

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

**Eightieth Session
May 1, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:08 a.m. on Wednesday, May 1, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Nicole J. Cannizzaro, Senate District No. 6

Minutes ID: 1097



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Lucas Glanzmann, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Sandra Douglass Morgan, Chair, Nevada Gaming Control Board
Matthew Griffin, representing Nevada Resort Association; and MGM Resorts International
Jim Penrose, representing Nevada Resort Association; and CG Technology
Graham Galloway, representing Nevada Justice Association
Patrick Leverty, President, Nevada Justice Association
Jesse Wadhams, representing National Association of Mutual Insurance Companies
C. Joseph Guild, representing State Farm Mutual Automobile Insurance Company
John Hawley, representing Farmers Insurance Group
Doug Harris, representing Farmers Insurance Group
Paul Young, representing USAA; and Progressive Insurance
Tyre L. Gray, representing Las Vegas Metro Chamber of Commerce
Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office; and representing Nevada Sheriffs' and Chiefs' Association
Melissa Clement, representing Nevada Right to Life

Chairman Yeager:

[Roll was taken. Committee protocol was explained.] At this time, I will open up the work session. First, I want to let everyone know we are going to pull Senate Bill 20 (1st Reprint), so we will not consider that bill this morning. I am going to pull two other bills from the Consent Calendar ([Exhibit C](#)), Senate Bill 97 (1st Reprint) and Senate Bill 274. We are still going to consider them, but not as part of the Consent Calendar. That means our first Consent Calendar will have three bills: Senate Bill 72 (1st Reprint), Senate Bill 74 (1st Reprint), and Senate Bill 286. We will be taking those three bills on one motion and one vote. At this time, we will go to the Consent Calendar with those three bills, and I will hand it over to Ms. Thornton.

Senate Bill 20 (1st Reprint): Revises Provisions relating to guardianships. (BDR 13-493)

[Senate Bill 20 (1st Reprint) was not considered.]

Diane C. Thornton, Committee Policy Analyst:

We have three bills on the Consent Calendar, these would be do pass. First, we have Senate Bill 72 (1st Reprint) ([Exhibit D](#)).

Senate Bill 72 (1st Reprint): Makes various changes related to gaming. (BDR 41-344)

Next, we have Senate Bill 74 (1st Reprint) ([Exhibit E](#)).

Senate Bill 74 (1st Reprint): Revises provisions governing eviction actions. (BDR 3-492)

Lastly, we have Senate Bill 286 ([Exhibit F](#)).

Senate Bill 286: Revises provisions relating to aggregated sentences and eligibility for parole. (BDR 14-293)

Chairman Yeager:

Are there any questions on any of those three bills as detailed in the work session documents [[Exhibit D](#)], ([Exhibit E](#)), and ([Exhibit F](#))]? [There were none.] At this time, I will take a motion to do pass Senate Bill 72 (1st Reprint), Senate Bill 74 (1st Reprint), and Senate Bill 286.

ASSEMBLYWOMAN TORRES MOVED TO DO PASS SENATE BILL 72 (1ST REPRINT), SENATE BILL 74 (1ST REPRINT), AND SENATE BILL 286.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement for S.B. 72 (R1) to Assemblyman Watts, S.B. 74 (R1) to Assemblywoman Peters, and S.B. 286 to Assemblyman Fumo. Moving along, we will now go to Senate Bill 46 (1st Reprint).

Senate Bill 46 (1st Reprint): Revises provisions relating to the regulation of gaming. (BDR 41-342)

Diane C. Thornton, Committee Policy Analyst:

Senate Bill 46 (1st Reprint) was sponsored by the Senate Committee on Judiciary on behalf of the Nevada Gaming Control Board ([Exhibit G](#)). This bill was heard in this Committee on April 25, 2019. This bill exempts cash prizes and the value of noncash prizes paid out to participants in certain contests or tournaments from the definition of "gross revenue" as it relates to calculating licensing fees to be paid by a licensee. The bill extends a prohibition on performing certain gaming-related acts without proper licensing to include performing those acts without proper registration. The bill also clarifies that an interactive gaming service provider must be licensed. Finally, offenses in violation of certain licensing requirements are

added to those for which law enforcement may seek authorization to intercept communications.

There is one proposed amendment by the Nevada Gaming Control Board. The amendment restores the language for the definition of "interactive gaming service provider" in section 5, subsection 6 of the bill.

Chairman Yeager:

Are there any questions on S.B. 46 (R1) as detailed in the work session document? [There were none.] I will take a motion to amend and do pass.

ASSEMBLYMAN FUMO MOVED TO AMEND AND DO PASS
SENATE BILL 46 (1ST REPRINT).

ASSEMBLYWOMAN TOLLES SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Cohen. Next, we will move to Senate Bill 97 (1st Reprint).

Senate Bill 97 (1st Reprint): Prohibits use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim. (BDR 15-559)

Diane C. Thornton, Committee Policy Analyst:

Senate Bill 97 (1st Reprint) was sponsored by the Senate Committee on Judiciary on behalf of the Nevada Youth Legislature. It was heard in this Committee on April 24, 2019 ([Exhibit H](#)). This bill provides that a defendant's discovery of a victim's actual or perceived sexual orientation or gender identity or expression is not an objectively reasonable defense for the existence of an alleged state of passion in the defendant and does not justify the defendant's use of force against the victim. There are no amendments to this bill.

Chairman Yeager:

Are there any questions about S.B. 97 (R1) as detailed in the work session document? [There were none.] I will take a motion to do pass.

ASSEMBLYWOMAN KRASNER MOVED TO DO PASS
SENATE BILL 97 (1ST REPRINT).

ASSEMBLYWOMAN TOLLES SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Daly:

I am okay with the bill. I do not think it is an excuse to harm anybody based upon your revelation or whatever. I do have some reservations about saying you cannot even bring it up as a defense. I do think it is probably better to use it as a defense and have it be slapped down and have that become the precedent rather than going in this direction. I am not against it, I just wanted to make that comment.

Assemblyman Edwards:

This would ordinarily seem like an easy bill to say yes to. However, I think there are a lot of complexities involved, especially when it comes to the defense of the accused. I think this bill diminishes our ability to give the accused a fair hearing in court. As nice as it may sound, I think complications in the courtroom are only going to be added. If you have done something violent or even murdered somebody, that is serious enough. In this session, we seem to be adding more and more penalties and crimes. This has not been a problem here in Nevada by admission of the sponsor. This is something that has happened a few times in other states, and I just do not think Nevada needs to go this way. For the sake of the accused, we need to give them every fair shot at having a fair trial. I will be voting no on this one.

Assemblyman Fumo:

I want to echo the comments and concerns of the previous Assemblymen. Anytime we are limiting the information we give to a jury, we are limiting justice. I do have a question. I saw there was a proposed amendment from the Clark County Public Defender's Office and I do not know if that was considered friendly or not. That would alleviate some of my concerns. In 23 years of practice, it has never come up with me. I have checked with my partner, and in the 45 years he has been practicing, it has never come up as a defense for him. So the number of times it would probably be used is negligible. In my research, it has never been used in any case that has gone through the appellate system. I hate to see us limiting defenses and limiting information we are going to give to a jury. I understand the intent behind the law, and I applaud those who brought it forward. I just do not think this is the way to do it.

Chairman Yeager:

Part of the amendment that was offered was not germane to the bill—the part about jury selection and bias. That would not properly be included in the bill. I think the first part of the amendment was not viewed as friendly by the sponsors, so the work session document in front of us is a straight do pass motion.

Assemblywoman Hansen:

I am going to vote yes on this. There are some bills we hear that I lose sleep over, and this would be one of them. I want to echo the comments of Assemblyman Daly as well as some of the others. John Piro and Kendra Bertschy made some compelling arguments for the idea of protecting the rights of the accused. For me, it is a balance between the rights of the victim and the rights of the accused, and I am wrestling with it. I thought the hate crime statutes might have been redundant enough that this was not necessary, but when I talked

with some other individuals, it seemed as though hate crimes are pretty hard to prove. There is almost an added burden on proving those. I am going to vote yes.

Assemblywoman Cohen:

I am comfortable with this bill, and I am going to vote yes. I received comfort during the hearing when I asked about the ability of the accused to tell their stories during sentencing and to tell the court they did not necessarily set out that day to do anything. It was not their intention. They did not go looking for trouble, but this happened. I think we need to make a clear statement that it is not okay to murder someone and say, I murdered them because they revealed to me they were trans when we were in the middle of an intimate encounter.

Chairman Yeager:

Is there further discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN EDWARDS AND FUMO
VOTED NO.)

I will assign the floor statement to Assemblywoman Krasner. We will go next to Senate Bill 117 (1st Reprint).

**Senate Bill 117 (1st Reprint): Revises certain provisions relating to real property.
(BDR 10-642)**

Diane C. Thornton, Committee Policy Analyst:

Senate Bill 117 (1st Reprint) is sponsored by Senators Ratti and Harris. It was heard in this Committee on April 26, 2019 ([Exhibit I](#)). This bill provides that any written instrument relating to certain transactions involving real property that contains any restriction or prohibition based on ancestry, color, disability, familial status, gender identity or expression, national origin, race, sex, or sexual orientation is void. Thereby, the bill eliminates the need to file an affidavit with a county recorder declaring any of these restrictions or prohibitions void. There is one amendment to the bill. Senator Harris proposed adding Assemblywoman Krasner as a cosponsor to the bill.

Chairman Yeager:

Are there any questions on Senate Bill 117 (1st Reprint) as detailed in the work session document? [There were none.] I will take a motion to amend and do pass.

ASSEMBLYWOMAN KRASNER MOVED TO AMEND AND DO PASS
SENATE BILL 117 (1ST REPRINT).

ASSEMBLYWOMAN PETERS SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Edwards:

I think this is another bill that has already been covered in the law. As the presenters noted, it is in federal law, it is in state law, it is in federal court decisions, and it is in state court decisions. This thing has already been covered and done. I just do not think this is a necessary law. Frankly, if they want to do this, there is a much better way. That would be through the escrow and title companies. I just disagree with the way they are doing this. Again, it is not a problem here in this state, so it is another solution in search of a problem. I am growing more and more frustrated with all these bills that are coming forward that just reiterate what is in law. Our predecessors have done this in the past. We should not have to be doing it again. I am just frustrated with the fact that we have 120 days to do the people's business and we keep doing the people's business from 50 years ago. I am going to vote no on this one.

Assemblywoman Krasner:

I would like to thank Senators Ratti and Harris for bringing this bill. I was mortified when I heard that here in Nevada, we still have items on real property titles that say only Caucasians can live in a particular house or neighborhood. I am very grateful they are bringing this bill, and I am happy to support it.

Assemblywoman Cohen:

I believe this bill is the people's business. There are people here today who are trying to buy a house, and on the paperwork it says they are not allowed to live in those neighborhoods. I cannot imagine what that would be like. I was thinking about how I cannot imagine being a person of color who gets that deed and reads those restrictions, and then I realized that includes me too. It is not just people of color; it is Jewish people; it is Muslim people; it is anyone who was considered "other" in the 1950s. Yes, it is in the past. Yes, you can still buy that house. However, people in Nevada need to know we are considering them and saying that is not who we are anymore.

