too keen with money going across the bar if they were unable to share in that revenue.

A kiosk takes bets, and it clearly is a form of gaming instrument. According to this bill, a kiosk is a sports book. Let me describe a scenario regarding kiosks. A player drives down a street and passes a bar with a sign that says, "Make sports bets here." The player walks in, someone helps the player set up an account, and the player makes a bet at the kiosk. If the player wins, a ticket comes out of the kiosk. The player cashes in the ticket with the bartender or makes another bet. In a real sports book in a casino, someone helps a player set up an account and the player makes a bet. If the player wins, the player cashes in the ticket or makes another bet. Common sense dictates the absurdity of the argument that the kiosk is not a sports book function.

I have heard the argument that it is the job of the Gaming Commission or the local governments, not the Legislature, to make gaming policy. This makes no sense to not have the Legislature create public policy on rules and standards for

the State's largest industry. Rulemaking has to be set in statute for, at best, uniformity of application and to avoid, at worst, exactly why we are here. I am confident our regulators will tell you that the decision to sunset the kiosk revenue-sharing agreements between the nonrestricted and restricted licensees for this coming July was done specifically to allow the Legislature to decide this very issue. A kiosk has never been approved by the Gaming Commission or the Legislature. It was done administratively. Today is the first chance that the Legislature, representatives from the gaming industry and constituents have had to hear, discuss and debate in an open, public forum the issue of whether kiosks should be allowed in restricted locations.

In closing, I will say that despite all the hysteria, two very simple but important public policy decisions are before you today: (1) clarify the bright line distinction between nonrestricted and restricted licensees, and (2) codify in statute the minimum quality standards for restricted licensees in order to protect the standards of gaming in Nevada. On behalf of the Nevada Resort Association, we respectfully ask for your support.

Chair Segerblom:
One of the operators told me that that he would go out of business the way S.B. 416 is written. Do you have a position on that, and are you willing to change that part of the bill?

Mr. Ernaut:
Clearly, that was an oversight; we did not realize their basis was a mobile gaming license. It is a simple fix, and I believe an amendment will be brought forward.

Senator Hutchison:
The Legislature unanimously passed Internet poker this Session. This has been indicated as a matter of public policy through the Legislative and Executive Branches. If I am playing poker on the Internet in my parked car, how is that okay from a public policy standpoint versus going into a bar and using a sports kiosk?

Mr. Ernaut:
There are a few differences. According to Assembly Bill 114, an establishment must be affiliated with or be a brick-and-mortar, nonrestricted resort casino in order to qualify for an interactive gaming license. This levels the playing field.

ASSEMBLY BILL 114: Revises provisions governing interactive gaming. (BDR 41-97)

There is no doubt that innovation will take over and more gaming devices will become mobile, but certain amenities that the gaming industry has held since 1967 should be reserved for nonrestricted resort casinos. That is exactly why A.B. 114 regulated interactive gaming to brick-and-mortar, nonrestricted resort casinos. A casino must have the basic investment to compete.

Senator Hutchison:
Can a regulator put more protections in place in a tavern or bar as opposed to Internet poker which can be played at any location? And from a regulatory standpoint, does a kiosk environment have more protections versus Internet poker?

Mr. Ernaut:
It becomes difficult when people blur the differences between mobile gaming statutes, interactive gaming statutes and now kiosks. In the next 5 years, there is no doubt that cell phones will be the most important device in gaming, but two important differences strike at the heart of your question. To set up an initial account, players must go into a brick-and-mortar casino which creates an enforcement issue. This standard forces players to prove their identity to help prevent identity theft by showing they are not an agent of another or from another state. Once there is a high level of certainty regarding identity, players are qualified to open an account and begin betting.

The other major difference is the cashiering function, which is more important than anything else. During the Laxalt Administration, when the gaming industry talked about moving to publicly traded companies owning casinos, one of the more important issues of that day was the handling of money. The cashiering function provides a necessary enforcement issue that is different from mobile gaming. With mobile gaming, a player can add to or draw down an account. But if a player wants actual money, he or she must go to a brick-and-mortar casino. This standard enforcement issue has been the State law for over 25 years in our mobile gaming statutes.

Senator Jones:
I was elected by the residents in Senate District No. 9, and I am mindful of and concerned for their interests. If Senator Hutchison's constituents want to place

a sports wager, they can go to Red Rock Casino or to the Suncoast Hotel and Casino; Senator Segerblom's constituents can go to Palace Station; Senator Ford's constituents can go to the Silverton or the Orleans. But the residents of Senate District No. 9 do not have that luxury of placing a wager in a local casino. Therefore, they will do one of two things: not place a wager because they do not want to drive 20 minutes to an unrestricted gaming location; or call their bookie and place their bet off the books, for which the State receives no revenue. What is the alternative for my constituents?

Mr. Ernaut:
That addresses a public policy decision at some level. As a State, we must decide if the foundation of our regulatory framework is one of convenience or standards and enforcement. Given our mobile gaming statutes, your constituents would only need to make that 20-minute trip once to set up their account. From that point on, they can bet on any machine anywhere they want, but they will have to cash out their tickets in a brick-and-mortar casino. I cannot imagine no local casino somewhere in your district that is not a burden to travel to in order to make a sports bet.

Senator Ford:
You mentioned a dichotomy for consideration: convenience or standards. That might be a false dichotomy because maybe we can do both. In an effort to equalize the playing field and require more from these restricted gaming users, can we require the smaller establishments to increase their capital investment by possibly taxing them more, or do something to increase their investment, albeit not quite as much as what goes into the larger casinos?

Mr. Ernaut:
Absolutely, we can do both, and that is the decision before you today. But where do you draw that line? To use Senator Jones's example of his constituents not wanting to drive out of their way to make a sports bet, he probably has constituents who may prefer to play blackjack. Two years from now, by that same rationale, will we have to come back to the table because his constituents do not want to drive 20 minutes to play blackjack? Who knows what the next gizmo will be 2 years from now.

Senator Ford:
Why is the Legislature establishing the definitions rather than the Nevada Gaming Commission? After all, the Commission is the entity in charge that deals

with gaming on a daily basis. I understand the Legislature has a responsibility to help the overall public policy of gaming, but the members on the Commission might be more qualified to establish the definition.

Mr. Ernaut:
The Nevada Gaming Commission and the State Gaming Control Board do a wonderful job, and if the Governor issued an executive order tomorrow making them all lifetime appointments, I do not think anybody in this room would object. The problem is that the ambiguity in the statutes leads to erosion. I reiterate the point of the July 13 sunset date. Just in the last 2 weeks, regarding nonrestricted quality standards, the City of Henderson has been taking an entirely different tack of instituting a new incidental test of 50 percent or more of the business. Locations in Sparks have been approved through waivers. The point is, if there is no codification in statute, there is no uniformity of application.

The decision to require nonrestricted licensees to have 200 rooms could have been made by the Gaming Commission, but as the industry grew and the dichotomy increased between nonrestrictive licensees, there came a point where the Legislature had to make a definitive public policy that stated in order to have a nonrestricted resort license, the licensee had to have 200 rooms.

A better example is the struggle regarding neighborhood gaming in the 1990s and early 2000s. Neighborhood gaming was not the proliferation of a Dotty's or a Jackpot Joanies. It was resort casinos. Policy was left to the Commission and local governments, but the local communities could not agree. It took many years for the Legislature to decide the right policy on neighborhood gaming. This shows that there are points in time when the Legislature needs to step in and make definitive rules.

It is important for the Legislature to be involved now because the gaming industry is on the cusp of a technological explosion. Companies like Cantor Gaming and William Hill are working every day to come up with the next new idea, and we should applaud them for that. If the line is not drawn regarding what is available to a nonrestricted or restricted licensee, the Gaming Commission will be put in the position of being referees without direction. If the law was clear, we would not be here today nor would we have 90 establishments arguing that they do or do not meet an incidental test, presumptive test or basic investment test. That is why the Legislature needs to

direct this matter in order to give our regulators better direction to interpret the future.

Senator Ford:
You have given examples of why it is important to go to a brick-and-mortar casino to verify a person's identity for enforcement and regulatory purposes, but I suspect that technology may do that one day. The cell phone may not be sufficient today, but in 5 or 10 years, some application or device may make it less important or necessary to go to a brick-and-mortar casino to verify identity. It is the slippery slope argument in reverse. As long as players have to go to a brick-and-mortar casino to establish identity or cash out, you seem to be satisfied. What will be the argument when players no longer need to go into a brick-and-mortar casino to establish identity and the regulatory purpose for that goes away?

Mr. Ernaut:
Innovation is driving the gaming business forward. That is the nature of this business today. These questions that confound the State will ultimately have to be decided by this body. I guarantee that the example you gave will result in a conversation in the next few years as a matter of public policy and regulatory interpretation. The kiosks were not a regulatory decision; they were approved administratively. When I say loopholes, I do not mean that in a negative way. Technology has driven those loopholes, and the Legislature needs to review and determine the best method of setting the proper standards and rules going forward. The industry is changing rapidly. I cannot say this is the last time that the Nevada Resort Association, the tavern group or even the regulators will be here before the Legislature seeking clarification. Gaming is the lifeblood of our State's economy, and we have to get this right. If Nevada wants to be the Country's leader in the gaming industry, it is incumbent upon this body to set standards and policy as well as provide direction. There cannot be a higher priority of this body than protecting the State's No. 1 industry.

