

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

**Eighty-First Session
April 22, 2021**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:04 a.m. on Thursday, April 22, 2021, Online and in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Alexis Hansen (excused)

GUEST LEGISLATORS PRESENT:

Senator James Ohrenschall, Senate District No. 21

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager



Traci Dory, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Zach Conine, State Treasurer
Linda Tobin, Deputy Treasurer-Unclaimed Property, Las Vegas Office, Office of the State Treasurer
Mackenzie Warren, representing Business Law Section, State Bar of Nevada
Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada
Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber
Kenneth Evans, President, Urban Chamber of Commerce, Las Vegas, Nevada
Peter Guzman, President, Latin Chamber of Commerce, Las Vegas, Nevada
Sonny Vinuya, President, Las Vegas Asian Chamber of Commerce
Tonja Brown, Private Citizen, Carson City, Nevada
Keith P. Bishop, Attorney, Allen Matkins, Irvine, California
Jessica Adair, Chief of Staff, Office of the Attorney General
Theresa Haar, Special Assistant Attorney General, Office of the Attorney General
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chairman Yeager:

[Roll was called. Committee protocol was explained.] We have three bills on the agenda this morning and will be taking them slightly out of order. I will open the hearing on Senate Bill 71 (1st Reprint). Welcome, State Treasurer Conine, to the Assembly Committee on Judiciary. I think this may be your first time in the Committee this session. I cannot quite recall because it has been a long 81 days.

Senate Bill 71 (1st Reprint): Revises provisions governing unclaimed property. (BDR 10-398)

Zach Conine, State Treasurer:

I do believe this is the first time I have been before the Assembly Committee on Judiciary, so maybe a high point for me, but we still have 40 or so days left in the session and maybe I will get to come back. Senate Bill 71 (1st Reprint) makes changes to Nevada's unclaimed property statute in an effort to modernize and align Nevada's unclaimed property laws with

national best practices and the Uniform Law Commission's Revised Uniform Unclaimed Property Act (RUUPA).

Pursuant to *Nevada Revised Statutes* Chapter 120A, the Office of the State Treasurer administers Nevada's unclaimed property program. In this role, the Office takes custody of lost or abandoned property from individuals and business holders and works to reunite it with its rightful owners. When property cannot be reunited with its owner, it is held in perpetuity by the state. When you have a free moment, I would encourage everyone to search for themselves and their neighbors at claimitnevada.org to see if the state is holding on to any money of yours. While Valentine's Day has passed, Mother's Day is coming up. It makes a great gift.

For scope, last fiscal year our office processed and approved 38,368 claims, which resulted in the return of \$46 million to Nevadans. On the holder's side, last fiscal year, holders reported and remitted over \$71 million in unclaimed property to our office. When the pandemic began, our office looked for ways we could assist Nevadans who were hardest hit and struggling. We teamed up with the Department of Employment, Training and Rehabilitation (DETR) to use the unemployment insurance claimant list to cross-reference our unclaimed property database to determine if we were holding any unclaimed property for unemployment insurance claimants. To date, this initiative has resulted in returning more than \$2 million in unclaimed property to owners who are currently filing for unemployment insurance. We receive weekly reports from DETR on new claims, and this effort is ongoing.

Unless there are any questions at this point, I will move on to walk through the bill.

Chairman Yeager:

That would great; thank you, Mr. State Treasurer.

State Treasurer Conine:

Sections 2, 3, 7, 8, and 9.5 of the bill adopt language from RUUPA to better align Nevada's unclaimed property laws with other states. The bill was amended in the Senate to add more sections of RUUPA, thus bringing us even closer to the Uniform Law Commission's language. I would like to thank Senator Ohrenschall for his efforts on that front.

Section 4 of the bill allows the Office to create a claim and deliver payment to the owner if we reasonably believe we have identified the rightful owner. Currently, the statute requires the individual to whom the property belongs to file a claim prior to delivering payment. At the beginning of the COVID-19 pandemic, as I mentioned, we started working with DETR in cross-referencing the property databases. Our intent was to verify the information and remit payment directly to those individuals who needed it most. However, given the requirements in statute, we instead had to send them all a letter indicating we were holding their property and instructing them on the process of filing their own claims. This flexibility will allow our office to more efficiently reunite owner's property. Our intent is to use this allowance under statute as limited, in controlled circumstances like the one described above,

where we had multiple points of personal information to match our database, such as birthdays, social security numbers, name, address, and phone number.

Sections 5, 10, 15, and 17 of the bill simply make conforming changes to statute based on the changes in the bill.

Section 6 and section 7, subsection 1, paragraph (n), clarify the definition of account of funds relating to the cost of burial. This terminology was adopted through Senate Bill 44 of the 80th Session. After speaking with the industry and the Department of Business and Industry, Division of Insurance, who governs these pre-need contracts, we determined that additional clarity was necessary to ensure the intent of the law was achieved in the language.

Section 9 updates existing language regarding the delivery of safe-deposit boxes. Currently, the law requires that once a bank sends a report of the safe-deposit boxes, it must wait 60 days before delivering the boxes to our office. As you can imagine, this creates inefficiencies for our staff as we have to put all safe-deposit box work on hold for two months. The updated language will require safe-deposit boxes to be delivered within 60 days, therefore allowing our team to get to work immediately once reports are received.

Section 11 allows our office to require proof that someone filing a claim on behalf of an estate has the proper authority to be doing so. This section also makes documentation received on behalf of a claimant confidential and not subject to public records. Collecting personal information is necessary to verify a claimant's identity and their relationship to property. We have included this change in statute to assure Nevadans that any personal information and documentation they share with us remains confidential. The inclusion of this language will also save staff time by allowing our processors to focus on claims rather than redacting records requests.

The change in section 12 allows us to make property available for claiming once we receive it. Under existing law, if a holder or business remits unclaimed property prior to it reaching the appropriate dormancy period, usually three years, we must hold onto the property for the same amount of time that a business would have. This issue most often arises when a holder goes out of business. Removing that requirement from statute will allow our office to connect Nevadans with their property when we receive it rather than holding on to it for additional years. In other words, if there was a business that sent a paycheck to an employee and then the business goes out of business right then, our office would have to hold on to that check for three years as opposed to giving it back to the employee. This would fix that problem.

Section 13 allows our office flexibility in our efforts to notify holders of an audit. We make every effort to give reasonable notice; however, in limited circumstances, this can be impractical, such as when a holder has multiple locations and does not respond to a request to confirm the appropriate location to send notice to or when a holder never acknowledges receipt of the notice. This section also allows us the ability to request copies of documents during an audit rather than requiring our staff to travel onsite to examine the originals.

Furthermore, it grants us the ability to compel production of records through an administrative subpoena. These changes modernize our audit processes and focus our auditing staff's time on identifying reportable property rather than on administrative back-and-forth.

Section 14 requires holders of unclaimed property to hold on to backup documentation that verifies their nonreporting of property. For example, during the course of an audit, it could be found that a holder has ten uncashed checks that were never reported or remitted to our office. The holder could claim that they canceled those checks which would render them worthless and not reportable to unclaimed property. Under existing law, there is nothing in statute that allows our office to request backup verification verifying their claim to prove the checks were indeed cancelled. This would allow us the ability to do so.

