

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

**Eightieth Session
February 28, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:03 a.m. on Thursday, February 28, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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:

Assemblyman Jason Frierson, Assembly District No. 8



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Robert C. Kim, Chair, Executive Committee, State Bar of Nevada Business Law Section
Albert Z. Kovacs, Vice Chair, Executive Committee, State Bar of Nevada Business Law Section
Ken Evans, President, Urban Chamber of Commerce
Sonny Vinuya, President, Las Vegas Asian Chamber of Commerce
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce
Patrick Leverty, President, Nevada Justice Association
Peter Guzman, President, Latin Chamber of Commerce
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Ana Wood, Chair, Government Affairs Committee, Las Vegas Asian Chamber of Commerce
Matthew A. Taylor, representing Nevada Registered Agent Association
Erik Jimenez, Private Citizen, Carson City, Nevada
Jack Mayes, Executive Director, Nevada Disability Advocacy and Law Center
Lynne Bigley, Supervising Rights Attorney, Nevada Disability Advocacy and Law Center

Chairman Yeager:

[Roll was called. Committee protocol was explained.] We are going to take the two bills today in reverse order. I will open up the hearing on Assembly Bill 207, which revises various provisions relating to business entities. Welcome back, Speaker Frierson, to the Assembly Judiciary Committee.

Assembly Bill 207: Revises various provisions relating to business entities. (BDR 7-146)

Assemblyman Jason Frierson, Assembly District No. 8:

First, I would like to say how much of an honor it is to be back before a committee I hold so dear. As a former chair of this Committee, I know there are a lot of important issues that come before it. I appreciate the hard work and I miss it, quite frankly. I want to thank you for your indulgence in this matter.

I present to you today Assembly Bill 207. This is a culmination of efforts after last session with the Business Law Section of the State Bar of Nevada about how we can continue our momentum to make Nevada a leader and an attractive prospect for new businesses. I believe

that A.B. 207 will solidify our consistent ranking as being one of the most business-friendly states in the country. We already have a clear business advantage. I think that distinction comes with a commitment to ensure that we do it right. We need to be constantly creating new and innovative laws and not just cutting and pasting from other states. We need to do this in order to safeguard that stable environment so that our business community can continue to have an environment of stability that they have come to expect.

You are going to hear from many business leaders in support of this legislation because I think they also share an interest in making sure that Nevada stays at the forefront. We are trying to constantly catch up with states like Delaware that have had the pleasure of being at the forefront when it comes to an environment for corporate formation. I think A.B. 207 does just that and makes us competitive with states like Delaware. I think it is also important to note that this bill does not impact existing business entities. This is not about handouts, this is prospective; this is moving forward, trying to help develop corporate formation in Nevada so that we continue to be an attractive prospect. I think passing this will send a message—not just here in Nevada but nationally—that Nevada is committed to cultivating a positive, stable business environment, and one that will have new businesses come to Nevada. Of course, we all know that our economy is dependent on that kind of development. We have to be responsible with it and make sure that there are safeguards in place. We want to encourage that kind of development in our state.

There are several technical aspects of this bill. A limited-liability company (LLC) is a typical form of corporation that gives businesses flexibility on how to move forward. We have several pieces of legislation this session dealing with various types of business formations, but this particular issue builds in a fiduciary obligation on the part of members and managers. I think that is an important distinction because our *Nevada Revised Statutes* (NRS) do not directly address that. It does for directors and officers, but not for members and managers. Our current statutory structure is kind of a look back, it is an after-the-fact application of a fiduciary duty. I believe A.B. 207 remedies that issue. Having to look back afterward is just bad for business. I believe this is an innovative effort to make us competitive nationally. It just moves forward with giving us new ways, new protections, and new businesses. I appreciate your indulgence. Those of you who know my background know corporations are not a part of it. But I have been meeting with members of the business community for the last year and a half trying to do what I could to make sure that we had a more stable and innovative business environment moving forward.

With me today I have Robert Kim, who is a managing partner at Ballard Spahr in Las Vegas, and he is the chair of the Executive Committee in the Business Law Section of the State Bar of Nevada. I also have Albert Kovacs, a shareholder at Brownstein Hyatt Farber Schreck, who is the vice chair of the Executive Committee in the Business Law Section. They have found a way to talk to me in noncorporate ways so I would be comfortable moving forward with this bill. With that, Mr. Chairman, I would like to have both Robert and Albert go over the technical aspects of the bill and answer the technical questions. Unfortunately, I will not be able to hang out so I will hand it off to them with the Chairman's indulgence.

Chairman Yeager:

Thank you, Mr. Speaker. I know you have a lot going on in the building so we will excuse you from the hearing as I am sure you have able help here. Members, if you have questions for Speaker Frierson after today's hearing, feel free to grab him in the hallway or some other time in the building. Mr. Kim and Mr. Kovacs, welcome, and please proceed with the presentation of the bill.

