

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
March 1, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:44 p.m. on Wednesday, March 1, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senatorial District No. 17
Senator Pete Goicoechea, Senatorial District No. 19

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Tyler Turnipseed, Chief Game Warden, Division of Law Enforcement,
Department of Wildlife
Steve K. Walker, Board of Commissioners, Eureka County
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Kyle J. Davis, Coalition for Nevada's Wildlife

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Chase Whittemore, Nevada Bighorns Unlimited
Andy MacKay, Nevada Bighorns Unlimited
Norman J. Azeveda

CHAIR SEGERBLOM:

I will open the hearing on Senate Bill (S.B.) 116.

SENATE BILL 116: Revises provisions governing warnings against trespassing.
(BDR 15-76)

SENATOR JAMES A. SETTELMAYER (Senatorial District No. 17):

Senate Bill 116 came about during the 2015-2016 Interim. The Legislative Commission heard disturbing information about individuals shooting big game animals on private property. Pursuant to *Nevada Revised Statutes* (NRS) 207.200, subsection 3, it is prima facie evidence of trespass for any person to be found on private or public property which is posted or fenced as provided in NRS 207.200, subsection 2. A "fence" is defined by NRS 207.200, subsection 5, paragraph (a) as a barrier sufficient to indicate intent to restrict the area including such barriers as a wall, a hedge, a chain-link or wire fence but not a barbwire fence. With an approved barrier, it is not necessary to provide notice that the property is private. It is assumed. There is no assumption that the property is private if the fence is barbwire.

The change proposed in S.B. 116 includes within the definition of fence a barbwire fence if it is not less than five strands. The concept of a five-strand barbwire fence comes from grazing on government land. The height of the first strand of barbwire has to be 18 inches from the ground to allow sage grouse or other animals to go underneath. The height of the top strand varies between 42 to 48 inches to allow animals to jump over the top. In my opinion, it is not realistic to have five strands between 18 and 48 inches. If acceptable to the Committee, I propose to amend S.B. 116 to provide an assumption that cultivated agricultural land is private property. That may be an easier solution than trying to count the number of barbwire strands. The intent is to create a rebuttable assumption so that individuals trespassing on private property can be charged with a misdemeanor and fined.

CHAIR SEGERBLOM:

How do other states handle this problem?

SENATOR SETTELMAYER:

I am aware of how California addresses this issue on government land. In California, it is the responsibility of individuals to know where they are. In Nevada, the burden is on the landowner to fence people out. In California, you fence your property in. In Nevada, you fence people out.

CHAIR SEGERBLOM:

Was there a bill that put something on the wire?

SENATOR SETTELMAYER:

Yes. The law states that, if the land is agricultural, you can choose barbwire and paint the top of a post every 1,000 feet fluorescent orange. If the land is nonagricultural, the top of a post must be spray painted fluorescent orange every 200 feet. We have discussed simplifying the law to painted posts every 1,000 feet because some people do not know what agriculture means.

SENATOR PETE GOICOECHEA (Senatorial District No. 19)

We are just trying to tweak the law just a little bit. John Carpenter proposed painting the tops of posts fluorescent orange. The 1,000 feet is focused on wide-open stretches of private property. Where there is brush on both sides, the gates and cattle guards have to be posted, and within sight of the gate or guard, the top 12 inches of a post has to be painted fluorescent orange. It is a pain. You are always painting posts, and it does not look good. Anything other than wire is considered a boundary and a barrier. Two boards constitute a legal no trespass barrier. Barbwire does not qualify whether there are 4 or 20 stands. Senate Bill 116 allows barbwire to qualify.

Most fences on rangeland have four wires. That is the standard. The bottom wire must be 18 inches from the ground and preferably smooth. The top wire can be not more 48 inches. Game-friendly fences are 42 inches. The Interim Legislative Committee on Public Lands dealt with this issue. Realistically, you do not want to have to paint all your posts orange. Instead, put five barbwires up and post the gate. There should be an assumption that the property is private. The intent is to make barbwire fencing a legally sufficient barrier if it is five wires and posted at the gate.

TYLER TURNIPSEED (Chief Game Warden, Division of Law Enforcement, Department of Wildlife):

I brought this issue up during the Interim because, before becoming Chief Game Warden, I was a field warden and I experienced situations that the law does not adequately address. I spent six years as the Overton Game Warden. I transferred to Winnemucca, and I patrolled Humboldt and Pershing Counties for ten years. I ran into challenges trying to enforce NRS 207.200. Time and time again, I would get a call about a person who just shot a deer in a cultivated field. The deer would be lying dead on a freshly cut windrow of alfalfa. The fence around the alfalfa field would be three or four stands of barbwire in various states of disrepair. The property owner would say that there used to be a sign down at the corner and a sign at another corner. Quite often, if the sign is down, it is impossible to know if the suspected trespasser took it down. In this situation, I would be unable to prosecute the suspect for shooting the deer on private land without permission, even though any reasonable person would know that a green alfalfa field in the middle of the desert is undoubtedly private land and permission to enter would be required.

