

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

**Seventy-Ninth Session
April 28, 2017**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:06 a.m. on Friday, April 28, 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
Assemblyman Elliot T. Anderson
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 Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Justin Watkins (excused)

GUEST LEGISLATORS PRESENT:

Senator Becky Harris, Senate District No. 9
Senator James A. Settelmeyer, Senate District No. 17
Senator Pete Goicoechea, Senate District No. 19
Senator Nicole J. Cannizzaro, Senate District No. 6



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Janet Jones, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Gregory R. Gemignani, Adjunct Professor, William S. Boyd School of Law,
University of Nevada, Las Vegas
Michael Linton, Private Citizen, Las Vegas, Nevada
Theodoros Perilis, Private Citizen, Las Vegas, Nevada
Chandler Pohl, Private Citizen, Las Vegas, Nevada
Mark Starr, Private Citizen, Las Vegas, Nevada
Lorne Malkiewich, representing the Nevada Resort Association
Lisa Foster, representing City of Fallon
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Daniel Hansen, Legislative Extern, Office of the City Manager, Reno
Kyle J. Davis, representing Coalition for Nevada's Wildlife
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Eric Spratley, Lieutenant, Intergovernmental Services, Washoe County Sheriff's
Office
Ann Dunn, Extern, Clark County District Attorney's Office
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association

Chairman Yeager:

[Roll was called. Committee protocol and rules were explained.] We have four bills on the agenda today, and we will begin with Senate Bill 240 (1st Reprint).

Senate Bill 240 (1st Reprint): Revises provisions relating to gaming. (BDR 41-939)

Senator Becky Harris, Senate District No. 9:

Senate Bill 240 (1st Reprint) is a special bill; it is the gaming bill for the gaming law policy course of the William S. Boyd School of Law, University of Nevada, Las Vegas. Existing law defines a "sports pool" as the business of accepting wagers on sporting or other events by any system or method of wagering, including, without limitation, the pari-mutuel system of wagering. The regulations of the Nevada Gaming Commission provide that "other events" are events other than horse races, animal races, or athletic sporting events. Sections 3-7 of this bill provide that existing laws governing pari-mutuel wagering on a race or sporting event apply to pari-mutuel wagering on other events.

Several members of this class from the William S. Boyd School of Law, University of Nevada, Las Vegas are here. As part of their learning experience, it would be fabulous if they could answer any questions.

Chairman Yeager:

Thank you Senator Harris. I know you have other places to be this morning, so please feel free to step out if you need to. We will take testimony from everyone else and then open it up for questions.

Gregory R. Gemignani, Adjunct Professor, William S. Boyd School of Law, University of Nevada, Las Vegas:

I, along with Professor Jennifer Roberts, teach the gaming law policy class at University of Nevada, Las Vegas (UNLV). This class was started by Robert Faiss in an effort to educate gaming lawyers about gaming law policies and legislative advocacy for the further development of gaming laws in Nevada. As part of this course, students draft, introduce, and advocate for a gaming law-related bill in this legislative session. We understand that your time and the time of others at this hearing is valuable, and we appreciate your willingness to hear from our students. It is with great pleasure that we continue Mr. Faiss' work and introduce our students. Michael Linton will begin the class presentation regarding S.B 240 (R1).

Michael Linton, Private Citizen, Las Vegas, Nevada:

I am a student at the William S. Boyd School of Law, University of Nevada, Las Vegas. Today I have three of my colleagues testifying with me. Our testimony will be broken up into three parts. After my introduction, my colleague Theodoros Perilis will give a general overview of our proposal; Chandler Pohl will give a summary of the current issue; and Mark Starr will review the amendments and be open for questions.

The student team proposes additions to *Nevada Revised Statutes* (NRS) Chapter 464 to clarify pari-mutuel wagering on events other than animal racing and sporting events. These additions do not alter the current framework or licensing requirements related to pari-mutuel horse racing. The intent behind these proposed additions is to harmonize the definition of sports pool with the pari-mutuel provisions in NRS Chapter 464 related to sports pool wagering. The proposed additions focus on expressly stating that other events, such as those governed by Nevada Gaming Regulation 22.120 are reflected in NRS Chapter 464. The bill originally sought to statutorily define other events in a manner consistent with regulation; however, the Nevada Resort Association has proposed a friendly amendment to keep the definition solely in regulations to preserve the flexibility of the definition.

This bill was brought before the Gaming Control Board on March 8, 2017, the Senate Judiciary Committee on March 21, 2017, and the Nevada Gaming Commission on March 23, 2017. The views expressed by this team are our own and not those of the William S. Boyd School of Law, University of Nevada, Las Vegas.

Senator Harris:

I want to clarify that the amendment was adopted by the Senate Judiciary Committee and is now included in the first reprint that you have before you today. We are not proposing an additional amendment.

Theodoros Perilis, Private Citizen, Las Vegas, Nevada:

In Nevada, there are two separate and distinct licenses for race and sports wagering. *Nevada Revised Statutes* (NRS) 463.01855 defines "race book" as "... the business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering."

Nevada Revised Statute (NRS) 463.0193 defines "sports pool" as "... the business of accepting wagers on sporting events or other events by any system or method of wagering."