Assemblywoman Torres:

I just want to echo my colleague's sentiments. I think it is appalling. In the classroom, I often teach my students about accepting diversity and how things have changed. It is quite evident that, while things might have changed, there are still policies that prevent change from actually taking full effect. We, as a Legislature, have a responsibility to ensure every Nevadan has the ability to purchase a home they have the means for, and this bill is quite simply doing that. For that reason, I am excited to support this bill.

Chairman Yeager:

I will note for the record that I think the bill does do some new things. Under current law, the restriction would be voidable. This makes it void and also requires the creation of a form to do that. I do not think it is accurate that all of this is already in law. Certainly the concept and the philosophy behind the bill is already in law, but I think there is a new streamlined procedure that is being offered to folks who would like to take advantage of that. I did not want to leave the impression that this is an exact repeat of what is there. There are some new

provisions presented in the bill about how to undertake removing these restrictions from the deeds.

Assemblywoman Miller:

While there are many people in this country who want to continue the narrative that racism and bigotry are dead, those of us of color—or those of us who are "other"—have known the whole time that racism never died. The policies, the laws, the bigotry, and the ideologies never died, they were just swept under the rug and put in a more convenient place. There are many of us who have understood that stuff has never died. It has never gone anywhere. We are living in a time in which things are being revealed and exposed again because it is as if that rug has been removed. We are at a time in our history in which there are so many things and so many people trying to revert us and pull us back to a time that is unacceptable in this country. For some people, it may seem small, but it is so significant. It was not that long ago that the newspaper would specifically say who could apply for a job, who could apply to buy a house in a neighborhood, and who could apply to a school. We are not that far away from it. At this point, we will continue to fight to hold onto what we have and to move forward. Here, in such a richly diverse and integrated state—not just that we have everyone here, but we have everyone living, working, and worshipping together—it is the very least we can do.

Chairman Yeager:

Is there further discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMAN EDWARDS VOTED NO.)

I am going to assign the floor statement to Assemblywoman Torres. Our last bill on the work session is Senate Bill 274.

Senate Bill 274: Revises provisions relating to crimes. (BDR 15-1076)

Diane C. Thornton, Committee Policy Analyst:

Senate Bill 274 is sponsored by Senators Scheible and Cannizzaro. It was heard in this Committee on April 17, 2019 ([Exhibit J](#)). Senate Bill 274 revises terms of imprisonment for the category B felony of discharging a firearm in certain circumstances. The maximum term of imprisonment for willfully and maliciously shooting into an aircraft, occupied building, train, vessel, or other structure from outside the structure or vehicle is raised from 6 years to 10 years. The term of imprisonment for shooting from inside a structure or vehicle is revised downward from 2 to 15 years to 1 to 10 years, bringing the penalties for the two similar crimes into conformity with each other. There are no amendments to the bill.

Chairman Yeager:

Are there any questions on S.B. 274 as detailed in the work session document?

Assemblyman Edwards:

I have a question about the penalties. It sounded as though if you shoot into a building, you get a worse penalty, and if you shoot out of a building, you get a lesser penalty. Is that correct?

Chairman Yeager:

The bill would align those two penalties. It would be a category B felony with a penalty of 1 to 10 years whether you fire into a structure or out of a structure. I will also note that there could be additional charges, of course. If you are actually shooting at somebody, that would be an attempted murder with the use of a deadly weapon as an additional charge to the charge contemplated here. I think the charges contemplated in this bill would actually be a random shooting, so to speak, not an actual targeting of somebody. The bill seeks to make those penalties the same in both circumstances.

Assemblyman Edwards:

I just wanted to make sure the October 1 shooter would not get a lighter penalty than somebody who was shooting back at him. It sounds good, thanks.

Chairman Yeager:

I will take a motion to do pass S.B. 274.

ASSEMBLYMAN WATTS MOVED TO DO PASS SENATE BILL 274.

ASSEMBLYMAN EDWARDS SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Hansen. I think that takes us through our work session. At this time, we will move to our agenda. We have three bills. I will open the hearing on Senate Bill 73 (1st Reprint).

Senate Bill 73 (1st Reprint): Revises provisions relating to gaming. (BDR 41-343)

Sandra Douglass Morgan, Chair, Nevada Gaming Control Board:

I am here to discuss Senate Bill 73 (1st Reprint), which makes certain changes regarding mobile gaming and seeks to have the Nevada Gaming Commission adopt regulations to address certain shareholder activity in publicly traded corporations registered with the Nevada Gaming Commission.

First and foremost, this bill no longer considers mobile gaming to be a unique and separate gaming category. It simply adds "mobile gaming" to the definition of "gaming device," which would regulate mobile gaming just as any other gaming device in the state. There are currently five companies with a mobile gaming license, and this bill would grandfather those

companies in as long as they had a license in existence before June 30, 2019. If an existing holder of a mobile gaming license, however, chooses to transfer its interest in that license, it would still be subject to the licensure, registration, or finding of suitability requirements through the Nevada Gaming Control Board if applicable.

Secondly, this bill proposes language that would strengthen the state's policy regarding corporate gaming governance and allow the Nevada Gaming Commission to revise existing regulations and adopt new regulations regarding investment in publicly traded corporations. As you all know, the Board is charged with protecting the integrity and stability of the gaming industry through our in-depth investigative procedures, licensing practices, and the strict enforcement of laws and regulations holding gaming licensees to high standards.

This bill would ensure that gaming continues to operate in an environment conducive to the integrity, stability, and success of the gaming industry. The state's current policy with respect to corporate gaming is to assure the financial stability of corporate licensees and affiliated companies, to preserve the beneficial aspects of conducting business in the corporate form, and to promote a neutral environment for the orderly governance of corporate affairs.

This proposed legislation would add the protection of the continued integrity of corporate gaming in matters of corporate governance to the state's policy. Again, this legislation would only affect publicly traded corporations that are registered with the Commission. It would revise the threshold for mandatory application of a finding of suitability to any level of stock acquisition and ownership as long as the intent of the shareholder is to engage in activities to change the corporate charter, bylaws, management, policies, or operation of the publicly traded corporation, engage in other activities that otherwise materially influence or affect the affairs of the publicly traded corporation, or any other activities that the Commission determines are inconsistent with holding securities in publicly traded gaming corporations for investment purposes only.

This legislation would require the Nevada Gaming Commission, in conjunction with the Gaming Control Board, to draft regulations that would set forth procedures by which a shareholder must file an application for a finding of suitability before engaging in those aforementioned activities I just discussed, determine which activities materially influence or affect the affairs of a corporation in such a way that the Commission would require a shareholder to file an application for a finding of suitability, and ensure that a person is not unduly prohibited from lawfully exercising any of his or her voting, proxy, or proposal rights derived from being a shareholder of a publicly traded corporation. That concludes my overview, and I am happy to answer any questions you may have.

Chairman Yeager:

I have a couple of procedural questions. I see there is an amendment from the Nevada Gaming Control Board on Nevada Electronic Legislative Information System (NELIS) ([Exhibit K](#)). Obviously, I assume that is a friendly amendment because it was submitted by

the Board. I am wondering if you can take us through what that amendment does. It looks as though it makes just a couple of changes.

Sandra Morgan:

The first change defines proscribed activities as activity that would "materially influence or affect the affairs of a publicly traded corporation." We thought it would be proper to mirror the regulations the Gaming Commission was requesting be adopted, which also include "materially influence or affect." That is to show that if a shareholder does want to have some type of influence over the corporation, it needs to be at a level that is substantial enough to require a file for licensure. That is why we wanted to add that in section 10.6, subsection 3(a).

Additionally, our current regulations and statutes require that if you file for an application for licensure with the Board, we provide an estimate of the length and the cost of that investigation, and you are required to submit a deposit. This language would also require a deposit in section 10.8, subsection 6. Again, that is currently in state law, but we wanted to make sure it is included for any type of shareholders who want to materially influence or affect the affairs of a corporation. It is just mirroring what is currently there.

Chairman Yeager:

There is a proposed amendment on NELIS from the Nevada Resort Association and CG Technology ([Exhibit L](#)). I am wondering if you had a chance to review that amendment and whether or not you view it as friendly.

Sandra Morgan:

Yes, we did review that amendment yesterday. It is a friendly amendment, and we are fine with it.

Assemblyman Daly:

I am just trying to understand. If I go buy shares as a private investor, would this preclude me from saying we should change the corporate governance, we do not want golden parachutes, we want to have the board elected in a different fashion, et cetera? As a shareholder who has bought enough shares and held them long enough, I can put in a shareholder proposal. Are you saying, No you cannot do that? Is that disclosed when you buy it? What would the penalty be for me if I say, I do not care about you, I live in Arizona, what are you going to do?

Sandra Morgan:

First and foremost, this is really just asking the state to have a more definitive policy on what we expect of publicly traded corporations that are filed with the Gaming Commission. This statute simply allows the Commission to adopt those regulations. Right now, if you are an investor in a publicly traded corporation that is registered with the Gaming Commission, you can actually request a waiver as an institutional investor that says, I just want to invest in this company but I am not going to be involved in the day-to-day activities. However, if you do something now that we think is going to change the corporate charter or bylaws, or if

you are getting more involved in deciding who runs the company, right now, as chair, I have the ability to require you to file for an application for licensure through regulations.

What this bill does is say, with any amount of shares, if your intent is going to be to do the things you said, Assemblyman Daly, you would have the responsibility to file for an application with the Gaming Control Board. You can file your application, and we will sit with you, we will tell you how much you have to deposit, and you can start engaging in those activities when you file. We are not saying you cannot do anything until the application is approved because that can be a lengthy process depending on the company. If you file, you are saying you are willing to be vetted, you want to engage in business in the state of Nevada, you want to have some type of influence on these companies that have significant impact on our state and our economy, and you are willing to be licensed. That is what the bill would propose.

As far as the penalties, there are definitely a lot of different repercussions that could happen when someone engages in activity that is not approved by the Gaming Control Board. That would be something we want the regulations to address, as well, if this legislation is adopted.

Assemblyman Daly:

I understand what you are saying. Is the U.S. Securities and Exchange Commission (SEC) rule disclosed when people buy the stock? Say I live out of state and I am an investor. If I am out of state and I bought shares on a stock exchange, I do not know what jurisdiction the Gaming Control Board would have over me. Is there some federal regulation that gets you there? I think a shareholder who buys shares in a company and then has met the requirements—I think you have to have owned it for over a year and own at least 100 shares in order to qualify to put in a shareholder proposal—has a right to protect his investment in the way he sees fit. I am just not seeing it. If I live in Nevada, maybe you can enforce this. But to me, it would go on to whoever sold me the stock. I say it is their responsibility. I do not think, as an individual, I can be controlled in this matter.

Sandra Morgan:

That is why we definitely wanted to include that nobody is unduly prohibited from exercising any of their voting rights or their proxy rights through this legislation. That is not the intent. The intent is solely that, if you are going to invest in a company and want to actually engage in the proscribed activities we discussed and influence or affect the affairs of the company, you simply have to file for a license so we know who you are. If those activities you are engaging in could affect the affairs of the company, it is going to have a trickledown effect on our economy and the employment status of so many Nevadans.

With regard to your question on the SEC, the SEC does have jurisdiction, of course, over publicly traded corporations. If there is an investment level of 5 or 10 percent, they do have to file requirements, and we get those as well. I do not see this running afoul of any type of federal requirements. Otherwise, we would not be proposing it.

