

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
June 1, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:25 a.m. on Saturday, June 1, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Kevin Powers, Chief Litigation Counsel
Andrea Franko, Committee Secretary

OTHERS PRESENT:

Melanie Young, Executive Director, Department of Taxation
J. Brin Gibson, General Counsel, Office of the Governor
Shellie Hughes, Chief Deputy Executive Director, Department of Taxation
Virginia Valentine, President, Nevada Resort Association

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Randy Soltero, United Food and Commercial Workers International Union
Erin McMullen, Boyd Gaming
Riana Durrett, Executive Director, Nevada Dispensary Association
Terry Murphy, Fremont Street Experience; Derek and Greg Stevens
Mona Lisa Samuelson, MJ Plan
Will Adler, Scientists for Consumer Safety
Andrew Diss, Meruelo Group
Josh Griffin, MGM Resorts
Chuck Callaway, Las Vegas Metropolitan Police Department
Mary Sarah Kinner, Washoe County Sherriff's Office
Mark Fiorentino, TGIG, LLC
Michael Alonso, Caesars Entertainment
Sam Bauserman, Peppermill Resort
Bill Gregory, Station Casinos
Todd Mason, Wynn Las Vegas
Tick Segerblom
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Madison Rogers
Chrissy Moresi, Rise
Susan Meuschke, Executive Director, Nevada Coalition to End Domestic and Sexual Violence
Jessica Ader, Office of the Attorney General
Jennifer Noble, Nevada District Attorneys Association
Jennifer McCann, Forensic Interviewer, Child Advocacy Center
Mike Draper, Fingerprinting Express; A1 Fingerprinting
Erica Souza-Llamas, Manager, Central Repository for Nevada Records of Criminal History, Communications and Compliance Division, Department of Public Safety
Andy MacKay, Executive Director, Nevada Franchised Auto Dealers
Dave Dazlich, Las Vegas Metro Chamber of Commerce

CHAIR CANNIZZARO:

We will open the hearing on Assembly Bill (A.B.) 533.

ASSEMBLY BILL 533 (1st Reprint): Revises provisions relating to cannabis.
(BDR 60-1217)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

It is my honor to make some introductory remarks in support of A.B. 533. This bill represents the next evolution of the cannabis industry in Nevada. It does that by setting up the Cannabis Compliance Board and the Cannabis Advisory Commission. Just as Nevada is the gold standard when it comes to gaming, so too can it be the gold standard when it comes to cannabis. This bill will make that goal a reality.

Some history might be helpful at this point. Since 2013, former Senator Tick Segerblom has been a passionate and tireless advocate for a well-regulated cannabis industry. He planned a series of fact-finding trips to other jurisdictions to learn more about regulating cannabis. I should add that those trips did not come at any cost to taxpayers. In 2013, when Nevada first set up a system of dispensaries for medical marijuana, I was a lobbyist for the Clark County Public Defender's Office. During that Session, I joined the lawmakers in visiting Phoenix, Arizona, to study their system of medical marijuana dispensaries. In 2013, Nevada launched its medical marijuana program with the Department of Health and Human Services taking the regulatory lead. In 2015, I again returned to the building as a lobbyist, and I traveled with lawmakers and other interested parties to Denver, Colorado, to learn more about their burgeoning adult-use industry. In that Session, some tweaks were made to Nevada's medical marijuana regulations, but none of them were too extreme. In the 2016 general election, the landscape changed when Nevada voters approved adult-use marijuana.

Before the 2017 Session, I traveled with lawmakers to Portland, Oregon, to learn about their Early Start program. Oregon voters had approved adult-use marijuana, and lawmakers wanted to implement it earlier than required by the ballot initiative. We also wanted to do that here in Nevada, and we were indeed able to start our adult-use program six months earlier than required by the ballot initiative. In that Session, we also moved regulation of the industry from the Department of Health and Human Services to the Department of Taxation. It was certainly a credit to the Department of Taxation and the former director, Deonne Contine, that Nevada was able to enact early start without requiring legislation.

Prior to this Session, I joined a delegation of lawmakers and others to visit San Francisco, California, to study their consumption lounge model and further explore what they were doing in that area. Before this Session started, Nevada

hosted New Jersey lawmakers and lobbyists who traveled here to learn about our industry and how they might replicate its success in the Garden State. They are not quite there yet, but they are making steps in that direction.

All of these fact-finding missions and research culminates today in A.B. 533, which ensures Nevada will remain at the forefront of responsible regulation of cannabis. With this legislation, Nevada will continue to be the model for other states about how to do this and do it right. With this regulatory model in front of you, Nevada is going to be the destination for fact-finding delegations from other states as they come online with either medical or adult-use cannabis.

Section 3 of A.B. 533 lays out why this measure is so important to Nevada. The growth and success of this increasingly important industry depends on public confidence and trust. Public confidence and trust only happen when the industry is regulated in an efficient, fair and transparent manner, and that is exactly what the Cannabis Compliance Board and the Cannabis Advisory Commission will do.

MELANIE YOUNG (Executive Director, Department of Taxation):

Since July 2016, the Marijuana Enforcement Division of the Department of Taxation has implemented the adult use of marijuana, regulated the industry and collected \$81.2 million in fiscal year (FY) 2018. To date in FY 2019, we have collected \$82.4 million in taxes and licenses.

Assembly Bill 533 proposes to separate the regulatory structure of the cannabis industry and tax collection by providing dedicated resources to the cannabis industry to ensure the creation of a well-regulated industry. This will allow the Department of Taxation to return to its core mission of collecting and distributing taxes.

The amount of revenue collected in taxes and fees from the marijuana industry equals 1.18 percent of the total revenue we collect. However, since the implementation of the program, the Department has dedicated significant resources to stand up the marijuana program, so much so that the Department has stopped growing its tax programs. Currently, taxpayers can submit an online tax return in only 3 of the 17 tax types. They can pay their taxes online, but they have to submit their tax forms on paper. The Department does not currently accept any other form of payment except cash, check or online transfer from a checking account.

To be a fair and efficient taxing entity, the Department needs to return to its core mission and grow its tax programs. The risk to the State of continuing to dedicate the Department's resources to regulating the cannabis industry could delay tax collections, tax distributions, unallocated revenue and higher accounts receivable. For example, at the last Economic Forum, there were multiple comments by State economists that the Department did not distribute nearly \$20 million to the General Fund for two quarters. This was due to a taxpayer who paid his or her taxes online, but since we did not receive the paper tax return, we could not distribute the funds.

Thank you for your consideration of A.B. 533. It will allow the Department to dedicate its resources to regulating and administering our tax programs. It will also provide dedicated resources to the cannabis industry, which will allow that industry to grow and flourish.

J. BRIN GIBSON (General Counsel, Office of the Governor):

I want to quickly run through the evolution of the gaming industry because there are parallels with the cannabis industry.

In 1931, Governor Fred Balzar signed Nevada's Wide Open Gambling Act into law. It added no real regulatory authority to manage the gaming industry.

In 1945, the Legislature authorized the Nevada Tax Commission to issue the first State-level casino licenses. Federal pressures emerged, and Nevada's federal delegation realized the need to strengthen the State's regulatory oversight to ensure the federal government did not intervene.

In 1955, the Legislature established a two-part regulatory structure. The Tax Commission stood in the shoes of the current Nevada Gaming Commission. We have the Nevada Gaming Control Board, which is the recommending and investigative body, and the Gaming Commission, which is the deciding body. At that time, it was known as the Tax Commission.

