MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 30, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, April 30, 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 Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Greg Brower, Senate District No. 15

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Megan Bedera, representing Nevada Firearms Coalition
Jeanette K. Belz, representing Nevada Psychiatric Association
Dave Prather, Deputy Administrator, Division of Forestry, State Department of Conservation and Natural Resources
Leo M. Drozdoff, P.E., Director, State Department of Conservation and Natural Resources
Ray Bacon, Private Citizen, Carson City, Nevada; and representing Nevada Manufacturers Association
Steve Yeager, representing Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
John T. Jones, Jr., representing Nevada District Attorneys Association
Scott W. Anderson, Chief Deputy, Office of the Secretary of State
Karen Michael, Business Portal Administrator, Office of the Secretary of State
Karen Duddlesten, Deputy Director, Department of Planning, City of Las Vegas
Michael Cathcart, representing City of Henderson
Mendy Elliott, representing City of Fernley
Robert Sack, Division Director, Environmental Health Services, Washoe County Health District
Dagney Stapleton, Deputy Director, Nevada Association of Counties
George A. Ross, representing American Tort Reform Association
Chris Appel, representing American Tort Reform Association
Michael Hillerby, Private Citizen, Reno, Nevada

Justin Harrison, Director, Government Affairs, Las Vegas Metro Chamber of Commerce
C. Joseph Guild, representing State Farm
Tray Abney, Director of Government Relations, The Chamber of Reno, Sparks, and Northern Nevada
Erin McMullen, representing Nevada Resort Association
Randi Thompson, Nevada State Director, National Federation of Independent Business
Lea Tauchen, Senior Director of Government Affairs, Retail Association of Nevada
Jaron S. Hildebrand, Manager of Government Affairs, Nevada Trucking Association
Sarah K. Suter, representing Las Vegas Defense Lawyers
Loren S. Young, President and Chair, Las Vegas Defense Lawyers

Chairman Hansen:
[The roll was called and Committee protocol was explained.] We have six bills on the agenda today and we are going to be rolling right through them. We will start this morning with Senate Bill 240.

Senate Bill 240: Makes certain changes relating to public safety. (BDR 14-955)

Senator James A. Settelmeyer, Senate District No. 17:
I am here to present Senate Bill 240 today, which is basically the same bill as Senate Bill No. 520 of the 77th Session. We had some illustrious sponsors from your house that included Assemblymen Hickey, Woodbury, Duncan, Hardy, Kirner, Ellison, Fiore, Grady, Hambrick, Hansen, Oscarson, Stewart, and Wheeler. What the bill seeks to do is to speed up the reporting of individuals who should not be in possession of a firearm. We are talking about individuals who have been convicted or pled guilty due to insanity, incompetency, or various other mental conditions. Within five days this information must be transmitted to the Central Repository for Nevada Records of Criminal History to help ensure that these individuals will be added to the prohibited possessor category. I can walk you through the other sections of the bill.

One of the other things the bill includes is straw purchases. We all have had situations when we have known an individual is not well, may not be in the right frame of mind, or may be in a domestic situation that is problematic. It would not be proper for you to purchase a gun on someone else's behalf knowing he could not purchase the gun himself due to an existing criminal offense.

Sections 11 and 12 refer to exceptions to patient privilege for relevant communications as deferred by *Nevada Revised Statutes* (NRS) 49.209 and NRS 49.225.

Section 14 is a new concept which refers to no charge for background checks. If an individual is trying to transfer gun possession but he or she would like to make sure the buyer is someone who should have a weapon, there is no charge for the person transferring ownership. Also, the Department of Public Safety's (DPS) Director can request funding from the state in order to offset those costs. There is also a section that covers civil immunity if the transfer was in good faith. In other words, if an individual transfers a gun to another individual, and it was done with no ill will or knowledge of a problem, there would be no liability for the original owner.

Section 15 discusses a prohibited possessor. Section 16 is what I discussed earlier regarding the prohibition of straw purchases, and the prohibition of sale or transfer to a gang member. It also contains a definition of "reasonable cause to believe." We all know what it means, but sometimes it is difficult to determine in the law. Section 18 allows agencies to consult with one another.

Section 19 gets into the discussion of mental health professionals and how imminent danger should be reported. As an example, let us say you go to a psychiatrist and tell him that you really hate Assemblyman X, and you are going to go after him. Sometimes the professionals feel as though they do not have much opportunity to go to the authorities. This creates some rules and regulations that will help professionals understand they need to communicate that type of information and to whom they need to communicate. They need to communicate it to the person who is the subject of the threat and to law enforcement, and if the individual making the threat is a minor, they should also inform the parent or guardian. This section includes some legal protections for those mental health professionals because we are basically compelling them to talk. It also provides the definition of mental health professionals. The bill will help to ensure that those individuals that should not be in possession of weapons are not.

Assemblyman O'Neill:
I like the bill, but I have one question for you. On the private sale of firearms and the checks being conducted by DPS, what would the checks and balances be to make sure that my ex-wife is not calling in with a fictitious statement saying she is selling a firearm? In other words, how do you ensure it is really for a firearm check and not someone just wanting to get a background check?

Senator Settelmeyer:
I believe the concept will be for DPS to have the ability to develop regulations to ensure that does not occur. That topic has been the subject of some of the discussion that has previously occurred. Also, the inquirer would only be told that the person is not a lawful possessor, and would not be given any other private information. There would be no details provided. I assume that if DPS came across something that said someone had 17 warrants, they would probably ask the person to come down and have a little talk with them.

Chairman Hansen:
I have one question about section 19. If a mental health professional fails to alert the proper authorities, is there a penalty for that? I did not see that addressed in the bill.

Senator Settelmeyer:
I would assume that it would follow all other law, and it would be treated as a misdemeanor.

Assemblyman Ohrenschall:
My question has to do with section 14. I think I understand what your goal is in terms of trying to provide immunity to the transferor. But, I am just wondering if maybe we are just opening a can of worms. Let us say that I sell a firearm to my friend, Bobby. I know Bobby is having marital problems, and I know he has lost his job and is looking for another job. I did not think there was anything too wrong, but I did not know he was going to Alcoholics Anonymous meetings and he is also getting counseling. Then, a tragedy happens. I sold the firearm in good faith and without malicious intent. However, if I get prosecuted, am I going to have to prove that, whereas, under prior law, maybe I would not have had to? I would appreciate it if you would discuss that kind of situation. I think I know where you are trying to go with it, but I wonder if the language is adequate.

Senator Settelmeyer:
I think you hit on the key point, which is good faith. We are trying to allow for a situation where individuals will have an opportunity they do not currently have. I will give you an example. I was out one night and there was a guy there who had way too much to drink. He decided he wanted to go somewhere else. The bartender begged me to get him out of the bar, so I did. I took him to the hotel where he said he said he was staying. I left and went home. The next morning, I woke up and there was a gun in my car. I headed for the motel, but the guy had not checked in that night. I tried to track the individual down, but could not. I took the gun to the police station and told them of the situation and asked them to take the gun. I filled out some paperwork, and

they told me that they spoke with the individual who owned the gun and they instructed me to take the gun back to him. I wanted to make sure that I was not giving a gun back to someone in a bad situation. Law enforcement told me that I had no way of running a background check first, and that bothered me.

Personally, I would like to have this law in place so I would know if it was a good idea to give the gun back to this person or not. Yes, there will be discussions about good faith and the related actions. I feel the good far outweighs any potential bad.

Assemblyman Thompson:
On page 18, section 16, subsection 1(b), where it talks about having reasonable cause to believe that another person is a fugitive from justice, you are taking that part out. Is this saying that it is okay to transfer to a person in this category?

Senator Settelmeyer:
I believe that it is already captured in the changes that we made to the section before that. The Legislative Counsel Bureau removed that line from the section because it is already referenced in section 15, subsection 1(b) of the bill.

Assemblyman Elliot T. Anderson:
I wanted to follow up on Assemblyman Ohrenschall's question. I took the immunity provisions to be a step forward in terms of holding people responsible. It says no civil action can be taken in existing law. Now, in some circumstances, there is a civil cause of action. In good faith, you would still be immune, but if it were bad faith, you would have liability. You would take that to be a step forward from current law, right?

Senator Settelmeyer:
I concur with the concept. We should try to report individuals who should not be in possession of firearms. I agree with the assessment that currently it is an absolute. This bill would say only if it was in good faith. If you did have reason to know that a person is intending to hurt someone, you probably should not give that person a gun.

Assemblyman Nelson:
I am wondering if you have had a chance to look at the proposed amendments by the National Psychiatry Association (Exhibit C) and Mr. Ben Graham, representing the Administrative Office of the Courts and the Nevada Supreme Court (Exhibit D). One deals with the mental health professional trying to get the person committed. The other says that the order becomes final five days

after the order is given, pursuant to this section. I think that is an easy one because sometimes orders do not become final, and may not be entered until a couple of days after the judge gives them. Have you had a chance to think about those amendments?

Senator Settelmeyer:
I was just made aware of the amendments [(Exhibit C) and (Exhibit D)] earlier today. We are going to take a look at them. Part of the discussion of the bill was the ability to remove that information from the system if something were to change. I think the desire was to try to make sure that certain people were prohibited possessors. If someone enters a plea of insanity and they are found to be sane, we are looking for protection within that time frame to ensure that these individuals did not acquire or possess a firearm. I will go back and look at the amendments to see what their overall effect will be. However, in this particular case, I think it is best to err on the side of caution about certain individuals having weapons. As you know, I am a strong advocate of the Second Amendment and I personally think that everyone should have a gun until they have messed up and no longer have the right to have that gun. That is my opinion. I have no problem looking at the amendments to see if they make sense. They seem reasonable, but I need to look at the consequences of those actions and talk to some of the mental health professionals and the National Rifle Association who were both instrumental in providing input for this bill. I will try to figure out how all of this works together.