Assemblyman Daly:

I was not trying to say we would be running afoul to that. Where is the disclosure? If I go and buy this stock and I do not know anything about it and I put in a shareholder proposal, what am I going to get? Am I going to get a letter from the Gaming Control Board saying I did not file? I am saying, I do not live in Nevada and I do not care if I did not file. What are you going to do to me? I think you are not going to do anything.

Sandra Morgan:

Honestly, I cannot answer that yet because the Gaming Commission would address that when it adopts the regulations. This is simply allowing them to draft the regulations to address that. So I do not know. It depends on what the Gaming Commission adopts.

Assemblyman Daly:

If they adopt a regulation, how can you apply it to somebody out of state? I will be curious to see how it comes out. I am just not sure how you can do this, especially if the person was not informed that he might have this other obligation regardless of where he lives. I am just curious how that works. As a shareholder, I want to influence a company to protect my investment, and I think I should have the right to do that. This seems to be an overreach to me.

Assemblywoman Cohen:

Can you go through the definition of mobile gaming again? When I read it, I thought I understood, and then I got to the last line in section 2, subsection 9(b) where it says, "The term does not include the Internet," and I realized I did not get it.

Sandra Morgan:

Mobile gaming is actually allowing gaming within the four walls of an actual property. It may be on the gaming floor. Maybe I want to go to the pool, maybe I want to go to my hotel room, and I can game on a device within the actual four walls of the property I am at. So it is not Internet gaming. It is gaming within the four walls of an actual property.

Assemblywoman Krasner:

Currently, when a publicly traded corporation has shareholders who hold 5 or 10 percent—it is usually 10 percent, I believe—they do have a change in status in which they may be considered a majority shareholder of that corporation and certain rights go to them automatically under the SEC. How does this vary from that? Or does it?

Sandra Morgan:

Right now, if you have a 10 percent interest in a publicly traded corporation, it is mandatory that you file an application for suitability with the Nevada Gaming Control Board and the Gaming Commission. That is a mandated threshold. If you hold between 5 and 10 percent, it is discretionary right now. However, if you are engaging in certain kinds of activities, regardless of the amount, the Board currently has the ability to call you forward and require that you actually file for licensure. This legislation would actually put the responsibility on the investor or the company that is intending on influencing or affecting the affairs to file

with the Commission and the Board. We will still do our due diligence, and we are still going to be monitoring any type of activities. If we see a company that could be influencing or affecting the affairs of a corporation, we will still require them to apply for licensure, but this would actually put the responsibility on the shareholder because they are the ones who understand their own intent with the corporation.

Assemblywoman Krasner:

Is that consistent with the SEC rules regarding that type of activity, or is that something that would deviate from the rules and be unique to the Nevada Gaming Control Board?

Sandra Morgan:

This would be unique to the state of Nevada.

Chairman Yeager:

I will open it up for testimony in support.

Matthew Griffin, representing Nevada Resort Association; and MGM Resorts International:

I am here to testify in support of S.B. 73 (R1). I am going to speak specifically to the issue of corporate securities in sections 10.6 and 10.8. This bill would revise Nevada's corporate gaming statutes to update and improve state law regarding suitable investment in gaming companies. The proposed legislation is the next step in the evolution of Nevada's corporate gaming laws.

As Chair Morgan noted, this legislation would revise the threshold so that any level of stock acquisition and ownership will require the shareholder to submit a mandatory application for suitability if the intent of the shareholder is to engage in activities to change the corporate chapter, bylaws, policies, board, or operation of a publicly traded corporation, or otherwise materially affect the affairs of a publicly traded corporation.

An example of the type of activity this legislation would regulate would be a shareholder who has the intention to appoint one or more directors to a corporation's board of directors or to remove one or more members from a corporation's board of directors. This is the type of activity that would be viewed as materially influencing or affecting the affairs of a corporation, and that shareholder would have to submit an application for suitability. Another example would be a shareholder who seeks to amend the corporation's bylaws or to change a corporation's charter. This activity would also require a shareholder to file an application for suitability.

These rules are important protections against investment entities that purchase stock in gaming companies with the intent to change the operations of the companies, including the commitments the gaming properties have made to their communities through their corporate social responsibility programs. Nevada has long recognized the importance of ensuring influence in its premier industry be scrutinized and regulated. To protect the integrity of the industry, one of the pillars of gaming regulation is that only those who are suitable should be

permitted to exercise influence over a gaming company's governance and operations. Under S.B. 73 (R1), these essential state interests are balanced against the need to encourage investment in gaming operations.

Jim Penrose, representing Nevada Resort Association; and CG Technology:

CG Technology is one of the five mobile gaming licensees in Nevada. Currently, to my understanding, it is the only licensee that is operating actively. We did submit a proposed amendment to the grandfather provision of the bill ([Exhibit L](#)). Basically, the language in section 19.5 of the bill provides that, notwithstanding the amendatory provisions of certain sections of the bill, to the extent those sections involve the rights or obligations of an existing mobile gaming licensee, those amendatory changes would not affect the status of that licensee or anyone who acquires an interest either in the licensee or in the licensee's operation.

I will walk you through the text of the proposed amendment, beginning, if I may, with what would be section 19.5, subsection 2. This is existing language in the bill that refers to the various sections I described. I am happy to walk through those if you have any questions about any of them. The amendment basically reorganizes some of the language to make it clearer. For example, the date reference that appears in Section 19.5, subsection 2(b) applies to both subparagraphs below [section 19.5, subsection 2, paragraph (b), subparagraphs (1) and (2)]. It also deletes the use of the term "pursuant to," because, as a longtime drafter, I do not believe it is an appropriate use of the term "pursuant to." I prefer to say "described in." I think that is more accurate.

The new language that is proposed to be added to subsection 19.5, subsection 1 was added at the request of the Gaming Control Board. It is to make it clear that, notwithstanding certain changes in section 3 of the bill relating to gaming employees, certain employees of mobile gaming licensees would likewise be grandfathered in so the existing provisions of that provision of *Nevada Revised Statutes* (NRS) continue to apply to those employees and they continue to be regarded as gaming employees subject to regulation by the Board and the Commission.

Finally, there is new language proposed in the amendment relating to section 20 of the bill. We are trying to make it clear that, notwithstanding the fact that the section repeals certain sections of NRS, those sections continue to apply to the persons and transactions that are described elsewhere in the amendment. One of those sections defines mobile gaming for the purposes of NRS Chapter 463. That definition needs to continue to apply with the other provisions of the amendment to make it clear the definition applies to all of those sections. Another section that is affected by the repeal involves the regulatory authority of the Gaming Commission as it relates to mobile gaming. Obviously, it is appropriate in the context of the bill as a whole to delete that reference, but that provision needs to continue to apply to those licensees that are going to be grandfathered in.

Finally, there is a provision of existing law that makes mobile gaming debts enforceable, and it is proposed for repeal. Obviously, it is our desire to have that provision continue to apply

notwithstanding the general repeal. I appreciate the efforts of the Gaming Control Board to work with us on this amendment. I am happy to answer any questions you may have.

Chairman Yeager:

Is there anyone opposed? [There was no one.] Is anyone neutral? [There was no one.] I will now close the hearing on S.B. 73 (R1). We will move to the third bill on our agenda. At this time, I will open the hearing on Senate Bill 435 (1st Reprint).

Senate Bill 435 (1st Reprint): Enacts provisions relating to claims for personal injury. (BDR 2-1148)

Graham Galloway, representing Nevada Justice Association:

The bill before you, Senate Bill 435 (1st Reprint), addresses some practices in the personal injury claims settling field. I would begin by saying this bill only applies to prelitigation practice; it does not apply to anything that happens after a lawsuit has been filed. We believe the provisions of this bill will enhance early resolution of cases and avoid litigation. There are three major components to the bill. I will work through each of those.

Section 2 provides that an unrepresented claimant—someone who is not represented by an attorney—can revoke or rescind a settlement agreement within 60 days of settling a case. This provision is designed to help those individuals who have not been represented by an attorney and have settled their case only to find out the settlement they entered into does not cover all of their injuries and damages. This is to take care of the first settlement call where a carrot is offered to an individual—a small amount, \$500 or \$1,000—to settle their case and to cover their medical expenses. Traditionally, what you hear is, We will pay you \$1,000 and take care of any hospital bill you may have that is not covered by your own health insurance. What unsuspecting, unwary, uneducated individuals do not realize is that when they go to the emergency room, it is not just a hospital bill. There is a separate bill from the radiologist if they have had diagnostic testing; computerized tomography scans can be very expensive. There is a separate bill from the emergency room physician. When they settle for the \$1,000 and they think their hospital bill is going to be taken care of, 60 days down the line they get a bill from the radiologist or the emergency room physician, and they are not covered. They come to me, and I say, well, you have entered into a settlement agreement and you are strictly out of luck. This is to help those individuals.

Traditionally, these are very small cases, not big cases, and these individuals have been sold on something that does not take care of them. This provision would allow an unrepresented claimant to unwind the deal if they pay back the settlement amount. They have to give the settlement amount back. They have to give the insurance company notice. There are some dates in here: 60 days and 30 days. It is not a long time frame. Some of the criticism I have heard on this provision is that this is going to delay settlement. It does, but only very slightly. It will not do anything other than take care of these uneducated, unwary, unsuspecting people.

The second component of the bill, which is set forth in section 3, prevents an insurance company from going to a hospital and negotiating a settlement with somebody who is in the hospital. That is all this does. It says an insurance company or someone representing the adverse party—the person who caused the person's injury—cannot go to a hospital within the first 15 days and negotiate a settlement or take a statement that can later be used against them.

The third provision, which is set forth in section 4, goes to what the law was up until 2015. From 1995 through 2015, the law said that if a personal injury claimant in the prelitigation process gave medical records and bills to an insurance company, the insurance company was required to disclose that person's policy limits so the injured person would know how much insurance was out there. In 2015, that law was rescinded, and we went back to what I call "the dark ages," in which you were not provided any information as to the adverse party's insurance limits, and the adverse party was not given any information about your medical condition, medical records, or medical bills.

We believe this disclosure is important for two reasons. One, if you are an individual who is hurt and you are not sure about getting further treatment—the doctor says, Maybe you should go do X, Y, and Z, and it is an expensive process—and you do not know how much insurance is out there, you may be undertaking medical expenses that are not going to be covered by the adverse insurance company, and you will ultimately be held responsible for those bills. The second component of the problem with nondisclosure is illustrated by a client I represented last year. This was prior to the amendment of the minimum limits from \$15,000 to \$25,000. There was a \$15,000 policy on the other side we did not know about. My client incurred \$14,000 in medical expenses within a few months. We contacted the adverse insurance company and said, "Look, we already have \$14,000 in medical expenses. If you only have a \$15,000 policy, you should just offer up your \$15,000 policy, we will settle with you, and we will move on to my client's underinsured motorist carrier." The adverse insurance company said, "Well, under the law, we do not have to give you that information." So two years later, when my client finally finished her treatment and we had to file a lawsuit because of the statute of limitations, she then had \$45,000 in medical expenses, and the insurance company said, "Oh, we only have \$15,000. We are going to offer it up." They held the money for a year and a half. My client's money was held up for a year and a half. They used that money; they invested that money; they made interest off of that money. My client was not able to use that money at all because they hid behind the law that says they do not have to disclose policy limits. We are asking for transparency.

