

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

**Seventy-Eighth Session  
March 12, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, March 12, 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](http://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](mailto: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:**

Senator Scott T. Hammond, Senate District No. 18

Minutes ID: 440



Senator David R. Parks, Senate District No. 7  
Senator Michael Roberson, Senate District No. 20

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Sarah M. Clark, representing Indian Springs Operating Company, LLC  
Ron Garcia, General Manager, Indian Springs Operating Company LLC  
Buffy Brown, Senior Research Specialist, Administration Division, State Gaming Control Board  
Brian Connett, Deputy Director, Prison Industries, Department of Corrections  
Loren Young, representing Las Vegas Defense Lawyers  
Jeffrey Cooper, Chairman, Legislation Committee, Nevada Society of Certified Public Accountants  
Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada  
Cheryl Blomstrom, representing Nevada Manufacturers Association  
Justin Harrison, Director, Las Vegas Metro Chamber of Commerce  
Stuart MacKie, Private Citizen, Hazen, Nevada  
Matthew L. Sharp, representing Nevada Justice Association

**Chairman Hansen:**

[The roll was taken.] We have three bills on the agenda, and we will start with Senate Bill 124.

**Senate Bill 124: Revises provisions governing gaming establishments.  
(BDR 41-787)**

**Senator Scott T. Hammond, Senate District No. 18:**

I am grateful to be here this morning, and I am pleased to bring Senate Bill 124 for your consideration. First, I will provide you with some background. Next to me is Sarah Clark, who will help you to understand the intent and language of the bill. As many of you know, I am a teacher. I have been working at Indian Springs High School for the last 16 years. If you have ever driven from

Las Vegas to Carson City, you have probably driven through the small town of Indian Springs. It is about 45 minutes northwest of Las Vegas on U.S. 95. One of the principal employment centers of Indian Springs is a casino that was shut down not too long ago. I want to let you know a little bit about why the casino was shut down.

Creech Air Force Base (AFB) is located in Indian Springs and has been expanding. Not too many people know this, but although the U.S. Air Force Thunderbirds are stationed at Nellis AFB, it is at Creech AFB in Indian Springs where they do many of their practice drills. They have been doing drills there for a long time, and the drone program is expanding out there as well. The Air Force wanted to expand the facility. Also, there were concerns about the integrity of the base. The base needed to make sure they did not have problems with security. While the casino was open for business, anyone could have gone to the back and launched a grenade far enough to hit the runway. That was the main purpose for them wanting to expand the base. The owner of the casino started negotiations with the base allowing them to determine a purchase price for the property. Instead of allowing the AFB to take it through eminent domain, the owner decided to negotiate in good faith. It took a long time, but the Air Force base purchased the casino from the owner. Afterwards, the owner realized that he now had no recourse to move his casino to the other side of the highway and reopen with his existing license. There were provisions that would allow someone to do that, but only through certain means. One of those provisions was through eminent domain.

The owner was caught in a bad situation. He wanted to move the casino because the community needed it, and they still need it. Most of the students that I have taught over the past 16 years obtained their first job there. It is a place where residents meet. It is one of only two places in Indian Springs where you can have a meal. If you are traveling through, you can spend the night. It is a vital part of the community. That is why they came to me to help them with this piece of legislation. Although they could not be here, Senator Goicoechea and Assemblyman Oscarson, who represent the district, are in support of the bill as well. For these various reasons, I am here before you asking you to consider this bill. I would now like to introduce Sarah Clark.

**Sarah M. Clark, representing Indian Springs Operating Company, LLC:**

I would like to thank the Committee for your consideration of this bill. I would also like to thank our joint sponsors. As Senator Hammond has mentioned, *Nevada Revised Statutes* (NRS) 463.302 allows the State Gaming Control Board to relocate an unrestricted license under three very narrow and specific circumstances. The narrow language of this bill would allow the Gaming Control Board that authority with respect to circumstances such as this.

The existing location of the gaming establishment is adjacent to a military installation. The move and transfer are necessary because the existing location has been designated for expansion of the military installation. It would allow the license to be moved within one mile of that location.

We have been working and engaged with the Gaming Control Board, the county, and the town, throughout the process. We have also submitted a letter of support from the Indian Springs Town Advisory Board ([Exhibit C](#)). As mentioned by Senator Hammond, this business is very important to the community who would like the casino reopened. This is the first step in moving forward and would allow us to do just that.

I would also like to introduce Ron Garcia, the General Manager of Indian Springs Operating Company, LLC. He is at the Grant Sawyer Building in Las Vegas.

