

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
March 10, 2015**

The Senate Committee on Judiciary was called to order by Vice Chair Becky Harris at 1:02 p.m. on Tuesday, March 10, 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

OTHERS PRESENT:

Braden Schrag, Las Vegas Metropolitan Police Department
James Lopey, Fusion Liaison Officer Coordinator, Nevada Threat Analysis Center, Investigation Division, Department of Public Safety
Dennis Osborn, Chief, Nevada Highway Patrol, Department of Public Safety
Doug Kassebaum, Nevada Highway Patrol, Department of Public Safety
John T. Jones, Jr., Nevada District Attorneys Association
Bob Roshak, Nevada Sheriffs' and Chiefs' Association
Eric Spratley, Lieutenant, Sheriff's Office, Washoe County

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Steve Yeager, Office of the Public Defender, Clark County
Sean B. Sullivan, Office of the Public Defender, Washoe County

Senator Harris:

I will open the hearing on Senate Bill (S.B.) 197.

SENATE BILL 197: Prohibits the filing of false or fraudulent liens or encumbrances against certain persons. (BDR 15-653)

Senator Greg Brower (Senatorial District No. 15):

I submit to the Committee a *New York Times* article addressing the growing issue of the filing of false or fraudulent liens ([Exhibit C](#)). The problem we seek to address with S.B. 197 affects law enforcement most acutely, but the bill also protects a broader subsection of Nevadans.

To give the Committee context of this problem, I will show a short video reporting how citizens use fraudulent liens to try to intimidate public officials ([Exhibit D](#)).

Liens place encumbrances on property and when falsely and fictitiously filed with county recorders, the problem is obvious. It is a growing trend to file fraudulent liens against public officials; it is an illegal tactic. The video I showed discussed the state of Georgia, one of 34 states that have passed legislation similar to S.B. 197. Under Nevada law—and it is against the law—filing a fraudulent lien against another person is a Category C felony. Senate Bill 197 increases the penalties for the filing of such liens against certain categories of public officials.

The filing of fraudulent liens is an illegal tactic used as nonviolent, yet very damaging, retribution against public officials, such as judges, prosecutors, legislators and jurors. Fraudulent liens intend to do harm by adversely affecting credit, undermining financial transactions, such as the selling or refinancing of a home, and creating fear and intimidation in the persons and families whose lives are targeted.

Nevada Revised Statute (NRS) 205.395 already makes it a Category C felony to knowingly record a false lien against any person for any reason. Senate Bill 197 increases the penalty for recording a false lien against a public or quasi-public official, including the following categories of persons: public officers, candidates

for office, public employees or participants in official proceedings, which includes jurors, witnesses in a judicial or administrative proceeding, referees, arbitrators, appraisers and assessors, or any other person authorized by law to hear or determine any controversy or matter when the fraudulent recording is based upon the performance of those persons' duties.

If Senator Harris's neighbors record a fraudulent lien against her because they do not like the way she cuts her grass, that is a crime, but it does not fit under S.B. 197. If Senator Harris's neighbors file a false lien against her because they do not like what she is doing as their State Senator, that fits under this new bill.

To be guilty of such a crime, a perpetrator must have known, or have had reason to know, that the lien recorded is forged, contains a false statement of material fact, or is recorded in bad faith or for the purpose of harassing or defrauding.

The bill also includes a series of penalties for this new version of the crime. The first offense is a Category B felony; the second offense is a Category B felony with an enhanced mandatory prison term. Senate Bill 197 provides for an enhanced prison term if the false lien filing is done pursuant to a pattern. An example of a pattern on the part of the perpetrator is filing fraudulent liens against all 63 Legislators. The bill also includes certain civil penalties.

Senator Ford:

The video shown was about the state of Georgia. How prevalent is this issue in Nevada? Is it appropriate to include a "has actual knowledge" standard in the language as opposed to "or has reason to know?"

Senator Brower:

To answer your first question, witnesses will testify about how prevalent this problem is in Nevada. Regarding your second question, when someone is making the fraudulent recording on behalf of someone else, that person may not have actual knowledge of the falsity of the recording, but he or she certainly has reason to know because someone has put him or her up to it. We can discuss that further; it is a valid concern.

I submit an amendment to S.B. 197 that deletes section 1, subsection 7, paragraphs (e) and (f), replacing it with new language ([Exhibit E](#) and [Exhibit F](#)). After the bill was drafted, we realized that the definitions of public employee

and public officer referenced in other statutes did not include judicial officers. It is important that judges be included in this bill. We have proposed new wording that references a section of the NRS clarifying that judges are a part of the category of public officers and officials.