The laws governing the pari-mutuel system of wagering are found in NRS Chapter 464. Though NRS Chapter 464 expressly permits pari-mutuel wagering on horse racing, dog racing, and sporting events, there is no expressed allowance for pari-mutuel wagering on other events. This bill adds the term "other events" to NRS Chapter 464, and will otherwise maintain the current framework, licensing, and requirements found in NRS Chapter 464.

Chandler Pohl, Private Citizen, Las Vegas, Nevada:

The wagering on events that are neither sporting events, horse racing, nor greyhound racing is gaining global popularity. Currently, NRS Chapter 464 allows the pari-mutuel system of wagering to be used only for sporting events, horse racing and greyhound racing. However, the law is silent regarding the pari-mutuel system of wagering for other events. This bill, S.B. 240 (R1), proposes provisions that would allow the pari-mutuel system of wagering for such "other events." Our class believes that by allowing the pari-mutuel wagering system for "other events," Nevada will be better suited to cater to the growing popularity of wagering on these other events.

Mark Starr, Private Citizen, Las Vegas, Nevada:

The primary amendments we propose to NRS 464.010 will clearly state the licensing requirements for taking pari-mutuel wagers on other events are the same as required for taking pari-mutuel wagers on sporting events, and will change NRS 464.020 to regulate where pari-mutuel wagering on other events may occur. It will also change NRS 464.025 to provide statutory authority for the Nevada Gaming Commission to regulate pari-mutuel wagering on other events as they have historically regulated pari-mutuel wagering on race and sporting events. Changes to NRS 464.040 will require payment of taxes on other events as they have historically been collected on pari-mutuel wagering on race and sporting events.

The goal of these modifications is not to change the regulatory framework, rather to ensure that NRS Chapter 464 is consistent with NRS Chapter 463 by ensuring that sports pool wagers identified in NRS 463.0193 are also reflected in NRS Chapter 464.

My colleagues and I will now open the floor to answer your questions.

Chairman Yeager:

Thank you for being here and for your work on this bill. Certainly, we can be proud of the work that is happening at William S. Boyd Law School.

Assemblywoman Tolles:

Could you explain what the bill refers to as other events? I have heard of betting on everything from elections to celebrity behavior, so exactly what are we talking about when we describe other events?

Mark Starr:

Other events could be described as any event other than a horse race, dog race, greyhound race, or athletic sporting events. Basically, events that are not sports, horse racing or dog racing. It is vast; it could be anything that casino operators think that they could make money on by taking wagers without the need for handicapping that has been approved for third-party wagering by the Gaming Control Board and regulators. One typical example could be eSports. The Gaming Control Board recently approved wagering on the DreamHack Masters and the 2016 *League of Legends* World Championship. The World Series of Poker is one instance of another event that is not a sport or race. Another example could be award shows. You mentioned elections, but under the current regulatory framework, betting on elections is prohibited by Regulation 22, specifically Regulation 22.120-1(c).

Assemblywoman Tolles:

It sounds like there is a regulatory framework for setting some limitations on this if it was deemed appropriate.

Mark Starr:

Under NRS Chapter 463, the Gaming Control Board and Commission still have full say on whether to allow an event. There is a set of standards that the event needs to have, mainly a definite outcome and to not be influenced by external forces.

Assemblyman Wheeler:

I think Assemblywoman Tolles asked the question I had in mind. I was going to ask if this would include some illegal activities if the Gaming Control Board agreed to them, such as dog fighting, cock fighting and things of that nature?

Chandler Pohl:

Other events would still need to be approved by the Nevada Gaming Control Board, so this bill would not change any of that. Anything other than horse racing or dog racing would still have to go through the approval process.

Chairman Yeager:

Do we have any other questions from Committee members? I do not see any further questions and want to thank you again for your presentation. At this time, I will open the hearing up for any additional testimony in support of S.B. 240 (R1).

Lorne Malkiewich, representing the Nevada Resort Association:

I want to thank Senator Harris and the representatives of the William S. Boyd School of Law for working with us on the amendment that we added to the bill in the Senate. With that amendment, the Nevada Resort Association is in support.

We did have a concern regarding the definition of "other events" which might raise the sort of issues Assemblyman Wheeler was raising. Taking it out leaves it to the Gaming Control Board. Regulation 22.120 already provides the standards similar to what would be used in evaluating pari-mutuel wagering. Other events could effectively be supervised, the outcome verifiable, the outcome of the event generated by a reliable independent process. It certainly would not include *Dancing With the Stars* after what happened to Heather Morris and Maksim Chmerkovskiy.

Chairman Yeager:

Thank you for your testimony. Is there anyone else in support of S.B. 240 (R1)? [There was no one.] Is anyone in opposition to the William S. Boyd School of Law gaming bill? [There was no one.] Is there anyone in the neutral position? [There was no one.] Senator Harris would you like to add any concluding remarks?

Senator Harris:

I just want to thank you and the Committee for your consideration of this bill.

Chairman Yeager:

We will close the hearing on S.B. 240 (R1). I will now open the hearing on Senate Bill 279.