**Ron Garcia, General Manager, Indian Springs Operating Company, LLC:**

For 30 years, the casino has been the mainstay for the community and travelers. I am sure a few of you must have stopped there for lunch a time or two while heading up north. The casino is located directly next to Creech AFB. Several years ago, the U.S. government designated the casino for acquisition to expand the perimeter for homeland security reasons. Wanting to cooperate and avoid entering into a legal battle, we negotiated the sale of the property and closed it last October. We would really like to reopen the casino directly across the highway. As soon as we found out the government was taking the property, we contacted Clark County, and the Gaming Control Board to see what was necessary to reopen. Unfortunately, under the current law, the license cannot be moved.

We are proud to be a part of the community there, and we are grateful to the bill's sponsors for taking up this issue. We appreciate the Committee for taking this bill into consideration.

**Chairman Hansen:**

Senator Hammond, is there anyone else you would like to have testify? I have to say that this bill is so narrowly tailored, I would be surprised if there was any opposition.

**Senator Hammond:**

No, thank you.

**Assemblyman Elliot T. Anderson:**

This is just a comment. I met with the bill's sponsors, and they took the suggestion to keep it tailored. This is something that state and

federal governments worked on together through the National Conference of State Legislature Task Force on Military and Veterans Affairs. One thing the Task Force works on is state encroachment issues. There is a standing effort to aid these types of projects. This bill is well in line with those efforts. I am happy to help our military and help our business owners deal with these types of issues.

**Chairman Hansen:**

I see no further questions. Is there anyone else who would like to testify in favor of S.B. 124? [There was no one.] Is there anyone who is opposed to this bill? [There was no one.] Is there anyone in the neutral position?

**Buffy Brown, Senior Research Specialist, Administration Division, State Gaming Control Board:**

I would like to extend our apologies for Chairman A.G. Burnett, who was not available to be here. On his behalf, I would like to indicate that the bill's sponsors worked together with the Gaming Control Board. The Board feels that the casino is an important part of the community. We support it to the extent that we do not disagree, and we believe the bill is reasonable.

**Assemblyman Nelson:**

I am in support of this bill, but I would like clarification for the record. The license will not change at all. Is that correct?

**Buffy Brown:**

That is correct. The purpose is just to move the location.

**Assemblyman Nelson:**

Are we just grandfathering it and allowing the move across the street to accommodate the military base expansion?

**Buffy Brown:**

Yes. I do not have the expertise in all of the details in the other parts of that statute for when properties can move, but they are all narrowly tailored for that reason. It is to maintain control and to maintain the license.

**Chairman Hansen:**

Senator, do you have anything further to add?

**Senator Hammond:**

[Shook his head as to indicate no.]

**Chairman Hansen:**

We are going to close the hearing on S.B. 124 at this time. We will now open the hearing on Senate Bill 96.

**Senate Bill 96: Revises provisions relating to Prison Industries. (BDR 16-281)**

**Senator David R. Parks, Senate District No. 7:**

I am here as the Chair of the Legislative Committee on Industrial Programs to present Senate Bill 96. In Las Vegas, I am joined by Brian Connett, Deputy Director of the Department of Corrections. He also directs Nevada's prison industry program.

Senate Bill 96 seeks to clarify and expand the authorized uses of those funds generated internally to prison industry programs and deposits them in the fund for new construction of facilities for Prison Industries. The proposed uses include relocating, expanding, modifying, enhancing or improving an existing program; purchasing or leasing equipment; paying for the operation of Prison Industries including paying staff and offender wages when necessary; and paying for advertising and promotion of prison industry goods and services. Depending upon which of these activities the Director of the Department of Corrections wants to pay for out of the fund, the Director must submit a proposal to either the Committee on Industrial Programs, the State Board of Examiners, or both. If the Director uses money from the fund to pay for operations including staff and offender wages, the Director must repay the money borrowed from the fund as soon as those funds become available.

At its November 7, 2014 meeting, the Committee on Industrial Programs unanimously voted in support of this bill. The Senate also passed this bill with a unanimous vote. I will be happy to answer any questions that you or the Committee members may have. Deputy Director Connett can provide testimony and answer technical questions from Las Vegas.

**Brian Connett, Deputy Director, Prison Industries, Nevada Department of Corrections:**

I appreciate your time to hear S.B. 96, which relates to the Department of Corrections prison industry program. Silver State Industries, also known as Prison Industries, was created under NRS Chapter 209, and operates under the Nevada Department of Corrections. Prison Industries operates 17 industries and has approximately 479 inmate workers. Prison Industries trains inmates with marketable skills to assist them in finding employment after their release. The inmates also assist the Department's correctional institutions by working, learning skills, and remaining productively occupied. Prison Industries has oversight from the Department's director, and the Committee on Industrial

Programs, which is a legislative subcommittee. All contracts are reviewed and approved by the State Board of Examiners. Nevada's Prison Industries has a fund authorized by NRS 209.192 for capital projects. This fund is completely subsidized through wage deductions of inmate workers from Prison Industries as NRS 209.463, subsection 1, paragraph I. There is no cost to the state or its taxpayers to fund this account. Currently, the money in this fund must only be expended to house new industries, expand existing industries, provide for more offender work, or for any other purpose as authorized by the Legislature.