Section 16 allows heir finders to receive a higher percentage of property claimed. Currently, several professional firms exist whose business is connecting individuals with their lost and abandoned property. These firms get paid a percentage of the property they have located through written agreements with the property owner. Existing law caps that percentage at 10 percent. This change would allow firms who connect owners of property older than five years old—most would have been abandoned or lost for at least eight years because of that three-year window we talked about before—to charge up to 20 percent of the property amount. Allowing for a higher commission better incentivizes these firms to find and connect Nevadans with their missing money. The short version here is, the longer a property is dormant, the harder it is to find the owner. Most often, that is not the original owner, it is an heir—so a nephew or a second cousin twice removed—and it is harder for these companies to find the individuals; it is harder for the individuals to find out they have money. We want to make sure we are creating incentives that match the additional work.

This concludes my presentation. I thank you for your time and consideration of S.B. 71 (R1) this morning. I am joined today by Linda Tobin, Deputy Treasurer-Unclaimed Property. Our junior deputy, Teddy, had to go to school. We are happy to answer any questions you may have.

Chairman Yeager:

Thank you, State Treasurer Conine. Before we take questions from Committee members, I had a request from Senator Ohrenschall, who is with us on Zoom, to make a brief comment about S.B. 71 (R1) as well.

Senator James Ohrenschall, Senate District No. 21:

I want to put on my uniform law commissioner hat this morning. As you and many Committee members know, I, Assemblywoman Cohen, Senator Pickard, and former Assemblywoman Backus served as some of the uniform law commissioners for Nevada. I want to thank State Treasurer Conine and his staff—Erik Jimenez, Kristen Van Ry, and Deputy Treasurer Linda Tobin—for working with the Uniform Law Commission to improve Senate Bill 71 (R1) and get us closer to the Revised Uniform Unclaimed Property Act. I do

appreciate the State Treasurer working with us and with the Uniform Law Commission on this bill.

Chairman Yeager:

Thank you for those remarks, Senator Ohrenschall. State Treasurer Conine, let me just say thank you for the work you and your staff have done on the unclaimed property. I think many of us in this Committee have either found unclaimed property of our own or have found some for family members. As you indicated, I think that is in large part due to the efforts that your office has made to publicize the fact that it so easy to look yourself up and find unclaimed property. I just wanted to thank you and I am very impressed by the amount of unclaimed property that has been returned. I expect that to continue. Are there any questions from the Committee?

Assemblywoman Cohen:

In section 7, subsection 4, paragraph (b), concerning the activity requirement by an apparent owner, how are we balancing the fact that some people do not have a lot of activities on accounts but they know that the account is there, they just do not use the account? Perhaps it is an emergency fund, so they just put it there and leave it. I have an emergency fund in a credit union, and they want me to do something with that. They literally said that I needed to come in and put a dollar in, that type of thing. I do not want to do that; I just want to leave the account alone. How are we making sure that people do not have to jump through a lot of hoops on the accounts that they know are there and recognize are there?

State Treasurer Conine:

I would be remiss if I did not point out that the fantastic success we have had in the unclaimed property program is completely due to our Deputy Treasurer, Linda Tobin and her staff. I occasionally tweet about it, but that is the extent of my skill set there.

On this specific topic, what we are trying to do is make sure that any touch of the account is effective. That is a series of things like the bank sending a statement to the house that does not get returned; that could be a person logging into an online account or viewing it online; that could be a transaction in or out; but the goal there is really anything that proves that the account is not dormant. The changed language here including accessing the account or information concerning the account is an effort to widen the number of contacts that we count. I will turn it over to Deputy Treasurer Linda Tobin, in case there is anything she would like to add.

Linda Tobin, Deputy Treasurer-Unclaimed Property, Las Vegas Office, Office of the State Treasurer:

To State Treasurer Conine's point, the intent of this language is to expand some owner contact to account for that specific scenario. There are some additional safeguards in particular to banking-type accounts that owner activity on any account will constitute activity for all of their accounts, so that helps to safeguard against this as well. Prior to any account actually coming to unclaimed property, the banks and all of the other holders are required to send out due diligence letters notifying their customers of the existence of their accounts and

ask for some acknowledgement in contact to give them an opportunity to acknowledge those accounts prior to those ever coming to the state.

Assemblywoman Cohen:

Thank you, I appreciate that. I literally did have the credit union say that they were going to turn over the account if I did not physically come in and deposit a dollar, even though we were on the phone.

Assemblywoman Nguyen:

Is there any way you could walk us through what it looks like when you are talking about section 2, concerning game-play currency and virtual wallets? How does that end up in your office?

State Treasurer Conine:

I will again take a shot here and then turn it over to Ms. Tobin if needed. The goal here is to move closer to the Revised Uniform Unclaimed Property Act, and specifically what we are trying to say here is that tokens that are created in a game do not ever get escheated. In other words, if you have got V-bucks in Fortnite or you have PokéCoins because your Slaking has done a great job protecting a gym, that that does not need to get escheated to the state because there is no way we can functionally return it. We are trying to make a very clear statement that if someone goes and purchases a skin in a game, or something like that, and it does not touch the game, that that does not need to get escheated to the state.

Chairman Yeager:

State Treasurer Conine, one of the downsides of being on Zoom is that you do not get feedback on your jokes, but they are going over very well this morning. Just know that we appreciate it, especially at 8 a.m. on an unclaimed property bill; thank you for making it entertaining.

State Treasurer Conine:

I appreciate that, Chairman Yeager, though, frankly, I have never needed feedback to continue making jokes.

Chairman Yeager:

Are there any other questions from the Committee? [There were none.] Is there anyone who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in neutral? [There was no one.] State Treasurer Conine, any concluding remarks on S.B. 71 (R1)?

State Treasurer Conine:

No concluding remarks; just thank you, the Committee, and our unclaimed property staff for their work. Have a great day, and I hope the rest of the hearing is exciting.

Chairman Yeager:

I will close the hearing on S.B. 71 (1st Reprint). I will open the hearing on Senate Bill 95 (1st Reprint). Welcome Senator Ohrenschall, Ms. Warren, and Mr. Kim to the Assembly Committee on Judiciary. We are looking forward to a very compelling presentation.

Senate Bill 95 (1st Reprint): Revises provisions relating to business entities. (BDR 7-493)

Senator James Ohrenschall, Senate District No. 21:

If you thought unclaimed property was exciting, get ready for "bizz orgs" because you have not seen anything yet. Senate Bill 95 (1st Reprint) is actually a pretty exciting bill, even though you might not think so. If passed, it will help Nevada become more competitive in terms of attracting business to our state; more modern in terms of what is in our statutes; and keep up with Delaware, South Dakota, and Wyoming, which tried to modernize their statutes to attract businesses and be business-friendly in light of modern developments and technology.

Chairman Yeager, with your permission, I would like to turn it over to some knowledgeable experts in the area of business law who have helped me work on this legislation. Before I do that, I want to point the Committee to a mock-up amendment [[Exhibit C](#)] that is on Nevada Electronic Legislative Information System (NELIS). We did amend this bill in the Senate to try to work with different stakeholders. There is a proposed amendment [[Exhibit D](#)] on NELIS which has a very small change I proposed to section 22.5, which represents consensus language, working with the Nevada Registered Agent Association, that I believe makes the bill better and addresses some concerns they had. I do ask Committee members to look at that mock-up.

With your permission, if I could turn it over to Mackenzie Warren and Robert Kim of the State Bar of Nevada Business Law Section, whom I have been working with on this legislation, and then I am happy to answer any questions.

Chairman Yeager:

Thank you so much, Senator Ohrenschall. Ms. Warren and Mr. Kim, welcome to the Committee and please go ahead.

