

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

**Seventy-Eighth Session
February 26, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, February 26, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Shelly M. Shelton, Assembly District No. 10

Minutes ID: 286



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division,
Office of the Clark County District Attorney
Kevin Schiller, Director, Washoe County Social Services
John T. Jones, Jr., representing Nevada District Attorneys Association
Scott K. Sisco, Deputy Director, Support Services, Department
of Corrections
Connie S. Bisbee, Chairman, Board of Parole Commissioners
Jonathan Friedrich, representing Nevada Homeowner Alliance
John A. Radocha, Private Citizen, Las Vegas, Nevada
Joseph Decker, Administrator, Nevada Real Estate Division,
Department of Business and Industry
Peter Barton, Private Citizen, Carson City, Nevada
Delores Bornbach, Private Citizen, Las Vegas, Nevada
Robin Huhn, Private Citizen, Henderson, Nevada
Robert Stern, Private Citizen, Henderson, Nevada
Dorothy Chavez, Private Citizen, Las Vegas, Nevada
Norman McCullough, Private Citizen, Henderson, Nevada
Mary Rotar, Private Citizen, Las Vegas, Nevada
Robert Frank, Private Citizen, Henderson, Nevada
Leonard Willoughby, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Community Associations Institute
Donna Zanetti, CoChair, Legislative Action Committee, Community
Associations Institute

Chairman Hansen:

[Roll was called.] We have three bills on the agenda this morning. We are going to start with Assembly Bill 151.

**Assembly Bill 151: Revises provisions relating to the adoption of children.
(BDR 11-757)**

Assemblyman Nelson Araujo, Assembly District No. 3:

I am very excited to be here today to propose Assembly Bill 151, which would make various revisions to the adoption process in Nevada. I also want to acknowledge that Mr. Kevin Schiller from Washoe County Social Services is here with me today. Additionally, we have Ms. Brigid Duffy from the Clark County District Attorney's Office, and Lisa Martinez, who is with the Clark County Department of Family Services.

I would like to point out that there were some amendments submitted for your review (Exhibit C). Please refer to those amendments for this hearing. Initially, the bill proposed an exemption of the six-month waiver for stepparents. It has changed completely, so I will be referring to the amendments as I go through the bill. With that said, I will walk you through the bill.

Under current law, a court is required to grant a petition for the adoption of a child if the court finds it to be in the best interest of the child. However, an order of decree of adoption may not be made until after the child has lived for six months in the home of the petitioners. Assembly Bill 151 would remove the six-month requirement if the petitioner is the child's next of kin.

Under current law, a minor child may be adopted by an adult person, subject to the rules described in this chapter. The person adopting a child must be at least ten years older than the person adopted. If the child is over the age of 14, the consent of the child is necessary. The second amendment proposed in this bill would exempt the next of kin from the ten-year rule.

Lastly, under current law any adult person or any two persons married to each other may petition the district court of any county in the state for leave to adopt the child. The third amendment proposes adding a subsection that states that a married person who is not lawfully separated from his or her spouse shall not adopt the child without the consent of the spouse, provided the spouse is capable of giving the consent.

I brought in the experts who have additional data to share. The data should help drive the impact this bill would have on many of our children currently in the system, and the impact it will have in the long run for Nevada. I will open it up to questions.

Chairman Hansen:

Are there any questions? The bill was very simple and is now more complex with the amendments.

Assemblyman Gardner:

From what I understand, this applies to a stepparent that is married to the biological parent. Does this deal with people who basically have a common-law marriage and are not technically married?

Brad Wilkinson, Committee Counsel:

We do not have common-law marriage in Nevada. Therefore, the answer to the question would be no.

Chairman Hansen:

The amendment says they may approve the adoption without regard to the age of the child. The current law requires consent at the age of 14. Would that change with the amendment?

Brad Wilkinson:

The way I read the amendment, the consent requirement is not affected by that. It is just related to the age. If I am misunderstanding it, maybe someone can correct me.

Chairman Hansen:

Ms. Duffy, maybe you can explain the driving motive behind the need to change the law.

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the Clark County District Attorney:

The Family Support Division is in full support of this bill. When we were approached and saw the language, we talked about the need to assist the children in our state with lifting some of the barriers that we have in order to get them adopted. This past year we managed the adoption of a little over 500 children. Of those 500 adoptions, approximately 10 were affected with delays because of a divorce issue. There have been relatives such as a grandmother wanting to adopt her own grandchildren because they have been in an abusive situation. While going through the adoption phase, we learned that the children's grandmother is married and has been married for approximately 20 years. She has not lived with her spouse for about 15 of those years. Because of religious reasons, they will not divorce. The husband, who has no relationship with the children, would have to consent to the adoption, therefore becoming fiscally and legally responsible for the children. Alternatively, we would have to tell this grandmother that she needs to get

a divorce in order to effectuate the adoption. It is a very difficult conversation to have. We have been looking to other states and have found that California has a very open statute regarding married couples. The proposed language in this statute mirrors California law, where the other spouse can consent to the adoption but not be legally responsible for the children. It also provides for the court to be able to dispense with the consent if, after a diligent search, they are unable to locate the spouse. We ran into 10 cases of children that were affected by that type of incident this past year. We approximate that 2 to 5 percent of our children are affected by the divorce issue alone in any given year.

Regarding the age of consent, I would like to share a true story of a family in Clark County that was affected by the age of consent. There were three children aged 14, 13, and 9. They had been in foster care for four years searching for a permanent home. Their parents were unable to reunify with them. We located a first cousin. He was 26 years old and he wanted to adopt his cousins. We placed the cousins with him. He had a fiancée, whom he ultimately married during the adoption process. We discovered that his wife was 24 years old. By a couple of months, she did not meet that ten-year age gap requirement. At that point, they were unable to adopt the oldest child as a married couple because she did not meet the ten-year age requirement. At that time, she was pregnant. They had some very difficult decisions to make as a family because they wanted to be married when she gave birth. They ultimately decided to get a divorce, even though they had only been married for a few months, so he could obtain permanency for the cousins. They remarried after they divorced, but he had to adopt these children as a single parent because we had no wiggle room within that ten-year age gap requirement. By allowing the court to make the decision that it is in the best interest of the children, we can do away with any type of nefarious circumstance. We think it is very important because that age gap requirement also affected about two to three adoption cases last year. We are talking about children that have been in foster care and want to get into stable and loving homes. Being told that because you miss a ten-year age gap requirement by two months is outrageous to children. This Committee can do something big for them in allowing the court to decide if it is in their best interest to finalize the adoption, regardless of the age gap.

As for the six-month requirement, there are multitudes of situations where one or both parents lose their lives and a relative wants to adopt the children. We do not see why they should have to wait six months if they already have an established relationship. Being able to waive that for stepparents and other relatives is important. If you have any questions, I would be happy to answer them.

Chairman Hansen:

Are there any questions at this time?

Assemblyman Gardner:

There was a case a few years back where a billionaire tried to adopt a woman he was in an intimate relationship with, and it was very strange. From my reading of this, it will not allow that sort of thing, will it? I just want to make sure that is true.

