# MINUTES OF THE MEETING
# OF THE
# ASSEMBLY COMMITTEE ON JUDICIARY

## Seventy-Ninth Session
## April 11, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:06 a.m. on Tuesday, April 11, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/79th2017.

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Elliot T. Anderson (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Edgar R. Flores, Assembly District No. 28
Assemblywoman Maggie Carlton, Assembly District No. 14

**STAFF MEMBERS PRESENT:**

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

**OTHERS PRESENT:**

Scott W. Anderson, Chief Deputy, Office of the Secretary of State
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
Tonja Brown, Private Citizen, Carson City, Nevada
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Alanna Bondy, Intern, American Civil Liberties Union of Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Kristin L. Erickson, representing Nevada District Attorneys Association
Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office
Mike Cathcart, Business Operations Manager, City of Henderson
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Scott K. Canepa, representing Nevada Justice Association
Beverly J. Miller, Private Citizen, Henderson, Nevada
Michael J. Gayan, Private Citizen, Las Vegas, Nevada
Tracy Rhodes, Private Citizen, Las Vegas, Nevada
Tom Gargus, Private Citizen, Sun Valley, Nevada
Eva G. Segerblom, representing Sun Mesa Homeowners' Association
Joshua J. Hicks, representing Nevada Home Builders Association
David Goldwater, representing Leading Builders of America
Josh Griffin, representing Nevada Subcontractors Association
Jesse Haw, President, Hawco Properties
Gary Milliken, representing Nevada Contractors Association
Victor Rameker, President, Nevada Home Builders Association; and Owner, Desert Wind Homes
Matt Walker, Chief Executive Officer, Southern Nevada Home Builders Association
Rocky Cochran, Vice President, Construction Operations, Pardee Homes, Las Vegas, Nevada
Rebecca Merrihew, representing Nevada Subcontractors Association
Jim Rampa, Director, Customer Service, Pardee Homes
Arthur White, President, Plumbing, Heating, Cooling Contractors of Nevada
Melissa J. Roose, representing Anthony & Sylvan Pools Corporation
Chris Barrett, Vice President, Business Development and External Affairs, Q&D Construction, Inc.
Aaron West, Chief Executive Officer, Nevada Builders Alliance
Lauren Brooks, representing Nevada Housing Alliance; and Nevada State Apartment Association

Don Tatro, Executive Director, Builders Association of Northern Nevada
Kevin Sigstad, Vice Chair, Nevada Association of Realtors
David R. Clayson, representing Las Vegas Defense Lawyers
Peter D. Krueger, representing National Electrical Contractors Association
Andrew Haskin, Director of Business Development, Northern Nevada Development Authority
James L. Wadhams, representing The Chamber, Reno, Sparks, Northern-Nevada; and Las Vegas Metro Chamber of Commerce
Gennady Stolyarov II, Lead Actuary, Property and Casualty, Insurance Division, Department of Business and Industry

**Chairman Yeager:**
[Roll was taken. Committee protocol and rules were explained.] We will first take Assembly Bill 476. Following that, we will likely do our work session, which will not take that long. Then we will go to Assembly Bill 438, and finish with Assembly Bill 462. That is the plan at the moment. We obviously have a very full agenda, but I am confident that we can get through it. With that, I will open the hearing on Assembly Bill 476.

**Assembly Bill 476: Revises provisions relating to notaries public. (BDR 19-1163)**

**Scott W. Anderson, Chief Deputy, Office of the Secretary of State:**
Assembly Bill 476 seeks to clarify certain provisions related to the Electronic Notary Public Authorization Act, which I will refer to as the Electronic Notary Act. This Act was originally adopted in 2009, but due to uncertainties surrounding e-notarization, a lack of national standards, and a lack of demand for electronic notarization, no activities or regulations have occurred. The Office of the Secretary of State has been approached regarding the need for e-notarization and will be moving forward with the development of processes, procedures, and regulations related to e-notarization. As we reviewed the current act, we found several provisions that would make it difficult to administer the eNotary program as the provisions are significantly different from those surrounding traditional notaries public. Assembly Bill 476 clarifies provisions relating to bonding, taking the oath, and training as an electronic notary public. More so, the bill aligns the term of appointment of an electronic notary public to be coterminous with the notary public's traditional notary appointment and the renewal of the appointment, which would be completed at the time the notary public renews his or her traditional appointment.

The bill also clarifies that the notary public must keep all notarial records for seven years after the termination of the notary appointment and clarifies procedures for notifying the Secretary of State if the technology used for electronic notarization is terminated or rendered useless. The bill also includes provisions currently in notary law that requires a statement that an authentication of electronic signature by the Secretary of State will not be used to harass a person; to accomplish any fraudulent, criminal, or unauthorized purpose; and provides for similar penalties for those relating to authenticating the notarization relating to the traditional notary.

We are currently developing the replacement program for our Notary Division processes, including enhancements for electronic notarizations. Assembly Bill 476 will allow the office to move more efficiently forward with the implementation of the Electronic Notary Public Authorization Act.

**Assemblyman Pickard:**
We heard some testimony on a prior bill about the e-notarization. What kind of time frame do you anticipate for the regulations in terms of when you think they will go to hearing and be adopted?

**Scott Anderson:**
Please remember that e-notarization is not remote notarization. They are two different things. E-notarization would still require a personal appearance before a notary public and the notary public would then affix their electronic signature and electronic notary stamp to the electronic document. As far as the regulations are concerned, we are in the process of looking at what needs to be done. It will probably be this summer when we have those hearings. Hopefully, we will have those before the Legislative Commission by the end of this year.

**Chairman Yeager:**
In section 10, there are some criminal penalties contemplated, particularly in subsection 4, that talks about, "A person who uses a document for which an authentication has been issued pursuant to subsection 1 to: (a) Harass a person; or (b) Accomplish any fraudulent, criminal or other unlawful purpose . . . ." I understand paragraph (b), but I wonder if there is specific conduct that you are contemplating or trying to capture in paragraph (a)? I am trying to think of a way someone could use an authenticated document to harass a person in a way that would not be fraudulent, criminal, or otherwise unlawful.

**Scott Anderson:**
Off the top of my head, I cannot give you a specific action that would be harassment. We just put the same provisions that are in current notary law into the Electronic Notary Act authentications.

**Chairman Yeager:**
Is the current statutory framework for notaries where that language is taken from criminal language? Section 10 of the bill seeks to criminalize certain conduct by electronic notaries public. Is similar conduct criminalized for regular notaries public as it stands right now?

**Scott Anderson:**
Yes. They are basically the same provisions.

**Assemblyman Thompson:**
In section 5, where you are talking about it being coterminous, and they have to renew their electronic notary at the same time as the regular notary. Are the fees doubled or is there one combined fee?

**Scott Anderson:**
There is an additional fee to be registered as an electronic notary. The original language was to have the term as two years from the time the electronic notary applied for the appointment. That caused multiple deadlines and multiple filing requirements. However, there is a separate filing fee for electronic notaries to become an electronic notary. That would be on top of the traditional notary fee.

**Assemblyman Ohrenschall:**
Section 6, subsection 3, paragraph (a), is the new instructions for notaries. Are the class requirements a brick-and-mortar class, or an online class? Is the class available now? How will that work?

**Scott Anderson:**
We can have a brick-and-mortar training course; however, in December 2015 we started our electronic web-based training course. Since that time, we have not needed a brick-and-mortar training course. All training has been done online and there has not been a call for the brick-and mortar class. The training for the electronic notary would also be online, which is currently under development.

**Assemblyman Ohrenschall:**
Will all of that be offered by the Secretary of State's Office?

**Scott Anderson:**
Yes.

**Chairman Yeager:**
Seeing no other questions, we will open for testimony in support of Assembly Bill 476. I do not see anyone in Carson City or Las Vegas, so we will go to opposition testimony. Is there anyone opposed to the bill? I do not see anyone. Is there any neutral testimony? Likewise, I do not see anyone, so are there any concluding remarks?

**Scott Anderson:**
Assembly Bill 476 is necessary for us to efficiently move forward with the implementation of the electronic notarization. We urge your support.

**Chairman Yeager:**
We will close the hearing on Assembly Bill 476. At this time, we will go to our work session. I will turn this over to Ms. Thornton to take us through the document.

**Assembly Bill 180: Enacts the Juvenile Justice Bill of Rights. (BDR 5-711)**

**Diane C. Thornton, Committee Policy Analyst:**
We have four bills on work session today. The first bill is Assembly Bill 180, which enacts the Juvenile Justice Bill of Rights (Exhibit C). Assemblywoman Monroe-Moreno sponsored the bill, and it was heard in Committee on March 13, 2017. The Assemblywoman submitted

a mock-up to the Committee. This mock-up changes certain language in the Juvenile Justice Bill of Rights in relation to the rights a child has who is placed in the care and custody of a detention facility. It also adds new co-sponsors to the bill: Assemblymen Frierson, Ohrenschall, and Thompson.

**Chairman Yeager:**
I am looking for a motion to amend and do pass. Is there any discussion on the motion?

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 180.
>
> ASSEMBLYMAN THOMPSON SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON AND TOLLES WERE ABSENT FOR THE VOTE.)

The floor statement will go to Assemblyman Ohrenschall.

**Assembly Bill 459: Creates a procedure for the establishment of paternity in proceedings concerning a child in need of protection. (BDR 38-1026)**

**Diane C. Thornton, Committee Policy Analyst:**
The next bill on work session is Assembly Bill 459, which creates a procedure for the establishment of paternity and proceedings concerning a child in need of protection (Exhibit D). It was sponsored by Assemblyman Frierson and was heard in Committee on April 7, 2017. There is one amendment proposed by Assemblyman Frierson. The amendment deletes the bill in its entirety and adds language that allows the court to order tests for the typing of blood or taking of specimens for genetic identification of the child, the natural mother of the child, and the alleged father of the child.

**Chairman Yeager:**
I am looking for a motion to amend and do pass. Is there any discussion?

> ASSEMBLYMAN PICKARD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 459.
>
> ASSEMBLYMAN WATKINS SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON AND TOLLES WERE ABSENT FOR THE VOTE.)

We will give the floor statement to Assemblyman Fumo.

**Assembly Bill 471: Creates the Nevada Office of Cyber Defense Coordination. (BDR 43-917)**

**Diane C. Thornton, Committee Policy Analyst:**
Assembly Bill 471 creates the Nevada Office of Cyber Defense Coordination (Exhibit E). It was sponsored by the Assembly Committee on Judiciary and was heard in Committee on April 7, 2017. There are two proposed amendments for this measure. The first is from the City of Henderson and amends section 15 of the bill to include that the records of a local government which identifies the detection, investigation, or response to certain cyber threats are not public record and may not be disclosed. It also amends section 15 of the bill by adding a cybersecurity incident response team to the list of entities to whom such information may be disclosed. In addition, there is an amendment from Governor Sandoval. The mock-up is in the work session document. It amends section 13 of the bill by revising the requirement for updating the state plan for cyber preparedness from 5 years to 2 years. It also amends section 14 of the bill by revising the submission deadline from January 1 to July 1 to provide more time for the first report to be submitted by the office. It also amends section 15 of the bill to include that the records of a local government which identifies the detection, investigation, or response to certain cyber threats are not public record and may not be disclosed.

The Committee may notice that the last amendment is similar to the one from the City of Henderson. I also confirmed with Daniel Stewart of the Office of the Governor that they are still okay with the first part of the City of Henderson's proposed amendment.

**Chairman Yeager:**
I will take a motion to amend and do pass Assembly Bill 471 with both amendments.

> ASSEMBLYMAN PICKARD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 471.
>
> ASSEMBLYMAN WHEELER SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON AND TOLLES WERE ABSENT FOR THE VOTE.)

Assemblywoman Jauregui will have the floor statement.

**Assembly Bill 472: Establishes policies for reducing recidivism rates and improving other outcomes for youth in the juvenile justice system. (BDR 5-918)**

**Diane C. Thornton, Committee Policy Analyst:**
Our final bill for this work session is Assembly Bill 472, which establishes policies for reducing recidivism rates and improving other outcomes for youth in the juvenile justice system (Exhibit F). It was sponsored by the Assembly Committee on Judiciary and was heard on April 7, 2017. Governor Sandoval has proposed an amendment. First, it amends

section 4, by changing the number of Commission members from 24 to 25. In section 5, the duties of the Commission are changed to establish performance measures for agencies that provide juvenile justice, instead of child welfare, and select a validated risk assessment tool that uses a currently accepted standard of assessment to assist the juvenile court, the Division of Child and Family Services and departments of juvenile services, Department of Health and Human Services. Section 7 amends the bill by the annual quality assurance review to include treatment and rehabilitation of children. It requires the Commission members to share the results of the review and recommendations for improvement. Also in section 7, it requires a facility to develop a facility improvement plan. The Commission is required to compile all facility improvement plans and submit the plans to the Governor and the Legislative Counsel Bureau with its annual report. In section 9, the percentages that each department will use to promote and coordinate evidence-based programs and practices are revised. Lastly, in section 13.2, the definition of "regional facility for the detention of children" is revised to "regional facility for the treatment of rehabilitation of children."

**Chairman Yeager:**
At this time, I will take a motion to amend and do pass Assembly Bill 472. Is there any discussion on the motion?

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 472.
>
> ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

You probably remember hearing this bill on Friday. I want to thank everyone who worked very hard on this bill. What we saw was a commission that had a number of people and it is pretty rare for a commission of that size to agree unanimously on recommendations.

> THE MOTION PASSED. (ASSEMBLYMEN ELLIOT T. ANDERSON AND TOLLES WERE ABSENT FOR THE VOTE.)

I will take the floor statement on that one.

Moving right along, we are going to take our next bill on the agenda. I will formally open the hearing at this time on Assembly Bill 438.

**Assembly Bill 438: Revises provisions relating to offenses involving controlled substances. (BDR 40-1071)**

**Assemblyman Edgar R. Flores, Assembly District No. 28:**
Unlike tradition, I am going to change the format. I recognize that I am not an expert on this subject matter, and I need to get back to my committee to chair, so I will make some opening remarks and afterward pass it along to John Piro, who has been instrumental and helpful in the last couple of days. I also want to say thank you to law enforcement and the district attorney's office for reaching out to me yesterday. There is a bit of confusion on my

end in terms of the communication flow with them, but I am incredibly grateful for them reaching out to me. I tried to provide an idea of what the language is now as opposed to where it started and allowed for their feedback. I want everyone to understand that we are going off the language in the conceptual amendment that I provided (Exhibit G). The language that you see in front of you is the actual bill, but I will not be looking at that at all. There have been a lot of changes.

Before I pass this on for Mr. Piro to go through the actual language itself and break it down for you, I want to start out with the general background. For the past 45 years, there has been an excess of trillions of dollars spent on this war on drugs. Unfortunately, it has been unsuccessful. The conversation today is what we are going to do as Nevadans when we talk about this issue. We have far too many individuals in our jails who are addicts and have committed nonviolent offenses, and who now have felonies on their records.

The argument that I bring forth is that we have more beds in our prisons than in our rehabilitation centers. The approach on the war on drugs has been wrong. I am not placing blame. The scare tactics and the dialogue on a national level have been on putting people in prison as opposed to how we help these individuals with addictions. You have had conversations in this room before. We are talking about the new drug epidemic with prescription drugs. The drug epidemic has been there for a very long time in our communities. This war on drugs has been long, exhausting, and we are not seeing any changes.

