MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
February 19, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:02 p.m. on Thursday, February 19, 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

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Joe Guild, Nevada Court Reporters Association
Lori Urmston, Nevada Court Reporters Association
Peggy Isom
Alex Ortiz, Clark County
Lisa Gianoli, Washoe County
Jeff Fontaine, Executive Director, Nevada Association of Counties
Andres Moses, Eighth Judicial District, Clark County
Ray Bacon, Nevada Manufacturers Association
George Ross, American Tort Reform Association
Randi Thompson, National Federation of Independent Business

Justin Harrison, Las Vegas Metro Chamber of Commerce
Loren Young, President, Las Vegas Defense Lawyers
Matt Sharp, Nevada Justice Association

Chair Brower:
We will begin the hearing with Senate Bill (S.B.) 131.

SENATE BILL 131: Revises provisions governing the compensation of certain court reporters. (BDR 1-639)

Joe Guild (Nevada Court Reporters Association):
The genesis of *Nevada Revised Statute* (NRS) 3.370 was in 1907. Based on my review of *Statutes of Nevada*, much of the language in NRS 3.370 is the same as that of the 1907 original bill. Two things are interesting. One, standards of competence were set forth for court reporters in 1907. A court reporter had to demonstrate evidence of good moral character and was examined as to competency by at least three practicing members of the State Bar. Those standards apply today for certified court reporters under NRS 656. Two, the per diem amount was set in 1907 at $10 a day, 10 cents per 100 words for transcription and 5 cents per 100 words for an additional copy. The exact scheme we are talking about today was in existence in 1907.

Since 1971, NRS 3.370 has been amended nine times to increase the per diem and the per page compensation for court reporters. Per diem compensation has not been increased for 10 years and per page compensation for 16 years. Section 1 of S.B. 131 increases per diem compensation from $170 to $250 and increases per page compensation for the transcripts.

Chair Brower:
Can you explain the rationale for S.B. 131 other than inflation? It would be helpful to the Committee to understand the realities of the business and why this is important.

Lori Urmston (Nevada Court Reporters Association):
I am a Nevada Certified Court Reporter and the immediate past president of the Nevada Court Reporters Association. I have submitted a February 19 letter (Exhibit C) and an exhibit showing court reporter per diem rates (Exhibit D) which address the rationale for S.B. 131.

It takes a court reporter an average of 3 years of schooling to become sufficiently proficient to take the State licensing exam. Before setting foot in a courtroom, a court reporter will have invested a minimum of $10,000 in the hardware and software required to perform the job. Court reporters purchase, maintain and upgrade their reporting and transcription equipment, saving the judicial system and the counties hundreds of thousands of dollars. These costs continue throughout a court reporter's career: namely, hardware and software upgrades, new machines, continuing education, production, billing and collection. Court reporters also absorb the costs associated with reporting and producing transcripts, which are at least 30 percent of the court reporters' gross compensation.

Court reporters are the only people who work in the courthouse everyday who have to come to the Legislature for a raise. We are asking for an increase to keep pace with other workers and to keep up with the cost of doing business. Passage of S.B. 131 will have a financial impact on the counties. Compensating people for jobs has a financial impact.

Court reporters are trained to be obsessively committed to the accuracy of the record. They care about the efficient running of the courts. They are available to immediately read back transcriptions for litigants, judges and juries or to help the clerks clarify something for their minutes. They are available for real time translation. While the cost of doing business has increased, it has been 10 years since court reporters have had an increase in compensation. I can think of no other profession that has had stagnant wages in excess of 10 years.

Chair Brower:
All of us who work with court reporters on a regular basis really do appreciate what you do behind the scenes. You are by definition the silent participant in depositions and court proceedings, but we could not do it without you. We know how hard it is to do your job well. I am constantly telling witnesses that, unless the court reporter can understand what you are saying, you are not saying anything. Slow down. Speak out loud. A typical court reporter in a courtroom is not an employee of the court. Please clarify how that works.

Ms. Urmston:
A court reporter is the official reporter hired by the judge. The court reporter is paid a daily rate to be available and to report criminal and civil matters. The rate is set at $170 a day. That is equal to about $21.25 an hour. That is gross pay

before expenses. In civil cases, court reporters are paid an hourly reporting fee by the civil litigants. That fee is not a cost to the county. The fee is $30 an hour.

Court reporters do two separate and distinct things: report in the court and produce a transcript. The rule of thumb is that for 2 hours of court time, it will take 4 hours to produce the transcript—editing, scoping, proofing and producing. Court reporters are paid a per page rate. For criminal cases, most court reporting fees are paid by the county. The civil litigants pay for civil matters. There is also a copy fee, but a court reporter never knows whether a copy will be requested. An original and one copy are usually guaranteed but more than that is an unknown. Income for transcripts fluctuates widely.