Brigid J. Duffy:

I believe that the amendment states that if the court is satisfied that it is in the best interest of the child and in the best interest of the public, it may approve the adoption. In a situation of boyfriend and girlfriend, I am not sure how the statutory requirement would be met because we have been very specific that it would have to be a stepparent. Unless he is dating his sister, brother, aunt, uncle, or first cousin, there would not be the ability to do it. The statute is written tightly enough to avoid that situation.

Chairman Hansen:

The third degree of consanguinity is the first cousin. Is that correct?

Brad Wilkinson:

I have a chart, but it is blurry. I think it goes all the way to second cousins.

Kevin Schiller, Director, Washoe County Social Services:

We want to offer our full support for this bill. I would like to make reference to a couple of areas. Regarding adoptions in the third degree of consanguinity, we are projecting about 150 adoptions to be finalized in Washoe County. About 55 of those should be with relatives falling within this degree. This is comparable with California and how they expedite permanency.

I think this is a twofold discussion. I want to make sure the Committee knows when we move forward with an adoption, there is a home study process that occurs. That home study process reviews the circumstances in the home and looks at certain scenarios so that we have some quality assurance. One thing that may be asked regarding the six-month time frame is, are you losing something in relationship to that quality assurance? We have a pretty in-depth process for that. It actually expedites permanency for children who are on the track of adoption. The other thing it does, if we have that six-month timeframe, is to cut into our child welfare budgets as we are trying to finalize the adoption. When we have barriers coming up such as foster care payments and rate issues occurring, it allows us to reinvest those dollars so we can continue to improve services. It really expedites the permanency in the best interest of the child.

I really wanted to emphasize that because over half of our adoptions were with relatives.

Assemblyman Ohrenschall:

Working at the juvenile court, I run into a lot of children whose biological parents are either unwilling or unable to provide a stable home for the children. A lot of the time we meet a person who is often referred to as godmother, auntie, or grandmother, but is not actually related. For this, we use the term fictive kin. I wonder if any thought was given to allow fictive kin to adopt the child, if the child has lived with or was raised by them. I am wondering if fictive kin can have the protection that this bill is contemplating, or is that just too much to take on right now? Maybe that is a topic for another day. I have encountered many children who find a stable home with someone that cares for them, but they are not actually related. Is that beyond the scope of this bill?

Brigid J. Duffy:

If the sponsors would like to have that conversation, we would be willing. We are so pleased to just knock down these barriers for children. We are excited for this bill. Fictive kin is the term we use for them, and it actually is a statutory term now in *Nevada Revised Statutes* (NRS), Chapter 432B. I think this would knock down even more barriers if it were expanded that far. We do have a lot of relationships where people call each other cousins or they call each other granny, whether or not they are biologically related. We recognize that relationship, and in NRS, Chapter 432B, we actually have that relationship equal to that of a biological relative. This is not my decision. Respectfully, I think this is the sponsor's decision to make. We would be happy to have what we can have, and we are willing to have the conversation.

Chairman Hansen:

Thank you all for testifying this morning. Is there anyone else to testify in favor of A. B. 151?

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

I would like to voice our organization's support for A.B. 151.

Chairman Hansen:

Is there anybody else in Las Vegas who would like to testify? Seeing none, we will move to opposition. Is there anybody who would like to testify against A.B. 151? [There was no one.] Is there anybody in the neutral position? Assemblyman Araujo, it looks like your bill is unopposed. Would you like to make any final comments?

Assemblyman Araujo:

I just want to take a few seconds to thank you all for taking the time to hear A.B. 151. As I referenced earlier, this bill will truly impact the lives of many of the children currently in our system. It would make changes to the system so that future children do not have to experience the hurdles that some already have. I thank you for your time, and I ask you for your support.

Chairman Hansen:

We are going to close the hearing on Assembly Bill 151 and move to hear Assembly Bill 31.

Assembly Bill 31: Removes the requirement that certain administrative regulations of the Department of Corrections be adopted in accordance with the Nevada Administrative Procedure Act. (BDR 16-340)

Scott K. Sisco, Deputy Director, Support Services, Department of Corrections:

I am here to present Assembly Bill 31, which is a Nevada Department of Corrections (NDOC) bill request. This bill will help clean up language in *Nevada Revised Statutes* (NRS) Chapter 209. This was language that was written in the statute in 2010, during the 26th Special Session, in the height of the many budget cuts and revenue diversions that had to be made during the budget crisis. That language results in two sections of NRS Chapter 209 that conflict with statutes elsewhere within the same chapter. [Continued to read from prepared statement, ([Exhibit D](#)).]

Assemblyman Elliot T. Anderson:

Can we have legal counsel comment on what this bill does? I have a completely different reading than what we just heard. My impression of this bill is that it completely stops the need for the Department of Corrections, through the Board of Prison Commissioners, to make any sort of regulations which would then have to be approved by the Legislative Commission. If that is the case, I am not a big fan of this because the Legislature granted this authority. Let us be honest about it; using offender's money to cover any part of the cost of their incarceration is really close to a debtor's prison. I would be curious about legal counsel's reading on this bill and what it does.

Brad Wilkinson, Committee Counsel:

Generally, regulations from the Department of Corrections do not go through the NRS Chapter 233B process. Therefore, they do not come through our office or go before the Legislative Commission. These two subsections are an exception to that general rule. What the bill is proposing to do is to take out the requirement for these regulations to go through NRS Chapter 233B, come through our office, and go before the Legislative Commission. They would still

do the regulations, but they would not come through our office or through the Legislative Commission.

Chairman Hansen:

That raises a question in my mind. If this requirement goes away, will they still have to get an approval, or is there some sort of check and balance by the Board of Prison Commissioners to make sure they are not abusing the prisoner's funds in some way?

Brad Wilkinson:

Yes, that is correct. They will go through the process that all the other Department of Corrections regulations do.

Chairman Hansen:

Are there any further questions?

Assemblyman Ohrenschall:

Regarding the process about promulgating regulations from NDOC, does every regulation go before the Board of Prison Commissioners? Can you explain how that process works? If this passes, would any regulations affecting the offenders' store go before the Board?

Scott K. Sisco:

To be honest, what we discovered was that these actually did go through that process and probably did not have legal authority to do so at the time. Nobody caught it originally. Currently, whenever a regulation is promulgated, we decide to move forward, or during our annual review we put the regulations out to the employees, inmate advocacy groups, and others. We collect comments on them, and we go through the process where they ultimately make it to our executive team. Then we review them, they are publicly noticed, they go to the Board of Prison Commissioners, and we will have employee groups or inmate advocacy groups come and speak on behalf of those regulations on a regular basis. Ultimately, the Board of Prison Commissioners blesses them or does not.

Chairman Hansen:

Are there any further questions for Mr. Sisco? Seeing none, thank you very much. Is there anybody else to testify in favor of A.B. 31?