Robert C. Kim, Chair, Executive Committee, State Bar of Nevada Business Law Section:

As noted by Speaker Frierson, we believe this bill will help advance Nevada's business laws, will help make it competitive, and in some points, make it surpass the laws of other jurisdictions including Delaware.

In terms of what you have before you, I wanted to make sure we are all looking at the same documents. There is the bill itself, an amendment to the bill ([Exhibit C](#)), and a memorandum that is a roadmap of what it is we are trying to accomplish ([Exhibit D](#)). The first page or two highlights the key elements of the bill, and the balance of it goes section by section and gives a more specific explanation of what is being changed in the particular section ranges noted.

The amendment ([Exhibit C](#)) is a product of discussions we had with the Nevada Justice Association, who is here and will be speaking to that point. We feel as though we have addressed any outstanding concerns they may have had and we have a mutually agreed upon amendment. We feel that both sides are ready to go forward with it. As background, this bill is a product of the Business Law Section's Executive Committee and is a product of the 15 members and various meetings. It was submitted to the State Bar of Nevada's Board of Governors for approval. The Board of Governors solicits comments from the other section leaders and resolves any questions or comments that might be raised. We exited that process with their approval to submit this bill and to speak on its behalf.

In terms of the purpose of the bill, there are three categories. There are technical, clarifying, and substantive amendments. In terms of the more technical amendments, the items we covered there relate to topics such as series LLCs, broker non-votes, and dissolution matters. In terms of clarifying amendments, we have offered up language relating to the delivery of records by the custodians for different entities, dealing with fractional shares, actions by written consent, dissenters' rights, and indemnification provisions.

In relation to the indemnification provisions—I would say that although it looks as though we have made a lot of changes—we have tried to reorganize the two sections that address indemnification of officers and directors so that they, in the end, read better and are clearer so that there is more predictability for people when they are trying to analyze those issues for directors and officers of a corporation.

The last area I would like to spend a little time on relates to the more substantive amendments that we have in this bill. The first one is in section 1 relating to forum selection. It is something that is overdue. Many other states already permit specifically and

acknowledge the ability of a corporation in its bylaws to establish a forum or a venue for certain corporate disputes. We have corporations in Nevada that are incorporated here that already have them in their bylaws, and this just gives them peace of mind that there is nothing improper with that. These are standards that are already done in many other states including Delaware.

Section 19 relates to LLCs and the introduction of a standard relating to alter ego. It is a standard that currently exists for corporations. We felt it was appropriate instead of having judges or people trying to analogize a standard for LLCs, we would write it in LLC terms for those persons who could be implicated by that and have the standards contained with NRS Chapter 86 itself instead of having people go back and forth. That is essentially what people were doing; judges and others were looking to NRS Chapter 78 for a standard and incorporating that as it was.

The other item we wanted to mention briefly is the clarification of the duties owed by managers and members of an LLC. As Speaker Frierson mentioned, there is not a lot of clarity as to what the default standard is. We have people that view the standard of a manager and member of an LLC to be held to the duties of a corporation and its directors and officers. We also have individuals who believe that the duties owed are that of a partnership and of a partner, and they are just dealing with good faith and fair dealing duties. We thought the best approach was to establish a baseline standard of good faith and fair dealing that must exist between the managers and members of an LLC. We believe that is an appropriate standard because the LLC is an entity of statute and its operating agreement is essentially a contract, and as core of the contract has the fundamental duty of good faith and fair dealing amongst the parties to it. If the parties decide that they want to elevate that standard to include all or portions of corporate-style duties, then they are allowed to do so as well as come to an agreement on any other terms in their operating agreement. This way it is very clear what the duties are, no one has any misperceptions as to what each person owes to the other, and we are able to provide a little predictability in terms of what we are doing.

The last item relates to intermediate-form mergers. This is an area that for the last few sessions we think has been missing and is a critical element of merger and acquisition transactions involving public companies. I will defer to Mr. Kovacs to speak to this more as he was the drafter of this particular section.

Albert Z. Kovacs, Vice Chair, Executive Committee, State Bar of Nevada Business Law Section:

With respect to the intermediate-form merger statute, it is a statute of very limited applicability. It applies and is relevant on a very, very narrow range of transactions. It is a type of transaction that is coming back into vogue, so you may see it eight or nine times a year instead of two or three. However, Delaware has a specific statute that makes this type of transaction much more efficient and cost-effective for public companies without sacrificing accountability or proper process. This statute adopts the Delaware approach, not using Delaware's language because the Delaware language is a bit unwieldy. We tried to be consistent with our Nevada-style approach with being clear and concise and easy to follow.

We have also built in a little bit of a plus element to the statute to add in some more structural efficiency and predictability into the statute. It is an area of narrow applicability in terms of how often it happens, but when it does happen, companies would like to know that in Nevada they can do everything they can do in Delaware and maybe even a little bit better. It is one of those "keeping up with the Joneses plus" type of statutes.