We are requesting the Committee approve language to expand the uses of this fund by adding the following paragraphs to section 1, subsection 1: "(b) To relocate, expand, upgrade or modify an existing industry in the industrial program to enhance or improve operations or security or to provide additional employment or training of offenders; (c) To purchase or lease equipment to be used for the training of offenders or in the operations of prison industries; (d) To pay or fund the operations of prison industries, including, without limitation, paying the salaries of staff and wages of offenders if the cash balance in the Fund for Prison Industries is below the average monthly expenses for the operation of prison industries." Section 1, subsection 4 says "If any money in the Fund is used as described in paragraph (d) of subsection 1, the Director shall repay the amount used as soon as sufficient money is available in the Fund for Prison Industries."

To provide detail on the uses of the Fund, section 1, subsection 1, paragraph (e) says, "To advertise and promote the goods produced and services provided by prison industries." This would include media buys, the printing of catalogs and brochures, funding shows and conferences, Nevada Sheriffs' and Chiefs' Association, Nevada League of Cities & Municipalities, Nevada Association of Counties, chambers of commerce, et cetera.

Language has also been added in subsection 2, paragraph (a) "As described in paragraphs (b) to (e), inclusive, of subsection 1, the Director shall submit a proposal for the expenditure to the Committee on Industrial Programs and the State Board of Examiners."

We are also requesting language be stricken from NRS 209.192, section 1, subsection, 1, paragraph (f) which says "The money in the Fund must not be expended for relocating an existing industry in the industrial program unless the existing industry is being expanded to provide additional employment of offenders."

As Senator Parks has said, we have run this by the Committee on Industrial Programs, and it passed unanimously. Thank you for your time. I would be happy to answer any questions.

To my left is Diane Dastal, and she is our Administrative Services Officer for the program. She is here for any technical support or questions you may have.

**Assemblyman Gardner:**

You said there were 17 industries. Can you let us know what some of those industries are?

**Brian Connett:**

The industries include everything from an arrangement with the Bureau of Land Management (BLM) to board about 1700 horses to manufacturing operations such as cut and sew, which is a garment operation. We also have several other operations: printing, drapery, metal fabrication, furniture, auto restoration, and card sorting. Those are some of the operations that we have.

**Assemblywoman Diaz:**

You are saying that you can currently use the funds in different ways such as construction, to expand programs, et cetera. Moving forward, I would like to hear what you are thinking of using the money for. I also have another question. Section 1, subsection 1, paragraph (b) says "...to enhance or improve operations or security...." I would like some information about the security part.

**Brian Connett:**

What we intend to use the funds for is to purchase and update our equipment. A lot of the equipment that Prison Industries uses is quite old, almost antique. We would like to upgrade our equipment and be able to train inmate workers on current equipment. With regard to security, there are times when we would like to enhance our security in the prison industry shops. Our shops, except for the ranch, are primarily located inside the prison perimeter fences. If we can enhance our security, we certainly would like to use these funds to do so.

**Chairman Hansen:**

Over the years, there have been concerns about prison-made products competing with products made in the private sector. Labor organizations have been concerned when projects have been completed by prison laborers rather than going out to bid. Will this have any impact on those types of issues?

**Brian Connett:**

No, sir. We do not see that there will be any impact on our competition with private sector industries.



**Chairman Hansen:**

I am fully supportive of the program. The prisoners will be returning to the general population, and they will need some training and skills in order to return to making a living rather than becoming a repeat offender. It sounds like a great program. Senator Parks, is there anything you would like to add?

**Senator Parks:**

No, I do not have any further comments.

**Chairman Hansen:**

Is there anyone else who would like to testify in favor of S.B. 96? [There was no one.] We will open it up to opposition. Is there anyone in Carson City or Las Vegas that would like to testify in opposition? [There was no one.] Is there anyone in the neutral position? Seeing none, we will close the hearing on S.B. 96.

We will now open the hearing on Senate Bill 134. We are awaiting Senator Roberson; therefore, we will take a one-minute recess [at 8:24 a.m.].

**Chairman Hansen:**

We will now reconvene [at 8:26 a.m.].

**Senate Bill 134: Makes various changes relating to the provision of a bond in certain civil actions. (BDR 2-948)**

**Senator Michael Roberson, Senate District No. 20:**

I am here to introduce Senate Bill 134, which passed out of the Senate with a vote of 18 to 2. We all know the challenges that Nevada's economy faces and the rise and abuse of lawsuits. This experience by our business community has only made matters worse. Nevada was recently placed on the American Tort Reform Foundation's Judicial Hellholes watch list which identifies jurisdictions with "histories of abusive litigation or troublesome developments." Civil justice reforms that curb some of the abusive practices in our courts provide a cost-free way for the Legislature to help businesses have a stable platform on which to create economic growth and jobs while still ensuring justice for injured parties.