Chairman Hansen:
If you would do us the courtesy of reviewing the amendments and getting back to me to let me know what you think, we will go from there. Are there any other individuals that you would like for me to call up to testify?

Senator Settelmeyer:
There are no scheduled speakers.

Chairman Hansen:
We will open it up to the public. Is there anyone who would like to testify in favor of S.B. 240?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am here today in support of Senate Bill 240, primarily for the section involving the mental health reporting. It has always been essential to get that sort of information to the criminal history repository in a timely manner. It is also good to provide the ability to get the information into the National Crime Information Center (NCIC) database so that an officer in the local jurisdiction has access to

that information in order to determine if someone is prohibited from possessing a firearm. This is an essential component to public safety. Therefore, we are here in support.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
Ditto.

Megan Bedera, representing Nevada Firearms Coalition:
We are here in support of this bill, and we thank Senators Roberson and Settelmeyer for bringing this bill forward. It contains a lot of good, commonsense reforms that protect Second Amendment rights of Nevadans while ensuring that that those who should not have a firearm are restricted from doing so.

Chairman Hansen:
Is there anybody else who would like to testify in favor of S.B. 240? [There was no one.] We will move to opposition. Is there anybody here who would like to testify against S.B. 240? [There was no one.] Is there anybody in the neutral position?

Jeanette K. Belz, representing Nevada Psychiatric Association:
There has been mention this morning of an amendment. We are neutral. We actually support section 19 of the bill, but we would like to offer an amendment (Exhibit C) to make it stronger. First, I wish to apologize to Senator Settelmeyer as I did not realize this was his bill. Testifying in this Committee is generally not my area. We had forwarded the amendment to Senator Roberson as well as Senator Hardy because the amendments that we are proposing would make this bill consistent with Senate Bill 15, which is on the same subject.

The Nevada Psychiatric Association is in support of section 19, which would add the "duty to warn" language to NRS. This language requires mental health professionals to warn potential victims of an explicit threat of harm, while at the same time protecting the industry professional from significant liability and discipline for such important actions that do impact confidentiality protections. This protection will shield the professional from civil or criminal liability if he or she exercises reasonable care in disclosing the threat.

The Association would like to propose several modifications to section 19, which would make this bill consistent with the first reprint of Senate Bill 15. That bill, introduced by Senator Hardy, addresses the same topic. [Continued reading from written testimony (Exhibit E).]

Thank you for your time and consideration of this amendment.

Chairman Hansen:
I am sure Senator Settelmeyer would be happy to work with you on those issues.

Assemblyman Elliot T. Anderson:
I am looking at the second part of your amendment (Exhibit C), which says, "Add the requirement and protection for mental health professionals working in government agencies such as Veterans Affairs Hospitals...." I am wondering about the constitutionality of that. Can we set those conditions on federal employees instead of the hospitals?

Jeanette Belz:
I understand your question, and I could check on that. There was no issue in Senate Bill 15, and it was amended with the same change. I believe the Legislative Counsel Bureau (LCB) considered it to be acceptable, but I would be happy to check on that for you.

Assemblyman Nelson:
I have a question about section 19, and I am not sure if your amendments cover this. The way I read the carve-out for the mental health professional in subsection 2, I see the professional is not subject to criminal or civil liability from a licensing board. However, does it also protect him or her from the person who has been determined to be mentally ill? What concerns me is, if the mental health professional reports this or calls the potential victim, it could possibly expose the mental health professional to a tort liability brought by the mentally ill person. I do not know if you or Senator Settelmeyer have thought about that.

Jeanette Belz:
You bring up a great point. This is language that has been vetted nationally but I will definitely look into it.

Chairman Hansen:
Is there anybody else who would like to testify at this time? [There was no one.] We will close the hearing on Senate Bill 240. We will now open the hearing on Senate Bill 36 (1st Reprint).

Senate Bill 36 (1st Reprint): Revises provisions governing state business licenses. (BDR 7-368)

Dave Prather, Deputy Administrator, Division of Forestry, State Department of Conservation and Natural Resources:
I am here this morning to testify in support of Senate Bill 36 (1st Reprint). The Division of Forestry (NDF), State Department of Conservation and Natural Resources, believes that this revision to the state business license requirements will facilitate emergency vehicles and equipment assigned to respond to emergencies in Nevada.

I would like to provide some background regarding why this statutory revision is necessary. Emergency vehicles and equipment are assigned to Nevada from outside the state when severe fire conditions exist and resources within the state have been depleted. Those vehicles and equipment are typically contracted through agreements with our federal partners, the Bureau of Land Management (BLM), U.S. Department of the Interior, and U.S. Forest Service, U.S. Department of Agriculture, and they are primarily used throughout the Great Basin. Once Great Basin resources become depleted, resources are drawn in from the nationwide pool. If a vendor is assigned to work in Nevada, there is a high probability that the fire will include federal property. If the fire includes property owned by a federal agency, the vendor is typically paid by the federal agency, eliminating the need for the vendor to procure a Nevada business license. The potential of a fire being on 100 percent state or privately owned property is small, but it does exist. It is this scenario that the bill addresses. [Continued reading from written testimony (Exhibit F).]

Thank you for your time, and I would be happy to answer any questions that you may have.

Assemblyman Trowbridge:
I am reading the Legislative Counsel's Digest and it mentions specifically that this bill authorizes a person to enter into a contract with the State of Nevada without obtaining a state business license. That seems to mean that the business has full intent to provide and the state has full intent to use the services. I understand that it would only be in an emergency situation, but at the same time, if you have an existing contract to conduct your activities in the state, I do not see how it is fair that you would not be required to have a business license. I could understand if we are calling in somebody from Texas because they are supplemental, but these are primary responders under contract. If a business license is not required, I think something is inconsistent with that.

Dave Prather:
The NDF does not have any contracts with vendors that would not be required to have a business license.

Assemblyman Trowbridge:
Section 2 seems to provide an exception, however.

Dave Prather:
Section 2, subsection 2(b) states, "Does not have an office or base of operations in this State." If the listed criteria are present, they are still required to have that business license. What we are looking for is the ability. Where this impacts the most is where we have farmers and ranchers that are on the borders of Oregon or Idaho and we ask them to bring their equipment over to help us. Those folks do not have to have a business license with the State for us to reimburse them for the use of their equipment.

Chairman Hansen:
Perhaps the language needs to be a little bit broader.

Assemblyman Elliot T. Anderson:
On page 3, section 1, subsections 6(b)(4) and 6(b)(5), it talks about performing duties. Obviously, we are talking about vehicles. I am wondering what that means. If you have a vehicle and you cross the border for work, are you now performing duties? I think we might get a lot of these vehicles close to a border area where they would come across and help us with an emergency. If they cross into the state for anything related to work, would that be considered performing duties?

Dave Prather:
You are correct. That is exactly what we are trying to address here.

Assemblyman Jones:
I like this bill. I lived in California where there are a lot of big forest fires. Help would come from Arizona, New Mexico, and other places. People would rally together. To me, it seems like this section is good for getting rid of the bureaucratic red tape so we can take care of business in emergencies. Is that the intent? If so, I am completely for it.

Dave Prather:
That is exactly the intent.

Assemblyman Araujo:
I think my question may piggyback on Assemblyman Trowbridge's comments. In section 2, I see that the State would have to enter into a contract. I am wondering if there is a way to add language that would stipulate the contract will include language specifying what the company is coming to Nevada for. Therefore, we would not be leaving it so vague. Short term could become quite long if we do not define the exact reason they are here.

Dave Prather:
When we have these severe fires and we are pulling in these resources, we are not entering into contracts with these folks. They are resources that are ordered through a national dispatch. When they arrive in the state, NDF has to go through the state accounting process to pay these folks. When those payments get to the Office of the State Controller, they check to see if there is a Nevada business license on file. If there is not, the payment will not be issued. There has really never been a formal contract to enter into because these resources come and go in very short order. They might go from Nevada and bounce into Utah. By the time we process these payments, sometimes we are talking about years to work through the system. If they have to go through that process, many of them will just refuse assignments in Nevada. There is no way for us to have existing contracts for everyone that might come into Nevada for a fire.

Assemblyman Nelson:
Have you taken a look at the proposed amendment by Leo Drozdoff (Exhibit G)? It is on the Nevada Electronic Legislative Information System (NELIS). In the amendment, Mr. Drozdoff wants to exempt wages paid in connection with the activities. I am wondering if that is necessary because if you are bringing people in to fight a fire, a vehicle is not going to put a fire out. You will also need workers to help.

Dave Prather:
You are correct. When the language was first drafted, the individuals were not included. That was an oversight because obviously engines and bulldozers do not run themselves. It should have said equipment and operators. We are fine with the amendment because it needs to be there.

Chairman Hansen:
Is NDF under the State Department of Conservation and Natural Resources?

Dave Prather:
Yes, sir.

Chairman Hansen:
We understand the intent of the bill, and I think we will be able to get the language cleaned up.

Assemblyman Trowbridge:
I believe the presenter already answered my questions. However, when I read it, I come up with a different conclusion. The difference is, when I read "contract," I thought of someone responding to a request for proposal, such as a contract that states the vendor will provide contract services for a year. That sort of person should have to have a business license. However, if it is the situation you just described where it is just a one-time, all-hands-on-deck situation, the contract is retroactive and after the fact. There is a difference but the all-encompassing word "contract" made me think of contracts in advance.

Leo M. Drozdoff, P.E., Director, State Department of Conservation and Natural Resources:
I appreciate the line of questioning and Assemblyman Nelson referencing the amendment that I have proposed (Exhibit G). I think Mr. Prather got to the point of the problem, which is the short-term resources that aid with fires. This bill, with the amendment, will be extremely helpful. I urge your support, and I am happy to answer any questions.

