

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

**Eighty-Second Session
February 20, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 9 a.m. on Monday, February 20, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda [[Exhibit A](#)], the Attendance Roster [[Exhibit B](#)], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

Assemblywoman Shannon Bilbray-Axelrod (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Duy Nguyen, Assembly District No. 8
Senator Rochelle T. Nguyen, Senate District No. 3
Assemblyman P.K. O'Neill, Assembly District No. 40



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Mackenzie Warren Kay, 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
Chelsea Capurro, representing Urban Chamber of Commerce, Las Vegas, Nevada
Cindy Choi, Vice President, Nevada AAPI Chamber of Commerce
Peter Guzman, President, Latin Chamber of Commerce, Las Vegas, Nevada
Gabriel Di Chiara, Chief Deputy Secretary of State, Office of the Secretary of State
Pamela Del Porto, Executive Director, Nevada Sheriffs' and Chiefs' Association
Vinson Guthreau, Executive Director, Nevada Association of Counties
Richard Hickox, Sheriff, Churchill County
Jerome Tushbant, Undersheriff, Carson City Sheriff's Office
Jesse J. Watts, Sheriff, Eureka County
Adrian Hunt, Police Detective, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Scott Henriod, Sheriff, White Pine County

Chair Miller:

[Roll was called. Committee protocol was explained.] We have two bill presentations this morning. I will open the hearing on Assembly Bill 126.

Assembly Bill 126: Revises provisions governing business entities. (BDR 7-762)

Assemblyman Duy Nguyen, Assembly District No. 8:

I am thrilled to present Assembly Bill 126 to you today as my first bill of my long legislative career—21 days. When the Business Law Section approached me about carrying this piece of legislation, Senator Rochelle Nguyen and I agreed under one condition—they have to walk through the bill because this is a technical one. It is important work by the Business Law Section to keep Nevada's business statutes current and competitive. We appreciate their diligence to ensure Nevada is keeping pace with other states, especially Delaware. You will note several of the bill sections propose concepts that already exist in Delaware. Delaware is often referred to as the "gold standard" in corporate law, and we want Nevada to steal that title. Assembly Bill 126 helps us to get closer to that goal. For example, A.B. 126 proposes efficiencies such as permitting a board of directors to change the name of the corporation without requiring the vote of stockholders—that will make doing business in Nevada a little bit easier. I urge you to support of A.B. 126.

For today's bill presentation, I am joined by Mackenzie Warren Kay, Robert Kim, and Albert Kovacs, the Chair and Vice Chair of the Business Law Section, who will walk you through the bill. First, I will pass to Senator Rochelle Nguyen for her opening statement.

Senator Rochelle T. Nguyen, Senate District No. 3:

I am proud to support this Business Law Section bill and their efforts to keep Nevada business statutes on the cutting edge and as predictable as possible for our business community. It really is a win-win situation for the Nevada business community. I apologize that I will not be able to stay for the remainder of the hearing, but I know that you are in good hands with Assemblyman Nguyen, Mackenzie Warren Kay, Rob Kim, and Albert Kovacs.

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

I like to think of this bill as routine maintenance. The Business Law Section is comprised of practitioners from all over the state. They interface with our business laws, they see how they function, and they find areas of clarity and opportunities where Nevada can be a leader. The goal of A.B. 126 is just to make sure Nevada remains a preeminent place to do business. We like to be business-friendly, and this bill does that. I also want to acknowledge the business chambers. Each session we engage with them, we collaborate with them, and you will be hearing from some of the business chambers this morning. I will hand it over to Mr. Kim to walk you through the technical aspects of the bill.

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

My practice is generally business organizations, corporate transactions, and finance. I am here before you on behalf of the Business Law Section of the State Bar of Nevada to present Assembly Bill 126. When we present this bill to you, although we have the approval of the State Bar of Nevada to present, it is clear that the matters contained in the bill are not necessarily any position or statements from the State Bar of Nevada itself and the recommendations from the executive committee of the Business Law Section. I wanted to make that distinction clear, even though the State Bar of Nevada has authorized us to go forward with the bill and obviously present this to you today.

Before you, you have the bill; a small amendment [[Exhibit C](#)]; and a summary memorandum [[Exhibit D](#)] that goes through each of the sections with cross-references to the section itself, to the *Nevada Revised Statutes* (NRS) section that it relates to, and provides a summary as well. As you have that before you, I will just focus on the areas that are worth noting for the record. If there are any questions, I am happy to answer them at any time.

Sections 2 and 3 [page 1, [Exhibit D](#)] of the bill are items that relate to record requests by stockholders of the corporation. We are trying to refine and clarify how that process works. It can also be read in conjunction with A.B. 126, section 8 [page 3, [Exhibit D](#)], linked to the right of inspection. We are trying to provide the parties with some predictability and also to memorialize things that we see in practice. For example, usually when a stockholder of record requests information of the company and is provided that information that comes with a confidentiality request from the corporation, which I think is a very reasonable request to

maintain those financial records on behalf of the corporation confidential, instead of allowing that to play out back and forth, we thought we would just memorialize that as part of the terms and conditions of receiving that information.

Sections 4, 9, 10, and 14 [page 2, [Exhibit D](#)] relate to plans, arrangements, and instruments. We wanted to clarify that the ability of a corporation to establish plans, arrangements, or instruments that provide certain rights and privileges to stockholders is done so in accordance with and in conjunction with NRS 78.200, which is a section that relates to the issuance of preferred stock so that is the vehicle for which those rights can be granted.