Senate Bill 279: Authorizes certain mayors to perform marriages. (BDR 11-517)

Senator James A. Settelmeyer, representing Senate District No. 17:

I represent all of Douglas, Churchill, Lyon, and Storey Counties. In that capacity I always try to reach out to my county officials to see if there is any particular legislation that they would like to bring forward. In doing that and talking to the mayor of Churchill County, he requested the opportunity to be able to perform marriages. The discussion began with the fact that you can go online and do things of that nature; however, there are some mayors who feel that it would be a breach of their faith. In that respect, we decided to bring this bill forward. However, in talking to other mayors, there were some that did not want that authority. This was mainly because their county was too large. One mayor I spoke with in southern Nevada indicated that it would take too much time away from his duties, so he did not want that authority. We also looked at larger cities that are not general law cities. They would actually have to go to their commissioners in order to receive that authority.

Lisa Foster, representing the City of Fallon:

In the audience, I have Fallon Mayor Ken Tedford and the legal and administrative director, Robert Erquiaga. As Senator Settelmeyer said, the bill changes the statutes to allow mayors to perform weddings. To summarize the bill, section 1 lists all those currently allowed to perform weddings, which includes ministers, religious officials, judges from the

Supreme Court down to municipal court judges, justices of the peace, commissioners of civil marriages, and notaries public if they have the required approval. Section 2 provides the required components of a marriage license. Section 3 lists those individuals who can perform a wedding and the limitations. It also describes the differences between general law mayors and charter city mayors as it relates to performing a wedding. It also states that a mayor cannot accept anything of value for performing a wedding.

Section 4 says if an official has received a certificate of permission to conduct a wedding and there was some problem with the official status at that moment, the marriage would not be considered void. Section 5 states that there is no particular form a marriage must take, but there must be a witness. Section 6 adds mayors to wedding certificates, and Section 7 adds mayors to those who must have a marriage license presented to them in order to perform a wedding.

Allowing mayors to perform weddings will be helpful in the rural areas since they typically have no wedding chapels. It is often difficult to find someone to perform those weddings. You typically have to plan far in advance if you want a religious official to perform the ceremony. If not, you may only be able to get married during weekday hours when there is a judge or justice of the peace available. It is difficult in the rural areas; this bill adds more options for a couple to have their wedding performed. Some couples want the city's leader to perform their wedding. Often in small towns, the couple knows the mayor and would like him or her to perform their wedding.

We presented this to the Council of Mayors in February 2017, and they were in support of the bill. There has been a letter presented from the mayor of Winnemucca who supports the bill and explains her community's particular needs for this legislation ([Exhibit C](#)). Margaret Flint, lobbyist for the wedding chapel [Chapel of the Bells] sent a letter to the Senate Judiciary Committee supporting the bill. I can provide a copy of that letter to this Committee, if so desired.

Assemblywoman Krasner:

You said that certain mayors from general law cities can perform weddings under certain circumstances and mayors from non-general law cities can perform weddings under certain circumstances. I think one of those has to do with the city council approval and the other does not need the approval?

Senator Settelmeyer:

The general law mayors have a different authority than a charter city mayor. Respecting that difference in authority, in a charter city, the mayor's power comes through their commission. Therefore, in order to give them the power to marry, they have to go through the commission. The other mayors are general law and they are given the power directly. That is the difference of how they were set up originally.

Lisa Foster:

I think that is the best answer to the question. As he said, with general law mayors, their law comes directly through the statute. With charter cities, each city council would have to give the mayor the power to perform a wedding.

Assemblywoman Krasner:

Because of the U.S. Supreme Court case *Obergefell v. Hodges* [135 S.Ct. 2584 (2015)], if the general law mayor is asked to perform a same sex marriage and if they refuse for any reason, would that open the city to a lawsuit?

Lisa Foster:

You and I spoke about that, and when I thought about it more in depth, there has not been an issue as of yet with all the judges that have this authority currently, from the Supreme Court all the way down to municipal court, justices of the peace, and notaries public. I do not know how many mayors actually want to do weddings. I do not think this will happen that often. It is such a small percentage of the entire group of elected officials that have the power to do weddings. Any issue that a Supreme Court judge or municipal court judge may have with this, they would be the same issues a mayor would have. It does not change the situation that we have currently with marriages being legal for all types of relationships.

Assemblywoman Tolles:

Section 3, subsections 3 and 4, are part of the existing law, but there are limitations on the justices of the peace and municipal judges to perform no more than 20 marriage ceremonies in a year. Was there ever a discussion about putting a limitation on the number of marriages a mayor may perform?

Senator Settelmeyer:

That discussion did not come up. Most of the general law cities are very small, and there would probably be a small number of individuals who would be coming forward to perform weddings. As I said, this is just another option for individuals in the smaller communities. The mayor is usually so well known that everyone probably has him at the wedding already. He or she would be there already, just in a different capacity.

Assemblyman Thompson:

On a busy day, say February 14, being that it is free to have the mayor marry you and others perform weddings for a fee, do you anticipate it jeopardizing the wedding industry?

Senator Settelmeyer:

In that respect I would have to say that in a smaller community, we would run out of people to marry in a short time. If a mayor did spend a lot of their time at marriages, I would assume in the next election that they might not do too well since they are spending all their time performing marriages. I understand the concept of worrying about the industry, but again we have a letter of support from the marriage industry specifically indicating that they do not feel this is a threat to them. We have had discussions with them regarding this issue. We will be sure to get their letter submitted to your Committee.

Assemblyman Thompson:

Is that letter from the county clerks and all the jurisdictions? Who is this letter coming from?