Assemblyman Nelson:
I apologize because I must not have been looking at the most recent language in the mock-up. Your language is in there.

Assemblywoman Diaz:
I was wondering how often the state is in the situation where we need to utilize someone else's equipment for fires. I just want to get a picture as to how often it happens and what are the amounts we are looking at each time.

Leo Drozdoff:
These resources to fight fires are used throughout the state all of the time. There are a great many resources that come in and out of the state. As to who would come in and support a state jurisdictional fire, that amount is probably low, but it is not zero. That is really what we are trying to get at here. I do not think it is going to be used very much but it could happen and it has happened. We just want to make sure that we are not causing folks that can help to avoid an assignment in Nevada.

Chairman Hansen:
I will open it up to the general public. Is there anybody who wishes to testify in favor of S.B. 36 (R1)? Seeing no one, is there anyone who would like to testify in opposition or in the neutral position?

Ray Bacon, Private Citizen, Carson City, Nevada:
This testimony has nothing to do with the Nevada Manufacturers Association that I normally represent. I was a volunteer fire chief for nine years under NDF. The only question that I have is on the last line of the bill, which is section 3. Perhaps it should apply on passage and approval because the last thing you would want is to have a contract that lands between now and the first of July that gets messed up for two or three years because of red tape.

Chairman Hansen:
That is a good catch because there are plenty of fires in June. We will have Legal look into that. Is there anyone else who would like to testify on this bill? Seeing none, I will close the hearing on S.B. 36 (R1). I will open the hearing on Senate Bill 186. Senator Brower, please come on up if you are ready.

Senate Bill 186: Provides for the recovery of attorney's fees and litigation expenses by certain prevailing parties in criminal actions. (BDR 3-205)

Senator Greg Brower, Senate District No. 15:
It is a privilege to be before the Assembly Committee on Judiciary. I will try to make this as brief as possible. Mr. Chairman, you will recall that you and I had a chance to discuss the concept in this bill a few months ago. Today I am here to give you the unabridged version for the benefit of the Committee.

Senate Bill 186 is aimed at filling a gap in Nevada's criminal justice system. This bill will allow a person, whether an individual or corporation, large or small, to be reimbursed for the cost of defending against a criminal case when a judge determines that the government's case was vexatious, frivolous, or brought in bad faith.

Back in 1940, U.S. Attorney General and future U.S. Supreme Court Justice Robert H. Jackson made the following observation about the power of the prosecutor in our system. He said, "If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted." The point of Justice Jackson's now famous admonition is that a prosecutor's abuse of power can have a devastating effect on those who find themselves on the wrong end of such abuses and on a free society in general.

As the Committee well knows, the reality is that the overwhelming majority of prosecutors in the country are honest, hardworking, and all of the other things we expect from public servants. We entrust them with enormous discretion and power over the lives and liberty of our citizens. However, we also know from experience that prosecutors are human beings and, like all human beings, they are susceptible to misconduct beyond a good faith mistake or a mere error in judgement. We occasionally see examples of this and when we do, it shakes our collective confidence in the system. If the system is to work, it must have the utmost confidence of the citizenry.

Consider the recent case from Phoenix, Arizona, where the former district attorney of Maricopa County and two of his deputies were disbarred and disgraced for "defiling the public trust," which were the words used by the judge presiding over the matter. When a prosecutor—who works for us—for whatever reason, whether it is laziness, political ambition, personal animus, desire to avoid embarrassment, et cetera, steps over the line and initiates or continues a case vexatiously, frivolously, or in bad faith, the wrongdoer should obviously be punished. Beyond that, the target of such misconduct should be made whole, at least monetarily. The dismissal of such by a judge or an acquittal by a jury is obviously a very good result for the unfairly targeted defendant. However, for a defendant to simply win, when he has spent thousands or even millions of dollars defending against charges that should have never have been brought, is not enough.

Unfortunately, under current Nevada law, even when the question of whether the case should have been brought transcends argument, and a judge has or might potentially conclude a prosecution was brought vexatiously, frivolously, or in bad faith, there is no remedy for the wrongfully charged defendant. Some might suggest that the wrongfully charged defendant could file a lawsuit alleging malicious prosecution or a civil rights violation. Such remedies require a completely new and potentially very expensive lawsuit which will always be nearly impossible to win because of the absolute immunity that prosecutors enjoy under Nevada law. Our law is not unique in that regard. Law enforcement officers and prosecutors enjoy significant immunity, and there is a significant bar to successfully suing when there has been misconduct.

This bill proposes a much simpler and straightforward approach. If an individual or a corporation is prosecuted and ultimately prevails in the case and the judge is convinced that the case was prosecuted vexatiously, frivolously, or in bad faith, this bill allows the judge to order that the government reimburse the defendants for all costs and attorney's fees expended in defending against the case. Procedurally, this will be accomplished by way of a simple motion that the defendant would make within 30 days of the dismissal or acquittal.

It would require no new case and no new judge. It would be a simple and quick motion following the result of the case. The judge would review the motion and make an independent decision as to whether the government's conduct was in fact vexatious, frivolous, or in bad faith.

It is critical to understand that simply losing a case at trial because a jury was not persuaded of guilt beyond a reasonable doubt, or suffering a dismissal of a case by a judge who was not persuaded that the case should even go to trial, is not necessarily sufficient to make a claim for costs and fees under this bill. A mere mistake, error in judgement, bad luck, or any myriad of other things that can cause a good-faith prosecution to fail will not support a successful claim under this bill. The judge must be convinced that the government acted vexatiously, frivolously, or in bad faith, which is an admittedly very difficult thing for a claimant to prove. That is the way it should be.

This concept is not a new one. In the federal justice system, there has been such a remedy in place since 1997. Under federal law, it is known as the Hyde Amendment which was named for the late Congressman Henry Hyde from Illinois. Despite a lot of understandable consternation from the U.S. Department of Justice at the time the federal law was proposed, it has actually worked pretty well.

Candidly, no prosecutor likes to think he could act vexatiously, frivolously, or in bad faith in carrying out his solemn duty to do justice. To those honorable public servants with whom I have had the pleasure of serving, you have nothing to worry about with respect to this bill. Will the competent, diligent, and honest prosecutor potentially be unfairly targeted by an unfounded claim? Yes, that is possible, just like public officials are subject to and oftentimes find themselves on the wrong end of lawsuits based upon their official duties. No public official likes to be second-guessed, sued, or otherwise accused of wrongdoing. I am confident that the system will take care of that possibility with an independent judge deciding the issue. I am confident that our judges will recognize meritless claims when they see them and deny them accordingly.

In the federal system, despite hundreds of thousands of cases prosecuted by the U.S. Department of Justice since 1997, fewer than 100 such claims have been made. At last count, only nine of the claims have been successful. If someone has a righteous claim, he or she should be able to make that claim and let a judge decide.

Finally, I did not introduce this bill expecting it to be universally praised. There is some controversy in some circles. However, we were able to convince all of the interested parties to remain neutral on the concept and this bill passed

unanimously out of the Senate. Just as what happened when the federal law was passed in 1997, I suspect that you may have heard some questions about this bill. This bill provides an extraordinary remedy for extreme cases. It is a very important deterrent and a necessary check on the enormous power that the prosecutors have in our system. I appreciate the Committee's time.

Chairman Hansen:
You were a federal prosecutor, Senator, for how many years?

Senator Brower:
I was the U.S. Attorney for the District of Nevada. As a result, I became the district's chief federal law enforcement officer. I escaped my time without facing such a claim. It is not uncommon because if you serve in the federal system as a U.S. attorney long enough, eventually there will be a claim made against you and the office for having filed charges frivolously. The system deals with that. Nobody likes to be on the wrong end of those claims but it will not surprise you to learn that the vast majority, 99 percent, of the claims are dismissed because they are without merit. Occasionally, prosecutors do step over the line. Therefore, there has to be a remedy.

Chairman Hansen:
I was intrigued by your comment from Justice Jackson, who is probably most famous for presiding over the Nuremberg trials. I will especially be interested to see how the Senate Committee on Judiciary will handle Assembly Bill 193.

Assemblyman Elliot T. Anderson:
I want to ask two questions. I like to apply facts when I am looking at bills. Do you have any examples of any cases in Nevada to show when this would apply? Secondly, I wonder about section 1, subsection 3, talking about public defenders not being able to take advantage of this. I feel like that would eliminate a good portion of our people from utilizing this remedy.

Senator Brower:
That is an excellent question, which also came up on the Senate side. I will answer the second question first. With respect to this potential claim not being available by those being represented by public defenders, there are two issues. The first issue is that is how the federal law works, which does not necessarily mean that is how the state law needs to work. The reason behind the federal law's carve-out for public defenders is it would essentially be a shifting of money from one government agency to another by way of a successful claim.

It is certainly something your Committee could consider. However, I think that part of why I present a bill to you today that had unanimous support on the other side is because that provision is in there. The stakeholders have decided that the bill was better with that carve-out.

With respect to your first question, requesting examples in Nevada, that is a very difficult question to answer. Because this remedy does not currently exist, there is really no case that we can point to. Approximately two years ago, there was a criminal case brought by the Office of the Attorney General. It was brought against two supervisory employees of a mortgage servicing company with more than 600 criminal felony counts between the two employees of indictments against them. The case was ultimately dismissed by one of our Clark County judges, who found abuse of the grand jury process among other things. It was an ugly case, and we do not have time to go into the details today. There were some questionable tactics, which led to the suicide of one of the witnesses. This was all related to a case that ultimately went nowhere. A judge found that there was no probable cause to continue the case. At the time, this particular type of claim was not available, and the record was not fully developed to determine if a righteous claim could have been made against the State. However, I would like to think that is a good example of the type of case where it appears the State has stepped over the line and there needs to be a remedy.

There is another potential example I can provide. This was the case of former Lieutenant Governor Brian Krolicki who was indicted on felony charges. The case was ultimately dismissed by a judge who found that the indictment was incomprehensible. It did not include probable cause of a crime. We will never know if former Lieutenant Governor Krolicki would have had a claim but if any of us were in his shoes, we would like to be able to have the opportunity to make a claim if we thought that we had one. Under the current law, this simply does not exist.

Chairman Hansen:
That is very interesting. I have talked to former Lieutenant Governor Krolicki personally about this incident. He spent over $500,000 in defending himself in that effort. That is an excellent example of why this needs to be fixed.

Assemblyman Nelson:
I have a question on section 1, subsection 2, where it says that the attorney's fees and litigation expenses will be awarded against the government. It would seem that if the defendant who prevailed wanted to go against the individual prosecutors, his remedy would be something like *United States Code*, Title 42, Section 1983. Is that correct?

Senator Brower:
Yes, that would be a civil rights claim and that is the usual remedy under federal law. It is very difficult to prevail. To get beyond the qualified immunity that law enforcement officers have, and in some cases the absolute immunity, it is essentially required that you prove that the prosecutor in a case knew that there was no evidence to prosecute the case but did it anyway in an effort to violate one's civil rights. It is just very, very difficult to prove. This is an alternate and practical remedy.

Assemblyman Nelson:
You purposely left out individual prosecutors from potential payers.

Senator Brower:
Yes, this is aimed at the particular office that is accused of having engaged in the wrongdoing, and not generally the State. The way the statute is drafted, if it is the Washoe County District Attorney's Office at issue, it will be the target of the claim. If it is the Attorney General's Office, it will be the target of the claim.

Assemblyman Gardner:
I have a question about section 1, subsection 7 of the bill. It is talking about when a party prevails. It talks about substantially all charges brought against a party in the criminal action being dismissed. Are you talking about the number of claims? If I bring three claims and two are dismissed, would that be substantially all charges? Or, are you talking about the substantive claims? If I am going after a first-degree murder charge but we have two smaller claims, if the two smaller claims are dismissed but the big claim is still there, would that count as substantive? I am just trying to understand where the line is.

Senator Brower:
It is really exactly what it says, although I concede that it is somewhat ambiguous. Let us say there is a minor charge and the defendant ends up pleading guilty to a misdemeanor charge at the end of a long felony investigation. However, the defendant believes that the main felony charges were brought in bad faith. Having pled guilty to a misdemeanor charge would not necessarily extinguish the claim. In practical reality, and how it works in the federal system, if at the end of an investigation and prosecution, even if the defendant thinks the prosecution was brought in bad faith, if a plea deal is worked out, the deal will include the defendant agreeing not to bring such a claim. That is simply the practical way these cases are resolved.

Chairman Hansen:
Senator, is there anyone specific you would like me to call up to testify?

Senator Brower:
There is no one in particular. I am happy to hear other testimony.

Chairman Hansen:
I will open it up to the public. Is there anyone who would like to testify in favor of the bill?

Steve Yeager, representing Clark County Public Defender's Office:
We are in support of this bill. We think it is good policy and closes a loophole. We had some discussion about including public defenders but I do understand the difficulty in doing that given that it would just be a shifting of money. Despite the fact that we are not included, we think it is a good first step and we are in support of S.B. 186.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
As usual, I echo the sentiments of Mr. Yeager. We support this bill because it is a step in the right direction.

Chairman Hansen:
I wonder if it goes far enough, if there have only been 9 federal cases out of 100,000 cases. I have a hard time believing there have not been more than nine vexatious cases. What are your thoughts on that?

Steve Yeager:
The proof will be in the pudding as the state system is a little bit different than the federal system. We have substantially more cases that are prosecuted. I believe the last count was tenfold the cases in the federal system. I would anticipate that maybe we would have more attempted claims here but in terms of the success rate, that will remain to be seen. However, I think it is a good first step.

Chairman Hansen:
In your experience, how often have you seen cases dismissed with prejudice by a judge?

Steve Yeager:
I do not see it happen often in Clark County. In the last five years, I could count on one hand where it was a dismissal with prejudice.

Chairman Hansen:
In your opinion as a public defender, you do not think there has been that many abusive cases involving prosecution in Clark and Washoe Counties?

Steve Yeager:
I do not think there have been a great number of them. I have not personally experienced it, although I cannot say it does not happen. It probably does but maybe I have been fortunate to have been working with some good prosecutors.

Assemblyman Elliot T. Anderson:
Obviously, the attorney's fee provision would be a little bit strange. I get that but maybe that is just not the right remedy for indigent defendants. Maybe there is another way to go about it because I would hate for us to leave out some of the most vulnerable members of society. Using Senator Brower's example, if a mortgage company is getting abused, there should be some punishment. I would also hope that we could find a way to protect the people who are especially vulnerable because unlike an indigent defendant, a mortgage company can hire expensive counsel. They can afford to hire huge firms that can put a lot of resources into litigation. The public defenders are often strapped by the budget that we give you and you have more defendants day to day. Therefore, I feel as though you are more under the gun. Is there something else that we can do to ensure your clients can get the same protection?

Steve Yeager:
I am just not sure. I think the intent of the bill is to make a defendant whole, in terms of the amount of money he or she has spent out of pocket. Obviously, with public defense, the defendant does not pay anything. At times, at the conclusion of the case, a judge may order the individual to pay a $250 fee after a conviction. That does not go to our office. I think that maybe down the road, some kind of nominal recovery would make the person feel vindicated. In terms of making a defendant whole with regard to the expense of attorney's fees, obviously, we do not have that in the public criminal defense system. I certainly understand where you are coming from with your question.

Chairman Hansen:
Is there anyone else who would like to testify in favor of S.B. 186? Seeing none, is there anyone in opposition or in the neutral position?

John T. Jones Jr., representing Nevada District Attorneys Association:
We are neutral on S.B. 186. We thank Senator Brower for working to alleviate some of our concerns. I want to address just a few issues. One is that there

have reportedly been only nine successful prosecutions on the federal level. I would like to point out that this is intended to be an extraordinary remedy. As in the case of *United States v. Isaiah*, 434 F.3d 513, 520 (6th Cir. 2006), where the court referenced the finding of another court, the Hyde Amendment says that "it places a daunting obstacle before defendants who seek to obtain attorney fees and costs from the government."

I want to say that our organization supports the premise of the bill completely. If somebody does act frivolously, in bad faith, or vexatiously, I think that defendant is entitled to recover the costs that he or she has expended on behalf of the defense. Our issues and concerns stem from the abuse of this. As was stated by Senator Brower, the legislative record is clear that the burden is on the defendant to prove the elements of this offense, and it is meant to be an extraordinary remedy.

Chairman Hansen:
Seeing no one else wishing to testify, Senator Brower, would you like to tie up any loose ends?

Senator Brower:
I will conclude by following up on Mr. Jones' comments. This is intended to be a truly extraordinary remedy. It is somewhat odd to suggest that we hope our bill is never actually used. This would fit into that category. I think it is something that should be on the books and should be available. However, it would be our collective hope that we never see a successful claim. We hope to never see a case where the judge actually agrees that the case was brought in bad faith and, as a result, imposes this remedy. I thank the Committee for its consideration. I do believe that this is a very important issue and this bill is drafted in a careful and balanced way. I would be happy if this bill passes and ten years from now we can say that it has never been used successfully because our prosecutors continue to have a record of doing exactly what they should do. In reality, I have shared a couple of examples from the last several years that if this law had been on the books, maybe we would not have seen some cases brought forward and in retrospect should not have been brought forward.

Chairman Hansen:
Along those lines, if this law had been in place during the Krolicki case, would this have been a remedy for him, in your opinion? Knowing him well and hearing about what happened to his family and the near bankruptcy of his personal and political life, and having no remedy under law to deal with it, I wonder if the outcome would have been different if this law had been in place.

Senator Brower:
It is impossible to know, because the record was not fully developed. Because you asked, I will offer my opinion. It is easy to paint that entire episode as partisan in nature, and many have. However, I will give you a former prosecutor's view. It was outrageous that upon dismissal of the case, we saw the State's chief law enforcement agency's representative go out and talk to the media about how she believed that Mr. Krolicki was guilty despite the judge dismissing the case. Yet, despite having the opportunity to do so, she never went back to the grand jury and sought to recharge him, and that was telling. For those who had the cynical view that the whole thing was political, her conduct and comments in the wake of the dismissal by the judge fed that. If it was a righteous case, it should have gone back to the grand jury. If it was not a righteous case, it should have never gone to the grand jury. I think the judge dismissing it, after not being able to determine the probable cause, says it all.

Chairman Hansen:
With that, we will end the hearing on Senate Bill 186. We will now open the hearing on Senate Bill 59 (1st Reprint).

Senate Bill 59 (1st Reprint): Revises provisions relating to the state business portal. (BDR 7-448)

Scott W. Anderson, Chief Deputy, Office of the Secretary of State:
Secretary of State Barbara Cegavske asked me to send her greetings to you and the Committee this morning. I would like to thank you for the opportunity to present Senate Bill 59 (1st Reprint). With me today is our portal administrator, Karen Michael. She and her team have done a fantastic job getting SilverFlume, Nevada's business portal, to where it is today. We need to move it along even further, and S.B. 59 (R1) does that. It gives us some opportunities to streamline the process and clean up some provisions allowing us to move forward with a number of other agencies. I will now turn the time over to Karen Michael, who will go over the details. We will be available for questions.

Chairman Hansen:
The bill is fairly detailed. I hope we can get through the sections fairly quickly with a synopsis of each. If there are questions from the Committee, we will get right back to them.