Section 5 [page 2] is an important area where we are allowing a corporation to approve a reverse stock split, not necessary by a majority vote of stockholders, but also by a plurality vote as long as there are more votes cast in favor than against. This addresses a situation where we have publicly traded Nevada corporations that need to amend their articles to increase the authorized shares, but in this day and age where we have a lot of investors owning shares in their own brokerage accounts, they do not necessarily respond to all the meetings. I know when I get that little card that says, Please vote, I put it in the recycling bin. It addresses the need to amend articles and obtain the sufficient voting power and to allow a corporation to progress and continue to raise capital as needed. I think this is an important feature that will help Nevada corporations and is limited to public corporations only.

The next item to note would be, as Assemblyman Nguyen mentioned, the ability to change the name of the corporation without actually formally requiring a vote of the majority of the voting power because the name of the corporation is part of the articles of incorporation. I am referring to section 12 [page 3]. In order to make any change therein, the statute requires that a majority of the voting power do so. As mentioned, in other states like Delaware, this is one feature that does not require the vote of stockholders, and we thought it was time to introduce that concept—that ability—to a board of directors so that they can, if they in their discretion and in their duties on behalf of the corporation, that it is appropriate that they can go ahead and do that.

Section 13 of [A.B. 126](#) deals with clarifying restated articles of incorporation [page 3]. It was important to clean up the fact that not every document needed to be restated when one does restate the articles of incorporation. A lot of times, the corporation might have its initial articles of incorporation that may have been amended piecemeal over time and may have also involved certain certificates of designation which established the rights of preferred stock. That being said, when a corporation does like to restate the articles, they do not need to include the certificates of designation themselves, which are typically standalone documents, although defined as being part of the articles. We thought that would be a good amendment because it clarifies some confusion and maybe some too overly literal interpretation of our current laws.

In sections 25 to 28, 30, and 31 [page 4, [Exhibit D](#)] we are relocating some definitions. It is important to relocate the definitions for "advance notice statement" and "statement of intent"

because they relate to dissenter's rights under Nevada law. When there is a transaction, an acquisition, or other business combination that triggers dissenter's rights in favor of stockholders, the corporation is required to send sections of the statute that relate to dissenter's rights to the stockholders themselves. Whereas these sections were added last session, they were not put within NRS 92A.300 to 92A.500, and it makes it harder to send the block of statutes. By moving it to the appropriate dissenter's rights sections, then there is no failure to include everything that a stockholder might need to understand their rights as a dissenter for a particular transaction.

That concludes my formal presentation. Thank you again for the opportunity to provide that to you today and I am happy to answer any questions anyone might have.

Chair Miller:

Are there any questions from Committee members?

Assemblywoman Summers-Armstrong:

In section 26, subsection 1, the advance notice statement is to "Be sent not later than 20 days before the effective date of the proposed corporate action;" but then subsection 3 says that a person who is a dissenter would have to respond, "which may not be less than 15 days after the date the notice is sent, . . ." Is this a conflict in timing? If the notice for the change is sent 20 days out, but they have to respond by day 15, that seems a little tight, especially if it is sent by mail. If it takes 3, 4, or 5 days to get there, they would have to respond immediately. Would you be open to opening the timeline a little bit to give people more notice and time to respond to an action?

Robert Kim:

One aspect of this particular amendment is that we actually have not made any changes to the dates, and this is merely a relocation of the current definition, like I mentioned before, between two sections, the range of NRS 92A.300 to 92A.500. This language that you referenced is the current law as it is today. Just to clarify, we have not changed those dates. As to your concern, I follow what you are saying in that they have a 15-day window upon receipt to provide their statement of intent after the notice is sent. Per statute, depending on how it is sent, there are defined days—I think it is three days if sent by mail, for example—and that is the window of time that stockholders have to respond. As to whether we could expand that, at this point I would be hesitant without looking at other states to make sure we would not disrupt all the other time frame mechanisms. If anything, I wanted to make sure this is not something we have changed, and we are just carrying it forward from a different portion of Chapter 92A to another portion.

Assemblywoman Newby:

In section 5 when you discuss the stock split voting and adjusting that standard, this applies to owners of security that own them separately and not within say, a mutual fund, I am assuming? And then secondly, when they vote, is it each person one vote, or is it weighted by the number of shares that the person owns?

Robert Kim:

What I propose to do is kind of just walk through how this would happen and that way I think it might cover some of your questions. If a corporation that was publicly traded, for example, that had 100 million shares authorized and had about 90 million shares issued and outstanding, and it only had 10 million shares available for issuance, that is something it would want to correct by either increasing its authorized shares, which would require a majority vote, or affecting reverse stock split of its current issued and outstanding shares, so that it had more headroom in terms of the authorized shares.

In the example I provided, the board with the corporation would solicit the votes of its public stockholders. Every person has one vote per share, and they would vote either for or against, and the proposal would allow the board to go ahead with the reverse stock split if the votes for the reverse stock split were in excess of the votes cast against the reverse stock split. If that were approved, in this instance for example, and they proposed a one for two reverse stock split, that would take that corporation's issued and outstanding shares from 90 million to 45 million. They would then have 55 million shares left for authorized shares to issue. In terms of the votes, it would treat everybody equally. They each have one vote per share up front, and if it was approved, then each stockholder would then have their holdings reduced in half, given the proposed one for two reverse stock split, and then the company would be able to have the authorized capital to enter into other financing transactions to raise capital for its operations.