An undeniable trend in litigation over the past decade has been the skyrocketing size of damage awards. Since 2011, more than ten jury verdicts entered across the country have exceeded \$1 billion. Nevada has not been left out of this trend towards shockingly large verdicts. Over the last several years, at least four Nevada juries have returned awards for more than \$50 million. One verdict entered into against a health insurer for more than \$500 million prompted the

*Las Vegas Review Journal* to declare Las Vegas the undisputed jackpot justice capital of the world. Awards of over \$1 million, which at one time had been landmark verdicts that made the news, are now commonplace. Nevada juries have returned more than two dozen verdicts of seven figures or more in the last ten years. Many of them were against small businesses.

Defendants who are subjected to such enormous damage awards invariably seek to appeal them. They are often successful in getting the judgments reduced or overturned on appeal, particularly where a significant portion of the award is made up of punitive damages. When an award is entered for millions of dollars, appeals are a healthy part of the justice system. When an award threatens the continued vitality of a company, possibly causing layoffs or even bankruptcy, it is entirely proper for an appellate court to review the case for error and make sure the trial court got it right.

Like most states, Nevada requires the defendant to post a bond in order to stay the execution of a judgment during the course of appeal. The purpose of requiring the posting of a bond is to protect the judgment creditors' ability to collect the judgment, if it is affirmed, by preserving the status quo and preventing prejudice to the creditor arising from the stay. At the same time, the filing of a bond establishes a stay of execution that protects the defendant from having the plaintiff seize assets during the appeals process. Nevada's current appeal bond practice, in virtually all cases, necessitates the bond the defendants must post to obtain a stay during an appeal to be equal to or larger than the amount of the judgment. Neither Nevada Rules of Civil Procedure 62(d) nor the Federal Rule of Appellate Procedure, Rule 8 specifies the amount of a bond the defendant must post in Nevada. Therefore, courts have discretion to determine how large of a bond is necessary to give the plaintiff sufficient security in the judgment. Courts frequently require bonding for not just the amount of the judgment, but also several years of postjudgment interest as well as other costs and fees. Nevada courts have required full bonds even when the amount involved exceeds \$50 million.

Nevada's current appeal bond provisions did not anticipate the potentially crushing size that today's verdicts sometimes involve. The cost of obtaining a multimillion dollar bond, in some cases a bond in the hundreds of millions of dollars, becomes unattainable for many defendants, even if they have a strong case that warrants appellate review. If a business cannot obtain the financing it needs to post an appeal bond, that business is effectively denied the right to appeal. The only other option is to file for bankruptcy.

Nevada is in the minority of states that do not cap the size of the required appeal bond for all industries. To date, at least 29 states have recognized the

potential consequences of exorbitant appeal bonds and have passed legislation or amended court rules to limit the size of the required bond in cases involving large judgments. In addition, it should be noted that five other states do not require the defendant to post a bond at all during an appeal. The bond limits range from \$1 million to \$150 million, but 24 states set the upper limit at \$50 million or less. Nearly all of the statutes include a provision that allows for a higher bond amount up to the value of the judgment if the court determines that the appellate is dissipating assets to avoid paying the judgment. Notably since at least 2005, Nevada has had a \$50 million appeal bond cap in place, but it is available only to tobacco companies involved in the master settlement agreement. It is also worth recognizing that the State has exempted itself from the burdens of obtaining any bond on appeal when it is sued in a civil case.

Senate Bill 134 would extend to all industries and businesses the \$50 million cumulative limit on the appeal bond the defendants must post to stay the execution of a judgment in Nevada. If a particular defendant can establish that it is a qualified small business, the upper limit of the bond for that particular business is set at \$1 million. This bond limit would not change any other aspects of the law. This means it does not change the rules by which the trial is conducted or affect who ultimately wins or loses the lawsuit. Additionally, it does not affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. This limit is essential to guarantying that all defendants are treated fairly and are able to fully exercise the right to appeal without being forced to declare bankruptcy or settle the case before completion of the appellate review.

Senate Bill 134 is also essential to protect the rights of plaintiffs by insuring the defendants are not bankrupted by huge appeal bond requirements. The limit would help to guaranty the plaintiffs, who obtained judgments, will have solvent defendants from whom they can collect. Plaintiffs are also protected by the provision in the bill allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment. Therefore, S.B. 134 would not injure plaintiffs in any way but would merely guaranty that all defendants, no matter how large the judgment against them, can exercise the right to appeal. For all of the foregoing reasons, we should pass S.B. 134.