Connie S. Bisbee, Chairman, Board of Parole Commissioners:

We are in support of A.B. 31. It truly is a cleanup bill, and I will tell you how it goes. Sometimes you are looking at the laws that relate to your job, and you realize that there is an unintended problem. It just so happened that the laws were being read and a problem was identified. If you have ever been through

the process of the Board of Prison Commissioners, it is an excellent process. Everything is very vetted and out in the open. As the Deputy Director said, advocacy groups provide pros and cons. It is a very good system. To have these particular sections anywhere other than in the system that goes through the Board of Prison Commissioners does not make any sense. We are in support and hope you pass A.B. 31.

Chairman Hansen:

Are there any questions? [There were none.] Is there anyone in southern Nevada that would like to testify in favor? Seeing no one, is there anyone here or in Las Vegas who would like to testify in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on A.B. 31. We are going to take a brief recess to pull someone out of another committee for a presentation here. We will take a five-minute recess [at 8:30 a.m.].

Chairman Hansen:

We are now going to reconvene [at 8:35 a.m.] We are now going to hear Assembly Bill 149. To present the bill is Assemblywoman Shelton.

Assembly Bill 149: Revises provisions governing retaliatory action by certain persons in common-interest communities. (BDR 10-815)

Assemblywoman Shelly M. Shelton, Assembly District No. 10:

I want to thank you for the opportunity to bring this forward. With me is one of my constituents, Jonathan Friedrich. I will go through the bill and then turn it over to Jonathan.

In 1991, the Legislature enacted *Nevada Revised Statutes* (NRS) Chapter 116, adding uniform laws regarding common-interest communities. Today there are nearly 3,000 homeowner associations (HOA) across the state, and the majority of people in southern Nevada live in common-interest communities run by executive boards.

These governing bodies are responsible for the quality of life our citizens enjoy in their homes. Some of these boards oversee thousands of homes and large amounts of money. [Continued reading from prepared statement, ([Exhibit E](#)).]

Now, I would like to turn it over to Jonathan Friedrich.

Jonathan Friedrich, representing Nevada Homeowner Alliance:

I was one of the homeowner representatives on the Commission for Common Interest Communities. Currently, I am the Legislative Affairs Director for the

Nevada Homeowner Alliance, a nonpaid position. Assemblywoman Shelton already ran through the bill. It is a very small bill that provides cleanup and clarification, which is much needed. I do not know who is down south, but there are horror stories that have come to me by people that are at wit's end. People have been financially harmed. Mr. Radocha has an \$8,200 fine on his house because the management company lost his landscaping plans. He will take that lien and fine to his grave. He is 81 years old.

Many of these owners are elderly and are easy targets of bully boards. When confronted with notices claiming they were in violation of their governing documents, they did not know what to do. You will be hearing from them shortly. The intent of this bill will put a stop to this intimidation and treatment. [Continued reading from prepared text, ([Exhibit F](#)).]

John A. Radocha, Private Citizen, Las Vegas, Nevada:

I live in a detached home in Astoria Trails in North Las Vegas, which I bought 15 years ago. It was a new home with a rear yard that was not landscaped. I have been retaliated against by the association board through no fault of my own. I purchased my home in June 2000 and did not receive architectural guidelines dealing with rear yard landscaping until September 2002, which was a year and a half later. My rear yard was the washout location for concrete trucks, which left a concrete slab in my backyard. It was then covered over with a layer of earth, which was not visible until I started the landscaping work in the fall of 2000. I notified the developer, who proceeded to remove most of the concrete eight weeks later. The landscaping was delayed until the concrete was removed by the builder. I submitted my plans to the management company, Terra West Management Services, in January 2001. The plans were never returned or approved.

After another period of time, Terra West Management Services was terminated; another management company took over the community. After another period of time, a third management company took over this troubled community. Shortly thereafter, I received a stop work order from this third management company as I had not received an approval for the work from the prior two companies. I was doing the landscaping work myself. Without getting into details, the association placed a continuing fine on my home, which now totals \$8,200. A lien has also been placed on my home. I have complained to the board to no avail. I have been targeted for not paying this bogus fine. I pay my monthly assessments six months at a time. On no less than six occasions, the management company has taken those funds and applied them to the fine, which is not allowed as per Nevada Administrative Code (NAC) 116A.345, subsection 7. The management company assessed a late charge against me for not paying on time. I have filed complaints with the ombudsman only to be told

I did not submit sufficient documentation even though I used the management company's own financial statement showing their ghastly accounting practices.

My home has been the subject of constant vandalism including the door button being ripped off, feces smeared on my door and concrete walkway, and garbage dumped along my passage. There is one more thing. I have a classic car, and someone poured coke, ketchup, and Tabasco sauce on the hood. I am 81 years old and I have a feeling I will take this with me to the grave. I hope you will change the statute to protect the people of this state and will help stop these practices to prevent others who are retaliated against. Thank you for listening.

Chairman Hansen:

Do you think the actions against you were from members of the HOA board or the management company because of the bad things that happened? I am trying to make the connection between the board and what happened to you. Are you pretty convinced, and is there strong evidence?

John A. Radocha:

Yes; I have four documents. It all started when they found out that I knew they committed fraud and theft and that they lied to the ombudsman. For years everything was good, but when they found this out, they wanted me out. I am a person that attends the board meetings, and I ask questions. That is a no-no, especially where I live. You do not ask questions because they really do not want to answer them. I have four sheets of documentation. For years, this went on. All of a sudden, all this started happening to me. They shut my irrigation water off. I took a vacation and when I came back, I started working in Laughlin quite a bit. A person called me and asked why my irrigation water was running. The cops were also called after it was reported that I was speeding in the community. How can I speed when there are ten speed bumps there? For a period of time, that is the way it was. As soon as they found out I knew about the theft, et cetera, is when this all started.

Chairman Hansen:

In your opinion, the existing law is inadequate to deal with that kind of retaliatory practice.

John A. Radocha:

Yes, definitely.

Assemblyman Thompson:

Thank you for coming forth. We love it when people of the community come and testify. I have some questions about the fine of \$8,200. Was there a process which included documentation, or was it all verbal?

John A. Radocha:

Unfortunately, I did not bring them with me, but I received documentation in the mail. The reason the fine got so high was because I was paying my assessment, and on the same sheet it showed that they would take my assessment and add it to the fine. It just kept adding up.

Assemblyman Thompson:

What was the initial assessment?

John A. Radocha:

The first time the fine was about \$2,200. When that occurred, I went to see Senator Michael A. Schneider. He came to court with me to advise the board that it was against state law to do that to me. Honestly, the board said, "Look, Mr. Senator, the people of the community elected us, and we will do what we want. We do not care what your laws are." That is exactly what they told Senator Schneider. Nothing ever happened after that. That is how this all started.

Assemblyman Thompson:

It grew from \$2,200 to \$8,200.

John A. Radocha:

Yes, and they took my assessment. At that point in time, they never fined me. They just added my assessment to the fine. Then I really got upset because that meant they could get collections after me and I could lose my house. It was six times, and each time they fined me because they took my assessment and allocated it to the fine. According to what I read in NAC, they are not allowed to do that. The ombudsman came back after a long time and said there was insufficient evidence. When I went to the meetings, I would ask for a copy of the meeting on CD. They charged me \$5 for it, which was against the law. I reported that to the ombudsman as well, but I never heard back. I finally went to the Better Business Bureau, and in two weeks I received the \$5 back. It was not the money, but the principle. I feel like I am surrounded, and we need a General Patton to come in and save us. That is what we really need.

