

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
March 6, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:01 p.m. on Friday, March 6, 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 Aaron D. Ford

**COMMITTEE MEMBERS ABSENT:**

Senator Tick Segerblom (Excused)

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Cassandra Grieve, Committee Secretary  
Lynette Jones, Committee Secretary

**Chair Brower:**

I will open the work session for Senate Bill (S.B.) 154.

**SENATE BILL 154:** Revises provisions relating to common-interest communities.  
(BDR 10-725)

**Patrick Guinan (Policy Analyst):**

I will read from the work session document on S.B. 154 ([Exhibit C](#)). Randy Watkins proposed an amendment to the bill at the initial hearing,

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requesting the newly approved continuing education be designated as legal education as it relates to chapters 116 and 116A of *Nevada Revised Statutes* (NRS) and *Nevada Administrative Code*.

**Chair Brower:**

Senator Harris, you are the bill sponsor. Do you approve of the proposed amendment?

**Senator Harris:**

Yes.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 154 WITH THE AMENDMENT FROM RANDY WATKINS REQUESTING THE NEWLY APPROVED EDUCATION BE DESIGNATED AS LEGAL EDUCATION.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 160.

**SENATE BILL 160**: Enacts provisions governing the liability of owners, lessees or occupants of any premises for injuries to trespassers. (BDR 3-939)

**Mr. Guinan:**

I will read from the work session document for S.B. 160 ([Exhibit D](#)). Senator Brower submitted Proposed Amendment 9724.

Proposed Amendment 9724 adds a definition of the term "trespasser" in section 1, subsection 4. The language is amended to read, "As used in this section, 'trespasser' means any person who enters or remains upon any premises owned, leased or occupied by another without express or implied consent."

The second proposed amendment adds language to chapter 41 of the NRS to provide immunity from liability to "a person who creates, sponsors, owns, or produces public art, or the owner, lessee or occupant of any estate or interest in any premises where such art is displayed."

**Chair Brower:**

During the hearing, there was discussion regarding the definition of "trespasser." The language in section 1, subsection 4 provides a definition from Wisconsin statute. The definition makes clear Girl Scouts, Latter-day Saints missionaries and political candidates would not be considered trespassers. It is clear from caselaw around the Country that people in these categories are deemed "implied invitees." Those on the premises of another with expressed or implied consent would not be considered trespassers and would not be impacted by S.B. 160.

The proposed amendment to chapter 41 of NRS comes from the testimony of the Nevada Museum of Art. The museum requested additional language be added to clarify if appropriate warnings are posted, the museum or owner in the position of the museum would not be liable for injuries sustained by those who deface, destroy or damage the art in question. This proposed amendment has been vetted by all concerned parties and there are no objections.

**Senator Ford:**

I agree with the amendments. I understand the proposed definition of a "trespasser." I want to confirm sufficient time will be given to leave the premises before a person can be deemed a trespasser.

**Chair Brower:**

If an implied invitee is asked to leave and does not within a reasonable period, the person's status converts from an implied invitee to a trespasser. For example, Senator Kihuen goes to a person's door to introduce himself, and the constituent asks him to leave. Senator Kihuen will have a reasonable period to leave before he is considered a trespasser under the bill.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 160 WITH PROPOSED AMENDMENT 9724.

SENATOR HARRIS SECONDED THE MOTION.

**Chair Brower:**

Senator Roberson, you are the sponsor of the bill. Do you agree with the proposed amendments?

**Senator Roberson:**

Yes, I support the bill with the proposed amendments.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 161.

**SENATE BILL 161**: Revises provisions governing product liability. (BDR 3-949)

**Mr. Guinan:**

I will read from the work session document on S.B. 161 ([Exhibit E](#)). Senator Brower has submitted Proposed Amendment 9744 changing section 1, subsection 2, paragraph (d) to read,

The seller failed to exercise reasonable and product appropriate care in assembling, maintaining, storing, transporting or repairing the product or in conveying to the user or consumer of the product the manufacturer's labels, warnings or instructions and such failure was a proximate cause of harm for which recovery is sought.