**Loren Young, representing Las Vegas Defense Lawyers:**

We are in full support of this bill. I want to echo Senator Roberson's comments and note that a right to a jury trial is very important to Nevada and all citizens of the United States. It is important to make sure that those rights are preserved as well as the right to appeal, and to ensure those verdict findings are correct. It is important to make sure those rights are preserved for both plaintiff as well

as a defendant. This bill will ensure a defendant's right to pursue that appeal if necessary. It also protects the plaintiff because it ensures the defendant will not try to dissipate assets to avoid a judgment, and it still provides the judge the discretion to evaluate the situation. The bond amount can be adjusted appropriately once evaluated by the judge. We are in support of this bill, and we appreciate Senator Roberson bringing it forth.

**Assemblyman Wheeler:**

This bill seems like common sense to me. Do you know what percentage of judgments on appeal have actually been reduced?

**Senator Roberson:**

That is a good question, and perhaps Loren can answer it for you.

**Loren Young:**

I do not know the exact percentage of judgments that could be reduced. Currently, the way the law stands is that a judge would require a defendant to post a bond in the entire amount of the judgment. Usually they add interest for three years on top of the judgment. On appeal, they would not usually reduce the amount of the judgment. They would either remand for a new trial if there was something that went awry, then the District Court would be given instructions to have another trial and overturning the verdict would be overturned. It is not really a reduction of the judgment. It is either affirmed or overturned, and then a new trial is started.

**Assemblywoman Diaz:**

It was cited in your testimony that Nevada is one of the states that does not establish a limit. How did you arrive at the figures of \$50 million and \$1 million, respectively. Is it because other states are capping it there? If not, how did you arrive at those figures?

**Senator Roberson:**

We thought that was a reasonable amount considering what other states do. There are currently 24 states requiring a \$50 million appeal bond cap. It ranges is from no required cap up to \$150 million in some other states.

**Assemblyman Elliot T. Anderson:**

I would like to get some context on some of the awards that you mentioned. As I understand it, when the jury comes back with an award, oftentimes they may be a bit impassioned and could take things a bit too far. It is difficult to say for sure without knowing the facts of a specific case. How often are the juries' awards immediately reduced by judges? I have read of at least a few

cases where that has happened. Were the awards that you mentioned ultimately reduced?

**Senator Roberson:**

I do not know.

**Assemblyman Nelson:**

I have a question regarding the concern of small businesses. I have read the definition under the Small Business Administration (SBA) Statutory Guidelines. How did you arrive at the figure of \$1 million limit for small businesses? Also, why is it important to this legislation?

**Senator Roberson:**

I am open to a lower amount. From my perspective, you can consider no appeal bond requirement for a small business. Certainly, we wanted to recognize how the small businesses would be much more heavily burdened by a large appeal bond requirement than larger businesses. We decided on \$1 million for a small business.

**Assemblyman Nelson:**

Does the SBA have a position on this? Have they advocated for this at all?

**Senator Roberson:**

I am not aware that the SBA has voiced an opinion on this.

**Assemblyman Nelson:**

I have dealt with this in cases where sometimes courts have not followed the law by not setting the required bond amounts, even on appeal. I see there is a need for uniformity.

**Senator Roberson:**

While any dollar amount may appear arbitrary, the idea was for a much lower appeal bond amount for small businesses. I am open to a smaller amount, if that is where you are going with this.

**Assemblyman Gardner:**

I did some research regarding the \$1 billion bonanza, as Bloomberg Press is calling it. It is about how we are getting a great deal more billion dollar judgments. Every single one that I have read about over the last ten years has been reduced. Some of them are simply determined out of a miscalculation. There was one ten years ago in California that was reduced from \$28 billion to \$28 million due to a jury miscalculation. There was another one for \$40 billion which was also reduced to a much smaller amount. I am assuming that the

reason for having this bill is to prevent the bankrupting of companies, especially since almost all of them are reduced anyway either by settlement or by the judge.

**Senator Roberson:**

That is exactly right. Unless we put some limits on what is required for appeal bonds, the right to appeal can be effectively undermined by judges setting appeal bond amounts that are unsustainable for small or large businesses. This is not good for plaintiffs either. If a company has to file bankruptcy because they cannot afford to pay for the appeal bond that the judge ordered, it is difficult to collect even if the judgment is upheld on appeal.

**Chairman Hansen:**

Senator, would you like Mr. Cooper to testify at this time?

**Senator Roberson:**

Although I did not know that Mr. Cooper was here, I am happy to have him testify.

**Jeffrey Cooper, Chairman, Legislation Committee, Nevada Society of Certified Public Accountants:**

I serve as Chairman of the Legislation Committee for the Nevada Society of Certified Public Accountants (CPA). I have practiced as a licensed CPA in Nevada since 1977. The CPA Society of Nevada supports S.B. 134, and we believe that the current structure challenges the accounting profession with an unreasonable appeal cost which may possibly force the settlement of meritless cases. We believe this bill provides adequate protection of plaintiffs while not placing an unreasonable burden on businesses.