Assemblyman Wheeler:

If this bill were to pass, you would have to prove in court all the terrible things that have ever happened to you. The lawyers can tell you better, but I think it is determined by the preponderance of the evidence. Would you be able to do that, and would this bill actually help you to stop these things from happening?

John A. Radocha:

With all of the documents I have collected, I would be willing to give it a try. I am serious. I do not know how much more time I have on this earth, but I am willing to. It is illegal what they did, and it is documented. There was theft, fraud, and they lied to the ombudsman. I would like to see you go along with some changes. Why does it take so long to get this all done? Like I said before, we need a General Patton to come out and get to the bottom of this. I just may end up in civil court.

Assemblyman Jones:

I would like to disclose that I live in an HOA as well. I have moved out of one community and into another because I really did not like the way they sent constant letters and imposed fines. It was unstoppable. I wanted to ask what community it was that you reference in your letter as Southern Highlands.

Jonathan Friedrich:

It was a subassociation and I do not recall the name.

Assemblyman Jones:

I know there are other associations that are more amenable. The one concern I do have is about the attorney fee provision. Do we have any concerns that it will result in what happened with the construction defect bill, where the attorneys were getting fees just to bring these actions?

Jonathan Friedrich:

No we do not, thanks to Assemblyman Ohrenschall and Assembly Bill No. 370 of the 77th Session. Previously, the process was that you had to go through arbitration. Between the arbitrators and the HOA attorneys, the fees could be up to \$50,000. In one particular case, it was over \$700,000. Now, there is a \$50 fee paid to the Nevada Real Estate Division (NRED), with \$250 paid to the mediator. That bill hit stiff opposition. They said it was a terrible bill, but guess what? It is working and it is relatively inexpensive. Each side pays their own legal fees. It is not a runaway train.

There is one other thing I would like to mention. I do not know if he is there in Las Vegas right now, but there is a gentleman named Robert Stern. He wrote a book called *HOA Wars*. He was a board member. He discovered that the

board was over-assessing homeowners. I think it was 1,600 homes, if I remember correctly. He wanted to give back money to the homeowners, and they went after him with a tomahawk. He wound up in litigation and eventually they settled with him. If I remember correctly, they paid back about \$38,000. Six months to a year ago, they have had a change of heart. They are suing him all over again. This is retaliation, and it has to stop. You cannot do this to people.

Chairman Hansen:

Thank you, Mr. Friedrich, Mr. Radocha, and Assemblywoman Shelton.

Assemblywoman Fiore:

Mr. Radocha, I just want to thank you for your continuing endurance of this. I also want to thank you for reaching out and sending letters, and I just want you to know that I think you are the best.

Assemblyman Ohrenschall:

As Assemblyman Thompson stated, we learn so much from personal stories. I do want to thank you for taking the time and trouble to be up here. Mr. Friedrich mentioned A.B. No. 370 of the 77th Session. That was a combined effort. We had a lot of help from legal aid and from Mr. Friedrich. The associations put everyone together, and I am glad there have been some good results from that bill. My question has more to do with how this bill will work in practicality. Last session, Assemblywoman Fiore had a bill that touched upon trying to prevent retaliation. I just wonder if that bill has helped at all.

Jonathan Friedrich:

To my personal knowledge, it has not. That was Assembly Bill No. 395 of the 77th Session. I filed a complaint, and the Las Vegas Metropolitan Police took the complaint. The key word in getting them to accept it was retaliation. They were not interested in any of the other language. It worked its way through the process and was handed over to a detective. The final response was that they were not going to deal with it. We were instructed to file a civil complaint. I have been told that it has to include harm. Unless there is the chance of you being physically harmed, they will not look at it. There are several other people who have filed complaints and they have not even reached first base.

Assemblyman Ohrenschall:

Unlike A.B. No. 395 of the 77th Session, this bill will have broader coverage as to whom it is applicable. Instead of criminal remedies, it would leave it up to the homeowners who feel they have been harmed to seek civil remedies.

Jonathan Friedrich:

It would be administered through the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels. If they decided that it rose to the level of a serious offense, they would turn it over to the Commission for Common-Interest Communities and Condominium Hotels. I have another bill in the hopper which is similar to NRS 624.115, the contractors' statute. It makes it a misdemeanor, and the agency can file criminal charges. We are told over and over again that the only thing we can do is administrative-related. We cannot go after people for embezzling money or doing other harm.

Chairman Hansen:

Mr. Friedrich, we are starting to cloud issues here. We better not start talking about another bill that we will address in the future. We are now going down to Las Vegas, where Mr. Decker has been patiently waiting to testify.

Joseph Decker, Administrator, Nevada Real Estate Division, Department of Business and Industry:

I am here in support of this bill. I will start out by saying the vast, overwhelming majority of board members and professional community managers are good people who are trying to do the right thing. Those are not the people we are talking about today. The extension of the language of this bill further clarifies elements of retaliation which, unfortunately, does happen. You will hear testimony from some of those people today. I will ask that some of those people observe that NRED does have open cases. I would also like to advise the Committee that the elements of extending the retaliation provision help NRED apply the statutes to the actual conduct that we are investigating. As you are aware, homeowner disputes usually go into the section of the ombudsman where we attempt to resolve disputes between board members and homeowners. When it rises to the level of misconduct, the case goes to the enforcement unit, which conducts an investigation against a respondent. Clarification of the statutes on the misconduct helps us to apply it. Therefore, we are in support of this bill. I will remain available for any questions the Committee may have.

Chairman Hansen:

There is existing law currently. Apparently, it is inadequate to address some of these issues. Is that correct?

Joseph Decker:

Chapter 116 of *Nevada Revised Statutes* is relatively vague when it comes to penalties. To specify for the Committee, one of the worst things we can do against a board member who has committed misconduct is to simply remove him from the board. There are some limited penalties to impose against the

association, but the board generally is responsible. That is one of the worst things we can do as far as misconduct goes. Any clarification of the statutes on the misconduct side, and how we can apply those to the complaint, helps us present that prosecution case to the Commission, thereby assisting them in adjudicating whether or not misconduct occurred.

Chairman Hansen:

The next person here in Carson City can begin testimony. We will then move down to Las Vegas.

Peter Barton, Private Citizen, Carson City, Nevada:

About 11 years ago, my wife and I moved to northern Nevada and bought a home in a common-interest community of about 90 units. The community is about 30 years old. The community has no common property or area. It provides no services to the homeowners other than a dubious discount on Charter cable services. Soon after we arrived, we involved ourselves with the board. We went to board meetings and asked to see various records of the association. We were denied access to those records, and we were stonewalled repeatedly. Last spring my wife and I embarked upon an effort to dissolve the association consistent with the governing documents and NRS Chapter 116. There was a public effort in the community. We needed to achieve 80 percent homeowner participation in the action to dissolve. We had received 74 percent, falling a little short. About six weeks ago, before I was aware that this was even a bill draft, one of the executive board members of the association came to our home and said, "We want you to know that the board has reevaluated the covenants, conditions, and restrictions (CCRs) and the architectural standards. You will get a letter in March and you, especially, are not going to like it." The operative words being "you, especially." In my mind, that is a threat of retaliation for trying to take action consistent within the law, which failed. Certainly we need some help. I fully endorse and seek your support for this bill.