Section 1, subsection 2, paragraph (i) deletes language referring to bankruptcy and replaces it with "to be insolvent." Section 1, subsection 3 will be deleted from the bill in its entirety.

**Chair Brower:**

As the proponent of the proposed amendments, I will explain the intent of the changes. The proposed language added to section 1, subsection 2, paragraph (d) and the deletion of section 1, subsection 3 were suggested by the Nevada Manufacturers Association. The proposed language broadens the scenarios allowing a seller to be sued in this context. These changes make sense.

The Nevada Justice Association requested a change to section 1, subsection 2, paragraph (i) to allow a suit against the seller when the manufacturer has been determined insolvent by the court.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 161 WITH PROPOSED AMENDMENT 9744.

SENATOR HARRIS SECONDED THE MOTION.

**Senator Ford:**

I agree with the proposed amendments based on testimony provided in the hearing. The amendments provide the answer to my question regarding the insolvency issue. There were other issues discussed with the bill sponsor, and the suggested amendments were not accepted. I requested adding the definition of “substantial control” to section 1, subsection 2, paragraph (a).

Section 1, subsection 2, paragraph (e) contains provisions related to the seller having “actual knowledge” of a defect. This is almost impossible to prove and implies the seller should have known about the defect. I am also concerned that S.B. 161 does not clearly address tolling of the statute of limitation. I recommend the bill be amended to state the statute of limitation does not expire until after the close of the discovery process in the event it is not known what the seller did with the merchandise. I cannot support S.B. 161 as a whole unless my suggestions are amended into the bill.

**Chair Brower:**

Thank you very much, Senator Ford. Let me try to address those because they are very valid points, needless to say. With respect to substantial control issue, I’ve taken a look at other states that have passed similar bills, and our substantial control language seems to be the standard. Not every statute has the same language, but that seems to be the most common. And I think frankly it works. It’s good enough. The same is true of the actual knowledge language in that subsection, which is the subsection or exception (e), if you will. I think that “actual knowledge” is the more common language for this type of bill, and I also think that that will work fine in practice. And with respect to the statute of limitations, or the tolling issue, let me just take a minute of the Committee’s time to make clear on the record how I see that issue

and why I don't think the proposed amended version of the bill is problematic.

It's clear, I think from the research that staff and I have done, that caselaw in Nevada and elsewhere around the Country, applying the so-called discovery rule, would prevent the type of problem that you raised, Senator Ford. Therefore under the discovery rule, if a plaintiff after a reasonably diligent effort is not able to develop facts that would allow for a suit against the seller under the various exceptions (a) through (i) in this bill, and therefore sues only the manufacturer as the bill would require, and then during discovery in the case, discovers facts that would allow for one or more of the exceptions articulated in subsections (a) through (i) to apply, which [sic] would then allow for the seller to be sued. In that situation, the plaintiff would not be time-barred because the 2-year statute of limitations that would apply to the action will not yet have begun to run as against the seller—not until the plaintiff obtains information, discovers facts that give rise to one of the exceptions and allows the seller to be sued. There seem to be many cases of from our State and from others that confirm the discovery rule and its impact on the scenario that Senator Ford suggests.

For example, in Nevada, *Wagner v. Chevron U.S.A., Inc.*, 281 P.3d 1228 (Nev. 2009), states the discovery rule tolls the statute of limitations “until the injured party discovers or reasonably should have discovered facts supporting a cause of action.”

The 1998 Nevada case, *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1998), cited a 1989 Wisconsin case, *Spitler v. Dean*, 148 Wis.2d 630, 436 N.W.2d 308 (1989). The Wisconsin case determined “The statute should not commence to run until the plaintiff with due diligence knows to a reasonable probability of injury, its nature, its cause, and the identity of the allegedly responsible defendant.”