Senator Settelmeyer:

The letter comes from Margaret Flint, who represents the wedding chapels. It is not from the county clerks because they only collect registration fees and do not do weddings. I think your question goes more toward the concept of being in conflict with those industries making a living off performing weddings?

Assemblyman Thompson:

In southern Nevada, for example, the county clerk is a key person around the wedding industry, and I was wondering if that letter was coming from them.

Senator Settelmeyer:

This letter came from the private industry. It came from Margaret Flint, she stated on March 23, 2017, that her family has owned and operated Reno's longest surviving wedding chapel, the Chapel of Bells since 1962. She could not be there to present on March 27, 2017 to testify on the bill. She wanted to make sure it was on the record that George Flint, her father, and the Flint family takes no negative issue with the bill and can comfortably come to the table in support of S.B. 279.

In southern Nevada, if I am correct, the county clerk is in charge and she actually recommends an individual to become the commissioner of civil marriages who then recommends deputy commissioners for civil marriages in Clark County and communities over 100,000 people. It is a different set-up, as you indicated, in those communities, whereas the mayors I have spoken to in the larger communities go through their commissioners and are not very interested in performing marriages. They have said their schedules are full and they have many things to do.

Assemblywoman Miller:

I find a real necessity for this in the rural areas, but have there been any discussions or amendments presented for a population cap?

Senator Settelmeyer:

No, there has been no discussion on a population cap. The concept of the general law versus the charter law takes care of that issue. The larger areas in Clark County are all through the power of a charter, not general law. The only general law cities in Nevada are Ely, Fallon, Fernley, Lovelock, Mesquite, West Wendover, and Winnemucca.

Chairman Yeager:

Thank you for your presentation this morning. We will now open the hearing for testimony in support of S.B. 279.

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:

We are in support of this bill. We appreciate the way it was crafted so that general law cities have the authority and that the larger charter cities would have to adopt an ordinance to allow the mayor to perform weddings. There are some mayors, especially down south, who will be too busy to perform weddings, but the general law cities are typically smaller. We think this is a good bill and that it would be somewhat neat to be married by the mayor of your city.

Daniel Hansen, Legislative Extern, Office of the Mayor of Reno:

The City of Reno is happy to stand in support of this bill, and Mayor Schieve is also in support.

Chairman Yeager:

Is there anyone in opposition? Seeing no one, is anyone in the neutral position? [There was no one.]

Senator Settelmeyer:

Thank you for hearing S.B. 279 today. If you have any further questions, please email me and I will address any of your issues or concerns.

Chairman Yeager:

We will now formally close the hearing on S.B. 279. We will now open the hearing on Senate Bill 116 (1st Reprint).

Senate Bill 116 (1st Reprint): Revises provisions governing warnings against trespassing. (BDR 15-76)

Senator Settelmeyer:

Senator Goicoechea and I had this issue come up through the Legislative Commission during the interim. There have been issues where someone has been trespassing on a property, however they could not be charged with trespassing because of the signage. In this situation, as we have seen on agricultural properties before, it was a cultivated field. It was actually a green, luscious alfalfa field. The windrower, which is a swather machine that cuts the field, had cut the hay and the deer were eating out of the windrow. The farmer, after seeing someone trespassed on the property, called the authorities. They came out and indicated that they could not do anything. The farmer stated that someone had just killed an animal on his property. The authorities could not do anything because the signage was not appropriately marked—barbwire fence does not qualify as a marker.

If you have a chain link fence, that is enough notice against trespassing. If you have a page wire fence that is made up of little squares, that is enough notice that it is private property. If you have a ribbon fence, that is enough to show it is private property. However, barbwire is not allowed. In that respect, we originally started with the concept of a five-strand barbwire fence. However, some of the hunters and other individuals indicated that it could be problematic because they felt that in the higher areas of the range country there might be five-strand barbwire fences. I challenged them to show me a picture; they never could.

With current regulations on federal property, the first strand of barbwire has to be about 18 inches to allow animals to go underneath and the maximum height is 37 to 40 inches so the animal can go over the fence. That creates a problem of trying to get five strands of barbwire between that distance. To respect their concerns, we came up with a different solution. We came up with the concept of saying cultivated land. If an animal or someone is trespassing on cultivated land, they know or should know that they are trespassing on someone's property. The government and public properties are not cultivated land. That is what this bill is trying to change.

There was some confusion within the law on agricultural land—you had to have signage every 1,000 feet. If it was other than agricultural land you had to have signage every 200 feet. That created confusion from time to time. It seemed easier to eliminate it and use 1,000 feet for everything.

Senator Pete Goicoechea, Senate District No. 19:

It has been an issue over the years. We will be honoring Assemblyman John Carpenter today in committee as this bill requiring the use of orange florescent paint on top of the post is his bill from a number of sessions ago [Senate Bill 588 of the 64th Session]. The purpose of the orange florescent paint was an effort to notice people when they were trespassing on private property. That bill required painting the top twelve inches of the post with fluorescent orange paint. We do that on our properties in eastern Nevada. Ace Hardware loves it because it takes many spray cans of paint to maintain the fence as we try to do it on an annual basis. It is somewhat expensive, and the paint fades rapidly through the winter. A legal fence in Nevada is a four-wire fence with a post capable of withstanding 300-foot horizontal pressure. As Senator Settelmeyer said, that wire spacing is 18 inches to a maximum of 4 feet. In an effort to clarify this, John Carpenter brought forward the requirement to paint the top of a post, gates and cattle guard, and it does work.