Robert Kim:

Those are the four key areas that we wanted to flesh out in a little greater detail. As mentioned, the memorandum ([Exhibit D](#)) tracks each section and gives you an explanation as to what it is we are trying to accomplish. We thank you for the opportunity to present these matters to you, and we are happy to answer any questions you might have.

Chairman Yeager:

Thank you, gentlemen, for your presentation. Members, there is an amendment on the Nevada Electronic Legislative Information System (NELIS) that came in a little late this morning ([Exhibit C](#)). It does delete some provisions of the bill, and then makes some changes to other provisions. Additionally, there is a memorandum that takes you through various sections of the bill ([Exhibit D](#)).

Assemblywoman Backus:

At the beginning of Speaker Frierson's presentation, he indicated that there was an agreed-to amendment ([Exhibit C](#)). When I pull it up on NELIS, I saw a proposed amendment that had "SBN" written on it and there were a lot of handwritten comments. Is that the amendment the parties have agreed to?

Robert Kim:

Yes, I do believe that is the one I am looking at as well. It has "SBN 2/28/19" on the front page.

Assemblywoman Backus:

Are you in agreement with this amendment to the bill?

Robert Kim:

Yes, that is correct.

Assemblywoman Backus:

I ask that because a lot of my questions last night mirror several of these amendments, so it made me really happy. One thing that I did like in the rider is that it is explicit as to when the new fiduciary standard would go into effect. Is this going to be applied to all of the revisions for LLCs that are being amended or is it just going to be limited with respect to the fiduciary?

Robert Kim:

The section relating to the timing is related only to the fiduciary duties. The language relating to when that section applies only relates to that particular section, the reason being as to the other items we had, we did not think they were of sufficient import to have different

categories of when it would be effective. But with this section, given the varying viewpoints on LLC duties and what might be applicable, we wanted to make sure it was prospective and did not change the rules on anybody. If they wanted to affirm or adopt the standard, they can do so on their own through their operating agreement.

Assemblywoman Backus:

I do not know if any of our judges have made any rulings, but when I saw that we are codifying the fiduciary standard of implied covenant of good faith and fair dealing—that is kind of what Nevada law is for entering contracts—I was very curious why that was codified. Are you running into issues with how any of our judges are applying any fiduciary standards to LLCs that are not there? What sparked this amendment? I just look at it as you have an operating agreement and you contract for that under an LLC.

Robert Kim:

The good faith and fair dealing concept is something that already exists in our statutes and it says that the parties can adopt any duties they want but for maintaining that one duty. We thought it was appropriate to not just say that that is what you cannot get rid of, but to say that is what you are to start with and make it clear. In terms of why we thought it was necessary to adopt a standard, we thought it was because at the State Bar of Nevada's annual meetings that Albert and I have presented at, we have actually had a panel on fiduciary duties at which there were judges and attorneys. It was very clear that no one thought the same thing as to what the standard duties would be, should be, or ought to be. With that clear range of opinion, we thought it was appropriate to make clear that there is a baseline standard and that if the parties want to adopt something different, they need to do that. They can do that through their operating agreement where they negotiate everything else.

Assemblywoman Backus:

I want to thank you both for putting that in there because it does scare me as a practitioner that the fiduciary could be heightened for an LLC. One thing I looked at was the three sections that relate to the records request. I was concerned that we were excluding the opportunity for a business to make the decision to just copy or send records on their own. I noticed that you are still keeping the provision that a reasonable charge could be made to the officers, shareholders, or whatever the entity individuals that have that right to make are bringing. I just want to make sure that that is not the intent with the change in language.

Robert Kim:

That is not our intention. Our intention is to make it clearer as to the options that already exist. I will let Mr. Kovacs give a little more detail on that as well.

Albert Kovacs:

The intent is to merely clarify the existing standards so in the records inspection context or the records demand context we are really not trying to change the landscape in any way. We are just trying to clarify issues that we have seen anecdotally in our practice. There have been areas where people do have some uncertainty or perhaps—depending on the position of your client—would really like there to be some uncertainty, so we tried to clarify the existing

law as it is. There really is no intention to prevent any company from voluntarily sharing documents and records with whomever they want to in accordance with their policies and applicable law.

Assemblywoman Backus:

Also, taking your attention to section 12 of your proposed amendment ([Exhibit C](#)), under NRS 78.390, the proposed change, I noticed that it was striking out notice of a meeting. This gave me some stomach issues in that you could have a group of people take over without putting other stockholders on notice as to something that was going to happen. I was curious why that was.