Senator Harris:

I can tell by the language in section 1, subsection 7, paragraph (d), where you define "participant in an official proceeding," that the intention is to make the list broad and not have it be an exclusive list. I did notice, however, that mediator is not on the list; there is arbitrator but not mediator. Nevada is increasingly moving toward utilizing mediation to dispense with controversies and concerns. Please consider adding that classification to the bill.

Senator Brower:

We will consider that. The idea with the amendment is to include any category of person who might be the target of fraudulent liens because of his or her official or quasi-official capacity. I think your idea fits well into S.B. 197.

Braden Schrag (Las Vegas Metropolitan Police Department):

I will give a brief national overview of how fraudulent liens originate, the determinations on the fees charged in the liens and examples from across the Country.

Fraudulent liens are filed because an individual has perceived an injustice from perhaps a citation that was given, an arrest that was made or perhaps an unfavorable outcome of a court hearing. These liens are often used as retribution, intentional harassment or as a means of intimidation. Those impacted by fraudulent liens can be court and judicial personnel, fire service personnel, and law enforcement.

These liens are often filed in the multimillions of dollars. One case I found was a \$100 billion lien against a public official. The dollar amount of the fraudulent lien is derived from a schedule of fees that an individual has filed with a county clerk's office. The cost amounts listed in the lien can be fees an individual has charged for time he or she spent speaking to a public official, meeting with an assessor or meeting with a prosecuting attorney. The charges also reflect the amount of time an individual spent preparing court documents or for being in court. These perpetrators may file charges with fees for every time their names

are used in official documents. These liens do not have a legitimate purpose but are designed to intimidate or harass.

In Manatee County, Florida, two judges who presided over a decision that was not favorable to the defendant had a \$50 million lien placed on their personal property by the defendant in retaliation.

In Chicago, Illinois, a former U.S. attorney and court personnel had liens placed on their personal property in the sum of \$100 billion in retribution for the ruling on the defendant's case.

Two federal judges were the victims of false liens for \$19 million.

A final example from Camden, New Jersey, involves a judge and 20 court personnel who had \$41 million in liens placed against them. The same defendant even filed fraudulent liens in a second state—so this was a pattern of false liens.

Senator Harris:

How was the penalty amount determined?

Mr. Schrag:

The individuals filing the lien determine the amount of the fees. If I file a lien, I also file a schedule of fees as a private citizen. I would have my own personal set of fees

Senator Harris:

I am referring to the penalties listed in S.B. 197.

Senator Brower:

A survey from other states' laws was conducted. Mr. Schrag, Senator Harris has a question about the penalties in S.B. 197 and how we arrived at those amounts.

Regarding the schedule of fees in a fraudulent lien, there is no logic to how the perpetrators come up with the size of their liens. Regardless of how outrageously high the amount of the lien, it is still an encumbrance on personal property. Whether the lien is \$10 or \$100 billion, if you do not owe it, it is your problem to solve.

Mr. Schrag:

Our legal department determined the penalty fees in S.B. 197. If you need further information on how they determined the amounts, I can provide it.

James Lopey (Fusion Liaison Officer Coordinator, Nevada Threat Analysis Center, Investigation Division, Department of Public Safety):

As the Fusion Liaison Officer Coordinator, I am aware of antigovernment activity across the State, including incidents regarding sovereign citizens. A self-avowed sovereign citizen is a person who embraces an ideology that clashes with public sector employees, such as police officers, judges, firefighters and county recorders. Additionally, private industries, such as financial institutions and mortgage firms, suffer repercussions from tactics used by sovereign citizens.

A sovereign citizen believes that the Fourteenth Amendment of the U.S. Constitution created two separate classes of citizens: those who are voluntary and those who choose to be sovereign. Sovereigns believe that if they engage in contracts with the government, they become a voluntary citizen—something they do not wish to become. Because of this rationale, sovereigns avoid contractual ties with the government by shunning the acquisition of driver's licenses, social security cards, vehicle registrations, birth certificates, hunting and fishing licenses, etc.

Sovereign citizens believe that if they choose the sovereign ideology, then the vast majority of conventional laws do not apply to them. Having this belief means there is a propensity for noncompliance when sovereigns come into contact with those in the public sector.

I want to outline examples of antigovernment sovereign citizen activity in Nevada.