What you will hear today is that we need this very intense war on drugs because this is a way to deter traffickers. I have three points on that. In Nevada, the intent to distribute is not a required element to prove or condemn someone as a trafficker. Intent to distribute and trafficking are two separate things in Nevada. An additional argument that you should understand is that, statistically, a lot of the data we have out there when we talk about drugs in general is this idea that if we have a very strong, aggressive penalty for trafficking or possession of drugs that will be the deterrence. Data suggests otherwise, that it is not how severe the punishment is but rather the likelihood of getting caught. The data is conflicting.

If we look at the state of Nevada in comparison to federal law, we are so much more severe in punishment, so far beyond the federal level that sometimes the punishment for one offense can be two or three times worse than at the federal level. At the federal level, it is treated completely different. With that, the intent of this discussion, and why we are here today, is my asking the state of Nevada to look at nonviolent offenders who have flooded our prisons, and to ask ourselves if that is working. If we think it is okay to continue in this systemic pattern of imprisoning individuals who are, in my opinion, addicts and in need of help, we absolutely need to attack this aggressively, but not with putting more beds in our jail cells. We need to change our approach to this conversation. It is long overdue and has been going on for 45 years, and we are going to be here for 45 more years if we do not do something now.

I want to now go into the language, but before doing that, I want to excuse myself with your permission and allow Mr. Piro to take over that dialogue.

**Chairman Yeager:**
That is fine. I know you have your own committee to run. We will excuse you at this time and hand the presentation and questions over to Mr. Piro.

**John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:**
I want to talk about where the law currently is and where this statute will move it. Currently, low-level trafficking in Nevada is a category B felony punishable by 1 to 6 years in prison. That is mandatory prison with no probation. That is for 4 to 14 grams, which is like four sugar packets. That is not including the intent to distribute and with no proof necessarily given that the four grams are for anything other than for personal use. Mid-level trafficking in Nevada is punishable by 2 to 15 years mandatory prison, and that is for 14 to 28 grams. High-level trafficking in Nevada is a category A felony punishable by 10 years to life, or 10 to 25 years with mandatory prison.

In contrast, our federal counterparts have the following rubric for comparison. It is important to note that the feds break out sentences based on drug types, where our policy is a weight-only policy when it comes to schedule I drugs. For trafficking in Nevada, like Assemblyman Flores said, it is basically weight and possession. In the federal system, it is based solely off weight and possession, which is what our trafficking laws are. For example, up to 49 grams of cocaine, which is certainly more than the 28 grams, is a base offense level 12 and punishable by 10 to 16 months, as opposed to 10 years to life in Nevada. Heroin, less than 10 grams, is a base offense level 12 punishable by 10 to 16 months as opposed to 1 to 6 years and mandatory prison. A methamphetamine (meth) offense, less than 5 grams, is a base offense level 12 punishable by 10 to 16 months, as opposed to 1 to 6 years and mandatory prison.

In order to get anywhere near our large trafficking penalty based on weight and possession like our laws are written, you would have to have 3 kilograms, which is 3,000 grams to 10 kilograms of heroin in order to get that 10 years to life penalty; 15 kilograms to 50 kilograms of cocaine to get that penalty; and 1.5 kilograms to 5 kilograms of meth to get the same penalty as you would get in Nevada. Even with these large amounts, the penalty is still less, though it is important to note that is not 10 years to life in the federal system. It is 10 years minimum to 12.5 years maximum.

It is important to note that the federal government does distinguish between distribution and simply having possession of a certain weight of narcotics. For example, if you are convicted of manufacturing the drugs, distributing the drugs, or possessing them with the intent to distribute, the penalty is 10 years to life, but again, the weights are much higher. One kilogram of heroin is needed for that; 5 kilograms of cocaine, and 50 grams of meth. These numbers are much higher than our trafficking penalties and include an intent element to distribute or manufacture, which is not included in our trafficking laws. It is also important to note that the average sentence in Nevada from the feds was 60 months and in

the federal government, generally, it was 66 months for drug trafficking crimes in fiscal year 2016. It is important to note that our current scheme is unfair, unworkable, and does not give the judges any discretion.

What Assembly Bill 438 does is bring us more in line with the sensible drug policy modeled after the feds. The federal government is generally held to be a pretty harsh system in this regard. It also puts discretion back where it belongs, with the judges, thereby giving them the opportunity to decide things on a case-by-case basis instead of just settling for mandatory prison.

Things that are important to note here for anyone who may say there are no other penalties concerning this, there are penalties for the sale of a controlled substance, which will get 1 to 6 years in the Nevada prison system. Possession with intent to sell is a category D felony punishable by 1 to 4 years, and that is for any amount if the intent to sell is shown. Selling to a minor has stiff penalties as it should, starting at 5 years to life or 5 to 15 years. There are several other statutes that address doing anything drug related around minors with stiff penalties, as the law should be.

Despite any possible opposition to this legislation, we will still have stiff laws on the books to punish the drug furnishers in our communities. It is also important to note that this legislation does not in any way, shape, or form lower penalties for gamma-hydroxybutyrate (GHB), which is the date rape drug.

Given the proposed amendment (Exhibit G), here is what the new framework would look like. Less than 1 gram would now be a misdemeanor with the exception of GHB, and that would still be a category B felony. Mr. John Jones will admit that, normally, when people are arrested for less than 1 gram, those cases routinely—at least in Clark County—deal for misdemeanors, as it is right now. More than 1 gram to 5 grams would be a category E felony, and more than 5 grams to 28 grams would now be a low-level drug possession and a category C felony. More than 28 grams to 56 grams would be mid-level drug possession and a category B felony, punishable by 1 to 6 years in prison. More than 56 grams to 112 grams would be high-level drug possession and a category B felony punishable by 1 to 10 years of mandatory prison. More than 112 grams to 224 grams would be low-level drug trafficking, a category B felony, and 2 to 20 years mandatory prison. More than 224 grams would be a high-level trafficking category A felony punishable by 10 to 25 years or 5 years to life with mandatory prison. These changes are an attempt to find a consensus working with law enforcement and the district attorneys. We are still willing to continue conversations on possible penalties.

Another change of note includes section 10 of the bill, which adds the possibility of duress defense for drug mules that was not present in prior law. Anyone who is forced to transport drugs in order to protect their family would be able to at least put forth a defense in this regard, whereas now, they do not have a defense.

In summary, Nevada's rate of incarceration is higher than the national average. We are the fifteenth highest out of 50 states and higher than the feds (Exhibit H). Oftentimes, the opponents to criminal justice reform bills come up here and say things like, "Why do we not just let them all out," or "Why not just decriminalize everything" in an attempt to discard modest attempts to reform our system. That is not what any of us here are saying. We all live in our communities, too, and we also want safe communities. What we are seeing is that we are incarcerating at higher rates and for longer terms than the federal government. Maybe it is time to admit that imposing higher penalties for the sake of higher penalties and claiming deterrence and higher penalties actually support deterrence is not working. Instead of using the same old hammer of criminal justice in the same old fashion, why not stop spending $25,000 a year on lengthy prison sentences not proven to deter crime and start spending that money on better drug treatment options, more police officers, and reentry programs?

**Assemblyman Fumo:**
In Nevada, if a judge gives 8 to 20 years as a sentence, they do 8 years before they are even eligible for parole. Is that correct?

**John Piro:**
That is correct.

**Assemblyman Fumo:**
In the federal system, if a defendant has good behavior, he is only going to do 85 percent of his time. If federal inmates get into what is called residential drug treatment program (RDTP), they can knock off an additional 18 months. The federal system is much more balanced in an effort to get people treatment than the state program is, where it seems to just warehouse them without treatment in the facilities. Do we have anything like that in our prison system?

**John Piro:**
I know that Director Dzurenda is trying to do amazing things, and I think he will, but right now we do not have those treatment options in the prison system.

**Assemblyman Fumo:**
A lot of time you catch someone who is considered a "mule." The point of the war on drugs was to get the manufacturers and the people who were importing the drugs. They use mules, and those people get caught with a load of drugs in their truck. They do not even know how much is in there. They are just told to take the keys and drive the truck from one place to another. It seems as if the mule is the one doing the majority of the prison time, and we are not going after the real offenders. Does this bill allow for a judge to have discretion when the state acknowledges that the person is just a mule and to give that person a break? Are we just warehousing that person in prison on a category A felony—perhaps for the rest of their life—when they did not have knowledge of what was in the back of their vehicle?

**John Piro:**
It provides a defense of duress, but it does not go as far as you stated. As I understand the issue, and for the Committee members who may not know what a "mule" is, it is a person who brings the drugs in, but is not the high-level person. Police oftentimes want to get the high-level person, so they interrogate the mule, but it is not worth the mule's safety or the family's safety to turn over that high-level person. They generally sit in prison for that mandatory time. Under the current law, there is no judicial discretion to move from the law.

**Chairman Yeager:**
With respect to good-time credit on the front end of felonies, the law as it states now is that if you are convicted of a category B felony, you do not receive good-time credits off the front of your sentence. If you receive an 8- to 20-year sentence, you would do 8 years. Under the current trafficking framework, they are all category B felonies, so I think that would be accurate. Under the amendment, when we are talking about categories C or E, the offender would be eligible for good-time credits off the front, but category B would remain the same.

With respect to treatment in the prisons, perhaps we can speak with Director Dzurenda. I believe there used to be a drug treatment program inside the prisons. My recollection is that they lost the funding for it, or simply could not continue to fund it. I will follow up with him to get a sense of where that program is and where it might be going.

**Assemblyman Wheeler:**
I noticed what you are taking away in section 5. The first and second offense, et cetera, on less than one gram of a controlled substance would now be a misdemeanor. If someone gets caught with less than a gram of heroin—which can kill you—it would be a misdemeanor. Would it still be a misdemeanor the second time they get caught? What about the third time they get caught?

**John Piro:**
As it currently stands, yes. I am sure that the bill's sponsor would be more than willing to work on changing some things if there are some serious concerns with that issue. I agree that heroin is very serious, and it is serious in our communities. I will say that, in practice, those cases do routinely deal for misdemeanors as it currently is a criminal-level possession. We will see if Mr. John Jones comes up here and says the same thing.

**Assemblyman Wheeler:**
Do they routinely deal to misdemeanor on the fourth, fifth, or sixth offense?

**John Piro:**
People do rack up a lot of misdemeanors in Clark County, unfortunately. What we are trying to do is get that person into justice court drug court and increase the capacity of the justice court drug court, so we can get those people in there. We try to shepherd those people there, especially the low-level drug possessors who have a serious problem. We also have a shortage of treatment beds, both globally and locally. When a person is in jail—and this is a large expense for the Clark County Detention Center—we have two treatment options. If

you are faith-based, and as a court we cannot press anyone into faith-based treatment, you can go to the Salvation Army. If you are not faith-based, we have WestCare. Sometimes people wait anywhere from six to eight months to get a bed in WestCare because they do not have the capacity. Some of that money could be used to increase the capacity.

**Assemblyman Wheeler:**
What I have also noticed about this bill is that you keep saying that penalties at the federal level are lower. Nevada is a sovereign state that can make its own laws, is it not?

**John Piro:**
Yes, it is.

**Assemblyman Pickard:**
I also noticed something we are taking away that did not even get a mention. In section 14, we are repealing the crimes of trafficking in controlled substances listed in schedule II, and for the unlawful use of controlled substances. Why did you omit two fairly substantial deletions from the law, particularly in section 12? Section 12 removes the requirement for someone on drugs, who would have been convicted, to be reported to the school district personnel. Why did you choose to omit any discussion of the repeal of those two sections?

**John Piro:**
It was completely unintentional. Thank you for bringing that up. There is a point I wanted to make on those. It removes the distinction between schedule I and schedule II. The section that is going to be repealed is the section that I wanted to talk about: the unlawful use of a controlled substance. That is mainly a law that punishes an addict or a user, so it removes that law from the books to stop punishing them.

**Assemblywoman Cohen:**
I want to talk about the section with the mule. Section 10, subsection 2 has a clear and convincing requirement, which you know is a high standard. I do not think drug dealers are sending texts or emails that can be used as evidence that says, "If you do not take the shipment for me, I will hurt your family." Can you get into that more? What is envisioned, and how would someone meet the standard?

**John Piro:**
You are correct that it is a high standard. We have problems with drugs in our communities, so it is important to keep high standards. In this case, it would be incumbent on me, or someone like Mr. Sullivan who represents the client, to do mitigation evidence and grab the evidence from the person or the person's family and try to present that to the court in order to present that defense.

**Chairman Yeager:**
I do not see any more questions at this time. We will open it up for testimony in support of Assembly Bill 438 and anyone who wants to testify in support, please make your way to the table. I do not see anyone in Las Vegas. We have two people here.

**Tonja Brown, Private Citizen, Carson City, Nevada:**
We strongly support this bill.

**Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:**
We support Assembly Bill 438 with the conceptual amendment that was provided to the Committee. We want to thank Assemblyman Flores for bringing this bill, and we want to thank Mr. Piro for presenting the bill this morning. He did an excellent job of outlining all of the issues. The Washoe County Public Defender's Office is a stakeholder in this matter and would be happy to continue to work with the other stakeholders to get this right. We believe this is a good bill, and it may be a good starting point, but we are committed to working to get the language right. As Mr. Piro stated when talking about the intent to distribute, this goes on the actual possession, and that is the problem with trafficking laws over the years that we have faced as defense attorneys when defending these crimes. We believe this does take a measured approach, and it still gives the judges discretion at the time of sentencing to give the appropriate sentence based on the unique facts and circumstances for each case.

To Assemblywoman Cohen's last question concerning the duress defense, I actually had that case. A gentleman from the Bay Area was coerced, in my opinion, to drive a car. He had no knowledge of what exactly was in the car, although he knew it was drugs. He thought it was marijuana, but it turned out to be a couple of kilos of meth. He was looking at 10 to 25 years, or 10 years to life. Those are the difficult cases and we were hoping to run a duress offense; however, he was very scared for his safety and the safety of his family members. We conducted an investigation and his two daughters were slightly aware of what was going on. These are the cases where we need tools, as the defense bar, to put on these types of defenses when an individual—who is told to take a car and drive it from the Bay Area to Reno, and ultimately to Minnesota—does not really know what is going on and has implicit threats made to him and his family.

Those are challenging defenses to say the least and to gather evidence. Nonetheless, we were able to investigate and talk to family members and gather any type of evidence to show that he was put under duress, so we do appreciate section 10 of the bill by giving the defense bar tools to combat these types of cases and to actually go after the bad actors. There were a number of bad actors in Minnesota that were ultimately apprehended by the federal government and prosecuted as such.

With that, I want to stress my commitment to working with all of the stakeholders in this room to get the language right, to keep compromising, and to bring forth something before this Committee that everyone will be happy with.

**Alanna Bondy, Intern, American Civil Liberties Union of Nevada:**
The American Civil Liberties Union of Nevada supports Assembly Bill 438. Drug arrests now account for a quarter of the people incarcerated in America, but the drug use rates have remained steady. Over the last 40 years, America has spent trillions of dollars on the failed and ineffective war on drugs. Drug use has not declined while millions of people, disproportionately poor people and people of color, have been incarcerated and branded with

criminal records that pose barriers to employment, housing, and productive participation in society. Further, mandatory minimums prevent judges from employing reasonable discretion in assessing appropriate penalties on a case-by-case basis. In Massachusetts, the Supreme Judicial Court reversed a judge's departure from a mandatory minimum sentence in the case of a severely disabled man caught with less than 5 grams of a controlled substance. The court, in its reversal, held that existing law does not provide a safety valve from mandatory minimums and urged the legislature to consider reforming mandatory minimums in drug sentencing. It is for this reason we urge your support.

**Chairman Yeager:**
Is there anyone else in support of Assembly Bill 438? I do not see anyone so let us take opposition at this time. If there is anyone in Las Vegas who would like to testify in opposition, please make your way to the table. I do not see anyone there, so we will come back up to Carson City.

**Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**
We are opposed to Assembly Bill 438 and the amendment, but we appreciate Assemblyman Flores meeting with us yesterday. You heard in the previous testimony about the major drug problems and issues that we face in our society, and not only does this bill not address these issues, in my opinion, it makes it worse. From a public safety standpoint, this bill is a drug dealer's dream come true. It raises the current trafficking levels by 120 times higher than they currently are. I share the same concern raised by Assemblyman Wheeler that subsequent offenses remain a misdemeanor in that lower level.

As I have said before this Committee numerous times this session, we are experiencing a violent crime increase in Clark County. Of the 38 murders so far this year, 20 percent have been drug related. When we talk about drug trafficking, we are not talking about the person who is addicted to narcotics, and the person who needs help. We want to get those folks help. At the Las Vegas Metropolitan Police Department (Metro), we want to get people who are addicted diverted from the system. In fact, low-level drug offenses are a walk-through in the jail. Our jail is full, and we do not have room. Anytime someone comes in, someone has to go out. We want to work with people and see them get help with treatment.

However, this bill focuses on the people who are supplying those folks. These are the people who are selling to our children, who have narcotics in their possession far above personal use. Most of these cases are plea bargained by the district attorney's office anyway, as you heard the testimony. Many of these cases that are first-time offenses, or second-time offenses, are plea bargained down. To raise the levels 120 times and then say subsequent offenses at these lower levels remain a misdemeanor to me is not the way to deal with this issue from a public safety standpoint.

We are not opposed to law enforcement looking at these issues. If we think the levels need to be changed, the sentences need to be changed, or the punishment needs to be changed, we are not opposed to looking at that. This is something that the Advisory Commission on the

Administration of Justice touched on briefly in the interim. I think it would be a good idea to have the Advisory Commission focus on this as a study during the interim and bring in narcotic detectives, former drug addicts, defense attorneys, and prosecutors and let us figure out what is fair and right and helps with the problem rather than just saying that the war on drugs has failed so let us raise the bar 120 times.

Finally, I will speak briefly about the mule experience. I certainly agree that the mules should not be held to the same level as the high-level dealer or the cartel leader, but my experience in law enforcement has been that oftentimes the so-called mules do know what they are doing. When someone comes to you and says, "Here is $5,000 and the keys to this car, do not look in the trunk, and drive it to Colorado," do not tell me that person has no idea what he is involved in or what he is doing. I agree that they should not be held to the same level, but it is an area that needs to be addressed.

**Chairman Yeager:**
You mentioned in your testimony that the current drug trafficking laws are intended to go after people who are selling or distributing, but we heard testimony that the current trafficking laws as envisioned do not have any requirement that there be an intent to distribute or intent to sell. Is that your understanding as to how the currently structured trafficking laws work?

**Chuck Callaway:**
Yes, that is my understanding as to how the current law is written. Again, if there is an appetite to put language in that requires those elements that there is intent to sell or intent to manufacture, we are not opposed. I do not think, however, that saying, "It is 4 grams today, so let us make it 500 grams tomorrow," is the answer to that issue.

**Assemblyman Thompson:**
In the first two sections that we have talked about, are we talking about less than a gram, or more than a gram? It was five grams in the opening statement. He mentioned that a lot of people are basically addicts. Do we have enough information to make the distinction between how many are addicts versus those who are aspiring to get a bit deeper into it to become a drug dealer? If they really are addicts, maybe this does make sense.

**Chuck Callaway:**
My experience as a police officer is that, when I come across the folks who are addicts, they are trying to find their next fix. They are not typically carrying around a large amount of narcotics in their possession. The heroin users have a balloon or two on them and are using what they need to get high for that day. When the high wears off, they are out trying to find their next high. I fully believe the courts should have discretion in the cases of addicts to say that they have a problem and need to get into treatment. I have family members who have had those addictions and needed help. Thankfully, in our case, that person got help and got out of it. In my mind, the folks who have large quantities of narcotics on them do not use them. It is like the old "Scarface" movie, "Do not get high on your own supply."

These people do not use it; they sell it. We often find in law enforcement that the traffickers and the dealers who are selling it are not even using the product they sell.

**Assemblyman Thompson:**
I am hearing you say that you agree that the first two or so bullet points that Assemblyman Flores gave in his conceptual amendment might be good. Where is the line in all of these that are listed that you feel is truly trafficking? It sounds like you are saying there is some potential merit to the lower offenses as has been proposed.

**Chuck Callaway:**
That is why I think a good option would be to have the Advisory Commission look at this, and to have law enforcement, defense attorneys, prosecutors, former drug addicts, and social services present to get all the information to determine where we can move that bar, what makes sense, and where we can move it, so we do not catch the folks who are addicts and need help, while still holding the dealers accountable. I think that is the best approach without saying that it will be 500 grams tomorrow.

**Assemblyman Pickard:**
Could you please explain the difference between trafficking and those who have an intent to sell? I understand there is a distinction between the two and one does not necessarily require the other in order to occur. Would you please also talk about the differences between the dangers of schedule I versus schedule II or lower drugs and how those might differ in how you deal with them?

**Chuck Callaway:**
When it comes to possession with intent to sell, the drug dealers are smart. They know what the levels are. We also have folks who sell fake narcotics. Some people put Drano in a package, take it out on the Strip, and sell it. They know by the time the tourist gets to his room, uses it, burns his nose, and finds out it is Drano, the dealer is long gone. If they are caught, it is less of a penalty to get charged with selling fake controlled substances than to get charged with selling the real thing. Criminals are smart; they know what they are doing. You can have a small quantity of narcotics, but if you have it individually packaged, you have owe sheets, scales, and a large sum of money. If the officer can basically articulate the totality of the circumstances that show this person is selling and not just using it for their personal use, then we can charge them with possession with intent to sell. Our law does not require showing that they are manufacturing it or trying to sell it.

The trafficking side of it is more the person who is moving it from one location to another. It has been made in the meth lab, and now I take the stuff and transport it or sell it, but it is not necessarily a small quantity individually packaged. We have traffickers who have it individually packaged for sale, but typically, when it is a larger amount of narcotics, we are going to charge for the more serious offense.

The schedules are set federally and through state pharmaceuticals. One of the key points that I want to touch on that was not in the original draft of the bill, but is included in the

amendment, is the GHB drugs that are not for personal use. They are for knocking someone out, so you can sexually assault him or her. It is a serious issue when we catch folks who have those types of narcotics on them. The amendment addresses that, but it is not addressed in the bill.

At the other end of the spectrum is marijuana. We are not aggressively arresting folks any more for marijuana offenses unless they are obviously growing and selling it illegally. Last session they lowered trafficking on marijuana from 100 pounds to 50 pounds, but my detectives told me that they have never in their entire careers found anyone with 100 pounds of marijuana.

**Assemblyman Pickard:**
The reason I asked is that, in previous discussions that we have had, it seems we wanted to differentiate, so we do not paint everything with a broad brush. We are removing the trafficking of schedule II substances entirely. We now make that legal under the guise of removing the distinctions between the schedules. How will that affect prosecutions? We are now lumping relatively minor drugs with the big drugs, so how will that affect things moving forward?

**Chuck Callaway:**
I agree 100 percent. I am concerned about removing what the public defenders have talked about and have said, that this section puts penalties on the user. That creates more demand. If I am the seller and there is no penalty for the people using, for me, that would create more demand for the product. I do not think this bill helps drug abuse or the social drug problem. I think it just says, "Let us raise the bar." I think it is bad for public safety.

**Chairman Yeager:**
Our trafficking laws, as they exist, do not require anything other than knowingly being in possession of a drug. There was some discussion about transporting or moving, and that is a different issue. There is a crime called "transport of a controlled substance" that would fit. I want to ensure the record is clear that the only requirement under current trafficking framework is knowingly being in possession of a certain quantity of drugs.

**Assemblyman Watkins:**
Are you good with the current set of penalties that exist for schedule II drugs and prescription drugs as compared to drugs that are being discussed in this bill?

**Chuck Callaway:**
I am comfortable. I am not saying that there should not be discussion or there is no room for improvement. From a law enforcement perspective, I am comfortable with the current statutes, and the way they are. I think we could look at sentencing. A potential life sentence for drug offenses could be looked at. The category B and category C could be looked at, but as far as the current statutes, from the public safety standpoint, most of these cases get plea bargained. I do not have the numbers, but I have seen them and out of the 9,000 people who are in the prison system in Nevada, only about 500 of those have drug-related offenses.

If you took those and broke them down, I would almost guarantee that you would see that it is not their first offense; they did not go to prison for their first offense. It was multiple offenses that resulted in them being in prison.

Of those 500, how many are traffickers or drug dealers, and how many are folks who got wrapped up in the system that had a problem and needed help? I do not know. That is why we need a broader look at this. That is why a body such as the Advisory Commission or the interim Legislative Committee on Health Care could look at this and determine what is appropriate. I think it would be more appropriate in the Advisory Commission, but I think it needs a bigger look than this bill, which is more of a knee-jerk reaction.

**Assemblyman Watkins:**
How often have you seen anyone be prosecuted or jailed over the use of a prescription drug? Have you ever seen doctors incarcerated for routinely overprescribing schedule II drugs? How often?

**Chuck Callaway:**
We have a small number of officers who do prescription medication investigations only. Last session there was a bill that passed that allowed those officers access to the prescription drug database through the State Board of Pharmacy. I believe there are some bills this session—the Governor has a bill that helps with that issue—but in the past, doctors were not required to enter their prescriptions into that system. I am not attacking doctors. There are great doctors out there like there are great police officers. The majority are doing a good job, but there are bad apples in every profession. It is the same with the medical community. There are doctors who overprescribe, and we make an effort to investigate those cases. Until we were able to access that database, and until doctors were required to participate, it was difficult to identify that.

On the other side of that, we find that many opioid abusers on the street—the folks who are using the prescription meds—go on to using heroin because it is cheaper, and they can get it more easily. They will doctor shop for a while to try to get their prescription meds or report them stolen, so they can get another prescription. In the long run, they find out it is easier to just buy heroin on the street.

That goes right back to this bill. If we raise the bar for the folks out there selling, we are not helping those people. We are making it worse for those people. It is a tough situation, and it goes beyond law enforcement; it is a social issue that needs to be addressed.

**Kristin L. Erickson, representing Nevada District Attorneys Association:**
This is a radical departure from existing law, and I am not sure it accomplishes what it sets out to do. For example, under the amendment, possession of less than a gram would be a misdemeanor. That is fine except when a person is arrested for a misdemeanor. Typically, they are sentenced to credit for time served in jail, and they are released, and the case is over. Or they are fined and released and the case is over. There is no opportunity for treatment. There is no opportunity for rehabilitation so they will eventually end up right back where

they started. If we keep it as a felony, that gives us the opportunity to treat the repeat offender as indicated by Assemblyman Wheeler. It also gives us the opportunity to say that they need to go through treatment and rehabilitation, and then they will have their misdemeanor.

There does not seem to be much rhyme or reason when it comes to the levels or amounts that were chosen. For example, if you possess 5 grams of heroin or cocaine, you are looking at 1 to 5 years in the Department of Corrections. Of course, probation is available. If you possess 55 grams, you are looking at 1 to 6 years, so 50 more grams of heroin, you are only facing one more year in prison. It does not seem to make much sense.

As for the Advisory Commission for the Administration of Justice, it attempted to take on the recategorization of certain crimes. When they started to look into this, and after several hours of testimony, they realized that this was much bigger and a much more important issue than could be addressed in one or two sessions of the Advisory Commission. At the end, it was unanimously recommended to put a bill forth to recommend the Sentencing Commission look at all of the sentences of the most frequent crimes to see that the sentences are consistent; the categories are consistent; and they make sense in comparison to each other; and one crime is not so far out that it is on the outlying edges from the other crimes.

The bill is Senate Bill 451 and was heard yesterday in the Senate Committee on Judiciary and received support from both sides of the aisle. The District Attorneys Association would recommend that that bill go through. Take a look at the amounts, and have the experts testify as Mr. Callaway indicated. Have the addicts and law enforcement come in, and get input from everyone and come up with amounts that make sense and make well-reasoned decisions on the amounts.

**Chairman Yeager:**
Would you agree, from the current law on trafficking, that "trafficking" is a misnomer in terms of the actual criminal conduct that is required for a charge of trafficking?

**Kristin Erickson:**
Yes, I would agree. Trafficking does seem to infer to the layman that there is some drug dealing going on, where in truth, it is the actual possession of a trafficking quantity of a controlled substance.

**Chairman Yeager:**
We heard some testimony at the introduction that our laws are not congruent with the federal laws in terms of the punishments for various possessions of different drugs. Have you had a chance to look into, or compare, our sentencing scheme for these kinds of drugs to federal law?

**Kristin Erickson:**
I have never practiced in federal court, and I have no knowledge of federal law, so I cannot answer that question.

**Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:**
We come to the table today in opposition to this bill. Rather than regurgitate what my counterparts have said, I will talk about some interesting things that have been going on since this session started. I will start with what is going on out in the streets and the potency of the drugs that are currently out there.

Just since this session started, our task force has taken over 5 pounds of a substance called a U-47700-fentanyl mixture, which in and of themselves when they are separate can be fatal, but together they are deadly. These are the types of things that are out on our streets right now. We are not talking about low-level drugs or drugs that do not have the potency to kill the first time used. They are out there now.

I spent approximately 10 years as a task force officer in the Northern Nevada Interdiction Task Force. During that same time, I was also a dual purpose, narcotic-detector dog trainer and handler. Many of these cases that come about when we are targeting these high-level offenders would give them the ability to get off—not scot-free—with lower-level penalties. We use these instances to go after these high-level drug traffickers. I would echo the comments made by Kristin Erickson with respect to our treatment programs. The misdemeanor programs would be difficult for us to get people into drug court or into our Crossroads program, which is nationally recognized. We need to be at least consistent with our drug sentencing laws, and I agree with Mr. Callaway that we need to look at that in the interim.

**Chairman Yeager:**
You mentioned that the strength of some of the drugs that are on the black market now are not what they used to be. Do our current drug laws make any distinctions based on either purity or strength of whatever compound it is that impairs the person?

**Corey Solferino:**
To my knowledge, no. Absent what Mr. Callaway spoke about with the "Turkey law" and the selling of synthetics or those represented to be drugs, there is no difference.

**Mike Cathcart, Business Operations Manager, City of Henderson:**
The City of Henderson is opposed to A.B. 438, but we do want to thank Assemblyman Flores for sitting down with us yesterday and providing the mock-up amendment. We sent it to Henderson, to our police chief, deputy chief, and our narcotics officers. We are, however, still in opposition to the mock-up amendment. We agree with the other speakers before us. This needs to be more comprehensive. If we are going to change the laws on drug enforcement in the state, we really need to do that in a comprehensive way and not piecemeal. You have heard that Nevada does not have a lot of beds for rehabilitation. Maybe we need to be looking at an overall scheme approach, and maybe even funding that needs to funnel through this building for rehabilitation.

**Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:**
We appreciate the work that Assemblyman Flores did on this bill, but we are also in opposition. We keep hearing people say that this is a nonviolent crime, yet the results seem to kill an awful lot of people. We truly believe this is something that needs to be looked at and addressed, and the Sentencing Commission would be the best way to go to bring all parties together.

**Chairman Yeager:**
Is there anyone else in opposition to A.B. 438? I see no one, so we will take any neutral testimony. I do not see anyone, so I would invite Mr. Piro back up for concluding remarks.

**John Piro:**
I have just a few points. Raising the levels in this manner would bring them closer to the federal levels. There are still several laws on the books to hold sellers and dealers accountable for their actions. It has been clarified several times that possession and weight are the primary factors in these offenses, so maybe we can add in some language with intent to distribute or something of that fashion to bring our current statutes more in line. As far as it goes about making Nevada a drug dealer's paradise if we raise the levels, it will not be.

Nevada is fifteenth in the nation in incarcerations. We are overincarcerating compared to other states, as well as the nation as a whole. We incarcerate more of our citizens per 100,000. The arguments based on deterrence alone and the penalties do not pan out when we look at the results of our criminal justice system. Perhaps it is time to take a different approach, and that is what this bill attempts to do.

**Chairman Yeager:**
We would encourage everyone who came up today to see if something can be worked out before Friday's deadline. I appreciate the work on this issue.

[Submitted but not discussed are (Exhibit I), (Exhibit J), (Exhibit K), (Exhibit L), (Exhibit M), (Exhibit N), (Exhibit O), (Exhibit P), and (Exhibit Q), various information submitted by Assemblyman Flores.]

We will close the hearing on Assembly Bill 438. We will open the hearing on Assembly Bill 462.

**Assembly Bill 462: Revises provisions relating to constructional defects. (BDR 3-1010)**

**Assemblywoman Maggie Carlton, Assembly District No. 14:**
I am here to present Assembly Bill 462. I will make some brief opening remarks and then we will walk through the bill. We have some proposed technical amendments [(Exhibit R) and (Exhibit S)]. I have worked on this issue for a very long time, but in no way would I ever purport myself to be an expert.

Nevada's residential construction defect statute, *Nevada Revised Statutes* (NRS) Chapter 40, was bipartisan legislation enacted in 1995 in response to a large volume of lawsuits alleging faulty construction. The twin objectives of the statute were to give contractors an opportunity to resolve construction defect claims before being sued in court, and to make the owners of defective homes whole in the event a lawsuit became necessary.

In a bargained-for exchange, the statute afforded additional protections to contractors who participate in the pre-litigation process in good faith, by limiting homeowners' recovery to the cost to repair their homes, litigation expenses, and reasonable attorney's fees. Contractors were thus insulated from punitive damages and all other general damages, such as "pain and suffering" damages, which a homeowner might otherwise be allowed to collect. Since its original enactment, the statute was consensually amended on several occasions to make the process better for both sides.

In 2003, contractors asked for and received, through consensual negotiation, the "mandatory right to repair," which provided contractors the right to make any repairs they deemed sufficient to remedy alleged defects. As required by the *Constitution of the State of Nevada*'s jury trial guarantee, homeowners retained the right to access the courts if repairs failed or were insufficient. The fundamental idea of protecting contractors from punitive and general damages, while simultaneously making homeowners whole, remained intact.

For as long as I have sat and listened to this public policy discussion, it has always been to have everyone sit at the table, bargain, and negotiate and come up with consensus. I remember there were days when we were getting ready to come to session and people would ask where we were on construction defect this session. People would say that we are in "stand-down." We are not doing anything, and we are going to let things work and move forward. That was always a good thing to hear because you knew that 20 to 30 hours of hearings were not going to be spent on construction defects. There would be other things, although this is an important issue, and we knew we had to give it the time. We also knew that we needed to have everyone at the table to address these issues.

In February 2015, Assembly Bill 125 of the 78th Session made significant changes to construction defect laws with broad strokes. It is the objective of A.B. 462 to restore balance to the statute in keeping with the original objectives of the law.

In walking through the bill, there are a number of amendments [(Exhibit R) and (Exhibit S)] that are proposed, and I believe they are all on Nevada Electronic Legislative Information System (NELIS). I will just hit a couple of them briefly. Section 3 and section 17 of the bill restore the rights of homeowners' associations (HOAs) organized pursuant to NRS Chapters 116 and 117 to fulfill their obligations under the law and the applicable Covenants, Conditions, and Restrictions (CC&Rs) to restore, replace, and maintain residences or appurtenances for which they are responsible. This is in keeping with the Uniform Common Interest Ownership Act; a uniform statute adopted by Nevada and codified in NRS Chapter 116, and removes the conflicting statutory language from Assembly Bill 125 of the 78th Session.

Section 6 relaxes the notice burdens on homeowners by requiring them to state in reasonable detail as opposed to specific detail the defect they wish to report. This will reduce time-consuming litigation over the sufficiency of notices. Section 6 also removes the obligation of an owner to submit a signed verification that each defect exists, a feature of Assembly Bill 125 of the 78th Session bound to scare homeowners from reconnecting with their contractors that is actually more burdensome than filing a lawsuit.

Section 9 eliminates the costly requirement that the homeowner have an expert present during contractor inspections. This requirement alone makes it nearly impossible for homeowners to afford to ask to get their homes fixed.

Section 12 is the homeowner's responsibility, and it restores the homeowner's obligation to diligently pursue any pre-purchased warranty protection, but that is one of the amendments that will be discussed (Exhibit R). They do not exist and we will be looking for a builder's warranty, and I have the amendment available for you. That warranty would offset the builder's liability and would eliminate the more burdensome and constitutionally questionable requirement that prohibits homeowners from providing notice of defects to a contractor unless warranty coverage is denied. This provision causes significant time delays and is simply unworkable in the real world since these warranties are not designed to cover defects, but take months or years to pursue before homeowners can file a notice of defect. Let us run both these trains down their tracks at the same time and make this work for the homeowner as quickly and efficiently as possible.

Section 13 will be amended to mirror the legal provisions covering disputes between contractors. It will allow the prevailing party in a construction defect action to collect reasonable attorney's fees from the opposing party. This is meant to restore balance to the law and to make homeowners whole, while ensuring both sides have some skin in the game. Homeowners should have the same right to be made whole that contractors enjoy under the mechanics lien statute, which mandates that a prevailing lien claimant be awarded reasonable attorney's fees in addition to the amount of the lien per NRS 108.237.

Section 15 extends the statute of repose, which was reduced from 10 years to 6 years in Assembly Bill 125 of the 78th Session, to 8 years. The national average is 10 years. It also restores pre-Assembly Bill 125 of the 78th Session law to afford no time limit for commencing suit if a contractor has engaged in fraud. Right now our law protects those who fraudulently conceal defects. I feel very strongly that this needs to be addressed.

You will notice that I read my remarks. This tends to be a very litigious issue, and I wanted to make sure that I stayed on course in front of the Assembly Committee on Judiciary and that my remarks were succinct and exact in making the record on this particular piece of legislation.

**Chairman Yeager:**
You referenced a couple of amendments on NELIS, and I see an amendment from the Department of Business and Industry (Exhibit R) relating to a builder's warranty. Is that the amendment you were referring to when you talked about that section?

**Assemblywoman Carlton:**
Yes. That is for section 12, and I believe there is someone here who will walk you through that. It is my understanding that, as it is written, a homeowner's warranty is not an actual insurance product. There is a gentleman who will be coming forward to walk you through it. They did present the amendment to me. It seems very reasonable. The gentleman who brought it to me is an actuary, and I love actuaries because they stick to the facts and say this is true and this is not and this is how you fix it. I have faith that the Division of Insurance knows what they are talking about and will actually address the issue when it comes up.

**Chairman Yeager:**
I did not see any other amendments on NELIS. I know that you had referenced section 13, which dealt with the attorney's fees. You indicated that there would be an amendment that you would take to a prevailing party analysis. Were there other amendments that you contemplated that I may have missed? We can have it submitted because I do not see it on NELIS at the moment.

**Scott K. Canepa, representing Nevada Justice Association:**
We brought the amendment (Exhibit S), and there are many copies with many people, so I can go through the amendment quickly if you like. It removes a significant portion of what was originally in the bill. It reduces it down to three areas for consideration.

**Chairman Yeager:**
I want to make sure you hold on to the copy that you have, and we will get it to the committee manager to upload to NELIS. It would be helpful if you could run us through the amendments before we take questions. I know we have heard a couple of them, but we want to make sure everyone is on the same page.

**Scott Canepa:**
I am a fourth generation Nevadan and have been testifying on construction defect matters here in the state since the statute was first enacted in 1995. In terms of the amendments for the bill, for the record, the following sections of the bill are being deleted as part of the amendment. I apologize because I had been told that the amendment had been transmitted to all of the Committee members. We are deleting section 1 in its entirety; section 3, subsection 3, in its entirety; section 4 in its entirety; section 6, subsections 3 and 4, in their entirety; section 7, subsection 4, in its entirety; section 8 in its entirety; section 9, subsection 1, lines 4 and 5; section 10 in its entirety; and section 11 in its entirety. The amendment reflects that.

**Chairman Yeager:**
There are a lot of amendments and what would be helpful is anything you want to add. Assemblywoman Carlton went through what would remain in the bill, but was there anything that you want to add to supplement that testimony in terms of how the deleted sections interplay with the bill as written?

**Scott Canepa:**
What is left is on homeowner entitlements, which are limited to collect in the event they have to go to court. We are asking for a prevailing parties fee rule. The language is on the first page of the amendment that mirrors very similarly the mechanics' lien statute when contractors have disputes over money. The prevailing party gets reasonable attorney's fees. The original bill had put the attorney's fees provision back in the entitlement section for homeowners as it was pre-Assembly Bill 125 of the 78th Session. We want to make clear that we endorse—and have run in the body in the past—a prevailing party rule as Assemblywoman Carlton said. Both sides should have some skin in the game, and it helps focus the debate before these matters proceed to trial. We are talking about the situation where the pre-litigation efforts to reconnect the homebuilder and the homeowner have failed for whatever reason. Good business decisions are made all of the time for contractors to commit a matter to suit. We do not dispute that. This is a situation where you are now in court and both sides are represented by counsel, and that can be very costly.

I will give you an example of that which I think would be helpful that I was not personally able to be present at the hearing on Assembly Bill 125 of the 78th Session. There was a case that I was involved in that was featured as part of the testimony in that case that was called the *Aventine* case [*Aventine-Traonti et al vs. Vanguard Piping Systems, et al*, Case No. 08A555328, 8th Jud. Ct. (Jan. 17, 2014)]. That was a case in which I represented the homeowners' association along with four other law firms in southern Nevada regarding over $480,000 in repairs of defective plumbing fittings. Our combined total hours for the five firms in that case were just about 8,500 hours if I am not mistaken, although it could have been a little more than that. The defense lawyers were from an international company with a United States presence and had four separate law firms representing them. Their total number of hours far exceeded the number of hours we had. In those situations, we think it is important since we did prevail on behalf of the homeowners that the homeowners be made whole. In that circumstance, given the number of hours we had to spend on the case in order to prove that it was a liability case, the homeowners would not have ever received any money to make repairs. That is one issue.

The second issue is the statutes of repose. I understand and appreciate that A.B. 125 of the 78th Session was very important to Governor Sandoval. I would certainly never sit here and tell anyone on this Committee that NRS Chapter 40 did not need some changes prior to A.B. 125 of the 78th Session. We are hopeful, through this bill, we can look at some of those issues and make it a little fairer for both sides. One of the issues has to do with the statutes of repose, and there are three subparts we are asking for. The first one has to do with simply extending the statute from 6 years to 8 years. That is still 2 years short of the national average in the United States, but in our communities, we have a lot of soil conditions that

often do not manifest the damage to properties until they are well over 6 years. You will hear some testimony today from a few homeowners who have had these experiences, and I think you should hear them because it underscores why we need to have something longer than 6 years.

The second piece to that is what Assemblywoman Carlton said with respect to fraud. I do not know what the driving force behind repealing that section of the repose that says you get no protection for fraud that was in A.B. 125 of the 78th Session. We certainly believe that it should be the policy of the state of Nevada that the people who engage in willful misconduct or fraudulent activities should be afforded no protection under the law. Once fraud is discovered, you would still be subject to pursuing those claims within a three-year statute of limitation. As in most other states, there is no protection on our statute of repose for fraudulent acts.

Last, the amendment also proposes to eliminate the statute of repose's applicability to wrongful death or personal injury claims. Under largely the same theory that, to the extent you would equate a home to be a product, if that home has a defect in it that damages or kills someone 12 years later, the industry should be afforded no protection at all in much the same manner as fraud.

There are a couple of other small changes that were read in. The other larger piece has to do with homeowners' associations. Under the Uniform Common Interest Ownership Act, a homeowners' association typically under CC&Rs vest in the HOA the obligation to repair, maintain and replace both limited common elements and things over which the HOA has no ownership at all. Assembly Bill 125 of the 78th Session interposed a piece that said if the HOA is not the actual owner of those things, it cannot bring those claims on behalf of the other owners. In so doing that, it has now impaired most HOA's abilities to actually meet their contractual obligations to their homeowners under the CC&Rs and NRS Chapter 116. You are going to hear about an example from one of the homeowners who will testify here today. Those are the overarching changes that we have advanced for the Committee's consideration.

**Chairman Yeager:**
The amendment is now on NELIS and can be found either under the meeting or under the bill itself. It is titled "Proposed Amendment from NJA" (Exhibit S).

**Assemblyman Pickard:**
How is it that the amended language affects our ability—as a prevailing party—to collect given NRS 18.010 is still on the books, and we can currently collect for judgments that we might win?

**Scott Canepa:**
I must confess that I have not compared those two. The original deal that was made in 1995 was just to make sure—since NRS Chapter 40—the homeowners have no other source of entitlements, no general damages at all—that the homeowners are made whole if they have

to go through the court process. Otherwise, by definition, we are leaving them short and, in part, affecting our housing stock since most homeowners are not going to get whatever fee structure they arrange with their lawyer, and the house is probably not going to get fixed. Then it becomes a disclosure issue to subsequent homeowners. I have not looked at that but would be happy to do that for you. In my years of practice, which exceeds 20 years, we have not made an application under NRS 18.010.

**Assemblyman Hansen:**
Assembly Bill 125 of the 78th Session was my bill; I am very familiar with it. I am also a contractor, a licensed plumber, and have been a contractor for 31 years now. I have dealt extensively with this issue. It is very interesting to hear how the theory is supposed to be applied versus how it actually works in the real world. I am sorry you missed the hearing last time because the one lawyer who did show up had a lot of guts. I have to give him credit. When he was asked specifically about the financial impact, he admitted that his firm, as I recall, grossed $800 million in settlements. That means if he got 33 percent of that, he was doing really, really well. In theory, he was supposed to be helping the homeowners, but in reality, all it helped was to line the pockets of a very successful law firm.

As for fraud, we all answer to the State Contractors' Board. If there is, in fact, fraud for a small contractor like me, if I deliberately go in and mess up the plumbing and lie about it, even if it is not specifically carried out in this section of law, I can lose my license to continue to make a living.