Delores Bornbach, Private Citizen, Las Vegas, Nevada:

This bill will provide relief for homeowners who are being abused by overzealous boards. I put up four signs when John was running for the board. We asked four homeowners if we could place the signs on their land, and they all agreed. The signs disappeared the first night. We went back and put up four more signs in the same places. They also disappeared. This occurred four different times. We do not know who did it, but two years ago the same thing happened. The president of the board admitted that he took them down. Fortunately, this bill would take care of that issue. John has lots more stories. Thank you for your time.

Chairman Hansen:

Let us go down to Las Vegas now. We have a few people waiting down there.

Robin Huhn, Private Citizen, Henderson, Nevada:

I am an advocate for homeowners living in HOAs. I am in support of A.B. 149, which states in section 1, subsection 1, "An executive board, a member of an executive board, a community manager or an officer, or employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner." It is an embarrassment to me that I sit before you today while Nevada's largest HOA fraud case is before the Nevada courts. This bill is a result of the FBI's political HOA corruption case that encompasses harassment, deceit, and retaliation. [Continued to read from prepared text, ([Exhibit G](#)).]

Robert Stern, Private Citizen, Henderson, Nevada:

I am the author of a book called *HOA Wars*. I am here to speak in favor of the bill. I am a trained CPA and have served on many HOA boards. As a board member, I fought against a rogue Henderson association. I fought to return surplus funds to homeowners, and as a result, nearly \$1.2 million was credited back.

The board members filed an unlawful civil suit against me with trumped up charges of misconduct. They failed to get the required homeowner approval. [continued reading from prepared text, ([Exhibit H](#)).]

Chairman Hansen:

Thank you, Mr. Stern. We have a couple of questions.

Assemblyman Ohrenschall:

Thank you for taking the time to testify. I heard you on the radio talking about some of what you went through. We have a lot of laws on the books but, unfortunately, bad things still happen. If this had been in the statutes during what you went through, do you think you may not have gone through some of what happened to you?

Robert Stern:

The process is not necessarily the laws that are on the books, but the enforcement of the laws that exist, and whether the process in place will allow the justice to come forth. I do think this bill strengthens the situation. Is it the cure-all to end-all? No. Since you were talking about George Patton, I will say that I am an ex-cavalry officer, having served in the 3rd Squadron, 12th Cavalry, 3rd Armored Division, which was the same unit General Patton

commanded in World War II. I agree with the gentleman who said we do require the cavalry at this time.

Dorothy Chavez, Private Citizen, Las Vegas, Nevada:

I speak not only on my behalf, but also for the two-thirds of our 168 unit owners who have had the faith and have stood by my side for the past two years in support of A.B. 149. As a member of an HOA, a member of an executive board, and a unit owner, I have the following information of the violations that we have encountered. Most insulting of all, we were paying a lawyer an astronomical amount to retaliate against us. [Continued reading from prepared statement, ([Exhibit I](#)).] We pray that the legislators will find a way for members and board members of a community to not be intimidated and harassed by all these illegal retaliation actions by attorneys especially.

Chairman Hansen:

I have heard management companies mentioned several times. Is it consistently the same management company involved in some of this? I see people shaking their heads no.

Assemblyman Jones:

What point are you at currently with your process?

Dorothy Chavez:

We have been to court, and they gave us an election which entitled us to have a completely new board. We have been through three management companies and have terminated the same attorney three times. We are moving on.

Assemblyman Jones:

You mentioned that two-thirds of your homeowners are behind you, and yet you are still having these problems?

Dorothy Chavez:

Yes, sir. We filed complaints through NRED. None of our complaints were heard. We still have the support of at least two-thirds of the community through the election that we just had in January.

Norman McCullough, Private Citizen, Henderson, Nevada:

I am a homeowner at Sun City Anthem in Henderson. I am assuming that you have the documents that were transmitted up before I came in here. I do not want to take a lot of time; therefore, I will read just the first and last paragraph of my statement ([Exhibit J](#)).

My name is Norman McCullough and I am appearing here today because I am an HOA resident who has been victimized by my HOA Board of Directors. I have been retaliated against by my Board of Directors only because I complained against the deceitful way they handled the money that was set aside to paint 162 villa homes, including mine, in the Association.

The proposed new wording to NRS 116.31183 should put an end to this type of retaliatory conduct. I am asking you today to please pass this legislation to stop and prevent these bullies from conducting these types of actions. Thank you for this opportunity to present the facts.

Mary Rotar, Private Citizen, Las Vegas, Nevada:

For the past year and a half I have been harassed by my board of directors because a person of whom I have no control has trespassed into our community by climbing the fence. The board has fined me twice in the amount of \$1,500 because that person is my 48-year-old son who has been told to stay off the property, and who I have a restraining order against. We need protection from boards, management companies, and attorneys who pick on a 71-year-old, single woman. I am not responsible for a 48-year-old man's behavior. He never had my permission to be on the property, and I have no control over that. Fortunately, I am going to see a lawyer today. If you do not think these ridiculous fines have affected my health, you do not understand what it has been like to be single, old, and alone in my home while being attacked by a vicious group of people. My friend Bob Robey helped me write this in order to pass A.B. 149. One of my biggest problems is the blatant lies they tell of what my son has done. They are blatant lies, there is no proof whatsoever.

Robert Frank, Private Citizen, Henderson, Nevada:

I am a retired colonel for the U.S. Air Force. I am from Henderson, where I live at the Sun City Anthem community. I am currently on the Commission for Common-Interest Communities and Condominium Hotels; however, I am not speaking on behalf of the Commission. I am here speaking on my own behalf and for the Citizen Task Force. My point this morning is that I support this bill. Unfortunately, I have been out of town and have not had a chance to submit comments or a friendly amendment to the bill. I have to apologize to Assemblywoman Shelton because I would have attended to that, if presented the opportunity. My concern is that this is the right direction, but it does not have enough teeth in terms of enforcement.

Here is the problem with retaliation. In my nearly 10-year experience, I have seen nearly 100 cases of retaliation that are just as bad as the ones you have heard this morning. This is a chronic and serious problem. I gave a presentation one year ago to a number of real estate agents and brokers.

Before I started my presentation about concern for due process and protection of citizens in HOAs and condos and the resulting retaliation, I asked for a show of hands. Of the more than 1000 real estate agents present, I asked if there was anyone in the audience with clients seeking to purchase a home in Nevada that is not an HOA property. To my amazement almost every single person in the room raised their hand, which indicated that their business was being affected by the poor enforcement of this kind of retaliation and lack of due process in our HOAs.