Due to the fact that we continue to have trespassing issues, especially in cultivated croplands, adding the language "cultivated land" will hopefully alleviate most of this problem. It does irritate you when you go out to put up hay in the morning and you find where an animal has been field dressed and the remains are still in the windrow. You have to remove it before you can harvest your crop. In other cases, the trespasser will say, I did not see a sign, or oh, it was painted orange, and I did not know what side it was. Clearly, the fact that it is a harvested crop should be significant warning that you are on private property and that is the intent of this bill.

Assemblyman Pickard:

Having lived in rural Idaho for several years, I have experienced this myself. Why did we not go further and include the various types of fences? I realize we have fencing along public rights of way as well, particularly along interstates and major highways. Aside from the right-of-way fencing, why did we not go further in the definition?

Senator Settlemeyer:

We tried to go with the concept of five-strand barbwire fence but there was opposition, and we wanted to respect that opposition. We are not trying to make a situation confusing. We are trying to eliminate what was to us black and white; we were not trying to get into the grey. We were just trying to stick to the black and white issue—if it was cultivated land, that should create a rebuttable presumption that you are on private property. If they wanted to go to court and fight it, they have that ability.

We are just trying to get to the situations that seem to be the most frustrating for law enforcement and property owners, which is again, when someone has walked through a gate because the gate was open into the field, and has been shooting geese, deer, or coyotes on your property without asking permission. You call the enforcement officer and then are told it was not signed properly because a barbwire fence does not count. This brought us to the idea of those specific black and white situations on cultivated land. We are trying to do it without getting too many people testifying in opposition against us all day.

Assemblyman Pickard:

I think that is admirable, particularly given this session.

Senator Pete Goicoechea:

Clearly, the issue of trying to incorporate barbwire becomes a real issue. We have so many rangeland fences along with private property fences that were constructed out of barbwire, so in an effort to avoid that confusion we took it back to just cultivated properties where the real issues occur. Hopefully, most people will respect that.

Chairman Yeager:

Page 2 of the bill, subsection 3, talks about evidence of trespass and specifically references subsection 2, if the land is posted or fenced. What I did not see in subsection 3 was bringing in the cultivated land portion that was added in the section above it. Was this purposeful, or do you think subsection 3 on the bottom of the page 2 should also include cultivated land since it is now being added to the section above it?

Senator Settlemeyer:

I may be a bit confused because I see on line 39 of page 2 of the first read using the area of cultivated land, am I missing something?

Chairman Yeager:

It is the section just below that, starting on line 42. It seems to talk about the prima facie evidence of trespass, and it references there that if the land is either posted or fenced, it is presumptive evidence of trespass. Since we are now adding the cultivated land definition as an actual trespass, do you think cultivated land should also be included somewhere between lines 42 and 45? I am just throwing this out—I wanted to make sure in case you feel that should be added. The question was whether it had been purposely excluded or was an unintended omission on the bill.

Senator Settlemeyer:

It was not purposeful, and this is the first time it has come up. I will have to refer to legal to see if it is covered well enough.

Chairman Yeager:

I can follow up with legal as well. Thank you for your presentation. I will open the hearing for testimony in support of S.B. 116 (R1).

Kyle J. Davis, representing Coalition for Nevada's Wildlife:

I want to thank Senator Settlemeyer for working with us in addressing our concerns. The reality is that the majority of hunters do respect private property, but we clearly have a problem with a few bad apples that have been going onto property that was clearly private. The compromise represented in this bill clarifies the law and makes sure we can get to the bad actors that are violating the law while not creating confusion regarding public lands. We do have many barbwire fences on our public lands, and we do not want to set up a situation where there is confusion about what is private and what is public. We think the bill strikes a good balance, and we support it.

Chairman Yeager:

Is there anyone in opposition of the bill? [There was no one.] Is there anyone in the neutral position? [There was no one.]

Senator Settlemeyer:

If you have any questions, please feel free to reach out to me, and thank you for your time today.

Chairman Yeager:

We will close the hearing on S.B. 116 (R1). At this time, I will open the hearing on our final bill on the agenda, Senate Bill 362.

Senate Bill 362: Revises provisions relating to racketeering. (BDR 15-966)

Senator Nicole J. Cannizzaro, Senate District No. 6:

I am here today to present Senate Bill 362, which makes various changes to our racketeering statutes. This bill talks about current Nevada law, which is *Nevada Revised Statute* (NRS) 207.360. This statute lists crimes that are related to racketeering. Pursuant to that statute, racketeering is also defined as engaging in at least two racketeering crimes within a five-year period. To be considered racketeering, the crimes must share common patterns, intents, results, accomplices, victims, or other distinguishing characteristics, and not be isolated incidents.

Racketeering in Nevada carries a penalty of 5 to 20 years and a fine up to \$25,000. *Nevada Revised Statutes* (NRS) 205.463 makes it a crime to use personal identifying information of an individual with the intent to fraudulently obtain credit, property, or other services. It also takes into account computer and internet technology and makes it a crime to aid or abet

another person in securing his personal information. This bill adds three crimes relating to racketeering. It includes forgery of a credit or debit card, obtaining and using personal identifying information of another person, and establishing or possessing a financial forgery laboratory.