There are those who will criticize this. They will say that, somehow or another, by requiring the disclosure of policy limits, it is going to raise rates. That is the old sawhorse the insurance companies bring out anytime we propose something they do not like. They always say the rates are going to go up. They say it is going to drive insurance companies out of business in this state. However, in 2015, when the law was changed and they did not have to disclose their limits, I do not recall any reduction in premiums. If the people who come up after us in opposition say the rates are going to go up because they now have to disclose this information—which they did for 20 years and there was really no problem—then I think

somebody on the Committee ought to ask them when we are going to get our refund for when the rates should have gone down for the past four years.

We believe these changes are not very dramatic, but they are appropriate. They protect the consumer. They protect the individuals who have been injured, who were innocently minding their own business when they got hit and incurred medical expenses, wage loss, pain, and suffering. Then they have to deal with lawyers, doctors, and insurance companies and they were just minding their own business. These provisions we have proposed are all in favor of the consumer, the individual victim of an accident. That concludes my overview of the changes we have requested, and I am happy to answer any questions.

Chairman Yeager:

I have a question about section 2 of the bill. It indicates that the release of liability is voidable within 60 days after its signing. When an attorney gets involved and there is a release that is signed, usually the client signs the release and there is a delay and the release is not actually exchanged until the settlement check is available. The attorney might be sitting on the release for, ideally, just a couple of days, but sometimes it can be a long time. I wonder if, in your experience, before someone has an attorney and they are signing a release and dealing directly with the insurance company, is there usually a delay in giving that release over? The reason I ask that question is because someone could sign the release and wait, and I am wondering if the trigger for the 60 days should be upon the signing of the release versus the exchanging of the release. Do you have an opinion on that?

Graham Galloway:

That is a good question. In looking at this, I think it is based upon when it is signed. I have never been an unrepresented claimant, so I cannot speak on behalf of an unrepresented claimant, but I would assume the unrepresented claimant signs it and hands it over right away. They are anxious to receive money. That is why they are engaging in this early settlement process. They hand it over right away. When I have a client sign a release, I typically hand it over right away. I understand some attorneys may delay that process, but in the context of an unrepresented claimant, it would be unusual or odd, in my mind, that there would be a delay in handing it over. I think you can interpret it either way because it is a little ambiguous and that may need to be fleshed out. In my mind it would be the date that is on the agreement because all of these releases are dated. I would take it from the day the release was signed.

Chairman Yeager:

It sounds as though you have the same experience I have, which is I do not know what happens before a person hires an attorney. There are a number of other questions, but I will go next to Assemblywoman Backus.

Assemblywoman Backus:

You did give me some comfort in how you explained section 2, but after I was introduced to this bill, I started pondering the extent of section 2 and I kept thinking of property damage that could be involved in an automobile accident. I did not think that was the intent.

From your presentation it sounds as though it is looking more at bodily injury settlements. When I realized this is in *Nevada Revised Statutes* (NRS) Chapter 10, I started getting more heartache as to any and all types of settlements. I do a lot of different law, whether it is civil defense or commercial litigation, and when I sit here and ponder this, I start to think of those easily resolved suits that could now be blown up if two individuals enter it and the roller-coaster effect this law could have. I am curious about that. Is the intent to overly broaden the settlements that would include releases?

Graham Galloway:

My understanding of section 2 is that it only applies in the personal injury context. However, you are right. It does not specify. The intent is to deal with bodily injury, not property damage. This would not prevent an injured party from contacting the insurance carrier to resolve the property damage claim, which is what typically happens. When your car has been crashed, one of the first things you do is contact the adverse company to ask when you are getting your car fixed. This does not prevent that from occurring. What it prevents is an insurance company or an adverse representative from going to the hospital and taking statements or trying to negotiate a settlement of the whole case. Really, the intent throughout this bill is to address the bodily injury claims.

Assemblywoman Backus:

Would you be open to including an amendment in which it is abundantly clear that this is only included in those situations that could potentially apply to bodily injury claims and not to other types of litigation?

Graham Galloway:

I would be open to an amendment to clarify that. That would not be an issue. However, I think the term "releasee" in section 2, subsection 4(b) talks about claims arising from personal injuries. I think the bill already takes that into consideration, but I am happy to consider and address any more clarification.

Assemblywoman Backus:

It sounds to me that there would be two requirements that would have to happen simultaneously: the releasee would have to provide notice to the releasor as well as return the consideration within the 60 days. Is that your understanding?

Graham Galloway:

Yes, it is.

Assemblywoman Cohen:

I have a question about section 2, subsection 1(b). It says, "Without the assistance or guidance of an attorney or power of attorney." I was somewhat confused about the power of attorney language because attorneys understand what is going on in personal injury law, but people with power of attorney are often just standing in place of the injured person in general and do not necessarily have any legal training. Can you address that?

Graham Galloway:

Yes. I have no understanding of why that language is in there, and I would be happy to delete that. I am not sure what that means either.

Assemblywoman Cohen:

I have a question about the language in section 3, subsection 1 about a person who is admitted to the hospital and our not being able to negotiate or make an agreement with them within 15 days. I wanted to check about that timeline because some people are in an accident and are admitted into the hospital right away, but some people are not. Maybe a few weeks later the doctor realizes the bone is not setting properly and they will need to have an operation or something. Does the clock start over again when they go into the hospital, even if it is weeks after the accident?

Graham Galloway:

My understanding is the 15 days would start from the date of the event that caused the injury, not a subsequent hospitalization. For example, if there was a delay for six months because they were trying to avoid surgery and after six months it was decided they had to have surgery, this would not apply. It is only the first 15 days after the event that caused the injury.

Assemblywoman Krasner:

Has this person we are talking about who is harmed been paying insurance and now wants the insurance company to pay for their injuries, bills, and damage to their automobile? Is this a person who has been paying insurance all along and is insured?

Graham Galloway:

Yes and no. It could be either. The injured claimant could have their own insurance and could be paying premiums, but they could also be an uninsured individual.

Assemblywoman Krasner:

My second question is about the provision in section 3 whereby an attorney or agent cannot go into a hospital to get a person to sign a release when they are lying in their hospital bed. Is the law currently that they can do that?

Graham Galloway:

There is no law that says they can do it, but there is no law that says they cannot do it. The law, as it stands now, would allow for that practice to occur.

Assemblywoman Krasner:

While they are in their hospital bed?

Graham Galloway:

Correct.

Assemblywoman Krasner:

My third question is about the provision in section 4 about the disclosure of policy limits. From what you said, this would just encourage settlement so you do not have to go and file a lawsuit. Is that correct?

Graham Galloway:

Yes. Under the law currently, the adverse party does not have to tell us what their insurance information is. If we deem that important for purposes of resolving the case, the only way we get that information is by filing a lawsuit. Frankly, that is what I do. When an insurance company tells me they are not going to tell me what their limits are, I just go out and file a lawsuit. Under Nevada Supreme Court rules and case law, they are required to tell me that information. This is a provision that will help decrease litigation. It will help facilitate settlement more quickly and efficiently. There will be people who will testify to the opposite, but that is to the contrary. As I said, when an insurance company refuses to tell me their policy limits, I simply file a lawsuit and then we incur more expenses, it is more time consuming, and it is not an efficient way to do it. We had this for the 20 years before 2015. It worked fairly well. There were some complaints, as there always are, but it worked well. Then in the past four years, it has been problematic for those of us on this side.

Assemblywoman Krasner:

I thought the policy of the state was to encourage settlements, but I wanted to verify.

Assemblywoman Hansen:

I have a question in regards to this idea of disclosure of limits and your thinking there might need to be a change from that 2015 legislation. Has there been some increase of complaints to the Division of Insurance within the Department of Business and Industry since the 2015 legislation that lends that we now need to have this legislation?

Graham Galloway:

I am not aware of more complaints to the Insurance Commissioner's Office because the Insurance Commissioner's Office does not take complaints from attorneys for the most part. Also, they would not handle this because the law says the insurance company does not have to give us the policy limits. If I complain to the Commissioner of Insurance, I can hear the answer: They do not have to give you that. The short answer is that there has not been an increase of complaints to the Insurance Commissioner's Office.

Assemblywoman Hansen:

The Division of Insurance takes complaints from the public, not just from attorneys or insurance agents. I know I have filed concerns we have had if something is not going properly.

Graham Galloway:

Your point is correct, that they take complaints from the public, but if a person is represented, they will not take the complaint. That is an oddity in the law that I would hope somebody would change someday because we are as frustrated as can be. For some reason,

if you are represented, they will not take that complaint, but if you are unrepresented, they will. Somehow or another, the law has twisted this so that if you are represented, they will not take or respond to your complaint.

Assemblywoman Hansen:

As far as the disclosure of limits, I am trying to understand why those would need to be disclosed. As a Realtor, we do not disclose what our offers are when we are doing a real estate transaction because it is an undue advantage to the other party. We own a plumbing company. When we do bids, those are confidential. The other bidding parties do not disclose their bids to us. I am just wondering if the disclosure of the limits places an unfair advantage into your court.

Graham Galloway:

It does not because if you file a lawsuit, you are entitled to that information. All we are trying to do is provide that information in the prelawsuit stage so you have clarity and know what is happening. If you represent somebody who comes in and they have \$200,000 in medical expenses, you want to know the policy limits on the other side because if there is only a \$25,000 limit—the state's statutory minimum—you want to be calling that insurance company and saying, Pay your \$25,000, let us get you out of the way, and we will move on to our client's own underinsured motorist coverage. On the flip side, if you have a client who has been recommended certain treatment, you want to know whether there is going to be insurance on the other side that will cover that treatment so the client does not run up a bunch of bills that they will ultimately be holding the bill for. It helps resolve cases. The opponents of the bill will say the contrary, but that is not true. This helps resolve cases because you have an understanding of what is on the other side. You get that information regardless if you file a lawsuit, so you are not really gaining any advantage. The advantage is, you do not have to file a lawsuit if you get the information prelitigation and then you can deal with the case as it comes up.

Assemblyman Roberts:

Do you have information on any other states that allow the void of releases and under what circumstances they allow that?

Graham Galloway:

Yes. The language that is set before you comes straight from the state of Maryland. That is why I addressed the Vice Chairwoman and said, I do not know why that language is there. Maryland passed those provisions, section 2 and section 3. Those two sections came directly from Maryland law. They have been in place since 1990 or 1995, and have been upheld as constitutional. There are other states that have similar provisions, but not exactly identical. The one state I am aware of would be Maryland.

Assemblyman Edwards:

In 2011, I was involved in a car accident because the woman in the adjacent lane had a tire blowout, she came into my lane, and we collided. It was ugly. While we were sitting on the side of the road, we agreed she was at fault, and we were just going to have the damages

repaired. However, because in those days you could find out what the limits of my insurance were, our agreement on the side of the road quickly disappeared, and suddenly the cost to my insurance company was going to become much higher. That is how I saw the game being played when you had access to that kind of information. I was here in 2015 when we changed the law. One of the reasons I voted for the change was because of my personal experience in how the game was played almost against me.

In this case, what I want to know is, if you are actually trying to make sure people do not get medical bills they cannot afford and make sure you know how much they can afford so they can pay it, why are we not, instead, simply requiring that the medical bills be provided within 120 days so you know what the costs are? That seems to be much more transparent. It seems to give much more protection for the individuals involved, it seems to avoid all the questions of lawyers coming into your hospital room and so on, and you would know where you stand. It also resolves the case in an equitable fashion without all the hassle because you know what all the costs are. For those cases that are going to go longer than 120 days because the injuries are severe, why are we not simply doing partial payments along the way whereby the bills are known because they are required to be provided every 90 days or whatever it would be? I think that actually achieves the goal you stated much more effectively.

Graham Galloway:

I do not have a problem with what you are proposing. However, what you are proposing is to change the way the medical profession works and the way the insurance industry works. The insurance industry, as I understand it, has never been one to favor partial payments. We, on our side, would love that. You are asking for monumental movement on both the medical side and the insurance side. We thought the better way to do it at this juncture would be to take small bites at the apple and move it along and keep progressing at an incremental fashion. I would be happy to have periodic payments along the way, much like they do in the workers' compensation arena for our seriously injured individuals. I would be happy to be able to tell a medical provider they have to give me a final bill within 120 days. I just do not see that happening quickly.

Assemblyman Edwards:

That sounds as though you would be agreeable to an amendment. Although the medical profession does not do it that way, we make laws here that can require them to do so.

Graham Galloway:

I am happy to talk about amendments, but I would rather not have an amendment that would kill the bill. I would rather tackle this.

Assemblyman Edwards:

This does not kill the bill. It actually achieves your stated purpose, and I think it achieves it in a much more effective, transparent, and accountable way, and in a way in which everybody wins.

Graham Galloway:

You still would not have the information you need to know about how much coverage is out there to settle your case.

Assemblyman Edwards:

But you do not need that. The issue is the medical costs and the bills. It is not a matter of how much insurance I carry. It is a matter of how much your injuries cost. That is the difference. What I am saying is, if you make that cost known, it meets your purpose of serving your client by making sure the bills are paid and that there are no surprises.

Graham Galloway:

I am happy to entertain anybody's amendment that would accomplish that.

Chairman Yeager:

I have one other question that occurred to me as I was reading section 3 of the bill, which is the provision about having to wait 15 days to make contact with someone at the hospital. In section 3 of the bill, it basically precludes negotiating or attempting to negotiate an agreement, but it also precludes taking an "oral or written statement from the person who was injured." That makes sense, but then when you go down to section 3, subsection 2, it seems to indicate that if you violate this provision of the law, you are not allowed to use a settlement agreement or release of liability, but what I do not see in that provision is a preclusion from using whatever oral or written statement you might have received from the person in the hospital. I wonder if that is intentional, or if it was an oversight in the language. It seems there is essentially a penalty for violating that provision, and the penalty is you cannot use it in the case, but that penalty does not seem to apply to an oral or written statement.

Graham Galloway:

There was nothing intentional with that. Again, sections 2 and 3 came straight from the Maryland statute, and we just adopted all the words included without really parsing it out. It seems to me that the language in section 3, subsection 2 should also include the prohibition of using the oral or written statements as well.

Chairman Yeager:

That seems to make sense. Otherwise, there would really be no penalty for taking that written or oral statement in violation of the 15-day rule.

Assemblywoman Tolles:

I am really enjoying this discussion because as representatives, we look at the individuals we represent and we look at the whole of the constituents we represent—roughly 64,000 in each of our districts. This is bringing forward a great conflict of how to look at the individual. Your stories are very compelling. I think about if I am in an accident or if a constituent of mine is in an accident similar to some of the scenarios you lay out, I think you make a good case for why it would be appropriate for them to have all the information available and why they might reconsider. I am thinking specifically of section 1 in which they might make

a deal and then reconsider that and need to be released from that deal. I listened to your testimony in the Senate as well. I can appreciate the question you are bringing before us, but then the other thing we have to ask about is the possible impact on all of our constituents beyond that individual and the possibility of increased insurance rates and insurance premiums. My question is, do we have some evidence from Maryland compared to Nevada? Do we have some evidence from pre-2015 to post-2015 in regards to section 3 to show what that impact was on the insurance premiums so we can make a more informed decision and balance out the individual needs versus all of our constituents' needs? That is what we have to weigh, and I am sympathetic to both those arguments. That can be a question you get back to the Committee with.

My more specific question relates to section 2. It says the "release of liability is voidable by a releasor within 60 days." I am just wondering how you came up with that 60 days versus 30 or 90 days. Where did that 60 days release period come from?

Graham Galloway:

Again, the language in section 2 was lifted completely from the Maryland statute. They set the 30-day and 60-day timelines. Apparently, it works well there. They have not had any issues with it, so we just went with those timelines. You could come up with a lot of different timelines, so we just went with what the Maryland statute had set forth.

Assemblywoman Tolles:

When it comes to the insurance premiums, would this specifically be auto insurance that we would want to look at? I happened to look it up. Maryland and Nevada are actually neck-and-neck in terms of our rankings for the cost of auto insurance. Maryland is ranked 18, and we are ranked 19 in the U.S. in terms of the cost comparison. Would other insurance possibly be impacted by this as well?

Graham Galloway:

It applies to all personal injury cases. As far as rates, I have no idea. I suspect the insurance industry is going to argue that it is going to increase rates. Typically, the cases I see in which this is involved are almost exclusively automobile cases. I have yet to have one of these involve a premises case or a medical malpractice case. I receive a phone call at least once a month from an unfortunate individual who wants to change their mind about their settlement. Almost universally, those are very small, modest cases. They are not very big. Will it increase rates? Maybe. But I cannot imagine it would increase them tremendously. It would be very negligible, at least in my mind, but I am sure my colleagues from the other side will say this will be some big outrageous increase.

Assemblywoman Torres:

I do not have a question; I just want to make a comment. I really think this legislation is going to protect hardworking Nevada families that may not be familiar with the legal process, as many of us are not. They may find themselves getting in a car accident and not knowing what steps to take after that. They settle the claim. I have seen it happen within my own community and within my Assembly district. We have individuals who are not familiar

with the legal process and they settle their cases and still have medical bills they need to pay that they did not realize were coming in. I do not know how many of you have been to a doctor's office and left thinking you owe nothing and then you get that bill in the mail saying you still owe \$60. I think this is going to protect a lot of Nevada families. I think it is really going to help our court system.

My understanding is that right now, in order for us to get the policy limits, you would have to file a lawsuit. Sometimes you get severely injured so you have to go to the doctor and you need certain types of treatment and those are pricey and bills add up, but you would not know how much money is in that policy limit. As the attorney, you are then in this situation in which you are either discouraging your client from going to the doctor or you are encouraging them to continue going and finishing that treatment. I think this allows for clients and Nevadans to get the medical treatment they need in order to close out the case because they know the policy will cover that. A lot of us will not make the decision to see the doctor if it is not covered.

Graham Galloway:

I think you have said it better than I have. This does protect the hardworking families of this state. Yes, there are times we counselors are sitting across the desk from the client saying, maybe you might not want to incur those medical expenses because we do not know whether they are going to be covered. It is never a good conversation. This just adds some transparency to the process. I think sometimes the opponents of this bill forget this is designed to protect the innocent victim of a personal injury situation. These people did not ask to be injured. They should not have to play this "hide the ball" game about what the limits are. They should not be put in that position. Assemblywoman Hansen talked about real estate. That is an arm's-length transaction in which two parties come together and negotiate a situation. I agree with her that you do not want to be giving away the privileged information. Here, it is not an arm's-length negotiation. A real estate transaction is an invited transaction. This is not. You are sitting at a stop sign minding your own business and some drunk driver creams you and then you have these bills and expenses. Then you have an insurance company playing "hide the ball," and not telling you how much coverage they have. But if you sue them, they have to tell you. You are right. The only way we get that information now is by filing a lawsuit, which is what I do. We file lawsuits, almost unnecessarily, but that is how you get the information.

Assemblywoman Torres:

Once we file the lawsuit, that is extremely expensive for the insurance companies as well because they are paying jury fees, attorney fees, and there are all types of court fees that are going into those lawsuits. My understanding is that a lawsuit is extremely more expensive than just settling that claim. Because that is the only way we can know the policy limits right now, and that leads to more lawsuits than necessary.

Patrick Leverty, President, Nevada Justice Association:

You are right. There are litigation costs to the insurance company. However, there are also costs to the defendant who caused the accident: being sued, getting served with a summons

and complaint, the anxiety, the worry of going through this process they never necessarily had to go through. If they got the limits disclosed prelitigation, their insurance company could have resolved it without having to use them as a pawn and increase the worry in their life.

Chairman Yeager:

There is a proposed amendment to the bill on the Nevada Electronic Legislative Information System from the Nevada Resort Association ([Exhibit M](#)). I wonder if you have had a chance to review that and whether you view that amendment as friendly or unfriendly.

Graham Galloway:

We saw that amendment for the first time this morning. We had no conversation or awareness this would be proposed until this morning. Frankly, one of the major components of this bill is the insurance disclosure requirement. All this amendment says is that we, on the injured party side, have to provide medical records and bills, but we get nothing back in return. The goal of section 4 is to provide a quid pro quo: we give records of bills, you give us insurance information. The proposed amendment deletes the whole requirement that the insurance policy limits be provided. Therefore, this is viewed as a most unfriendly amendment.

Chairman Yeager:

I will open it up for testimony in support of S.B. 435 (R1). [There was none.] I will open it up for opposition testimony.

Jesse Wadhams, representing National Association of Mutual Insurance Companies:

We are opposed to the bill as written. It is a bit of a schizophrenic bill in a way. You have section 4, which says we want to get the policy limits and make sure we are settling quickly, yet in section 2, we do not want to settle too quickly. It is a little bit scattered. With regard to section 2, obviously this hits NRS Chapter 10. That is in the general civil practice, so this is not specific to policies of insurance. This applies across the board to insurance companies, to self-insureds, to local governments, and to a whole host of things. The timelines they set are pretty arbitrary. Functionally, you will delay any settlement until plus one day after the date is set.

Section 3 is overly cumbersome. I would struggle to say this is a problem within the state of Nevada as to settlement practices while an individual is admitted to a hospital. If that is occurring, I have to imagine it is a number approaching zero. I think it is a little bit cumbersome and would be somewhat subsumed by section 2.

As to section 4, ultimately this returns to that pre-2015 language in NRS 690B.042. For any of you who lived that experience of trying to walk through the possible reforms to that bill, ultimately, the issue was that it felt disproportionate. One of the practices that would happen was that attorneys would submit one bill and then demand the policy limits. Then the insurance company would say it did not get all the records necessary to evaluate and it did not feel it had received the information to disclose the policy limits. Then the complaint

would be filed with the Division of Insurance, and the Division of Insurance would say the insurer's license is now on the line and its certificate of authority is at risk. It was very disproportionate. It felt as though the obligations and the benefits were not really in sync.

We certainly tried to work through that language. I have visited with the sponsors about seeing if we can try to balance those components a little more. I am happy to stand for any questions. We look forward to continuing to chat with Mr. Leverty and Mr. Galloway about the bill to see if we can arrive at some happy medium.

C. Joseph Guild, representing State Farm Mutual Automobile Insurance Company:

What we are talking about is a contract. The policy of insurance is a basic contract between the insurer and the insured. The system of civil justice in our country is based on a fair and adversarial dispute advocacy and resolution process. This bill, in our opinion, clearly aims to substantially unlevel the playing field. An effort to shift the rules in this direction will unfairly benefit one side in that dispute. Contrary to what Mr. Galloway said, we believe this will lengthen the process, complicate the prelitigation settlement process, and lead to more delays.