Governor Grant Sawyer, who ran in the 1958 election as a prosecutor from Elko, was significantly separated from the gaming industry. He pursued gaming regulatory reform during the 1959 Session. He proposed moving gaming regulation from the Gaming Control Board tax model to a Gaming Control Board and Gaming Commission model. His purpose was similar to our purpose in A.B. 533, which is to allow the Department of Taxation to focus on its core

mission of revenue collection and at the same time create a regulatory body to deal with enforcement, compliance and such matters.

Immediately upon taking office, Governor Steve Sisolak's third executive order was to establish an advisory panel or task force to make recommendations regarding the establishment of a Nevada Cannabis Compliance Board. The goal of the task force, which included a number of highly respected former regulators, gaming lawyers, members of the Assembly and the Senate, as well as Commissioner Chris Giunchigliani, was to propose a State-level regulatory body that could make uniform decisions to regulate cannabis across jurisdictions. This became especially important in light of the lawsuits relating to the late 2018 award of recreational marijuana certificates and the claims made in those matters.

At roughly the same time, just prior to the initiation of the lawsuits, the U.S. Department of Justice (DOJ) rescinded the Cole Memorandum and the Wilkinson Memorandum. These were resource allocation memoranda, but they provided some certainty to the marijuana industry that if it complied with a certain set of rules, it would not be a priority for prosecution. The current DOJ rescinded those, though current U.S. Attorney General William Barr, during his confirmation hearing, argued that he would follow the Cole Memorandum and its dictates.

Assembly Bill 533 is a culmination of a lot of work. One of the findings of the 2017 task force put together by Governor Brian Sandoval regarding implementing the 2016 voter initiative was that there should be a Gaming Control Board-like structure independent of the Department of Taxation to regulate marijuana. That is what we are trying to fulfill here.

The principles of good regulation are embodied in this bill. The Cannabis Compliance Board is independent, in that the board members cannot have vested interests in the industry they will be regulating. Members of the Cannabis Advisory Commission can have interests in the industry, and they will have the knowledge they need to make informed decisions. The recommendations of the Commission are advisory only and not binding on the Board. This is critical. It brings in the expertise of people in the industry while maintaining separation between the regulated and the regulators.

This is the right model for this industry. With the study and the expertise of the people on this board, the Legislature will be able to make more informed decisions going forward.

SHELLIE HUGHES (Chief Deputy Executive Director, Department of Taxation):

The intent of A.B. 533 is to establish the Cannabis Compliance Board to create and maintain a gold standard cannabis program in Nevada. Board members will have the authority to make decisions on the most important issues that affect this industry. The Board can vet these issues with full stakeholder participation and come to the best solutions for the industry. The Board can adopt regulations to incorporate these solutions or bring them to the Legislature at the next Legislative Session.

If we rush to address some of the issues by putting language in this bill without thoroughly vetting the issues and considering all stakeholder interests, we bind the members of the Board and ignore the intent of the bill. With that being said, it is important to note that while many of the provisions from existing law were carried over to the bill, there are a few new provisions to establish the Board and enable it to regulate the industry.

Other points of A.B. 533 include replacing the word "marijuana" with "cannabis" throughout the *Nevada Revised Statutes* (NRS) and establishing the Cannabis Advisory Commission, which will serve in an advisory capacity. The Commission will recommend guidelines, rules and regulations, study the distribution of licenses, study the feasibility of the use of emerging technologies and establish various subcommittees to make recommendations.

The bill also establishes a five-member Cannabis Compliance Board to regulate the industry. The Board will carry out the provisions established in A.B. 533, adopt policies, procedures and regulations, establish enforcement and investigative mechanisms, establish requirements for licensees and registrants and study cannabis consumption lounges.

The bill also establishes the Board's regulation process, confidentiality provisions, disciplinary process and hearing rights of licensees. It also brings over various provisions from existing law in NRS 453A and 453D that relate to the application and renewal process for cannabis establishments and registration cards, fees for applicants for an establishment license and registration card, operations of medical and adult-use cannabis establishments, advertising and

labeling requirements, delivery requirements and the role of the Division of Public and Behavioral Health in medical cannabis use. The Division will continue to have oversight of the issuance of registry identification cards and letters of approval, and they will continue to regulate the holders of those cards and letters. The bill also brings over excise taxes on cannabis and the distribution of those taxes.

In summary, A.B. 533 establishes provisions to create a Cannabis Compliance Board to regulate, license and register medical and adult-use cannabis establishments and agents. The Department of Taxation will still retain the tax collection function pertaining to cannabis and cannabis products. The Division of Public and Behavioral Health will retain the registry cards and letters of approval process. The regulations in NRS 453A and 453D will remain in effect and will be transferred to the Board on July 1, 2020. All references to the Department will be changed to the Board. These regulations will remain in effect until revised or repealed by the Board. All current licensees and establishment agent cardholders as of July 1, 2020, will continue to hold such licenses or cards until the licenses or cards expire or are revoked. Prohibitions on consumption lounges become effective upon passage and approval and expire on July 1, 2021. The entire act becomes effective upon passage and approval for the purposes of adopting regulations and performing other preparatory tasks and on July 1, 2020, for all other purposes.

VIRGINIA VALENTINE (President, Nevada Resort Association):

We are in support of A.B. 533. We commend Governor Sisolak on his leadership and vision in creating the first Cannabis Control Board and modeling its framework after that of the Gaming Commission and Gaming Control Board. As you know, Nevada's gaming regulatory structure is a proven system that has been replicated across the U.S. and around the world. We support A.B. 533 as amended and appreciate that it lays the groundwork for a regulatory structure that will protect cannabis consumers, create a level playing field and collect revenue for the State. It also ensures that the gaming and cannabis industries will continue to operate separately and successfully.

As you know, the gaming industry's privileged license holders are held to the utmost standards of conduct by State gaming regulators in order to protect and preserve the reputation of the State's largest industry, one that supports 450,000 jobs and generates nearly \$60 billion in economic impact each year. It was through this lens of safeguarding the integrity of our industry that gaming

regulators decided that as long as cannabis remains illegal under the Controlled Substances Act, it is incompatible with the gaming industry.

Given the unique and complex compliance issues cannabis causes for our industry, we appreciate that this bill as amended takes our industry's concerns into consideration and also takes the time needed to thoroughly consider the impacts on the emerging cannabis industry. We support the measure and appreciate the thoughtful and thorough approach.

RANDY SOLTERO (United Food and Commercial Workers International Union):
We stand in support of A.B. 533. We represent folks who work in the industry and understand that this is an industry that will continue to grow. We support the creation of the Board and the Commission to ensure the industry grows correctly.

ERIN McMULLEN (Boyd Gaming):
We also stand in support of A.B. 533 as amended. I would like to thank Governor Sisolak, Mr. Gibson and Ms. Young for their efforts on this bill. We appreciate the inclusion of the distance separation for nonrestrictive gaming licensees. As Ms. Valentine mentioned, gaming licensees must comply with federal and State law, per our State regulators. Since marijuana is still considered a schedule 1 drug, we must take precautions to protect ourselves and not jeopardize our privileged licenses. We think this bill will help us do that.

RIANA DURRETT (Executive Director, Nevada Dispensary Association):
The Nevada Dispensary Association (NDA) represents the majority of marijuana dispensaries in Nevada. Many members are vertically integrated, in that they also own and operate cultivation and production facilities. The NDA was formed in late 2014 to develop and promote best practices in Nevada's legalized cannabis industry.