**Chairman Hansen:**

Are there any further questions for any of the testifiers at this time? Seeing none, thank you all for your testimony. Is there anyone else who would like to testify in favor of S.B. 134 at this time?

**Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada:**

We appreciate the Senate Majority Leader for bringing forth S.B. 134, and we strongly support it. We think it is important to put Nevada's small businesses on the same playing field as multinational tobacco companies. It allows small businesses to exercise their appellate rights. Additionally, it will ensure that the small businesses will not have to lay off all of their employees just for exercising their appellate rights. We support this bill and urge its passage.

**Cheryl Blomstrom, representing Nevada Manufacturers Association:**

Me too.

**Justin Harrison, Director, Las Vegas Metro Chamber of Commerce:**

Tort reform has been a longstanding priority of the Las Vegas Metro Chamber of Commerce. We believe that through reform we can bring Nevada on par with other states, thus creating a greater incentive for economic growth and job creation. The proposed \$50 million cap, and \$1 million cap for small businesses, affords the defense their full right to exercise an appeal without the fear of bankruptcy through the current system of bond requirements. We urge the bill's passage.

**Assemblywoman Seaman:**

What role does tort law play in bringing new business to Nevada?

**Tray Abney:**

It plays a big role. The Senate Majority Leader mentioned Nevada being placed on the judicial hellhole list. The U.S. Chamber of Commerce has a similar list. Nevada is always near the top because of how difficult it is to do business in this state. I would argue that as our economic development authorities and others are looking to bring companies to this state, they are going to see those types of things. That will go into their calculation. They calculate many things such as tax rates, regulations, educated work force, et cetera. This is definitely one of the pieces that goes into that calculation.

**Chairman Hansen:**

Are there any further questions? [There were none.] Is there anyone else who would like to testify in favor? Seeing none, we will move to the opposition.

**Stuart MacKie, Private Citizen, Hazen, Nevada:**

I gave you all a copy of some bonds ([Exhibit D](#), [Exhibit E](#), and [Exhibit F](#)). There is one question that I would like to ask directly. Why is it that the bonding company does not pick up the amount that must be paid to the court? I do not understand why we are creating a new court. The bonding company has to pay, so why should they not cover the appeal? It should not be the person because he paid for a bond that should have covered him. Yet, he has to make up everything over and above that. It does not sound right. It sounds like the Indian thing that happened on the Truckee River. There were a bunch of contracts signed for the Paiute Tribe, but they did not have a real lawyer. Now the Indians do not have a valid contract for anything.

The Truckee-Carson Irrigation District (TCID) which is located in Fallon, owns water at Donner Lake, where you cannot own water because it is in California. The whole problem is that nobody pays attention to what they are doing.

I have handed out official bonds to everyone ([Exhibit D](#), [Exhibit E](#), and [Exhibit F](#)). I will begin by discussing the last district attorney (DA), and the sheriff of Washoe County, who just left office, and they paid \$100,000 a year for an unlimited policy. The two people who took over as the district attorney, and the sheriff, paid \$100,000 a year, and they get a \$7,500,000 bond. It sounds like the insurance company has gotten wind that they would get sued on this unlimited policy, so all of a sudden, the new DA is not worth having a decent bond, but he is willing to pay \$100,000 for it. I show one bond out of Washoe County for \$5 million in which they pay \$500 per year. That is two-thirds of what the sheriff pays. I think they are looking for work for the attorneys that do not have work currently. It does not sound like they are generating anything. What was the real reason that they could not put this on the insurance companies which would save us court time. After seeing what is on these bonds, I cannot believe the insurance companies are not able to do what is being asked.

**Chairman Hansen:**

Thank you very much for your testimony. Are there any questions for Mr. MacKie? [There were none.]

**Matthew L. Sharp, representing Nevada Justice Association:**

I am going to split up my comments because, generally speaking, we are not opposed to the \$50 million portion of the bill. I am happy to answer any questions but, in my experience, there were verdicts rendered by juries with overwhelming evidence of bad corporate conduct. I want to take a little bit away from that issue. I hear Senator Roberson's argument on the \$50 million aspect of it. What I wanted to talk about is the other part of this bill.

In section 1, it refers to \$50 million or the amount of the judgment. I would like to explain how we get to that point. When you have obtained a jury verdict in favor of the plaintiff, you have gone through the process. A jury has decided your case has merit and awards a judgment. The fact is that nearly all cases are upheld on appeal. The last I heard, the rate was at 90 percent. I am sure the Supreme Court could provide that information to the Committee. The purpose of the bonding requirement is to put skin in the game. What happens is you get a judgment, and a party can execute on that judgment pending a supersedeas bond. All the supersedeas bond does is secure the judgment plus interest. To me, that is common sense. If somebody appeals a case, they should have skin in the game. They should not be able to file an



appeal just for the sake of filing an appeal. If they have a meritorious position, these bonds are readily available.