In late 2013, in Humboldt County, a Nevada Highway Patrol (NHP) trooper issued a citation to a self-avowed sovereign citizen for not having a valid driver's license. In early 2014, the Justice Court, the Attorney General and the State trooper who issued the citation each received the first of many packets of legal documents that the sovereign sent in an attempt to coerce the court into dropping the citation. This sovereign asserted that the courts had no jurisdiction. The situation is ongoing and the most current submission by this individual was a Waiver of Tort claiming several elected officials acted outside of their duties; the same document outlines penalties against those elected

officials. The document also lists a \$2 million charge against various State agencies, compensating for the time the sovereign has spent fighting the citation.

In 2013, there was an incident in Lake Tahoe where firefighters confronted an individual associated with an illegal burn. The individual, a self-avowed sovereign citizen, recorded the incident with the firefighters and was generally uncooperative. The firefighters wrote the sovereign a citation and the situation eventually required the battalion chief to place this person under citizen's arrest because he refused to sign the citation. The individual stated he would not cooperate because he was a sovereign citizen and the firefighters had no jurisdiction. Since that incident, the individual has made repeated efforts to find the firefighters who cited him. There is a fear that this individual will attempt to file liens or sue the firefighters personally.

In 2013, a self-avowed sovereign was stopped by NHP in Nye County because his vehicle had a fictitious license plate, a common practice among sovereigns. This individual produced a Common Law Vehicular Judicial Notice Constitutional Driver's License, which is also a common document used by sovereigns.

Sovereigns will often not have state-issued driver's licenses. Sovereigns will argue with troopers that they do not have to have valid driver's licenses but are legal to drive because they are sovereign. In this case, the sovereign refused to cooperate with the trooper and refused to exit his vehicle. He was eventually arrested on numerous charges, refused to identify himself and was in jail for several days until he was eventually identified.

In another incident, a California fugitive engaged authorities in a high-speed pursuit before being stopped by NHP in Nye County. The individual was suspected of being a sovereign because his vehicle had a fictitious license plate. After being stopped, the individual refused to recognize the authority of the trooper and refused to roll down the window. The individual then reached for a wrapped object, later discovered to be a loaded firearm. The individual had to be pulled from his vehicle and was arrested on several charges.

Another example of sovereigns acting in Nevada involved two NHP troopers who were subjected to tort claims and frivolous liens. One of the troopers is here today to testify on his experience.

Nevada has ongoing and regular criminal activity involving sovereigns. I want to give the Committee an idea of what law enforcement is experiencing in the State.

The federal government has passed similar legislation to what we seek in S.B. 197. The Court Security Improvement Act of 2007, Public Law No. 110-117, created a new criminal offense for filing false liens against the real or personal property of officers of the federal government. The Act also created a new crime of disclosing personal, identifying information to intimidate or incite violence against individuals.

Sovereign activity will continue to grow in Nevada. We support enhanced penalties for this crime, including provisions to protect against incessant and harassing “paper terrorism.”

Senator Ford:

This issue needs to be addressed; however, I question the punishments listed in the bill. Do you know if the penalties under federal law are comparable to the ones in S.B. 197? Are these penalties too onerous for what we are trying to stop? Two years in prison, Category B felony, punitive damages, reasonable attorney’s fees—are these penalties comparable to the federal law?

Senator Brower:

I do not have the federal statute in front of me, so I cannot speak to the specific details of the law. The penalties in S.B. 197 are based upon a survey of other states’ statutes. Some states are more lenient; some are comparable. The penalties in S.B. 197 are harsh, but justifiable.

This type of crime is not committed accidentally. It is not committed by somebody trying to feed a drug habit. It is not committed by someone too drunk to know what he or she was doing at the time. These crimes are intentional and specific and do great harm. An individual does not accidentally get caught up in this sort of criminal activity. The people who commit these crimes do so with a specific intent to accomplish a specific goal, and that goal is to harm public officials. The penalties are harsh, but they are appropriate.

Senator Ford:

Fair point. The bill also creates a private right of action—a civil action—that can be brought by “any person who is damaged by a violation of this section.”

While I see a judge bringing action, does S.B. 197 also contemplate the judge's wife bringing action?

Senator Brower:

Yes, if the judge's wife jointly owns the property, she is thereby also affected by the false lien. The point of the private right of action part of the bill is if the government chooses to prosecute and if the government is successful in its prosecution, the decision may not make the affected person whole.

