MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-second Session
March 30, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:04 p.m. on Thursday, March 30, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Senator Edgar Flores, Senatorial District No. 2

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Kelsey DeLozier, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Michael Morton, Special Assistant Attorney General, Office of the Attorney General
Michael Hillerby, Nevada District Judges' Association
Chase Whittemore

Sean Claggett
Paul Moradkhan, Vegas Chamber
Misty Grimmer, Nevada Resort Association
Cheryl Blomstrom, Nevada Trucking Association
Bryan Wachter, Retail Association of Nevada
Jeff Rogan, Clark County
Brian Partridge, Creditor Rights Attorneys Association of Nevada

CHAIR SCHEIBLE:
We will open the work session. There are many bills on the agenda, so I will consider four of them in a consent calendar format: Senate Bill (S.B.) 37, S.B. 39, S.B. 190 and S.B. 223.

SENATE BILL 37: Authorizes governmental attorneys to volunteer as third-party neutral mediators under certain circumstances. (BDR 1-428)

SENATE BILL 39: Provides that certain records received, obtained and compiled by the Board on Indigent Defense Services in the Department of Indigent Defense Services and the Department are confidential under certain circumstances. (BDR 14-215)

SENATE BILL 190: Revises provisions relating to the liability of certain persons for protecting or removing a child or pet from a motor vehicle. (BDR 15-802)

SENATE BILL 223: Revises provisions relating to real property. (BDR 2-657)

PATRICK GUINAN (Policy Analyst):
Senate Bill 34 in the work session document (Exhibit C) authorizes the Attorney General, the chief legal officer or other authorized representative of a political subdivision of the State to represent certain officers or employees who are summoned or subpoenaed to appear if the person is not a named defendant, submits a written request for representation, or if the Attorney General, chief legal officer or other authorized representative determines that representation is in the best interest of the State.

SENATE BILL 34: Revises provisions relating to legal representation in certain actions or proceedings. (BDR 3-422)

The bill also authorizes use of special counsel if the Attorney General, chief legal officer or other authorized representative determines it is impractical, uneconomical or could constitute a conflict of interest to provide legal services. The requirement that a determination regarding the use of special counsel be made prior to trial and the prohibition against compensation being paid out of the General Fund are removed.

A member of the Executive Branch is authorized to employ counsel other than the Attorney General to represent the State or any agency in the Branch if it is determined to be impracticable, uneconomical or could constitute a conflict of interest for the Attorney General.

At the initial hearing for S.B. 34, the Attorney General proposed an amendment that removed "State Legislator" in section 1 and added the term "political subdivision." It also replaced "impractical" with "impracticable." Section 4 of the amendment contains changes regarding attorney or counselor compensation.

SENATOR HANSEN:
What is the difference between "impractical" and "impracticable"? Is there a legal reason for the change?

MICHAEL MORTON (Special Assistant Attorney General, Office of the Attorney General):
The words are somewhat different. Impractical is not a legal term of art, whereas impracticable is.

> SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED S.B. 34.
>
> SENATOR HARRIS SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

* * * * *

MR. GUINAN:
The other four work session bills have no amendments and will be considered as a consent calendar: S.B. 37, S.B. 39, S.B. 190 and S.B. 223. I will read the bill

descriptions from the respective work session documents (Exhibit D, Exhibit E, Exhibit F and Exhibit G).

SENATOR NGUYEN MOVED TO DO PASS S.B. 37, S.B. 39, S.B. 190 AND S.B. 223.

SENATOR STONE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR SCHEIBLE:
We will close the work session.

VICE CHAIR HARRIS:
We will open the hearing on S.B. 418.

SENATE BILL 418: Revises provisions relating to candidates to the office of district judge. (BDR 1-803)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):
Senate Bill 418 is intended to help provide voters with more information when they elect judges. I have received feedback from constituents who find voting for judges can be difficult or confusing because we do not know them well. Campaign rules for judges are different from those for Legislators. Judges cannot stand on a podium and tell us how they feel about different provisions of the Nevada Constitution, U.S. Supreme Court decisions or policy matters. They can, however, tell us about their legal experience or philosophical approach to the law. It is not as easy to get the kind of information voters need about judicial candidates as it is for other candidates.