Senator Brower:
I am trying to understand the language of the statute versus the new proposed language. The restricted license definition in NRS 463.0189 states that a restricted license can have no more than 15 machines and no other game or gaming device. If I was new to this debate, my initial reaction would be to question why regulators have not deemed kiosks to be a gaming device according to NRS 463.0155. What is your perspective on that?

Lorne Malkiewich (Nevada Resort Association):
This is one of the reasons why this issue did not come before the Nevada Gaming Commission. A gaming device is something that determines the outcome of a game. A kiosk does not meet the definition of a gaming device because it does not determine the win or loss on a wager. It has fallen into this catchall definition of associated equipment. As such, a kiosk goes through technological review. The State Gaming Control Board can look at a kiosk before and after it has been put into place, but a kiosk does not get licensed. As Mr. Ernaut said earlier, at what point does associated equipment, which only needs to be approved by the Chair of the Control Board, become a sports book? How much more functionality does a kiosk need before it does everything a sports book can do? That decision never came before the Gaming Commission because it does not review approved associated equipment. The only reason the decision came up in 2011 is because of a revenue-sharing proposal.

Senator Brower:
Was there an administrative decision to approve the kiosks?

Mr. Malkiewich:
A kiosk is associated equipment that allows players to communicate with a race book and provides information about the latest special for the day. A number of administrative decisions must be made for its approval. A developer will first approach the Chair of the Control Board and ask to put a kiosk in a location. Once approved by the Board, a marketing plan is developed to put the kiosks in different locations, which also requires the Board's approval. This associated equipment is then improved over time and now has the ability to place bets through the kiosk; the developers seek approval to add this function. Slowly, one step after another is approved by the Control Board, each of which is not reviewed by the Gaming Commission. Eventually, we get to the point where we are today. This equipment does everything a sports book can do, but because it is considered associated equipment, it never required licensing. This bill states that if a kiosk does these things, it should require a license.

Senator Brower:
It appears that NRS 463.0189 was last amended in 1989. I think it is fair to say that in 1989, the kiosk did not exist.

Mr. Ernaut:
I am not sure if the kiosk existed in 1989, but the original intent of a kiosk was to provide sports books in small, nonrestricted casinos that did not have the infrastructure for a sports book. It was never intended for restricted locations.

Senator Brower:
It is clear that we need to get this right.

Senator Jones:
I do not see a specific definition for "incidental" in this bill. Is section 3 the attempt to define "incidental"?

Mr. Ernaut:
The term "incidental" has perplexed the Commission for 20 years. At first, the Commission could look at a financial test and question if gaming is more than 50 percent of a business. This evolved to a presumptive test that said if a local entity deemed an establishment a tavern, then gaming was deemed as incidental to the business. The problem with that was the definition of a tavern was different among the local communities. Therefore, presumptive test proved to be a problem as well. That resulted in a number of restricted locations that some would say are substandard and do not provide anything but a slot arcade, but they meet presumptive test. Since they were deemed a tavern in some communities, they got their machines.

The definition before you was a product of necessity. We cannot go backwards and have a financial test and audit every tavern in Nevada. As a result of discussions with the Control Board, the simplest thing was to make the audit easy for the enforcement agency in the form of an optical test where an agent could visually see what was going on and check items off a list.

Senator Jones:
Does this bill do that?

Mr. Ernaut:
We believe it does.

Senator Jones:
Then why is "incidental" not clearly and specifically defined in the bill?

Mr. Ernaut:
That has proven to be difficult to do.

Senator Jones:
I understand, but you are asking us to change this section of the law for a long time. Why not define "incidental"?

Mr. Ernaut:
"Incidental" to the business can be looked at from a critical mass standpoint of having the proper investment. If a person walks into a Golden Gaming establishment and sees a bar, four bartenders, 20 TVs, restaurant staff, pool tables and dartboards, most everyone would agree the establishment is a tavern. If a person walks into a place that has 15 machines, a card table, a bottle of whiskey, Dixie cups and one person selling cigarettes, most people would say that place is a slot arcade. The problem is how to define optically, and from an intellectually defendable standpoint, the bare minimum investment needed to establish a tavern. This is why the optical test is used to make the enforcement easy so the agent can walk in and check off items that exist.

Senator Jones:
If the Commission looks for specific things to define this type of gaming establishment, then why not remove "incidental" from the statute?

Mr. Ernaut:
That is a tough question. A consequence of deleting "incidental" is that an underlying business—such as a tavern, a convenience store or a liquor store that added gaming—now becomes a gaming establishment. That was not the point of restricted licensing in the first place. Justin's Bar, which has been on Rock Boulevard for 20 years and has four or five machines that enhance the underlying bar business, becomes a mini casino by removing the word "incidental."

Chair Segerblom:
We are agreeing to disagree. If we do define "incidental" in the bill, would you object to giving everyone 10 years to recoup their investment and loss of license if they do not meet the requirements, instead of grandfathering everyone in?

Mr. Ernaut:
We have not contemplated that issue, so if that is the pleasure of the Committee, we would have to look at it.

Chair Segerblom:
Is there anyone wishing to testify in favor of the bill?

Barry Lieberman (Chief Development Officer, Gaughan South LLC):
Gaughan South LLC is the operator of Michael Gaughan's South Point Hotel, Casino and Spa. I support S.B. 416 which delineates the legal lines between nonrestricted gaming locations, such as the South Point Hotel, and restricted locations.

Chair Segerblom:
The Committee understands the issue. Do you have anything to add?

Mr. Lieberman:
I want the Committee to understand that Mr. Gaughan looks forward to competition, but not with restricted locations that have limited investments. Both William Hill and Cantor Gaming operate nonrestricted sports books, and Mr. Gaughan is happy to compete with those nonrestricted sports books where people go to open an account, fund an account and withdraw funds. He never expected to see restricted locations have functional sports books, which is happening with this slow creep of kiosks and other devices that now allow betting and paying at a restricted location. This is not what the statute allows. Mr. Gaughan is fully supportive of this bill. I am authorized to also testify that El Cortez, Affinity Gaming and Primm Properties, which includes Terrible's, are fully supportive of this bill.

Jeff Rodefer (Vice President, Legal Affairs, Boyd Gaming Corporation):
Boyd Gaming Corporation supports S.B. 416. Anything that would further define the line between restricted and nonrestricted gaming is welcomed. Mr. Ernaut's presentation was on point. The existing law probably would prevent the placement of these kiosks in restricted locations, but anything that can be added to the law to clarify that point is welcomed.

John Griffin (Independent Gaming Operators Coalition):
The Independent Gaming Operators Coalition is a group of small gaming operators from mostly smaller towns in rural northern Nevada. One member,

Tamarack Junction, is a small casino in south Reno with a $40 million investment and 190 employees. It just recently reinvested in its steakhouse. Another member, the Casino Fandango in Carson City, has a $100 million investment, 300 employees and a movie theater. Those reinvestments into their properties, employees and their communities are only possible because of bright lines that do not get blurred. Also, each of these properties has a Dotty's directly across the street.

Stephen Ascuaga (Chief Operating Officer, John Ascuaga's Nugget):
I present to you the perspective of a gaming operator of a family-run operation that has grown from a 60-seat coffee shop to a 1,600-room resort with 1,500 employees that is open 7 days a week. Our company understands competition. We spend over $1 million a year selling the destination of Sparks. We know about infrastructure and reinvestment. Our investment is sizeable, but it is not just financial. For many years, the Nugget has worked with State regulation, playing by the rules. There is no doubt that competition is on all fronts: tribal gaming, online applications, lotteries and entertainment in general. Companies need to adjust to the competition and make themselves better operators, but this blurring of lines between restricted and nonrestricted gaming has really hit the companies that have put up dollars and invested in their properties. Mr. Ernaut's example of anteing up is a great example.

Tourism is Nevada's main export. The more reinvestment there is in the State, the more the State imports tourism dollars. But the uncertainty in the statute is hurting reinvestment. I am sensitive to the fact that signs of projects once planned are no longer visible. If I had seen the loopholes that have been exploited through the recent years, my company would not have invested the way that it has in the past. Addressing this issue may help to clearly define some of the uncertainty. My company strongly supports S.B. 416 to help clarify and crystalize the delineation between restricted and nonrestricted gaming.

Yvanna Cancela (Culinary Workers Union Local 226):
The Culinary Workers Union Local 226 represents approximately 55,000 gaming employees in Las Vegas and Reno. For decades, we have fought for good gaming jobs. We support this bill because drawing the line between restricted and nonrestricted gaming continues to promote the kinds of good gaming jobs that we want to see.

Mr. Burnett:
I would like to introduce Peter Bernhard, Chair of the Nevada Gaming Commission, and Robert Grozenski, Deputy Chief of our Investigations Division, who is the guru on restricted gaming in Nevada. For the record, I will note that the State Gaming Control Board does not take a position one way or the other on these matters.

Senator Ford:
Does the Commission need or want the Legislature to answer this question?

Mr. Burnett:
I am not a member of the Commission, so I will let the Chair of the Commission answer your question.