Karen Michael, Business Portal Administrator, Office of the Secretary of State:
Senate Bill 59 (1st Reprint) contains critical cleanup provisions that will enable SilverFlume, Nevada's business portal, to continue to operate efficiently and eliminate time-consuming governmental processes while adding more services for the business community. The Office of the Secretary of State has worked

with state and local agencies to resolve concerns about mandatory participation language. The Secretary of State's Office wants to clearly state that this legislation is intended to be enabling and not mandatory. We are working with agencies and will continue to review amendatory language.

Based on feedback from the business community, the cross-agency team members would also like to request that the phrase "state business license" be changed to "state business registration" to reduce confusion about the difference between state, local, and other forms of licensing. We understand that the state business license may be moved back to the Department of Taxation as part of the Governor's budget proposal. We hope that you will keep this terminology in mind with any upcoming changes as it is certainly a win that comes out of the diverse agencies working together.

To date, SilverFlume has processed over 1 million business transactions and generated more than $217 million in revenue providing business customers with a one-stop shop. It is one place where the customer is guided through multiple governmental registrations in a simplified format. The customer may enter one payment to check out with and download a variety of governmental services. Customer payments are transmitted to the partner agencies directly. But the Secretary of State's Office needs your help to ensure that the one-stop shop is not hindered by outdated statutes and processes. Sections 7 and 8 of S.B. 59 (R1) eliminate a requirement for cities and counties to report D-25 attestations [affirmation of compliance with mandatory industrial insurance requirements] if the businesses have already completed the step electronically via SilverFlume. Workers' Compensation Section, Division of Industrial Relations, Department of Business and Industry can now go directly into SilverFlume to receive D-25 attestation reports without requiring local governments to manually file the reports, eliminating a redundant step.

Section 10 of S.B. 59 (R1) would allow the Department of Employment, Training and Rehabilitation (DETR) to share data with SilverFlume so that SilverFlume may eventually guide businesses through required unemployment insurance and modified business tax registrations. Without section 10, DETR is not authorized to share information that would allow registrations to occur via SilverFlume.

Today, with SilverFlume, the customer fills out the online common business registration (CBR) once and SilverFlume shares that common information to register the customer across authorized governmental agencies. It is one of the uniquely valuable portions of SilverFlume because it is designed to be shared with authorized governmental agencies in its simplest format at no cost to those agencies. The CBR extends beyond the commercial recordings of public

information such as the business name, officers list, registered agent, and registered agent address. It would also include nonpublic information such as actual physical locations for an inspector to go to; the business description and industry codes; owners list, which is often very different than the officers list; number of employees; and other information that most agencies need but that is not available as part of the commercial recordings public record.

Section 3 of S.B. 59 (R1) pertains to how the CBR may be utilized and ensures the information is confidential and privileged while being transmitted via SilverFlume unless an exception, as listed, applies.

Section 6 of S.B. 59 (R1) updates public records statutes to reflect section 3 of the bill. To clarify, section 3 does not hinder any existing methods of accessing public records. The benefit to business is that the CBR not only eliminates up to 80 percent of redundant steps required of the customer but it also contributes to economic development within the state for the first time, providing information on how many businesses export goods and/or services or would like to. The Office of Economic Development, Office of the Governor can use this information to connect businesses to programs to help them grow.

Section 4 establishes that the CBR may be shared with partner agencies to simplify business registrations. It enables agencies to accept electronic signatures, protects SilverFlume technical information as confidential and privileged, and establishes the Nevada business identification number.

An important provision is that section 3, subsection 2(g) would also enable a business to designate if portions of its common business information may be released for purposes of a public directory. This would provide Nevada the competitive advantage of empowering businesses to easily look up other Nevada businesses by physical location, industry, and the number of full- and part-time employees per location. While pieces of this data reside in various governmental silos, they also come with a cost of thousands of dollars for this information. With the passage of S.B. 59 (R1), there will be, for the first time, a more comprehensive directory of Nevada business information available to any Nevada business that wants it via an optional online public business directory.

Section 5 of S.B. 59 (R1) requires that a Nevada business identification number be assigned to each entity with a state business license exemption or exclusion. This is cleanup language to ensure consistency in the business data.

Section 9 cleans up a statutory issue which allows fictitious firm name filings to be filed by a person without qualification to do business under Title 7 of *Nevada Revised Statutes* in certain circumstances, such as an insurer.

As the Secretary of State's Office investigated sequencing of required registrations across agency silos, there were some conflicts between statutes that were identified for removal, such as this one.

Section 12 pertains to repealing a 20-year-old statutory requirement from NRS 237.180 and replacing it with a requirement that SilverFlume establish the common business registration. This eliminates the need for a time-consuming annual meeting with representatives from several agencies to review an outdated form called the Nevada Business Registration. Section 12 also eliminates affidavits being a signed physical record regarding fictitious firm names, change of ownership, and the associated filing fees.

The Secretary of State's Office has been in close contact with state and local agencies for recommended changes in language. In closing, S.B. 59 (R1) clears the way to continue moving forward. Thank you for your time today. We are available to answer any questions you may have.

Chairman Hansen:
You were very thorough. Are there any questions? [There were none.] We will open it up to testimony from Las Vegas now.

Karen Duddlesten, Deputy Director, Department of Planning, City of Las Vegas:
We want to offer our thanks and support to the Secretary of State's Office on this legislation. We have worked diligently over the last two years to identify ways to improve SilverFlume and make our integration with that product and local licenses smoother for our customers. I think this bill addresses many of those issues. We are very appreciative. We also offer our support for the changing of the state business license to state business registration. It is very confusing for our customers to think they have to get a license from the state and then a license from the local government. We have a lot of folks that will maintain their local license because we have inspectors out there. However, they do not realize that they have to pay every year for their state business license. If we can explain in steps that you register your business and then get a local business license, it makes it much clearer to our customers.

Michael Cathcart, representing City of Henderson:
I would like to thank the Secretary of State's Office for bringing this legislation. It is something we have been working on for a long time to streamline business license processes. We would also support the change from a license to a registration. We really do think that would help our customers' understanding of the process. We think that moving forward we will really be able to streamline the business license process. I believe we are really going to be able to do some good things for the business community.

Mendy Elliott, representing City of Fernley:
I want to echo Mr. Cathcart's comments. They have done a wonderful job. Fernley was one of the pilot communities that worked with SilverFlume over the past two years. We have been able to integrate very nicely with the state portal. Anytime we had an issue, the Secretary of State's Office was always there to help support all of the challenges that the City of Fernley had. I just want to compliment the staff on how wonderful the integration process worked. We agree with all of the other comments.

Robert Sack, Division Director, Environmental Health Services, Washoe County Health District:
We are basically here in a neutral position because of the permissive side of this that does not require us to participate. We do have some concerns regarding confidentiality and some of the lack of two-way communication that we perceive to be in the bill as it is presently written. However, it is our understanding that the Secretary of State's Office has agreed to some changes that we are in agreement with, more like Assembly Bill 364, which is in the other house now. We are okay with that one.

Chairman Hansen:
I am sure that the Secretary of State will be willing to work with you in any way possible. Is there anyone else who would like to testify in favor of the bill at this time? [There was no one.] Is there anybody in opposition? [There was no one.] Is there anyone in the neutral position?

Dagny Stapleton, Deputy Director, Nevada Association of Counties:
We are neutral on the bill. We just wanted to put on record that we also appreciate the efforts of the Secretary of State's Office to work with local governments, especially the clarifications that they made in the bill regarding the requirements for local governments to integrate into the portal. We look forward to continuing to work with them on this bill.

Chairman Hansen:
Mr. Anderson, do you have any loose ends that you would like to tie up?

Scott Anderson:
Thank you, Mr. Chairman. I would like to thank those who support this bill. We, too, look forward to working with other state agencies and local governments to further SilverFlume and the services that we provide.

Assemblyman Araujo:
Mr. Anderson, I just wanted to follow up on a previous remark with regard to Assembly Bill 364. I wanted to see if there was intent to incorporate some of that language into S.B. 59 (R1).

Scott W. Anderson:
There had been some discussion. We have not seen any proposed amendments to this specific bill. There was certain language that was proposed through Washoe County that we would be willing to entertain. We may also need to add the language in regard to changing the language to state business registration from state business license.

Assemblyman Araujo:
We do appreciate you working with the folks on the other end trying to incorporate that language so that we are all on the same page.

Chairman Hansen:
We will close the hearing on Senate Bill 59 (1st Reprint), and we will open the hearing on Senate Bill 160 (1st Reprint).

[Documents included for Senate Bill 59 (1st Reprint) but not discussed were "Amended Fiscal Note" from Department of Business and Industry (Exhibit H) and a memorandum (Exhibit I) from the Department of Health and Human Services, Division of Public and Behavioral Health about the removal of the fiscal note.]

Senate Bill 160 (1st Reprint): Enacts provisions governing the liability of owners, lessees or occupants of any premises for injuries to trespassers. (BDR 3-939)

George A. Ross, representing American Tort Reform Association:
We are proud to present Senate Bill 160 (1st Reprint), which would reform Nevada's trespass liability law. With me is Chris Appel, who is with Shook, Hardy, and Bacon in Washington, D.C. He has worked on this issue in a number of states and serves as an advisor to the American Tort Reform Association. He will provide you with the detailed presentation of the law.

Chris Appel, representing American Tort Reform Association:
I will start off with a quick overview of the common law, and then discuss the bill's purpose and provisions. Traditionally, under common law, the duty owed

by a land possessor to an entrant on the property is determined by that land entrant's status on the property as either an invitee, licensee, or trespasser. Those are the three traditional status-based categories.

The invitee is someone you have invited onto your property and you owe that person the highest duty of care. You have invited him or her onto your property so you owe the invitee the duty to warn of any latent defects on the property. You have a duty to inspect the property to find such defects.

The next category is a licensee. If you are a business owner, you have not specifically invited the person but you allow him or her to come onto your property to purchase goods, et cetera. The duty owed to a licensee is to warn of any latent defects on the property that the licensee might not see.

The final duty is to a trespasser on the property. This is someone that you have not invited onto your property, and he or she has no business being on your property. Under the common law, the land possessor owes that person no duty of care except subject to a few exceptions. One of the exceptions is the duty not to willfully or wantonly injure that person. For example, you cannot see a person on your property and throw a grenade at that person. That would be a willful or wanton intentional injury. You would be liable as the land possessor. The second exception previously recognized in the state is if someone is in danger on the property; you owe the person the duty of reasonable care if you find him or her in a place of danger.

The final main exception is called the attractive nuisance doctrine, which is a narrow exception that the common law has built up for children who are attracted onto a property usually by some sort of enticing artificial condition on the property. If you know that children are likely to travel on the property and you do nothing about it, you could potentially owe duty in that situation.

Senate Bill 160 (1st Reprint) has a couple of other exceptions. I believe that one was just introduced as an amendment today. That is the traditional common law scheme. In Nevada, the law is very different. The Nevada Supreme Court abolished the three status-based distinctions of land entrance with *Moody v. Manny's Auto Repair*, 110 Nev. 320,333 (1994). They adopted a unitary duty of reasonable care to any land entrant. This means that property owners have to exercise reasonable care and whatever that may entail to anyone that comes on their property. This impacts everyone. If you are a rancher, farmer, business owner, homeowner, or are leasing property from someone else, you now have a duty to any trespasser for injury he or she may incur on your property.

This is a radical proposition in the common law of the United States. The Nevada Supreme Court adopted this doctrine following a decision by the California Supreme Court in *Rowland v. Christian,* 69 Cal. 2d 108 (1968), which abolished the three status-based land entrant provisions. Many legal commentators at the time thought this was going to signal a real shift in the law. That shift never occurred; as a matter of fact, the shift has been entirely in the opposite direction.

In 2012, the American Law Institute (ALI) tried to revive this idea of abolishing status-based duty rules. For those of you who are unfamiliar with the ALI, it is without question the most prestigious, private legal organization in the development of American law. They essentially develop what is called a restatement of law, which is a sort of legal bible or encyclopedia for judges. When judges are trying to determine what is the best rule in the state, they pull the restatement off the shelf and look at what the restatement has done. The restatement, in this case, adopted a provision reviving the original approach by the California Supreme Court and it is what Nevada adopted. It recommended this unitary duty of care.

So in 2012, the Nevada Supreme Court became the only court of last resort in the country to adopt this doctrine. Usually restatements have to rely on existing case law. That is sort of the credo for what you do in a restatement. In this case, the reporters went off on their own vision of what the law should be and adopted a unitary duty rule that is unique. It did not exist in any state before Nevada adopted it. That creates a general duty of reasonable care to everyone that comes on your property except for what is called a flagrant trespasser, which has never been defined in any case law and is now the current law in Nevada.

Senate Bill 160 (1st Reprint) would restore the common-law rules in Nevada and put the state back in the legal mainstream with regard to duties owed by land possessors to trespassers. To give you a sense of the groundswell that has happened since 2011, which is the year before the ALI adopted its new radical approach, 19 states have legislatively codified the duty owed by land possessors to trespassers. It can be seen on the chart provided (Exhibit J). That is the landscape of how we got here and why this bill is timely and important. I would be happy to answer any questions.

Chairman Hansen:
I would like to throw out a few scenarios. I am an individual and I want to rob your home. I go to your home and try to get through a window, which has been previously broken and not repaired. I get severely cut breaking into your home. Would I be able to sue you under current Nevada law? I will give you

another hypothetical situation. I am breaking into someone's property and I am climbing on the roof. He has a faulty skylight that is not up to code. I fall through the skylight in my effort to rob his home. In the third hypothetical scenario, I am sneaking across some farmer's field, and he has dug a great, big pit out there. I fall in that pit while I am trespassing. In those three scenarios, under Nevada law currently, could I sue the homeowner, or the guy that did not fix his window, or the farmer that was not up to code?

Chris Appel:
The answer to all three of those questions is it really just depends on the circumstances. In the first scenario you described, where someone is actually coming onto your property to rob you, the restatement adopting the flagrant trespasser exception is the only case where you do not owe any duty. The question in the one you described was whether or not that robber would fall under this new definition of a flagrant trespasser, which has not been defined by any courts. The ALI actually included an example of someone who was fleeing another robbery while coming onto the property and injuring themselves. In this example, they were able to sue although they were not a flagrant trespasser. Therefore, it is really unclear. As for the other two scenarios you described, what was reasonable in that situation? The whole point is because there is a duty of care, land possessors have to take some precaution because they do not know what reasonable care will entail. Different juries can decide different things and reasonable minds can differ on what reasonableness is. That is really the whole point. It creates this huge economic burden, especially if you are running a business. If you are running a parking lot, do you have to put up security cameras? Is the absence of a security guard not reasonable care for injury to a trespasser? Reasonable minds can differ.

Chairman Hansen:
Would S.B. 160 (R1) help alleviate the uncertainty?

Chris Appel:
Yes, it would restore Nevada to what it was prior to the 1994 decision. Unless that trespasser fell within one of these categories, it would add greater certainty knowing in the vast majority of cases there would be no duty.

Assemblyman Elliot T. Anderson:
I think everyone gets the purpose of this bill. Regarding the examples that the Chairman brought up, there is no way that a property owner should be liable for those examples. In one of the cases from your handout (Exhibit K), it was asked, in a highly urbanized environment, do the traditional tenets of property law make sense anymore? Now I think in some cases it does, especially for

wanton trespassers. On the Senate side, I see you amended in a definition of what a trespasser is. I think that was trying to get at the courts' concerns in the highly urbanized environment where you may have a missionary or a political candidate coming to your door. I think the other example that was used was a Girl Scout selling cookies. Do you think that implied consent language protects those people who are just coming to a door? In the criminal version of trespass, say if you have a fence up, that would be considered a trespass warning, and you are subject to trespass liability under *Nevada Revised Statutes* (NRS) 207.200. Is that strong enough protection for those groups that we all agree should be able to come up to the door? Maybe there still should be a duty of care for those types of individuals.

Chris Appel:
That is an excellent question. If you have had Girl Scouts coming to your house for years, or missionaries coming to your house for years, the argument would be that you have now implicitly consented to those persons being there, unless you specifically state that solicitors will be considered trespassers. Is that enough protection? In my opinion, if you have a house that is open to these types of people and you have given no indication that they should not be coming on your property, they would not be considered trespassers; they would be considered licensees. However, the scenario which was commonly given in the hearing in the Senate Committee on Judiciary was this: A Girl Scout comes to your house, you open the door, and your dog runs out and attacks her. Should the Girl Scout have some sort of recourse, given she is a very sympathetic plaintiff? Should she have recourse against the land possessor in that circumstance? You would have several arguments in that situation if you were representing the Girl Scout. She could have been an implied licensee, which is what we were just talking about. You have allowed her to come to your front door. The second would be if she was in a place of danger. If you knew your dog could run out and bite people, it could fall under that exception. The third exception did not occur to me until quite recently. A recent case in the Mississippi Supreme Court addressed this exact issue. The dog bite example does not even fall under premises liability law. In that case, the court held that it actually falls under a separate area of animal law, which is outside the scope of premises liability entirely. That is three different ways that example can be addressed.

Assemblywoman Diaz:
I was comparing section 3 to section 2, and I need to know the why behind the language. In section 2, it mentions "no duty of care," physical care, and endangering a trespasser. However, when you get to section 3, subsection 1, it says "is not liable for the death." I am wondering why death is mentioned in

that section versus physical harm, injury, et cetera. We did not talk about death in section 2, but we are talking about it in section 3. I just wanted to understand the logic behind that.

Chris Appel:
That is a great question as well. Section 3 is an extremely narrow exception. In most cases, there would be no duty if someone was playing on equipment, like some sort of sculpture, which is really what it is aimed at. They would not owe a duty under section 2. However, there was an extra layer of protection added to carve out these individuals playing on a sculpture and dying. The best way to describe it is an extra layer of what is already no duty.

George Ross:
That provision was actually added by the Nevada Museum of Art, and I think Mike Hillerby may be here to address it.

Chairman Hansen:
That is an interesting provision. I am picturing somebody climbing up on the Iwo Jima Memorial in Washington, D.C., protesting war, and then falling off and killing himself. I cannot think of a situation that would apply to in Nevada, but maybe Mr. Hillerby will give us some examples. There is an amendment that has been proposed on behalf of the Nevada Resort Association (Exhibit L). They have some concerns about folks jumping off the balconies with parachutes. Have you had a chance to review that?

Chris Appel:
Yes, I just saw it this morning. Sometimes building, antenna, span, and Earth (BASE) jumpers will do it at a hotel. When they get a room at a hotel, they are considered licensees at that hotel. This exception would make sure that when this person goes out the window and BASE jumps, he is actually a trespasser.

Chairman Hansen:
We get some very interesting law provisions in Nevada. Are there any further questions for Mr. Appel or Mr. Ross at this time? Seeing none, Mr. Ross, do you have anyone here to testify?

George Ross:
I believe there are several people behind me who may want to testify. I did want to mention that you will see several tort reform laws. This law in particular is not just a bill for business. It certainly is helpful for business. It will protect the McDonald's franchisee while closed at 4 a.m. and someone breaks his leg while skateboarding in the parking lot. Having said that, it is also very useful for a homeowner. Every one of us who is a homeowner or renter

will be protected. It protects all Nevadans and not just businesses. It restores common sense back to that part of the law, and puts us back in the mainstream with 42 other states.