Mackenzie Warren, representing Business Law Section, State Bar of Nevada:

I have to give Senator Ohrenschall a big shout-out. Last fall when I was hunting for a bill sponsor, Senator Ohrenschall perhaps made the mistake of saying that "geeky and wonky" was his middle name, and I said, I have got the bill for you. I am starting to see a theme this morning in how we have stacked these bills. Truly, as you heard the sponsor say, this is a highly technical area of law, but it is important. We want Nevada to be cutting edge, we want to stay competitive, and these are highly vetted changes.

Just a bit of backstory on the Business Law Section executive committee. This is comprised of practitioners from all across the state who work on these statutes and encounter scenarios

in their everyday practice and come up with little tweaks that we can be doing to make sure that our laws are predictable, that we are creating default rules that create a really good baseline in the instance where governing documents may not exist or perhaps they are silent on a certain point. It really protects business entities, from a limited liability company (LLC) all the way to some publicly traded corporation issues.

Especially of note and very relatable to this Committee and really the entire legislative body, is meeting virtually. There is a quirk in *Nevada Revised Statutes* (NRS) that we wanted to change to make sure that when, in fact, stockholder meetings are noticed and are held virtually, that people cannot get cute with the statutes. That is just one of the highlights. Luckily, I am not in the hot seat this morning, nor am I the big brain on this bill. There is a memorandum [[Exhibit E](#)] on NELIS that breaks the bill down section by section. We were grateful to be able to meet with many of the Committee members yesterday to walk you through it. It is also available for the public, and Robert Kim will be taking us through the bill section by section.

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

I appreciate the time given to us for this bill and appreciate Senator Ohrenschall for his sponsorship. I plan to go through the bill and the memorandum [[Exhibit E](#)] so that you can have a small taste of the different things that we have put together. Unfortunately, in my years of knowing State Treasurer Conine, I have realized there is no sense in competing with his humor and just to basically laugh with him. I do not have anything prepared as he did with respect to Pokémon references.

Generally speaking, the bill is a product of input from various practitioners on the executive committee as well as those members of our bar who have provided us with feedback, suggestions, and other concerns about our statute. What we try to do is take those into consideration and take into account the quirky things we find, corrections, some typos in a way, and also recognize different trends that we see in corporate jurisprudence throughout different jurisdictions, namely trends in the Model Business Corporation Act or trends in Delaware. What I would like to do is quickly run through the memorandum [[Exhibit E](#)] provided that tracks S.B. 95 (R1) where we reference the relevant section, the impacted NRS section, and a short statement as to what it is that we are trying to accomplish.

The first item is meant to be a cleanup item related to NRS 75.160, where we merely shift the burden of providing notice to management who do not reside in Nevada but are parties to lawsuits, from the clerk of the court to the actual serving party, just to make sure that there is no latent defect in terms of service of process of those individuals who have elected to use our state's laws but happen to not reside in Nevada but yet are necessary parties to litigation. I do not think it is controversial; it is just meant to make sure there is no gap, and to alleviate the clerk of the court from that burden and shift it on to the moving party in the first place.

The next item covers sections 2, 3, 7, 8, and 38 of S.B. 95 (R1) and relates to various sections in the corporate statute, NRS Chapter 78. What we have done here is merely take the

existing definition of "publicly traded corporation" and moved that forward into the definitions section instead of having it tucked away in one of the anti-takeover sections of our corporate statute. Again, there has not been any substantive change; we are just moving it forward so that it is easier to locate. This is a nod to the fact that publicly traded corporations are more prevalent, more people are comfortable with them, more people invest in them, and more people have relationships with publicly traded corporations, so we just found it appropriate to move it forward so it is easier to locate.

Section 4 relates to NRS 78.046. It allows a corporation in its bylaws to require that matters of certain federal jurisdiction or federal law be heard in specific federal courts. This is somewhat analogous to our successful attempt to introduce state forum selection provisions that allowed a corporation in its bylaws to designate a Nevada state court as the exclusive jurisdiction for matters that relate to the internal governance of a Nevada corporation. Again, there are policy reasons why we wanted that to be the case. We want our state courts to listen to and adjudicate matters relating to Nevada state law. This section would allow, not require, a corporation to require jurisdiction on certain federal law matters to be heard in federal law.

Section 5 merely seeks to clarify that Nevada in its state as a multi-constituency state where the board is permitted to consider a wide range of factors—not just the interests of the stockholders—when in doing so is allowed to take into consideration the list of items contained in NRS 78.138 but is not limited to. We are clarifying that that is not a preclusive list; it is merely an exemplary list and that the board has the discretion to consider other factors just as much as those that are listed.

Sections 6, 9, and 10 of the bill deal with distributions to stakeholders. We thought it was appropriate to clarify, make a distinction, and recognize the fact that a corporation has more than just one class of stock. There is a general reference that distribution shall be made to stockholders of the corporation, when in reality most folks are accustomed to corporations having common stock, preferred stock, Series A, B, or C stock, and all those different classes or series have unique and preferential rights to a variety of things, including distributions. Our revisions to sections 6, 9, and 10 merely are reflective of the current practice of corporations to allow distributions of different classes or series, and that is the goal of our revisions here: to acknowledge the current practice and update the language that is currently in effect.

Sections 11 and 14 relate to virtual stockholder meetings, but it is not as though those were not permitted already. In prior sessions, it was made clear that a corporation can hold a meeting virtually, exclusively so. During the last 12 to 15 months, there has been a distinct transition with respect to stockholder meetings and the way they have been conducted. That being said, as people were working through the realities of having stockholder meetings remotely instead of in person, there is certain language, terms, and phrases that did not quite work. We wanted to make sure that the context was appropriate such that the different requirements that related to notice to stockholders properly accommodate the fact that meetings can be held virtually on an exclusive basis.

Sections 12 and 14 relate to stockholder meetings and provide clarification as to record date statements and distribution of additional information related to notices, meetings, and adjournments.

Section 13 relates to the voting agreements in NRS 78.365. If you look at the title of NRS 78.365, it is actually titled "Voting trusts," but the substance of the statute actually relates to voting trusts and voting agreements. The purpose of our amendment is to allow parties to enter into stockholder voting agreements that have a term in excess of 15 years. Currently, to the knowledge of some but to the ignorance of others, there is a hard cap of 15 years on the stockholder voting agreement per statute. We thought it was about time and that there is no need to have such a hard ceiling on that number unless the parties agree otherwise. So what we have done is included language in NRS 78.365 to allow parties, after the transition date, typically October 1 of this year, to extend past that and amend their agreements so they can provide for a date that makes sense beyond a 15-year term. When voting agreements do come up, it is common that people are not aware of the 15-year limitation on its duration and we hope to provide a framework for people to extend and revise that date if they need to.

Section 14.5 is merely a clarification item. There is a 10 percent threshold for making motions or petitioning the court to appoint a receiver or trustee, we wanted to include the words, "at least" 10 percent so that it reads a little better than it currently does.

Section 15 is not a substantive change—it adds "as a manager of a limited-liability company," as a capacity that an agent of the corporation can serve in and still benefit from the indemnification provisions of a corporation and serve on its behalf.

Section 16 was submitted at the request of our Real Property Section because it related to NRS 81.430. We agreed to include this as part of our bill, but it does touch upon certain corporations and associations under NRS Chapter 116, and the only true change we are trying to make is to exempt the membership certification requirement of certain associations and corporations under NRS Chapter 116 from that requirement. The reality is many of these associations do not actually issue paper certificates or have any other physical manifestation of membership, and thus it was appropriate to exempt those from that requirement so there is no latent defect in terms of how they are operating or any claim that they could be operating improperly. We thought that was relatively unobjectionable and appropriate to recognize the common practice.

The next area of the bill is relatively significant. It covers sections 17 to 27 and covers the concepts of distributions and voting rights and relative rights of members in limited liability companies. These changes were prompted by the changes we made in NRS Chapter 78 as it related to distributions. We thought, Let us take a look at how NRS Chapter 86 handles it, and we realized there is no definition for distributions in NRS Chapter 86. In doing so, we also noted that the relative rights of members in NRS Chapter 86 was a function of essentially two things: one's contributions and one's rights to shares of profits in the LLC. We thought it was appropriate to add a definition for distributions and to actually not have

varying default rules as it relates to how you determine the rights of members. We went with the contribution concept as being the default rule for members in determining their relative rights rather than their rights to profits.

In our revisions, section 18 is where we set forth the default rule in terms of determining the rights of members with respect to their interests. An interest is a function of their contributions to the capital of the limited liability company. When reading that, one would think that references only cash contributions, not other contributions, but NRS 86.321 is very clear that one's contributions to the capital of the company include cash, property, services, and a wide range of items not limited to cash. Obviously on the Senate side, we amended the bill to include section 22.5 which made clear that that definition applies throughout the chapter and again, as Senator Ohrenschall mentioned, section 22.5 will be further amended [\[Exhibit D\]](#) to make absolutely clear that any contributions to the capital of an LLC include both tangible and intangible property that is contributed by a member. It is a very clear statement that the contribution to LLCs is very broad and it is not limited to cash or other tangible property, or related to any benefit and any intangible rights as well that can be contributed by members.

Section 19 talks about distributions and basically tries to set a baseline standard as to what distributions are, which are transfers of property to the members in accordance with their interests. But again, like many portions of NRS Chapter 86, the parties can and often do enter into their own agreements and their own standards with respect to distributions and other rights vis-à-vis members and the LLC itself.

Sections 28 to 31 and section 37 of S.B. 95 (R1) relate to dissenter's rights. In the context of transactions, where the votes are being solicited or obtained via written consent versus a noticed meeting—which is consistent with the methods of approving transactions under NRS Title 7—in the written consent context, the parties to the transaction have the ability to reach out, obtain advance notice, so to speak, of those stockholders that have the intention of exercising their dissenter's rights. We thought this would be an appropriate and useful function because it helps the parties quantify the costs of a deal. Many times transactions that are subject to dissenter's rights and the ultimate valuation of those shares underlying the dissenter's rights, they usually have limitations on how many shares can be properly perfected to have those rights: maybe 5 percent or 10 percent at most. What this does is allow the parties to assess the extent and scope of that post-closing obligation liability and provide more deal certainty and ability for the parties to go forward—we think more so than before.

Sections 32 and 35 are minor cleanup revisions to the references to "domestic corporation" and "publicly traded corporation" in the context of a dissenter's rights. All it does is help streamline and define terms being used.

Sections 33 and 34 pick up on the changes we made in NRS Chapter 86 as it relates to the relative rights of members of an LLC being based on their interests. We have carried those

forward with respect to the default voting requirements for limited partnerships and limited liability companies under NRS Chapter 92A as it relates to statutory business combinations.

Section 36 relates to notification of rights to dissent. We just wanted to make sure that the statute was clear as to what event actually triggers the time frame for a notice of dissent to be sent to stockholders. There was some ambiguity as to when exactly, so we thought it was appropriate to make that change in section 36 of S.B. 95 (R1).

That concludes my presentation of the bill, and I am happy to answer any questions that the Committee may have. Thank you for allowing me to present this on behalf of the State Bar of Nevada Business Law Section.

Chairman Yeager:

Mr. Kim, thank you for your presentation and for walking us through the bill. Thank you, Senator Ohrenschall and Ms. Warren. Back when I chaired this Committee for the first time in 2017, I relied heavily on former Assemblyman Elliot T. Anderson, who was our business law expert. I could always count on him to have several questions on a bill like this. Unfortunately, he is not here with us. In 2019, we had former Assemblywoman Shea Backus, who often had a number of questions on a bill like this. I just wanted to acknowledge both of them publicly and to tell them that we certainly miss them here at the Legislature, and I miss having them on the Assembly Committee on Judiciary. Are there any questions from the Committee?

Assemblywoman Cohen:

With regard to section 4 regarding the federal forum selection, does this affect, on the ground, the rights of Nevadans as they are dealing with corporations?

Robert Kim:

Section 4 is merely meant to provide the corporation with some predictability as to where certain claims can be heard. I guess going forward, once adopted, it would change the venue to say that a corporation elected to require certain matters relating to federal jurisdiction to be heard in certain delineated federal courts as provided for in the bylaws as the corporation is allowed to do so. This idea of tying jurisdiction to federal matters was developing, as was the state court or the internal affairs kind of doctrine, and tying that to state court as well. Those were developing somewhat concurrently, but as a committee we thought it was appropriate to go forward with the internal affairs state court concept first, and then wait to see how courts had viewed this particular construct. In the last year, based on some recent Delaware Court of Chancery decisions, it was made relatively clear that this construct was permissible and within the discretion of the board to do so. We thought it was appropriate to at least give Nevada corporations the option to include that in their bylaws. What it is meant to do is to take courts with subject matter experience in federal matters and have those subject matters be heard in those courts versus having matters filed in the wrong court where the parties would have to either face motions to remove or have other venue changes along the way. Our goal is just to make sure that the right courts are hearing the right matters, or at least have the ability to, if the corporation deems it appropriate to do so.

Assemblywoman Cohen:

What I want to know on a very basic level is this: if our constituents are in a lawsuit with a corporation, how does this change affect getting it to the right court first, or does this affect which court they go to and whether or not they have a say in that, or is it just the corporation that has a say in that?

Robert Kim:

If the corporation were to take advantage of the statute, then they could merely indicate the court that the federal actions would need to be filed in. The plaintiff, a stockholder, would then be required to file that action in that federal court versus in state court. That would be the change that would affect a stockholder as it relates to this provision. It would merely advise the stockholder of which court that action would need to be filed in.

Assemblywoman Summers-Armstrong:

The expansion of indemnity to the managers of the organization as laid out in section 34, could you explain why this was expanded? Generally, it is more the executive directors, and I just found this curious as to why it is being expanded.

Robert Kim:

I am looking at section 15 of S.B. 95 (R1) relating to NRS 78.7502. What this is meant to do is to acknowledge the fact that you might serve as an officer, director, or representative of the corporation, but you also might serve as an appointed board member or an appointed manager of a subsidiary or of an investment in the LLC downstream. All we were trying to do is acknowledge the fact that corporations own a lot of LLCs, and usually that is their subsidiary of choice, in a way. We are covering the capacity of an officer or director of a corporation who has been asked to serve as a manager of a limited liability company on behalf of the corporation, and that this capacity be specifically set forth in NRS 78.7502.

Assemblywoman Summers-Armstrong:

This is not my area, but at first blush it seems to give an unfair advantage to someone if they hold multiple roles—then they can possibly be a bad actor and have all kinds of indemnity. I think that is just a little bit of a concern, so if you could speak to that.

Robert Kim:

I would respond to that concern in two ways. First, even without including this reference, a corporation has the discretion to indemnify its representatives and agents in various capacities that the person is being asked to serve. But I think more importantly, the standard of indemnification does not change just because they serve in different roles. The standard of indemnification, number one, is discretionary on behalf of the corporation. If it decides to indemnify someone, to be entitled to that indemnification, that person generally needs to be taking actions that are in the best interests of the corporation and taking actions that are believed to be in good faith. The mere expansion of the roles that are permitted to be indemnified I do not think increases the ability of a person to be a bad actor.

Second, regardless of how many roles one has and whatever hats and colors, shapes, and sizes those hats may be, that person is still held to the same standard that they need to act in good faith and in the best interest of the corporation regardless of what it is they are doing. That baseline shall always be the case and that is part of our statute and would be unaffected by what we are proposing today.

Chairman Yeager:

In section 13, which talks about the stockholder essentially entering into a voting agreement—and right now 15 years is the cap—I understand what you are trying to do in the bill. I just wondered if you could give us a sense of why a stockholder would want to enter into an agreement for that long of a time period—if you have some examples. Is it a matter of convenience? I am wondering why it would not be more typical for a stockholder to have a shorter agreement that could just be renewed on a regular basis?

Robert Kim:

A few members of our committee have dealt with this issue and have dealt with parties being unaware of the 15-year ceiling or limitation on the term. Even if there were built-in provisions that permitted extension, if you read the statute it really does not accommodate the will of the parties to go beyond the 15 years. What we are trying to do is, retaining the 15-year concept, not trying to change the rules necessarily on individuals, but once this is effective, the parties can then go back and amend their voting agreements to provide for and take advantage of the fact that terms can be longer. Fifteen years does seem like quite a long period of time, but there have been cases where that time frame has already been past and people have disputes and are unaware that these agreements are no longer effective, and at that point it is a bit of a mess because then people are now only relying on principles of equity, reliance, and other items to really establish their rights and resolve their disputes. I think it is appropriate just to make clear that parties can enter into agreements that have a longer term.

Chairman Yeager:

With regard to the amendment [\[Exhibit D\]](#) presented by Senator Ohrenschall, could you tell us what the concern was that prompted the amendment and how the amendment addresses that concern?

Robert Kim:

Whenever you make changes to default rules or expectations of what people believe are the rules, there are a lot of questions and concerns, and obviously people want to make sure the best intentions do not yield unfortunate results. There are many questions that we receive related to what is the contribution of a person to the capital of an LLC. What is that concept? It sounds like it is just money. It sounds like it is something tangible, as I mentioned in our presentation. In cross-referencing NRS 86.321, our first attempt to clarify the situation was to say that, for the purposes of this chapter, for example, NRS Chapter 86 in its entirety, the contribution to the capital of the LLC is this definition, which is very broad. I will make reference to the way it was originally drafted and then make reference to the amendment.

I think the amendment is a further reiteration of the concern and a further clarification of the intent. Initially, NRS 86.321 referenced contributions to capital of an LLC as consisting of property or services or a promissory note or other obligation to contribute cash, property, or services. In response to some concerns about does that really capture everything, we did look to NRS Chapter 87A, which references contribution to the capital of a limited partnership. In that section, it had its own description of what contributions to the capital were, and we thought on balance, just to make sure that there was no confusion, that we would pick this definition and adopt it in NRS Chapter 86. Now the definition as amended by the proposed amendment [[Exhibit D](#)] to section 22.5 says:

A contribution to capital of a member to a limited-liability company or series may consist of tangible or intangible property or other benefit to the limited-liability company or series, including, without limitation, money, real or personal property, services performed, or a promissory note or other binding obligation to contribute cash or property or to perform services.

I think in the end we have come to, through this amendment to section 22.5, a very clear unequivocal, broad statement as to what it is a member's contribution to the capital of an LLC can be. It is not our intent to not—by statute, at least—recognize the wide range of contributions that can be made, whether it is cash, an idea, contacts, or someone's credit rating, as was discussed yesterday with a member of the Committee. It is meant to just be as broad as possible because every contribution has value and should be recognized.

Chairman Yeager:

Are there additional questions from the Committee? [There were none.] Is there anyone who would like to testify in support?

Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber:

We appreciate the work that has been done by the bill's sponsor and the Business Law Section of the Nevada State Bar. The Chamber supports S.B. 95 (R1). As you heard, it provides greater clarification, predictability, conforming changes, and modernization as it relates to Nevada's businesses. These proposed changes will allow Nevada to remain competitive with other states such as Delaware.

Kenneth Evans, President, Urban Chamber of Commerce, Las Vegas, Nevada:

We are pleased to be testifying in support of Senate Bill 95 (R1) this morning. I also want to recognize the bill's sponsor, especially the Business Law Section, for reaching out to the Urban Chamber of Commerce the last few sessions in order to make sure that we could participate and support legislation like this that keeps Nevada current and makes sure that our state remains one of the most attractive places to do business. Most importantly, we do have several of our members that often use LLCs in order to get structured, so we are glad that we continue to improve the ability to state the rules in a manner that provides predictability as far as their governing documents are concerned. Thank you very much, Chairman Yeager and Committee, and we ask for your support for S.B. 95 (R1).

Peter Guzman, President, Latin Chamber of Commerce, Las Vegas, Nevada:

I am testifying in support of S.B. 95 (R1), and I would like to thank Senator Ohrenschall and the Business Law Section of the Nevada State Bar for including the Latin Chamber of Commerce on this bill for the last few sessions. It has been a brutal year for so many Nevada businesses, including some of my very own members, but S.B. 95 (R1) ensures that Nevada does not stop innovating. Senate Bill 95 (1st Reprint) gives additional clarity for LLCs in particular, which is the most common and popular business entity amongst members. Senate Bill 95 (1st Reprint) also provides assurance that in this virtual world, companies are not caught up in legal technicalities when meeting virtually. Anytime we can keep business out of court for needless reasons promotes efficiency and prosperity. For me, plain and simple, this is a pro-business piece of legislation and the Latin Chamber of Commerce is always happy to support pro-business legislation. That is why we are happy to support S.B. 95 (R1).

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

The Las Vegas Asian Chamber of Commerce is happy to come to the virtual table in support of Senate Bill 95 (1st Reprint). I would like to recognize the Business Law Section for taking the time to brief the Asian Chamber of Commerce on this bill as they have in the past few sessions. Senate Bill 95 (1st Reprint) helps maintain Nevada's position as one of the most pro-business states in the nation. During these tough economic times, it is more important than ever to stay current and competitive with other states. Many of our members use LLCs, and S.B. 95 (R1) gives owners and managers better understanding when the LLC governing documents are silent or when the LLC has no operating agreement. The Asian Chamber of Commerce would urge your support on S.B. 95 (R1).

Chairman Yeager:

Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position?

Tonja Brown, Private Citizen, Carson City, Nevada:

I was not going to speak on this, but the subject of bad acts and good faith comes to mind. I just want to give you a brief history of what happened in our situation. My mother passed away in 2011. Several years later I received a letter. I thought it was junk mail because it was just a letter with an address from Las Vegas addressed to me. You would get that in the mail, and it is just junk mail. For some reason I did not throw it away; I opened it up. I was being sued by an attorney on behalf of a bank corporation out of state over some property that we owned. It goes back to 2000. My mother and I owned some property together. She had taken a reverse mortgage out on the property and then she got sick, and Medicaid got involved, which is federal in the state. My name had to come off the title. The transaction did not get completed and we had no idea until I received that letter. Turns out that I still owned part of the property, so I was being sued by the bank. I might not have responded to this letter; I was not served by law enforcement. It was just a letter saying that they had taken legal action and I had to respond. I contacted the attorneys in Las Vegas who were

representing the bank. Ultimately, I had to file in court in Lyon County. I wound up having to sue the title company and they were suing me. Ultimately, we came to some decisions.