Housing getting fixed, now that is really interesting. In the entire time I have dealt with this, I would guess I have been involved with at least 25 class action lawsuits. Never once was I asked to go back and repair a house, not even a single time. It is very interesting to hear how it is supposed to work in theory on the legal side versus how it actually works on the practical side. I see that we are back to one thing, and that is mandatory legal fees. That was the issue from 2003 when we all had the right-to-repair law passed. How did it actually work in the field? We never repaired a thing because it immediately went to class action lawsuits. The attorneys and the insurance companies would work out settlements, and we would never get the opportunity to go in a home and see what was supposedly wrong.

It is frustrating to sit here and listen to this. This has been on the books for less than two years, but somehow the whole world is collapsing and everything is going to hell in a handbasket. We have tens of thousands of people living in housing tracts, so how many cases have there actually been where homeowners were told that you would really love to help but, because of A.B. 125 of the 78th Session, I am sorry but I cannot help? Those guys just shafted all of the homeowners.

**Scott Canepa:**
If I understand your question, it is, am I aware of how many new cases have been filed since A.B. 125 of the 78th Session was enacted?

**Assemblyman Hansen:**
Correct.

**Scott Canepa:**
I can tell you from my experience that my firm is not taking any new cases because there is no way for us to make the homeowners whole. If I have a client come into my office and say they want me to represent them, I will look at them and tell them that, at the end of the day, we have to get paid, just like builders have to get paid.

**Assemblyman Hansen:**
How many people like that have you turned away?

**Scott Canepa:**
We have not taken any cases.

**Assemblyman Hansen:**
So, is that none?

**Scott Canepa:**
Yes, that is none. I am not saying there are not any, and certainly the Eighth Judicial District Court and the Second Judicial District Court keep track of those filings. I can tell you that one of the statements that was made in connection with the A.B. 125 of the 78th Session hearing was that filings were on their way up. That statement is grossly inaccurate. In fact, I brought the document from the 2014 Bench Bar Committee with me if you care to see it.

**Assemblyman Hansen:**
I just want a simple answer, and I think you gave it. Right now your firm has turned away zero people that you know of because you feel that under the new law you cannot be compensated effectively.

**Scott Canepa:**
It is the opposite. We have just not taken any new clients under A.B. 125 of the 78th Session, nor am I aware of any other law firms that are actively taking construction defect cases. I would be very surprised if you found any filings at all where it is an A.B. 125 of the 78th Session predicate case.

**Assemblyman Hansen:**
I think that would be a good thing.

**Assemblywoman Carlton:**
That is the thing that concerns me. If this had happened to my daughters or me when they bought their homes, and I had taken them to someone to say, "Help me. What can I do?" If they looked at us and said, "I am sorry. Because of the way this is now structured, and if this had happened in January of 2015 or earlier, we might have been able to help you, but right now we do not see a path forward for you," that would be a problem. Folks have no

redress. Your home is the most valuable thing that you have. The middle class bases their retirement on their home; that is middle class wealth. If your home is messed up, and you cannot figure out a way to get through the system—which is what I think A.B. 125 of the 78th Session did to some folks—there are some things that need to be fixed. Everyone deserves their day in court and to have representation to make sure their issues can be addressed.

As far as not being invited back to fix something, if the guy who put it in the house messed it up, that is not the guy I am going to invite back to fix it. I do not think that statement bears much weight when it comes to this argument.

**Assemblyman Wheeler:**
I am glad you said what you just said. I understand what you are trying to do here. I have to take a look at some actual statistics. I will admit that these came from a builder's association. They are actual statistics, and I see that the average time to settle a construction defect claim from 2010 through 2014 was 33 months. From 2015 to 2016, after the passage of A.B. 125 of the 78th Session, that time dropped to 13.5 months, or a 60 percent decrease. It seems to me that construction defect claims are still happening, but without so many lawsuits involved, they are getting settled much faster.

**Assemblywoman Carlton:**
I do not have your statistics. I would say that, as Mr. Canepa said a moment ago, if there are folks out there turning other folks away because they do not think there is a path forward, fewer cases mean quicker results. But does that mean it is okay to turn cases away? That would be my concern. I would love to see those statistics. After the Committee meeting is over, I will be able to download all of the things that are available to the Committee and go through them. If we need to have any further discussion, I will be happy to do that. If people are being turned away and are unable to get their homes fixed, we still have a problem.

**Chairman Yeager:**
We will now open it up for testimony in support of A.B. 462, either in Las Vegas or here in Carson City. We will start in Las Vegas.

**Beverly J. Miller, Private Citizen, Henderson, Nevada:**
I own my home in Henderson and I am a constituent of Assembly District No. 23. I am here today to share my experience with construction defects, and how NRS Chapter 40 protections for homeowners helped me and why certain aspects of Assembly Bill 462 will help protect homeowners who are unfortunate enough to have experiences similar to mine.

In March 1999 my husband and I purchased a home in Sun City Anthem. We were retired and on a fixed income. About 7 years after moving in, we noticed a significant loss of water pressure from some of our fixtures. Not long after that we found out that we were part of a construction deficit litigation related to the defective Kitec plumbing system. We learned that our water problems were telltale symptoms of the Kitec system, which made us nervous

that we might have a plumbing leak or flood like so many others had experienced. Being on a fixed income, we could not afford to replumb the home at our own expense. We had to wait and hope the litigation resulted in enough money to replumb our house. That took more than two years of waiting. Fortunately, the litigation allowed us to get it replumbed in late 2009 at no cost to us. That was because, at the time, NRS Chapter 40 allowed homeowners to recover their attorney's fees in addition to the cost of repairing any construction defects. We could not have afforded the replumb otherwise. The replumb cost $6,800. We would have had to continue living with the defective Kitec plumbing system and just hope we never had a leak or flood in our home.

My husband passed away 4 years ago, and I would really like to buy a smaller home now. I live alone. I am afraid of buying a new home that may have problems. The fact that my current home no longer contains a defective plumbing system gives me peace of mind; something that I really value at this stage of my life. I am also happy to say that I have not had any problems since the replumb. I am very grateful that NRS Chapter 40 allowed me to make a claim for the defective Kitec plumbing in my home even though my home was more than 6 years old. It also allowed me to recover my attorney's fees in addition to the cost of fixing my house, which ensured that I had enough money to replace the defective plumbing system. Like me, a lot of Nevadans are on a fixed income and could not afford to fix major construction defects if litigation only provided some of the money to fix the problem.

I understand that A.B. 462 allows Nevada homeowners to recover their attorney's fees for real construction defects and gives them more time to litigate a legal claim for defects that are hard to identify. I urge you to approve A.B. 462 to afford Nevada homeowners with some protection from the risks and worries that I had to live through.

**Michael J. Gayan, Private Citizen, Las Vegas, Nevada:**
We were Mrs. Miller's attorney at the time. I am here today to support Mrs. Miller and to assist her with providing her testimony and her experience.

**Tracy Rhodes, Private Citizen, Las Vegas, Nevada:**
I currently own a home in Las Vegas, and I am a constituent of Assembly District No. 13. I am here today to share my experiences with construction defects, how they have impacted my life, how NRS Chapter 40 protections for homeowners saved me, and why certain aspects of A.B. 462 will help protect homeowners who are unfortunate enough to have experiences similar to mine.

In June 2003, I purchased my very first home. I could not have been more excited to own a home. I picked out a lot of upgrades and made it my dream home. Unbeknownst to me, the homebuilder installed a defective Kitec plumbing system in my new home. About four and a half years after moving in, I came home from work on Thanksgiving Day and found water on my kitchen floor. After some investigation, I found mold and mushrooms growing on the wall behind my dishwasher. The water came from a slow leak in a Kitec fitting behind the cabinets in my kitchen. I had not noticed any problems with my plumbing system or water pressure before, so I could not believe what was happening. I filed a claim

with my homeowner's insurance company, but they denied my claim. The mold remediation and other repairs, including a replumb of my home that was not even five years old, cost more than $20,000. I did not have that kind of money, which caused me significant financial burdens.

Fortunately, I found out about litigation involving the Kitec plumbing system that might be able to recover some of what I had spent fixing the defect. Unfortunately, the litigation took too long and I had to file for bankruptcy before I received any reimbursement of what I had spent. The silver lining is that I was eventually reimbursed for all of the verifiable costs that I spent to replumb my home, remediate the mold, and repair the leak damages, which totaled more than $12,000. That is because, at the time, NRS Chapter 40 allowed homeowners to recover their attorney's fees in addition to the cost of repairing any construction defects.

After going through the stress of a major leak in my dream home, I decided to move to distance myself from the bad memories. I lived with family for several years and saved my money to, hopefully, buy another home. In 2013 I decided to give homeownership another chance. As fate would have it, my second home was originally constructed in 2000 with the same defective Kitec plumbing system. By this time, the litigation had been resolved and it allowed the prior homeowner to get a replumb in 2012. My new home was Kitec free. Without that repair, I would never have considered buying the home. Allowing the prior owner to make a claim for a latent defect like the Kitec plumbing system—which is buried behind the walls—more than 6 years after the home was built, prevented me from living the same nightmare again. I am happy to say my current home has not experienced any plumbing problems in the 4 years since I purchased it.

Without the ability for Nevada homeowners to recover their attorney's fees in addition to the cost of repairing construction defects, they will not be able to recover the full amount required to fix the defects in their homes. That could force some people into bankruptcy, something I would not want anyone to go through if they did not have to. It could also force homeowners to leave real defects unfixed. Some defects, like the defective Kitec plumbing system, are hidden from homeowners and do not manifest themselves for several years. I understand A.B. 462 allows Nevada homeowners to recover their attorney's fees for real construction defects and gives them more time to initiate a legal claim for defects that are hard to identify. I urge you to approve A.B. 462 to afford Nevada homeowners some protection from the dangers and risks I struggled through.

**Tom Gargus, Private Citizen, Sun Valley, Nevada:**
I live in Sun Valley, and I am a constituent of Assembly District No. 27. As a former president of the Sun Mesa Homeowners Association, I am here today to state why we must pass A.B. 462 to modify some of the changes from the last legislative session, changes that have had a negative effect on both homeowners' associations and homeowners. Sun Mesa Homeowners Association recently went through litigation concerning Rockery walls located throughout our community. These Rockery walls were poorly constructed, causing them to crumble and present a safety hazard to homeowners whose homes set atop these walls.

These walls were constructed using poor quality, defective rock that decomposes and has created an unstable support base for those homes built on top of these walls.

These Rockery walls span across our community, but they are technically located on individual homeowners' lots. They exist upon and pass across the private property lines of the homeowners. Regardless of the location being partially on private property, the Sun Mesa Homeowners Association has an obligation and duty to maintain, repair, and replace these Rockery walls. Any repairs or problems that arise are the responsibility of the HOA. When problems were discovered, the HOA was solely responsible for all repairs. The suit that followed was handled by the HOA as the holder of responsibility for repairs to these walls, with the outcome affecting both the HOA and all Sun Mesa homeowners. We retained an attorney only after exhausting all other avenues.

Under the changes from the last legislative session, my HOA would not have been able to bring an action against the developer and builder of these Rockery walls because the HOA does not own the Rockery walls. Had the homeowners association not been able to bring suit, I have no doubt these Rockery walls would remain a safety concern to Sun Mesa homeowners. As an element maintained solely by the HOA, it is unreasonable to believe the homeowners should have or could have been the ones to propose and manage this litigation. To do so would only result in a piecemeal and ineffective approach to repairs. These Rockery walls were built as one massive project and should not be handled on a case-by-case basis depending on what property lines are crossed or at what point they are crossed.

To ask or require each property owner to file a claim instead of allowing the HOA to do what it is already obligated to do is not realistic. There would be an inherent conflict between the homeowners and the HOA because only the homeowners association is tasked with repair and upkeep of these Rockery walls. If a homeowner received an election to repair from a builder, or money to effect the repairs on his or her own, that money would still have to go to the HOA, the responsible party for effecting repairs to the walls. This is neither efficient nor reasonable.

I ask you to consider the implications of current law, which is why we need to pass A.B. 462. Please think about how not allowing an HOA to file a suit unless it is "exclusively a common element" can and will affect a homeowner. The primary job of the HOA is to maintain a safe living environment for the community it serves. If we, as an HOA, are not allowed to bring about a lawsuit for an element or land that we are responsible to maintain, repair, and replace, we cannot effectively do our job and keep our residents safe.

**Eva G. Segerblom, representing Sun Mesa Homeowners' Association:**
I represented the Sun Mesa Homeowners Association, and I am only here if there are any technical questions regarding the homeowners association section 13 of A.B. 462.

**Chairman Yeager:**
Is there any other testimony in support of A.B. 462? Please come forward. I do not see anyone, so I want to thank you for joining us and providing your testimony. We will open it

for opposition. We have a number of folks signed in and to be fair and give everyone an equal amount of time, I will limit opposition testimony to approximately two minutes. I will remind you when your time is getting close. If we limit it that way, we are going to hear equal time from the proponents and those in the neutral position. With that we can start with Carson City.

**Joshua J. Hicks, representing Nevada Home Builders Association:**
The Nevada Homeowners Association is a state umbrella association that consists of the Southern Nevada Home Builders Association and the Builders Association of Northern Nevada.

I would like to make a few comments that are more contextual than anything else. We put a variety of documents on NELIS (Exhibit T), (Exhibit U), and (Exhibit V). It is important that you heard a little bit of testimony on the history of NRS Chapter 40. There are a lot of members on this Committee who were not around the last session, so I thought it would be important to lay out a little of the findings that justified what happened on A.B. 125 of the 78th Session and why. A lot of this is on NELIS from 2015 if you would like to go back and look at it. When we went into that hearing, we were striving, as the home building industry, to take a system that had gotten too far into incentivizing litigation in our minds and were trying to bring some balance back to it.

We did a study, we did surveys, and we found a variety of interesting facts. Those are on NELIS as well (Exhibit W) and (Exhibit X). We saw a significant increase in construction defect lawsuits while home building was actually going down at the same time. We saw a striking statistic that Nevada homeowners were 38 times more likely to be involved in a construction defect lawsuit than in other states. In a survey that we did of homeowners, we found that only 3 percent of them actually sought out an attorney themselves. Most of these cases arose from solicitation letters. Any of you who have lived in a community might have seen or received one of those. Most homeowners involved in litigation, 77 percent, were involved in cases arranged by others. A lot of those were the HOAs' cases that were instituted. The average resolution time for a construction defect matter—which was an important factor because what we are talking about is how fast someone can get a home fixed—was found to be 2.6 years, and in a recent survey that Mr. Goldwater will cover, it was actually about 33 months. It was about a three-year resolution time on average for homeowners.

That is difficult because these are defects that need to be disclosed if you try to sell the house. They can impact your financing and market value. There are a lot of negative issues with having that hang out there for that long. We put on some evidence about the discrepancies between fees and recovery to the homeowner. Those were quite strikingly different. We also found some evidence about insurance costs being much higher in other states as compared to Nevada. We are happy to report that one of the documents that you will find on NELIS now is a letter from LP Insurance Services (Exhibit Y) that actually makes the point that insurance rates are actually going down for contractors, so we are seeing some really good results from the bill.