In terms of your question regarding the mutual fund, I am not quite sure, but if they were a stockholder of the corporation, they themselves would have their own votes per shares. However many shares they had, they would have the equal number of votes as well, and they would vote in favor or against it as they make their own decision to do so.

Assemblywoman Cohen:

In section 4, subsection 5, where you are deleting "and its" and putting in "or," it looks like you are separating the corporate interests and the shareholder interests, and I do not know enough about business law to know whether those can be separated that way or why you are separating it that way. Can you address that, please?

Robert Kim:

As to the separation of the concepts of corporation and stockholders, one thing that is important to understand is that Nevada corporate law is a multi-constituency statute. The board of directors owes its fiduciary duties to the corporation as a whole. Pursuant to NRS 78.138 it has the ability to consider long-term/short-term interests of different constituents, such as stockholders, employees, the interests of the state, and so on as set forth in that section. Yes, in Nevada, the board can make decisions on behalf of the corporation as a whole. It can make decisions on behalf of the corporation weighing different factors in particular. It could be the short-term interest of stockholders. It could be the long-term interest of stockholders, but they have the ability to have the flexibility to make what they think is the best decision for the corporation. Sometimes the short-term interest of one

stockholder might not be the same for that of a long-term stockholder or for the state or for other constituents as well.

Assemblywoman Cohen:

I understand that you are saying that in Nevada the board has different constituencies, but is this a big policy change that we are making within this legislation? Or is this following along with what we have done in other legislation in the past and it is just bringing it in line with what we have already done in other places in the statutes?

Robert Kim:

What is being proposed here does not change how the executive committee looks at Nevada corporate law and how the duties are owed; it is not a policy change at all. It is just consistent with the policy that has always been in place for Nevada and how the board of directors owes their duties in general to the corporation. Our attempt here was just to clarify, as there was some concern with the way it was written. It did not give the flexibility to consider other constituents that were listed in the section itself. We just tried to make it clearer that it was a broad range that is available to the board of directors.

Assemblywoman Considine:

I have some questions on sections 2 and 3, the records request, the affidavit portion; section 8, the confidentiality agreement; and section 12, the name change without stockholder approval. Are there any examples in Nevada of why we need these? Have there been any problems with those three areas, or is it just that it is being done in Delaware so we want to bring it here? With the confidentiality piece in section 8, is this a public entity? Are these all with public corporations? I am just trying to figure out if these are problems that you are trying to solve because we have had these problems in Nevada, or are these things because Delaware is doing it and we want to do it here, and if there is a balance between the needs of the corporation and the needs of the stockholders that this has been vetted before.

Robert Kim:

Let me first address the name change item. That one in particular is a feature that the members of the executive committee have received as requests. We would like to change the name, and we would say, Well that requires a stockholder vote, and if it is a public company, it can be a timely and expensive exercise. Other practitioners would say, Well, it is this way in a lot of other states, such as Delaware; can the board just approve it? And we say, Well, that is not what our statute provides. On that section, in particular, I think that is in direct response to a feature that exists elsewhere that we are adopting to acknowledge the request that we practitioners have received over time. That one in particular is squarely a response to practice.

Sections 2 and 3 were more to clarify the reference to such purpose, so that it was very clear that they could not use the record to sell direct or offer to sell the stockholder list and other records under those two sections. The change is pretty minor, and I do not think that changes anything. We just want to be more specific and structurally, from the way this section was written, so that it was very clear what that other purpose was as referenced before it.

Section 8 deals with financial books and records. If my recollection is correct, if it is a public corporation that files current reports under the Securities Exchange Act of 1934, and its periodic reports are filed consistent with those rules and requirements, then information about its financial situation is already out there. This confidentiality agreement essentially relates more to private companies that have financial books and records that have been requested by the stockholder. If they are provided, usually they are granted or issued along with the agreement to maintain those records as confidential. That would be the typical instance where you would see that in a private corporation. Usually that is where we found the parties end up, and we thought it was appropriate to reflect that in the statute, so that it was clear that someone cannot just take the records and somehow release sensitive information regarding the company.

Assemblywoman Considine:

I appreciate all of that. Going backwards, the one that we just spoke of—the private corporation—I understand that is a private corporation as opposed to a public corporation, so that is delineated on this, and then also, this does not overrule any whistleblower protection, correct?

Robert Kim:

That is not the intent at all. It is just meant to streamline the process instead of having the back and forth that people normally have to go through to get the records, there is this upfront, clear expectation that they need to maintain that information as confidential, and we thought that was a way to make the process more efficient for both sides.

Assemblywoman Considine:

So that has not been a problem in Nevada? People are asking for it, but there has not been a documented issue. I just wanted to make sure for all three of these. On the changing the name, does this at least require notice? I understand that they do not want to have an entire vote, but does this still require notice to the stockholders if the name is going to be changed?

Robert Kim:

As written, it does not require notice. If one is a public company, then one is required pursuant to U.S. Securities and Exchange Commission laws to file a current Form 8-K to make any amendments to the articles and bylaws. If it is a public company, the securities laws would require a notice to the stockholders in that regard. But if it is a privately held corporation, there is no current requirement; not that I can think of.