I urge you to take serious consideration of the facts. If someone wanted to place blame on why this problem has persisted over the past 10 to 20 years, it is because our Legislature has listened to the industry representatives who say there is no problem that cannot be solved by a good board of directors. I agree with that. A good board of directors does not have a retaliation problem. The problem is that we do not know how many bad boards of directors or bad management companies we have. By the way, I disagree with the previous testimony. Management companies are involved in this retaliation problem because they provide the community managers that are involved in most of these problem areas. Community managers are intimidated and harassed. They cannot speak with opposition when they find boards who are involved in retaliation. It is a very difficult challenge. Without belaboring the point too much, my concern is that there is a link between retaliation and the lack of due process in the assessment of fines, the escalation to the collection companies, and the ability to force people to knuckle under to a misbehaving board process. It has to be stopped and, quite frankly, I do not know how you would stop it using the administrative law procedures.

As a member of the Commission, I have observed directly that it is almost impossible for NRED to do anything about retaliation. From the time the complaint is filed until the case comes before the Commission, it can be anywhere from one to four years. By then, the board members involved are long gone and cannot be punished. As you have heard, law enforcement agencies are not prepared to handle white-collar crime investigations or prosecutions. It becomes a challenge. Only if you are a fairly wealthy person, who can afford to spend more money than you can recover through the civil courts, is there a chance you may get some kind of justice. This is a real problem because administrative law cannot handle this problem effectively.

I am going to be submitting a friendly amendment for consideration by Assemblywoman Shelton and the rest of the Committee, to consider how we may deal with the balance between due process and the effect of retaliation. The amendment would cover how to deal with misbehaving board members in a year or less. I am passionate about individual rights. I get very frustrated

when I am lectured by industry members saying the majority of people are happy. My problem is about individual rights and not about collective rights. People who have been seriously abused and have no real recourse of effective balance are like the picture of the woman of justice with the blindfold on but the scales are totally out of balance. The individual homeowners cannot deal with the almost-blank check the boards have if the boards wish to misbehave.

I want to finish with this point. I am not saying that all HOAs are guilty of retaliation. I am saying that a high percentage of them are. I know that from personal observation over the past eight years. We need to do something about it. Quite frankly, the only hope we have is if this Committee and our Legislature puts some teeth into the statute, making it possible for these rogue board members to be punished fairly quickly, and to require law enforcement agencies to get involved. If you did not have law enforcement for murder, rape, or any other serious crimes, you would have more of it. There should be some kind of punishment for rogue board members who are systematically retaliating. I did not plan to talk about my personal case, but my own board has caused me more than \$50,000 in damages and legal fees over the past eight years. There are people like me all over this state that can tell you horror stories. There are very few of our elected members who do not know of at least some of their family, neighbors, friends, or even themselves, being retaliated against. It is a systematic problem that will not go away unless we put more teeth into this legislation. Thank you for the opportunity to speak.

Chairman Hansen:

Are there any questions for Colonel Frank at this time? I see none.

Robert Frank:

If I may say one more thing. Many people believe that I just hate HOAs. I would not serve on the Commission if that were true. I do not have a problem with the concept. I love the development concept. I just resist the concept that says the governing system is broken and there is nothing we can do about it. That is the problem. We can do something about it, and our Legislature can do something about it. Individual rights are very important. Thank you.

Leonard Willoughby, Private Citizen, Las Vegas, Nevada:

I support A.B. 149. It is a good bill in the right direction although it does not go far enough. Like Colonel Frank mentioned, it does not have the teeth to punish the people who retaliate. It also does not address stalking. I had an incident where the management company was stalking me, even though I was on the board. They levied fines against me, and they did not use the due process as required by our documents. It took NRED over two years to resolve that case. I believe this bill is a step in the right direction, but it does need to have some

teeth. I believe that if anyone is found in retaliation or is perceived in retaliation, the management company should have their license yanked by NRED. That would solve many of these problems.

Bob Robey, Private Citizen, Las Vegas, Nevada:

I am speaking for myself. I am the vice chairman of the Nevada Homeowner Alliance. I would like to make a couple of comments. They might be separated in your thoughts, but together they will form a picture. Dr. Gary Solomon is a champion who goes after the big dogs. He took one of his associations to small claims court. Like every other small claims court in the Las Vegas area, they referred him to NRED. Most people tuck their heads under their wings and go south. Dr. Solomon stayed the course and took them to court. In district court, he won the right for all of us to take our HOAs to small claims court.

Yesterday, after the hearing for another bill, four of the attorneys attacked the bill with minutia. They wanted to twist it and turn it so that nobody can do anything with it. At that hearing, I heard two things that hit me hard. The language of the law is supposed to be in plain English. That does not mean it has to be one syllable words. It means it has to be understandable to the average person. Attorneys will try to twist and turn it until we cannot understand anything. At the meeting yesterday, former Senator Schneider revealed that he had been a victim of retaliation. How are you asking me if we are subjected to retaliation, when a state senator testifies that he has been retaliated against?

Look at the age of the people who have testified today. They are not youngsters. The youngsters are trying to survive and are working to feed the kids. You heard testimony today about how this may affect children. Does anyone have any idea how many United States Department of Housing and Urban Development (HUD) cases have been adjudicated against HOAs for violating the rights of children to behave as children in an HOA? No, we do not, because it is all segregated. Pass this bill. Do not worry about it. It is a good bill. Put something out there, people will make it better, and the courts will finally hear us. We need a tool to start. Give us a little ladder, and we will make it into a giant ladder. Thank you.

Chairman Hansen:

Is there anyone else in Las Vegas who would like to testify in favor of A.B. 149? Seeing none, we will come back to Carson City. Is there anyone here who would like to testify in opposition?

Garrett Gordon, representing Community Associations Institute:

Randy Watkins, representing the Southern Nevada Home Builders Association, was in Las Vegas but had to leave early. He gave me authority to speak on his behalf as well. Let me first say that we are sympathetic to all of these stories. As Assemblyman Ohrenschall knows, I have worked closely with Mr. Friedrich during the last four sessions on his bills. As Assemblyman Ohrenschall also knows, we have always tried to find a solution to the problems. I continue to provide my personal information to each of these individuals. If there is an issue, we track down the HOA and management company to try to figure out a solution and resolve it whether they are a member of my institute or not.

Let me provide you with a little bit of history. Nevada Revised Statutes Chapter 116.31183 was codified in 2003. If you look at the language and you look at minutes, it was supported by the Community Association Institute. We support retaliation actions being prohibited. There should be no place for retaliation. In 2003, we testified in favor of the bill. The current statute says that an executive board or community manager—which was added into the language in 2009—shall not take action or encourage any retaliation by a unit owner who is complaining in good faith about any violation of any provision of NRS Chapter 116 or the governing documents themselves. We supported a very broad and encompassing bill which covers all of this.

All of the examples I have heard today are clear violations of NRS Chapter 116. They would clearly fall under the existing statute in NRS 116.31183, for example, the fines that you are hearing about. The statute clearly says that for a fine, the maximum can be \$100 for the first incident. If it is not resolved in 14 days, there is what is known as a cure period. There can only be another \$100 per week added, not to exceed \$1,000. Certainly, it is a violation of NRS Chapter 116. If there is evidence supporting that it was retaliatory, there is already an action within the law to go to the ombudsman's office to resolve it. The existing statute also talks about, if the unit owner requests in good faith to review the books, records, or other papers of the association, they have a right to do that. I have heard two or three times here that it was not permitted. It is a violation of NRS Chapter 116. At my institute, if we hear about a member that is willfully violating it, we will do all we can to resolve it.