Peter C. Bernhard (Chair, Nevada Gaming Commission):
As Mr. Ernaut indicated, the Commission assigned an expiration regarding the sharing of revenue at our July meeting. The position of the Commission, as expressed on the record at that time, was that if the Legislature felt it was important to act and make changes, then the Commission would have the benefit of your deliberations and any results that you achieved through legislation. The Commission expected a bill such as this from the Nevada Resort Association and other nonrestricted locations. It also expected the restricted locations to have a position as well. This forum is the proper place in which to make a decision. Whatever the Legislature decides—which could include the options of doing nothing; supporting or amending this bill; considering a different bill; or considering restrictions on administrative approval of associated equipment—the Commission pledges to implement those changes as it has done in the past. If the Legislature does not act, the Commission will continue making interpretations as the law allows.

Senator Ford:
To me, that sounds like the Commission does not need the Legislature to do anything. If I am wrong, I would like to be corrected.

Mr. Bernhard:
When the Commission approved revenue sharing, it recognized this was a major issue as to what administrative approvals would allow and what would be allowed in restricted locations. Just as Mr. Ernaut indicated, there will not be a wholesale set of nonrestricted locations going out of business if you do not pass

this bill. The Commission believes the statutes and guidance it receives from the Legislature is more than adequate to do its job. However, if the Legislature wishes to make statements in the form of new legislation, the Commission's obligation is to follow those new statutes. It is difficult for me to say that it is absolutely necessary to get feedback from the Legislature, although it may be desirable. On behalf of the Commission as expressed at our meeting, my view is that if the Legislature desires to make further clarifications, the Commission will support and implement any changes.

Senator Hutchison:
Is the law so unclear that the State Gaming Control Board or the Nevada Gaming Commission cannot reasonably regulate the industry as it relates to nonrestricted versus restricted gaming licenses?

Mr. Bernhard:
Existing legislation is adequate for us to do our jobs, but there would be a benefit to clarifying the law. If the Legislature decides that the laws need to be clarified, the Commission will be happy to implement those changes. For decades, the Commission has worked with the term "incidental" and the administrative approvals of associated equipment. It does not want or need to be involved in deciding whether pieces of associated equipment should or should not be approved. It is perfectly appropriate for these approvals to be limited to the discretion of the Control Board. In that sense, the law is adequate as is, but if the Legislature decides to change the law, the Commission will implement and adopt the necessary regulations to carry out the law.

Senator Hutchison:
Mr. Burnett, is the law so unclear that the Control Board cannot reasonably regulate the industry as it relates to nonrestricted and restricted gaming licenses?

Mr. Burnett:
I completely concur with Chair Bernhard. The words "reasonably regulate" ring with me. What you have seen up to this point is reasonable regulation, and I would be happy to provide history on that subject. For the record, I do not disagree with anything Mr. Ernaut has said. In response to one of the questions regarding administrative approvals of associated equipment, Mr. Malkiewich described the approval process perfectly.

In almost every analysis that I conduct when reviewing an application or request for administrative approval, the guiding light is the public policy of the State of Nevada contained in NRS 463.0129. As I have said on the record many times, the Control Board and the Gaming Commission are not here to stop the growth of business or entrepreneurship. We are not here to stop devices or applicants who bring fresh ideas and taxable revenue to the State. However, I do concur with Mr. Ernaut when he said we are involved with new areas. It is not the fault of the Gaming Commission or the Control Board regarding the notion of reasonable regulation that we try to provide every day. We are talking about two issues: the line between restricted and nonrestricted locations, and the definition of a kiosk and what it should be allowed to do. Those questions are rightfully in your lap. The Nevada Legislature is the true guiding light of the gaming industry, dictating the policy for the gaming industry going forward.

It is important to keep in mind the notion of technology, especially regarding kiosks. Some licensees want to push technology as new ideas bring innovation, employment and revenues to the State. If these licensees pushing new technology were to testify, they may complain that the Control Board is sometimes slow in its approval of new technologies, associated equipment, devices or ideas that come before us. That points to the notion of reasonable regulation. Whereas the Board does its best to regulate new ideas and devices, its slowness may lead to complaints. An administrative approval is not a willy-nilly approval by me or any of my predecessors. An approval comes up through staff and is vetted through various individuals. Sometimes several of the Board's six divisions may review an approval prior to a recommendation landing on my desk for review.

Senator Hutchison:
In my view, the reason that Nevada is the gold standard for the world is because of people like you, Mr. Burnett, Pete Bernhard and those who work with you. The Legislature sets broad policy, and we expect all of you to do your jobs by interpreting that policy. You are the world's standard in executing that policy and making certain that our policy decisions at the broad level are being fulfilled.

Chair Segerblom:
Deferring to local entities regarding the definition of a tavern, to get from "incidental" to Dotty's, seems to be a big stretch, and we have to find a way to pull that back. That may not happen right now. In July, there will be a review of

the revenue-sharing agreement. Will there be a decision to make that permanent or stop it?

Mr. Bernhard:
The Commission has three options regarding the revenue-sharing agreement: continue for another shorter period of time, approve the revenue sharing without limitation or stop it. We will hear from the applicants at that time on reasons why we should do one of those three things.

Chair Segerblom:
Hypothetically, if we decided to punt this and ask for a study, could the Commission keep that agreement on a temporary basis for another 2 years?

Mr. Bernhard:
Yes, we have the power to do that.

Chair Segerblom:
At this time, I will open the hearing to the opposition of S.B. 416.

Gregory R. Gemignani (Cantor Gaming):
I am here on behalf of my client, Cantor Gaming, whose primary issue with the bill is that it contains an inadvertent change to NRS 463.245, subsection 2, that removes Cantor Gaming's ability to operate sports wagering as it currently does. We are proposing an amendment (Exhibit C) to the bill to add a reference to subsection 5 of NRS 463.0177 to the existing list of the NRS 463.0177 references in the Nevada Resort Association's proposed changes. We want to amend section 4, line 2 on page 5, to change subsection 1 or 2 to read, "subsection 1, 2 or 5."

Chair Segerblom:
Please submit that in writing to the Committee with a copy to Mr. Ernaut.

Mr. Gemignani:
This amendment will allow a mobile gaming licensee to obtain a sports book license at a nonrestricted location.

Senator Brower:
Is there an agreement with the NRA for this language?

Mr. Gemignani:
There was quite a bit of discussion, and I thought we had an agreement. This morning we were pleased to hear Mr. Ernaut say that the NRA was agreeable to an amendment of this type.

Sean Higgins (Nevada Restricted Gaming Association; Golden Gaming, LLC):
It has been said today that this issue before us is about policy. We arrive at these policy discussions or decisions over time. Simple businesses grow and become successful, and when they become successful, these businesses appear on people's radar screens. When this happens, we end up at a hearing to stifle the competition. This is what happened with Dotty's and now the kiosks. The kiosks have been around for 8 or 9 years, and no one said a word about them until they started becoming more popular. The key here is to be successful, but not too successful. If you are a successful restricted gaming operator, people will try to push you down.

The gaming industry has a regulatory scheme that works today. There are bright lines in place. Fifteen gaming devices is what a restricted location can have. The NRA members and others, including Senator Hutchison, have used the term "gold standard." I agree with that term. I have been practicing before the Control Board for 23 years, and the decisions it has made, some against me, have been thoughtful. The Board and its staff are the professionals; they ask the right questions. Although the Legislature has the authority to enact legislation, sometimes it may be better to not enact legislation.

Recently, the Gaming Commission enacted a definition of "tavern." The Restricted Gaming Association has had members not in compliance with that definition before, but they have opened locations since that date and now comply with both Clark County and State standards. Unfortunately, what is being talked about here today is aesthetics. People do not like the way some of these establishments look. Even if this bill passes, we will be back here in 2 years because someone dislikes the way those locations look since they do not resemble a typical tavern. In the 1970s, taverns had a long bar against one wall and machines against the other wall. They did not serve food; they were a tavern and served liquor. Until the 1980s, you did not have embedded games.

Senator Jones:
Rather than aesthetics, this is about investment. Please discuss the investment issue.

Mr. Higgins:
The Gaming Commission enacted a tavern definition which requires an investment. Whether that investment is $600,000 or $3 million, taverns are limited to 15 or fewer games. Taverns are also required to have 2,000 feet of public space, a restaurant and a kitchen. The Gaming Commission saw fit to retain a waiver in case of instances where it decides that those standards do not need to be met. The level of investment can range from hundreds of thousands to millions of dollars, which is appropriate for a 15-game location.

Senator Jones:
Would you agree there is a difference between your bar, Three Angry Wives Pub and a Dotty's location? I know you have invested money in your bar.

Mr. Higgins:
Absolutely. Since Dotty's locations first came out in 1995, they have followed every rule and regulation of the local or State regulators regardless of investment. In 2011, the Gaming Commission had new regulations and requirements, and Dotty's follows those today. I do not know if Dotty's locations are investing as much as my location. The Gaming Commission looked at and appropriately handled this investment issue less than 2 years ago. The Commission also has looked at and approved new Dotty's locations that have opened since this new investment regulation has been put in place.

Senator Jones:
Are kitchens being put in just for the sake of having one, or are locations putting in a kitchen so that great food can be served to the community?

Mr. Higgins:
I cannot force people to eat at my location. Patrons who enjoy the atmosphere of a Dotty's location are probably not the same type of patrons who frequent my establishment. Still, investment dollars are going into the establishment. I do not know if you can set a dollar threshold in order to have a tavern. The situation has to dictate those types of questions.