This measure was created because of a case that I worked on at the Clark County District Attorney's Office that involved a series of incidents at our local Las Vegas casinos where individuals were operating in a group. We eventually identified and charged eleven individuals in different casinos throughout Henderson and Las Vegas. They would go into the casino, set up a financial forgery laboratory, obtain information over the Internet by purchasing that information on dark Internet sites, go to casinos and recruit individuals to come in and put that information into cash advance machines. Once they found an account that had money in it, they went back to the room to create a forged card that matched that individual's actual valid Nevada driver's license, but was encoded with the information from another individual's banking, check, or credit card account. Then they cashed in the cash advance receipt at the cashier's cage. Detectives from the Las Vegas Metropolitan Police Department, Henderson Police Department, the Gaming Control Board, and Homeland Security worked in conjunction with California law enforcement because these individuals were operating between the two states.

This case involved over 30 search warrants, over 3,000 seized forged credit cards, and hundreds of thousands of individuals' personal identity information from different accounts. Eventually, over the course of approximately a 2½ year investigation, we were able to charge these eleven individuals with over 74 counts of racketeering related to their activity. In my work on this case, we were able to identify and charge the low-level individuals who were approaching the cashier's cage with the forged credit cards and obtaining the cash advances. The problem is that these individuals, in the grand scheme of things, were not the people buying the information on the Internet, they were not operating the forgery laboratories, and they were not the individuals who were making the forged cards. They were the individuals who were hired and participated as part of this scheme in order to obtain a portion of the proceeds from the cash advance. What we found difficult about this case was that we lacked the tools in order to really target the individuals who were in charge of this scheme.

The purpose of this bill is to add to the list of crimes related to racketeering. We see these crimes escalating with the prevalence of identity theft. This is one tool law enforcement can now use to help identify and target the higher-level offenders so that we can effectively stop these large-level identity theft schemes in the Las Vegas area and in Nevada. That is where the impetus of this bill came from.

According to an identity fraud study, the incidence rate in 2016 increased 16 percent from 2015. Two million more victims were impacted, and the amount these individuals took increased by nearly \$1 billion, to \$16 billion. The Federal Trade Commission reports that in 2015, identity theft was ranked in the top categories of complaints received. Such complaints increased more than 47 percent from 2014 to 2015. According to the Federal Trade Commission's 2015 data book, the state of Nevada ranks fifth in fraud and other

complaints with 24,194 complaints or 837 complaints for every 100,000 people. Nevada rates nineteenth in identity theft complaints with a total of 3,613, or 125 complaints per 100,000 people.

When looking at Las Vegas and how it ranks compared to other large metropolitan areas for fraud and other consumer complaints, it receives a ranking of twelfth with 10,816 complaints, or 523 complaints per 100,000 people. For the specific crime of identity theft, Las Vegas ranks 87 out of 377 large metropolitan areas with 2,768 complaints, or 134 per 100,000 people. When looking at complaints relating to identity theft in Nevada by type of crime, credit card fraud received 819 complaints, or 23 percent of the complaints. It was ranked second behind government documents or benefits fraud. An attempted identity theft received 169, or 5 percent of the complaints. When looking at complaints relating to fraud in Nevada, credit cards received 424 complaints, or 2 percent of the complaints.

I think that this data illustrates why it is so important for us to look at ways in which we can identify identity theft, credit card fraud, and how we can help these victims. When someone steals your personal information, when they get into your bank account, when they have your social security number, your name, your address, and birthdate, it can wreak havoc on somebody who had no idea that they were going to be a victim of a crime. It can wreak havoc on their life that is sometimes irreparable and very difficult to manage.

Rather than try to focus our efforts on individuals who are looking for a way to make \$100 by working with these higher-level individuals in obtaining fraudulent funds, this is one way for us to get at those individuals who are the driving force of these crimes. It is one area of the law where I find it extremely difficult to target these individuals so that we can stop them at the source rather than continuing to target the lower-level offenders. I know this was a long-winded way of saying this is going to help us with the ability to fight identity theft, but I do believe that is the case.

Some questions that were raised in front of the Senate Judiciary Committee related to whether or not this is going to permit someone who has committed two crimes to unknowingly find himself wrapped up in a racketeering case. What is important to note is that in the racketeering statutes such as NRS Chapter 207, it is explicit about having to identify not only the criminal enterprise but also to prove that there is a criminal syndicate, which means that those individuals have to be operating in a way in which if there was one person removed from that syndicate, the syndicate would continue to operate by replacing that individual.

You also have to prove that these crimes are not isolated incidents, that they have similar intent, and they are benefiting from the operation of the criminal enterprise. This is an important step, not just to say that we want to include additional crimes in the racketeering statutes but also to have a way to target individuals who are operating these large-scale schemes that are increasing, especially in the Las Vegas Valley with the availability of the cash advance machines and ways to commit credit card fraud within our casinos. I thank you for your time and indulgence, and I am open for any questions.

Assemblyman Pickard:

I like simple bills and this appears to be direct and to the point. One question I had was on the definition of financial forgery laboratories. It is not defined in the bill. Is it defined somewhere else, or was the language intentionally left broad to capture anything you might encounter?