Chair Miller:

We keep hearing many states and Delaware, many states and Delaware, but we just keep hearing Delaware. What are those other states, or how many other states?

Robert Kim:

We look at the state corporate laws of Delaware, the Model Business Corporation Act, and then depending on the instance, we look at other states as well. For example, Nevada is somewhat based on the Model Business Corporation Act so we would look at that at times,

and it is appropriate to look at other states that have adopted the Model Business Corporation Act. Delaware is not a Model Business Corporation Act state. They have their own set up of laws. At times, we would look to, for example, another multi-constituency state like Pennsylvania. Sometimes we look to California only because of its proximity, and sometimes our judges are inclined to look at states close by for different kinds of jurisprudence. We do not do it too often, but we do it in response when we hear things, especially when we deal with counsel from other law firms that are located elsewhere that use a lot of Delaware corporations for the most part. They suggest different things that we might want to include in our laws.

Chair Miller:

Okay, so let me clarify my question a little bit. It is not just who are we looking to; it is who is actually doing this. When you say the Model Business Corporation Act, how many states and which states apply to that? In response to a specific question earlier about the ability for the corporation to change the name without including the vote of the stockholders, we just keep hearing Delaware. How many states actually do that? What I am looking for, is how many states actually do what is being attempted in this bill? Because the previous line of questioning was, in fact, about which other states are doing this, and if this is specifically already a problem here in Nevada, and why are these changes coming forward? So, could you give us the details that you have specified in the bill for the changes, how many and which states are doing what we are attempting to do in this bill?

Robert Kim:

For the name change: the executive committee consists of up to 15 individual practitioners in the state, and I do not recall the person who suggested this particular amendment. As I was not the one that proposed it within our committee, I do not have the exact details of the other states that do this. I am happy to provide that information subsequently just so you have that context for yourself. I do not have the information currently to know which states have adopted or permit that. But as I mentioned before, it has been a long-standing differentiator for Delaware to be able to do that. It is something that as practitioners in Nevada, we have heard many times. As mentioned before, Delaware is looked to as a state for the corporate laws and so we thought it was appropriate at this point to bring it forward for addition to Nevada's corporate laws.

Mackenzie Warren Kay:

Just to expand on Delaware a bit on the jurisprudence question for members, Delaware has a Court of Chancery. It is a special court system that they have created that specializes in business issues. This is why we refer to Delaware frequently as the gold standard.

Assemblywoman Hardy:

Sections 17 through 24 refer to records filed erroneously. Are you further clarifying something that already exists or is that something additional that we are adding in the bill?

Robert Kim:

Sections 17 through 24 are trying to merely reflect current practice. Currently, if there was an error made in a filing with the Office of the Secretary of State, one could correct that filing by filing a certificate of correction, whether there is a number misprinted or some other aspect of the filing that needed to be corrected due to either error or oversight. What these amendments are trying to do is to actually permit the actual filing itself to be categorized as being corrected, the entire filing or something in it. That is a practice that the Secretary of State is already accepting, and we thought it was appropriate to make the statute reflect the current practice amongst the Secretary of State and the attorneys.

Assemblywoman La Rue Hatch:

As I consider bills, I am always cognizant of the time and resources that are taken to put these bills into effect. Every bill that we pass has to go to lawyers to draft the regulations, has to be put into effect with the Executive Branch, and it costs taxpayer time and money. As I am considering it, I always want to make sure that the public good of the bill outweighs whatever cost is associated. I just wondered if you could speak to the societal good that comes from this bill. What is the benefit that our constituents in our communities will see from this bill?

Robert Kim:

As the executive committee of the State Bar of Nevada's Business Law Section, we keep in mind different motivations for what we propose. Obviously, there are items that come to our attention that are in error or could work better or may not have all the features that may be appropriate or needed by those that use and avail themselves to our business entities. We take those into consideration. We have jurisprudence from different courts from different states that we look at that are written by the American Bar Association. As Mrs. Kay mentioned, Delaware has the Court of Chancery that is structured in a way, as a court of equity, to publish many decisions. By virtue of that, there is just a lot of discussion as to corporate law in Delaware. That is how they have been able to establish themselves as being a very well-known jurisdiction for corporate law because of that ability.

That being said, we do not reflexively adopt items just because another state advances them. We try to think who is using these laws and whether it is something that is appropriate and would help them use our laws better. A lot of times we try to clarify items that over time and over practice we have realized it would help to add a phrase here or to provide more information. Sometimes it is hard to understand the impact of a law until you have used it for a few sessions. A lot of times we do amend things that we have proposed in years past just to clarify and see how it is being worked in practice.

From our perspective, we like to make Nevada an attractive jurisdiction for people to choose for their business entities, with that in mind to the extent that that helps the Secretary of State maintain or increase the fees that they generate. I think that is a great result, but that is obviously one of the many things we think about in terms of what we propose for the Business Law Section and the bills that we advance every session.

Assemblywoman Hansen:

In following Assemblywoman La Rue Hatch's question, I, too, come here with a business perspective. Knowing that Delaware, Wyoming, and Nevada are the top incorporating states, it looks like you are trying to bring some of the best practices you are seeing in what we might call the "gold standard," being Delaware. It looks as if we are trying to just streamline things; it is not a huge policy shift. As a business, when I go onto the Secretary of State's website, there are practices, things for filing, that I could relate to from this, even though I do not deal with stocks. It is a lot of legal language, and I do not want to miss something super important. It looks as if this is just trying to fine tune, bring in some best practices of streamlining language, to make it a little bit less onerous for corporations when dealing with some minor changes. If there are major changes that I am missing, that is what I would want you to clarify on the record for me.

Robert Kim:

I would agree with the statement that the intent of this bill is not to create a policy shift in terms of Nevada corporate governance. It is meant to address, for the most part, items of clarity and additional features. As to the items I did highlight to the extent that there are items worth noting for clarification purposes, I would point back to section 5, amending the voting standard for reverse stock splits. That is a different standard that we are adopting to allow publicly traded corporations the ability to obtain the vote they need to operate their business. The name change is something new. That is something that we are granting the board the ability to adopt without a stockholder vote. I think those two are the ones that change the standard per se in terms of what was being done before; and the balance, clarity, practice, and other considerations are what the other sections are based on.

Chair Miller:

With that, we have concluded our questions. We will now open it up for testimony in support of Assembly Bill 126.

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

The Chamber is in support of A.B. 126. As you heard from the presenters and the bill sponsors, we view this as a technical cleanup bill rather than a policy bill. As you have heard, it is about increasing efficiencies and practicality of the business sector but also to keep up with the national competition in these areas. As you have discussed and noted, this is also a revenue line for the State, and we believe this is a win for Nevada and for the business sectors across the state.

Chelsea Capurro, representing Urban Chamber of Commerce, Las Vegas, Nevada:

The Urban Chamber is in support of A.B. 126. We appreciate the clarity and the cleanup and are happy to support this.

Cindy Choi, Vice President, Nevada AAPI Chamber of Commerce:

We want to thank the Business Law Section and bill sponsors for including us on this bill. We support Assembly Bill 126 because it helps to maintain Nevada's position as one of the most pro-business states in the nation. As a leader in the business community, it is critical

that we are involved in legislation that impacts members. Even more importantly, it is critical that Nevada's business statutes provide clarity and stay competitive with other states so that Nevada remains the top destination to incorporate and conduct business. Assembly Bill 126 brings better predictability and provides efficiency for the Nevada companies, which is central to the Chamber's mission. The Nevada AAPI Chamber of Commerce would urge your support of A.B. 126.

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

It is my pleasure to testify in support of A.B. 126 this morning. We thank the Business Law Section for including the Latin Chamber each session and keeping our members current on how Nevada is taking positive steps forward to protect its reputation as an excellent place to conduct business. I think that is one of the most important things. Nevada must be an excellent place to conduct business. I also want to acknowledge the bill's sponsors for taking on a complicated but important topic. This bill provides additional clarity to our business statutes, and nothing is more critical than having predictability when making business decisions. Assembly Bill 126 is a pro-business piece of legislation and the Latin Chamber urges your support on this bill because we are always pro-business.

Chair Miller:

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?

Gabriel Di Chiara, Chief Deputy Secretary of State, Office of the Secretary of State:

It is the Secretary of State's position that Nevada law should be streamlined wherever possible to improve our business climate without compromising on protections for small business or local investors. He has spoken repeatedly of wanting to keep Nevada's status as "Delaware of the West," and there are many provisions of this bill that would bring us further in line with Delaware. This consistency could prove beneficial when trying to bring new entities to Nevada which could then lead to increased revenue via our Commercial Recordings Division. However, I believe it is worth noting that the Commercial Recordings Division currently has a single compliance investigator who has duties across multiple divisions, including elections and notary, and if there is any concern that any of these changes might lead to increased complaints of fraud, our office may need additional resources to effectively investigate.

Additionally, though we did not get a request for a fiscal note on this bill, it will require changes to the software of Silver Flume and many of our forms which could come with a cost. We began reviewing the legislation when we got the language and hope to have an answer to that question shortly. We look forward to working with the bill's sponsors and this Committee and are always available for further conversation. Who does not love a win-win bill?

Chair Miller:

Is there anyone else who would like to testify in the neutral position? [There was no one.] I will close testimony on the bill. I invite the bill's sponsor to provide concluding remarks.

Assemblyman Nguyen:

When the Business Law Section came to me about this bill, of course, I am not a lawyer and I do not play one, and outside of being an Assembly representative and a nonprofit executive, I am also a small business owner. One of the lenses that I looked through when this bill came to my desk was, how can we make things easier for small business and how can we reduce barriers? Those are the two win-win factors I looked at when this bill was submitted. Hopefully we were able to clarify any questions that you had today. We will follow up on things that need to be clarified. Mr. Kim, Mrs. Kay, Mr. Kovacs, and Senator Nguyen are here to help push this forward. I urge your support of this bill, as you heard the testimony from the chamber leaders. I thank you for your support.

Robert Kim:

It is very important to work with members of our community and in conjunction with their efforts and their focus to create a better environment for all of our citizens here. That is something that we, as a committee, are looking to do when we propose our amendments, and hopefully we have done this and are able to express our motivations for the matters that are set forth within A.B. 126.

Chair Miller:

I will close the hearing on Assembly Bill 126. The next bill on the agenda is Assembly Bill 142. Minority Leader O'Neill will be presenting the bill. I will open the hearing on Assembly Bill 142.