Chair Segerblom:
Like the Gaming Commission, this bill provides requirements for restricted locations. How is S.B. 416 more onerous than what the Gaming Commission already requires?

Mr. Higgins:
The bill is slightly more onerous because it requires games to be embedded into the bar. Mr. Ernaut mentioned how kiosks will be outdated like an eight-track tape. This is the same type of situation. To require a restricted location to embed games into the bar, not knowing where technology might be in 2 years, does not make sense if that onerous requirement may have to be overturned. Whether the game is embedded in the bar or my bartender hands an iPad to someone, we are restricted to 15 games. The 2,500-square-footage requirement is larger than we think necessary, but we can work through that. The Gaming Commission got it right, and there is no need to codify this.

Senator Hutchison:
In your view, is there a difference with customers who use sports kiosks versus customers who use the sports books in the casinos?

Blake Sartini (Chair, Nevada Restricted Gaming Association; Owner and CEO, Golden Gaming, LLC):
There is a clear difference. I do not want to preempt my remarks, but they flow into that and the investment part of the discussion. If you will allow, Senator, I will address that later in my comments.

Mr. Higgins:
The Nevada Resort Association does not like the technology called human interaction. Hypothetically—and I believe this is legal in the State—anyone who operates a race and sports book could open a satellite location in a strip mall to only allow the withdrawal of money from accounts as long as internal controls required by the Gaming Commission and the Control Board are met. Then, someone could get a storefront next door to a PT's Gold, where anyone could walk in, withdraw $200 from his or her account, walk next door to PT's Gold and do anything he or she wanted with the money. However, if the bartender from PT's Gold is allowed to dispense money, therein lies the problem.

Chair Segerblom:
Are you saying the kiosk is basically a sports book?

Mr. Higgins:
It is not. The technology that exists today allows a person to make a wager from anywhere. One thing that Mr. Ernaut overlooked, which was probably just an oversight, is that customers do not have to step into a brick-and-mortar

location to sign up for a sports wagering account. People can sign up in their homes, at their businesses or in taverns.

In closing, this is a public policy discussion, and sometimes the best policy is to do nothing. The Legislature does not need to act on this issue just because a single actor thinks you should. The best policy here is to leave the system in place because it is working.

Senator Ford:
How is a kiosk not the same thing as a sports book?

Mr. Higgins:
A kiosk is not a sports book; it can do only one thing. A player can sign up at a kiosk, but a player can also sign up outside a brick-and-mortar building.

Senator Ford:
Let me ask my question a different way. What is being done at a sports book in a nonrestricted gaming location that cannot be done or is not being done in a restricted location where a kiosk is being used?

Mr. Higgins:
Winnings cannot be collected.

Senator Ford:
Can a player get a ticket from a kiosk and collect his or her winnings from the bartender?

Mr. Sartini:
I want to correct my friends, Mr. Higgins and Mr. Ernaut. A player cannot cash out from a kiosk. A kiosk is a communication device approved by the Control Board as a piece of associated equipment. It is a communication device like a cell phone, a personal digital assistant (PDA) or any device that communicates to a home source for interaction. A kiosk does not pay out cash, no matter if a player wins or loses. As established by the Control Board and the Gaming Commission, a person who has been verified through a strenuous identification process to set up an account can withdraw up to a maximum dollar amount from their account within a 24-hour period. Those rules were vetted and approved by the Control Board.

Mr. Higgins:
If a player has an account, he or she can walk into any location and request money be taken off his or her account. There is no requirement to place a wager.

Mr. Sartini:
Golden Gaming is the largest restricted gaming operator in Nevada, operating approximately 8,000 gaming devices in 650 locations statewide. In addition, my company also owns and operates three nonrestricted casinos in Nye County. I am the only person here today with significant experience in both restricted and nonrestricted establishments.

Before us today are two issues, both of which concern myself, my team members and our constituents. The first issue is the attempt by the Nevada Resort Association and its members to bring new language to the definition of a tavern and have that language waterfall to Clark and Washoe Counties. On that subject, I am hopeful that our organization and the Nevada Resort Association can reach a compromise that all parties can support. We are on our way to that discussion. The Nevada Restricted Gaming Association is of the opinion that this type of significant alteration to current gaming regulations and definitions belongs to the State regulatory agencies, which are admitted to be—by both the Nevada Resort Association and Nevada Restricted Gaming Association—the gold standard of regulatory activity throughout the world. Anytime an attempt is made to circumvent that, we take that as a threat in our industry and react as such.

The other issue before us today is that of sports wagering kiosks operating within restricted gaming locations. Judging by the show of force here from the Nevada Resort Association representatives, one would assume a three-alarm fire has been ignited over this issue. The Nevada Resort Association first claimed the need for policy discussions around this issue, and since then, the topic has now switched to "unfair competition," to use their words. A casual observer would believe that it was restricted gaming that struck the match to ignite this raging out-of-control fire, but the Nevada Resort Association struck the match to ignite the fire, which is neither raging nor out of control. The fact is, this flame is not even big enough for a garden hose to put out, let alone the top lobbyists in the Nevada Resort Association. There is no fire; this is a false alarm.

I have been a Nevada resident since 1964 and a member of the Nevada gaming industry since 1983. During that time, new ideas and inventive approaches have been part of Nevada's gaming history and the State's ongoing challenge to reinvent itself and stay competitive. New ideas and the use of widespread technology are not the sole property of the Nevada Resort Association. It never has been, so why now?

I now present a different perspective than what Mr. Ernaut gave you regarding policy and technology. In my opinion, the economy is the industry's main concern. All of you know the water level has been lowered in the State's economic lake. The Nevada Resort Association and its members have begun new initiatives to keep their siphons full by extending their reach further into the now more shallow lake. The most recent initiatives began around 2009 and 2010 in southern Nevada with the Nevada Resort Association's push for a new definition of tavern in Clark County. In addition, there was a push to increase distances between restricted locations and to establish design criteria and kitchen menu requirements at these smaller locations. All of this came about during the low watermark of the State's economic downturn. The push by the Nevada Resort Association and the tough economy were not disconnected; the timing was not a coincidence.

In the spring and summer of 2011, the tavern-kiosk issue was being heard by the Control Board and subsequently the Gaming Commission. The Nevada Resort Association made publicly known its displeasure with the Control Board's approval of the kiosks and began to flex its muscle around the Gaming Commission. However, all of the Nevada Resort Association's extensive public opposition at that time could not derail the Gaming Commission's final approval of the devices. The Commission did not have to approve the kiosks in restricted locations for one simple reason—the kiosks complied fully with all of Nevada regulations and requirements prior to being introduced to the public.

William Hill, along with myself and my company, pioneered the idea of the kiosks. We worked hand in glove in an expensive and protracted time frame to gain final approval. The kiosks were determined to be associated equipment rather than a gaming device. Kiosks have been in operation since September 2011, and our guests have become accustomed to having them in locations where we provide our slot route services. Does any of this sound unfair so far?

Part of the Nevada Resort Association's opposition has been misdirected comments from their representatives stating that kiosks actually pay out. This functionality of the kiosk and the withdrawal from an account were thoroughly vetted and approved by the Gaming Commission and the Control Board before the kiosks went into operation. In addition, Nevada Resort Association lobbyists have said it was abundantly clear that the Gaming Commission intentionally provided a conditional license for the kiosks at that time so that State lawmakers could then determine their ultimate status as to whether they were allowed in restricted locations. The Nevada Resort Association's lobbying, public comments and allegations at that time are not true. After 2 years of operation, there is no inference they expected State lawmakers to make a final decision on the fate of kiosks. It stands to reason that a conditional license implies an ever-present threat of losing a license or a disciplinary action by the Control Board and/or the Gaming Commission, which would negatively impact the ability of the company to continue operating in an approved manner. This is a prove-yourself condition, and to date, we have continued to work closely with the gaming authorities. Both William Hill and Golden Gaming have proven themselves, resulting in our continued good standing regarding our regulatory status in the operation of sports wagering kiosks.

Mr. Sartini:
Should State lawmakers put this genie's kiosk back in its bottle after nearly 2 years in operation, there would be several negative consequences. First, wagers made through these kiosks would stop. Subsequently, the State loses out on this tax revenue stream now and in the future. These wagers would not go to a larger, nonrestricted location. These customers will not park in massive garages and walk significant distances to a casino, pass by the buffets, bars, food courts, table games, movie theaters and child care facilities to make a $20 wager. It is not going to happen. So whether the wagers of today are $600,000 in sports write or tomorrow at $2 million, the wagers would not be made if the kiosks are removed. That would not be good for Nevada.

Second, if the State's residents who have become accustomed to using these kiosks no longer have that ability, they may not continue to frequent the restricted location. This would unnecessarily hurt the business owner and the employees. While the Nevada Resort Association fires its guns at this target, they will undoubtedly miss, which has been the case in the past. Collateral damage is widespread, affecting many unintended targets: business owners, Nevada residents, the State's tax revenue, purveyors of goods and services,

and the employees directly tied to the operation of the kiosks. The Nevada Resort Association has no real ammunition for the ultimate target to which they are aiming. That target—oblivious to them—is convenience. Nevadans continue to place a premium on convenient entertainment, and that will never change. Lawmakers can legislate a litany of issues, but customer convenience will never be legislated. Therefore, is having a convenient and competitive restricted tavern unfair to Nevada's residents?