Albert Kovacs:

The amendments that you are talking about in terms of section 12, subsection 1, paragraphs (a) and (b), the changes to NRS 78.390 are essentially intended to modernize that provision. The way the amendment process would work is you could call a meeting or act by written consent. Even with the meeting references here, in accordance with the company's internal procedures, they could do the same thing by written consent. They could do that anyway. This is one of the few vestigial sections where we still specifically call out a meeting unnecessarily so we are just trying to avoid confusion there. This amendment looks like it is changing the process, but as a practical matter, it does not have that effect. If there is a meeting, the notice requirements under the statute would still apply. If it is appropriate to act by written consent and that is what the parties want to do, they can take that route as well.

Assemblywoman Backus:

My last question is with regard to the term "person." I cannot recall if we had had that defined. That was something I was concerned about because we use different terminology throughout our statutes. I took a look at Delaware's definition and I thought it was pretty good. If it is not in there, it is not in there, but I wanted to circle back with you to see if that had been a thought with changing those terms.

Robert Kim:

Those two sections that I think you are referring to are related to the alter ego sections: sections 14 and 19 of NRS 78.747 as well as the new section on LLCs relating to alter ego. It is more pronounced in section 14 because we replaced "stockholder, director or officer" with the word "person." We thought it was appropriate to do that because we did not think titles limiting causes of action for appropriate alter ego actions—limiting the person who might be responsible to only stockholders, directors, and officers—probably does not capture the real bad actor who is really behind it. That was the impetus for the change. We did not want to have something technical limiting an appropriate action to be taken. As to the definition, I do know "person" is used throughout the chapter, but there probably is a definition somewhere.

Albert Kovacs:

"Person" is actually defined in NRS 0.039, which is probably not a chapter that many people look at. For a transactional lawyer, it has the definition you would expect.

Assemblywoman Backus:

I just wanted to make sure that if someone read "person" that they did not realize because obviously a lot of members or managers could be other formed entities. I just wanted to make sure there was no ambiguity with respect that if we are veil-piercing, someone makes the argument, Well, it says "person," not "company". I just wanted to make sure that was fully inclusive under the definition of "person." Thank you.

Assemblyman Daly:

This is more of a comment than an actual question, but the gentleman was right, it is NRS 0.039 that defines person and includes corporations. I appreciate your both coming to talk to me about this bill and we went over several of my questions which I see are mostly addressed in the amendment. I am glad I was tracking on that as well. But the one issue on the alter ego section, as I mentioned to you, is that there is another term that has been creeping into court cases and various things at least on the labor side of issues. I could not remember it the other day, but it is called an "integrated enterprise." I am sure they are synonymous, but the courts have been using that—if there is a future term that somebody might want to be adding to make sure we are capturing the latest trends in the court cases on alter egos. I wanted to get that on your radar at the very least.

Robert Kim:

Thank you for providing us with the term. We will definitely note that and take a look at that for future consideration.

Assemblyman Roberts:

I am not close to being an attorney and I tried to figure out exactly what this bill does or does not do. So, as I always do when I do not understand something, I consult with people in my private life that do. The verdict overall was that it was a pretty good bill. In section 19, when it talks about alter ego or veil-piercing theory, are there concerns about how it would impact a small business if it were to be sued? How would that be paid for? Could insurance kick in or would that be a prohibitive cost for somebody in a small LLC?

Albert Kovacs:

Insurance would likely not come into play in the alter ego context. The alter ego or veil-piercing statute is a rather extreme remedy that courts as a general matter are very, very hesitant to apply. What it actually does is, it is one of the few exceptions where you actually punch through the liability protections that people like so much about a corporation or an LLC. That protection, that limitation on liability that is in the name, this is one of the few areas where a court can pierce through that. Because of the way the statute is set up and the test is applied, there are three rather high hurdles that a court would have to clear in order to impose that kind of liability on the owner of an LLC. It does not happen very often and usually is reserved in its application in instances of fraud where there is actual malfeasance. You do not really find yourself in a veil-piercing scenario by accident.

Assemblyman Roberts:

With respect to the amendment, does it increase or decrease liability compared to the current statutes?

Robert Kim:

No, our intention is not to modify anything. Some items we had initially proposed but through discussion thought in the end were not really necessary. If you look at the proposed amendment (page 3, [Exhibit C](#)), on page 7, there is a deletion of lines 3 through 9. I think that related to distributions under NRS 78.288 and a related one in subsections 7 and 8 of NRS 78.138. We had language for those subsections, but in the end, the standard that a director and officer can only be individually liable is contained in subsection 7 of NRS 78.138. They have to have a breach of fiduciary duty involving intentional misconduct, fraud, or a knowing violation of law. We felt as though after discussing it, this reiterates that same standard. We did not want to introduce anything different and felt it was better to just take it out entirely.

Assemblywoman Cohen:

I am looking at section 3, subsection 7, paragraph (a) on page 6 of the bill where the language about the trier of fact determining that the presumption established by section 3, subsection 3 of the bill has been rebutted. "Trier of fact determines" has been deleted. Why was that deleted?