I asked Senator Settlemeyer and Senator Goicoechea if there was a way to fix this problem. Senator Settlemeyer has proposed a solution for cultivated land. Most enforcement challenges are on cultivated land. The Department of Wildlife often acts as the liaison between sportsmen, hunters, fishermen, trappers and landowners. When a hunter or backpacker encounters a range fence, brush on brush on both sides, we want to eliminate any confusion as to whether the land is private or government-owned.

CHAIR SEGERBLOM:

How do you know which side of a range fence is privately owned land?

SENATOR GOICOECHEA:

The law requires posting at the gate or the cattle guard. The sign would be facing the entrance. Unfortunately, a hunter seeing a good animal inside a field will probably tear the sign down before entering the property. We are hoping five wires and some nail holes will allow for prosecution. That is the intent of the changes proposed in S.B. 116. This is not about the average person. The average person will ask for permission to hunt.

CHAIR SEGERBLOM:

Is there a publication that can place people on notice that five strands of barbwire means private property?

MR. TURNIPSEED:

Yes. The Department of Wildlife has yearly publications that can provide information about a change in the law. In June, a booklet is mailed with the big game tags. *Nevada Revised Statutes* 207.200 is confusing. For example, NRS 207.200, subsection 2, paragraphs (a) and (b) allow for painting posts rather than signage. It is wordy and confusing. The majority of the landowners in Humboldt County do not use the orange-paint method because it is so complicated. Would it be possible to combine or simplify these sections?

CHAIR SEGERBLOM:

Yes. Senator Cannizzaro will work with you.

MR. TURNIPSEED:

The Department tries to provide support for landowners with trespass problems while ensuring that recreational users know what land is public and what is private.

STEVE K. WALKER (Board of Commissioners, Eureka County):

The Board of Commissioners for Eureka County supports S.B. 116.

ROBERT ROSHAK (Executive Director, Nevada Sheriffs' and Chiefs' Association):

We support S.B. 116.

KYLE J. DAVIS (Coalition for Nevada's Wildlife):

The Coalition is opposed to S.B.116. The reality is that many barbwire fences are not five strands. Some five-strand barbwire fences have public property on both sides of the fence. These range fences are generally used for management of cattle or other livestock. The public has the right to access public lands at all times. The Coalition would like to avoid creating a standard for denoting private property that causes an average person to assume land is private when it is not. Senator Settelmeyer's proposal to limit the presumption to cultivated land makes sense. The Coalition does not support hunting on private property without permission. Most of the Coalition's members hunt on public lands far from private lands. If something that can be done to deter people from violating

the law, we are all for it. However, the Coalition does not want to create a situation where public land becomes inaccessible.

CHAIR SEGERBLOM:

I appreciate your comments, but you do not seem to have a solution. How would the Coalition propose changing S.B. 116?

MR. DAVIS:

Limiting the changes proposed in S.B. 116 to cultivated land might work. I would need to check with the Coalition.

CHASE WHITTEMORE (Nevada Bighorns Unlimited):

Nevada Bighorns Unlimited is opposed to S.B. 116. We support Senator Settelmeyer's proposal to limit the changes to NRS 207.200 to cultivated land.

ANDY MACKAY (Nevada Bighorns Unlimited):

I am a member of the Board of Directors of Nevada Bighorns Unlimited. Nevada Bighorns Unlimited is the largest organization of Nevada sportsmen with over 3,600 members. We oppose S.B. 116. We are opposed to members inadvertently going onto private land that they believe to be public. Most of our members hunt on wide swaths of Nevada. They presume the land is public. Senator Settelmeyer has proposed an amendment that is acceptable to Nevada Bighorns Unlimited.

SENATOR GUSTAVSON:

Do the five-strand barbwire fences you have seen fall within existing guidelines?

MR. DAVIS:

Probably not. Some fences on public lands in Nevada do not meet the standards. A lot of fencing has been out there for years and years. Ideally, all landowners would update their fences to satisfy the law, but not everyone does.

SENATOR GUSTAVSON:

There is an app for a cellphone that identifies Bureau of Land Management, U.S. Forest Service and private lands.

MR. DAVIS:

I have that app on my GPS device. It usually works well.

NORMAN J. AZEVEDA:

I support S.B. 116. I am a rancher in Washoe Valley. Part of my ranch goes into Little Valley. The Little Valley fire burned the northern boundary of my land. I have encountered the problems described by the Department of Wildlife. Approximately 100 acres of my ranch is deemed cultivated land. These are meadows where the house is located. The meadows go up the mountain into the valley behind which is forest. We maintain and plant the forest, but it would not typically fall into the definition of cultivated land.