Assembly Bill 142: Revises provisions governing certain sales of property. (BDR 2-70)

Assemblyman P.K. O'Neill, Assembly District No. 40:

I am here with the assistance of Pamela Del Porto, Executive Director of the Nevada Sheriffs' and Chiefs' Association, along with several other state sheriffs who will also show their support and give reasoning why this bill is important to them. In short, I will tell you that all this bill does is bring the Nevada sheriffs and their mechanisms for auctions into the twenty-first century. It is not my intent to disturb the newspapers or any print media of their current practices regarding printing of notices. I draw your attention to page 3 of the bill, starting at line 23 of section 1, which is the current language of *Nevada Revised Statutes* (NRS) 21.130 and supports that statement. There is no change. I bring that to your attention because there was some conversation earlier this morning that this bill would impugn print media and I wanted to clarify that there is no intent or reasoning for that. I have been in discussion with Legislative Counsel Bureau's Legal Division on that, and they are in agreement with me. With that said, Chair, I would like to turn it over to Ms. Del Porto for further conversation.

Pamela Del Porto, Executive Director, Nevada Sheriffs' and Chiefs' Association:

I have been the executive director for approximately a year for the Nevada Sheriffs' and Chiefs' Association. During this past year I have had the opportunity to attend conferences, and some of these have vendors and exhibitors. One of them came to my attention because it was about online auctions, which hit me as odd. I asked him if it is legal in Nevada, and he indicated not for sheriffs but it is for the county treasurers for their tax liens.

I looked at NRS 21.150, and it talked about the sheriff or their designee having to be on the court steps. All I could think of was the old town criers [page 2, [Exhibit E](#)] and it seemed very outdated to me. That is when I began doing some research and spoke with Assemblyman O'Neill about there being a way to improve this mechanism and bringing it into the twenty-first century. Then I started having conversations with the sheriffs.

I will start going through some of the sections, many of which are just repeats from section to section. Section 1 would be amended in subsection 1, paragraphs (a), (b), and (c) to add that perishable property notifications would include, in the cases of an Internet website or other electronic medium, where the property was being stored or situated pending the sale [page 3].

Section 1 also includes the new subsection 4 so that the notification to the tenants of the property would be notified if the sale were being conducted on an Internet website or other electronic medium, and that notice must include: the website or the other electronic medium; how the electronic bids would be accepted; and the period during the time the bids would be accepted [page 4].

Section 2 amendments would remove the language outlining the specific time frame of 9 a.m. to 5 p.m. and would add language that the sale of property under execution may be conducted on an Internet website or other electronic medium as designated by the officer conducting the sale [page 5]. The officer in charge may also allow for the collection of deposits and payments made by the bidder, settle the transaction, and remit the payment of the purchase as the officer directs.

The new subsection 4 identifies persons who are not authorized to become a purchaser or be interested in any purchase of property under execution. New subsection 5 describes, when the property is capable of manual delivery, how it should be done, both in person and when conducted on an Internet website or other electronic medium; that the personal property must be sold to bring the highest price; and subsection 6, that the judgment debtor is able to make his or her wishes known in certain circumstances of real property [page 6].

In section 3, subsection 6, under COVENANT NO. 6, language is added directing the trustee on how to notify the persons present for the sale to be notified in cases of postponement, and in cases of sales conducted on an Internet website or other electronic medium, by proclamation published on the Internet website or other electronic medium [page 7]. Additionally, there is new language that the governing body of the county maintains the authority as to whether to authorize the sale on an Internet website or other electronic medium. In other words, if the sale is going to be postponed, it has to be posted publicly, or

if the sale is going to be on the Internet, they have to post on the Internet that it is being postponed.

Section 4 amends NRS 107.080 by adding paragraph (d) to subsection 4, identifying that if the sale is to be conducted on an Internet website or other electronic medium, notice will be posted to include the actual Internet website or electronic medium, how bids will be accepted, and the time period during which the bids will be accepted [page 8, [Exhibit E](#)]. There is additional language in that section about property for sale and the location.

Section 6 amends NRS 107.081 to add or remove language [page 9]. Subsection 1 removes the language that identifies that the sale must be done between 9 a.m. and 5 p.m. and information about the agent holding the sale not becoming a purchaser. The language about the agent holding the sale cannot be a purchaser was added under subsection 3, in a different location in the statute. The new subsection 3 also adds language that contains the mandate that the governing body of the county may authorize the sale of the property to be conducted on an Internet website or other electronic medium as they designate.

The other changes in section 6 amend NRS 107.081 to add that the governing body of the county, if they choose to have the sale on the Internet website or other electronic medium, may further authorize the provider of that service to collect deposits and payments made by the bidder, settle the transaction, and remit payment of the purchase price as directed by the agent holding the sale [page 10]. This new section also identifies who shall not become a purchaser or be interested in any purchase at such a sale. This is where the agent conducting the sale was added back in.

Section 7 amends NRS 107.082 to add and remove language [page 11]. Subsection 1 adds the language to be included in the proclamation should the sale be postponed.

There is repeated language through these different statutes concerning the requirements for posting as noted in section 8, amending NRS 116.311635 in the same manner by adding a new subsection 5 [page 11].

Section 9 amends NRS 116.31164 by adding a new subsection 5, which states that the governing body of the county in which the unit is located may authorize a person described in subsection 3 to conduct the sale on an Internet website or other electronic medium designated by the governing body. In connection with such a sale, the governing body may authorize the person who operates the Internet website or other electronic medium to collect the deposits and payments made by the bidder, including without limitation, payments made by wire transfer, electronic funds transfer, or cashier's check. They can settle the transaction and remit payment of the purchase price as directed by the person conducting the sale [page 12, [Exhibit E](#)].