Senator Hammond:
The per diem compensation has not been changed for 10 years. The per page compensation has not been changed for 16 years. When was the last time the civil reporting fee changed?

Ms. Urmston:
The civil reporting fee was changed in 2005 from $25 to $30.

Senator Hammond:
That has been over 10 years as well.

Senator Ford:
Why is court reporter compensation locked into statute?

Mr. Guild:
I will see if there is a legislative history to determine why in 1907 the Legislature decided to place court reporter compensation into statute.

Senator Ford:
Are there other professions with salaries locked into statute?

Ms. Urmston:
I know that court reporter compensation is in statutes in other states. In California, the administrative office of the court funds a rate set by the counties. Each county in California sets its own rate.

Senator Ford:
California does not lock court reporter compensation into the code. How many states are like Nevada and lock court reporter compensation into statute?

Ms. Urmston:
I do not know the answer to that question. I will research the question and get back to you through Mr. Guild.

Peggy Isom:
I am a court reporter for District Judge Timothy Williams in Department 16 of the Eighth Judicial District in Clark County. As a past president of the Nevada Court Reporters Association, I know that the members of the Association support S.B. 131.

Alex Ortiz (Clark County):
We are neutral on S.B. 131, but we are concerned about the fiscal impact. We understand that the court reporters have not had an increase in salary in many years, but there will be a fiscal impact on Clark County. The increase would be $437,000 to $1.2 million. Theses figure are derived from fiscal year 2014 bills for services.

Lisa Gianoli (Washoe County):
We are neutral on S.B. 131. The fiscal impact on Washoe County will be approximately $200,000.

Jeff Fontaine (Executive Director, Nevada Association of Counties):
The rural counties are neutral on S.B. 131. There will be a fiscal impact to a smaller degree, but we are sympathetic to the issue.

Andres Moses (Eighth Judicial District, Clark County):
We are neutral on S.B. 131. We estimate an approximate $178,000 per year fiscal impact with these changes. In the Eighth Judicial District, there are only eight court reporters. Recorders do most of our reporting, which is captured by Jefferson Audio Video Systems.

Senator Michael Roberson (Senatorial District No. 20):
I will introduce S.B. 134. We all know the challenges that Nevada's economy faces, and the rise in abusive lawsuits experienced by our business community has only made matters worse. Nevada was recently placed on the *Judicial Hellholes 2013-2014* Watch List, which identifies jurisdictions with histories of abusive litigation or troublesome developments. Civil justice reforms that curb some of the abusive practices in our courts provide a cost-free way for the Legislature to help businesses have a stable platform on which to create economic growth and jobs while still ensuring justice for injured parties.

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

An undeniable trend in litigation over the past decade has been the skyrocketing size of damage awards. Since 2011, more than ten jury verdict awards entered across the Country have exceeded $1 billion. Nevada has not been left out of this trend toward shockingly large verdicts. Over the last several years, at least four Nevada juries have returned awards for more than $50 million. One verdict entered into against a health insurer for $500,000 prompted the *Las Vegas Review-Journal* to declare Las Vegas "the undisputed jackpot justice capital of the world." Awards of more than $1 million—which at one time had been landmark verdicts that made the news—are now commonplace. Nevada juries have returned more than two dozen verdicts of seven figures or more in the last 10 years, many of them against small businesses.

Defendants who are subjected to such enormous damage awards invariably seek to appeal them, and the defendants are often successful in getting the judgments reduced or overturned on appeal, particularly where a significant portion of the award is made up of punitive damages. When an award is entered for millions of dollars, appeal is a healthy part of the justice system. When an award threatens the continued vitality of a company, possibly causing layoffs or even bankruptcy, it is entirely proper for an appellate court to review the case for error and make sure that the trial court got it right. Nevada, like most states, requires the defendant to post a bond in order to stay the execution of a judgment during the course of appeal. The purpose of requiring the posting of the bond is to protect the judgment creditor's ability to collect the judgment if it

is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. At the same time, the filing of a bond establishes a stay of execution that protects the defendant from having the plaintiff seize assets during the appeal process.

Nevada's appeal bond practice in virtually all cases necessitates the posting of a bond by defendants equal to or larger than the amount of the judgment. Neither Nevada Rules of Civil Procedure Rule 62(d) or Nevada Rules of Appellate Procedure Rule 8 specify the amount of a bond that a defendant must post in Nevada, so courts have discretion to determine how large a bond is necessary to give the plaintiff sufficient security in the judgment. Courts frequently require bonding for not just the amount of the judgment, but also for several years of postjudgment interest, as well as other costs and fees. Nevada courts have required full bonds even where the amount involved exceeds $50 million.