The NRA's mantra is that the investments in nonrestricted locations, which in some cases are in the hundreds of millions or even billions of dollars in capital, are disproportionate to the paltry $500,000 or $2 million to $5 million that some restricted operators invest. In this case, that is 100 percent true, and it should be true. A restricted location can only support an investment that is right in size since these locations are limited to 15 gaming devices. I must remind our friends at the NRA that the rules regarding the minimum investment and amenities for nonrestricted locations were thought of, created and lobbied for by themselves. They created the business model which requires the massive investments, and they are now using their own set of rules to cry foul in this argument. How is that fair?

In all my experiences as an executive with a large, nonrestricted gaming operation or as the owner and operator of restricted facilities, no one ever put a gun to my head and told me I had to spend hundreds of millions of dollars to build a facility. These massive facilities are not built by accident. The men and women who run these organizations are brilliant and forward-looking. Their decisions regarding where to build and how much to spend are well thought out. They survey the competitive landscape and spend giant sums of money to build world-class facilities. They do this with their eyes wide open.

Most recently, Genting Group, SLS Las Vegas and Project Linq, sponsored by Caesar's Entertainment, have surveyed the competitive landscape and will invest billions of dollars, collectively, to infuse new life and ideas into our great State. I am sure they are aware that there may be a Molly Malone's Irish Pub around the corner or a Three Angry Wives Pub with a sports kiosk nearby. Boyd Gaming surveyed the landscape and embarked on an almost-completed multimillion dollar remodel and renovation of one of its premiere properties. Other local casino operators continue to invest tens of millions of dollars every year to operate and improve their properties. If the executives of these large, nonrestricted operations were here today, they would look you in the eye and

tell you the impact of making these decisions with their eyes wide open. They would also tell you that taverns, or taverns with sports kiosks, are a threat to their business model; subsequently, they would have to alter their investments or even pare down their workforce. They would not tell you this because it is not true. That is my perspective, having been on both sides of these issues.

In the end, there should be no connection between the amount of investment in a facility and that facility's ability to make use of widespread technology to enhance its business when the rest of the world has access to the technology. I was not aware that, by receiving a restricted gaming license, I immediately gave up my right to use the latest technology. Like any good business person, restricted operators limited to small square footage and a maximum of 15 games look for other ways to drive business to their locations. This new world of technology is at everyone's doorstep. It seems reasonable to me that if a player can make a sports wager from a church pew, a living room or an office chair, the player should also be able to make those sports wagers on a kiosk at a Molly Malone's Irish Pub.

Finally, the only constant regarding anything unfair about these two issues being discussed today is that restricted gaming operators continue to respond to the now more frequent fire drills caused by the Nevada Resort Association pulling the fire alarm handle for no reason. Fire drills need to stop so we can continue to excel at our respective businesses for the betterment of Nevada.

Chair Segerblom:
For the record, we are going to finish this bill at 10:30 a.m.

Senator Jones:
I appreciate the investment that Golden Gaming has made throughout the State. If the Commission had made a different determination 2 years ago regarding the kiosks and your company was on the losing end, would you be here asking the Legislature to overturn the Commission's decision as the Nevada Resort Association is doing?

Mr. Sartini:
I do not believe that I would because resources are a significant issue. My company probably would have tried to find a way to get the kiosks approved in some form. I would pose the question a different way and ask, "Would we be here having these discussions if the State's economic trajectory was the same

as in 2006 and 2007?" My earlier comments suggest that we would not be here if that was the case.

My company has been on the other end of denials many times. Most recently, my company has begun developing ticket-in, ticket-out technology that dovetails with our own internal gaming management system. We have experienced delays, turnarounds and denials during this process, but that is a part of what we do. If denied, we approach our business from another direction.

Senator Jones:
I have a hard time believing that if this technology is the wave of the future, you shrug your shoulders if you lose. If this had been decided the exact opposite way, Peter Ernaut probably would have been up here objecting to potential intervention by the Legislature.

Mr. Sartini:
That is a fair comment, Senator Jones. If the situation required us to embed machines in a bar, essentially making them dinosaurs now and into the future, we would fight against that vehemently, but the kiosk is a different issue. My company spent a significant amount of time and money working with the regulatory bodies to get these kiosks approved. We did our homework to ensure the kiosks were approvable before we brought them to the regulatory authorities.

Senator Ford:
Mr. Ernaut presented some examples where the Legislature stepped in to regulate fairness in the telephone and cable TV markets after the introduction of cell phones and satellite TVs. I am fairly convinced that your customers are not necessarily the same customers as those who frequent the big casinos. These large casinos have spent a lot of money for a benefit written into a statute that they should be able to expect. They did not expect competition against restricted gaming entities. Why is this not the same situation where the Legislature may have to step in?

Earlier, I asked Mr. Higgins what can be done at a nonrestricted location that cannot be done at a restricted location with a kiosk, and he did not answer my question. You have said the kiosk does not pay out, but if a player can hand over a ticket that shows how much money the player wants and the bartender

can pay the money, how is that any different than what occurs at a nonrestricted location?

Mr. Sartini:
The examples regarding the cable and telephone markets are not appropriate arguments for this particular situation because the NRA would have to show attrition into their business as a result of the kiosks. Last year, the State's sports write and sports win were up 20 percent from the prior year, even with every kiosk we had in operation. It does not appear that the kiosks have caused any intrusion into the NRA's business. They cannot prove this because it is not the case. The record sports write and record sports win were a result of the continuing attraction of the sports culture in our society which will only continue to grow. I am confident that the money wagered at a kiosk would not be wagered in a nonrestricted location. The more kiosks out there, the more beneficial it is from a policy and tax standpoint for the State of Nevada. The kiosks provide convenience for Nevada's residents who should have access to the same technology that they can have in the front seat of their car.

To answer your second question regarding what is done differently at a restricted location than at a nonrestricted location, the kiosk is a communication device. In a sports book, a player makes a wager over a counter and interacts with a person. Some nonrestricted locations even have kiosks within their floors and around their sports book areas, and players can utilize them if they feel more comfortable doing so. The kiosk is a stand-alone device, like a PDA or a cell phone, and it communicates a wager back to the sports book. The argument could be made that that is probably the same function. But the difference is that players are not going through a protracted scenario to get to a sports book in a hotel casino. As I mentioned earlier, a kiosk does not pay out. I will not construe that collecting money from an account is not somehow similar to what happens in a sports book, but it is dissimilar. At a normal sports book, if a player loses, the player takes money out of his or her pocket to make another wager. In the case of a kiosk, a player has money on deposit and can withdraw from that account, make another wager or take the money out the door. I do not know what is controversial about that.

If the inference is that kiosks prevent trips to nonrestricted locations, those locations have unilaterally given up five or six trips with the advent of new technology by allowing customers to sign up and make wagers on their computers without entering a casino. In the case of online poker regulation,

players do not even have to go into the casino to collect anymore. Nonrestricted locations cannot argue that the kiosks take a trip away from their casinos when they opt into technology that restricted locations simply want to take advantage of as well.

Senator Ford:
It is one thing for people who have invested billions of dollars to give away their own rights, but it is something entirely different for people who signed up for a different kind of license to chip away at the rights of others. I appreciate your testimony and will take it under consideration.

Senator Hutchison:
This all did not happen in a vacuum. Debates must have taken place before the Nevada Gaming Commission and the State Gaming Control Board approved the kiosks. What was the Nevada Resort Association's involvement regarding this debate before the Commission? Was anything said, positions taken, agreements reached or input provided that would be helpful for us to understand their position before us right now?

Mr. Higgins:
I stood next to the Nevada Resort Association representative at the dais when I presented our language to the Gaming Commission. The Nevada Resort Association was intimately involved in drafting and agreeing to our language. I am certain there is testimony to the fact that the Nevada Resort Association thought our language was superior to the Clark County language. But we are here today with the Clark County language back in front of us. Given an agreement between the restricted gaming operators and the Nevada Resort Association regarding the language, we believed the issue was behind us and done.

Senator Hutchison:
In your opinion, why are we here regarding this point?

Mr. Higgins:
Some of these restricted locations have the same décor, and certain people in the Nevada Resort Association do not like their aesthetics. If you enact this measure, we will be back here in 2 years because someone will want to make sure all restricted locations have mahogany wood on their bars. In my opinion, aesthetics is the root of this entire issue.

Senator Hutchison:
The Control Board and the Gaming Commission are the gold standard, and we should give them a tremendous amount of deference.

Scott Scherer (American Wagering, Inc.):
I am here on behalf of American Wagering, Inc., also known as William Hill. Some important things have not been discussed.

Chair Segerblom:
We know the issues, but we are short on time. Please tell us what we do not already know.

Mr. Scherer:
Nevada law states that a race and sports book is "in the business of accepting wagers" (Exhibit D). In this case, William Hill accepts the wagers from the kiosks. Simply placing wagers does not make a person a sports book. If it did, we would have to license every bettor in the State.

Chair Segerblom:
To answer Senator Ford's earlier question, what can you do in a sports book that you cannot do at a kiosk?

Mr. Scherer:
The wager accepted by the sports book is transmitted through the kiosk.

Chair Segerblom:
If I use William Hill's kiosk at a PT's Pub, what am I doing differently there than at a sports book at one of the nonrestricted casinos?