Citing the discovery rule, the New Jersey case, *Caravaggio v. D'Agostini*, 166 N.J. 237, 765 A.2d 182 (2001), said “... the doctrine postpones the accrual of a cause of action so long as a party reasonably is unaware either that he has been injured, or that the injury is due to the fault or neglect of an identifiable individual or entity.”

In the Nevada case, *Nogle v. Beech St. Corp.*, No. 2:10-CV-01092-KJD, 2013 WL 2405272 (D. Nev. May 31, 2013), a U.S. District Court said the plaintiff correctly asserts that under the discovery rule the statute of limitations should not begin to run “until the plaintiff with due diligence knows ... the identity of the allegedly responsible defendant.” The court quoted the *Siragusa v. Brown* case.

In the 2007 Nevada case, *McCreary v. Wyeth*, 2007 WL 4206835 (2007), a Second Judicial District Court judge said Nevada, unlike some other jurisdictions, does require more than a mere suspicion. An action does not accrue “until the plaintiff discovered or should have discovered all facts material to the cause of action.” The judge also cited the *Siragusa* decision.

Finally, and perhaps most directly on point with respect to one scenario that has been raised, there is a valid scenario to consider. The Supreme Court of Tennessee heard an appeal from a lower court with respect to a similar statute in Tennessee.

In that scenario, and the specifics of the Tennessee case were as follows: plaintiff sues an auto dealer and Chrysler alleging a product defect. Plaintiff’s counsel then realizes that Tennessee law, not unlike the bill we are considering today, doesn’t allow the seller to be sued absent certain factual exceptions to the general rule. So, the plaintiff dismisses the seller. Then during the course of litigation against Chrysler, Chrysler becomes—goes bankrupt, becomes insolvent. Plaintiff tries to add then the seller to the case and the seller’s attorneys argue that the statute has run. In fact, it had run had it accrued from the date of the injury. But what the Tennessee Supreme Court said is that—for that—in that scenario the statute of limitations doesn’t run from the date of the injury, it runs from the date in that case, that Chrysler became insolvent or more accurately from the date that the plaintiff discovered the fact that the manufacturer defendant became insolvent. And so the plaintiff was allowed to add to the case the seller despite the fact that the statute otherwise had run. The statute of limitations had run and had expired vis-à-vis the seller.

And so, taking all of that together, particularly the Nevada cases on point, the concerns very legitimately raised by Senator Ford I

think are taken care of by the common law discovery rule, which does apply in Nevada.

And so, let me be clear for the record. In the event that one of the exceptions in the bill, one of the exceptions (a) through (i), comes to light upon due diligence by the plaintiff—comes to light only during the course of the case pending—it would seem to me that the seller could be added pursuant to one of those exceptions without a statute of limitations problem precluding the addition of the seller as a defendant.

So again, I think all things considered, the discovery rule would apply and the plaintiff would not be without a defendant from which to seek a remedy.

**Senator Ford:**

I am satisfied with the information you provided regarding the discovery rule. I still object to S.B. 161 because of other issues raised. The Committee has an understanding of how the discovery rule is applied in these circumstances.

**Chair Brower:**

The scenarios I provided the Committee may not be as clear and comprehensive as in a legal brief or if the issue was argued before the Nevada Supreme Court. I made it clear the discovery rule applies and would mitigate, if not eliminate, a scenario in which a plaintiff is without a remedy.

THE MOTION CARRIED. (SENATORS FORD AND KIHUEN VOTED NO.)

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**Chair Brower:**

I will close the work session. The meeting is adjourned at 1:26 p.m.

RESPECTFULLY SUBMITTED:

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Lynette Jones,  
Committee Secretary

APPROVED BY:

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Senator Greg Brower, Chair

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

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	2		Attendance Roster
S.B. 154	C	2	Patrick Guinan	Work Session Document
S.B. 160	D	5	Patrick Guinan	Work Session Document
S.B. 161	E	4	Patrick Guinan	Work Session Document