For example, the public official under attack is a homeowner. In order to sort out the mess created by the false liens, an attorney is hired. Hiring an attorney costs money that would not be recouped, even by way of a successful prosecution.

Senator Ford:

Do you really mean any person who is damaged—without limitation? I am concerned we are being too broad relative to who can enforce this. What if someone down the chain of title has taken an action, or not, based on a lien. Is that what you want to accomplish with this language, or are you only talking about the judge and his wife?

Senator Brower:

Yes, we want the bill to be that broad. The key is this: the plaintiff in such an action has to establish that he or she was damaged. The idea is that any individual who can prove that he or she was damaged by way of this fraudulent conduct should have a means of being compensated for that damage.

Dennis Osborn (Chief, Nevada Highway Patrol, Department of Public Safety):

We support S.B. 197. Trooper Doug Kassebaum was a victim of a false lien filed against him. Several times a year, troopers have false liens filed against them. The Office of the Attorney General (AG) does an outstanding job of resolving these cases, but the AG staff is spending considerable hours defending them.

Doug Kassebaum (Nevada Highway Patrol, Department of Public Safety):

I am a trooper with the NHP in the Yerington area of Lyon County. I have been a trooper for 19 years.

In 2003, I had an experience that immensely affected my family and me. I made a routine stop on a vehicle for speeding. I approached the individual, asked for his driver's license and registration, and advised him why he was stopped. At that point, the stop was routine. After I issued the citation, the violator asked me for my business card. That request alarmed me because what I do is not a business, it is a service.

At the time, I was in the process of building a house and I was about halfway through construction. Several days after the incident with the individual, my title company called and asked about a lien on my property. I eventually learned there was a tort claim filed against me for \$6 million ([Exhibit G](#)).

I contacted chain of command through NHP, who sent me to the AG's Office. Ultimately, the AG's Office was able to resolve the problem, but it took almost 6 months for them to do so ([Exhibit H](#)). The situation affected me greatly. When I borrowed money to build my house, there was a stipulation that if any liens were assessed, my property would be seized. The situation was hard for my wife, too.

John T. Jones, Jr. (Nevada District Attorneys Association):

We support [S.B. 197](#).

Bob Roshak (Nevada Sheriffs' and Chiefs' Association):

We support [S.B. 197](#).

Eric Spratley (Lieutenant, Sheriff's Office, Washoe County):

We support [S.B. 197](#).

Steve Yeager (Office of the Public Defender, Clark County):

We support the concept of [S.B. 197](#) and the creation of the additional protected persons. We support the civil right of action. We are in opposition to the criminal penalty provisions in section 1, subsections 2 and 3.

The penalties, especially the term of imprisonment, are too great. Reducing the minimum amount of imprisonment would be more acceptable. The bill now reads: 2 to 10 years, 4 to 20 years, 6 to 20 years and 8 to 20 years. We do not have a problem with the maximum being 20 years, but we would like judges to have more discretion on the minimum and to take into consideration the particulars of each case.

I remind the Committee that this is a nonviolent offense. To lend perspective, under the criminal statutes, attempted murder is punishable by 2 to 20 years, with 8 to 20 being the maximum penalty. We are essentially saying that this crime is equitable to attempted murder, which is disproportionate.

I listened to the testimony on cases in Nevada, but I did not hear an indication that those prosecuted were not appropriately convicted or that they did not serve an appropriate term of punishment. I do not see a need to increase the penalty.

Under existing law, this crime is a Category C or Category B felony. If more than one false lien is filed, the district attorney has the ability to file multiple charges. If someone abuses the system and files 20 lien charges, that equates to 20 Category C or Category B felonies. The judge has discretion in running the penalties concurrently or consecutively.

It would be better if the penalty provisions in this bill were scaled back. We have reached out to the bill's sponsor to work something out, but I do not think we are there quite yet. I am hopeful the bill's sponsors will continue to entertain suggestions so we can be neutral on S.B. 197.

Senator Ford:

Can you tell me the primary difference between statutes that offer a Category C felony versus this proposed bill's offer of a Category B felony?

Mr. Yeager:

Statute does not provide for an additional penalty for public officials, so S.B. 197 creates a new subset of protected persons. If you filed a false lien today, the first offense is a Category C felony, punishable by 1 to 5 years.

If you engage in a pattern of filing false liens, pursuant to page 5 of the bill, it is a Category B felony, punishable by 3 to 20 years. This means the judge must give you a minimum of 3 years but could go up to 8 years—3 to 20 minimum, 8 to 20 maximum.