Mr. Asher:
For the most part, the functionality regarding the types of wagers is very similar. You cannot do some types of wagers on the kiosk that you can do in the sports book. An example would be parlay cards; a player has to get these cards from a sports book in a casino. Sports books also offer contests such as March Madness and various football contests.

Chair Segerblom:
That is today, but with technology, kiosks will probably have parlays years from now.

Mr. Asher:
That may be true, but if your question is directed to the precise types of wagers, that is my answer. A player is handed a ticket in the sports book, and the ticket can be cashed which is different than what happens with the kiosk. As Mr. Sartini stated earlier, money is on account in a kiosk; win or lose, players draw down money from accounts up to predetermined limits.

Chair Segerblom:
If I place a bet, can I have the kiosk ticket equal the amount I want on that bet, as opposed to withdrawing $100 or $200 out of my account?

Mr. Asher:
A player can withdraw a certain amount up to the predetermined amount. The kiosks do not issue tickets. They issue receipts like you get from ATM machines. Players enter into kiosks how much they want to withdraw.

Chair Segerblom:
That is what I am saying. The kiosk does not say a player just won $92 and provide a ticket to show winnings. You have to ask the kiosk for $92.

Mr. Asher:
Correct.

Chair Segerblom:
What else do we need to know?

Mr. Scherer:
I want to talk about how this regulation came into existence.

Senator Brower:
I appreciate that we are running out of time, but we need a full hearing on this.

Chair Segerblom:
We have already had a full hearing. We are stopping at 10:30 a.m.

Mr. Scherer:
Adopted regulations that allow for the creation of accounts off the premises of a sports book were not pushed by the Control Board or William Hill. They were advocated for by the Nevada Pari-Mutuel Association. This Association, which

is comprised of all the pari-mutuel books in the State, is a nonprofit corporation that handles administrative matters for pari-mutuel wagering in Nevada, as well as providing representation for political, regulatory and public affairs interests. Boulder Station, Palace Station, Red Rock Station, Caesar's Palace, Bally's, Paris and William Hill are all members of the Pari-Mutuel Association. During the workshops, the Association's representatives specifically asked for the flexibility to sign up people wherever they are off the premises of the book, which is how this regulation came to be. I would be happy to send you the transcripts of the workshops.

Chair Segerblom:
Are you saying the Nevada Resort Association is not consistent?

Mr. Scherer:
I am saying they were for this before they were against it.

Chair Segerblom:
People can change their minds, and the reality is we are here to decide whether the Legislature wants to get involved in this issue.

Mr. Scherer:
One of the reasons the Association pushed that regulation was specifically to compete with offshore, unlicensed, unregulated sports books. The Association was concerned that those customers they wanted to sign up at their homes, in their businesses or in bars and taverns would instead wager online with unlicensed, offshore sports books. This was an opportunity for them to capture that market. We are doing the same with kiosks. We are capturing that market rather than having players go offshore and online.

A player can withdraw money from an account using a cell phone by calling the sports book and providing the correct PIN number. The money can be wired into the player's account or a check can be sent to the player's home address. Withdrawals can also be made with an iPad or any other device we have talked about. A player can even mail in a ticket for winnings.

I am concerned with the language of this bill. I do not know if it is the intent, but the language cuts off the ability to do many things that the Legislature approved last Session, such as using call centers or housing centers since they are off the premises of a licensed sports book. With many states now involved

in gaming, Nevada must move forward with them and all the technological advances. This bill asks the State to move backwards from its position on this regulation just 2 years ago. The Nevada Resort Association should offer you a compelling and accurate reason to move backwards. Kiosks are allowed by law, but blackjack tables, poker tables and crap games are not allowed in bars.

Chair Segerblom:
The Nevada Resort Association is saying you cannot have those right now. Where do we draw the line? Do you have a presentation, Mr. Asher?

Mr. Asher:
I have some slides (Exhibit E), but I will focus on a few key points. William Hill runs 100 sports books, and 14 of those casinos are operated by members of the Nevada Resort Association. We are not out to hurt those members; we have invested millions of dollars into their success. Just recently, we spent several million dollars upgrading the sports books in some of these properties. The public policy of Nevada is actually about competition; the word "competition" appears in the gaming industry's public policy statement four times.

The last time I met with this Committee, Senator Jones asked a question about how other states operated. I did some research and we have a sample of very different models in other states, Exhibit E. Delaware has three casinos; it also has sports betting now at 31 additional locations. We told you at the last meeting that evidence has those three casinos in Delaware showing no cannibalization. Illinois has ten riverboat casinos and five video gaming terminals at more than 1,000 locations, which is growing every month. Maryland is an emerging market with three casinos, but at a high tax rate. New York has nine casinos. Our friends at Genting told us that in order to get a license in New York, they paid $380 million up front. They pay a 67 percent tax rate, but in return, they get a monopoly in New York City. Nevada has a different model with over 320 nonrestricted locations, approximately 2,000 restricted locations and a tax rate that scales up to 6.75 percent. This is all premised on the State's public policy of competition. The 6.75 percent is the gross gaming revenue tax which we pay on wagers made on kiosks, mobile gaming devices or over the counter.

Chair Segerblom:
But that is not paid in these restricted areas, right?

Mr. Asher:
That is right. I am talking broadly about the public policy of the State which is one of a low tax rate and open competition. If Nevada Resort Association members want to change the policy, they should not cherry-pick the one piece of policy they want to change. Everything should be on the table. You cannot look at one policy element and say it is bad in isolation without looking at all elements of the policy.

Senator Ford:
Competition between comparable entities, such as restricted versus restricted, is fine. In my opinion, the Nevada Resort Association did not bargain for nonrestricted versus restricted competition. I doubt the policy in our State is that we want to allow such competition. Speak to that issue, please.

Mr. Asher:
This goes back to the same point brought up at the last meeting and touched on earlier today by Mr. Sartini. Sports kiosks are in no way limiting investment in Nevada. Having full knowledge of the sports kiosks, Genting intends to spend several billion dollars on The Strip, and other places are upgrading their properties as well. The kiosks are not a factor when considering capital allocation within the State.

Senator Hutchison:
Many of us on this Committee are beginning to understand that we are not referring to the same customer base. Therefore, competition would not be fair or level if you are talking about taking customers from the nonrestricted gaming properties. I have not seen any evidence of erosion in the customer base of the nonrestricted gaming licensees versus the restricted licensees, but it does not appear that the business model and customer base are the same.

Mr. Asher:
The reason you have not seen the evidence is because it does not exist. In my preparation for today, I spent Saturday morning in one of the taverns that has a kiosk. It is hard to articulate the types of customers who came in because it is a visual experience. I can tell you the customers at this location were not the same type of people who frequent the nonrestricted locations. These people are in PT's or Sierra Gold for breakfast or betting on a basketball game at halftime. To some extent, we are being asked to disprove a negative. The customers are very different.

For my final point I would like to ask Mark Keller to stand up. Mark is an employee of mine who tends to the kiosks. He takes the money out and brings it back to where it is counted. Mark has a 3-year-old son. If you killed the kiosks, you would take away his job. The jobs the Nevada Resort Association claims they are losing are not any more important than Mark's job. Nevada should be promoting more jobs in the State. Unless evidence exists that kiosks in restricted locations are damaging the members of the Nevada Resort Association, there is no reason to start cutting people's jobs to solve a nonexistent problem. From a policy perspective, the Nevada Resort Association is coming to you asking for relief for something that the Gaming Commission and the Control Board have permitted. The Nevada Resort Association must show some evidence that kiosks are harming them.

I liked the slippery slope point brought up by Mr. Ernaut. Right across from Red Rock Resort Casino is a BJ's Restaurant and Brewhouse. Within the Red Rock is a Yard House tavern. As a consumer, I like Yard House better, but it is in direct competition with BJ's across the street. Do we just shut down BJ's? Where does the slippery slope end?

Chair Segerblom:
I will close the hearing on S.B. 416 and open the hearing on Senate Bill 394.

SENATE BILL 394: Provides for the establishment of intermediate sanction facilities within the Department of Corrections for certain probation violators and offenders. (BDR S-498)

I want to preface the hearing by disclosing that in a discussion I had with District Judge Linda Marie Bell last night, we agreed that Senate Bill 200 is a similar and better bill than S.B. 394.

SENATE BILL 200: Revises provisions relating to the pilot diversion program for certain probation violators. (BDR S-744)

I have asked District Judge Bell to give us some background information on the program she runs.

Linda Marie Bell (District Judge, Department 7, Eighth Judicial District):
In 2011, A.B. No 93 of the 76th Session created a pilot diversion program, Opportunity for Probation with Enforcement in Nevada (O.P.E.N.), which helps people on probation who are struggling.

The program is geared toward younger offenders who do not have a history of violence or severe mental illness but are failing to thrive while on probation. The program is a shining example of what can be accomplished when all parts of a system work together. This is a collaborative effort between the courts, the Division of Parole and Probation of the Department of Public Safety and the Department of Corrections (DOC).

When a person on probation is struggling and facing termination, that person is transferred over to the O.P.E.N. program for supervision. We have one officer from Parole and Probation who does a wonderful job with these folks. The program has the flexibility to use Casa Grande Transitional Center in Las Vegas, run by the DOC, for people who are not doing what is required of them during their probation. For example, we had a gentleman who was supposed to take his GED test as a condition of his probation. The program required him to stay at Casa Grande until he finished the necessary schooling to obtain his GED. The program has about 20 participants. The hope is to continue and expand the program to provide more services to help these struggling people get on the right path early.