In 2009, not only was the statute amended to add community manager, the attorney fees and compensatory damages clause was added. Therefore, it is currently in existing law as well. *Nevada Revised Statutes* 116.31181 says, "In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover: (a) Compensatory damages; and (b) Attorney's fees and costs of bringing the separate action." Therefore, that is already covered in the bill as well.

I would certainly note that if you look at the regulations dealing with retaliation, the regulations of NRS Chapter 116 talk about revenge. If revenge is taken upon a unit's owner, there are penalties. We believe the current law should cover all of this. The Chairman stated that much of this sounds like criminal behavior as with the bill heard yesterday in the Senate Judiciary Committee hearing. The Chairman asked if there have been complaints filed with the District Attorney's Office. The testifier answered yes, indicating that the law enforcement office did not move forward based upon the facts. We think the laws on the books appear sufficient to cover all of this. As I have always indicated, I will sit down with Mr. Friedrich, and if we need to focus on penalties or enforcement, we will be happy to do so.

Looking at the specific language to be amended in this chapter, retaliatory action is a tort from a legal perspective. You have to have specific language in dealing with a tort. I tried to find a definition of retaliatory in another context in order to provide some context here. The best that I could come up with is the whistleblower laws, and the retaliation for whistleblowing. A lot of that language is very specific about actual harm. If you look at what is being proposed here, section 1, subsection 1, paragraph (a), subparagraph (1) of the bill says "Causes or may cause financial harm to the unit's owner." The word "may" is very subjective. It is certainly a little overbroad in our interpretation. Subparagraph (2) of the bill also says "Maligns or may malign the reputation of the unit's owner." Once again, "may malign" is difficult to enforce.

Also, there are slander and libel laws on the books. We certainly think that would cover it. I have heard the word slander used a couple of times in testimonies. As you go through the language further, we think there is a reference that would be a violation of the Fair Housing Act. Section 1, subsection 1, paragraph (b)(4) of the bill says that anything related to race, color, religion, et cetera, is clearly covered and would be a violation of the housing discrimination laws.

Mr. Chairman, I am always willing to sit down with Mr. Friedrich to discuss this bill as well as with the others. At this point, we are opposed to the current language. We look forward to working with the sponsor and Mr. Friedrich to find out if there is some common ground.

Assemblyman Wheeler:

The defense seems to be that all of this law seems to already exist. If that is the case, why do you think the other side feels that they need to have this codified? Are the examples so far out of hand? If all of these laws already exist, why do you care if we codify them?

Garrett Gordon:

In my experience working with Mr. Friedrich during the last four sessions, certainly the stories we hear are horrific.

I have always done my best to track down the facts behind the stories and why it may or may not have gone forward. Many of the situations we have been able to resolve with discussion. I think the reason why is this chapter, which started as a uniform act and was about 20 pages, is now at 160 pages. Many times we are codifying some personal stories or incidents that occurred. In our opinion, it is making it more ambiguous. I think this actually narrows the scope of retaliation. Currently, there is language to move forward with.

What I am reading here is now there will be some triggers to go through. To specifically answer your question, it is the word "may" that causes us a lot of concern. We think it will certainly cause some good boards concern about what it means. Usually any action the board takes deals with assessments, fines, or hiring a new landscaper. It is all within the financial context. We would hate to see a flood of complaints that require the HOAs, which are funded by unit owners, having to raise assessments or hit the reserves in order to hire attorneys to fight this.

Assemblyman Jones:

It seems you are saying that everything is in the laws, but I think you are missing a big point. When the HOAs have the people, money, and big government apparatus to go against the individuals, the individuals need more protection. I believe the people who are testifying. This bill needs more teeth because the law already exists and these people are still being badly abused. I experienced it myself, and I got so frustrated that I had to move out of my community. It made me sick how they were constantly badgering. I would say we need more teeth in this law based on your testimony.

Assemblyman Ohrenschall:

I would like to echo what Mr. Gordon said. The last two sessions, I had the opportunity to vice chair the HOA subcommittee, and Mr. Gordon's door was always open. I appreciate his working with Mr. Friedrich, working with the attorneys at Legal Aid Center of Southern Nevada, and all of us, trying to find collaborative solutions. When we disagreed, we always parted civilly. My question has to do with the language of the bill. Do you think we have the right balance in terms of the liability of board members? Do you think people may be hesitant to serve on a board because of expanded tort liability? Or do you think it is not really expanded much beyond what is currently in statute?

Garrett Gordon:

That is a great question. The HOA boards are made up of volunteer board members. It is very difficult to find people to run, whether it be a small board or a large board. It is always difficult to find people willing to spend their time and their days. At the larger associations, such as Summerlin, they are dealing with million dollar budgets. The budgets of the smaller HOAs are just as important. Working on these issues for the last four sessions, there does seem to be a chilling effect. You have your neighbor on a board trying to interpret 150 pages of NRS Chapter 116. They do receive a class but, certainly, there is much to learn. I have been doing this for four sessions, and I still learn something new every day about NRS Chapter 116. I think as you expand it, and the focus is on bad boards, there is a chilling effect, and it may prevent some really good and honest folks from being on their board. Looking at the first part of section 1, where it talks about not taking action against the unit's owner, a lot of times there are unit owners retaliating against board members. It could be against a board member who believes they did something in good faith and in compliance with the law. Sometimes there may be unit owners retaliating against community managers. The industry says that it should go both ways because there are circumstances where it happens both ways.

Assemblyman Ohrenschall:

We definitely need to strike a balance on this. Thank you.

Donna Zanetti, CoChair, Legislative Action Committee, Community Associations Institute:

I am an attorney here in Nevada and we represent HOAs. We also represent individual homeowners who feel they have been aggrieved by their associations. I would like to believe that I am capable of seeing both sides of the issues presented in the HOA dynamic. Prior to becoming an attorney, I was a community association manager here in Nevada. I think that gives me some insight into the situation that people encounter. Do I believe that there is retaliation within HOAs in the state? Yes, but I also believe that it exists on both sides of the equation. We have five concerns with this bill. I apologize that some of it will be repetitive. You have listened to a lot today, and I will try to make it as concise as I can.

Our first concern is that it is vague and overly broad as drafted. It overlaps with other laws and the purviews of other commissions. There is no parity in this amended version. There are several provisions that are already covered in existing law making it duplicative and confusing. Finally, there is frustration about a lack of remedies that people feel actually achieve something. This bill is not going to address any penalties the Commission can apply or change them in any way. I will be more specific about vague and overly broad.