The NDA has supported the creation of a board modeled after the Gaming Control Board since 2015, but it seemed out of reach until Governor Sisolak announced the creation of such in his State of the State Address this year. We thank Mr. Gibson and the Governor's Cannabis Compliance Board Advisory Panel for holding hearings on the framework of the proposed board and meeting with industry and community stakeholders throughout this process.

The Panel has been thoughtful and receptive to industry concerns raised throughout the drafting process. In a nutshell, these concerns and priorities relate to the importance of stability and predictability for the businesses involved and the tax revenue they generate, the need to focus attention on the robust and often sophisticated illegal market through Nevada, the need to maintain the integrity of the strict regulatory framework, and the need for improvements in the efficiency and efficacy of regulation enforcement.

TERRY MURPHY (Fremont Street Experience):

I also represent Derek and Greg Stevens, who are the owners of the Golden Gate Hotel, The D Las Vegas, the Downtown Las Vegas Events Center and the Circa Las Vegas, which is currently under construction.

The most important part of A.B. 533 to us is the distance/separation because of the unique nature of gaming in downtown Las Vegas. We fully support the bill and thank you for your service.

MONA LISA SAMUELSON (MJ Plan):

I am Nevada's first medical marijuana patient lobbyist. I am here today because I am in favor of this bill. It was very well thought-out, and it is a thorough approach. I am also in agreement with the amendments.

The most important thing for patients is that we reevaluate some of our medicinal issues. It is important to us that the Department of Health and Human Services oversee hemp, and that safety standards include testing for heavy metals and microbes. We need a subcommittee to monitor the methodology and efficiency of the labs we use for testing.

It is very important that we have a commission structured like the Gaming Commission.

It is important to know that medical marijuana patients are not a voice to be used. We do not have a huge issue with gaming or with the smoking lounges. That is a recreational issue. Patients are in favor of the proper, thoughtful and thorough evolution of the marijuana industry in Nevada.

WILL ADLER (Scientists for Consumer Safety):

We would like to applaud those who worked on A.B. 533. It was a large collective effort to take medical marijuana out of the Department of Health and

Human Services, hemp out of the State Department of Agriculture and recreational marijuana out of the Department of Taxation and put them all into this one vessel of the Cannabis Control Board. We are in support of the bill, specifically section 118 for its acknowledgement of the need for random laboratory quality assurance checks.

ANDREW DISS (Meruelo Group):

We are in favor of this bill. We have two properties that are located on the border between different jurisdictions. The Grand Sierra in Reno is on the border between Reno and Sparks, and SLS Las Vegas is on the border between the jurisdictions of the City of Las Vegas and Clark County. It is important to us to have State-level regulations for all jurisdictions to provide consistency and uniform rules.

JOSH GRIFFIN (MGM Resorts):

We are in favor of A.B. 533. We echo the foregoing comments, particularly those of Ms. Valentine.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

We are here in support of this bill.

MARY SARAH KINNER (Washoe County Sherriff's Office):

We are in support of A.B. 533.

MARK FIORENTINO (TGIG, LLC):

I am representing TGIG, LLC, which does business as The Grove Wellness Center. It operates growth and production facilities in Clark County, and it has one dispensary in Clark County and one in Nye County.

We support the bill in its current version and ask you to recommend its adoption. We commend the Governor and the others who were involved in producing this bill. They had a lot of cats to herd on this bill; there were many, many interested parties advocating for lots of different things. I was one of those cats, and I can tell you from firsthand experience that not everyone got everything they wanted. What we did get with this version of the bill is a framework for a fair, balanced and transparent regulatory system, and a framework for a transparent and structured system for identifying and vetting policy issues and making recommendations to the Legislature. Because of that, we support this bill.

MICHAEL ALONSO (Caesars Entertainment):

We are in support of A.B. 533. We echo the comments of Ms. Valentine and the other speakers. The buffer distance requirement language for nonrestrictive licensees is especially important to us.

SAM BAUSERMAN (Peppermill Resort):

Because of the reasons stated by Ms. Valentine, we are in full support of A.B. 533.

BILL GREGORY (Station Casinos):

We also want to voice our support for A.B. 533.

TODD MASON (Wynn Las Vegas):

We are in support of this bill.

TICK SEGERBLOM:

I am here in opposition to A.B. 533. I am just speaking on my own behalf; I am not here as a county commissioner or speaking on behalf of the Commission.

The central provisions of the bill are fantastic. The Cannabis Advisory Commission is something we need. It raises us to a new level, and I support that. My concern is over the amendment that was added, and the fact that the cannabis consumption lounges are being kicked back for at least two years. That concept never had a hearing. It is important to raise a few issues before the bill is finalized so everyone has a chance to at least think about it.

We have 44 million tourists in Las Vegas right now. We encourage them to purchase the product, but there is literally no place they can legally use it in Las Vegas. That is intolerable. To kick that can down the road for two more years just makes things worse. The City of Las Vegas stepped up with a proposal to have its own lounge ordinance. I do not see that it hurts to allow local governments to start to look at the issue.

One of the things the Cannabis Advisory Commission is supposed to do under the amendment to this bill is to study cannabis consumption lounges to determine where lounges should go. But what is it going to study if there are no lounges? By pushing this down the road two years, we are unnecessarily delaying the issue and jeopardizing millions of tourist dollars and potential revenue. This industry generates \$120 million a year in taxes.

Again, the bill itself is fantastic. I want to make sure that people think about what is going to happen for the next two years while we let this process evolve. This bill makes it a misdemeanor crime to use marijuana in public and imposes a \$600 fine. On the one hand, we are criminalizing the conduct; on the other hand, we are denying tourists the opportunity to do it legally.

BRYAN WACHTER (Senior Vice President, Retail Association of Nevada):

We want to echo the comments of Ms. Valentine, Ms. McMullen and Commissioner Segerblom when they say that a lot of work and time has gone into this.

We are very much in favor of the compliance portion of A.B. 533. We think the bill is good. Please do not construe our attempt to have a conversation about consumption lounges as an attempt to stall the bill or not have it pass. We very much think the regulatory work should be in place. However, we believe the original bill had some merit. We understand the industry has concerns about how big the buffer between the retail industry and the resort or gaming industry needs to be when it comes to consumption lounges and cannabis. We wholeheartedly agree that the 1,500-foot buffer zone, even though it exceeds the distance from a school to one of these facilities, is appropriate if that is what licensees feel they need. But we need to be careful that we are not stunting a brand-new industry, especially given Mr. Segerblom's comments. We are criminalizing the use of these legal products by not providing a place where they can legally be consumed.

We would appreciate a conceptual amendment or compromise to resolve the issue. We agree with the study and with Mr. Segerblom when he says, "What are we going to study?" We would like to at least have a discussion about allowing each jurisdiction to issue at least one license but not more than 20 percent of the number of dispensary licenses they have. With that requirement, when the study is completed we would have good, Nevada-specific data we can use to make a determination about where this industry needs to go.

You heard about the fact-finding trips, and they were useful, but it is time to step up our game in terms of what the industry looks like and how it complies with both the gaming industry and the greater retail environment. We would appreciate the ability to open a pilot program to study the issue. We conducted a county-wide poll this week and found that 56 percent of respondents believed

we should be doing something to change where and when you can consume marijuana. When asked, "Do you support or oppose creating new guidelines on where people can consume marijuana?" 56 percent supported and 24 percent opposed. When asked, "Do you support or oppose expanding the current law to give people a safe and legal place to use marijuana in dedicated lounges?" 51 percent supported and 30 percent opposed.