There is no evidence that I heard this morning or in the Senate hearing that supports the notion that claimants are not being given adequate time to evaluate their claims. Nor have I heard any evidence that claimants are being forced into settlements before they can make a thoughtful decision regarding that claim. Right now, it is the claimant who has the ability to make an initial settlement demand, make the final decision, and retain counsel at any time during that process. An example of this is in section 3, subsection 1 where we are talking about the prohibition against any attempt to negotiate within 15 days of the event that caused the injury if the person is admitted to a hospital. What if they have been in the hospital for 24 hours and released? Mr. Galloway did say that what we are talking about here are very small claims for the most part. I think the numbers he used were \$500, \$1,000, and \$1,500. What this bill would prohibit is the speedy resolution with the person who is released after 24 hours. An insurance adjuster on behalf of the company could not talk to that person for another 14 days. That does not make any sense to me.

We think sections 1 and 2 of the bill set up a highly unusual situation that would put the claimant in complete control of whether to furnish the authorizations. That does not seem to be a fair, leveled playing field. Section 4 appears to be an effort to revive the Nevada law that was repealed in 2015. However, in contrast to what was said to you as a Committee, this proposal does not put the law back to where it was in 2015; it goes further. It does not confine itself to policy limit information, which was the old law. It establishes an extremely vague standard. It says to disclose "all pertinent facts or provisions of the policy," beyond just the policy limits. How is that going to speed the process up and make settlements more easily obtained?

I understand where the proponents of the bill are trying to go with this. I would be happy to sit down with the proponents at any time to try to work out something that makes a little more sense from our point of view. I would be happy to answer any questions.

John Hawley, representing Farmers Insurance Group:

I am here to answer any questions you might have regarding this bill.

Chairman Yeager:

The way I read it, the language in section 4 does restore what the law was prior to 2015. I understand what happened in 2015. I understand why that provision was enacted. When the proponents testified, they talked about the scenario of having a client who is trying to decide whether to seek additional medical treatment. In making that decision, all of us would want to know if there is going to be coverage and what the financial ramifications are. Obviously, in an ideal world we would want everybody to get all the medical treatment they are ordered to get, but we know in the actual world there are financial considerations that come up. I guess my question is, how do we expect an injured claimant to be able to really make that determination and analysis without knowing from the adverse insurance company whether there is adequate coverage?

I am assuming the three of you at the table would prefer to disclose that rather than getting sued and having all that a lawsuit entails. We are trying to find this balance, and I am wondering if you can shed a little more light on your reluctance to disclose the policy limit and how a potential claimant would make a determination about whether to seek additional medical treatment.

John Hawley:

We talk about an injured claimant, and that is fine. However, there are two aspects to any personal injury suit: liability and damages. People can suffer damages and there might not be any liability on the other side. Really we would advocate that claimants get the medical attention they need, and the availability of funds from the other side will depend on the liability on the other side and what a fair interpretation of their injuries is. Also, yes, we are required to disclose insurance limits when a lawsuit is filed. The plaintiff, at least in Las Vegas, is also required to disclose not only the medical bills that directly resulted from the injury, but also five years of medical history before the accident. If the person was having back pain for four years prior to the accident, they cannot blame it all on this accident. That is how it has to be parsed out, and that is how we do it in an adversarial system.

Chairman Yeager:

I know you do not speak for all the insurance companies, but is there a blanket policy or prohibition against disclosing policy limits? Does it only happen when there is a lawsuit or are there scenarios in which that information is disclosed in the prelitigation part of the claim?

John Hawley:

I know only about the litigation process. I do not know if there are instances in the claims process in which limits are disclosed.

Joseph Guild:

I can try to get that information from State Farm, but I do not have that information right now.

Assemblywoman Tolles:

I just want to confirm that there is willingness to work together. Although it may not possibly be the ideal scenario, there is a willingness to talk through some of the amendments that have been proposed. I heard that from the other side as well, to hopefully get closer to where we can strike that balance. You would be open to finding a way to strike that balance in a more fair way?

Jesse Wadhams:

Yes. I have already had a couple of very productive conversations with the Nevada Justice Association, and I would be happy to continue to do that so we can find some kind of middle ground.

Joseph Guild:

We are always willing to try to find a common ground.

Assemblyman Fumo:

I have a question about finding the common ground. I do not do personal injury. We mainly do criminal defense, but I have had people come to me saying, I signed this contract; now I am getting these medical bills I did not know I was going to have, and I want to undo it. And I have to tell them, First, go seek other counsel. We do not do that, but it seems to me you are kind of in a bind here. These contracts I have read appear to be adhesion contracts. It seems to me that the insurance company has a huge bargaining advantage over the victim in the accident. When you go meet the person to have them sign these contracts, would you be willing to tell them, Rather than signing it right here, right now, go and seek alternate counsel? Come back after you have had 24 or 48 hours to seek counsel to see if this is a good idea for you. Check with your insurance company to make sure you know what your bills are actually going to be.

The second concern I have is that we have had judges come in here earlier in the session seeking scores of new judges all over the state. I asked them what their biggest need was, and the big need was family judges. The other big need was civil, and some were telling me it is directly related to the lawsuits that are being filed because insurance companies are not transparent and the only way to get that information is when a personal injury attorney files a lawsuit. So now, hardworking Nevadans are going to pay millions of dollars for new judges and new seats to do this. Would you be willing to concede that and go back to the way it was so we would have more transparency in this state?

John Hawley:

Actually, we have a growing population in this state, and with growing populations, you have growing civil disputes between people. That is going to be the primary driver for caseloads. I worked for seven years in the Nevada court system at the beginning of my career, and that

was the primary driver. That is why we instituted the alternative dispute resolution program. We have the arbitration program in Clark County and Washoe County. That is why we instituted a number of systems to try to take the load off the courts. Blaming insurance companies or defense lawyers for not disclosing limits during a claims process for the increase in the judicial workload seems kind of specious.

Joseph Guild:

Actually, Assemblyman Fumo, it is coincidental, but I thought about contracts of adhesion yesterday thinking about this hearing. I do not want to discriminate against my fellow insurance companies, but State Farm is a mutual company and is a member of the National Association of Mutual Insurance Companies. That means the policyholders State Farm insures own the company. To my knowledge, and I can only speak for State Farm, I do not think the Nevada Supreme Court has ever held that a State Farm policy is a contract of adhesion. I have represented State Farm for over 25 years, and I have never heard that. I hope that helps to put something in context for you.

John Hawley:

If I might amend my statement regarding the advice of counsel, the releases I have dealt with for the last 30 years have all informed the person signing the release that they have the right to counsel and that if they do not understand the release, they should get counsel.

Assemblyman Fumo:

I appreciate that, but it is usually in the smallest point font you can find. I have to get a magnifying glass to read it. Would you be willing to put in your contract, "Do not sign it now. Go seek advice of another attorney. Come back in 48 hours so you have had a reasonable opportunity to review this contract with the small print and everything else," and then it is more of a level playing field?

John Hawley:

I cannot say we have considered that at this point.

Jesse Wadhams:

One of the things I talked with Mr. Galloway and Mr. Leverty about was somehow giving the Division of Insurance some regulatory authority over what these might look like in that situation. Those are concepts we can tease out in a regulatory process rather than in statutory law. We have at least had discussions that would lead, perhaps, to that.

Doug Harris, representing Farmers Insurance Group:

I just want to address your specific question, Chairman Yeager. I can only speak for Farmers Insurance, but you had asked if there is a blanket approach that we would never disclose policy limits regardless of the information we are given. That is not the case. We would expect some support for what is being presented and what those injuries are. In the case Mr. Galloway mentioned in which there was a \$15,000 limit and \$14,000 of incurred medical bills, we would certainly disclose those limits at that time. We may not disclose if we have a

very large policy and they present \$15,000 in medical bills. We may ask for additional information in that case.

Paul Young, representing USAA; and Progressive Insurance:

Unfortunately, we are here today in opposition of S.B. 435 (R1). Most of our concerns have been vetted by the previous gentlemen. We are also looking forward to working with the sponsors on this bill to hopefully come to a resolution.

Jim Penrose, representing Nevada Resort Association:

This is not included in the amendment we submitted ([Exhibit M](#)), but in listening to the testimony on the bill, it has occurred to me that a large part of our concern about the bill would be alleviated if sections 2 and 3 of the bill were made applicable to only auto accident cases. Many of our claims, of course, involve premises liability claims and the like.

That aside, I did draft an amendment that is hopefully not completely hostile. The initial part of the amendment attempts to clarify section 2 of the bill. If you look at the amendment, apart from shortening the time frames at the beginning of the section, it is our belief that it should be made clear that the time frame we should be talking about is the event that initially causes the prospective plaintiff's injury. Our concern is the case in which someone is involved in an automobile accident, they are not represented by an attorney, and 35 days after the accident, still without an attorney, they sign a release, and then six months later, having some lingering symptoms, they seek medical treatment—surgery for example—as a result of which their injuries are actually aggravated. A plaintiff in that situation can seek recourse not only against the doctor, but against the original tortfeasor for the full amount of their damages. In that case, the question is whether the release they gave the original tortfeasor is valid. Adding the word "initially" in section 2, subsection 1(a) attempts to make it clear that is the bright line event that starts the time line, whatever that time line ends up being.

Another change proposed is in section 2. If you look at the bill in its current form, section 2, subsection 2 proceeds on the premise that the release is voided, but it is not really clear how the release is voided. The amendment attempts to make it explicit. They void the release by giving the required notice and returning the consideration that has been given for the release within whatever period of time it ends up being. Those two changes are really intended to clarify that provision of the bill. I do not think they are completely inconsistent with the intent of the bill.

Section 3 of the bill precludes someone who is hospitalized from signing a release or settlement agreement or giving a statement within the first 15 days after the event that caused their injury. The question was asked, what if a person was released after 24 hours from the hospital? Should those 15 days continue to apply? We suggest an amendment that would basically stop the running of that time period once the person is discharged from the hospital. We can talk about whether that happens 24 hours after the discharge, 48 hours, or immediately upon the discharge. We have suggested 24 hours.

Finally, with respect to section 4 of the bill, I heard the testimony that this was intended to apply only to the prelitigation stage of a case. That is certainly not apparent from the language of section 4. I understand it may have been taken from the laws of Maryland. If that is the intention, I think that needs to be clarified because once you get into litigation, all the discovery rules come into play, and those should be allowed to operate. With respect to section 4, subsection 4, we had asked that the provision be eliminated. As I read that language, frankly, I do not know what it means. It is certainly not explicit that it refers only to the policy limits. It seems to suggest, depending on how you read it, that the insurer can be required to provide the plaintiff and the plaintiff's attorney with a roadmap to avoiding any coverage dispute that may exist. At best, it seems to me that the language should be clarified to make it clear we are talking about the policy limits.

Chairman Yeager:

Was this amendment also offered on the Senate side for this bill?

Jim Penrose:

It was not, to my knowledge. I personally became involved with the bill only relatively recently, so I am not familiar with its history, but I do not believe it was offered. I apologize, but because of the lateness of the hour in which I got approval for the language, I was not able to discuss it with the proponents of the bill.