Albert Kovacs:

That provision was added in 2017, and it has led to some confusion because the presumption established by section 3, subsection 3 of the bill is what is commonly referred to as the "business judgment rule." In Nevada, it is the presumption that directors and officers have acted in good faith and with a view to the interest of the corporation. Including the phrase "trier of fact" muddies the water in the sense that that is a legal presumption. Presumably whether or not the legal presumption has been overcome is a question of law for the court and not necessarily a jury. That phrasing has led to some confusion and we thought it would be best to revert to the phrasing pre-2017. So that is all this change does.

Assemblywoman Cohen:

We are just taking it out of the hands of the jury and making sure it is in the hands of the judge?

Albert Kovacs:

Ultimately if a case goes to trial, there will be certain matters that would have to be concluded by the jury and matters of fact found by the jury. But overcoming the legal presumption is better suited with a judge.

Assemblyman Watts:

As it relates to the fiduciary duty provisions—and I understand the idea of wanting to hold harmless existing LLCs—do you see any potential issues with essentially creating two

different classes of corporations and those responsibilities or requirements based on before this bill would take effect versus after?

Albert Kovacs:

Where we came down in terms of the dividing line is to try to be consistent with our overall approach, especially with respect to this area, and is to emphasize clarity, predictability and flexibility. If a company is in existence and in operation and they like the way things are going and they do not feel there is uncertainty as to what their obligations are, this statute does not change the ground under their feet. However, if they like this new approach, the statute, expressly in the rider, allows them to opt in. Going forward, if someone forms a new LLC, this will be the framework. This new framework still emphasizes that flexibility of contracts. If you form a new LLC under this framework and it does not work for you, you can change it to work however you want it to work, consistent with the contract-based nature of the LLC, the whole point of which is to give people that flexibility.

Chairman Yeager:

Do we have additional questions from Committee members? [There were none.] I want to thank you for your presentation of the bill, and I will open it up for testimony in support of A.B. 207 either in Carson City or Las Vegas.

Ken Evans, President, Urban Chamber of Commerce:

I am here today in support of A.B. 207. Assembly Bill 207 will distinguish Nevada from other competing states like Delaware, as it was mentioned, to make Nevada the most attractive place to do business. As a choice of entity, LLCs show tremendous flexibility to our members. A key element to the success of an LLC, however, is predictability. This bill enhances predictability for our members by allowing those starting LLCs to draft their operating agreements to precisely fit their needs. The overall social policy goal of business entity governance is to foster investor confidence while keeping transaction costs at a minimum. Assembly Bill 207 accomplishes this. Importantly, A.B. 207 is good for Nevada's businesses, big and small, much like the majority of the members at the Urban Chamber of Commerce. Therefore, thank you, Speaker Frierson, for establishing Nevada as the best place to start new businesses in the nation. Thank you.

Sonny Vinuya, President, Las Vegas Asian Chamber of Commerce:

Assembly Bill 207 establishes a clear legislative framework for our judges. It can be difficult to draw any conclusions about a party's state of mind at the time the LLC was formed, often with unanticipated results the parties did not bargain for. This bill will help produce better outcomes when our members find themselves in the unfortunate position of litigation. We appreciate Speaker Frierson's vision and leadership in backing our members in the Nevada business community. Thank you.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Chamber would like to thank Speaker Frierson for sponsoring this bill and engaging the Las Vegas Metro Chamber of Commerce in those dialogues. The Chamber supports the

overall intention of this bill, which will resolve current ambiguities in law and will focus on making sure that Nevada remains competitive compared to other states. As a large business association in the state, we agree with the sections of the bill that protect contractual freedom of businesses. One of the Chamber's governing principles is that members need predictability, and this bill provides that predictability in regards to the manager responsibilities in section 3; the fiduciary duties in section 18; delivery of records in sections 2, 17, and 22; clarifying the treatment of broker non-votes in section 10; and finally, forum selection in section 1. We appreciate the work that has been done today and appreciate Speaker Frierson for bringing this bill forward as well as the presentation by the State Bar of Nevada. Thank you.

Patrick Leverty, President, Nevada Justice Association:

We are testifying in favor of A.B. 207. We appreciate the State Bar of Nevada Business Law Section's working with us and getting our issues addressed in the amendment. They were a pleasure to work with, and with these changes we now support this bill and appreciate what Speaker Frierson has brought forward today. Thank you.