With all that said, the bill that went into A.B. 125 of the 78th Session, and most of this is being suggested for repeal in the as-drafted version of A.B. 462, was to clean up the definition of a defect and require some kind of showing of physical harm or risk of physical harm or damage to a person or property. Although the entitlement to fees came out of the damages, it is important to note that that was replaced with an ability for a homeowner to bring a pre-litigation offer of judgment. That is not something that has been mentioned. It is not subject to repeal in the bill, which I think is telling. It shows that it has been seen as a valuable tool.

What we have in law right now is the NRS Chapter 40 process, which is a pre-litigation process and the ability for a homeowner to make an offer of judgment from day one before all of the fees and costs are incurred. Then that puts the contractor at serious risk of having to pay those fees and costs in their entirety if they do not beat the offer of judgment, another tool that is there to help resolve things early and make sure homeowners have an avenue of resolution. We required specificity in the notices of defects and that was important because the whole idea of NRS Chapter 40 was to provide a notice and opportunity to repair for a builder. When the notices were vague, there was no cooperation from the homeowner in that process. It was impossible to identify the specific problems and get things fixed. The whole idea of the notice and opportunity to repair fell apart and the homes were not getting fixed. We required specificity in the notices and we also required homeowner verification of those notices. I will note that in the original draft of A.B. 125 of the 78th Session it was actually a sworn statement by a homeowner that was changed to just a verification in the final version of the bill.

We touched on homeowners associations and that was a direct result of some of the issues we have seen in Las Vegas with HOAs getting involved in some bad actions. It was a system that was set up for potential abuse just because of the ease of going into the construction defect lawsuits. There are a variety of other changes. We did try to strike a balance and bring something fair into play for everyone. As Assemblyman Hansen pointed out, it has only been two years since this has been out there. We have also tried to direct people to the State Contractors' Board, which is always an available remedy, and the Residential Recovery Fund that is there that usually gets completed in about 60 days. There are other options besides litigation.

**Chairman Yeager:**
I will note for the members that there are a number of exhibits on NELIS. What I am going to do is allow the other two gentlemen to testify and then we will take questions. We have some questions up here, but we will take them in that order.

**David Goldwater, representing Leading Builders of America:**
So often when we come up in opposition to a bill it is always a tale of doom and gloom, but not today. I am excited to tell you a success story. After the passage of NRS Chapter 40, Noticed and Opportunity to Repair Act, we collected some data from our members. We all like to make decisions based on data so let me share some of the highlights of that. It is on NELIS (Exhibit Z) as success stories and is in PowerPoint format.

First, NRS Chapter 40 notices are down by 40 percent. What does that number tell us? It tells us two things. It is not zero. The notices are still being filed. Fewer lawsuits and notices mean that homeowners are finding satisfaction. The average time to resolve NRS Chapter 40 disputes is down from three years to one year. That is extremely encouraging to know. Your constituents, our customers, even when they file a lawsuit are finding satisfaction a full two years faster than they were before. Which part of A.B. 125 of the 78th Session was responsible for the faster resolution is hard to say. All of the reforms are working together. They get people quicker resolutions to their problems. The cost to settle a NRS Chapter 40 case is down by half. Gone are the days of $500,000 worth of damages and $10 million in attorney's fees. Today, there are pre-litigation offers of judgment making constituents and our customers whole.

What do we know? The data tells us that lawsuits are still being filed. There is still access to justice, but the homeowners are getting these matters adjudicated faster. This helps the value of their home and helps make them whole quicker.

**Josh Griffin, representing Nevada Subcontractors Association:**
Nevada subcontractors, as many of you know, are the smaller businesses that oftentimes make up the construction process of a home, whether they are the plumbers, electricians, roofers, landscapers, drywall, painters, et cetera. We serve as partners with the homebuilders to deliver a product to our customers. I have had the honor of representing the Nevada Subcontractors Association for the past 11 years. During each of the years that I have represented them, I have had a conversation with the bill's sponsor on this topic. Just as on this bill, her door has always been open to us, and we appreciate it. While we do not support the bill, we do appreciate her open door to always talk with us and hear our perspective.

I was going to come up here and talk about the history of how we got there, but I think both of the gentlemen and the bill's sponsor covered all of that. Before A.B. 125 of the 78th Session was passed in 2015, that was the first piece of legislation since 2003 in which the Legislature addressed NRS Chapter 40. I have represented them in almost every session since, and we have made many attempts. The bill passed as a partnership with a lot of the industries that are testifying today. In our estimation, from the standpoint of the construction industry, it did not work. It did not do what we were hoping we were doing in 2003, which was to create a right to repair. That is what everyone intended. I do not think this was a deliberate attempt. It just did not work out the way we thought it was intended.

We tried to address some things in 2005 and 2007, and like what was addressed earlier, we were told to give it some time and see if the bill that was passed works. We gave it some time and made other efforts in 2011. What we are saying now is the same thing: give it some time. Assembly Bill 125 of the 78th Session is less than two years old. It is working. We think the path for homeowners to get their repairs done is a little shorter, a little clearer, and a little more reasonable. We are asking for the same consideration to give it some time, to see it work, and to let the industry continue to flourish and continue to grow.

**Assemblyman Wheeler:**
Mr. Hicks, you made the comment that insurance rates have dropped since this happened. I have received maybe 20 phone calls in the last 24 hours from contractors in my district who have made the same comment to me that insurance rates have dropped drastically since the implementation of A.B. 125 of the 78th Session. Since that happened, will the contractors pass on that savings in either the form of lower pricing or by not raising their prices as much? We all know, with supply and demand, right now housing prices are going up. If that is the case, would not the implementation of this bill raise those prices and cause first-time buyers a whole lot of hardship when prices go up on those homes?

**Josh Hicks:**
That is our exact understanding of the situation. The cost of insurance is like any other cost of business for a contractor. The more it costs to do business, the more you try to pass that on to your end-product price. If those prices are going down, that lowers costs, and if they go up, it raises costs. I will submit to you that there will be other testifiers who will give their specific experience as contractors, about what they have seen on those insurance rates, what they saw in the past when we were at the height of litigation over NRS Chapter 40, and what they have seen today. They have all been trending in the direction of costs going down.

**Assemblyman Pickard:**
I have the experience on all sides of this, having been a contractor and developer, and now an attorney, and someone who has created and run homeowners associations. The testimony that troubles me is about the HOAs and their professed inability to seek repairs. I recognize the block walls, for example, are owned half by one resident and the other half by the other neighbor. Since they have a maintenance requirement, they are truly precluded from getting that. I do not know if they join with the homeowners and file suit, but can you tell me how they would go about redressing their issues, or are they truly left out in the cold?

**Josh Hicks:**
I think there are a couple of different pieces to that. The law as it stands today allows the HOA to have standing if it is a common element. Whether that particular issue falls into that, I do not know. That would depend on a case-by-case basis. There would be standing in that case if that was it. If it was not, and the HOA did not have standing, there is nothing to preclude the homeowner himself from either bringing an NRS Chapter 40 action, banding together with other homeowners to do that and potentially becoming a class action. There would be nothing to prevent them from seeking either redress from the Contractors' Board on an individual level, seeking recovery out of the Residential Recovery Fund, or simply contacting the builder to see if there is a warranty issue that might take care of that. Regarding the question on whether they can get into court, you would have to ask the first questions first. Are there other avenues of relief to get that? If not, there is also an ability to go under NRS Chapter 40 and go into court either alone or banded together with other homeowners.

**Assemblywoman Tolles:**
My husband and I have been through two house remodels and the majority of that experience was excellent, but we did have one contractor that we had issues with, along with another homeowner. It got elevated to the Contractors' Board. We have heard about insurance and NRS Chapter 40, and added to that conversation was the Contractors' Board. What are all of the available remedies today for a homeowner to address an issue when it comes up? Please bullet point that, so I can get a current landscape of what is available.

**Josh Griffin:**
I do not mean to sound glib, but the most obvious one is that homeowners are the customers for the homebuilder and the subcontractors. For the subcontractor, it is often the homebuilder, but good customer service and happy customers are typically how you get more customers. I do not say that to dismiss any other avenue but that is a very important piece of being in business and making the investment of time and money that people get into. They get referrals from their customers.

That being said, all new homes have a warranty and that is an effective method. The process should be, if you have a problem with your home, you call the builder that you bought it from and explain what the problem is. The path to get that fixed is there to the extent that, in the rare occasional circumstance that that does not work and there is no satisfaction, or someone does not respond the way they are supposed to respond, the Contractors' Board in this state is very robust and has a recovery fund and rules. As Assemblyman Hansen pointed out, they hold your professional license. There is a lot of influence and leeway there. Of course, there are still the courts. The courts are not shut off as a result of NRS Chapter 40 as it has currently been modified by A.B. 125 of the 78th Session.

**Chairman Yeager:**
Is there a cap on the Residential Recovery Fund that you mentioned where there is an amount that can be paid out for a claim?

**Josh Hicks:**
I believe it is $35,000 per claimant.

**Chairman Yeager:**
Is that fund available to be used to compensate folks for personal injury claims, or is it related solely to structural problems with the house?

**Josh Hicks:**
I believe it is just for repairs to the house. I may be wrong, but that is what I believe it is.

**Assemblyman Hansen:**
I wanted to have one of you elaborate on the Residential Recovery Fund. Nobody even knows about it. Many people on the Committee have no idea that it is available, and what a great, simple way it is to deal with issues like this. Can you elaborate a little more? That is

something that we need to emphasize because we have a great mechanism for taking care of most problems with homes if the contractors are not doing their jobs.

**Josh Hicks:**
There is a robust Residential Recovery Fund in this state. It is funded by contractors; they all pay into it. There are several million dollars in that fund right now. There are limits that we talked about that are sufficient to cover these things. The biggest advantage of the recovery fund is its simplicity and its speed. It is a process and you can go online and fill out your claim and submit it. Most of those are resolved within 60 to 90 days. There is a significant incentive for the contractor to resolve it because they do not want to have those problems on their record. They do not want to have the problems out there. If they do not fix it, the fund is there and available to compensate the homeowner. It is a very underutilized fund and we always try to educate homeowners about the availability of it if they cannot get recourse through their builder, but they usually can. It is not complicated. You can have legal counsel draw it up, but you certainly do not need legal counsel. It seems to work for a lot of people in a quick fashion.

**Assemblyman Hansen:**
I would point out that you do not need a trial lawyer to access it either. That saves a ton of money.

**Chairman Yeager:**
I think you just said that you can only go through the Recovery Fund if you cannot be made whole through the builder. Is the Recovery Fund limited to circumstances where the builder is not available to pay or is out of business, or can anyone go to that fund?

**Josh Hicks:**
I am not sure if I understand your question. My understanding of the Recovery Fund is that, if you cannot get the builder to help you out and cannot get redress, it is available for the homeowner.

**Chairman Yeager:**
Is there a time limit on how long you have to go to the Recovery Fund?

**Josh Hicks:**
Yes. It is four years.

**Chairman Yeager:**
I do not see any more questions. We will invite the next speakers in opposition. If there is anyone in Las Vegas who would like to testify, please come up to the table. I do not see anyone, so we will stay up here in Carson City. Please keep your comments brief so we can hear from everyone.

**Jesse Haw, President, Hawco Properties:**
I am a builder from northern Nevada. As background to this issue, I have been humbled to serve as our local and state president of the Builders Association. My grandfather built houses in Henderson in the 1950s, and my father built homes in Winnemucca in the 1980s. For a short period of time, we all worked together in Reno building homes. In 2002, we had over 200 employees. As a family business, we could not take the risk of frivolous lawsuits. It was a time when companies were being sued regardless of how well they took care of their homeowners. Our insurance reflected this and our insurance premiums escalated from $47,000 a year in 1997 to $750,000 a year in 2002. We never had a loss, but it cost $750,000 for $1 million worth of premiums. It was at that time that we decided it was not prudent for our family to stay in business. In 2016, a year after A.B. 125 of the 78th Session passed, my brother and I built the first subdivision in our family since 2002. That was directly attributable to the changes in NRS Chapter 40.

I want to thank this body for supporting those changes and giving our family a chance to work again. If a home has an issue, we must encourage builders to fix the problem instead of reverting to a time when homeowners were canvassed to join a suit. With the changes put in place two years ago, homeowners are getting their homes repaired faster than they have in years. Is that not really one of the main goals? Families want their homes fixed and builders want to fix them. We should encourage that and you can encourage that by supporting the homeowners and workers in Nevada to keep NRS Chapter 40 working well. If today's discussion brings a vote, I respectfully ask you to vote no.

**Gary Milliken, representing Nevada Contractors Association:**
As Mr. Griffin mentioned earlier about the historical perspective, when I met with Assemblywoman Carlton last week, we agreed that since 1999 we have been discussing construction defects every session. I doubt that will change for a while. It has taken us from 1999 to 2015 to define what a construction defect was. From the contractors' perspective, every session we could bring up the same point about defining what a defect is before we get concerned about repairing it. I thought Mr. Hick's summary of what happened last session and the results were excellent, and I agree with everything he said.

**Assemblyman Pickard:**
Would you be able to explain the power of the Contractors' Board and how the specter of a complaint from them differs from a lawsuit and how you respond to it?

**Jesse Haw:**
The Contractors' Board is a scary place. If they do not approve of you and support you and you do not do the right things, you lose the ability to go forward and do any other work. As opposed to a suit, when NRS Chapter 40 suits were really coming on, at some point you could not talk to the homeowner, so you just turned it over to your insurance company and you kept going. The Contractors' Board will stop you. You will not build anymore as opposed to more lawsuits and your costs going up. It will be a terrible headache and heartbreak, but at least you can keep going forward and try to make a living. The Contractors' Board is Darth Vader.

**Assemblywoman Tolles:**
I know that you work with a number of other builders. Do others share that same story where they had to stop building as a result of this issue?

**Jesse Haw:**
Yes. I see it more in our local homebuilders. I champion and welcome the nationals and the publics to Nevada. If we had a chart to show how many local, small contractors there were prior to the run on NRS Chapter 40 and where we are now, it would be dramatic. I simply cannot take the risk, as a family-owned business, of losing everything I have, whereas a large public contractor might take a hit on their stock price. It is a very different and dramatic affect for the local guys versus the publics.

**Assemblyman Wheeler:**
You made a statement a moment ago that jogged my memory about something in A.B. 125 of the 78th Session, and I wonder if you can expound on it. Have you actually seen construction defect attorneys going out and fishing for construction defect lawsuits to make a class action lawsuit?

**Jesse Haw:**
Yes, sir. It is commonplace and frustrating to see. I coach the local high school girls' soccer team. Their parents were actually in a suit against us nine years after the home was built, and they did not even know it. I do not altogether blame the attorneys that go out and canvass these neighborhoods because there is absolute money available whether you win or lose. Absolute money creates a small portion of attorneys who abuse it. What you saw was them literally going from neighborhood to neighborhood canvassing people to get them to sign up for the lawsuit.

**Assemblyman Wheeler:**
Would this bill recreate that problem?

**Jesse Haw:**
It most likely will if the judges agree with the same interpretation that they had before the unintended consequences of attorney's fees somehow becoming automatic, which is not how the law states it, but that is how it is ruled by the courts.

**Chairman Yeager:**
I think the amendments that were proposed today [(Exhibit R) and (Exhibit S)] contemplated a prevailing party-only attorney's fees, which I believe is a departure from NRS Chapter 40 as it existed before A.B. 125 of the 78th Session, and I am merely putting that on the record as far as attorney's fees. Just like in the contractor's lien scenario, there would have to be a prevailing party for those fees to be awarded.