With Senate Bill 197, those penalties will increase for this protected class of public officers or employees. Under S.B. 197, a first offense is a Category B felony, 2 to 10 years; a second offense, even without a pattern of misconduct,

is a Category B felony, 4 to 20 years. If someone engages in a pattern of misconduct, the penalty is 6 to 20 years or 8 to 20 years.

Our issue is that, in that fourth category of 8 to 20 years, a judge has no discretion but to give 8 to 20 years; there is no ability to give a reduced sentence on the front end. This means violators are given 8 years in a Nevada State prison before becoming eligible for parole.

Senator Ford:

I have a problem with the first offense. If you are a second and third offender, there is a larger issue going on, so I am less concerned about that punishment. The punishment meted out for the first offense, for any person, is a Category C felony, punishable by 1 to 5 years.

Do you think the bill attempts to elevate public officials over the "any person" scenario that is in statute by adding an additional penalty?

Mr. Yeager:

Yes, I do. I do not have a problem with the first offense being 2 to 10 years; it is the later offenses and their mandatory minimum that removes discretion from the judge. If somebody filed a lien on all 63 Legislators and filed those liens over a course of 4 days, under the definition in the bill, that person engaged in a pattern of misconduct. If that person were to be prosecuted for that pattern of misconduct, the judge would have no discretion and would have to give a penalty of 8 to 20 years.

Senator Ford:

Do you have an issue with the first offense?

Mr. Yeager:

I would be neutral if that was the only thing the bill was set to do.

Senator Ford:

Are there any different collateral consequences to the category of felony, for example, gun ownership? Are there differences between the categories of felonies associated with this type of crime?

Mr. Yeager:

No, I do not think there are collateral sanctions of the kind you are suggesting. With Category B felonies, there is no good time credit given on the front of an offense; when a minimum of 8 years is given, it is a hard 8 years.

If the offense is a Category C or Category D felony, good time credit on the front end is handled differently, with an offender ending up with a penalty of 5 or 5.5 years.

Senator Harris:

Your concern with the punishment provisions are the terms of years, but not the fine amounts?

Mr. Yeager:

That is correct. Our clients at the Public Defender's Office are not going to pay the fine anyway, although I understand why the fines are listed as they are. A judge would have discretion to assess a lesser fine.

Sean B. Sullivan (Office of the Public Defender, Washoe County):

I agree with Mr. Yeager's comments. I also am not as concerned about the monetary fines as I am about the enhanced incarceration. Vanessa Spinazola of ACLU of Nevada had to leave the meeting but signed in opposition to S.B. 197 for the same reason.

I have not seen a case like this yet, but a similar situation may occur with embezzlement cases. With embezzlement cases, I ask judges to allow the defendant a chance to make restitution or pay the fine. I ask you to consider that point.

Senator Harris:

Senator Brower, please give us your concluding remarks on S.B. 197.

Senator Brower:

Mr. Sullivan's testimony about arguing an embezzlement case is a great example of the type of case this bill does not address. There is a variety of reasons, including sympathetic, why someone might engage in the crime of embezzlement. Filing a fraudulent lien is a type of crime that one engages in only with an evil motive, a motive to harm other people. That evil motive is

what separates this type of crime from crimes like embezzlement or other property crimes.

The penalties in this bill are harsh, but they seem less harsh to one who has been a victim of this sort of activity.

To the extent that the sentence range in statute for attempted murder can be compared to any of the ranges in this bill, perhaps we have a problem with the sentence range for attempted murder.

Despite my stance on the penalties in S.B. 197, I want to make sure this bill works and I am open to amending the language. The bill makes sense given the laws of other states and given the gravity and type of crime we are talking about.

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Senator Harris:

I will now close the hearing on S.B. 197. Seeing no further business, I will adjourn the meeting at 1:50 p.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
Committee Secretary

APPROVED BY:

Senator Becky Harris, Vice Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 197	C	4	Senator Greg Brower	News Article in Support
S.B. 197	D	1	Senator Greg Brower	Link to News Clip in Support
S.B. 197	E	3	Senator Greg Brower	Proposed Amendment
S.B. 197	F	1	Senator Greg Brower	Proposed Amendment
S.B. 197	G	5	Doug Kassebaum	Tort Claim
S.B. 197	H	5	Doug Kassebaum	Notice of Recording Invalid Document