James Scally (Correctional Manager, Department of Corrections):
I am the Correctional Manager at Casa Grande. I want to go through some points of S.B. 394.

Chair Segerblom:
We have agreed that S.B. 394 is dead. How is the O.P.E.N. program working, and what can we do to help you in the future?

Mr. Scally:
The O.P.E.N. program is a great program. With the help of District Judge Bell, Director Greg Cox and Parole and Probation, it is growing and becoming better at helping those people in need.

District Judge Bell:
We are hopeful that S.B. 200 will pass in order to provide the necessary funding to continue and expand the O.P.E.N. program.

Chair Segerblom:
One of the problems with these programs is that the Legislature looks at the sum of money to support the program, but we do not consider the money saved each year by not putting people in prison. The end result is the money being spent is helping to save ten times as much, but those savings are not normally calculated for legislative review. If the program could focus on how much money the program is actually saving by not incarcerating these people, that would be helpful to the Legislature.

James G. "Greg" Cox (Director, Department of Corrections):
I appreciate District Judge Bell's support of the program and the expansion with S.B. 200. This intermediate sanction program tries to swiftly and quickly deal with people who may be looking at reoffending or doing inappropriate things, such as not going to substance abuse counseling. This program attempts to divert these people from going to jail, which saves money for the taxpayers of Clark County. I would like to see the DOC and the State expand this program and look at other types of diversionary programs. By expanding our budgets now to include community corrections and these types of diversionary programs, the correctional prison budgets will eventually be reduced. Many states have these types of programs, and the State needs to move in this direction for the future.

Chair Segerblom:
Is there a way to calculate the money the State saves from this program so the Committee can explain this program as a savings rather than an expenditure?

Mr. Cox:
We can work with the University of Nevada, Las Vegas, to produce a snapshot to show how this program saves money for the State and the community of Las Vegas. We are looking at bringing this program to northern Nevada with the future expansion of our transitional housing centers in Sparks and Reno.

Chair Segerblom:
I will now close the hearing. Senator Cegavske, we are not going to hear Senate Bill 224 today.

SENATE BILL 224: Revises provisions governing driving under the influence. (BDR 43-668)

We will now open the work session and start with Senate Bill 365.

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

Mindy Martini (Policy Analyst):
Senate Bill 365 heard on March 29 was sponsored by Senator Brower. This bill provides that a person who commits the crime of stolen valor is guilty of a gross misdemeanor if the person knowingly, with the intent to obtain money, property or another tangible benefit: (1) fraudulently represents himself or herself to be a recipient of certain military decorations or medals; and (2) obtains money, property or another tangible benefit through such fraudulent representation. No amendments were submitted for this measure (Exhibit F).

Chair Segerblom:
Since Senator Hammond has stepped out, we will wait for him to return before voting. Therefore, we will now move to Senate Bill 419.

SENATE BILL 419: Revises provisions relating to marriage. (BDR 11-1107)

Ms. Martini:
Senate Bill 419 heard on March 28 authorizes a notary public who has obtained a certificate of permission from a county clerk to perform marriages. The measure requires fees to obtain the certification and provides that a notary may collect a fee of not more than $75 for performing such a marriage ceremony. No amendments have been submitted for this measure (Exhibit G).

Chair Segerblom:
When Senator Hammond returns, we will also vote on S.B. 419. Let us move on to Senate Bill 140.

SENATE BILL 140: Revises provisions relating to a lien for attorney's fees. (BDR 2-558)

Senator Hutchison:
The bill looks good to me. I am looking at a proposed amendment on my desk (Exhibit H). There were some changes to section 1, subsection 4, which states,

"A lien pursuant to." And section 1, subsection 4, paragraph (b) states, "Paragraph (b) of subsection 1 attaches to any file or other property properly left in the possession of the attorney by his or her client, including copies of the attorney's file if original documents from the attorneys file are returned to the client, ..." I would like to change that paragraph to read, "If original documents received from the client are returned to the client." This gives meaning to the intent.

Ms. Martini:
This amendment that Senator Hutchison refers to, Exhibit H, was received this morning and is on your desk. It was not in your work session document (Exhibit I).

Senator Hutchison:
I was fine with the original bill with some slight revisions.

Chair Segerblom:
Can you read that one more time?

Senator Hutchison:
Section 1, subsection 4, paragraph (b), Exhibit H, states, "Paragraph (b) of subsection 1"—this is what we commonly refer to as possessory lien on the file—"attaches to any file or other property properly left in the possession of the attorney by his or her client ... ." The additional language that we have to modify is, "including copies of the attorney's file if original documents from the attorney's file are returned to the client ... ." In my opinion, that swallows the rule because everything in the file is an original. The way I understand this section is that, whereas an attorney has to return the entire original file back to the client, he or she can keep a copy of the file, which completely defeats the purpose of a possessory lien on a file. I suggest we modify this by stating the client is giving the attorney original documents from the client's own records. The attorney can return the original documents back to the client, but I have a problem with giving the entire file back to the client if he or she has not paid attorney's fees, which generated that file in the first place.

Chair Segerblom:
Do you mind giving the clients a copy of the file?

Senator Hutchison:
No. A copy of the file is fine. In fact, the best practice is for the attorney to retain the original, but if the client has some need for a copy from the original, then the attorney should provide that copy to the client.

Chair Segerblom:
Mr. Standish, do you have a problem with that?

Tom Standish:
Not at all. The receipt from the client would follow from the attorney's file.

Senator Jones:
Where did this amendment, Exhibit H, come from?

Chair Segerblom:
The amendment came from Tom Standish working with Senator Hutchison.

Senator Hutchison:
I proposed the blue-colored font language in subsection 4, paragraph (c) which states, "Paragraph (b) of subsection 1 shall not be construed as inconsistent with the attorney's professional responsibilities to his or her client." When I suggested that language, I had not seen the new red-font language provided by Mr. Standish. Mr. Standish, are you okay with the modification where I suggested giving back only original documents received from a client?

Mr. Standish:
Yes.

Senator Ford:
I want to make certain I understand what we are doing now. At the previous hearing, the discussion focused on what happens when attorneys were required to give over a file because there was concern about deadlines and malpractice suits. I want to be certain that we do not run afoul of our own rules, while at the same time not having to give over a file and release the liens. In other words, are the attorneys retaining a copy of the file, and is that copy sufficient for purposes of attaching the lien? Are we still trying to do that?

Mr. Standish:
Yes, that is what we are still trying to do.

Senator Ford:
Senator Hutchison, can you please repeat your proposed change?

Senator Hutchison:
A possessory lien is meaningless if a client owes money and walks away with his or her file. The purpose of a possessory lien on the file is that the attorney keeps the file. If there is a need for documents from that file, the professional thing to do is give the clients a copy of whatever document they need but not the entire file. If the clients bring you original documents, such as a birth certificate, I say it is reasonable to give back the original documents, but the attorney keeps the file.

Senator Ford:
I understand that you are only talking about original documents. As I recall, it was contemplated that attorneys file their liens with the court after they are dismissed, or they volunteer to dismiss themselves from the case, in order to perfect the lien so they can get paid. We want to ensure that, regardless of whether the attorneys have the original file or a copy of the file, the attorneys may still perfect the lien by filing. Is that still operative under this amendment, Exhibit H?

Mr. Standish:
That is correct.

Senator Hutchison:
The intent of this bill, as I understand it, is that statute provides a possessory lien on a file. To me, the question becomes what does an attorney need to give back to the client when that file remains with the firm? The attorney gives back original documents provided by the client, hangs on to the file and perfects the lien by filing an action in court. If the client needs copies, the correct practice is to give copies of the documents the clients would need that would not prejudice their case.

Senator Ford:
I understand.

Senator Jones:
Are we keeping the language in the new amendment today, Exhibit H, that says a lien pursuant to paragraph (b) includes filed copies? If so, that is not what you are saying, Senator Hutchison.

Senator Hutchison:
Explain that real quick.

Senator Jones:
Your point is that we can give back the originals.

Senator Hutchison:
The originals of the documents we received from the client.

Senator Jones:
But the amendment does not say you can give back the originals or including the original documents.

Senator Hutchison:
Let me walk through this again. It says, "... attaches to any file or other property properly left in the possession of the attorney by his or her client, including copies of the attorney's file ... ." To me, that is not a file. My modification was, "If original documents received from the client are returned to the client."

Senator Jones:
Okay. I got it.

Mr. Standish:
I would like to address subsections 7 and 8. I spoke with the gentleman at the Legislative Counsel Bureau who drafted this amendment; he indicated that if it was to be retroactive, he would like to look at the language. Do I have the Committee's permission to run this by him?

Senator Jones:
I have a general objection to "retroactive" statutes as a matter of policy.

Chair Segerblom:
I will entertain a motion on S.B. 140.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 140 WITH THE AMENDMENT PROVIDED BY MR. STANDISH, MODIFYING THE RED LANGUAGE IN SECTION 1, SUBSECTION 4, PARAGRAPH (B), TO READ, "INCLUDING COPIES OF THE ATTORNEY'S FILE IF ORIGINAL DOCUMENTS RECEIVED FROM THE CLIENT ARE RETURNED TO THE CLIENT"; RETAINING THE REMAINING WORDS NOTED IN SUBSECTION 4, PARAGRAPH (B) PLUS THE BLUE LANGUAGE OF PARAGRAPH (C); AND INCLUDING SUBSECTIONS 5 AND 6.