**Assemblywoman Cohen:**
Is it common for several houses in one neighborhood to have similar construction defect problems?

**Jesse Haw:**
Yes. I believe that can be true, especially with the Kitec issue that happened when there was a product that had a real defect. When that product is used by the same plumber in the same number of houses, it can certainly happen that a particular subdivision uses the same defective materials. I can assure you that contractors in that case would want to get that fixed. If there is an issue of a common problem, we want to fix them all.

**Victor Rameker, President, Nevada Home Builders Association; and Owner, Desert Wind Homes:**
I serve as president of the Nevada Home Builders Association (Exhibit AA), and my wife and I are also the owners of Desert Wind Homes. We are a small local homebuilder that builds homes in northern Nevada. I wrote a letter to the Committee (Exhibit BB) and included in that letter were actual NRS Chapter 40 filings that have been filed against our company. In addition, some photos accompanied those filings from the plaintiffs' attorneys. I would encourage you to take a look at it. By looking at it, you will see the absurdity and abuse that took place before the passage of A.B. 125 of the 78th Session. Prior to A.B. 125 of the 78th Session, the definition of "construction defect" was made so broad that complaints included items in an almost-10-year-old home such as paint overspray on windows, baggy carpets, and exterior iron fences rusting.

We also received—and this is no joke—an NRS Chapter 40 complaint that said "missing smoke detector." Upon inspection of the missing smoke detector, it was discovered that the bracket was there. The smoke detector obviously had to have been there for us to get a Certificate of Occupancy. After seven or eight years, the battery died and someone did not want to hear the beeping, so he pulled it down but never replaced it. As a result, Desert Wind Homes had to come up with the first $25,000 to $50,000 depending on what my insurance deductible was for that project to defend that lawsuit. When you start arguing over baggy carpeting, it is not hard to see how 8,500 hours of attorney's fees and 33 months of litigation add up pretty quickly.

The irony of NRS Chapter 40 before A.B. 125 of the 78th Session is that those kinds of claims, the baggy carpets and missing smoke detectors, really underserved legitimate claims like Kitec. It denies justice and denies repairs for people who have legitimate claims. Bad legislation also closed many small businesses, caused the loss of many construction jobs, made insurance prohibitively expensive or unavailable to us in terms of any type of multifamily project, and drove up the costs of housing for our community. Right now, we are actually looking at a multifamily project because we are now able to get insurance. An insurance carrier will now look at Desert Wind Homes and provide coverage for us that is affordable.

**Matt Walker, Chief Executive Officer, Southern Nevada Home Builders Association:**
On behalf of the hundreds of members of our association and the thousands of men and women who work in the residential construction industry, I am pleased to have this opportunity to give you a brief progress report on how changes to the construction defect law have impacted the construction of multifamily condos and townhomes in southern Nevada.

In 2015, the Nevada Home Builders Association presented before this Committee that the construction defect statutes were preventing our members from planning new multifamily condos and townhome communities. In 2015 we reported that, over the past ten years, the starts were near zero, while between 2008 and 2013, new multifamily housing permits in surrounding states like Arizona, Utah, California, and Oregon were drastically increased and exceeded their 2008 levels. Multifamily housing has a much higher liability risk as you have heard because HOAs had frequently been appointed entry for construction defect disputes. Mr. Canepa laid out a case where approximately $500,000 in defective repairs was awarded by a jury and was matched by almost $7 million in attorney's fees that were awarded by the judge.

Owner-occupied multifamily units are a key segment for workforce housing, first-time home buyers, and seniors. Multifamily condominiums and townhouses are key elements of southern Nevada's high-capacity transit plan, the City of Las Vegas' Downtown Centennial Plan, and many other urban redevelopment plans throughout our state. First-sale multifamily units are a crucial building block for sustainable development and making the dream of middle-class home ownership possible for working Nevadans and for attracting new, young professionals to southern Nevada to work in our job markets.

Since A.B. 125 of the 78th Session passed, we have seen a significant uptick in multifamily starts. Specifically, you will find a letter from four of our builders (Exhibit CC) on NELIS that lays out the Toll Brothers' planning or building 266 new units since the effective date of A.B. 125 of the 78th Session. Lennar, a builder that built no multifamily units from 2005 to 2014, has initiated construction on 385 units, and an additional 500 units are in the planning stages. There are two additional builders for a total of just over 2,000 units just among those four builders alone. We are very excited about that progress.

**Rocky Cochran, Vice President, Construction Operations, Pardee Homes, Las Vegas, Nevada:**

This is an important issue for homebuilders, as well as subcontractors in the homebuilding industry as a whole. I myself, as is Jesse Haw, am a third-generation homebuilder in the Las Vegas area of Nevada. My father and my grandfather told me not to get into construction, but that did not work very well. I have been working for Pardee Homes for 27 years. Managing the construction operations has allowed me to manage the customer service operations and purchasing. Every one of these NRS Chapter 40 lawsuits over the years of my career with Pardee passes through my desk, and many times what we find is that the client, for the trial attorneys, never did make a phone call to my service department. That is unsettling. We take a lot of pride in what we do in building quality homes, and not being able to have an opportunity to service our buyers was disappointing.

We also have opportunities that have come up recently with A.B. 125 of the 78th Session and, as a homebuilder, I will give you an update of what some of those items were. As Matt Walker talked about, Pardee Homes, for the first time in 20 years, is putting plans on the table to build multifamily (Exhibit DD). This is something that I did early in my career, but it has been eliminated for the majority of my career. It is essential that homebuilders be

able to build multifamily because they become more affordable when you can have an attached structure that becomes more of an opportunity to put product out to the market that can be more affordable. We talked a little about affordability, but what has been empty from that, and the reason it has been empty, is the lawsuits. You get wrapped up in a class action lawsuit. Many years ago that was the direction that came from California and migrated to Nevada and pretty much the present-day NRS Chapter 40 is what we have. I am very pleased that Pardee Homes is able to get back into the multifamily market in desirable parts of town, close to people working. I have a son who is 31 years old and is looking forward to purchasing his first home in the price range that we could not have afforded without attached living.

Customer service is so important to homebuilders. It was also mentioned that our life blood as a homebuilder is our reputation, and Pardee Homes in Las Vegas depends a lot on that, as well as move-up buyers. We probably have a 25 percent move-up buyer category that is essential for our business. We could not do business without our reputation of building quality homes and delivering quality service. Since the passing of A.B. 125 of the 78th Session, the data shows that I am able to serve my buyers quicker and am able to get them satisfied without having to go through a lengthy period of time dragging them through undue needs. We have also found that the buyers themselves feel that they have the opportunity to be able to call and get service without having to go through a third party that really is not part of our industry.

On a final note, there was another subject that came up. To my dismay, Pardee Homes has had a few NRS Chapter 40 issues that have recently come in. All of it comes through my desk, and I look those up and go into the records. None of those homeowners had made a call to my service department to be able to get things fixed. They jumped over that process, and over the Contractors' Board process, and went to an attorney. My understanding from doing some investigating is that those attorneys were actually canvassing my neighborhoods. To answer that question, they are still out canvassing homeowners and talking about getting involved in NRS Chapter 40 lawsuits.

**Rebecca Merrihew, representing Nevada Subcontractors Association:**
I am a Nevada subcontractor and have been for 13 years. I would like to share my experiences on that side of the fence. My lawsuit experience has been giving letters, having a very vague boilerplate of what is actually wrong with the home and looking for my scope of work to see why I am implicated in the suit. When I look and I am not there, I still have to turn it over to the insurance companies to have them battle it like Jesse explained. It would be easier for me if I had the opportunity to repair my work, and not once did I have the chance to repair my work. It would have been cheaper for me and easier for the homeowner if I had been given that chance. To go and redo my entire work would have been less money for me, but so much easier for the homeowner if I was allowed that. I was not once given that opportunity.

Regarding the Contractors' Board, he is not kidding when he said it was Darth Vader. If you get a call from the Contractors' Board and they say jump, you ask how high. It is your

business and your pride. Your name is on that. For me, if I have an upset customer, I am going to do everything I can to make them happy. I just need to receive that call, and that is why A.B. 125 of the 78th Session has changed the relationship of the subcontractors and the builders. They are aligned and have come together to tell the homeowner that, if there is something wrong with your home, please exhaust all you can before you go to the long, lengthy litigation process. Call the builder and ask if their warranty is in place. Again, if it is not there, you have other avenues like the Recovery Fund. If the Contractors' Board calls the subcontractor and says there is an issue with a house, the subcontractor will be there to repair it.

**Jim Rampa, Director, Customer Service, Pardee Homes:**
While well intended, before the NRS Chapter 40 law, my experience is more of a hindrance to homeowners than a benefit. Assembly Bill 125 of the 78th Session allows for speedier and more direct resolution to any individual's issues without the lengthy legal battles that instead stymie everyday livability for all residents in the community. For example, homeowners who contact the builder with any concerns receive an immediate response from our customer care teams that are ranked among the highest in the industry. Conversely, homeowners who contact lawyers unwittingly put all of their neighbors in a class action scenario that can take years to resolve while receiving no help or assistance in taking care of the original problem. In addition, these legal proceedings take homeowners out of work for additional inspections, meetings, lawyers, and other administrative responsibilities related to the litigation, while also unnecessarily tarnishing the reputation of the builder, who would have been happy to resolve the issue directly.

Furthermore, at Pardee Homes, our commitment to our homeowners' satisfaction reaches far beyond the initial first year of the warranty. In fact, for up to ten years from the close of escrow, a homeowner is welcome to call Pardee Homes and set up an appointment for an evaluation of any needed repairs. If the home is within four years, the director of customer service, me, makes the decision to repair or not. If the home is past the four years and up to ten years and possibly beyond, the director and the vice president of construction make that decision. The guidelines for Pardee Homes' decision to repair is simple: if something was installed improperly, we repair it. It is as simple as that. Pardee Homes has exceeded many homeowners' expectations by following this process and are often surprised that we would complete the repairs when their homes are eight or nine years old. In my 13-plus years with Pardee Homes customer service, our homeowners are not only thankful for our standing behind the homes that we sell, but are also appreciative and astonished that we would come back and do the repairs to their homes even if it is past the one-year time frame.

At Pardee Homes, we simply do the right thing. It is our core value, and we will continue for generations to come. Keeping A.B. 125 of the 78th Session is not only good for the homeowners; it is also good for the reputation of the entire building industry, as well as the city. I am on the front lines as a director, and I deal with a lot of the homeowners whose houses are past ten years old, and they are very happy that we come back and make the repairs. All we ask for is the opportunity; they just need to call us.

**Arthur White, President, Plumbing, Heating, Cooling Contractors of Nevada:**
I will give you a brief history of how the construction defect law back in the day affected my life and several of my employees. Back in 1992, I became a contractor. I was the seventh-youngest contractor in Nevada. A friend of mine and I opened a plumbing company. With that said, we performed plumbing on primarily new homes. In 1999, we had 100 employees. The construction defect was getting bad enough that we could not stay in business. We could not afford it. Around 2003, my insurance premiums jumped 600 percent. I actually went to Lloyds of London for a quote, and believe it or not, they were not the highest quote. We chose in 2004 to close the doors on our company and redirected our efforts to small commercial tenant improvements, service, and repair.

The biggest problem with the construction defect is exactly that the attorneys were, and still are, canvassing these neighborhoods trying to get people to sign on the dotted line. New, old, first-time homeowners, 15-time homeowners, all have the opportunity to hire a third-party inspection company to come out for an inspection. Lenders today will not lend on a Kitec home. If the home has Kitec in it, a bank will not lend on it, so there is some protection there.

I would strongly encourage voting no on Assembly Bill 462. Let us give A.B. 125 of the 78th Session a chance to ride for another couple of years. It seems to be working well. I learned a lot today listening to the testimony from everyone on both sides.

**Chairman Yeager:**
To let everyone know, we will not be voting on this legislation today. If that is going to happen, it will be sometime later this week. Let us come back now to Carson City and remember that it is always okay to agree with folks who spoke ahead of you. If you have something new to add that we have not heard, you are welcome to do that.

**Melissa J. Roose, representing Anthony & Sylvan Pools Corporation**:
I am here in opposition of this bill on behalf of our client, Anthony & Sylvan Pools (Exhibit EE). We currently have a case pending before the Nevada Supreme Court, which this bill directly impacts. In our case, the entirety of A.B. 125 of the 78th Session is being challenged, including the statute of repose specifically. Assembly Bill 462, as drafted, would retroactively change the existing periods of repose and eliminate these defenses in our case and any other case in which the statute of repose is at issue. We respectfully request the opportunity to allow the reforms of A.B. 125 of the 78th Session to have a chance to work, and to allow the legal issues to go through the court system, including our case, which has a briefing scheduled for this summer.

**Chris Barrett, Vice President, Business Development and External Affairs, Q&D Construction, Inc.:**
We appear before you today to support your record of opposing Assembly Bill 462. We are a family-owned business. Q&D Construction was established in 1964. We have a number of divisions. We have the heavy civil division, which provides site work, utility work, bridges, and roads. Our building division constructs residential and commercial applications, as well

as tenant improvements. We also have an aviation division where we do tenant improvement construction at airports. We served over 100 airports last year.

We have had considerable involvement in this legislation over the years. We fully recognize that consumers need protection, and it needs to be firm and fair. Assembly Bill 125 of the 78th Session has brought that to the table in allowing us to deal with our customers' issues and problems and to get them resolved right away. We feel that A.B. 462 is far reaching. Subpar legislation does not protect the consumer. It prolongs fixing those problems, and it furthermore penalizes responsible contractors. I submitted a letter for the record (Exhibit FF), and rather than read that in, I just provided my brief statement.

**Aaron West, Chief Executive Officer, Nevada Builders Alliance:**
I am here on behalf of our 750 member companies representing all aspects of construction statewide. We are here in opposition to A.B. 462 for the reasons stated previously. I would also put this out there from an economic development perspective. As we see jobs being created in the state again, that is creating demand on the housing side. I think everyone is aware that the demand is driving prices. We are seeing the need for more flexibility in our housing options in order to meet the demands of the buying workforce. In order to provide the workforce housing, we really need those options. Whether real or perceived, NRS Chapter 40, prior to A.B. 125 of the 78th Session, was a barrier for builders to provide that product.

As an example, two weeks ago in Carson City, a group broke ground on a 110-unit condominium project. It is the first time in 20 years that a condominium project has been contemplated. I would submit to you that, in Carson City now, we are looking at a zero vacancy rate for multifamily products. In the statement from the builder at the groundbreaking, he would not have contemplated this project or been able to push forward with the necessary insurance, financing, et cetera, if it were not for the changes from A.B. 125 of the 78th Session. It is for those reasons I stand with everyone else in opposition.

**Lauren Brooks, representing Nevada Housing Alliance; and Nevada State Apartment Association:**
Both organizations I am representing are opposed to Assembly Bill 462. The Housing Alliance and the Apartment Association provide affordable housing for our workforce. Since the passage of construction defect reform just two years ago, we have seen a number of multifamily home projects break ground. Please reject A.B. 462 and allow our current workable statute to stay in place.

**Don Tatro, Executive Director, Builders Association of Northern Nevada:**
I was not planning to testify, but since it came up, I thought I would mention that canvassing is very active and continues. On March 17, 2017, I received a letter from a prominent construction defect law firm asking about some very vague problems with my house. I declined the offer, but I would be happy to submit the letter for the record if anyone so desires.