With regard to the amount of the judgment, currently it includes the amount of the judgment plus interest. Interest is 2 points above prime. To me, it makes sense even in a business context. You can have a small business that has defaulted on a loan of over \$1 million with no defense for having defaulted on the loan. However, with this bill, they can file an appeal for any reason and stall from going into collections for two years. It is a two-to three-year process typically before the Supreme Court makes a decision on appeal.

My point is we should divorce ourselves from the \$50 million issue, which is the exception to the rule. Most cases are ones where juries or judges have made decisions and the person who lost should have skin in the game. The courts should continue to have discretion to set the bond in an amount to protect the party who prevailed. We discussed proposing an amendment, and I am happy to work on these issues.

The other point I would make is about section 3. The reality is that once you have received a judgment, you have prevailed on the case. Therefore, if a business goes bad during a recessionary time while on appeal, and there is no bond in place, it hurts the plaintiff whether it is an injured party or a business. It does not necessarily mean the appellant is doing anything wrong. If recessionary times hit, they may not be spending money to avoid paying a judgment. The business just went bad. The purpose underlying the supersedeas bond is to protect that person who has prevailed at the time of trial. It is like a security interest for a bank.

Section 4 should give the courts discretion to flip it the other way. There are instances where a higher bond may be necessitated. There may come a point that the court should have discretion to do that. With that, I am happy to answer any questions.

**Assemblyman Wheeler:**

One of the things you said was that the party who loses the lawsuit needs to have some skin in the game. I would have to agree with you on that. However, for a corporation, \$50 million is some pretty good skin. For a small business like a mom-and-pop place, \$1 million is a lot of money. Do you agree that is pretty substantial skin in the game?

**Matthew L. Sharp:**

I would say you are correct with regard to the \$50 million issue in almost all instances. I would be happy to explain what our firm has done in those

instances. I can envision moments when \$50 million may not be enough, but that would be the exception to the rule. With regard to the \$1 million issue, I would have to look at the context of the business. You may be correct. Whether a particular business is small or not, perhaps \$1 million is a lot. You can also have a concern where \$1 million is nothing. What I typically see in my practice is the small businesses that we sue do have insurance. Typically, the insurance companies post those bonds. I will go back to the banking issue. If the small business took out a loan that is over \$1 million, and they lose on the case, they owe \$1 million. In that context, I do not see where the bond encourages skin in the game.

**Assemblyman Wheeler:**

One of the other things you said was regarding the two-or three-year process before the Supreme Court rules. In November, we instituted an intermediate court. Do you still think it is going to take that long? I was discussing this with Justice Hardesty just last night. He said that they should be able to get most of these appeals down to one year or less.

**Matthew L. Sharp:**

That would be correct in the context of family courts or criminal courts. In the context of civil appeals that involve legal issues, I am not sure. Obviously, that is an issue. If you have no reason not to appeal, you will flood the courts with appeals that should not be filed. If you do not have a bond type requirement, people just file appeals.

**Assemblyman Gardner:**

You were talking about how 90 percent of appeals are upheld by the Supreme Court. Are you sure on those numbers? The reason I ask is because I have appealed several cases through the Supreme Court, and we have always won on those. It seems to me that 90 percent is a very high number. Also, you were talking about people who win judgments. Back in 2006, the *Los Angeles Times* did some research of our judges in Las Vegas. The research found that some of the judges were rewarding verdicts to their plaintiff friends who had filled their coffers when then were running for office. There was a big corruption-related story on that. Maybe they did not win. Maybe they just had a judge that they paid off. I am not saying for sure that is what occurred, but the whole point of appeal is to have this chance to take another look at it. We would want to make it more accessible and not less. By requiring somebody to put up \$28 billion, like the case ten years ago in Los Angeles, it would stop somebody from appealing when it was supposed to only be \$28 million. Would you agree?

**Matthew L. Sharp:**

I would like to respond on a few points. I am not familiar with that case out of Los Angeles. Obviously, as stated, it does not make any sense to require a \$28 billion bond. I do not know why a judge would have required it. Currently, we have provisions in the law currently that the courts can adjust the supersedeas bond requirements. I have heard of other instances where some of these involve business disputes and not personal injury cases. I am not here to advocate on the extreme. I am not here to argue about the \$50 million issue. In terms of prevailing rates on appeals, I can only tell you that those are the statistics I have heard from justices at settlement conferences in the past. I believe it is safe to say that the overwhelming majority of cases on appeal are upheld. That does not mean the lawyers do not have success on appeal. I have had successes on appeal as well. The fact is that most cases are upheld on appeal.

