

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
February 16, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:01 p.m. on Monday, February 16, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senatorial District No. 19
Senator David R. Parks, Senatorial District No. 7
Assemblyman John C. Ellison, Assembly District No. 33
Assemblyman Jim Wheeler, Assembly District No. 39

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary
Julia Barker, Committee Secretary

OTHERS PRESENT:

Henry Krenka, President, Nevada Outfitters and Guides Association
Willis Lamm

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Danny Riddle, Back Country Horsemen
Neena Laxalt, Nevada Cattlemen's Association
Beverlee McGrath, Nevada Humane Society; Nevada Political Action for Animals
Margaret Flint, Nevadans for Responsible Wildlife Management
Walt Gardner
Bill Bradley, Nevada Justice Association
Brian Connett, Deputy Director, Industrial Programs, Department of Corrections

Chair Brower:

I will open the hearing of the Senate Committee on Judiciary with Senate Bill (S.B.) 129.

SENATE BILL 129: Limits civil liability of certain persons for injuries or death resulting from certain equine activities. (BDR 3-611)

Senator Pete Goicoechea (Senatorial District No. 19):

Senate Bill 129 has come before this Committee three times before. As it stands today, if you own the property or the horse, you are liable. There are a number of cases where someone was on another person's land and injured by his own horse and then the rider sued the land owner. If a person is clearly negligent, then that person is on the hook; but if a person goes through the efforts outlined in S.B. 129 that clearly state a best effort to act responsibly, that horse or property owner is not held liable. This bill takes the presumption of automatic liability away. Nevada is one of four states without this law.

Senator Ford:

What other states do not have this law?

Senator Goicoechea:

Maryland, New York and California. Without this law in place, if I give you a horse of mine to ride and that horse injures you in an accident, I am at fault.

Chair Brower:

Is it your belief that under the law you are automatically liable, or would negligence have to be proven?

Senator Goicoechea:

Without this law in place, I would be automatically liable because I own the horse and I own the property.

Assemblyman John C. Ellison (Assembly District No. 33):

Senate Bill 129 follows along with the Montana Code 27-1-727. This bill also includes veterinarians, farriers, and 4-H kids, so it will protect the people who allow others to use their horses and facilities. This would help those who have racetracks, horses or stalls. The bill would act like a no-fault insurance for no negligence. Section 1, subsection 3 states circumstances in which the horse or land owner would not be immune from civil liability.

Senator Goicoechea:

This bill does not include the racetracks because they are licensed separately.

Assemblyman Ellison:

It does include the stalls that racetracks rent out.

Chair Brower:

As drafted, S.B. 129 does provide protection to a rider if the owner provides either a horse known to be dangerous or a nondangerous horse to a person without understanding his or her ability to control the horse. It does put some responsibility on the horse owner to make sure the horse is safe and the rider is aware of what he or she is getting into.

Assemblyman Jim Wheeler (Assembly District No. 39):

Without S.B. 129, Nevada is in the same category as California. In the early 1980s, I started an organization called the All Police Rodeo Association for policemen. All the money went to benevolent funds for the families of fallen officers. During that time period, the Association was sued twice by people who rode their own horses and fell in the arena. The Association won those lawsuits, but the attorney's fees took away a lot of money from the benevolent funds. There are consequences without a bill like this; therefore, I support S.B. 129.

Henry Krenka (President, Nevada Outfitters and Guides Association):

I have owned my own guiding business for 34 years and am President of Nevada Outfitters and Guides Association. The Association supports S.B. 129. I have submitted my written statement ([Exhibit C](#)). If someone says he or she is unfamiliar with a horse, outfitters are required to give a short safety training with the horse.

Chair Brower:

The bill would not provide immunity when the provider of the horse does not attempt to engage in an effort to ascertain the ability of the rider.

Willis Lamm:

I support S.B. 129 and have provided my written testimony ([Exhibit D](#)).

Senator Hammond:

Section 1, subsection 2, paragraph (b) says “before engaging in an equine activity, know and be aware of the inherent risks of that activity.” Is there anything in statute that tells you some things you say to riders before they get on horses? How will people know the inherent risks? As a trail boss, is it your responsibility to make them aware?

Danny Riddle (Back Country Horsemen):

Back Country Horsemen try to have our own insurance policies, but they have holes. When working on U.S. Forest Service land, we are covered under the agency’s policies, but those policies are only good if we have a safety briefing before riders get on the horses. That is also customary with the charity work I do. As subguides, we have a safety briefing with riders.

Senator Hammond:

It is the riders’ responsibility to listen to the safety guide?

Mr. Riddle:

I have been surprised by how many people pay attention to the safety briefings. You would think that people do not pay attention, but they do.

Senator Hammond:

When you are standing next to a large animal with the potential to injure you, you tend to perk up a little bit.

Mr. Lamm:

In the industry, we have attempted to have informed consent. Insurance companies have driven this. My work tends to do a lot with the Bureau of Land Management, dealing with people and wild horses, which is a little more dangerous than a backcountry pack trip. We encourage something S.B. 129 will further encourage, a disclosure form that people read and sign, but people will need to write a paragraph saying that they have read and understand what the

form says. This gives us a solid record that the participant is fully informed of what is going on. The problem is we do not have blanket protection if the participant knowingly gets involved in an activity that does have an inherent danger. This is where the language in S.B. 129 will be useful.

Mr. Riddle:

A little over 100 Back Country Horsemen in southern Nevada belong to the Bristlecone Chapter. Last year, our services on public trails had a value of about \$84,000. I would hate to lose everything just because of an accident while I was trying to do good. Senate Bill 129 would protect against that.

Neena Laxalt (Nevada Cattlemen's Association):

The Nevada Cattlemen's Association supports S.B. 129.

Beverlee McGrath (Nevada Humane Society; Nevada Political Action for Animals):

The Nevada Humane Society, Northern Nevada Society for the Prevention of Cruelty to Animals (SPCA), Nevada Political Action for Animals, Lake Tahoe Humane Society and SPCA, Pet Network of Lake Tahoe, Wylie Animal Rescue Foundation, Fallon Animal Welfare Group, Hidden Valley Horse Rescue and Compassion Charity for Animals support S.B. 129. We think it encourages safer and more professional conduct while protecting the mom-and-pop operations from reckless lawsuits.

Margaret Flint (Nevadans for Responsible Wildlife Management):

Nevadans for Responsible Wildlife Management supports S.B. 129.

Walt Gardner:

I am a rancher and outfitter in favor of S.B. 129. A couple years ago, we were processing cattle and had horses tied up outside the corral. A gentleman pulled in to ask for directions and his kids got out of his car. We felt like we were liable if those uninvited kids had been hurt by the horses.

Bill Bradley (Nevada Justice Association):

The Nevada Justice Association is opposed to S.B. 129. We are opposed to the immunity because we believe it is an additional government regulation that prohibits an innocent citizen from exercising the Seventh Amendment of the U.S. Constitution, the right to a jury trial. Immunity closes the courthouse doors to people Senator Goicoechea or these outfitters never intended.

Senator Goicoechea said, "if you are negligent, you are on the hook." Unfortunately, as hard as he may try, this does not stand for the proposition that a negligent operator of a horse will be held accountable. There are five situations in this bill where immunity does not exist. Under every other interpretation of this law, immunity exists and there is no accountability of that wrongdoer.

If an outfitter does not let the air out of the horse before pulling the cinch up and a child falls off the horse because of it, under S.B. 129, that operator is immune. If a horse acts violently in a crowd and the operator knows the horse could act violently, under S.B. 129, that operator is immune when the horse injures some kids. I understand the difference between negligence and common sense, but S.B. 129 starts off with a blanket grant of immunity for any inherent risk of an equine activity. In section 1, subsection 5, paragraph (d), subparagraph (6), the definition of inherent risk of equine activity says, "a negligent act by a participant while using an equine." How can you have an inherent risk including negligence? Inherent risks include unpreventable risks. Preventable risks are not inherent. In the definition the bill uses, inherent risk makes sense, things that happen that are nobody's fault. In situations where people pay for the benefit of hiring a professional and that professional does not do his or her job, that is negligence. Where there is negligence, there should be accountability. If there is not accountability, you have to decide whom to tell the injured party to get help from because you have eliminated the accountability of the person who has caused the harm.