Senator Cannizzaro:

That is defined elsewhere in Nevada law. These three crimes are separate crimes that already exist within Nevada law. Establishing or possessing a financial forgery laboratory is in itself its own crime. What I would note about charges relating to racketeering is that a prosecutor would still have to prove the existence of these crimes. The criminals would have to operate a financial forgery laboratory. For the racketeering charge, we would have to prove that it is part of the criminal syndicate's business and that there is an enterprise operating in respect to that, and that there are two or more of those crimes that had occurred.

Assemblyman Elliot T. Anderson:

I like this bill. I just had a large credit card fraud charged on my account over the weekend and everyone commented that it had happened to them. I definitely look at this favorably. Is this similar to the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statute; are those not the same elements?

Senator Cannizzaro:

My understanding is that Nevada law is similar to but differentiates itself from the federal RICO statutes. This bill is more precise and, certainly within Chapter 207, defines racketeering crimes from a criminal syndicate that are specific to Nevada. These would have to be state crimes committed in order to charge them under the state racketeering statutes.

Assemblywoman Krasner:

This bill is especially relevant and important right now. When I was on the campaign trail I had many people tell me how there is so much personal information on the Internet. There is just too much information out there. I want to thank you for bringing this bill forward.

Senator Yeager:

Are there any further questions from the Committee members?

Assemblywoman Cohen:

I just want to make sure I am following this correctly. I understand what you were talking about creating fake credit cards and that type of thing; however, what if someone got identifying information and did something on their own, like Internet shopping—is that covered here?

Senator Cannizzaro:

It would depend. Depending on how they use that information, obtaining and possessing personal identifying information of another. If they did that and there were at least two crimes that we could prove, and we proved the existence of other individuals operating

in a way that showed the existence of a criminal syndicate—which means they are committing these crimes with the same intents or purposes, same types of victims, and operating in the same sort of manner—then potentially that would fall under this racketeering statute.

This particular bill will not solve every instance of identity theft, but it will help us target the larger operations that are occurring. Potentially yes, that could fall under this bill providing those other things were happening and we had evidence to link those individuals together and to prove the existence of the enterprise and how it was operating as a criminal syndicate. This would fall underneath that law. If it was an isolated incident, that probably falls under a different statute. Potentially, it could be obtaining and possessing personal identifying information of another. Certainly, a theft charge and potentially a forgery charge. However, if we could prove the existence of a criminal syndicate, that would fall under this.

Assemblywoman Cohen:

My knowledge of criminal law is limited, so I want to be sure I understand this. I hear the term "felony stupid" used by criminal law attorneys, when you have people who are young and stupid and do dumb things. If we have a couple of kids who, on their own, took someone's information and went on a shopping spree online and they were charged, the penalties would not be greater because this bill would not be applicable. But if they happen to be together because they are friends and friends do more stupid things together as they tend to egg each other on, are we treating them the same as we would treat an actual criminal syndicate? Is that an unintended consequence that might happen?

Senator Cannizzaro:

The simple answer is no. Two individuals that happen to be together when they commit a crime would most likely be considered a conspiracy. Depending on how they interact with one another, potentially there would be an aiding and abetting liability for that particular crime. However, this bill is more specific, and that is why I talk about it in terms of larger operations and this being a tool for us to target those larger operations. That is what we should be looking to do rather than focusing on the incidents that you just mentioned.

Specifically, NRS 207.390, which talks about racketeering activity, expressly lays out that you have to show that these are interrelated crimes. They cannot be two separate incidents or just two incidents that arise out of the same transaction or occurrence. These have to be crimes that are being committed not only with the same type of motive but for the benefit of the criminal syndicate. Additionally, it requires that if an individual were to leave the syndicate another individual could easily replace them. It has to operate almost like a small business, where you would have employees and you would get different individuals involved. The instance where two individuals happen to commit a couple of crimes would not fall within this statute.

Chairman Yeager:

I am trying to follow these statutes, but they are a bit complicated in the way they are drafted. To be prosecuted under the racketeering statute, does it require prior criminal convictions for the activities that are listed in the S.B. 362? Or could it be that you simply engaged in what is alleged to be a criminal act and there is more than one within that time period? I ask these questions because the statute is a bit unclear. In S.B. 362 it seems to indicate that there would need to be a conviction, but then when I look at the definition of racketeering activity in NRS 207.390 it says ". . . engaging in at least two crimes. . . ." I wonder if you could help me understand how that works in the real world?

Senator Cannizzaro:

My understanding is no. If this contains a criminal complaint or indictment or information that two or more of these crimes had occurred, obviously, at trial the state would have to prove that those two crimes actually occurred. Those predicated offenses would have to be proven. They could be charged with racketeering, but you would still have to prove the nexus between all of those. It could be a prior conviction, but it could be charged in the same charging document.

Chairman Yeager:

For instance in the habitual criminal statute that requires actual prior convictions, the prosecutor brings a judgment of conviction. To prove the prior convictions were racketeering, I guess this could function in that same way, but you are saying it does not require the prior convictions. They can all be brought in one case?

Senator Cannizzaro:

That is correct.