Tyre L. Gray, representing Las Vegas Metro Chamber of Commerce:

We are opposed to this bill. We have spoken with many of you and will continue conversations with the proponents of this bill. Our issue with the bill is basically where sections 2 and 3 are seated in that general applicability chapter.

Chairman Yeager:

Is there anyone neutral? [There was no one.] I will invite the sponsors back up to the table for any concluding remarks.

Graham Galloway:

Let me just address section 4, which seems to be the area in which some of our opponents have issues. It is not from Maryland. That is our prior statute that was passed in 1995. Ironically, the chief lobbyist for Farmers Insurance, Jim Werbeckes, was the one who negotiated that language back in 1995. So if there is any schizophrenia, it involves their change in position. Their lobbyist proposed it and was the sponsor of the original language, NRS 690B.042, back in 1995.

Also, I am a little confused at the Nevada Resort Association because section 4—the disclosure provision—only applies to motor vehicle policies. I am not sure why there is such opposition from them.

[([Exhibit N](#)), ([Exhibit O](#)), ([Exhibit P](#)), ([Exhibit Q](#)), and ([Exhibit R](#))] were submitted but not discussed and will become part of the record.]

Chairman Yeager:

I will close the hearing on S.B. 435 (R1). At this time, I will open up the final bill on our agenda, Senate Bill 328.

Senate Bill 328: Prohibits certain communications that are obscene, threatening or annoying. (BDR 15-70)

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

The impetus for Senate Bill 328 came from an interesting place. The bill is fairly straightforward. This basically prohibits the use of an electronic communication device to harass or annoy someone. I know those terms seem fairly vague. Currently in statute, what we have is that you cannot use a telephone in order to harass or annoy someone. Obviously, as technology evolves, our statutes are sometimes required to evolve as well. What S.B. 328 does is add that you cannot use a communication device in order to send an electronic communication for those same purposes. It simply adds to what is current law in Nevada.

This particular bill came to be through an interesting process. I have some constituents who have reached out because there was someone who was on parole out of the state of California for several offenses relating to child sexual assault and was using a telephone device—not to call—but to take a lot of photos and use it to harass these neighbors. There was very little we could do to stop that whatsoever, even through his own supervision on parole, because he was in the state of Nevada through an interstate compact and we can only monitor out-of-state parolees through an interstate compact for various explicit things such as terms that would be applicable to all supervised individuals. There was nothing specific in the statute that would pertain to his taking these photos of kids and harassing some of these neighbors by saying, I am here, and by the way, I know where your kids are. We thought that would be something we could maybe try to address.

One of the things we heard in the Senate is that there were some concerns this would infringe upon someone's First Amendment right to get into social media debates with individuals. I will note that in the statute, there has to be a specific intent to harass or annoy someone. Expressing one's opinion on social media platforms would not fall within the context of even the current statute as written with a telephone call—if you were to call someone and express your opinion, that would not fall within the current statute—but if this is used in a continuous fashion to harass and annoy someone, that would fall within this statute. What this bill does is add those electronic communication devices. I know that was one concern expressed in the Senate. I think since this does require the specific intent, it would not fall under that. The bill is not intended to infringe on some of the First Amendment issues that were raised.

Chairman Yeager:

I just wonder if you have dealt with cases dealing with this in your time as a prosecutor. I know they are misdemeanors, so a lot of them would end up in municipal court rather than justice court. I am wondering if you can give us a sense of whether you have had these cases or know of the existence of these kinds of cases actually being prosecuted.

Senator Cannizzaro:

I have never personally dealt with a case that has utilized this specific statute. I do not have any statistics on whether or how often this is charged and if it is different between the municipal jurisdictions and justice courts, but I can get that for you. I have never seen this particular statute. There may have been some instances here and there in which it was used, but not through a telephone. I think that is what this is attempting to get at. Not many of us use the telephone in the same way we have in the past. That is the reason why this adds that additional electronic communication.

Assemblywoman Cohen:

Can you go more into the specific intent requirement? How is that proven now and how do you see that being proven if the bill is passed?

Senator Cannizzaro:

In section 1, subsection 2 it says, "Every person who makes a telephone call or a communication through the use of an electronic communication device with intent to annoy another." That is where we talk about specific intent. If somebody makes one phone call and says, I disagree with your opinion on something and I really find you to be a person I do not care for—however that conversation occurs—that is probably not done with the intent to annoy or harass. However, if there is a course of conduct, that would be one way we would prove it. Sometimes the content of the message could be used. It is fact-specific. This is not to say that if you use an electronic communication device and someone disagrees with your opinion, this would fall within the criminal realm. We are not trying to criminalize things like that. There is an appropriate place for people to have disagreements or even to say something that might be a little offensive. However, when it gets to the point of doing it for the sole purpose of trying to annoy or harass someone, that is fact-specific according to the case. It could include everything from how many times it was done to whether or not there were specific statements made indicating intent, or even the content of the message itself and whether or not you would be able to prove intent. We do that in a number of cases that require specific intent. It just depends on the facts.

Assemblywoman Cohen:

Can it be on the actions of the alleged perpetrator or the victim? For instance, if the victim just starts hanging up every time they get the call, does that prove intent on the alleged perpetrator's part, or does the alleged perpetrator have to say, "I am going to keep calling you. I do not care what you think. I am just going to do this over and over again"?

Senator Cannizzaro:

I think in both those circumstances, depending on how that course of conduct occurred, that could be used to prove intent. It is not words or actions alone. It can be just actions. It can be just words. It can be a combination of both. It depends on the case.

Assemblywoman Torres:

I definitely understand the intent. Upon reading this legislation, I think most of us were confused on the purpose of this bill. I understand it is current statute, so I imagine there is

some type of definition somewhere in the *Nevada Revised Statutes* (NRS) or in case law, but can you please tell me how we are defining "annoying"?

Senator Cannizzaro:

With respect to whether there is a current definition in statute for the word annoying, I would defer to committee legal counsel. I would say, generally speaking, common words have common meaning. So just a dictionary definition of "annoy" or "harass" would be applicable if there is not another definition. I am not aware that there is, but I do not know for sure.

Bradley A. Wilkinson, Committee Counsel:

There is not a definition in statute, and it would have its ordinary meaning as found in a dictionary definition.

Assemblywoman Torres:

I think one of the things we would have to do is define "annoying." I teach high school students, and they are often communicating with me in some form that is annoying. I think we should put some type of definition in there.

When I look at section 1, which deals with obscene language, it does not specify an intent. It just deals with obscene language. I think it is an issue I have with the current NRS as well as with the amendment. For example, if an individual were to send somebody some type of graphic image, that might be perceived as okay. If individuals are sexting one another, it might be okay for one individual to sext one person, but it might not be appropriate for a different individual to sext that person. I think those circumstances definitely happen. My concern is that one situation is now a misdemeanor because I do not feel comfortable with that person sexting me, and this other situation is not a misdemeanor.

Senator Cannizzaro:

I think that sort of speaks to some of the difficulty in the law as it currently exists. At what point is it the use of obscene language? I think we can all think of circumstances in which somebody has sent a photo, an emoji, or some other character thinking it was very benign, and when someone receives it he or she can feel annoyed or put off because he or she has taken it another way. I do not know that this situation would fall within the statute because you would have to do so with the intent. Somebody who sends something that is rather innocuous in a text message that is then read a different way by someone else would probably not fall under this because it was not sent with that intent. I think, in some regards, the law is a little difficult. I think your question is well stated, but I think what this is intending to get at is somebody who is sending it with the intent to purposefully harass or annoy.

Chairman Yeager:

I will also note that this law would apply to adults, so we are talking about people over the age of 18. If somebody under 18 violated this, it would be a juvenile issue—likely a child in need of supervision rather than a criminal offense. Obviously that is complicated by the fact that we sometimes have 18-year-olds and people under 18 years old attending the same

school. I do not think we are wrapping up juveniles if it is a juvenile-to-juvenile information exchange.

Assemblyman Watts:

Looking at the previous language, I understand the intent is to incorporate more modes of communication. I think of prank calling, and I understand when that is your main mode of communication and it is getting hung up with repeated annoying phone calls, your only option to make it stop is to disconnect the phone, and then you do not have the ability to communicate. I appreciate the concept that you are trying to expand this and make it broader. At the same time, however, on social media and some of these other modes of communication we have now, there are—to some extent—abilities to report, block, or mute people who are engaging in that behavior. To be frank, there are a significant number of people who enjoy trolling, which I think is absolutely annoying behavior, with the intent to annoy. I wonder how you would potentially see that working with the Internet. We have people all over the country or all over the world who may be reaching out with the intent to annoy on some of these modes of communication. How would that actually work if somebody wanted to push forward with having that person charged with a misdemeanor?

Senator Cannizzaro:

I think your question is sort of twofold. The first part of the question deals with somebody who is outside of the United States or in another state and how that would apply in terms of being able to charge them. Some of that is jurisdictional. Whether or not a court would even have jurisdiction over that particular instance is certainly not covered by this bill.

Again, I would note a lot of this comes down to intent. This is a situation in which, if somebody is simply expressing their viewpoints, even if I find it annoying, it is not intent. It is intent when it is done for the purpose of annoying or harassing that particular individual. With the example of people who troll and do it on purpose for that reason, some of that action could potentially fall under the statute. I think it would be interesting to see how you prove that somebody is trolling and see if that is being done with that particular intent to harass or annoy someone or if it is their legitimately expressing an opinion. I am sure everyone here is active on social media. There are not always people who agree with everything you are saying or doing. I do not think that would fall within the context of this statute just because somebody disagrees. I think that is the point I wanted to make. Potentially, some of those actions could fall within this bill.

Assemblywoman Torres:

My concern would be with the intent to annoy. I am just thinking of exchanges in which that intent to annoy is very prevalent. I have two siblings. As adults, we annoy each other all the time, and often on purpose. My concern would be that we are criminalizing a simple engagement between somebody when I think there is a quick fix, especially if it is through an electronic communication—we can block the number. Why would court action need to be taken when it could be prevented quite easily by the individual?

Senator Cannizzaro:

I have siblings too. I know we are sometimes purposefully trying to annoy folks. This is certainly not a bill to regulate sibling conduct or friends who have that kind of relationship. For the most part, this is not a statute that requires a person to report that someone is sending harassing messages to them. If you can easily turn it off on your phone and that solves the problem, this does not require that it becomes a criminal issue. It is in statute for those situations in which this is being used to purposefully go after and target someone and harass them. I do not think that would necessarily preclude other remedies. I think the reason why this is currently in statute for telephone calls and the reason for the request to include electronic communication devices is when it is used for more nefarious purposes, not simply because individuals are poking fun at each other, or even somebody you get into an argument with. I do not think everyone is calling the police to say, Hey, by the way, my friend and I got into a tiff and I think they should be prosecuted. A lot of that is meant to be ferreted out in the court to say whether or not this is a situation in which someone is using this for that specific purpose or if it is more akin to an argument or just the nature of a relationship. I do think that if there is the history of a relationship, it probably does not meet the intent standard.

Assemblywoman Hansen:

Could we accomplish the same intent if we took out the word "annoying"? I looked at the part in which it says "obscene, threatening or annoying," and I was trying to find it in the new language. Although, I guess it does say annoying in the existing statute in section 1, subsection 2. I guess that is where I am having some discomfort. I appreciate the intent, and I agree with much of that. Obscene is clarified and threatening is clarified in existing statutes that say we cannot do those sorts of things, but I guess it would be the annoying aspect of it. Although, I guess we are dealing with what is in the existing statute. I have just never had that called to my attention until now.