If one more exception said, "if the equine operator failed to act reasonably under the circumstances," that would be acceptable. I hope it is not the intent to let negligent actors go without accountability. There is no presumption of liability because you are a property owner. I have tried cases in most of the State's counties, and I could not convince a group of local jurors to hold someone accountable for offering to let friends come ride horses. This bill goes too far and eliminates people's rights when there is negligence and accountability.

Chair Brower:

The point Senator Goicoechea attempts to make with S.B. 129 is, in certain circumstances, to not have to deal with a trial and associated costs regardless of a jury's decision. There may need to be some improvements, but there is a certain logic to the bill.

Senator Ford:

Senator Goicoechea spoke to some of the examples you gave and said an inherently dangerous horse would not be exempted under these circumstances.

Mr. Bradley:

It is.

Senator Ford:

You may have to show me where. Would you run the negligence provision you would add to make S.B. 129 sufficient for your purposes past the bill sponsors to see if they would adopt it?

Mr. Bradley:

Senator Goicoechea and I have talked about that concept before. Senator Goicoechea is of the opinion that this bill does not do away with holding someone who is negligent accountable, and he is mistaken. Say Senator Hammond is taking his family riding at Mr. Gardner's ranch, and another group of riders who have been drinking are raising a stink on their horses. If a rider on one of their horses does something negligent, causing one of the children to be injured, under S.B. 129, that participant and Mr. Gardner are immune from liability. Under section 1, subsection 5, paragraph (d), subparagraph (6), inherent risks of equine activities includes a negligent act by a participant while using an equine. This bill defines inherent risks as negligent acts. I cannot understand that.

Chair Brower:

My interpretation of section 1, subsection 5, paragraph (d), subparagraph (6) is that a participant acting negligently is a risk inherent in this activity.

Mr. Bradley:

Inherent risk is negligent.

Chair Brower:

I am just reading it.

Mr. Bradley:

That is how it reads and that is what I am struggling with. How can an inherent risk include a preventable act?

Chair Brower:

On the part of the participant, not the provider of the equine.

Mr. Bradley:

It should be on both sides.

Chair Brower:

The negligence on the part of the provider of the equine cannot be an inherent risk. The provider of the equine is not supposed to be negligent. It is assumed in horse-riding activity that a novice participant might be negligent, which is why it is listed as an inherent risk.

Mr. Bradley:

If that negligent participant is negligent and hurts another, this bill would create immunity for that negligent act.

Chair Brower:

That scenario is not clearly contemplated.

Mr. Bradley:

Negligence is defined as not doing what a reasonable person would do under the same circumstances. Nothing has ever been written about how a person is supposed to act around anything; but we all know of certain inherent risks in activities. The general inherent risk that cannot be prevented should not give rise to a lawsuit. When equine operators know or should know that harm could be caused if they do not take certain steps, they should not be subject to immunity. Other than willful and wanton conduct, defective tack and knowledge of an obvious or latent defect are specific exceptions.

Senator Hammond:

This law has been passed in 46 other states. You mentioned portions of negligence missing in the bill. Do you think the other states have also missed those portions, or do they have the change in their law that you would like to see?

Mr. Bradley:

I wish I knew. I am happy to work with this Committee or whomever this Committee names to identify the set of circumstances where there is negligence

and should also be accountability. It is difficult to define negligence in specific situations.

Senator Hammond:

Would you be willing to work with the sponsors of the bill?

Mr. Bradley:

I am happy to do that. Is it this Committee's intent to eliminate certain forms of negligence and accountability?

Chair Brower:

That is more philosophical than we would entertain today. You and I have worked in the past to find tweaks to language to alleviate your concerns. I would suggest that you work with Senator Goicoechea or anyone else on the Committee to propose language that you think fixes the defects. The Committee would be happy to look at those fixes.

Mr. Bradley:

I would suggest adding, "if the equine operator acts reasonably."

Chair Brower:

I will close the hearing on S.B. 129 and open the hearing on S.B. 96.