Chairman Yeager:

Thank you again for joining us this morning. We will open the hearing for testimony in support of S.B.362.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We are here in full support of S.B. 362. Skimming has become a huge problem in Clark County. As was stated by Assemblyman Anderson, I know of several legislators in this session who have been victims of this. It is one of those crimes that can be shocking as to how easy it can take place. We had a training session for law enforcement recently where the fellow put on the training class for 40 people, and during the class he said, "Everyone in the room, I have your personal information." He was able to show that while these people were sitting in the class, he had gotten their credit card information with fake Wi-Fi or the ability

to skim their personal information. It is becoming very prevalent at gas stations where they are able to put a small device on the gas pumps, and the collected information goes into the forgery laboratory. Typically, they can fit these into a small tackle box. It involves skimmers, blank cards with magnetic strips on them, and the ability to steal your information and then put it onto another card. Sometimes they put them on a gift card so that if the police stop them it does not look suspicious. It is a huge problem.

We often hear in the criminal justice world and in the Judiciary Committees about collateral consequences to suspects. This is a crime that has huge collateral consequences on victims. This is a crime where, when it happens to you, it is hard for you to get credit or get your money back in some cases. It is very difficult to get your life back on track when someone has victimized you with this kind of criminal activity. Last year we had over 60 people that were involved in a forgery laboratory of this type. We often see that these are related to organized crime and, in some cases, overseas activity or terrorism-related. It is a very important issue, and we are glad this bill seeks to help address it.

Chairman Yeager:

Thank you, Mr. Callaway. I have certainly experienced this as well, and for some reason it seems it is always a grocery store in Kentucky or somewhere like that that gets hold of my credit card information. Many times it is someone who is out of the state who is attempting to use your credit card. What ability or tools does local law enforcement have? Because the problems I ran into were that when I reported it, and it is coming from another jurisdiction, I ran into road blocks there. Can you give the Committee a sense of what tools are available to help with that situation when it comes from a jurisdiction outside of the state?

Chuck Callaway:

That is a great question. First, we work closely with our federal partners, such as the FBI, when crimes go across state lines. We will make every attempt to locate local law enforcement in the jurisdiction. Last session I was a victim of this. They stole my credit card information and bought a sandwich in a bar in Tennessee. It was exactly as you described. There is an attempt to contact the local law enforcement in Tennessee to attempt to connect the dots. How did they get my information and how did it get to someone in Tennessee?

The real problem here is local people stealing your information through these skimming devices and then selling it, sometimes online to someone else on the dark web. Then the person in Tennessee buys your information, puts it on a card, then goes into a store and purchases something. It can be difficult, but we try to go after the person who bought the information by connecting the dots through other jurisdictions and also targeting the initial thieves who were stealing your information here locally.

Assemblyman Elliot T. Anderson:

How does someone steal a credit card through Wi-Fi?

Chuck Callaway:

First, I am not an Internet or cyber theft expert. However, from my own personal law enforcement experience, it is easy to set up a fake Wi-Fi account. For example, I am sitting in a car outside the legislative building and I have a device that puts up a fake Wi-Fi signal that says "Legislative Counsel Bureau Wi-Fi." You come into the building, look for the free Wi-Fi, and log onto it, thinking it is a safe site. While you are on that Wi-Fi, you access your bank account. Boom, I have your password and all the information you entered. That is one method.

There is also another method, which is like the modern-day form of pickpocketing. I have a device in my pocket that reads your credit card information and I just stand next to you in the elevator and it reads the information off your card. I can then download your information on a computer, put it on say a Subway gift card, and then use it as if it is your bank card. The thieves are always a step ahead, especially in the technology area.

Eric Spratley, Lieutenant, Intergovernmental Services, Washoe County Sheriff's Office:

You have heard the bill presented in an excellent manner, and you have heard great testimony from Chuck Callaway. We ditto that and express our support.

Ann Dunn, Extern, Clark County District Attorney and the Nevada District Attorney's Association:

We are happy to add our support to this bill.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We appreciate Senator Cannizzaro for bringing this bill forward, and we totally support S.B. 362.

Chairman Yeager:

Is there anyone else in support of S.B. 362? There was no one. Is there any opposition testimony? Seeing none, is there anyone in the neutral position? Again, I do not see anyone approaching the table. Senator Cannizzaro, do you have any concluding remarks?

Senator Cannizzaro:

I want to thank the Committee for hearing this bill. Please let me know if you have any other questions in the future.

Chairman Yeager:

This is a good reminder to the Committee and those watching that when you are on public Wi-Fi it is probably a good idea not to purchase anything with your credit card or log into your bank account. As we have heard, the people who want your credit card information are getting very sophisticated. Remember, it is always okay to use cash at businesses, and a good way not to have your credit card compromised. We will now close the hearing on S.B. 362. Now would be the time for public comment.

Assemblyman Ohrenschall:

We had the University of Nevada, Las Vegas, William S. Boyd School of Law gaming bill today, and I wanted to remember Professor Robert Faiss who started that program. He used to bring students here to Carson City and to the Grant Sawyer Building in Las Vegas. We lost Mr. Faiss, but he was a giant in gaming law and a giant at the William S. Boyd School of Law, and he would be proud of the students who presented the bill today.

Chairman Yeager:

Anything else from Committee members before we adjourn this morning? The meeting is adjourned [at 9:22 a.m.].

RESPECTFULLY SUBMITTED:

Janet Jones
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated March 23, 2017, in support of Senate Bill 279, to Chairman Segerblom and the Senate Judiciary Committee members, authored by Mayor DiAn Putnam, City of Winnemucca.