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

Nevada is among a minority of states that do not cap the size of the required appeal bond for all industries. To date, at least 29 states have recognized the potential consequences of exorbitant appeal bonds and have passed legislation or amended court rules to limit the size of required bonds in cases involving large judgments. In addition, it should be noted that five states do not require a defendant to post a bond at all during an appeal. The bond limits range from $1 million to $150 million, but most—24 states—set the upper limit at $50 million or less. Nearly all statutes include a provision that allows for a higher bond amount—up to the full value of the judgment if the court determines that the appellant is dissipating assets to avoid paying a judgment.

Notably, since at least 2005, Nevada has had in place a $50 million appeal bond cap, but it is available only to tobacco companies involved in the Master Settlement Agreement. It is also worth recognizing that the State has exempted itself from the burdens of posting an appeal bond in a civil case.

Senate Bill 134 would extend to all industries and businesses the $50 million cumulative limit on the appeal bond that defendants must post to stay the execution of a judgment in Nevada. If a defendant can establish that it is a qualified small business, then the upper limit on the bond is set at $1 million. This bond limit would not change any other aspect of the law—meaning it does not change the rules by which the trial is conducted or affect who ultimately wins or loses the lawsuit—nor affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. This limit is essential to guaranteeing that all defendants are treated fairly and are able to exercise fully their right to appeal without being forced to declare bankruptcy or to settle the case before the completion of appellate review.

Senate Bill 134 is essential to protecting the rights of plaintiffs. By ensuring that defendants are not bankrupted by huge appeal bond requirements, the limit would help guarantee that plaintiffs who obtain judgments will have solvent defendants from whom they can collect. Plaintiffs are also protected by the provisions in S.B. 134 by allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment. Senate Bill 134 thus would not injure plaintiffs in any way, but would guarantee that all defendants, no matter how large the judgment against them, can exercise their right to appeal.

For the foregoing reasons, we should pass S.B. 134.

Chair Brower:
Your introduction reminded me of two cases from the recent past that illustrate this problem. One involved Pennzoil as the plaintiff and Texaco as the defendant. Texaco was on the wrong end of a $10.5 billion verdict and it went bankrupt because it could not afford to post an appeal bond, which is never a good thing for the judgment creditors. In another case, Philip Morris was on the wrong end of about a $10 billion verdict, and but for the court's intervention in allowing a smaller bond to be posted, it would not have been able to pursue its appeal. The verdict against Philip Morris was reversed on appeal. This is an important issue.

Ray Bacon (Nevada Manufacturers Association):
Judgments are often collected from the manufacturer. Consequently, this is a vital interest to the Nevada Manufacturers Association. There are roughly 2,000 manufacturers in the Department of Employment, Training and Rehabilitation

database. There are 217 manufacturers that have more than 40 employees. That means that roughly 1,950 are small businesses. The small business provision in S.B. 134 is critical to our industry.

George Ross (American Tort Reform Association):
Senate Bill 134 is essential to improving the business climate in Nevada and to making Nevada competitive with states that have bond caps. Senate Bill 134 furthers the cause of justice. A corporation that has a judgment against it should not be required to risk financial solvency to appeal. Whether the corporation wins or loses, it has a right to justice.

Randi Thompson (National Federation of Independent Business):
We support S.B. 134 and agree with the statements of Mr. Bacon. Sixty-two percent of new job growth in America is because of small businesses. Appeal bonds impact small and large businesses. Since 2000, 39 states have reformed their appeal bond statutes by capping the amount that must be posted. In Wyoming, a defendant cannot be required to pay more than $25 million to stay execution of a judgment. In Hawaii, the cap is $1 million. We applaud your efforts to keep up with and stay competitive with other states. Small businesses mean growth in our State, and protecting small businesses ensures continued job growth.

Justin Harrison (Las Vegas Metro Chamber of Commerce):
We support S.B. 134 and agree with the statements of the previous testifiers. Tort reform has been a long-standing priority for the Las Vegas Metro Chamber of Commerce. Through reform, Nevada can be on par with other states, thus creating a greater incentive for economic growth and job creation. The proposed $50 million bond cap and $1 million cap for small businesses affords defendants the right to exercise an appeal without fear of bankruptcy while providing recourse for plaintiffs. My colleagues from The Chamber in northern Nevada could not be here today, but they also support S.B. 134.

Loren Young (President, Las Vegas Defense Lawyers):
We concur with Senator Roberson and the others who spoke in support of S.B. 134. It is important that not only the right to pursue litigation be protected, but also the right to appeal a judgment. This bill does both. It also protects a litigant who has received a judgment from assets dissipation during the appeal process.