Subsection 7, paragraph (a) was amended to read, "For a sale that is not conducted on an Internet website or other electronic medium, shall state to the persons assembled for the sale whether or not the holder of the security interest described in paragraph (b) of subsection 2 of

NRS 116.3116 has satisfied the amount of the association's lien" And for a sale that is conducted on an Internet website, it shall be published on the Internet website or other electronic medium. There is further language about the sale being conducted on an Internet website or other electronic medium as described in subsection 7, paragraph (b).

When I originally approached Assemblyman O'Neill, I thought it was just taking out one little sentence in one little statute and then I got this monster.

I have already discussed subsection 5 of section 9. Subsection 6 has the language that should an Internet provider be used, and the sale is postponed, the Internet provider must provide notification of the postponement. Other language was to follow procedures for any additional postponements. I believe they can be postponed up to three times.

The final amendment to section 9 amends NRS 116.31164 in subsection 8, paragraphs (d) and (e) to further identify persons who may not purchase that specific property to include an appraiser involved in the sale or a director, officer, and others; or a person who operated an Internet website or other electronic medium involved in the sale. That concludes my presentation, and I am happy to answer any questions.

Assemblyman O'Neill:

Chair, would you like some of the sheriffs to speak also on the reason for this bill before going into questions? I think they may give better examples as to some of their needs for this and why verbiage is repetitive in the bill.

Chair Miller:

As they were not part of the original bill presentation, they are more than welcome to come and testify. I think that the bill has been explained. I think we can proceed with questions. I appreciate you addressing at the beginning the clarification that you had worked out with Legal.

Assemblywoman Cohen:

In section 2, subsection 4, and sections 6 and 9 regarding the persons who may not become purchasers, would you be willing to add language that includes their close relatives to make sure that we are meeting the goal of that section, that they are not benefiting from their positions involved with these sales?

Assemblyman O'Neill:

I would be more than willing to do that, and I think it would actually be best to say within the third degree of consanguinity. Is that acceptable to you?

Assemblywoman Cohen:

Yes. And maybe Legal could help us with some standard language that I think is in the statutes about that.

Assemblywoman Summers-Armstrong:

I would also like to add a little bit more. Would you be willing to also add employees of those companies? If they are going to run the sale, no one inside their companies should also be participating because they have inside information. I hope you would be open to that as well.

Assemblyman O'Neill:

Assemblywoman Summers-Armstrong, I appreciate that. This is the nice thing in the questioning; we really flesh out some of the issues that we overlooked. I am in full agreement, and I thank you for that suggestion.

Assemblyman Gray:

I think I saw a couple of times in section 9 amendments under subsection 6, where the Internet provider must provide notification. I think what you really mean is it is not the Internet provider but the auction site provider or whoever is providing the service. Charter [Spectrum] is an Internet provider, but they do not provide the auction service. I do not think they are going to be making any notifications of postponement, if that makes sense.

The other question I have is with regard to fees. We have these auctions to recoup monies for the government entities that are having the auction. What kind of fees are these folks providing? I know they can vary widely. Is it always in the best interest to do it through an auction service provider on the Internet as opposed to, say, the old-fashioned way of doing it on the steps? I am always in favor of trying to do it electronically, if possible, but will it always make fiscal sense?

Assemblyman O'Neill:

Assemblyman Gray, for the first part, you are right. It will be the auction provider who will give the notices. The second part, you will hear from the sheriffs that they will call, even in Las Vegas, for the sale on the courthouse steps, but no one shows up. Think about Lincoln County where there is an even smaller population; no one is there for the sale and then they are stuck. There is a backup of property, and the county is not getting full use of it and receiving funds. As to the fees directly, I will have the executive director handle that.

Pamela Del Porto:

Assemblyman Gray, I will be happy to reach out to some of the auction providers and find out if they have upfront or after fees.

Chair Miller:

Ms. Del Porto, could you submit that to the Committee so that everyone has that response?

Pamela Del Porto:

Yes, ma'am.

Assemblywoman Considine:

My concern is through the lens of affordable housing. I know that this includes real property at a foreclosure sale. Is there a way to confirm or to ensure equitable access when an Internet bidder is trying to buy a home that they are going to live in—because the price would be less at a foreclosure sale than otherwise—competing with large entities, corporations, equity firms, whatever you are talking about, that could have an algorithm that could be automatically set to do that last bid, like at a tenth of a second prior to the auction closing. Has that been discussed or is there a way to make it more equitable? There is someone on the steps picking people, up to the end of the auction, and this can be a little bit more manipulated, which is a worry that I have.

Pamela Del Porto:

I can certainly reach out and ask that question as well.

Assemblyman Orentlicher:

One thing I am not clear on and not knowing much about these sales, in section 1, where it says you have to make a public notice in three places or if it is on the Internet, your notice is on the Internet and that is repeated in a number of places. Does that mean if I am interested in these kinds of sales, I need to look in two places to figure out the universe of sales? Is it rather than being able to either go to the public place or go on the Internet and see the universe of sales, which some are on the Internet and some are not? Is that how this works?

Pamela Del Porto:

From my knowledge and information on what I have read, you are going to have the same notice posted publicly and on the Internet.