Chair Segerblom:
What about "with respect to fees incurred" in subsection 7? Senator Jones, do you have any objection to that being retroactive?

Senator Jones:
No, that is okay.

Chair Segerblom:
We are okay with subsection 7.

SENATOR HUTCHISON MOVED TO ALSO INCLUDE SECTION 1, SUBSECTIONS 7 AND 8 OF THE AMENDMENT TO S.B. 140.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
Let us now go back to S.B. 365 regarding stolen valor.

SENATOR HAMMOND MOVED TO DO PASS S.B. 365.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
I will entertain a motion on S.B. 419 regarding notaries and marriage.

SENATOR BROWER MOVED TO DO PASS S.B. 419.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
I will open the work session on Senate Bill 420.

SENATE BILL 420: Revises provisions relating to the issuance of subpoenas. (BDR 14-1108)

Ms. Martini:
Senate Bill 420 was heard on March 27. The specifics of this bill were presented by Steve Yeager of the Clark County Public Defender's Office. This bill authorizes a prosecuting attorney or an attorney for the defendant to issue subpoenas for witnesses to appear before a court for a preliminary hearing. An amendment received from Mr. Yeager is in your binders (Exhibit J). This amendment removes the provision giving the defense attorneys subpoena power at the preliminary hearing. Instead, the amendment adds a new section 3 which provides that testimony provided at a preliminary hearing by any witness other than the defendant shall not be used for any purpose other than to establish probable cause or for impeachment.

A letter of support for the bill was received from the Washoe County Public Defender's Office (Exhibit K), as well as a letter of opposition to the amendment from the Advisory Council for Prosecuting Attorneys (Exhibit L).

Chair Segerblom:
Mr. Yeager, please explain the significant changes made in your amendment.

Steve Yeager (Clark County Public Defender's Office):
After reflecting on the opposition raised when the bill was first heard, I thought about a potential compromise to resolve the opposing concerns as well as the

concerns on the defense side. The genesis of this amendment is that if we all acknowledge there is no subpoena power, then we will not have the ability to use that testimony later, absent some certain exceptions. I circulated that amendment on Monday. The District Attorneys Association and the Advisory Council for Prosecuting Attorneys are in opposition to my amendment, but I have not received any proposals from them regarding workable language for section 1.

I received the letter from Brett Kandt, Exhibit L, and want to address that the relevant consideration is not whether there is an opportunity to cross-examine, but whether there was an "adequate" opportunity to cross-examine. This notion comes from Nevada caselaw, which is the essence of the issue before us. Without the ability to get evidence or witnesses to a preliminary hearing, can that opportunity ever be adequate? The amendment was to satisfy both sides, but my amendment has not accomplished that.

Senator Hutchison:
I am sure you have looked at the citations to the case *Crawford v. Washington*, 541 U.S. 36 (2004) which states that this issue has been decided by the United States Supreme Court.

Mr. Yeager:
I am aware of the *Crawford* case, but I do not know if that is the controlling case here. A Nevada case, *Chavez v. State*, 125 Nev. 328 (2009), specifically looked at *Crawford* and stated under what circumstances preliminary hearing testimony can be admitted in a situation where a witness disappears or is not available. The *Chavez* case built in the requirement that the cross-examination has to be adequate. In that case, the Nevada Supreme Court allowed the transcript in, but it also noted that the discovery was almost complete and the defense attorney was not operating on a deficit of information. With respect to *Chavez*, we must keep in mind that this case was decided in 2009 before two decisions out of Clark County last year said that the defense does not have subpoena power. I do not know how that might potentially change the *Chavez* case analysis. I agree that *Crawford* says you have to have the opportunity to cross-examine, but then *Chavez* says it has to be adequate. The issue is whether cross-examination can ever be adequate absent the subpoena power.

Senator Hutchison:
In the *Chavez* case, you have no subpoena power, and the court specifically found that to be meaningful.

Mr. Yeager:
That is correct, but as I pointed out, the cross-examination was extremely thorough, and the court noted that the entire discovery in the case was nearly complete at the time the preliminary hearing took place. That is in stark contrast to your normal run-of-the-mill cases. In *Chavez,* the defense attorney asked approximately 300 cross-examination questions of the victim. That case is a bit different, and the decisions out of Clark County were not in existence at that time. Historically, nobody has disputed that the defense has subpoena power at a preliminary hearing. People have generally obeyed those subpoenas, but we are going to see a trend in the other direction with the decisions that came down in Clark County.

Senator Jones:
Mr. Yeager, I appreciate your compromise attempt because too often that does not happen. I may get on board with this or some version, but I am not ready to vote on this bill today. I want to talk to Mr. Kandt and Mr. Jones.

Chair Segerblom:
The Committee is not prepared to move forward until we can hear from Mr. Kandt and Mr. Jones.

Brett Kandt (Executive Director, Advisory Council for Prosecuting Attorneys):
The subpoena power and the adequate opportunity to prior cross-examine are two separate and distinct issues. The proposed amendment to add section 3 that amends NRS 171.206 and limits the use of that preliminary hearing testimony would essentially nullify the *Chavez* case and nullify *Crawford v. Washington* under Nevada law. You will have created a statutory limitation in the use of that testimony, and none of that caselaw would apply any more.

Chair Segerblom:
Let me play devil's advocate. If you do not have the subpoena power ahead of time, then how can a defense attorney possibly prepare for adequate cross-examination and then use that inadequate testimony later on?

Mr. Kandt:
This is an important issue. What is being proposed here would drastically change the way our criminal justice system is handled, including the preliminary stage, pretrial proceedings and our criminal prosecutions. Because of the enormity of the proposed change, we need to have more dialogue.

Mr. Yeager:
I would certainly welcome any proposed language from either of these gentlemen about a workable compromise, but I have not seen anything yet.

Chair Segerblom:
I urge them to come forward. We will close the work session on S.B. 420 and move to Senate Bill 423.

SENATE BILL 423: Revises provisions relating to offenders. (BDR 16-1112)

Ms. Martini:
Senate Bill 423 was presented on March 26 by Senator Barbara Cegavske. This measure requires the Director of the Nevada Department of Corrections to provide an offender, upon release and upon request, with a photo identification (ID) card issued by the DOC. This ID card could be used through the Department of Motor Vehicles to provide proof of the offender's full and legal name and birth date. There were no amendments to the bill, as noted in the work session document (Exhibit M).

Senator Barbara K. Cegavske (Senatorial District No. 8):
I would like Director Cox from the DOC to come forward.

Mr. Cox:
After talking to Senator Cegavske and other community partners, I support S.B. 423. If this bill passes, the DOC will change its policy to reflect that anyone leaving our facilities will be provided the inmate ID. Also, the release packet will contain an inmate's social security card, birth certificate and on-file license. The DOC is working closely with the counties in obtaining that type of documentation from inmates upon intake at our facilities at the High Desert State Prison in southern Nevada and at the Florence McClure Women's Correctional Center in southern Nevada. Identification cards are critical for someone being able to move forward; they are the right thing to provide for someone leaving our system.

Chair Segerblom:
Do you have a comment on the fiscal note?

Mr. Cox:
We can pull the fiscal note since our expenditures will not increase because of these ID cards.

SENATOR JONES MOVED TO DO PASS S.B. 423.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Senator Greg Brower (Senatorial District No. 15):
I am here to present Senate Bill 347.

SENATE BILL 347: Requires the Advisory Commission on the Administration of Justice to consider certain matters relating to parole. (BDR S-1050)

Sixteen states, as well as the federal government, have eliminated their parole systems. This is a complicated issue. Senate Bill 347 proposes to have the Advisory Commission on the Administration of Justice study the issue in the next interim. I serve on that Commission; Nick Anthony, Counsel for the Senate Committee on Judiciary, staffs the Commission; and Chair Segerblom is likely to be on that Commission next interim. Worthy of careful study, it can only be done during the interim when Legislators have the time.

Chair Segerblom:
I will close the hearing and see if we have a motion.

SENATOR JONES MOVED TO DO PASS S.B. 347.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
There being no public comment, the Senate Committee on Judiciary is adjourned at 11:08 a.m.

RESPECTFULLY SUBMITTED:

_____
Janet Coons,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE:_____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	2		Agenda
	B	8		Attendance Roster
S.B. 416	C	1	Lionel Sawyer & Collins	Proposed Amendment
S.B. 416	D	8	Scott Scherer	Written Testimony
S.B. 416	E	17	Joe Asher	Sports Kiosks Presentation
S.B. 365	F	1	Mindy Martini	Work Session Document
S.B. 419	G	1	Mindy Martini	Work Session Document
S.B. 140	H	2	Tom Standish	Proposed Amendment
S.B. 140	I	3	Mindy Martini	Work Session Document
S.B. 420	J	7	Mindy Martini	Work Session Document
S.B. 420	K	2	Washoe County Public Defender's Office	Letter of Support
S.B. 420	L	1	Advisory Council for Prosecuting Attorneys	Letter Opposing the Proposed Amendment
S.B. 423	M	1	Mindy Martini	Work Session Document