Matt Sharp (Nevada Justice Association):
The constitutional right to trial by jury must remain inviolate. That right is protected in the Nevada Constitution and the United States Constitution. I believe in the separation of powers. The judicial branch of government, i.e., the court system, is in the best position to address appeal bonds. I generally agree that there should be discretion to permit bonds to be posted in an amount less than the judgment. I think this is best decided by the litigants and the court. The award of damages to an injured party is determined by a jury; however, every litigant should have a right to appeal in accordance with the rules. An appellant bond is a secured interest. I know of no small business or bank that would say a fair secured interest would be $1 million for a $3 million judgment. That does not protect the prevailing injured party. I am not aware in Nevada of any business being forced into bankruptcy merely because of a supersedeas bond requirement. If a deadbeat creditor happens to qualify as a small business and decides not to pay a $10 million loan, it can just ride the appeals process with a $1 million bond. If possible, I would like to work with the Committee on an accommodation of Senator Roberson's concerns.

Senator Ford:
How many states do not have appeal bond caps?

Senator Roberson:
Twenty-four states have an upper limit of $50 million. Five states do not require a defendant to post a bond at all. The bond limits in the states that do have limits range from $1 million to $150 million.

Senator Ford:
Do the majority of states that have limits set the limit at $50 million?

Senator Roberson:
Yes, and that is what S.B. 134 proposes.

Senator Ford:
Section 2 subsection 4 of S.B. 134 says the provisions of this section "do not limit the discretion of the court, for good cause shown, to set the bond on appeal in an amount less than the amount otherwise required by law." Have you given thought to allowing discretion to go above the amount otherwise required

by law? If an injury is $500 million, a $50 million bond is woefully deficient to deter someone from simply riding out an appeal. Would you consider allowing the court discretion to go up or down under certain parameters?

Senator Roberson:
I am always open-minded as you know, Senator Ford, but I like S.B. 134 the way it is. If a plaintiff can show asset dissipation by a preponderance of evidence, then a judge can require a higher bond. There is a problem with Nevada courts. That is why we are on the *Judicial Hellholes* Watch List. That is why I am bringing this legislation to fix some of the problems that we have with our legal system.

Senator Ford:
What parameters are appropriate for the court to consider in exercising discretion in lowering the bond?

Senator Roberson:
Are you suggesting we tighten or limit discretion to lower the amount?

Senator Ford:
I am wondering what the court should consider when deciding to reduce the bond below the cap. Comparably, if we were to agree that discretion should be allowed to increase the bond above the cap, what parameters would be appropriate for the court to consider?

Senator Roberson:
I am certainly willing to work with you, Senator Ford.

Chair Brower:
The point behind S.B. 134 is that security beyond $50 million is useless. It is virtually impossible for it to be posted. Above a certain number—most states have picked $50 million—it becomes an absurdity. It is hard to come up with a rationale behind a higher number.

Senator Ford:
You may be right, but I do not know that to be the case. I have not seen any statistics or studies establishing that. In fact, if some states go up to $150 million, then it may be that $150 million is the amount beyond which it becomes an absurdity. Ultimately, I would like to know the answers to those

questions as we deliberate this issue, because there is a fine balance between an aggrieved person being able to recover and a defendant, who may have been wrongfully found liable, needing to appeal. I am happy to try to find that balance, but we do not have enough information on the record today to make an informed decision.

Senator Segerblom:
What about in the case of an insurance company with an insurance policy that would cover a $500 million verdict? Should they post the bond? Do you know what the definition of small business is in the Small Business Act?

Senator Roberson:
I can provide that definition to you.

Senator Segerblom:
It sounds like the basic premise for S.B. 134 is that in Nevada, a jury verdict is suspect.

Senator Roberson:
No. I did not say that. I think every defendant has the right to appeal. They have the right to justice.

Senator Segerblom:
Why should they not be required to go to court and ask for a bond reduction?

Senator Roberson:
I like S.B. 134 as proposed.

Senator Segerblom:
The *Hellhole* Website appears to be the American Tort Reform Foundation.

Senator Roberson:
Yes.

Senator Segerblom:
Is that where the language in S.B. 134 comes from?

Senator Roberson:
No. This is my bill. I would be happy to work with you if you want to bring forth modifications.

Remainder of page intentionally left blank; signature page to follow.

Chair Brower:
We will close the hearing on S.B. 134. We are adjourned at 2:33 p.m.

RESPECTFULLY SUBMITTED:

Connie Westadt,
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. 131	C	2	Nevada Court Reporters Association	Letter of Support
S.B. 131	D	2	Nevada Court Reporters Association	Compensation Rates