SENATE BILL 96: Revises provisions relating to prison industries. (BDR 16-281)

Senator David R. Parks (Senatorial District No. 7):

I serve as chair of the Committee on Industrial Programs, which is an ongoing statutory committee consisting of the Director of the Department of Corrections, the Administrator of the Purchasing Division of the Department of Administration, four Legislators and five members of the public appointed by the Interim Finance Committee. Senate Bill 96 seeks to clarify the authorized uses of funds in the Fund for New Construction of Facilities for Prison Industries. The internal funds are generated through the operation of industrial programs. We seek to replace the vague statute in place and enable prison industries to expand into more programs. Too few inmates are able to work in a prison industry program. Prison industry programs have beneficial effects.

Senator Harris:

What kinds of products and services do prison industries provide?

Senator Parks:

With tough times brought about by the economy rollback in recent years, some programs no longer exist. We are working to develop new programs.

Brian Connett (Deputy Director, Industrial Programs, Department of Corrections):

Nevada's prison industry was created under *Nevada Revised Statutes* (NRS) 209 for the Department of Corrections (DOC). This program operates 17 industries and works approximately 480 inmates. Inmates are trained and gain marketable skills to assist them in finding employment after release. Working inmates also assist the Department's correctional institution by keeping them productively occupied while also assisting with public safety.

Prison industries is a self-funded program with oversight from the Director of the DOC and the Committee on Industrial Programs. This Committee consists of the Director of the Department, the Administrator of the Purchasing Division of the Department of Administration and nine regular members appointed by the Interim Finance Committee.

Nevada's prison industry is funded by NRS 209.192 for capital projects. This is completely funded through the wage deductions of inmate workers working in prison industries as authorized by NRS 209.463, subsection 1, paragraph (c). There is no cost to the State or taxpayers to fund this account while creating a benefit. The money in this Fund must only be expended to house new industries, expand existing industries, provide for more offender work or satisfy any other purpose as authorized by the Legislature.

We are requesting that the Committee approve language that would expand the uses of the Fund. The new language would allow funding to: relocate, expand, upgrade or modify an existing prison industries program to enhance or improve the operations or security; provide additional employment or training of offenders; purchase or lease equipment to be used for the training of offenders in the operations of prison industries; and pay the operations of prison industries by paying the salaries of staff and wages of offenders only if the cash balance of the fund for Prison Industries falls below the average monthly expenses. If any Fund money pays for operations, staff salary and inmate wages, the Director shall repay the amount as soon as sufficient money exists in the Fund.

We want to advertise and promote the goods and services provided by prison industries as well as include language that would have the Director submit a proposal for expenditure of Fund money to the Committee on Industrial Programs and the State Board of Examiners. We also want to strike language from NRS 209.192 that refers to money in the Fund that must not be expended for relocating an existing industry in the industrial program unless the existing industry is being expanded to provide additional employment of offenders. The Committee on Industrial Programs has reviewed and approved these changes.

Some industries programs are a print shop; mattress, furniture and metal fabrication; and auto, garment and drapery shops. We have a fully functional ranch as well as card sorting at four different facilities. We work with the private sector to do returns from a private sector company. We have a tag plant and license plate plant. We also have an arrangement with a company that handles compost that comes from our ranch.

Senator Parks:

At the November 7, 2014, meeting of the Committee on Industrial Programs, S.B. 96 passed unanimously.

Mr. Lamm:

In my public safety experience, I supervised a prison fire crew. I am a supporter of Silver State Industries. Prison industries support activities that take place with county, local and special district governments and save taxpayers money. Prison industries also does a lot of good for some of the personnel involved. Some inmates should never be back out in the general population. Others have made bad life choices, and they need a road map to learn responsibility, accountability and marketable skills. We tracked a number of the men who come out of the horse training program, and a high percentage end up with reasonably good careers. Prison industries needs to have the flexibility to adapt to our changing environment and conditions. I support S.B. 96.

Chair Brower:

I will close the hearing on S.B. 96 and will entertain a motion to request the drafting of seven Committee bill draft requests.

SENATOR HAMMOND MOVED TO INITIATE SEVEN COMMITTEE BILL DRAFT REQUESTS.

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SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Brower:

I will adjourn the meeting of the Senate Committee on Judiciary at 1:58 p.m.

RESPECTFULLY SUBMITTED:

Julia Barker,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 129	C	1	Nevada Outfitters and Guides Association	Letter from Henry Krenka
S.B. 129	D	1	Willis Lamm	Letter of Support