Garrett Gordon has touched on a lot that causes or may cause financial harm. The only document the law gives the association to enforce is the CCRs, which are restrictions on living that everyone who moves into the community originally agreed to. By law, these are supposed to be provided to the potential buyer. The potential buyers are supposed to be given the opportunity to read them and decide if they choose to accept them comfortably. The law only gives the association a limited number of options to enforce the covenants, conditions, and restrictions. It can levy fines, or it can impose sanctions such as suspending membership privileges. It can take you to court to enjoin some actions. Let us say that I am a homeowner, and I am putting on an addition to my house, and I have done so without obtaining approval from my association as required. The association will send me a cease and desist letter or will get an injunction. Have they caused me financial harm? If they fine me for a violation of the covenants that I agreed to, does that cause me financial harm? This is so broad that it would create concern in the minds of volunteer homeowners who are trying to do their best about what they may do under the law without encountering a retaliation claim.

Regarding "malign" or "may malign" the reputation of a unit's owner, I can tell you from personal experience it does go both ways. It could be homeowners who run their own blogs or post on websites that run parallel to the association's website with defamatory and derogatory claims about board members. I will give you an example. The owner has claimed that board members have defrauded her, discriminated against her, and are in a conspiracy with various persons of local governments. This is all placed out in the public view. None of it is valid. I know that none of it is valid because this owner took the claim to court and a judge decided that it was not valid. This kind of maligning of the board members' reputation continues. There is nothing in this law that would stop it or allow them to do anything about it.

Regarding the interference of a candidate's campaign, that is addressed in NRS 116.31034, subsection 12. It is already in the law.

With regard to section 1, paragraph (b), subparagraph (4), that is addressed in NRS 118.100, which addresses prohibited acts and practices. It is a fair housing violation at the state and federal level. At the state level, an aggrieved person is directed to file a complaint with the Nevada Equal Rights Commission. Therefore, there is an overlap, not only in the law, but in the purview of the various commissions. For that reason, we do not believe that it is a good addition to this bill. It is covered in other law.

Chairman Hansen:

I see no questions. Thank you both for your testimony. Is there anyone in Las Vegas who wishes to testify in opposition? Seeing no one, we will move to the neutral position. Is there anyone who would like to testify in the neutral position for A.B. 149? [There was no one.] Since Assemblywoman Shelton is no longer here, would you like to make the closing statement, Mr. Friedrich?

Jonathan Friedrich:

Mr. Gordon put a very nice spin on it. If existing statute is so great, why are we having all of these problems? You have heard a lot of very unpleasant testimony today, and Assemblyman Jones has lived it firsthand. I have lived it firsthand. The author of *HOA Wars* has lived it, and it is still going on.

One other point that I would like to make is the CCRs cannot be changed without great difficulty; however, the rules can be changed at a board meeting. It is 75 percent or higher of the homeowners to approve a change to the CCRs, but the rules are at the whim of a board.

Chairman Hansen:

We will now close the hearing on Assembly Bill 149. We are going to set up an HOA subcommittee. It will be composed of Assemblymen Seaman, Gardner, Jones, Ohrenschall, and Anderson. Assemblywoman Seaman will be the chair, and Assemblyman Gardner will serve as vice chair. At the discretion of the chair, the HOA bills will probably be heard at those meetings. Tomorrow there will be no hearing. Is there anyone who would like to enter any public comments?

Bob Robey:

I have a question. If I hear something that is totally misleading, and I would like to come forward to demonstrate that it is an omission, do I address it later or do I say so now?

Chairman Hansen:

Normally, during testimony there is no debate period to go and refute it. Mr. Friedrich came up again because the bill's sponsor would have normally come up to clean up last minute issues. Honestly, there is no opportunity to correct testimony heard. We do have a public comment period, which we are in right now. We do prefer that you put it in writing if there is something significant, but you do have a moment now in public comment if you would like to say something else.

Bob Robey:

Under NRS Chapter 116 there is a provision that a fine for a health and safety violation has no limit. Mary Rotar testified that she was fined \$1,500 in one instance because the board claimed her son climbed over the fence. Later, it happened again and they fined her another \$1,500. To say that the fines are only \$100 is totally misleading. I thank you for the opportunity to correct that.

Robin Huhn:

Hearing all of this, I just wonder when it became so complicated for a person to live in their own home. I remember people would buy their house, make their payments, pay their taxes, and take care of their house, and that was it. With all of my education, I did not realize that I needed someone to tell me how to live in my own home.

Robert Frank:

I wanted to follow up on the previous conversations by alerting the Committee, and the future subcommittee, that I have been working as a member of the Commission. I have been authorized to work with law enforcement to try to come up with a regulation or procedure to address when financial harm has occurred by referring it to law enforcement agencies. This would avoid such fiascos as we have had as in the FBI case where the homeowners have tried to get help, but they could not get the law enforcement agency to deal with the obvious financial misconduct that was known prior to FBI involvement. I would like to encourage the Committee to be aware that one relatively small but very important action to be considered would be to add language that involves the law enforcement agencies so that white-collar crimes, expenditures, or efforts would not be so easy to avoid. There should be a partnership between law enforcement and the ombudsmen so that when a complaint is made by a homeowner who does not know how to deal with NRS Chapter 205 versus NRS Chapter 116, he can get some help between the two executive branches. I also call on Assemblyman Gardner, with his legal background, to look at the possibility because just a little law enforcement and punishment for some of these outrageous retaliations could put a real cloud on some of the misconduct that is going on. I encourage you to consider that and support some of my efforts, along with the Commission, to get help from law enforcement and NRED.

Leonard Willoughby:

There was mention that other laws in the statute exist and that we do not need to go back in and reference them. For a clean bill, what we would need is to reference the sections so that when people read the statutes, they can go to the appropriate section without having to try to find it. They may never even find it. It would help clean up a lot of the disparities. I do not mind jumping

back and forth between various statutes, but it would be nice to reference the other statutes.

Norman McCullough:

I would like to spend a little time explaining why I am so upset at my board of directors. By comparing the 2006 figure of square feet with the 2008 figure, there is 1,850 square feet missing. Not only is the stucco missing, but the money that was appropriated to paint is missing. That is why I am so concerned. There is no explanation. I used to work for a developer. I retired when I was 65 after working for a developer for 15 years who built homes in Las Vegas. I know this is just plain garbage. This figure was changed by my board of directors with no plausible explanation. I want it looked into. I will be happy to answer any questions.

Chairman Hansen:

During public comment, we normally do not take questions. Thank you very much for your testimony this morning. Seeing no others to speak, we will close the public comment period. With no other Committee business, we are adjourned [at 10:11 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 26, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 151	C	Assemblyman Araujo	Amendments to A.B. 151
A.B. 31	D	Scott Sisco, Department of Corrections	Written Testimony
A.B. 149	E	Assemblywoman Shelton	Written Testimony
A.B. 149	F	Jonathan Friedrich, Nevada Homeowner Alliance	Written Testimony
A.B. 149	G	Robin Huhn, Henderson, Nevada	Written Testimony
A.B. 149	H	Robert Stern, Henderson, Nevada	Written Testimony
A.B. 149	I	Dorothy Chavez, Las Vegas, Nevada	Written Testimony
A.B. 149	J	Norman McCullough, Henderson, Nevada	Written Testimony