Michael Hillerby, Private Citizen, Reno, Nevada:
I am here in a personal capacity as a volunteer and former Chair of the Board of Trustees of the Nevada Museum of Art. As Mr. Ross mentioned, section 3 was an amendment suggested by the Nevada Museum of Art with support from the arts community. The Nevada Museum of Art is the state's only accredited art museum. The accreditation is by the American Association of Museums [now American Alliance of Museums] and is limited to about 5 percent of the country's museums. That puts us in the same tier as the Metropolitan Museum of Art in New York, the San Francisco Museum of Modern Art, and other facilities. We have been able to attract international artists and exhibitions.

Nevada has long been a home for significant land art, like Michael Heizer's *City* project in rural Nevada. The Nevada Museum of Art is working on a significant public art project near Jean, Nevada, with international artist Ugo Rondinone from Switzerland. That project will involve significant stone sculptures that will be out for the public to view and interact with.

The language here is to protect artists, arts organizations, sponsors, and presenters of public art. You can see all of the criteria in section 3. It has to be free and available to the public; we would have to post signage about any known risks, warnings, et cetera. However, we would like to have the protection for the nonprofit organizations such as the Nevada Museum of Art and its sponsors, presenters, and artists involved in projects such as the one I described. That was the genesis for the language which was drafted by McDonald Carano Wilson. Kathleen Conaboy, who emailed most of you, is a trustee of the museum. She was not able to be here today but her firm has worked pro bono on that language. I would be happy to answer any questions.

Justin Harrison, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:
We are here today in support of S.B. 160 (R1). Tort reform has been a longstanding priority of the Las Vegas Metro Chamber of Commerce. I will note that economic development and incentivizing business to come to Nevada has been a big talking point this legislative session, and this is a piece of that. Mr. Ross mentioned the business climate in Nevada. The legal environment is something that businesses ask about when they come here. As you have heard, S.B. 160 (R1) would bring Nevada in line with 42 other states precluding businesses from the current liability they would incur when trespassers are

injured on their property. It would remove that burden of liability from business owners for what happens to a person on their premises when he had no invitation, permission, or license to be there.

I will make one final note this morning. We received a final version of an article that we will be sending out to our members regarding tort reform. We did not have time to submit it to the Nevada Electronic Legislative Information System (NELIS) as it was just approved this morning. With your permission, we would like to submit it to you.

Chairman Hansen:
We would be happy to have it.

C. Joseph Guild, representing State Farm:
I am testifying in favor of S.B. 160 (R1) as amended.

Assemblyman O'Neill:
By passing this law, do you think it would lower homeowner's rates?

Joseph Guild:
I have no idea because I am not an actuary.

Tray Abney, Director of Government Relations, The Chamber of Reno, Sparks, and Northern Nevada:
I will echo the comments of my colleague from the Las Vegas Metro Chamber of Commerce. This is an important economic development issue, a job creation issue, and probably an insurance issue.

Erin McMullen, representing Nevada Resort Association:
We support the bill as written; however, as mentioned, we have an amendment (Exhibit L) to offer that relates to building, antenna, span, and Earth, BASE jumping. Those are the mediums from which an individual can jump with a parachute. I have learned that span and Earth mean bridges or cliffs. As you have heard, this is a growing trend here in Las Vegas where people are jumping off of our properties, either from the tops of the buildings or from the hotel balconies. In this amendment, we will propose the prohibition of that act, and make it a criminal act in Nevada. They would be considered trespassers under section 2 of the bill making it a category E felony.

I would like to note that this has already been made illegal in federal law. Some of the language in the bill is from the *Code of Federal Regulations* relating to public parks, national parks, and public space. It is already illegal in national parks, and you would be subject to fines. Even if the jump itself is not illegal, you would have to trespass in order to complete the jump. This would help to clarify.

Randi Thompson, Nevada State Director, National Federation of Independent Business:
The National Federation of Independent Business works nationally with the American Tort Reform Association. We are very excited to see this bill come forward.

Lea Tauchen, Senior Director of Government Affairs, Retail Association of Nevada:
We are in full support of this measure as we believe it provides a level of protection for business owners from the liability of trespassers.

Assemblyman Jones:
Can you tell me how often BASE jumping occurs? I know that once in a while it is in the news, but is it something that happens frequently?

Erin McMullen:
From what I have heard, it is pretty infrequent right now. We have random occurrences of it. It is a growing trend and the intent of this amendment to the bill is to deter it. I can get you some true statistics if it would help.

Jaron S. Hildebrand, Manager of Government Affairs, Nevada Trucking Association:
Our industry invests a tremendous amount of resources and time to ensure safety, and our employees exercise care. At a trucking facility, there is a tremendous amount of moving parts. Obviously, there are people everywhere, moving trucks, and trucks being loaded. There are forklifts, pallets, et cetera. We feel that we should not be held liable for a person illegally trespassing and getting injured on one of our facilities.

Ray Bacon, representing Nevada Manufacturers Association:
Manufacturing facilities are very much like trucking facilities, and we ditto Mr. Hildebrand's comments.

Sarah K. Suter, representing Las Vegas Defense Lawyers:
We fully support S.B. 160 (R1).

Chairman Hansen:
Is there anybody in opposition or in the neutral position? [There was no one.] I will now close the hearing on Senate Bill 160 (1st Reprint), and open the hearing on Senate Bill 161 (1st Reprint), which Mr. Ross will also be presenting.

Senate Bill 161 (1st Reprint): Revises provisions governing product liability. (BDR 3-949)

George A. Ross, representing American Tort Reform Association:
I am not an attorney, and this bill involves a lot of subtle legal concepts. It will also have tremendous benefits for economic development in the business climate in Nevada. For any legal questions, I will have assistance from a member of the Las Vegas Defense Lawyers to answer your questions. Innocent product sellers should not be dragged into Nevada's courts to defend themselves in product liability lawsuits when the real dispute is between injured claimants and the manufacturer that designed and constructed the product. Even though product liability claims almost always arise from claims of defect in the design or the production, claimants all too frequently name not just manufacturers but also distributers, retailers, and even sales representatives in their personal capacity.

A case filed in Clark County District Court in October is a perfect example. A plaintiff claimed he was injured due to a defect in the design and manufacture of his GLOCK handgun which resulted in a malfunction. He sued GLOCK, an international corporation with U.S. headquarters in Georgia, on a variety of product liability theories based on what they did to design and manufacture the handgun. He also sued the retail store on Tropicana Avenue in Las Vegas based on nothing more than the fact that the store was the point of sale. The handgun was sold in a box from the store. A few weeks later, a similar case was filed. The practice is frequent and ongoing.

These indiscriminate lawsuit filings result in unnecessary legal costs for sellers in addition to distracting their attention away from running their businesses. They essentially have done nothing wrong whatsoever; they just happen to be the person or store that have sold this product. As one court in a neighboring state has put it, "there remains no reason to require [a passive retailer] to incur the time and expense of defending" product liability actions. To make matters worse, these costs and inefficiencies resulting from unnecessary product liability claims asserted against retailers are passed on to Nevada consumers in the form of a tort tax on products they purchase or to employees who lose their jobs when stores go out of business.

At least 17 states have recognized the injustice of requiring innocent sellers to defend against product liability lawsuits and have enacted statutory protections. We believe Nevada should join them. Essentially, this is another attempt to improve the business climate overall in Nevada. This is particularly favorable towards small and large business retailers. The retailers are brought into these cases to ensure there is a trial in the state of Nevada instead of the manufacturer being able to remove them to federal court.

Enacting protection for innocent sellers would not undermine the ability of persons injured by the defective product to recover compensation for their injuries. Injured plaintiffs' ability to sue their true target, the manufacturer, would not be affected. I also want to stress that we are not bringing this bill to say that sellers never have culpability; in fact, in many cases they would have culpability. Much of this bill is a listing of those exceptions to the general rule. You will see a list of the exceptions in section 1, subsection 2 of the bill. Here are some examples of the exceptions included in the bill: if the seller changed the product in a way that was not authorized; if the seller resells the product for use or consumption and it was not in the same condition as it was when it left the manufacturer; if the seller did not exercise product-appropriate care such as if the product required refrigeration and he did not properly refrigerate it or if it required gasoline and he got water in the gasoline. There is ample opportunity to assume liability, particularly as shown in section 1, subsection 2(e): "The seller had actual knowledge of the defect."

We also have exceptions for situations where the manufacturer cannot be identified or you cannot get jurisdiction of the manufacturer in this state, or the manufacturer has been declared insolvent. The purpose of the bill is to protect the innocent seller who did nothing more than have a box from the manufacturer or distributor and sell it to a person; the seller cannot tell what is in every box to determine whether it is designed perfectly or not. However, he may have done something along the way and there may be extenuating factors. Those extenuating factors are probably included in this bill.

We believe this bill would be a significant improvement for the business climate in Nevada. Our state was rated by the Institute for Legal Reform as 37th in 2012 in the legal climate for business. We are also on the American Tort Reform Foundation's Judicial Hellhole's Watch List. However, we are not as bad as Alabama, some parts of Illinois, et cetera. That is my presentation and I am open to any questions. As I stated earlier, Loren Young, who is with the Las Vegas Defense Lawyers, is sitting in Las Vegas. He probably will answer most of the questions.

Loren S. Young, President and Chair, Las Vegas Defense Lawyers:
We are an organization that represents defense lawyers that practice in civil litigation in Clark County. We are in support of this bill. I wanted to give my two cents about the current state of the law in Nevada.