We appreciate the bill, but we think there could be a common middle ground here that would allow the industry to expand while still protecting the resort industry.

SENATOR PICKARD:

As I understand it, you are proposing to allow local jurisdictions to license or approve one consumption lounge outside the 1,500-foot buffer zone as part of an overall study. Who would do the study? Would this be the Cannabis Control Board? It will take them a while to get up to speed. Or would it be the Department of Taxation or the Legislative Commission?

MR. WACHTER:

The study was placed into the bill by amendment in the Assembly and was to be completed by the Cannabis Control Board. It was our intent that a requirement for getting one of these licenses would be to comply with that study. With regard to the 1,500-foot buffer zone, that can work if we need that buffer. However, we have several members who have made significant investments. Given that the different restrictions to say parks, community centers and schools are so low, we would ask those be grandfathered in, and that going forward, no more licenses be allowed.

SENATOR PICKARD:

That makes sense to me. Was there a timeline for the study?

MR. WACHTER:

It was to be a two-year study. The amendment essentially put a moratorium on this type of activity until the study was completed, which is why we are seeking to enhance the study to allow lounges to be put in place and collect that data. We would also like to add a provision that once the local government issues your license, after a year you have to go in front of the Cannabis Control Board and seek its approval to continue operating. We think that would provide additional oversight from the State.

MADISON ROGERS:

I am neutral on this bill. I am a resident of Henderson, Nevada. I want to give you my experience in the cannabis industry as a patient, a consumer and an agent. I have worked from seed to sale in this industry, from popping seeds to planning corporate marketing. In light of all of the experiences I have had, I would like to recommend a couple of alterations and amendments to this bill.

I believe a human resources component should be added to the requirements of the Cannabis Compliance Board. Employees do not have a safe space to report incidents, and the U.S. Equal Employment Opportunity Commission will not take our complaints. The Nevada Department of Employment, Training and Rehabilitation is overwhelmed beyond belief, and our grievances often get pushed back two to three months after they happen. I have experienced sexual assault, physical assault, ridicule and death threats with regard to reporting compliance errors. It is of the utmost importance that human resources be added to this bill.

It has been my experience that medical marijuana patients do not have a voice in setting policy. When I tried to ask the city of Henderson why it had removed education requirements in its city ordinances, I was escorted from the meeting. There are not enough voices actually being heard and represented in legislation. In May 2017, there were 31,000 medical marijuana patients; in May 2019, there are only 17,623. It is completely unacceptable that we have such a degrade.

One problem is the restrictions on how medical patients are allowed to operate within their own homes. In section 137 of A.B. 533, we are only allowed to have 12 plants per household instead of per patient. It takes one ounce of flowers to yield three to four grams of the quality cannabis oil known as Rick Simpson Oil, and a home grower would be lucky to get half an ounce of flowers from one flowering plant.

SENATOR PICKARD:

The amendment offered in the Assembly also included a piece about ratifying the licensing decisions from the Department of Taxation in addition to the piece about the lounges. Can you touch on the rationale behind those two changes?

MS. HUGHES:

Regarding consumption lounges, after talking to stakeholders about the requirements for consumption lounges, we found there were many concerns that opposed each other. We felt this matter needed to be thoroughly vetted by the Cannabis Control Board. Since it is going to be the regulator of the cannabis industry, we wanted to make it the decision-maker. We thought it was best to put a prohibition on the cannabis lounges at this time so the Board could thoroughly study that issue.

Regarding the ratification language, that was removed from the bill because it has some effect on existing litigation. It was the intent of the Governor's Office not to affect the litigation at all at this time, so we thought it was best to remove that language.

SENATOR PICKARD:

That is certainly consistent with our custom in the Senate. We try to avoid legislation that has a direct effect on pending litigation.

SENATOR HARRIS:

Where could a tourist purchase and consume it legally today? Is there a place?

ASSEMBLYMAN YEAGER:

About the only place is in a private residence. I do not think it is any secret that all the casinos and resorts have said, "You can't do it here," because of the federal prohibition on cannabis and the need to protect their gaming licenses. There may be other locations without gaming licenses, such as nongaming hotels, that could allow people to consume cannabis in private areas. According to the voter initiative, public consumption is precluded in any space that is open to the public. If we wanted to change that, we would be restricted from making that effective until November 2019, because as you know we cannot change a voter initiative for a period of two years.

SENATOR HARRIS:

I would hope this Board would, as part of their directive, focus on diversifying the industry and ensuring everyone has access to getting into the business. This will not happen on its own; we have to make a concerted effort to ensure that diversity occurs.

SENATOR HANSEN:

The federal issue always disturbs me. We are flipping the bird at the federal government. That is the whole issue here.

I believe the Department of Taxation still regulates alcohol. We do not have a separate alcohol board, do we?

Ms. YOUNG:

We do still regulate alcohol and tobacco.

SENATOR HANSEN:

I like the idea of this bill, but I must say that I do not like the industry, and I do not regard it as I do Tesla. In the Committee on Judiciary, we hear constant issues with substance abuse. In the Committee on Education, we hear constant problems with kids coming from homes with substance abuse. I am still opposed to legalization. Yesterday, we had testimony from Mr. Callaway that the black market in marijuana is still thriving, and in fact I got the impression that it is as big or bigger than it was prior to legalization. The Gaming Control Board has a section that looks at problem gamblers. Are we planning for the Cannabis Control Board to have a section that looks at cannabis abuse? Will a portion of the dollars collected be diverted to that? The human cost in this area is enormous.

ASSEMBLYMAN YEAGER:

I do not know that it has been explicitly contemplated, but you make a great suggestion. The Cannabis Advisory Commission could make recommendations to the Cannabis Control Board to establish such a program or at least coordinate with the existing entities that deal with substance abuse. There is nothing in the bill that would preclude that from happening. One of the beauties of the bill is that it is loose enough to allow the Commission to be responsive and make recommendations to the Board.

SENATOR HANSEN:

Because of the limited number of people who have been able to get licenses, the cost is not as competitive as it could be in a true open market. One of the reasons the black market still thrives is because it costs substantially more to purchase cannabis through the legal markets. From a free market perspective, is one of the goals of this bill to expand the number of outlets to drop the cost? It may sound weird coming from a free market guy like me, but if I could regulate

this industry to death, I would. But not seeing that, I do want to see at some point the elimination of the black market. Is that considered in this bill?

ASSEMBLYMAN YEAGER:

It is not explicitly contemplated, but that is certainly something that could be looked at. Whether you support the industry or you do not, the whole point of having a well-regulated industry is to eliminate the black market and make sure people who use the product know what they are using and are not getting taken advantage of through the black market. Anything the Commission or the Board can do to eliminate that problem is going to be in everyone's best interests. I would anticipate that this would be a topic of conversation of how best to do that.

SENATOR HANSEN:

I will support A.B. 533. It is rather like the necessary evil argument with prostitution. It thrives in Clark County, and the rural counties will defend legalization because it is going to happen anyway, so we need to regulate it. But just for the record, I absolutely oppose the expansion of this industry. I would like to see it go away. But if it is not going to happen, the more regulation you have on it the better.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 533.

VICE CHAIR HARRIS:

I will open the hearing on A.B. 176.

ASSEMBLY BILL 176 (2nd Reprint): Enacts the Sexual Assault Survivors' Bill of Rights. (BDR 14-87)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

This bill builds upon the work this Legislature has been doing to make sure survivors of sexual assault are treated with respect in all facets of our criminal justice system. This effort began to take shape with A.B. No. 97 of the 79th Session, which mandated that all sexual assault kits be tested within 120 days. It also made an appropriation to help solve the backlog of sexual assault kits we had in Nevada.

Assembly Bill 176 has come a long way since it was introduced. I am proud to announce that we were able to obtain a \$300,000 appropriation out of the Assembly Committee on Ways and Means, and that is for the Attorney General's (AG's) Office to recruit and train victim advocates, which you will hear more about in a minute. I am also proud to report that the bill passed in the Assembly by 40 to zero.

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

It is my pleasure to join Assemblyman Yeager in presenting A.B. 176, which creates the Sexual Assault Survivors' Bill of Rights and makes other changes to ensure this bill of rights can be implemented properly.

In the last few years, Nevada has made great strides, and we have done a lot to address sexual assault. In 2017, we passed A.B. No. 97 of the 79th Session, and it vastly improved the way we handle sexual assault forensic evidence (SAFE) kits by speeding up those processing timelines and requiring the DNA information obtained from them to be included in State and federal databases. In S.B. No. 169 of the 79th Session, we extended privacy protections for victims and enhanced penalties for persons who take advantage of their authority over others in order to commit sexual abuse.

However, we still have a lot of work to do to reduce sexual violence, offer victims better protections and support, and do everything in our power to catch and punish perpetrators. Assembly Bill 176 is another big step in the right direction, and I am proud to be here today to present it.

I will take you through the bill. Sections 2 through 29 of A.B. 176 contain the Sexual Assault Survivors' Bill of Rights.

Sections 31 through 34 create the Advisory Committee on Rights of Survivors of Sexual Assault.

Section 35 revises requirements for prosecutors to inform victims of certain information when a case goes to trial.

Sections 36 and 37 make improvements to the timelines, tracking and availability of information generated in relation to the processing of SAFE kits.

Section 40.5 appropriates \$300,000 to the AG's Office to award grants for recruiting and training victim advocates.

With regard to the Sexual Assault Survivors' Bill of Rights, sections 4 through 15 contain definitions, none of which are out of the ordinary. They are primarily drawn from elsewhere in the NRS. I would point out, though, that section 15 defines "survivor" as a victim of sexual assault per statute unless the victim is incompetent, deceased or a minor. In that case, the definition includes a parent, guardian, spouse, legal representative or other relation within the second degree of consanguinity, unless that relation is the defendant or accused or is convicted of the assault.

Section 16 provides that the rights set forth in the bill attach as soon as a forensic examination or interview by law enforcement or prosecutor is conducted. These rights are in effect at all times regardless of whether the survivor agrees to speak with law enforcement or a prosecutor or to participate in an examination or the legal process.

Section 17 assures the survivor the right to consult with a victim's advocate during an examination and an interview with law enforcement or a prosecutor and to designate an attendant for support during the same.

Section 18 provides that a survivor retains those rights even if he or she has waived them during a previous examination or interview. A survivor's waiver of the right to consult with a victim's advocate is not admissible as evidence except with the survivor's consent.

Section 19 addresses the actual circumstances that occur when a survivor requests to see a victim's advocate or support attendant prior to being given a forensic medical examination. A medical examiner is required to summon an advocate or attendant if one is requested and available. If one is not available, the medical examiner must explain the ramifications of delaying the examination. Further, a survivor must not be charged for expenses related to the forensic examination. A survivor is allowed to shower after the examination if a shower is available and is to be informed of his or her rights by the medical examiner pursuant to the Sexual Assault Survivors' Bill of Rights via a document that is to be developed by the AG. The person who presents this document to the survivor must sign a written acknowledgement of its presentation to be retained in the survivor's case file.

Section 20 addresses a survivor's rights during an interview with law enforcement or a prosecutor, should the survivor choose to have a victim's advocate or other support attendant present or not. A survivor has the right to choose the gender of his or her law enforcement interviewer. If the preferred gender is not available, the survivor may only be interviewed by a person of a different gender with the survivor's consent. The same process required of medical providers regarding informing the survivor of his or her rights is to be followed by the interviewer.

Section 21 provides the right for counsel to be present during any forensic examination or interview and requires that the presence of counsel must not affect the treatment of the survivor.

Sections 22 and 23 address genetic marker analysis derived from SAFE kit testing and set forth the survivor's rights regarding the timelines for processing such an analysis, as well as the length of time that biological evidence, including SAFE kits, must be stored. These sections also provide that a survivor has the right to be informed of analysis results, including whether the analysis yields a DNA profile and whether that profile belongs to the accused or to any other person already in the Combined DNA Index System (CODIS).

Section 24 provides that law enforcement's failure to take possession of or to submit a SAFE kit to a forensic laboratory within the timeline specified in the Sexual Assault Survivors' Bill of Rights alters neither law enforcement's nor a forensic laboratory's authority to conduct their work.

Section 25 makes clear that a failure on the part of a medical provider, law enforcement agency, forensic lab or other relevant entity regarding the timeline set forth in the Sexual Assault Survivors' Bill of Rights is not grounds for a defendant to seek to have a conviction or sentence set aside. Nor is such a failure grounds for challenging the validity of a DNA match in any criminal or civil proceeding. A court may not exclude such a match on these grounds.

Section 26 protects a survivor from prosecution for a misdemeanor or offense related to a controlled substance based on forensic evidence obtained from a SAFE kit.

Section 27 sets forth requirements for the form that the AG is to develop regarding the Sexual Assault Survivors' Bill of Rights.

Section 28 grants a survivor the right to be provided various reports free of charge from law enforcement and prosecutors and requires forensic labs to submit their reports pursuant to current statute.

Section 29 sets forth survivors' rights considering criminal or civil cases, including protection from the defendant, the right to be heard through a victim impact statement and reasonable efforts for a secure and separate area at court.

Sections 31 through 34 create and set forth the duties and membership of the Advisory Committee on Rights of Survivors of Sexual Assault. I will not go through all those provisions, but I will say that the Advisory Committee is to be comprised of experts and advocates from a broad range of disciplines and experiences. Its general mandate is to study issues surrounding sexual assault at both State and national levels and to advise the Legislature on how we can continue to improve our understanding and thereby our policies in this area.

As I mentioned earlier, section 35 revises requirements for prosecutors to inform victims of certain information when a case goes to trial.

Sections 36 and 37 make improvements to the timelines, tracking and availability of information generated in relation to the processing of SAFE kits.

Finally, section 40.5 contains a \$300,000 appropriation to the AG to award grants for recruiting and training victims' advocates.

ASSEMBLYMAN YEAGER:

There is a proposed amendment from the Nevada District Attorneys Association ([Exhibit C](#)). There is also a small proposed amendment from the public defenders of Clark and Washoe Counties ([Exhibit D](#)). My position on those proposed amendments is that I do not see them as either friendly or unfriendly. I would leave it up to the pleasure of the Committee whether you want to accept them or not.

CHRISSY MORESI (Rise):

I have written testimony ([Exhibit E](#)) describing my experiences as a survivor and an organizer of Rise, a nonprofit civil rights movement. I urge your support for A.B. 176.

SUSAN MEUSCHKE (Executive Director, Nevada Coalition to End Domestic and Sexual Violence):

I have written testimony ([Exhibit F](#)) in support of this bill. I want to thank the sponsors and all of the stakeholders who have worked hard to craft a bill that, while not perfect, is a huge step forward in providing rights for survivors of sexual assault.

Rape and sexual assault are some of the most underreported crimes in the U.S., with only 37 percent of cases being reported to law enforcement. Ms. Moresi's testimony explains one of the reasons for this. It is important, as you think about this bill, that you understand how critical it is for us to enumerate some rights for survivors of sexual assault. They have no trust in the system and no trust that anyone will believe them. They have no hope that they can recover from what has happened to them. While A.B. 176 will not make everything right—nothing can do that—it is an important first step in changing the way we in Nevada treat survivors of sexual assault. The rights established in this bill are critical to a victim's willingness to participate in the process.

SENATOR HANSEN:

Have other states implemented something like this? Have such changes brought about a rise in the number of assaults reported? Also, are these typically serial rapists? I am trying to figure out why two out of three rapists get away with it.

MS. MEUSCHKE:

I believe 22 states have passed a bill like this. We are still in the beginning of this process, however. As a society, we have ignored the issue of sexual assault for many years. This is not something we have focused on. We have done some things, but we have not really addressed the barriers to victims coming forward. We have not addressed how survivors feel calling law enforcement to report something that is incredibly personal and having their bodies become crime scenes, to be repeatedly and minutely examined with microscope and tweezers. You are a victim, but you are more and less than that. Then there are the questions. Were you drinking? Had you ever had sex with this person before? The questions go on and on. It is not enough to say, "This happened to me; and there is proof this happened to me." Now you have to prove you were worthy to be considered a victim.

This process is just starting. We do not have data to tell you that putting this bill in place will solve the problem. As long as we have the attitudes that

continue to exist in our society, we have a rape culture that excuses it, that says, "Oh, well, if you hadn't been drinking, or if you had worn something different, or if you hadn't gone out at night, this wouldn't have happened. So really, it's your fault as well."

We are also laboring under the misbelief that rape only happens with strangers, which is not the case. You often know your attacker; you may have had a relationship with the person. That does not stop a rape from occurring.

Many of those individuals are serial rapists, but we are only just learning that as a result of having the backlog of rape kits tested and seeing that, in fact, what someone decided was an isolated case not worth moving forward with was actually part of a pattern that spread across the U.S. We are just now beginning to see those patterns.

Yes, two out of three rapists are getting away with it. More importantly, however, two out of three survivors are not getting any help.

SENATOR HANSEN:

I am sensitive to the criticism that we do not want to do anything about it. When I was the Chair of the Assembly Committee on Judiciary, I actively supported any type of bill like this that would help. We were shocked to discover that so many rape kits had been stored and forgotten. I do not want to leave the impression that we were not doing everything we can. I support A.B. 176, and if there is something that needs to be added, we should do it.

JESSICA ADER (Office of the Attorney General):

Our office is in full support of A.B. 176. We are charged with implementing several pieces in this bill, including the development of the Sexual Assault Survivors' Bill of Rights document and transmitting it to law enforcement and medical facilities, being part of the Advisory Commission, and disbursing the \$300,000 appropriation to organizations and advocacy groups to train advocates. We are critically underfunded and lack the resources we need to provide advocates as required in the bill at this time.

I also want to echo Ms. Meuschke's comments and respond to Senator Hansen's comments regarding the language in the bill. Some of the language is taken from national working groups on the Sexual Assault Survivors' Bill of Rights. Specifically, the kit retention storage requirements in

the bill are taken from that document. Ms. Meuschke is right that many of the offenders we are seeing in these cases are friends and family, especially when it comes to survivors who are children. There were serial rapists who were not brought to justice due to the more than 8,000 kits that were not tested in a timely manner. We are seeing disturbing rates of hits in CODIS from the kits that are now being tested.

SENATOR SCHEIBLE:

I would like to ask you about the proposed amendment in [Exhibit C](#). I know this is not your amendment, but have you considered it? Do you have any similar concerns about the attendant becoming a witness in the case?

MS. ADER:

I spoke to Jennifer Noble from the Nevada District Attorneys Association about its proposed amendment last night. I believe there may be ongoing conversations about the language. The concern is a valid one, but there is still some work we could do on the language to ensure that survivors who are not able to access an advocate are able to have someone in the room without compromising any ongoing investigation.

JENNIFER NOBLE (Nevada District Attorneys Association):

We are here in support of [A.B. 176](#). Ms. Ader hit the nail on the head regarding our proposed amendment. We were trying to accomplish something with [Exhibit C](#), but I do not think we are quite there yet. After talking with Ms. Meuschke and Ms. Ader, we think we can get there very quickly.

Let me tell you what we are trying to do. Forensic interviews of children who have or may have been sexually abused are different from other types of law enforcement interviews. Jennifer McCann is a certified forensic interviewer who works at the Child Advocacy Center in Washoe County. In the last year, she interviewed 398 children in Washoe County and the rural counties where we suspected abuse. She has specific training to do this. Interviewing children is different from interviewing adults. Our proposed amendment was trying to address the concerns that arise when a child comes in with someone who is potentially the perpetrator of that assault, who may want them to minimize the incident or who may just be very upset. Under those circumstances, the child is less likely to disclose. We think that some small amendments to section 17 of the bill will make it consistent with best practices for interviewing children.

JENNIFER McCANN (Forensic Interviewer, Child Advocacy Center):

My job is to interview children who have been suspected victims of physical or sexual abuse. Unfortunately, it is mostly sexual abuse. Having someone present in the room during the interview is extremely problematic for children. Children usually want a caregiver to be there. However, often it is the caregiver's partner who is the perpetrator, and having them in the room creates stress for the child. Older children may be doing things they do not want anyone to know about. To get the truth of what the child is saying, we need to get the full story. A lot of times, I have had children tell me, "I don't want to tell anyone else these details. I don't want anyone else to know these things." I would hate to have a child feel they cannot disclose the full truth because someone else is present.

Another thing that could be problematic is a lot of times when we are talking to children, the things we talk about are extremely traumatic, and people react when they hear those things. As a forensic interviewer, I am trained to not react or to react in a way that is appropriate. Untrained people are likely to react in a way that is not appropriate, especially if they have an attachment to the child.

SENATOR SCHEIBLE:

Do you ever use a victim advocate or the equivalent, someone the child does not know, to bring them some kind of comfort in the interview room?

Ms. McCANN:

We have victim advocates present for every interview. However, most victim advocates are not trained to interview children, so we have them talk to the parents while I talk to the child. From my experience, most children want someone present with them that they have a relationship with. Our advocates are wonderful resources for our families and our children, but they do not have a relationship with the children. I would hate to put someone in the room whom the child does not want.

SENATOR PICKARD:

What kind of training is required to interview children in a legal context? How does that change among age groups? What kinds of mistakes are made by people without that training?

Ms. McCANN:

There are certain protocols recognized by an organization called the National Children's Alliance (NCA), which accredits many of the Children's Advocacy

Centers (CAC) around the U.S. Those protocols go over child development with what is appropriate for each age group. We are taught to be child-led. We ask open-ended questions and let them disclose what they want to talk about, then we take pieces of that and ask more specific questions. We do not ask leading questions. Often, people who do not have this training ask a lot of leading questions, which can be problematic in a criminal case as well as resulting in children saying things that might not be truthful. A lot of times, people may ask the same questions repeatedly because they did not understand the answer the first time, so the child thinks, "I'm obviously not giving them the right answer; I'd better change it."

I went through basic training at CornerHouse, which is the protocol we use, and then I did advanced training. We have peer reviews four to five times a year and go to additional trainings throughout the year.

SENATOR PICKARD:

How many hours of training is involved for the typical forensic interviewer?

Ms. McCANN:

Initially, 40 hours of classroom training, then a month or more of observing a seasoned forensic interviewer, then going over the interviews you have done and getting critiqued.

SENATOR PICKARD:

This may be outside of your area of expertise, but do we have core personnel with these skills? Are the prosecutors, defense attorneys or judges trained in how to interview children properly?

Ms. NOBLE:

We start from a place of believing the victims. However, we know that there may be situations in which there is pressure on the child to color or even change what they say. This is especially true when there is a custody battle. If we have that dynamic with the parent in the room and we have a child who has truly been abused, it will be suggested on cross-examination that the child was motivated by one parent or the other. That is one reason that best practices dictate that it should be the forensic interviewer and the child. For the integrity of the case and the information we get from the child, we are advocating to have this carveout.

I do not know whether judges get training in this area. Our CAC takes a multidisciplinary approach that includes prosecutors, counsellors and detectives as well as people like Ms. McCann, so the child does not have to tell his or her story over and over again. The whole point is to minimize trauma to the child and connect him or her to services.

SENATOR SCHEIBLE:

I would be happy to work on language that might ameliorate some of the concerns about children being alone and scared, making it easier for them by being allowed to bring their pets with them. A child who has bonded with a dog or a fish or a lizard might want to have that animal in the room, and that animal can never be called as a witness.

Ms. NOBLE:

Our amendment in [Exhibit C](#) is not my best work. I did not adequately capture the concerns of the Coalition to End Domestic and Sexual Violence. I had a conversation with Ms. Meuschke and Ms. Ader in the hall, and we are all striving for comfort for children. All four of us in that conversation are mothers. None of us would ever want our children to feel unsafe, especially after something so horrible had happened to them. That is definitely not what we are trying to do. Our goal is for the four of us to get together after this meeting and craft some language that works for the Coalition but still answers the concerns we are talking about here today.

ASSEMBLYMAN YEAGER:

The bill you have in front of you is a reflection of a lot of commonsense changes that were made at the suggestion of other people who do this really difficult work day in and day out. My thanks to them and to the AG's Office.

Initially, this bill had an appropriation that would have allowed us to set up the Advisory Committee on the Rights of Survivors of Sexual Assault and create the document with the Sexual Assault Survivors' Bill of Rights in it. They were able to find a way to do that without requiring an appropriation. I believe that saved the bill; it would not have made it out of the Assembly Committee on Ways and Means with a dollar more than we got.

SENATOR CANNIZZARO:

This bill is more than lip service; it is more than just feel-good legislation. It speaks to the question asked by Senator Hansen: how is it that people get away

with this? It is not because of a lack of dedicated law enforcement officers who are trying to do their job. It is not a lack of dedicated prosecutors who are bringing forward those cases. It is not a lack of the dedication of victim advocates and forensic interviewers. It is not a lack of real bravery among the survivors.

To go through the process of reporting a sexual assault involves so many ways where survivors can be made to feel it was their fault it happened. Every survivor has felt that way at some point in the process, with questions about where they were, who they were with, why they did not do things differently, and finally telling them they could have avoided this if they had taken one step differently, so it must be their fault. They are interviewed over and over and over, going over the same details repeatedly, to the point where they have told the same story to the same person 17 times and still do not feel believed. They go through the same physical exam over and over where they are photographed, tweezed and swabbed. And all this has to happen within a very short period of time after a very traumatic event.

One thing this bill does is provide respect for survivors in that process. The interviews and exams are unavoidable, but we can take steps to make survivors feel respected and safe throughout the process. That is critical to starting to answer the question of why sexual assault goes unreported. The more we can respect and believe survivors and support them in that process, the more people will feel reporting assault does not mean they have done something wrong. That starts with legislation like this.

Ms. MORESI:

Thank you for hearing A.B. 176 today. Please do not forget the more than 700,000 survivors of sexual assault in Nevada who would benefit from this bill. As a survivor, I hope that I am never assaulted again, but in our society, I know it is possible, and there will be future survivors. I came to testify today for them.

VICE CHAIR HARRIS:

I will close the hearing on A.B. 176.

CHAIR CANNIZZARO:

I will open the hearing on Senate Bill (S.B.) 554.

SENATE BILL 554: Revises provisions governing application of the legislative continuance statute in certain judicial or administrative proceedings. (BDR 1-90)

KEVIN POWERS (Chief Litigation Counsel):

The Legislative Counsel Bureau (LCB) is a nonpartisan legal agency. We do not support or oppose any particular policy viewpoint, and in most cases, legislation. However, the statute provides that the LCB can make recommendations to the Legislature with regard to the clarification of statutes. I am here before you today to discuss what is known as the legislative continuance statute, which is in NRS 1.310.

The existing statute provides that if a Legislator during the Session is a party to any action or proceeding before a court or administrative body or is an attorney of such a party, that Legislator is entitled to seek and get a continuance in that judicial or administrative proceeding. That right is established by statute.

These types of legislative continuance statutes are in other jurisdictions, and they have been interpreted by courts. Most recently, there has been a trend in courts to give these statutes heightened scrutiny. If the statute on its face does not provide a party who objects to the continuance with an opportunity to prove that under those particular circumstances the continuance would affect a substantial right or interest and cause irreparable harm, the statute potentially has a constitutional infirmity because it does not have what we like to call a constitutional safety valve providing an opportunity to prove that in that particular case, continuance would do harm to the objecting party.

In 2017, a State district court, after a Legislator-lawyer requested a continuance, determined that on its face, Nevada's legislative continuance statute was unconstitutional as written because it did not give the district court discretion in those extraordinary circumstances to determine that continuance would cause that sort of substantial, irreparable harm. As a result of that case, a petition was sought in the Nevada Supreme Court for review of that statute. While that review was pending, the parties in the underlying district court case resolved their case, thereby rendering the Supreme Court action moot. So the Supreme Court never got to the merits of whether Nevada's continuance statute is unconstitutional as written.

As a result, the Legislative Counsel determined that there is a situation where the Legislative Counsel needed to advise the potential clarification of the statute. Before you today is S.B. 554, which represents that approach of the Legislative Counsel to clarify the statute. Keep in mind that the goal of this legislation is not to change the underlying policy in the statute. It is to clarify the statute and provide that constitutional safety valve so that in those extraordinary circumstances, when the objecting party can prove that continuance would cause substantial, irreparable harm, the continuance would not be granted or it would only be granted in part.

Section 1 of the bill sets up how this applies. First, the person has to be a member of the Legislature or the President of the Senate. Second, that person has to be a party to an action or proceeding before a court or administrative body, or the attorney for a party to an action or proceeding before a court or administrative body who was employed as an attorney for that party before the Legislative Session commenced. Third, if under those circumstances the person files a request for a continuance, the court has a mandatory duty to provide that continuance.