I know this does not really have too much to do with that, but I think when you are dealing with bad acts and good faith, the corporations, when they are hiring attorneys to look into this and you are being sued, they need to do it properly, not send a letter with not stating they are an attorney, because if I had not responded, it would have ruined my credit and it would have gone against me. Ultimately, they ruled that I did own the property, but I would have lost it all. I just wanted to say that in neutral, whether it has anything to do with it, but I think the corporations need to know who they are dealing with and make sure that it is done properly.

Chairman Yeager:

Is there anyone else who would like to testify in the neutral position?

Keith P. Bishop, Attorney, Allen Matkins, Irvine, California:

I have been writing and following Nevada business entity law for about 30 years. I wanted to provide some comments on section 4 of the bill, which would amend NRS 78.046. This deals with forum selection provisions in either the articles or bylaws. The bill would allow the articles or bylaws to require that actions brought by the corporation or against the officers or directors of corporations to be only brought in specified courts in cases of what is known as "concurrent jurisdiction." Concurrent jurisdiction is when a case could be brought in either federal or state court. Perhaps the most prominent example of that is the federal Securities Act of 1933, which provides that lawsuits involving the public offering of securities may be brought in either federal or state court. When people buy in IPOs or in registered public offerings, they have a right to bring claims in either federal or state court. That has led some plaintiffs to forum shop. They may prefer to be in one court or the other. This bill would allow the bylaws or the articles to require that those kinds of actions be brought in a specified court.

My concern with the bill is that it does not just bind stockholders—people who have actually purchased shares in the corporation—it would also extend to people who are merely offered shares. If I were walking down the street and I offered shares and you are then an offeree, seemingly, you would be bound by the articles or bylaws of a corporation that you are not even yet a stockholder of. It would also apply to subscribers—again, these are people who have agreed to buy shares but have not actually become shareholders yet. I think that is problematical.

Another problem with this provision is that it would seemingly allow people . . .

Chairman Yeager:

Mr. Bishop, if I could interject for just a moment. If you are expressing concerns about the bill, I am going to characterize your testimony as opposition rather than neutral. Neutral is if you really have no position on the bill. I will do that at this time, and we are over your two minutes. I would just ask if you could please wrap up your comments.

Keith Bishop:

Okay. Just to be clear, I am not against the policy of the bill or the bill itself. But I do have some technical comments and that is why I thought it appropriate to characterize my position as neutral. At any rate, I just want to point out that the bill would seemingly require stockholders who are bringing lawsuits totally unrelated to the corporation against officers or directors to be bringing those suits in the forum specified in the articles, which seems a bit quirky to me. Thank you for your time.

Chairman Yeager:

Is there anyone else who would like to testify in the neutral position? [There was no one.] Before I close neutral testimony, I will note for the Committee that there is a statement from the Office of the Secretary of State on NELIS that is formally neutral on the bill [\[Exhibit F\]](#). I will hand it over to our presenters to make any concluding remarks on S.B. 95 (R1).

Senator Ohrenschall:

Thank you, Committee, for your close attention to S.B. 95 (R1). I believe S.B. 95 (R1), if passed, would help business development here in Nevada and help us be competitive with other states. I certainly want to thank Mr. Kim and Mr. Albert Kovacs of the State Bar of Nevada Business Law Section, and Ms. Warren for reaching out to so many stakeholders trying to work on different issues and get the bill to this point. I want to thank Mr. Anthony and Mr. Wilkinson of the Legislative Counsel Bureau, Legal Division, for their help in getting us a mock-up so quickly that the Committee could look at. I appreciate the Committee's time.

Mackenzie Warren:

We echo what Senator Ohrenschall said. This is a session unlike any other. It is highly technical, and this bill is complex. The Legislative Counsel Bureau helped us get it right.

Robert Kim:

I want to echo thanks to Senator Ohrenschall for sponsorship of the bill and the attention and time taken by the Committee on this bill in particular. To note for the record, we have worked with Mr. Bishop in the past, and I am happy to have additional conversations with him as well on the items noted. Obviously, he has looked at Nevada laws for quite a while, as he stated, and so we look to speak with Mr. Bishop in the ordinary course and productive manner to make our laws in Nevada the best that we can make them. I look forward to future conversations and to the actions to be taken by the Committee.

Chairman Yeager:

Thank you to the three of you. Senator Ohrenschall, I am sure we will be seeing you back in Assembly Committee on Judiciary again soon.

Senator Ohrenschall:

I hope so. Thank you very much. It is always a pleasure to be before this Committee.

Chairman Yeager:

I will close the hearing on Senate Bill 95 (1st Reprint) and open the hearing on Senate Bill 41 (1st Reprint).

Senate Bill 41 (1st Reprint): Revises provisions relating to orders authorizing the installation and use of a pen register or trap and trace device. (BDR 14-412)

Jessica Adair, Chief of Staff, Office of the Attorney General:

With the Chairman's permission, I would like to turn the virtual microphone over to Special Assistant Attorney General Theresa Haar to present Senate Bill 41 (1st Reprint).

Chairman Yeager:

Welcome, Ms. Haar. I know we have spoken on the phone before, but I do not know that we have ever met in person, so it is nice to meet you, virtually at least. Welcome to the Committee, and please go ahead with the presentation.

Theresa Haar, Special Assistant Attorney General, Office of the Attorney General:

As a preliminary note, the amended language in this bill has been arrived on after meetings with a number of stakeholders including the Nevada Sheriffs' and Chiefs' Association, American Civil Liberties Union of Nevada, Clark County Public Defender's Office, Nevada District Attorneys Association, Nevada Attorneys for Criminal Justice, Nevada Police Union, and Nevada Association of Public Safety Officers. We appreciate collaboration with those groups on a number of the Attorney General's bills. I just wanted to note our appreciation for that first.

Under existing law in *Nevada Revised Statutes* (NRS) 179.530, district courts in Nevada have jurisdiction to issue orders authorizing use of pen registers and trap and trace devices. By way of background, a pen register identifies all phone numbers that have been dialed outgoing by a telephone, and a trap and trace device identifies all incoming phone numbers dialed by a telephone. A pen register and trap and trace device do not record the contents of any communications in that device. This proposed bill makes a few changes to the mechanics of the application but not to the contents of the application or to the scope of any information available to be obtained through the use of a pen register or a trap and trace device.

Under current law, district courts issue the orders upon application by a member of the district attorney's office or a member of the Office of the Attorney General based on an affidavit from a peace officer. This proposed bill seeks to include in the definition of peace officer federal officers who are members of task forces with state and local law enforcement officers. This bill would also allow either the member of the district attorney's office or the Attorney General's Office with the supporting affidavit from a peace officer, or the peace officer himself, to apply for the court order allowing for the installation of the pen register and trap and trace device.

The proposed bill also seeks to bring the mechanism for submitting an affidavit into the modern world by allowing for electronic submission for the supporting affidavit and application. As we have seen over the past year, a need for an electronic submission is very helpful when courts are physically closed. Under current law there is no specification as to whether electronic submission is permissible, and it really varies from court to court. This will make for a consistent process statewide and will also be similar to the secure electronic transmission provision as it currently pertains to submission of search warrant applications.

Lastly, this proposed bill eliminates the date specified for the federal statute that is incorporated by reference as the federal statute gets updated from time-to-time; that way we do not need to come back here and request updates to the statute every time the federal provision changes.