We have had great difficulty with both hunters and fishermen. The Department of Wildlife has assisted us. Under the law, in order to call law enforcement and have someone prosecuted for trespassing, we have to put the trespasser on notice. Notice can be a sign. We have a sign on our gate to the western portion of the ranch that is three feet by four feet. We also have barbwire fences. The terrain is rough and irregular.

The other form of notice requires painting posts orange at 1,000-foot intervals. Law enforcement will not enforce this part of the law if the terrain is irregular and the trespasser claims the painted posts were not visible due to the trees and brush. From a practical standpoint, the bright orange paint fades during the winter so it is an annual maintenance item. We have about ten miles of fencing. Adding a fifth wire and realigning all of the barbwire, which I will do immediately if S.B. 116 is passed, will cost approximately \$8,000 in materials and wire. It will probably take an entire summer for my son and me to do the work.

We have little or no opportunity to have individuals, whether hunters, fisherman, mountain bikers or the like, held accountable for trespassing under the law. We post signs. They remove the signs. They have the app referenced by Senator Gustavson. Even with that, they trespass. Our western boundary is, as the crow flies, about two miles from Lake Tahoe. Trespassers want to access that forest, as it is quite beautiful. I understand that. However, the only way to deter this type of activity is to have a bill like S.B. 116 pass. We will make our fences comply with the law. We would appreciate the assistance of this Committee. To highlight the seriousness of this matter, we were threatened with arson last fall. When the Little Valley fire broke out, my first reaction was

that someone had made good on the threat. The sheriff and law enforcement do the best they can, but without a law that is sufficient to put someone on notice, they cannot prosecute the crime.

CHAIR SEGERBLOM:

The proposed compromise would not help you. You do not have pasture.

MR. AZEVEDA:

We have about 100 acres of pasture on which we grow hay. The remaining 430 acres of the ranch is forest, which would not meet the definition of cultivated land unless the definition is expanded to include forests. Our ranch burned 30 years ago. We are maintaining it and bringing the forest back. We work with the U.S. Department of Agriculture and the National Resources Conservation Service. If the definition of cultivated land included forestry, it would help. If the definition were limited to cultivated land, it would only help our 100 acres of pastureland.

CHAIR SEGERBLOM:

We will need to figure out how to include cultivated forestland.

SENATOR SETTELMAYER:

I have no problem working on this. The concept of cultivated agricultural land should work. We will try to find a way to make the language broad enough to apply to all of these situations yet narrow enough to put people on notice. We will work on simplifying NRS 207.200, subsection 2, paragraphs (a) and (b). I have no problem going to cultivated agricultural land. We could even get rid of the concept of barbwire. If you are on cultivated land, you should understand you are on private property.

CHAIR SEGERBLOM:

What is the need for barbwire?

SENATOR SETTELMAYER:

Barbwire keeps cattle in. Cattle rub on smooth wire. They walk through nonbarbwire fencing. I used to have page wire fencing beneath barbwire, but I learned during the 1997 flood that page wire fencing catches debris. Water will flow through a barbwire fence.

CHAIR SEGERBLOM

Barbwire is not necessary for agricultural land.

SENATOR SETTELMAYER:

Correct. I cultivate, plant and harvest three crops. Then we get a fourth crop. We wait for the first frost to knock it down. Then we run the cows across those fields. This year, some of my cultivated land is the only dry place my cows can find due to the floods.

SENATOR GOICOECHEA:

Subsection 2, paragraph (a) of S.B. 116 protects land used for agricultural purposes and for herding and grazing livestock. I am sympathetic to the issue of ranchland fences and not knowing which side is private. The hope is entry will be made through the gate. For ranchland, I want to make sure we do not take away the provisions in the law for the orange-painted pole tops. I have lots of private property that would not qualify under cultivated land. I want to make sure we keep the orange tops in place for those who do not want to hang another wire on 50 miles of fence. I think the law regarding land used for agricultural purposes and for herding or grazing livestock is sufficient. It should be sufficient notice that land is private if it is inside five wires and posted at the gate. We are not concerned with true sportsmen but with someone driving down the highway, seeing a good animal and deciding to shoot it. Those people will trespass. They are not true sportsmen.

CHAIR SEGERBLOM:

We will work with you. I am hopeful that we can find a solution that satisfies everyone or at least almost everyone.

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CHAIR SEGERBLOM:

I will close the hearing on S.B. 116. The hearing is adjourned at 2:13 p.m.

RESPECTFULLY SUBMITTED:

Connie Westadt,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster