

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
April 5, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:16 a.m. on Friday, April 5, 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

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Jeanne Mortimer, Committee Secretary

OTHERS PRESENT:

Karen Dennison, Real Property Section, State Bar of Nevada
Michael Buckley, Real Property Section, State Bar of Nevada
Garret Gordon, Community Association Institute
Donna Zanetti, Community Association Institute
Mike Kozor

CHAIR CANNIZZARO:

The meeting is called to order and will begin with a work session beginning with Senate Bill (S.B.) 155.

Senate Committee on Judiciary
April 5, 2019
Page 2

SENATE BILL 155: Establishes provisions regarding the possession and use of fictitious personal identifying information. (BDR 15-917)

PATRICK GUINAN (Committee Policy Analyst):
The work session document ([Exhibit C](#)) summarizes S.B. 155. The Committee heard this bill on February 28. There is one amendment to be considered.

SENATOR PICKARD:
Is this bill trying to prevent us from running afoul of juvenile delinquencies?

CHAIR CANNIZZARO:
I know that during the hearing there was concern regarding the criminal statute. This bill clarifies that for anyone who has proof of age to get into a nightclub, this crime would be a misdemeanor. This language clarifies that if a youth shows different age for the purpose of engaging in age-restricted activities, that it would not apply and would be a misdemeanor.

SENATOR DONDERO LOOP MOVED TO AMEND AND DO PASS AS AMENDED S.B. 155.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANNIZZARO:
We will move to S.B. 218.

SENATE BILL 218: Revises provisions relating to domestic violence. (BDR 3-316)

MR. GUINAN:
The work session document ([Exhibit D](#)) summarizes the bill, and there are no amendments.

SENATOR SCHEIBLE MOVED TO DO PASS S.B. 218.

SENATOR HARRIS SECONDED THE MOTION.

Senate Committee on Judiciary
April 5, 2019
Page 3

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANNIZZARO:
We will move to S.B. 223.

SENATE BILL 223: Revises provisions relating to persons in need of care or assistance. (BDR 13-67)

MR. GUINAN:
The work session document ([Exhibit E](#)) includes two proposed amendments provided by Chair Cannizzaro with consultation with stakeholders.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 223.

SENATOR SCHEIBLE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANNIZZARO:
The work session for S.B. 8 is now open.

SENATE BILL 8: Revises provisions governing the conditions for lifetime supervision of sex offenders. (BDR 16-408)

MR. GUINAN:
The work session document ([Exhibit F](#)) summarizes the proposed amendment by the Office of the Attorney General.

SENATOR DONDERO LOOP MOVED TO AMEND AND DO PASS AS AMENDED S.B. 8.

SENATOR SCHEIBLE SECONDED THE MOTION.

Senate Committee on Judiciary
April 5, 2019
Page 4

SENATOR OHRENSCHALL:

I would like to reserve my right to change my vote on the Senate Floor.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANNIZZARO:

The work session for S.B. 73 is now open.

SENATE BILL 73: Revises provisions relating to mobile gaming. (BDR 41-343)

MR. GUINAN:

The work session document ([Exhibit G](#)) has two proposed amendments for Committee consideration.

SENATOR SCHEIBLE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 73.

SENATOR OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANNIZZARO:

We will open the work session on S.B. 392.

SENATE BILL 392: Transfers the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels from the Real Estate Division of the Department of Business and Industry to the Office of the Attorney General. (BDR 18-1044)

MR. GUINAN:

The work session document ([Exhibit H](#)) has two proposed amendments for Committee consideration.

SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 392.

SENATOR DONDERO LOOP SECONDED THE MOTION.

SENATOR HANSEN:

I would like to reserve my right to change my vote on the Senate Floor. I would like to see the homeowners' association have maximum amount of authority possible to fulfill complaints.

SENATOR PICKARD:

I like the concept; however, I need to see the final language. I will be voting no but like to reserve my right to change my vote on the Senate floor.

THE MOTION CARRIED. (SENATOR PICKARD VOTED NO.)

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CHAIR CANNIZZARO:

We will open the work session on S.B. 436.

SENATE BILL 436: Revises provisions relating to professional entities. (BDR 7-1147)

MR. GUINAN:

The work session document ([Exhibit I](#)) has one proposed amendment for Committee consideration of S.B. 436.

SENATOR HANSEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 436.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANNIZZARO:

That concludes our work session and the hearing on S.B. 382 is now open.

SENATE BILL 382: Revises provisions relating to real property. (BDR 9-1067)

Senate Committee on Judiciary
April 5, 2019
Page 6

VICE CHAIR HARRIS:

We will begin the hearing on S.B. 382 with a presentation of the bill.

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

Senate Bill 382 came to fruition through the real estate section of the State Bar. Together, we have worked on proposed changes that address real property transactions.

KAREN DENNISON (Real Property Section, State Bar of Nevada):

Senate Bill 382 was proposed by members of the section and pertains to various sections of real property law. The purpose of S.B. 382 is to make sections in the real property statutes consistent. The first part is to centralize definitions in the deed of trust statute, which is *Nevada Revised Statutes* (NRS) 107. This bill corrects inconsistencies in terminology and modernizes the language. This bill amends NRS 40.050 which pertains to entry by a lender after foreclosure onto the foreclosed property. This bill streamlines landlord waivers under the mechanics lien law. This bill also addresses common-interest community law.

MICHAEL BUCKLEY (Real Property Section, State Bar of Nevada):

I have provided written testimony ([Exhibit J](#)), and we support S.B. 382. I have also provided a summary of changes ([Exhibit K](#)) which contains an explanation of the changes to each NRS section. Additionally, a proposed amendment ([Exhibit L](#)) addresses the technical changes to S.B. 382.

SENATOR PICKARD:

This bill makes sense with regard to clarity and consistency. In S.B. 382, section 22 references multiple parcels. If the waiver is covering multiple improvements that span an entire parcel, will that require a recording on each parcel?

MR. BUCKLEY:

Yes. The document would need to be recorded against that parcel. That is the intent for that part of the bill to remain the same.

SENATOR PICKARD:

Many developments have multiple parcels, even though it is within one project. With regard to section 29, language has been removed. Where did the language move to?

Senate Committee on Judiciary
April 5, 2019
Page 7

MR. BUCKLEY:

The language you reference was moved to section 28.

SENATOR PICKARD:

I believe it is section 28, subsection 1 and subsection 2; however, it is not clear.

MS. DENNISON:

The language is in section 28, subsections 1 and 2.

SENATOR PICKARD:

Thank you for clarifying that the language was still present, but moved to a different section. With regard to section 30, there is a deletion for the change of uses from unanimous. It is important to note that it refers to only unanimous consent of the unit owners whose units are affected by the change. Why the need for the change? There are a number of situations that this amendment would affect. If we do not include a grandfather provision, or preservation of those rights, it would impact unit owners without their input.

MR. BUCKLEY:

This amendment derived from our common-interest community subsection. There was a grandfather section that was enacted previously, and the intent would be to include the grandfather language to S.B. 382.

SENATOR PICKARD:

I appreciate that. Without that language, we would end up with a significant risk of litigation based on an estoppel argument.

MS. DENNISON:

In S.B. 382, section 4 is the grandfather language that protects persons who bought into a common-interest community and would be protected as long as the owner remained in the unit. Senate Bill 382 does not change current law with regard to the grandfather provision.

SENATOR PICKARD:

The language of section 4 is not clear. As Legislators, we try to avoid sections that conflict with one another. This does not make an express exception to the provisions of subsection 6. This language might expose us for need for clarification through litigation if it is not clear.

MR. BUCKLEY:

I express reference to section 6.

GARRETT GORDON (Community Association Institute):

We support S.B. 382 and have provided a proposed amendment ([Exhibit M](#)).

DONNA ZANETTI (Community Association Institute):

We have proposed an amendment as [Exhibit M](#). In situations where owners are entitled to vote on whether the homeowners' association (HOA) commences a civil action, the owner should be informed what the risks, benefits and costs are. Subsection 1 of the statute has 4 exceptions on whether an owner wants to commence a civil action. This section leaves whether to leave the lawsuit in the hands of the board of directors of the HOA.

The HOA is empowered under the statute to make a decision when a civil action would be commenced to enforce payment of an assessment, to enforce the declaration, bylaws and rules, to enforce a contract, or to proceed with a counterclaim. In these cases, the owners are not entitled to vote.

The HOA has the authority to commence a civil action but must submit to the membership within 90 days to be ratified. In that case, subsection 2 applies. The owners are entitled to know the cost and the risks of the proposed litigation. This amendment clarifies that the HOA would not be required to spend the money to produce an analysis of the estimated costs of the civil action, the pros and cons and what would be disclosed about the pending litigation through a resale disclosure when it is a matter in which the owners are not entitled to vote.

If we are talking about a legal action to collect an assessment to enforce the declaration, to enforce the contract with a vendor or to proceed with a counterclaim, it is an unnecessary expense for the HOA to send out this statement when the owners are not permitted to vote. The law provides a mechanism for the owners to be fully informed about any litigation that the HOA undertakes on their behalf, even when the owners cannot vote. The HOA is required under Nevada law to give the owners a summary of pending litigation at regular board meetings, which are required to occur at least quarterly. Pending litigation is required to be disclosed as part of any resale, and the law entitles the owners to view and inspect the financial records of the HOA. We

would like to add to subsection 2, "on which the owners are entitled to vote pursuant to subsection 1."

SENATOR PICKARD:

Can you mention the scope of frequency for these types of cases and the burden it places on HOAs?

Ms. ZANETTI:

I do not want to give the impression that HOAs always sue their members. Sometimes it is necessary to collect an assessment through remedies or to proceed in a lawsuit against a contractor. I do not have exact statistics; however, it is reasonably frequent for HOAs to proceed in lawsuits in order to protect its members. Without this amendment, there would be a burden on the HOAs for no discernable benefit to the members.

SENATOR HARRIS:

In the amendment, [Exhibit M](#), owners would still be able to receive this information; however, it would be 90 days after the commencement of the action, is that correct?

Ms. ZANETTI:

There are certain exceptions. The HOA members are entitled to vote before an HOA commences a civil action. That is why there is a 21-day notice requirement in which the HOA will consider voting on the matter. The 90-day exception pertains to health and safety and welfare matters. The HOA could file a lawsuit without a vote; however, it would need to get ratification within 90 days of the filing. There are very limited exceptions where an HOA could take action without a vote.

SENATOR HARRIS:

Is there still value for owners to know background behind litigation that the board is taking even though the owner does not have a right to vote on that action? Why would owners be precluded from accessing this information? It seems to me that owners should be able to have access for transparency purposes.

Ms. ZANETTI:

In NRS 116, the law gives the owners all the tools they need to keep an eye on the elected board. The owner can see the disposition of the case, the financial

records of the HOA and are entitled to an update from the board quarterly. When owners sell their property, the owners receive a notice of any pending litigation. There are provisions that give the owners the right to access information from the HOA.

SENATOR HARRIS:

If we pass this amendment and an owner goes to the HOA to request information on any pending lawsuits to force the payment of an assessment, could the HOA say under this amendment the owner does not have the right to know that information?

MS. ZANETTI:

That is correct. The owner is entitled to that information.

MIKE KOZOR:

I live in Las Vegas and have served on an HOA board for the last six years. I am opposed to S.B. 382; more specifically, to section 30. Section 30 pertains to the use right implications. I have not reviewed the proposed amendment in [Exhibit M](#) and have provided testimony in opposition ([Exhibit N](#)). Section 30 will change occupancy use of a unit without the unanimous consent of the unit owners. Nevada law is consistent—there has been no reason given as to why we need to change the law. The declarations are a constitution and allow the HOA to make changes as we move through the process and as the HOA matures. We need to be cognizant of safeguarding the legitimate interest of those who find themselves in the minority.

Section 4 provides that there has to be a unanimous vote as well as a majority vote of the HOA in order to effect this change of use. This bill modifies the process. I believe that a unanimous consent has always been the requirement of the HOA, and it is unclear why we need to change the law.

The bill will permit a declarant redeveloper to place an extremely high approval threshold for the remaining units and could make that approval a subject approval. When all unit owners agree to make a change, the declaration could be written so that it requires a unanimous vote of the remaining homeowners. As the statute is currently written, a declarant cannot change the approval authority in a majority vote.

In section 4, subsection 6, the change would affect all current declarations. There are serious concerns with the ability of an HOA to adversely affect an owner's right of use if the declaration did not fairly appraise the purchaser prior to his acquisition. This language is unclear and I am opposed to this bill. The proposed amendment in [Exhibit M](#) broadens the capability of the HOA. It is easy for a board to raise privilege in executive session, the contents of which is not available to homeowners. Action by an HOA should be a serious action if the HOA is going to spend the homeowners' money—there should be deliberate action before any action is taken.

MR. BUCKLEY:

Speaking to the language in NRS 116.2117 with regard to section 30, we are attempting to comply with the uniform law. This language was deleted from NRS 116. 2117 in the past by the Legislature. We want to ensure that the law follows the uniform law, which has done away with occupancy restrictions.

MS. DENNISON:

I have a copy of NRS 116.2117 for clarification.

SENATOR HANSEN:

Are HOAs required to have a majority vote by a majority of homeowners? For example, a situation occurred where the HOA wanted to make changes but a majority of the homeowners did not vote in the election. It was nearly impossible to get those changes. Is that governed by State law?

MS. DENNISON:

Amendments for HOAs are governed by the declaration of covenants, conditions, and restrictions. Section 30 addresses unanimous consent of homeowners affected. If there were going to be a restriction on pets, a majority of homeowners would need to vote in the election. Section 30 is inconsistent with section 6, and we would not disagree with an inclusion of section 6. There are certain restrictions that can only be changed by majority vote of homeowners.

SENATOR HARRIS:

Would a majority vote be required for rental restrictions?

MS. DENNISON:

Yes, rental restrictions would be considered use restrictions.

Senate Committee on Judiciary
April 5, 2019
Page 12

VICE CHAIR HARRIS:

The hearing on S.B. 382 is closed and the meeting is adjourned at 9:21 a.m.

RESPECTFULLY SUBMITTED:

Jeanne Mortimer,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	6		Attendance Roster
S.B. 155	C	1	Patrick Guinan	Work Session Document
S.B. 218	D	1	Patrick Guinan	Work Session Document
S.B. 223	E	1	Patrick Guinan	Work Session Document
S.B. 8	F	7	Patrick Guinan	Work Session Document
S.B. 73	G	7	Patrick Guinan	Work Session Document
S.B. 392	H	3	Patrick Guinan	Work Session Document
S.B. 436	I	2	Patrick Guinan	Work Session Document
S.B. 382	J	3	Michael Buckley / State Bar of Nevada, Real Property Section	Written Testimony
S.B. 382	K	2	Michael Buckley / State Bar of Nevada, Real Property Section	Summary of Changes
S.B. 382	L	4	Michael Buckley / State Bar of Nevada, Real Property Section	Proposed Amendment
S.B. 382	M	2	Community Association Institute	Proposed Amendment
S.B. 382	N	2	Mike Kozor	Testimony in Opposition