Section 1, subsection 2 states that such a continuance must be for the duration of the Session plus an additional seven calendar days following the Session. However, the person requesting the continuance can ask for a continuance for a shorter period. This section also states that the continuance must be granted without the imposition of any bond, costs or other terms. This is existing law. The point is that the continuance is a matter of right, and no additional burden should be imposed upon the Legislator seeking the continuance.

Section 1, subsection 3 provides the exception I mentioned earlier. If the objecting party proves that as a direct result of emergency or extraordinary circumstances they have a substantial right or interest that will be defeated or abridged by the continuance, and that they will suffer substantial and immediate irreparable harm by the continuance, then the court has the discretion to deny the continuance either in whole or in part.

CHAIR CANNIZZARO:

I will close the hearing on S.B. 554 and open the hearing on A.B. 425.

ASSEMBLY BILL 425 (2nd Reprint): Revises provisions governing fingerprinting services. (BDR 14-945)

MIKE DRAPER (Fingerprinting Express; A1 Fingerprinting):

This is an important bill, though it is quite short. Currently, statute requires the employees of more than 80 industries to go through fingerprint background checks to be employed. Unfortunately, we do not have a lot of oversight on the private fingerprint industry. In an age where data breaches, identity fraud and other violations of personal information have become prevalent, we have found that it is important for us to make sure people taking fingerprints in Nevada are doing it the right way, protecting personal information and working through appropriate agencies to secure the information they handle.

We have been working on S.B. 425 with Assemblyman Edgar Flores for a year or two. We appreciate his efforts. We have also worked with the Office of the Secretary of State and the Department of Public Safety (DPS) on this bill. The goal of the bill is to give the DPS the additional ability to oversee the private fingerprint industry.

Our work on this bill started when a customer went into a store that sells knockoff women's accessories and got their fingerprints done in the back of the store. The customer then came to us and said the situation in that other store did not feel safe and secure. We then had conversations with a number of stakeholders about how we could make sure the personal information taken through the fingerprinting process is safe. One step was to require fingerprint background checks for the people who are doing fingerprint background checks. The bill also allows the DPS the ability to do compliance checks and audits of fingerprinting businesses at their discretion. It also implements various regulations over the fingerprint industry as the DPS sees fit.

Assemblyman Flores submitted a proposed amendment ([Exhibit G](#)) from the DPS. It clarifies a couple of issues remaining in the bill.

The bill itself is fairly simple. It allows the DPS to require fingerprint background checks for the people who perform such checks. It also allows the DPS to conduct regular compliance audits or checks at its discretion.

SENATOR HARRIS:

I am always skeptical when an industry asks to be regulated. I understand that the two companies you represent, Fingerprinting Express and A1 Fingerprinting, are the big guys in this field, and these regulations may not be much of an issue for them to comply with. My concern is that your goal is to regulate some of

the smaller guys out of business. You gave an example of someone who got fingerprinted in the back of a business and it did not feel safe, but this bill would not address that. The circumstances you describe do not necessarily mean the business was doing anything wrong. If it was just a case of an environment that was not welcoming, they will get fewer customers because of that, and the market will take care of it without regulations from the DPS.

Can you convince me that this is not just an attempt to force other companies to do something you are already doing or can absorb more easily than others that are trying to become the next Fingerprint Express?

MR. DRAPER:

Absolutely. It would be disingenuous of me to say this does not affect our business opportunities; clearly it does. But our goal was to create some standards that would not be onerous. Nevada requires 80 other industries to get fingerprint background checks on their employees. The least we can do is expect our employees to be similarly checked. Outside of that and giving the DPS some additional abilities, A.B. 425 does not require fingerprint companies to do anything more than that.

I will tell you where it really affects our business opportunities. Right now, the privatized fingerprint industry is starting to become more prevalent. Currently, we put civilians through what is essentially a criminal process by requiring them to go to law enforcement to get fingerprint background-checked. Sometimes, they have to wait for hours to get this done. As we had conversations with different public agencies, we said, "Look, we can help; we are licensed by the DPS, and employees of many State agencies can come to us to get fingerprint background-checked rather than going to law enforcement." However, others said, "We're not entirely comfortable sending people to you because you're not more regulated." That is where this idea came from. It was not to put other companies out of business; rather, it was to allow us the opportunity to do more of this public sector-fingerprinting and give customers confidence that we are regulated and have oversight to make sure that personal information is protected and safe.

SENATOR HARRIS:

That only partially answers my question, but I will take it.

Section 5 of A.B. 425 requires anyone who wants to own a fingerprint business that transmits or forwards to the Central Repository for Nevada Records of Criminal History to enter into a contract with the Repository. Is there a requirement in existing law that you have to have a contract with the Repository if you wish to transmit or forward any type of fingerprint information to the Repository, or could you do that absent a contract? If so, why are we requiring them to enter a contract?

ERICA SOUZA-LLAMAS (Manager, Central Repository for Nevada Records of Criminal History, Communications and Compliance Division, Department of Public Safety):

Existing law does not have a requirement for private fingerprint sites to enter into a contract with us. The language in section 5 of the bill would allow the Repository to enter into a contract for personal services with each private fingerprint site. That language gives us the authority to conduct background checks on the owners, operators and employees of those sites as well under NRS 239B.010.

SENATOR HARRIS:

So is the point of that section to ensure that all fingerprinting businesses are vetted by the Repository?

Ms. SOUZA-LLAMAS:

We already have a vetting process in place. The purpose of this bill is not to change what we currently do. It will allow us to adopt formal policies and give us that legislative authority to conduct background checks on the owners, operators and employees and establish policies to make our vetting process more formal.

SENATOR HARRIS:

I will try not to belabor the point too much, but section 5 is about what someone who wants to own a business must do, not what the Repository may do. I do not see it as authorizing the Repository to do something; I see it as something a business must do. If the goal is to enable the Repository to enter into contracts, I think you mentioned you can already do that. I am not sure what the point of section 5 is. If you want to make sure everyone who works at a fingerprinting business has to be fingerprinted, you could just say that. My concern is if you require them to enter into a contract with the Repository, if the

Repository then says, "I don't want to enter into a contract with you," you do not have a business.

MR. DRAPER:

The way the process works right now is in order to be a fingerprint company in Nevada, the DPS inspects your building, and there are some standards you have to meet to do that. You can be a mobile fingerprint company. But after that, very little is done. You are right that it is easier to say, "We require fingerprint background checks," and we can do that. I believe the DPS was more comfortable with the language in section 5 because it mimics some of the other language it uses in other processes.

ANDY MACKAY (Executive Director, Nevada Franchised Auto Dealers):

We support A.B. 425. Our industry employs thousands of individuals who are subject to fingerprint background investigations. We are in support of anything that can improve that process.

DAVE DAZLICH (Las Vegas Metro Chamber of Commerce):

We are in support of this bill. We believe it is a good basic level of regulation that will help ensure some data security in an industry that provides a basic and necessary service for so many in Nevada.

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CHAIR CANNIZZARO:

I will close the hearing on A.B. 425. Is there any public comment? Hearing none, I will adjourn at 10:43 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	9		Attendance Roster
A.B. 176	C	3	Nevada District Attorneys Association	Proposed amendment
A.B. 176	D	1	Clark County Public Defender's Office; Washoe County Public Defender's Office	Proposed amendment
A.B. 176	E	1	Chrissy Moresi / Rise	Written testimony
A.B. 176	F	2	Sue Meuschke / Nevada Coalition to End Domestic and Sexual Violence	Written testimony
A.B. 425	G	2	Assemblyman Edgar Flores	Proposed amendment