**Kevin Sigstad, Vice Chair, Nevada Association of Realtors:**
I want to give you a couple of aspects from our side that are different from what has been presented so far. Most of us are aware that the housing stock is very low in both northern and southern Nevada. We have a two-month inventory of properties for sale in the north. I do not think it is marginally different in southern Nevada. There have not been any multifamily projects developed in a number of years, which has contributed to the shortage. The median home sale price in northern Nevada is now $330,000. There is no entry-level affordable housing on the market for all of the workers we are attracting with the growth in the north and the south. For this reason, I would oppose A.B. 462 and encourage you to allow the formation of multifamily homes to continue, so we can address this housing problem.

**Assemblywoman Tolles:**
It occurred to me earlier when we were talking about the steep climb in insurance costs, and I imagine that it gets passed down to the residents, so could you speak to the impact that the high cost of insurance has on the affordability of housing?

**Kevin Sigstad:**
I do not know if I can speak to the construction side of the insurance problem. I can tell you that I know a number of contractors who have been out of the business for a number of years because of the insurance who are now coming back into the business and are contemplating projects. This is a radical change from the last 15 years, and it is certainly a welcome change from our perspective.

**Assemblyman Ohrenschall:**
You touched upon the housing shortage here in northern Nevada. Do you think it is as bad down in southern Nevada in terms of the need to build new apartments and condominiums?

**Kevin Sigstad:**
Everything that I have heard I believe is true. I just read an article that there are 45,000 people a year moving into Las Vegas. They are building as fast as they can to address that issue. Part of that has to be multifamily in order to address the needs of the consumers.

**Assemblyman Ohrenschall:**
With that kind of demand for housing due to Tesla and all of the new industry that is coming to our state, how do you divide it up in terms of what the rise in housing starts is attributable to, because of the new industry versus the recent change in law?

**Kevin Sigstad:**
We did not have any construction to speak of for the last ten years, and yet, there were still household formations in the marketplace. Kids were still graduating from high school and college and formulating households, but we were not building any housing stock. We started off behind the curve in terms of availability. In spite of the construction that has taken place since 2011 and 2012 when we came out of the recession, we still have yet to catch up to the

demands in that period of time. We consider an even balance to be about a six-month supply of inventory. We have one-third of that currently, and we have been in that position for the last few years.

**David R. Clayson, representing Las Vegas Defense Lawyers:**
I am going to talk about a couple of things that have not been addressed by the others. First of all, the statute proposal is going to get rid of the statute of repose for all personal injury and wrongful death cases. The only justification that we have heard is equating these somehow to fraud. That is certainly not the case. Statutes of repose are just as important on those types of cases as others. If it is 10, 15, or 20 years down the road, there is no way for a construction company to keep records to be able to know who actually performed the work, if there is insurance available, and all of those issues. There is no reason to cut that out. It should be the same as property damage.

The second thing is that we were told one of the goals is to make folks whole. In the definition of a construction defect, which is greatly expanded by this proposal, in the current way, it is physical damage. That makes a person whole. There can be technical violations that do not cause physical damage to the home, and if the goal is to actually make the people whole, there has to be a limit. The problem in litigation is that it is a technical violation, and there can be no physical damage to the home, but you have a huge verdict from the awarding of attorney's fees and expert fees. We had one case—it was a single family home—that cost $150,000 in repairs, the attorney's fees were $250,000, and expert fees were over $200,000. It was just absurd. There needs to be some definition by the Legislature as to what is meant by these things.

As far as prevailing parties, you can have litigation where there could be ten separate defects. If the defendant prevails on nine, and the plaintiff prevails on one, who is the prevailing party? It is not set forward as far as I can tell. Guidance for the courts on this would be extremely helpful for litigation.

**Peter D. Krueger, representing National Electrical Contractors Association:**
We represent both the greater Sacramento, California, and Reno, Nevada, chapters, as well as the southern Nevada chapter. Our position is that we have new legislation from last session, and we would like to encourage that it be allowed to run and see if the things that we are talking about here continue to bear fruit.

**Andrew Haskin, Director of Business Development, Northern Nevada Development Authority:**
For the most part, we are in agreement with Aaron West from the Nevada Builders Alliance. This has an economic development impact from the workforce housing standpoint, so we are in opposition to the bill.

**James L. Wadhams, representing The Chamber, Reno, Sparks, Northern-Nevada; and Las Vegas Metro Chamber of Commerce:**
I have been asked to enter into the record, on behalf of The Chamber of Reno, Sparks, and Northern Nevada, as well as the Las Vegas Metro Chamber of Commerce, their opposition. They supported A.B. 125 of the 78th Session and would like to see it continue to operate for at least another two-year cycle.

**Chairman Yeager:**
Seeing no one else in opposition, I would like to open the testimony to neutral. We have at least one person signed in. If there is anyone neutral in Las Vegas, please make your way to the table. We will start in Carson City.

**Gennady Stolyarov II, Lead Actuary, Property and Casualty, Insurance Division, Department of Business and Industry:**
I want to emphasize that the Insurance Division is neutral as to the policy matters surrounding A.B. 462. We are here in the capacity of offering a technical amendment to section 12, subsection 3, which the Committee members should be able to access on NELIS (Exhibit R). We are grateful to Assemblywoman Carlton for considering our amendment and for mentioning it in her introduction. The purpose of this amendment is to align the language of section 12 with the stated intentions of the bill's proponents.

I also want to emphasize that this is not an issue unique to A.B. 462. It is an issue that exists in current law in NRS 40.650. It is also an issue that predates the 2015 reforms. As I understand it, the intent of NRS 40.650, subsection 3, is to require homeowners who are claimants in construction defects situations to pursue claims under the original builder's warranty of the home; the warranty that a new home comes with. However, the builder's warranty is not an insurance product, and it is not regulated pursuant to Title 57 of NRS. In fact, there is no insurance product, or other regulated product pursuant to NRS Title 57 that would offer homeowners any direct first-party coverage in the event of a structural construction defect. There are no insurance products in Nevada called a "homeowners warranty."

The current language of NRS 40.650, subsection 3, refers to a "homeowners' warranty that is purchased by or on behalf of a claimant pursuant to NRS 690B.100 to NRS 690B.180."

Those provisions of NRS actually refer to a different product called "insurance for home protection," which is not the same as homeowners' insurance with which we are familiar. This is a niche product that has not actually been offered on the market since 1999 when NRS Chapter 690C, pertaining to service contracts, was enacted.

The strict technical reading of the law as it is would essentially require homeowners to file claims under a nonexistent insurance product and that wording would make that entire situation a null set.

What happened in NRS Chapter 690C was service contracts were placed under the purview of the Division of Insurance. The service contracts most of you are familiar with can be purchased to cover your home appliances or your heating or air conditioning systems. They may not, however, provide coverage for structural components of the home. That is one key distinction between home protections, which no insurer is offering now, and service contracts. There is no situation where a service contract could ever provide coverage for a structural construction defect.

The issue we might run into in practice is, colloquially, those home service contracts in the field are often referred to as home warranties or extended warranty contracts. In a claim situation, individuals who may not be aware of these fine distinctions that we are discussing, may construe that requirement in NRS 40.650 as a requirement to file a claim under a service contract. If that claim is filed, it will necessarily be denied because service contracts not only do not cover structural defects, they are prohibited by law to cover the structural defects.

To remedy that unintended consequence, the Division of Insurance has drafted the proposed amendment, which clarifies the intent for the homeowner to seek recourse under a builder's warranty, rather than any insurance product or service contract (Exhibit R). What the amendment does is simply replace references from homeowner's warranty to builder's warranty. It eliminates any reference to an insurer because no insurer is involved in that situation. It further clarifies in a new paragraph what a builder's warranty is for the purposes of that section. It is simply a contractual promise by or on behalf of a party involved in the original construction of the home. It is not insurance for home protection, and it is not a service contract.

**Chairman Yeager:**
Is there anyone else neutral on Assembly Bill 462? I do not see anyone, so I will invite the sponsor to give any concluding remarks. I did look at the Contractors' Board website regarding the Residential Recovery Fund. It does indicate that to make a claim the homeowner must have exhausted all other means of recovery. I am not sure what that means, but I wanted to put on the record how it is worded on the website.

**Assemblywoman Carlton:**
We tried to keep the proposal of the bill as short and sweet as possible so folks would understand, but I realize that there are a number of people who have concerns about the bill. I would like to thank those that did reach out to me before the hearing. In the testimony that we just heard, I heard very little interest in working on any consensus moving forward. I basically just heard "no," and that is concerning, because whenever we bring a piece of legislation, you should work with the other party, unlike what has happened recently. I believe we should sit down and have a conversation.

One of the things that we could have that conversation about is that I did not hear anything really about the fraud, just a little bit about it. I think that is something we may be able to work on. If the answer is that there is nothing to consider, that is their purview also. As I have stated, my door is always open, and I am happy to talk to folks about the bill.

If there is something constructive, some tweak we need in there that they would like to see, we can sit down and negotiate the way we have done these bills since 1995. I would be more than happy and willing to facilitate that negotiation.

**Chairman Yeager:**
We do not have any further questions, but I do note that I was keeping track, and we spent about 45 minutes on the presentation and support, about 1 hour and 5 minutes on the opposition, and about 5 minutes for neutral testimony. I hope everyone felt they had a chance to weigh in on this. That puts us at about two hours for the hearing, which was the grand sum of testimony taken on A.B. 125 of the 78th Session in both houses last session. Obviously, if this piece of legislation continues to move through the Legislature, there will be an opportunity to have a similar hearing on the Senate side. I invite folks to continue working on this piece of legislation.

Before I close the hearing, I want to thank everyone here for a very civil discussion. We do not always have that in Judiciary on some of the bills that we hear. I appreciate the tone and tenor that the testimony took. I think it speaks to the integrity of this institution and to the character of those who are here today. With all that being said, I will close the hearing on Assembly Bill 462.

Now would be the time for public comment if anyone would like to give public comment in either Carson City or Las Vegas. I do not see anyone.

I want to let the members know that tomorrow we have a very full agenda. The agenda has been updated, so we now have six bills scheduled for hearing. We have a work session on four or five bills that we intend to take first. We can do most of the bills tomorrow in a summary manner, but try to get here as close to 8 o'clock as possible.

With that, thank you for a great meeting and we are adjourned [at 11:21 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

## EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Assembly Bill 180, dated April 10, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit D is the Work Session Document for Assembly Bill 459, dated April 10, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit E is the Work Session Document for Assembly Bill 471, dated April 10, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit F is the Work Session Document for Assembly Bill 472, dated April 10, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit G is a conceptual amendment to Assembly Bill 438 presented by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit H is a copy of an article titled "Nevada imprisons at higher rate than U.S.," dated January 25, 2016, by Mark Robison, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit I is a document titled "Drug trafficking," by United Nations Office on Drugs and Crime, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit J is a copy of a publication titled "Five Things About Deterrence," dated June 6, 2016, by U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit K is a copy of an article titled "Tag Archives: Nevada prison demographics, Locked and Overloaded: NV prisons," dated May 5, 2015, by *Desert Beacon*, relating to Assembly Bill 438, submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit L is a copy of a publication titled "Quick Facts: Drug Trafficking Offenses," by United States Sentencing Commission, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit M is a document titled "Fact Sheet: Nevada Crime and Corrections," dated December 2015, updated by Diane C. Thornton, Research Division, Legislative Counsel Bureau, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit N is a document titled "Statistical Information Packet Fiscal Year 2016 District of Nevada," by United States Sentencing Commission, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit O is a document titled "World Drug Report 2015," dated May 2015, by United Nations Office on Drugs and Crime, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit P is a copy of an article titled "Why America Can't Quit the Drug War," by *Rolling Stone*, relating to Assembly Bill 438, and submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit Q is a 2013 document titled "Deterrence in the Twenty-first Century: A Review of the Evidence," by Daniel S. Nagin, Carnegie Mellon University, relating to Assembly Bill 438, submitted by Assemblyman Edgar R. Flores, Assembly District No. 28.

Exhibit R is a proposed amendment to Assembly Bill 462 presented by Gennady Stolyarov II, Lead Actuary, Property and Casualty, Insurance Division, Department of Business and Industry.

Exhibit S is a proposed amendment to Assembly Bill 462 submitted by Nevada Justice Association.

Exhibit T is a letter dated April 10, 2017, in opposition to Assembly Bill 462 to Committee members of the Assembly Committee on Judiciary, authored by Mark Leon, Private Citizen, Las Vegas, Nevada.

Exhibit U is a position statement dated April 6, 2017, in opposition to Assembly Bill 462 to members of the Assembly Committee on Judiciary, authored by Aviva Gordon, Legislative Committee Chairwoman, and Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce.

Exhibit V is a letter dated April 10, 2017, in opposition to Assembly Bill 462 to members of the Assembly Committee on Judiciary, authored by Robert L. Smith, President, Montane Building Group, Inc.

Exhibit W is a letter dated April 8, 2017, in opposition to Assembly Bill 462, authored by Brett Seabert, Chief Financial Officer, Tanamera Construction, LLC.

Exhibit X is a letter dated April 10, 2017, in opposition to Assembly Bill 462 to members of the Assembly Committee on Judiciary, authored by Chuck Beaupre, Sparks Branch Manager, J.W. McClenahan Co.

Exhibit Y is a memo dated April 7, 2017, in opposition to Assembly Bill 462 to Chairman Yeager, and the members of the Assembly Committee on Judiciary from Nick Rossi, President, LP Insurance Services, Inc., LP Insurance Services, Inc. Shareholders and Employees.

Exhibit Z is a copy of a PowerPoint presentation titled "Measuring the Impact of AB 125," from the Nevada Home Builders Association, in opposition to Assembly Bill 462, presented by David Goldwater, representing Leading Builders of America.

Exhibit AA is a letter in opposition to Assembly Bill 462 to Chairman Yeager, authored and presented by Victor Rameker, President, and Wayne Laska, Vice President, Nevada Home Builders Association.

Exhibit BB is a letter dated April 5, 2017, in opposition to Assembly Bill 462 to state of Nevada legislators, authored and presented by Victor Rameker, Owner, Desert Wind Homes.

Exhibit CC is a letter dated April 11, 2017, in opposition to Assembly Bill 462 to Chairman Yeager and members of the Assembly Committee on Judiciary, authored by Terry Connelly, Senior Vice President, William Lyon Homes; Joy Broddle, Division President, Lennar; Brian Kunec, Division President, KB Homes; and Brad Burns, Division President, DR Horton; presented by Matt Walker, Chief Executive Officer, Southern Nevada Home Builders Association

Exhibit DD is written testimonials, authored by Rocky Cochran, Vice President, Construction Operations, Pardee Homes, Las Vegas, Nevada; and by Jim Rampa, Director of Customer Service, Pardee Homes, both dated April 4, 2017, both in opposition of Assembly Bill 462.

Exhibit EE is a letter dated April 10, 2017, in opposition to Assembly Bill 462 to Chairman Yeager, authored and submitted by Melissa J. Roose, representing Anthony & Sylvan Pools Corporation

Exhibit FF is a letter dated April 7, 2017, in opposition to Assembly Bill 462 to Chairman Yeager, and the members of the Assembly Committee on Judiciary, authored by Lance Semenko, Chief Operating Officer, Q&D Construction, Inc., submitted by Chris Barrett, Vice President, Business Development and External Affairs, Q&D Construction, Inc.