Before I close, I want to thank the Committee for your time here, and I welcome all questions.

Chairman Yeager:

I wanted to ask a quick clarifying question. You addressed this at the beginning, but I will be candid and say my mind was elsewhere for a moment. You talked about a pen register and a trap and trace device, and I know those are defined federally under the *United States Code* (USC). But I wanted to confirm that the pen register simply captures the numbers that are dialed out from a phone and the trap and trace device records the numbers that are calling in to a phone. Did I get that right?

Theresa Haar:

Yes, that is a correct generalization. With your indulgence, under *United States Code*, Title 18, § 3127, which is the federal definitions, we have incorporated those by reference into this new provision. A pen register is a device or process that records dialing, routing, addressing or signaling information; however, it does not include any contents of the communication and does not include any device or process used by a provider for billing. Similarly, a trap and trace device is incoming information as opposed to outgoing, but again, does not contain the contents of any of those communications.

Chairman Yeager:

Thank you for that explanation. As a follow-up—and I certainly do not want you to reveal any information you are not at liberty to reveal—can you give me an example of an investigation that would benefit from the use of a pen register or a trap and trace device? I understand you need to get a warrant for it, but I think maybe it would help the Committee if you could just give an example or two of when a warrant like this might be sought and what the context would be.

Theresa Haar:

Under the federal provision, the standard for the use of pen registers and trap and trace devices, most commonly, is it has to be related to an ongoing criminal investigation. We are simply looking for communications between two individuals, and part of why this is

incredibly helpful is once we look at the entirely separate heightened wiretap application standard, you have to demonstrate that you have done all of your due diligence in less intrusive and less invasive means. That usually includes pen registers and trap and trace devices. This will allow if you have someone that you suspect has committed a crime, you can look at their communications with other individuals, which, based on the phone number of whom they are regularly communicating with, might give you more information as to who else may have been involved based on the information that you are obtaining during your ongoing criminal investigation.

Jessica Adair:

Ms. Haar did an excellent job explaining the federal definitions of pen registers and trap and trace and how they are commonly used. To answer your question, I wanted to give you a hypothetical. One of the criminal acts under our jurisdiction in the Attorney General's Office is insurance fraud. Commonly we see what are staged accidents. Someone conspires with another person to have a car accident and then bills the insurance company for damage to that vehicle. If we suspect that a car accident is in fact a staged accident for the purposes of insurance fraud and have reason to believe from other facts and circumstances that the two drivers of these vehicles are working together; and when we interview these people, they say, I have never met this person before in my life—I am just driving my vehicle and they hit me; we might, based upon these other facts and circumstances, put in an affidavit and apply to the court to have a pen register or a trap and device tell us if these people are calling each other and planning this accident. It also shows us that in this interview, when we have asked them, Do you know this person, and they said, No, I do not know this person at all, that they are lying to us. That helps us in our investigation of this staged accident. Do we know what they have discussed on the phone? No. The pen register and trap and trace device, as Theresa Haar stated, do not tell us the contents of a communication. It is just like looking at your phone and being able to see the calls you have dialed and the calls you have received—those phone numbers and the number of minutes that the calls took—that is the only information that we can see from these devices. Thank you for that question. It is a very important clarification because I want to make sure that the Committee understands that what we are seeking to do here has nothing to do with a wiretap.

Chairman Yeager:

Thank you for that example. I think that was helpful. Are there any questions from the Committee?

Assemblywoman Summers-Armstrong:

I see that you have added that the peace officer can directly ask for this. Could you please expound on why? The example that you just gave seems to indicate it is when you are doing something coordinated, when your office is doing something, or when there is a federal coordinated investigation. I am concerned about a peace officer, of their own volition, going forward and asking for a warrant. I would like to know why you added this.

Theresa Haar:

As a preliminary note, under NRS Chapter 179 as it pertains to search warrants, law enforcement officers are permitted to apply directly for their own search warrants. They do not have to rely on their attorney. It is only once you get into the wiretap application that the attorney is required to submit the application. We are looking to make this in conformance, generally, with the warrant application. Beyond that, under the federal provision it states expressly that, under 18 USC § 3122, state law enforcement officers are permitted to make direct applications, not going through their attorney, as long as state law does not expressly prohibit it. We wanted the opportunity to clarify that our state law does not expressly prohibit that.

Assemblywoman Summers-Armstrong:

Would you please slowly restate the NRS to which you referred?

Theresa Haar:

It is in NRS Chapter 179 in the warrant provision. The law enforcement officers can make direct application for the warrants themselves.

Jessica Adair:

Assemblywoman Summers-Armstrong, we will be happy to send you that exact citation at the conclusion of this hearing.

Chairman Yeager:

Are there any additional questions from the Committee?

Assemblywoman Cohen:

I have a question on civil immunity in section 1, subsection 5, for a public utility that relies, in good faith, upon an order authorizing the installation and use of the pen register and the trap. I get why we need utilities to have some sort of immunity when they are relying on what they have been provided. How do they physically get the trap into the system? I guess what I am getting at is, they are not walking onto someone's property where they could possibly break something, and then they have immunity and they have destroyed someone's yard. Is it all done from their facilities?

Theresa Haar:

I do want to note that the new section 5 regarding public utilities is currently in the statute. It was previously section 3 down below; it was just moved into that section. But that is correct. Generally speaking, cell phone providers and utility companies rely on the pen register and trap and trace installation at their own facilities. They are not generally going onto people's private property to install anything.

Assemblywoman Krasner:

I was looking at section 1, subsection 5, of the bill, and was just wondering why public utilities are included there.

Theresa Haar:

Again, that section was already in the statute, preexisting. The public utilities are mentioned just as a phone company would be a utility company that would be included in this, but that section was preexisting in the statute. It was only moved.

Assemblywoman Krasner:

Say it is a public utility such as the electric company and they are trying to see if somebody has a grow house, and so they are monitoring their activity of electricity used but they are not finding any. How long would that trap and trace or pen device, whichever applies here, stay in place? Is it a reasonable time, like a month, two months, or three months, or is it, we just suspect that house and we are going to leave that on there for a year? How do you determine that?

Theresa Haar:

If a pen register or a trap and trace device is being put into place by a phone company to determine this, it is for a fairly short period of time. There is a provision under the statute and, consistent with the federal statute, that allows them to reapply for it if they need additional time. But the time specified will be in the order.

Chairman Yeager:

Are there any additional questions from the Committee?

Assemblyman O'Neill:

Ms. Adair, would it be fair to say one of the reasons why officers are allowed to go directly to the district court with a sworn affidavit is because of exigent circumstances—being 2 a.m., to go to a district attorney, find the district attorney—that could delay that action, and that would be one reason of good cause for that, and it is a sworn affidavit before the judge? It is not just a freedom to act, but that is why the officers are included in this.

Jessica Adair:

Yes, Assemblyman O'Neill, you are exactly right. I want to be absolutely clear. This application is to a court and a judge has to make a determination that there are enough facts and circumstances that have been provided under penalty of perjury to justify a pen register or a trap and device. The judge would also issue the time limit for how long that device would be allowed to be used by a phone company.