Peter Guzman, President, Latin Chamber of Commerce:

We, too, listen to our members. They are the most valuable asset we have, and we are constantly putting together roundtables that allow us to hear their voices. We are in agreement with this bill. This bill levels the playing field for our business community in several ways. Although many multimember LLCs are formed by members who cannot afford the assistance of lawyers with LLC fiduciary expertise, the fiduciary provisions of many LLCs have been drafted principally to protect the interests of LLC promoters and managers who can afford these lawyers. Assembly Bill 207 puts the power into the hands of those forming the LLC to tailor their governing documents to fit their needs. Another example of how A.B. 207 levels the playing field is the inclusion of a forum selection provision for corporations. Nevada law is silent on this point despite the fact that many Nevada corporations have included this type of provision in their governing documents. In order to ensure that Nevada courts are the forum for these types of claims, with the passage of A.B. 207 the law will clearly state that such provisions are allowed and valid. We appreciate Speaker Frierson's leadership and desire to establish Nevada as the preeminent place to do business nationally. We also thank Speaker Frierson's business-friendly attitude in reaching out to the chambers to allow us to have a voice since we represent the small business community. I appreciate the privilege of giving testimony today in front of you.

Bryan Wachter, Senior Vice President, Retail Association of Nevada:

I will not repeat what you have heard since it has been a long hearing, but only to underscore the importance of keeping Nevada in the forefront of a place to form and locate a business. We want to thank the State Bar of Nevada Business Law Section as well as Speaker Frierson and the cosponsors for bringing this forward.

Ana Wood, Chair, Government Affairs Committee, Las Vegas Asian Chamber of Commerce:

I am on our board of directors as well as the chair of our government affairs committee. We are in support of A.B. 207 as it is a prime example of how Nevada consistently leads the nation in creating a business-friendly climate. When our members choose to incorporate in Nevada, this comes with the expectation that our laws are clear. Assembly Bill 207 gives this body an opportunity to improve the experience of our Nevada entrepreneurs. Contracts are performed far more often than they are not, but judges only see agreements that have failed in some way. This bill will alert our members who select LLCs to write those operating agreements with care. We are in support of A.B. 207. Thank you.

Matthew A. Taylor, representing Nevada Registered Agent Association:

We want to thank the sponsors of A.B. 207, and we appreciate the stated intent of what they are trying to do and agree with the concepts outlined in the bill. We are working with the sponsors on just a couple of language nuances to make sure we have a clear understanding and agreement that it is achieving that stated intent. We are happy to support A.B. 207.

Chairman Yeager:

Is there anybody else here to testify in support of A.B. 207? [There was no one.] Is there any opposition testimony? [There was none.] Is there any neutral testimony? [There was none.] Concluding remarks by the presenters were waived on A.B. 207. I want to thank members of the Committee for your thoughtful questions. If this is not your area of expertise, this area of law can be a little bit dense so I appreciate Committee members' attention and questions. Now you see why the attorneys on the Committee have an exemption from continuing legal education requirements during session. I think we just had a corporate law refresher today. Thank you to the two presenters and Speaker Frierson. I will now close the hearing on A.B. 207.

I will open the hearing on Assembly Bill 91, which establishes provisions concerning the sterilization of protected persons. Assemblywoman Cohen is going to do some introductory remarks and then hand it over to a couple of presenters who will take us through the bill. There is a minor amendment ([Exhibit E](#)) that I believe is a friendly amendment.

Assembly Bill 91: Establishes provisions concerning the sterilization of protected persons. (BDR 13-173)

Assemblywoman Lesley E. Cohen, Assembly District No. 29:

During the interim I was the chair of the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs. I am here to present Assembly Bill 91, which strengthens Nevada's current guardianship law relating to the sterilization of a protected person. *Nevada Revised Statutes* 159.0805 relates to guardianships and provisions concerning the sterilization

of a protected person. Existing law prohibits a guardian, without court authorization, from consenting to:

- (a) The experimental medical, biomedical, or behavioral treatment of a protected person;
- (b) The sterilization of a protected person; or
- (c) The participation of a protected person in any biomedical or behavioral experiment.

The interim committee received an analysis of Nevada's current statute as it compares to the provisions of the *United States Constitution* and case law. Assembly Bill 91 contains the provisions that we are missing in our law. Assembly Bill 91 clarifies the process under which requests for sterilization of a protected person may be authorized. Under section 1 of the bill, the process is strengthened by requiring the courts to: (1) appoint an attorney, a guardian ad litem, or both for the protected person; and (2) conduct a full evidentiary hearing. This is where the amendment ([Exhibit E](#)) comes in. Originally, a full evidentiary hearing would be conducted if the protected person has not consented to the sterilization. The amendment removes the consent option for the protected person and requires the court to have an evidentiary hearing regardless if there is going to be sterilization. That is a friendly amendment.

In addition, the measure clarifies that a court may authorize a guardian to consent to the sterilization of a protected person only if the court finds clear and convincing evidence that the sterilization is in the best interests of the person. The measure also requires the court to consider whether any less irrevocable and intrusive means of contraception would be suitable before granting such authority. With me today is Erik Jimenez, who is a disability advocate, Lynne Bigley, Supervising Rights Attorney with the Nevada Disability Advocacy and Law Center, and Jack Mayes, Executive Director of the Nevada Disability Advocacy and Law Center. I will turn the rest of the presentation over to them.