Assemblyman O'Neill:

Assemblyman Orentlicher, that was actually the conversation I had with Legal earlier today and it is my understanding—and maybe Mr. Wilkinson would best answer that—but it is my understanding that they would be in both places for the public notice. Whatever medium you use, it is available or you are being notified of it.

Bradley A. Wilkinson, Committee Counsel:

That is correct.

Chair Miller:

With that, I will close questions. Is there anyone who would like to testify in support?

Vinson Guthreau, Executive Director, Nevada Association of Counties:

We rise in support just on bringing the law up to the twenty-first century and modernizing and streamlining this. This approach is already used by our counties for other departments. We appreciate the bill sponsor bringing it forward and we are in support of this measure.

Richard Hickox, Sheriff, Churchill County:

I am here to support this bill. There are a couple of things that I wanted to say first off, and I do appreciate your approach that it needs to be for societal good and that there needs to be change not just for the sake of change, but because somebody else is doing it. I really support this bill because I think it is something that we need to do to get a better equitable sale. I have stood on the steps of the courthouse in 100-degree heat, and we have nobody there for the auction. We have houses for sale and property for sale within the county. We have talked to some people who we know are looking for houses, but they cannot make the sale because the hours are 9 a.m. to 5 p.m., and they cannot be there. This bill would allow them to bid on that property, maybe get a home, with the convenience of being at their home or at the coffee shop when they have a few minutes of time.

In regard to the fees that are associated, currently you have filing fees that are there, you have hours that are put in by our department as we process these papers, and so those fees are still there. The county currently uses an auction house to sell other property for other departments, and they are posted. Those fees are there, but they are still making more money on those sales than they were the other way simply because of the greater availability to more people. It reaches out to a greater audience, which is really the point of this. If we were to sell property that is back pay, you want to reach the broadest audience; you want to be able to reach the biggest portion of it so you can get that recouped. I would really support this, and I would ask you to do it as well.

Jerome Tushbant, Undersheriff, Carson City Sheriff's Office:

I am going to echo what I have heard from Assemblyman O'Neill, Executive Director Del Porto, as well as the Sheriff. Currently the sheriff's office uses an online auction for personal property, not real property, with great success. What we have found is that over on the county side, the treasurer's office uses the system that is proposed here for real property. What we found is that, at the end of the day, it is a fair, efficient, and transparent method to get out to the widest audience. With that said, we support A.B. 142.

Jesse J. Watts, Sheriff, Eureka County:

I am here in support of A.B. 142 for multiple reasons. It brings our sales current and consistent with what happens at the treasurer's office with surplus property of the county. As Sheriff Hickox said, it does broaden the audience. I have stood out in front of the steps in negative temperatures on certain things and it is not fun. The county has also broadened its sales of property through the online basis. To answer the question about an algorithm, we do not draw anything until it closes at 5:00 p.m. To us, we do not see the difference of who put the first bid in or who put the last bid in. Those packets are opened at the time that it closes, and we go forth that way. I am here with full support of A.B. 142 because it is consistent and current with practices throughout the state with other properties.

Adrian Hunt, Police Detective, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We are here in support as well and echo the same sentiments of everyone here in support. It definitely frees up our civil deputies to perform other duties such as protection orders as well. We are in full support.

Chair Miller:

Is there anyone else who would like to testify in support of A.B. 142?

Scott Henriod, Sheriff, White Pine County:

I have had the opportunity to participate in quite a few of these sheriff sales. Several of those sales were quite memorable. One had to do with selling sheep and the other had to deal with selling the mining claims. Standing on the courthouse steps to conduct these sheriff sales is always interesting. The sheep sale ended up with the owner of the sheep buying his own sheep back. The mining claims sale ended up in quite a process as the owner of the claims and the attorney for the other party involved came to an agreement on the sale. This was quite time consuming for me. I am in support of A.B. 142. It gives us quite an option for these types of sales.

Chair Miller:

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? [There was no one.] I would invite the presenter back to the table for any concluding remarks.

Assemblyman O'Neill:

If I may go back to Assemblywoman Considine to ask if the clarification was made for you on the bidding process, or do you need additional information?

Assemblywoman Considine:

The sheriff who explained that his bidding process is not an auction where people are bidding on top of each other, if that is across all counties, that would be great. But if it is up-to-the-last-second bidding, I would like to get some more information.

Assemblyman O'Neill:

We will make sure that is taken care of for you. Otherwise, I would greatly appreciate your support. As you heard, other agencies within our state are utilizing this methodology. We are just trying to bring our sheriffs into the twenty-first century.

Chair Miller:

We will formally close the hearing on Assembly Bill 142. I will open it for public comment. [Public comment was heard.]. I will close public comment. As a reminder, we will meet again tomorrow at 8 a.m. This meeting is adjourned [at 10:36 a.m.].

RESPECTFULLY SUBMITTED:

Traci Dory
Committee Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to Assembly Bill 126, submitted by Mackenzie Warren Kay, representing Business Law Section, State Bar of Nevada; and presented by Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada.

[Exhibit D](#) is a memorandum dated February 15, 2023, submitted by Mackenzie Warren Kay, 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 Assembly Bill 126.

[Exhibit E](#) is a copy of a PowerPoint presentation titled "Nevada Sheriffs' and Chiefs' Association Assembly Bill 142 Presentation," submitted and presented by Pamela Del Porto, Executive Director, Nevada Sheriffs' and Chiefs' Association.