I want to speak very quickly about why we included the direct application. To your point, it has to do with efficiency, but also the level of privacy that is involved with a pen register or a trap and trace device and the warrant itself. When you are talking about a search warrant, and a peace officer entering your residence and going through your property, your level of privacy is very high. But to get that warrant, a peace officer can directly apply to a judge and receive that warrant. They do not have to go through a district attorney. To get a pen register or a trap and trace device warrant, you have to go through your district attorney and then to the judge. But the privacy interest in just the phone number that you have called or has called you is much lower than your actual property. To us, it did not make sense that

there would be more bureaucracy to get the warrant for a privacy interest that is much lower than a search warrant for your house. That is one of the reasons why we felt like making this consistent with a search warrant just made sense. And to your point, it is also more efficient.

Chairman Yeager:

Are there any additional questions from the Committee? [There were none.] Is there anyone who would like to testify in support?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We are here in support.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

We are in support of S.B. 41 (R1). I want to thank Attorney General Ford, Chief of Staff Adair, and Special Assistant Haar for presenting the bill. Senate Bill 41 (1st Reprint) is a procedural cleanup measure and we are in support.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:

I am here today in support of S.B. 41 (R1). Senate Bill 41 (1st Reprint) extends existing law used to fight crime with pen registers and trap and trace devices by giving the authority to obtain them to federal law enforcement officers who are members of state or local task forces. The bill, as amended, also fortifies the requirement that such devices be obtained by an order of a district court judge in this state. In other words, warrants are necessary; we are not getting away from that. As Ms. Haar stated, we were privileged to work with the Attorney General staff and several other stakeholders to arrive at this good piece of legislation and we urge the Committee's support of S.B. 41 (R1) as amended.

Chairman Yeager:

Is there anyone else who would like to testify in support?

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We are in support of Senate Bill 41 (1st Reprint). We appreciate the Attorney General's Office bringing this important bill today and thank the Committee for considering this bill.

Chairman Yeager:

Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position?

Tonja Brown, Private Citizen, Carson City, Nevada:

Advocates for the Inmates and the Innocent are in neutral. Assemblywoman Krasner touched on why we would be in neutral. Let us say, hypothetically, someone is living in a house and the public utility sees something growing in the backyard. Do they do a thorough and

complete investigation as to who is actually living in the house? It could very well be a person's loved one who may have some illness and they are allowed to grow medical marijuana, but it is not registered because they just moved in. Do they actually check to find out who is doing that other than, they are growing it, so it has to be the owner? And then there is the text messages too, so the phone calls going in and out could very well be the son taking care of the mother, contacting family members, saying she is doing okay, but it could show that maybe they are doing drugs or whatever. We are in neutral on this. I would like some more information on that as well. Do they actually look at who is on medical marijuana, who is living in the home, and those kinds of things?

Chairman Yeager:

Is there anyone else who would like to testify in the neutral position? [There was no one.] Ms. Adair and Ms. Haar, I invite you back for concluding remarks on S.B. 41 (R1).

Jessica Adair:

I wanted to make one very quick clarification. The public utility that is referred to in this bill is only phone companies. The pen register and trap and trace device do not apply to anything other than telephones. The public utilities would not include electricity, gas, or any other utility, only phones. Also, the public utility or phone companies cannot unilaterally install these devices. They only can do so under a court order. With that clarification, I just want to thank you, the Committee, and our many stakeholders who helped us come to the best version of this bill. We appreciate your time.

Chairman Yeager:

Thank you. Ms. Haar, do you have any concluding remarks?

Theresa Haar:

I just want to thank the Committee for your time and consideration this morning. We appreciate it very much.

Chairman Yeager:

Thank you both for presenting. As Chairman, I just want to express my appreciation. I think the bills you have brought forward this session have obviously been worked on before they arrived here at the legislative session and that makes our jobs easier. I really do appreciate the hard work. I know it is not always easy to get all of those people in one room and try to get them to agree, but that work is not unnoticed and certainly appreciated. I will close the hearing on Senate Bill 41 (1st Reprint).

I will open it up for public comment. We do not have anyone on the Zoom for public comment. Would anyone in the room like to provide public comment? Ms. Brown, Mr. Viesca, or Mr. Finseth? There is no public comment in the room, so we will take public comment from the phone.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:

I am the sister of Thomas Purdy, who was murdered by Reno police and Washoe County Sheriff's Office during a mental health crisis. My brother was just one of several men in your state asphyxiated by police. There was also Tashii Brown, Niko Smith, Justin Thompson and [Erik] Scott. There are too many to name and they all deserved justice like George Floyd's family got. Seeing the killer caught, convicted of all three charges, brings a renewed hope to us families, especially our families, who did not even get a review of the murder by the district attorney's office. If anything, I feel like your Attorney General or your Department of Safety, whatever, they need to investigate. I do not know how a federal investigation was never done into Washoe County when 14-plus people died at the jail within two years—people who were waiting for their day in court. Innocent until proven guilty but tried, convicted, and executed by police. Please support bills that promote transparency and accountability. Please do not support bills that further protects police officers. If anything, I think we should repeal *Nevada Revised Statutes* Chapter 289.

Chairman Yeager:

Is there anyone else who would like to make public comment? [There was no one.] Is there anything else from Committee members before we talk about where we go from here? Again, I want to thank you, Committee. I know it has been a long week. We have one day yet left in this work week, so we do have a meeting tomorrow.

Assemblywoman Kasama:

I would just like to thank State Treasurer Conine. I went online to claimitnevada.org and I had property. I encourage everyone to do it. I think it is only enough for a couple of cups of coffee, but it is there.

Chairman Yeager:

Thank you for that comment. I would certainly encourage anyone in the Committee and anyone listening, run yourself on that website, run people you know, because it is a name-based search. You are going to find people who have unclaimed property, and so, if you could let people know it is out there, they just have to go through the process. Please do encourage others to do that.

Assemblyman Wheeler:

I found \$16.

Chairman Yeager:

That will buy a couple dozen donuts down the street, so that sounds good to me.

Assemblywoman Bilbray-Axelrod:

I found \$150.

Assemblywoman Cohen:

My mother found thousands for my grandmother, so people should know to check because it is not just small amounts.

Assemblywoman Nguyen:

I found \$47 just last month.

Chairman Yeager:

It looks like Ms. Brown and Mr. Finseth found some money as well. It looks like Mr. Viesca is the only one who has not yet run his name. Everyone is finding money.

We will be meeting tomorrow at 8 a.m. with three bills on the agenda. As a reminder, Committee, we have floor today, and one of the things I think is going to happen on the floor is we are going to receive a whole lot of Senate bills coming over that will be referred to Assembly Committee on Judiciary. I do not yet know what next week is going to look like, but I will certainly tell you tomorrow what Monday might look like. We are just waiting to see what we get, and we will go from there. Thanks again, everyone, for a very entertaining Committee meeting this morning. We will see you back here in this Committee room at 8 a.m. tomorrow morning.

The meeting is adjourned [at 9:55 a.m.].

RESPECTFULLY SUBMITTED:

Traci Dory
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to Senate Bill 95 (1st Reprint), dated April 21, 2021, submitted by Senator James Ohrenschall, Senate District No. 21, and presented by Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada.

[Exhibit D](#) is a conceptual amendment to Senate Bill 95 (1st Reprint), submitted and presented by Senator James Ohrenschall, Senate District No. 21.

[Exhibit E](#) is a memorandum dated April 22, 2021, submitted by Mackenzie Warren, representing Business Law Section, State Bar of Nevada, and presented by Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada, regarding Senate Bill 95 (1st Reprint).

[Exhibit F](#) is a statement in neutral of Senate Bill 95 (1st Reprint), submitted by Kimberley Perondi, Deputy of Commercial Recordings, Office of the Secretary of State.