Erik Jimenez, Private Citizen, Carson City, Nevada:

I am not here on behalf of the Office of the State Treasurer this morning, just as a constituent of Assembly District No. 24. Jack Mayes and I serve on a committee for the City of Reno, and we were made aware of a case over the summer in Washoe County where a guardian was trying to seek to have the person under their care forcibly sterilized against her wishes. That led me to do two things. First, I reached out to Barbara Buckley, and she responded, What year is it? The second thing I did—I did what any reasonable person would do—I took to social media, and that is when Assemblywoman Cohen got involved. We asked how we could do something to first make sure the due process rights of protected persons are protected. We went to the interim committee and the concept was approved by them unanimously.

We asked what are the deficiencies in the law right now, how can we ensure that everyone who is under the care of a guardian has the right to counsel, and how can we make sure that this is not always a permanent decision. The way that the statute reads now there is no

consideration given to less extreme forms of birth control. Sterilization is a permanent process. I think it is important to note that we should not automatically jump to permanently taking someone's reproductive rights away from them. Despite the fact that someone might be born a little bit different, that does not mean that they should not have the same reproductive freedoms as everyone else. I would like to introduce my friend Jack Mayes from the Nevada Disability Advocacy and Law Center.

Jack Mayes, Executive Director, Nevada Disability Advocacy and Law Center:

On the Nevada Electronic Legislative Information System is a summary of my comments ([Exhibit F](#)) as well as our one recommended amendment ([Exhibit E](#)). We were contacted last summer by an attorney in Washoe County who was working on a guardianship case. In their review of the statutes, they had concerns and brought it to our attention. We had an attorney on our Las Vegas staff do research, and she came up with the areas that we felt were deficient in Nevada's statutes. *Nevada Revised Statutes* 159.08053 fails:

- To reference a burden of proof;
- To appoint a guardian ad litem or counsel;
- To mandate the appointment of an expert to examine and observe the protected person;
- To demand an evidentiary hearing take place before the court orders an involuntary sterilization;
- To include the judge's direct role in apprising the protected person's competency to consent or withhold consent to a sterilization; and
- To consider less irrevocable and intrusive means of contraception, other than sterilization.

We want to clarify that there are instances where somebody may need a medical procedure that results in sterilization. We do not want to say that this is prohibited, but we want to make sure that the rights of the individual are protected in that process. The small amendment ([Exhibit E](#)) deals with asking if the person has provided his or her consent to the sterilization. We believe that if that is left in, it opens the door to possible abuse or misunderstanding by the client who is being asked a question. People could be susceptible to influence, and we just want this to be a clean process. I have our supervising rights attorney here who would be happy to answer any questions you have. Thank you.

Chairman Yeager:

Ms. Bigley, did you want to provide any comments before I take questions?

Lynne Bigley, Supervising Rights Attorney, Nevada Disability Advocacy and Law Center:

I would just say that we are happy with the bill as it has been drafted with the acceptance of that amendment. We think the amendment is necessary to ensure that a full evidentiary hearing occurs in every instance involving sterilization.

Assemblywoman Miller:

I am glad that a medical procedure that could result in sterilization was just addressed because we know that is a reality. I also would want to ensure that all of the options—because sometimes even medical procedures have multiple options—that can be taken which do not result in full sterilization are explained to individuals. I see that this bill is adding more protection for an individual who has a guardian. I am a real proponent of accountability if the person is able to understand what is happening. They should have a voice in making a decision for their own body. I also do not think that just the fact that someone has a guardian means that they cannot make these decisions. Can you just give us a little more background on what is happening? Is this something that is happening? Are or were guardians authorizing sterilization or permanent birth control for individuals?

Lynne Bigley:

What I can say is there was a case in Washoe County. The attorney approached us, but I do not know the basis upon which the guardian was seeking the sterilization. I personally am not a practitioner in guardianship law. I think possibly some of the legal services attorneys who actually do this on a day-to-day basis may have a better answer for you in terms of the frequency of this, but it does happen.

Assemblywoman Cohen:

I do want to add—about that case in the summer—that what was good to see is that the judge saw there were gaps in the law as well as legislation that had not been looked at in a really long time. The good news for us as Nevadans is that the judge took it upon himself to order that there be an evidentiary hearing and ensure that the protected person had her own attorney. The attorney, who may not necessarily be in line with the guardian, is speaking for the protected person rather than just doing whatever the guardian says. This is someone's life, but it was actually somewhat interesting to see because it was something that I never thought of, that you would ever need to do the sterilization. Why would that be necessary? My understanding was, with the physical condition of the protected person, that sterilization might have been in her best interests. It was important for the judge to take it upon himself to do the evidentiary hearing and really dig into that.

Assemblywoman Miller:

Thank you for that. With that being said, I want to flip it for an individual who desires or requests to have sterilization. I know that when I first moved to Nevada, the stories I would hear from grown adult women, married or otherwise, of how difficult it was to find or to be permitted to have certain procedures done were quite challenging for me. If a person has a guardian and they actually choose to have permanent sterilization, would this bill impact that? They could come forward and say, This is something I want, this is my choice for me. Would they have the ability to do that?