There have been various cases in Nevada when an injured person filed a lawsuit against a manufacturer for a defective product while also pursuing litigation against anyone in the chain of distribution of that product. This would include the innocent sellers and the distributors of the product. The purpose of the bill is to ensure that the injured party has some type of remedy. As Mr. Ross has pointed out, the exceptions in the bill also provide for those types of situations. If a manufacturer is somehow gone or insolvent, the injured party will still have some ability to recover. I have heard some indications that people think this bill deviates from the common law. It truly does follow what we have in common law. However, it prevents the innocent seller from having to be dragged through litigation when it is not necessary because the manufacturer distributed a defective product or did not properly warn about a product. The purpose of this bill goes hand-in-hand with what our current common law provides.

As in the cases that I mentioned previously, the bill allows a plaintiff to sue all companies in the chain of distribution. It also provides that a distributor or seller would be entitled to full indemnity from the manufacturer to defend those allegations if the seller or distributor is not actively negligent. That remedy is provided in those exceptions in the bill.

To force an innocent seller to defend the allegations of product defect forces these businesses, which are mostly small businesses, to incur substantial fees and costs. For example, many of you may recall a local company in Reno called Cope and McPhetres Marine. They sold motorboats and speedboats. I represented them in a litigation. Approximately four or five years ago, the plaintiff sued Cope and McPhetres Marine simply because they sold a motorboat and the person driving that motorboat happened to back over someone else whose leg wound up being amputated. There was no allegation that Cope and McPhetres Marine did anything to modify the boat. The boat was approximately ten years old. The plaintiff was simply arguing that it was a dangerous product which did not have the proper warnings. It was a very costly case for Cope and McPhetres Marine, and the Reno store went bankrupt and is no longer in business. They incurred well over $250,000 in fees and costs in defending those allegations. None of the allegations were proven to be truly against Cope and McPhetres Marine. It was mainly all a manufacturing and warning defect case.

I also defended another case that Mr. Ross mentioned, which was recently filed in Clark County. I represent the gun store that sold the GLOCK handgun to the plaintiff. In that case, the plaintiff is solely alleging that the gun was defective and turned from a semiautomatic handgun into a fully automatic handgun, causing his injuries. The gun was actually sold brand new—in the box—by my client in 2008. The injury did not occur until 2012, yet my client is still being sued and having to defend the allegations simply because they sold the product.

The bill does not depart from the common law. It simply provides that if a company, seller, or distributor is innocent and did not modify a product or was not actively negligent in any way, the litigation should not be brought against them. The litigation should be brought against the proper party. I am open to answer any questions.

Assemblyman Nelson:
In the common law, has it not always been that you do not need to prove negligence in a product liability case, that it is outside the realm of negligence?

Loren Young:
Negligence is not product liability. Under case law with regard to product liability, you can sue all parties within that chain of distribution.

Assemblyman Nelson:
I understand the rationale behind the bill that you should not hold someone liable for something that was not his or her fault. However, I thought that part of the rationale has always been, if you name every participant in the supply chain, that is because everyone profits from it. Is that correct?

Loren Young:
In the case law that I read, the rationale to allow a suit against all parties in that chain of distribution is to ensure that the injured party has an ability to recover. I do not have any percentages or numbers of the potential profit that each person in the chain of distribution obtains, but if you look at it, the manufacturer is going to profit from the development and manufacturing of the particular product. If shown that a seller or distributor did something to the product and has somehow modified that product, the seller or distributor should be held accountable. If the product is in the same condition as when it left the manufacturer, there should be no viable lawsuit against that company.

Assemblyman Nelson:
Thank you, although I do not think you really answered my question. Maybe I did not articulate it that well. Section 1, subsection 2(h) says, "Jurisdiction over the manufacturer cannot be obtained in this State." I am trying to think of

a scenario when that would apply. Would that be perhaps an Internet sale? Usually when a manufacturer is aware that goods are being sold in the state, that would constitute doing business. Is that correct?

Loren Young:
Yes, that is correct. I think this particular provision is dealing with foreign corporations, like manufacturers from China or other parts of the world, that are importing into the country.

Chairman Hansen:
Mr. Ross, is there anyone else you would like to have testify?

George Ross:
I believe there are several people sitting behind me.

Randi Thompson, Nevada State Director, National Federation of Independent Business:
It is rare that I sit at a table with a defense attorney. However, I am in support of this bill. It is a good bill for innocent sellers and it is a good business bill. We are pleased to see the bill coming forward.

Justin Harrison, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:
We are here today in support of S.B. 161 (R1). We believe this will enhance the state's business climate by protecting sellers and distributors, while allowing claimants the appropriate recourse against manufacturers' defective products.

Tray Abney, Director of Government Relations, The Chamber of Reno, Sparks, and Northern Nevada:
Today I will just say, "Me, too."

Lea Tauchen, Senior Director of Government Affairs, Retail Association of Nevada:
I will be brief and state that we fully support this bill because we believe that it will help clarify the rights and responsibilities of the parties involved in product liability actions.

Ray Bacon, representing Nevada Manufacturers Association:
This is a step in the right direction for the manufacturers as well. What happens is, many times everyone is brought into a case. If you look at the terms and conditions of a sale, for most manufacturers, it says if you are going to sue us, you have to do so in our home state. Consequently, this becomes a way to shift away from the jurisdiction where the product was made. It also

becomes a situation where, if you take a look at any consumer product you buy, you have to muddle through three pages of warnings and statements. We all are frequent users of power tools, and I am sure we ignore those first three pages that appear in every piece of equipment that we buy. The reason those warnings are there is to be very specific for the customers.

I do not think there is a manufacturer in this country that knowingly makes a defective product. Saying that, I cannot defend what General Motors did on their ignition switch issue. The fact that they knew about it for so long is indefensible in my opinion. As everybody knows, they are paying a huge price.

The gut-wrenching and difficult-to-handle cases do happen, although they happen rarely. One such situation is the Blue Bell Creameries situation which is happening currently. They were in business for 113 years and this is their first product recall. There have been nine cases so far related to contamination. The source of the contamination has not yet been determined. However, everything they have made has been recalled. Most of the time, when a manufacturer finds a problem, they step up and take action.

In my former life, I was the vice president of manufacturing at Bently Nevada. One time, we changed our process and wound up with contaminated circuit boards. We sent people all over the world to chase down those circuit boards to swap them out. Typically, when there is a clear case where we have done something wrong in the manufacturing sector, we step up and handle it.

We added a provision, which can be found on page 2 of the bill. Section 1, subsection 2(d) was modified by us because there were manufacturers that were sued for something they had no ability to know of. For new products that are in the custody of the retailer, in a storage situation, where there has been a natural disaster such as a flood, hurricane, et cetera, some will get picked up afterward and sold as a new product. Meanwhile, they may have been sitting in floodwater for a while. As we all know, electric tools do not work very well after they have been sitting in floodwater. The manufacturer may wind up getting sued, and that is why we added that clarifying provision in the bill. At this stage, we believe this will improve our situation as far as handling the court. It takes out the muddle in the distribution situation when it is clearly our issue.

Chairman Hansen:
My brother has a small hardware store in Sparks. Let us say that I go in and purchase a reciprocating saw that is made by a national manufacturer. I go to

use it but something is defective and I get hurt. Is there ambiguity in the law right now that would allow me to sue the small hardware store that I purchased it from?

Ray Bacon:
Yes.

Chairman Hansen:
Is that what this bill is trying to fix?

Ray Bacon:
Yes.

Chairman Hansen:
Are the manufacturers fine with that? In other words, you do not feel that the hardware store owner, as the retailer, would have any level of liability in a manufactured product?

Ray Bacon:
If we make a defective product, and it is a closed box situation, yes. However, if it has been out of the box and the retailer has done something in the process, or it has never been out of the box but somehow got damaged, that is different. Those are the situations where, in many cases what has happened is, in order to increase the odds of getting a large settlement, they will include the large retailer. They will include Home Depot, Lowe's, Walmart, Ace Hardware, or whoever else they can, to get to the point where there are deep pockets involved in the case because it increases the odds of a settlement.

Chairman Hansen:
I see no further questions. Thank you for your testimony. Is there anyone else who would like to testify in favor of Senate Bill 161 (1st Reprint)? [There was no one.] Is there anyone who is against or in the neutral position? [There was no one.] Mr. Ross, do you have anything to add?

George Ross:
No. I do not.

[Also submitted but not discussed was a letter in support of S.B. 161 (R1) from the Property Casualty Insurers Association of America (Exhibit M).]

Chairman Hansen:
We will close the hearing on Senate Bill 161 (1st Reprint), and we will open it up to public comment. Is there anyone who would like to address

the Committee? [There was no one.] Is there any Committee business? [There was none.] We will have a work session tomorrow, so be sure to be on time if you intend to vote. This meeting is adjourned [at 10:22 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: April 30, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 240	C	Jeanette Belz, Nevada Psychiatric Association	Proposed amendment
S.B. 240	D	Ben Graham, Nevada Supreme Court	Proposed amendment
S.B. 240	E	Jeanette Belz, Nevada Psychiatric Association	Written Testimony
S.B. 36 (R1)	F	Dave Prather, Division of Forestry, State Department of Conservation and Natural Resources	Written Testimony
S.B. 36 (R1)	G	Leo Drozdoff, State Department of Conservation and Natural Resources	Proposed Amendment
S.B. 59 (R1)	H	Lisa Figueroa, Department of Business and Industry	Amended Fiscal Note
S.B. 59 (R1)	I	Mark Winebarger, Division of Public and Behavioral Health	Fiscal Note Revision Memo
S.B. 160 (R1)	J	George Ross, representing American Tort Reform Association	States Codifying Traditional Common Law Land Possessor Duties to Trespassers
S.B. 160 (R1)	K	George Ross, representing American Tort Reform Association	Written Statement
S.B. 160 (R1)	L	Erin McMullen, Nevada Resort Association	Proposed Amendment
S.B. 161 (R1)	M	Mark Sektnan, Property Casualty Insurers Association of America	Letter of Support