Regarding your comments about the Las Vegas judiciary, I have been lucky enough to practice in Las Vegas. In my opinion, some of the finest judges in the state are in Las Vegas. At the end of the day, we have to trust the judicial system. From my perspective, when a judge or jury has found in favor of whomever, whether it is the defendant or the plaintiff, the process has worked. The whole point of a bond is to protect the prevailing party as if it is a secured interest. My criticism on the second part of the bill is that it includes the amount of the judgment but does not include interest. Additionally, it encourages appeals simply for the time value of money.

**Assemblyman Nelson:**

I have two questions for you. For those not aware of the bonding process, can you explain what an appellate does, in terms of how much money or security usually has to be put up front in order to obtain a bond?

**Matthew L. Sharp:**

In order to stay execution and to post a supersedeas bond, you would go to a bonding company. They usually require security to post that bond. From my experience with my clients who have lost cases, posting a bond required adequate security to do so. Usually the bond would be 80 to 90 percent, if not 100 percent.

**Assemblyman Nelson:**

You and I have had many discussions about the Seventh Amendment right to trial; I agree with it. As Senator Roberson has mentioned, there are a number of states that do not even require a supersedeas bond to pursue an appeal. From a philosophical standpoint, is it not true that you should have a right to appeal?

**Matthew L. Sharp:**

I completely agree. Everybody should have a right to appeal. My only point would be that there should be some security provided to the prevailing party. Currently, our courts are providing for the amount of judgment plus interest. I believe that is fair. Divorcing the issue from the extremes on both ends and staying in the middle, like we do currently, is pretty good policy.

**Assemblyman Ohrenschall:**

Can you comment further on section 2, subsection 4 of the bill? This section provides discretion to the judge in the "less than" direction but not in the other direction. How do you see that playing out, and what might be the unintended consequences on tort law or in a contract dispute?

**Matthew L. Sharp:**

As a practical matter, in many cases, you will have posttrial motions. The way it typically works is you go through a trial, you get a verdict, and then you have posttrial motions. This may take six months to a year to play out. That is going to be at play in terms of how much the bond should be, making for another layer of litigation.

**Chairman Hansen:**

I see no further questions. Thank you very much, Mr. Sharp. Is there anybody else who would like to testify in opposition? Seeing none, we will move to neutral. Is there anyone in the neutral position? [There was no one.]

**Senator Roberson:**

I would like to thank you for the opportunity to be here. I look forward to being before your Committee many more times this session.

**Chairman Hansen:**

We will close the hearing on S.B. 134 and will open it up to public comment.

**Assemblyman Gardner:**

I realized that earlier I talked about my record at the Supreme Court. Personally, I have not been at the Supreme Court. I was referring to my firm's record at the Supreme Court. I just wanted to make that clear.

**Chairman Hansen:**

We have moved the Homeowner Association (HOA) meeting to Monday, March 23, 2015, at 7 a.m. We will also have a meeting behind the bar to introduce some bill draft requests (BDR).

**Diane Thornton, Committee Policy Analyst:**

The reason we moved the meeting is because of scheduling conflicts. We moved the HOA meeting to the time of our regular Committee. We have five bills which will take a long time. We will start the HOA meeting at 7 a.m. That date is a deadline for Committee BDR introductions. Therefore, during floor session, we will have to introduce about four or five BDRs behind the bar.

**Chairman Hansen:**

Is there any further Committee business at this time?

**Assemblyman Elliot T. Anderson**

Is there any possibility of moving the HOA meeting to the evening of March 23? If I recall, you scheduled a full Judiciary Committee meeting with one of my bills being heard that day. I am wondering if two hours will be enough time to hear four or five bills. I am wondering how the logistics of that will work out.

**Chairman Hansen:**

Let us do a little homework on it. We will coordinate with the Chair of the HOA Subcommittee and get it worked out. That is a critical day because of bill introductions, but we will work it out.

**Assemblyman Elliot T. Anderson**

Is the HOA meeting scheduled for March 16 or March 23? March 16 is the BDR introduction deadline.

**Chairman Hansen:**

That is for the personal introductions. There are personal introductions and then there are Committee introductions.

**Assemblyman Elliot T. Anderson**

Thank you, I understand.

**Chairman Hansen:**

We will see what we can work out, but for the moment, the 7 a.m. meeting will be on the docket. Is there any further business to discuss? Seeing none, this meeting is adjourned [at 9:13 a.m.]

RESPECTFULLY SUBMITTED:

---

Lenore Carfora-Nye  
Committee Secretary

APPROVED BY:

---

Assemblyman Ira Hansen, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** March 12, 2015

**Time of Meeting:** 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B.124	C	Jayme Brown, Indian Springs Town Advisory Board	Letter of support
S.B. 134	D	Stuart MacKie, Private Citizen	Public Official Bond
S.B. 134	E	Stuart MacKie, Private Citizen	Official Bond and Oath
S.B. 134	F	Stuart MacKie, Private Citizen	Verification Certificate