Erik Jimenez:

It is not the intent of this bill to prohibit that from happening. The way I read the language, I do not believe that would happen because the attorney or the guardian ad litem, in

particular, would advocate on the best wishes of the person. So I think it would stop in the process. If the person wants to do it, the full process at those hearings would not be needed.

Assemblywoman Miller:

Could you explain for everyone so we get a better and clearer picture of the different scenarios of when an individual would have a guardian? Just so we understand, it is not a cookie cutter scenario and it is not a judgment or distinction on somebody's physical or mental abilities.

Lynne Bigley:

A guardianship would be established when there are issues of competency and diminished decision-making capacity for that individual. A person could have a guardian for all purposes or for limited purposes as well. It really relates to the individual's capacity for decision-making.

Assemblyman Edwards:

How often does this happen in a year? How many people are involved on an annual basis?

Erik Jimenez:

It has been really hard to quantify that. We have tried going through all of the avenues that we can to figure out what is happening. I heard about a case a few years back in Clark County where a gentleman who was on the autism spectrum disorder was forcibly sterilized by a guardian because the guardian did not want him to spread his disease. I do not think there is a rampant abuse of this, but I think from some disability rights attorneys we have talked to there have been a lot of cases where guardians are trying to do this without going through the legal process. My argument would be even if it is happening once, it would be too many without giving these people due process rights.

Assemblywoman Krasner:

Thank you for your presentation. I am referring back to Assemblywoman Miller's comment about the choice of a protected person to consent to sterilization. In the existing bill, in section 1, subsection 3, it does say, "If a protected person has not provided his or her consent to the sterilization, the court must conduct a full evidentiary hearing before authorizing the guardian of the protected person to consent to the sterilization." However, looking at the amendment ([Exhibit E](#)) that was supplied by the Nevada Disability Advocacy and Law Center, you have deleted that portion. You have deleted, "If a protected person has not provided his or her consent to the sterilization." So in fact it is not true, if we accept this amendment, that a person may consent. They must still go through the evidentiary hearing process if we accept the amendment. Is that correct?

Lynne Bigley:

I believe that the individual's consent will definitely be considered by the judge in the evidentiary hearing and that is where the express desires of the protected person would come forth. I think it does complicate and muddy the waters having consent in this bill because the person is subject to a guardianship and their capacity for decision-making is the reason they

have a guardian. I appreciate the question, but that is the reason for the amendment. The express interest of the individual, the protected person, would be considered by the judge in that evidentiary hearing.

Assemblywoman Krasner:

Just clarifying that, because you stated they would still be able to consent—but with the amended language, they would not be able to consent.

Lynne Bigley:

Not without having the evidentiary hearing occur.

Assemblywoman Hansen:

Just to follow up on that, I am assuming that the purpose of having the evidentiary hearing is to take into consideration if they have the ability to consent. Is that why we would want to have the evidentiary hearing period in these cases, because we are not sure if they are capable of consent?

Lynne Bigley:

Yes, that would be part of it. It would also be to explore whether there was any undue influence by the guardian and a whole number of other factors.

Chairman Yeager:

Are there any other questions from Committee members? [There were none.] Thank you for your presentation of the bill. Is there any testimony in support of A.B. 91? [There was none.] Is there any testimony in opposition to A.B. 91? [There was none.] Is there any neutral testimony to A.B. 91? [There was none.] Concluding remarks by the presenters on A.B. 91 were waived. I will close the hearing on A.B. 91.

That is the last bill on the agenda. Is there any public comment? [There was none.] Are there any comments from Committee members? [There were none.] Committee, thank you again for your attention to these two bills this morning. We will be meeting at 8 a.m. tomorrow. We have two bills that we will be considering and will likely have a work session

as well. Be on the lookout by email to receive a work session document for the bills that we may consider tomorrow. We will likely do the work session first. On Monday, we will start at 9 a.m.

The meeting is adjourned [at 9:13 a.m.].

RESPECTFULLY SUBMITTED:

Traci Dory
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to Assembly Bill 207 presented by Robert C. Kim, Chair, Executive Committee, State Bar of Nevada Business Law Section.

[Exhibit D](#) is a memorandum regarding Assembly Bill 207 dated February 27, 2019, from Brownstein Hyatt Farber Schreck. and presented by Robert C. Kim, Chair, Executive Committee, State Bar of Nevada Business Law Section.

[Exhibit E](#) is a proposed amendment to Assembly Bill 91 submitted by Jack Mayes, Executive Director, Nevada Disability Advocacy and Law Center.

[Exhibit F](#) is a document regarding Assembly Bill 91 submitted by Jack Mayes, Executive Director, Nevada Disability Advocacy and Law Center.