Senator Cannizzaro:

I can see where that causes some consternation because we are referring to a common understanding of the word "annoy," and what that means to different people can differ. I will say, more often than not, we do see prosecutions for the type of offense that falls under subsection 1, not subsection 2. That is in current statute. It is a telephone call with the intent to annoy. I am certainly open to anything that might make that a little clearer so it is not targeting these less concerning situations, only when somebody is abusing an electronic communication or a phone call to cause harm to another. Maybe "annoy" is not the best word, but I am certainly open to talking about how we can maybe change that. But you are correct; that is currently in statute.

Assemblywoman Tolles:

I have not had a chance to look up the original NRS and when this was put into statute. I remember in the 1980s, there was a rash of prank calls that were specifically used to harass people. My aunt was a victim of that. There was a gentleman who called her, pretending he was holding her husband hostage, just to keep her on the phone for 45 minutes and to elicit an emotional response from her for whatever gratification he derived from that. That was

something that was getting a lot of media coverage. These prank calls were a lot more than something minor. They were pretty serious.

It would be interesting to know the history of the statute and whether that was the reason this statute was put into place in the first place. It seems to me that all we are doing is modernizing it with the technology. In addition to the landlines we used to use, there are other ways to commit egregious behavior. However, I do echo the sentiments of my colleagues that, even though "annoy" is in statute already, perhaps using that to denote a little bit more aggressive behavior that is distressing to the individual on the receiving end may help as we discuss this.

Assemblywoman Peters:

I just want to wrap in the idea of anti-bullying. We talk a lot about anti-bullying these days. I am just trying to imagine how this could potentially be used as an effort to reach out and say, Look I am being harassed by somebody. They are continuing to send me these text messages that are making me feel very uncomfortable and are leading me to feel badly about myself. What happens if it is not responded to appropriately or if this does not go into a trial and the person ends up hurting or killing themselves? How do we make this something that can be a tool for these really serious situations we are dealing with?

Senator Cannizzaro:

I think you bring up a very interesting point. Quite honestly, I have not thought about how to incorporate that into the larger conversation we are having on a number of levels and in a number of pieces of legislation. If there is a complaint, law enforcement tries to do their best to conduct a proper investigation. If that gets to the point of prosecution, the attorneys in charge try to do their best to address it in a reasonable fashion. I do not know what the answer would be if it was not handled properly. I think that is probably outside the parameters of what this bill does and touches on other issues of liability. I think your point is well taken with the broader context of bullying and how this applies. I think that is exactly the type of situation we are talking about in this current statute and what we are trying to add into this statute. This is not, "Somebody sent me a text message and it offended me in some fashion." It is truly having an effect on the well-being of the person who is receiving repeated unwanted messages. I am happy to continue having that conversation about how this might fit in with all that stuff.

Assemblyman Roberts:

I think it is a good bill. I can think of a lot of situations just like what you brought up with the parolee doing things to harass folks. With new technology, you can do it a number of different ways. We are so connected. I was looking at the definitions for harassment, and it goes into bodily harm and a number of things. There might be some things in the definition of bullying that might be able to shore up where we are. It says, It is intended to cause or actually cause a person to suffer harm or serious emotional distress. That bar may be too high, so if we wanted to try to define it, there might be some other statutes we can refer to. There were some concerns from folks about how broad that could be. I would be happy to help if you want to go in that direction.

Assemblywoman Cohen:

I was thinking of something during the hearing I had not thought about before. I know of a situation in which someone has been harassed for years because the person who is doing the harassing gives her number to other people, businesses, and companies, saying she is very interested in their product and wants to know more. Years later, still ten times a day, she gets a call saying, We have on our list that you want to know about this product. I know that is a telephone call, so it is the original content, but does this capture that situation? I know the language says, "Every person who makes a telephone call." Is there a way to say, "Causes a telephone call to occur"? Or is that captured somewhere else in NRS?

Senator Cannizzaro:

I am a little perplexed by that situation. That is a unique way in which you really could annoy and harass someone. I do not think that particular action of giving out someone else's information for the purposes of hoping someone would call them repeatedly about a product or service falls under what is currently covered in this bill. I am certainly happy to have conversations about how that could be addressed. I have never heard of anything like that. That sounds terrible. Potentially, I guess it depends on what kind of information they would be giving out. I do not know if it would fall under a different statute having to deal with personal identifying information. I am not sure that would fall under that statute because usually that is being utilized to establish a false status or occupation or to obtain goods or services. It does not exactly fit in there. I would be happy to talk about the language in this bill and maybe how something like that—which, I agree, that sounds terrible—could be included in here as well.

Chairman Yeager:

I will open it up for testimony in support of S.B. 328.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office; and representing Nevada Sheriffs' and Chiefs' Association:

We are here in support of this piece of legislation. The way I see it from the law enforcement standpoint is, in those instances, when we have a person who is specifically harassing an individual, we have no teeth to go after them. In law enforcement, we are conflict resolution managers and mediators. This gives us an ability to go out and try to stop this behavior before it occurs rather than just taking a report and documenting a case for that stalking/harassment-type behavior. We would be happy to work with Senator Cannizzaro, and we welcome the comments Assemblyman Roberts brought forward. I think that is a great way to start.

Chairman Yeager:

I will take opposition testimony.

Melissa Clement, representing Nevada Right to Life:

There are lots of times in which something like this needs to happen. I do not know how many times I get a phone call about my car warranty. It is annoying. I get that. That kind of thing is not what I am talking about. When this original law was enacted and the word

"annoying" was used, there is no way they could have envisioned social media. Annoying telemarketing calls are very different than what could be considered annoying on social media. Social media is, by its nature, annoying. It is the modern-day public square. It is where information is passed. Very important opinions are shared that are oftentimes very annoying. How do I know this? Because I have been told I am very annoying because I am passionate about life and that goes from the unborn all the way to natural death. Lots of people disagree with me, and that is okay. My job is to change people's minds. I can very easily envision a time when somebody who is not as bold as I am could see a law like this, if you were to enact it, and it could chill their political speech. That worries me.

As I was looking at this, I thought, how do you define annoying? Quite honestly, I think porn is easier to define than annoying. "I know it when I see it," as Justice Potter Stewart said. Sometimes it is the threat that we might break a law that is going to cause me or somebody else to stop speaking.

I put up a meme on Facebook. There were a couple of comments that really struck me. One was from a friend of mine who escaped from Cuba at the age of 6 or 7. Raimundo Rojas II says,

Unbelievable, unacceptable, and un-American. This is how it begins. I am a child of communism, my family risked literal life and limb to bring me to this country. We were not just hungry for food; we were starved of freedom of expression. The people of Venezuela are dying in the streets today so that their voices will be heard. This proposed legislation is chilling, not at all representative of the America my parents brought me to. This legislation must be stopped from going further and relegated to the "what were they thinking?" ash-heap.

I have laughed a lot about the memes, but it is pretty serious. This is a serious infringement of political speech. We have seen social media in so many countries, such as Venezuela, where social media has caused uprising and change, and the government is the first to come in and shut it down. I would ask you to think twice.

The other person who responded is a good friend of mine who has experienced this threat to political speech. His name is Ryan Bomberger. He is also a Right to Life advocate. He talks about the disproportionate number of African-American babies that die every year due to abortion. It is a valid point, and he does it very well. He was sued by the National Association for the Advancement of Colored People a couple of years ago. He said, "Wait, annoying speech? Liberals, who own public education, Hollywood, the music industry, and the fake news establishment think truth is annoying and do all they can do to shred the First Amendment." He then has a meme that says, "There is no America without free speech and religious liberty." The Fourth Circuit Court of Appeals had to come in and say his speech was protected. It cost him millions of dollars.

I have to reiterate that I understand the intent of this bill. There are some very important things this is trying to address, but I would ask you to use a scalpel and not a chainsaw. Political speech is so very important.

Chairman Yeager:

I will note that the original bill was enacted in 1967. That is when the word "annoying" was added.

Assemblywoman Tolles:

I appreciate your testimony, Ms. Clement. It sounds as though there may be some room to clarify the language that could address those concerns. I will be interested to see if we can do that with the language.

Chairman Yeager:

Is there anyone in neutral? [There was no one.] I will close the hearing on S.B. 328. I will now open it up for public comment. [There was none.] We will not start tomorrow until 9:30 a.m. We will have a couple of bills. We will not have a meeting on Friday. Monday, we will start at 9 a.m. I hope everyone has a really wonderful afternoon. This meeting is adjourned [at 10:58 a.m.].

RESPECTFULLY SUBMITTED:

Lucas Glanzmann
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 Consent Calendar for Work Session for the Assembly Committee on Judiciary, dated May 1, 2019.

[Exhibit D](#) is the Work Session Document for [Senate Bill 72 \(1st Reprint\)](#), dated May 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is the Work Session Document for [Senate Bill 74 \(1st Reprint\)](#), dated May 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit F](#) is the Work Session Document for [Senate Bill 286](#), dated May 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit G](#) is the Work Session Document for [Senate Bill 46 \(1st Reprint\)](#), dated May 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit H](#) is the Work Session Document for [Senate Bill 97 \(1st Reprint\)](#), dated May 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit I](#) is the Work Session Document for [Senate Bill 117 \(1st Reprint\)](#), dated May 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit J](#) is the Work Session Document for [Senate Bill 274](#), dated May 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit K](#) is a proposed amendment to [Senate Bill 73 \(1st Reprint\)](#), submitted and presented by Sandra Douglass Morgan, Chair, Nevada Gaming Control Board.

[Exhibit L](#) is a proposed amendment to [Senate Bill 73 \(1st Reprint\)](#), submitted by the Nevada Resort Association and CG Technology, and presented by Jim Penrose, representing Nevada Resort Association; and CG Technology.

[Exhibit M](#) is a proposed amendment to [Senate Bill 435 \(1st Reprint\)](#), submitted by the Nevada Resort Association, and presented by Jim Penrose, representing Nevada Resort Association.

[Exhibit N](#) is a letter dated April 29, 2019, to members of the Assembly Committee on Judiciary, submitted by Randolph Carleton Wright, Private Citizen, Reno, Nevada, in support of [Senate Bill 435 \(1st Reprint\)](#).

[Exhibit O](#) is a letter dated April 10, 2019, to members of the Senate Committee on Judiciary, submitted by C. Joseph Guild, representing State Farm Mutual Automobile Insurance Company, in opposition to [Senate Bill 435 \(1st Reprint\)](#).

[Exhibit P](#) is a letter dated May 1, 2019, to Chairman Yeager and Members of the Assembly Committee on Judiciary, submitted by Allstate Insurance Company; American Family Insurance; American Property Casualty Insurance Association; CSAA Insurance Group, a AAA Insurer; Farmers Insurance; Liberty Mutual; National Association of Mutual Insurers; and USAA; in opposition to [Senate Bill 435 \(1st Reprint\)](#).

[Exhibit Q](#) is a packet of emails in opposition to [Senate Bill 435 \(1st Reprint\)](#).

[Exhibit R](#) is a packet of letters from various members of the Nevada Justice Association, in support of [Senate Bill 435 \(1st Reprint\)](#), submitted by Kaylyn Kardavani, representing Nevada Justice Association.