Senate Bill 418 proposes the use of something already used by the Commission on Judicial Selection: a questionnaire when there is a vacancy in a district court when a judge retires or leaves and a replacement must be appointed. Applicants must fill out a questionnaire of about 12 pages. It includes biographical information such as where candidates are from, where they went to law school and how long they have been practicing law.

The questionnaire gives candidates the opportunity to answer questions about their legal background and career, including what percentage of their practice has been spent in various areas of the law. They can talk about major cases they have worked on and provide other information helpful to the Commission when it is appointing replacements for district court judges.

Senate Bill 418 requires anybody who files to run for a judicial seat to fill out the questionnaire, which the election official in that district makes available on his or her office website. Every person who votes in a judicial election would be able to go to one centralized location—the official elections website of that jurisdiction—and read the questionnaire filled out by each candidate for a particular judicial department.

The proposed amendment (Exhibit H) from the Nevada Supreme Court clarifies procedures when applicants apply for a judicial appointment and feel parts of the application are confidential, such as background and credit checks. They would not have to include that information when they file to run for office; they would just have to fill out the questionnaire.

SENATOR STONE:
You are right: we do not know a lot about judge candidates other than their names. They cannot weigh in on political issues. The application process and questionnaire on registrars' websites is a great idea.

As a part of the judicial application process, would a person have to disclose if he or she has been sanctioned by the State Bar of Nevada for any issues the public would like to learn about? Would that be considered confidential?

SENATOR SCHEIBLE:
That is one of the questions on the questionnaire. Bar sanctions are not confidential. You can look up any State attorney on the State Bar website to see if he or she has been sanctioned or disciplined. I encourage everybody to do that before they hire an attorney or vote for a judicial candidate.

SENATOR NGUYEN:
Is the application for appointment posted on the registrar websites? Is there a document that I can look at right now?

SENATOR SCHEIBLE:
Yes, it is posted now on the Commission website.

MICHAEL HILLERBY (Nevada District Judges' Association):
The Nevada District Judges' Association is neutral on S.B. 418, pending tweaks to the proposed amendment, Exhibit H.

CHASE WHITTEMORE:
I am testifying in neutral on S.B. 418. I have many legal clients who run for judicial positions.

SENATOR SCHEIBLE :
We will continue to work with stakeholders on the amendment, Exhibit H.

VICE CHAIR HARRIS:
We will close the hearing on S.B. 418.

CHAIR SCHEIBLE:
We will open the hearing on S.B. 252.

SENATE BILL 252: Revises provisions governing civil actions. (BDR 2-852)

SENATOR EDGAR FLORES (Senatorial District No. 2):
Senate Bill 252 revises *Nevada Revised Statutes* (NRS) 18.005, which governs recovery of costs during litigation. My copresenter is attorney Sean Claggett, who was recognized nationally for his work on focus groups. During the 2021-2022 Interim, Mr. Claggett and I engaged in conversations about what is happening within the legal community and how we could potentially address some concerns.

Nevada Revised Statutes 18.005 addresses recovery of costs in civil actions by allowing the prevailing party to recover reasonable costs incurred during litigation. These include fees and costs for expert witnesses, transcripts, photocopies, etc. One of the relevant things when we talk about attorneys is standard of care. There is a duty, responsibility or obligation placed on them to use everything in their arsenal to advocate passionately and seriously for the folks they represent. Anything beneath that is a disservice, whether you are on the plaintiff or defendant's side.

It is now almost a mandatory requirement for legitimate law firms to include focus groups in their practice plans. This is necessary because focus groups often provide the benefit of avoiding going to trial. Let us say Mr. Claggett and I are representing party B. In our representation, we both conduct several focus groups. We may come to the realization that I may have the stronger and winning argument or vice versa. If we make that determination—remember—the entire objective of going to trial is to make a human whole. That is the only reason attorneys are involved.

However, in a case with a contested issue that could take years, if an attorney can do anything to reduce the amount of time to make the client whole, he or she has an obligation to do so. In our hypothetical, we may realize my argument is stronger or I have a winning case. That will encourage Mr. Claggett and I to settle. That is why it is so important and almost an obligation imposed on all attorneys to use focus groups.

Focus groups have become common practice in other states. We want to make sure focus group costs are recoverable under NRS 18.005 under S.B. 252. The use of focus groups does not benefit one side over the other; it is a part of a requirement. I know there is going to be opposition to the bill, but I cannot imagine attorneys saying they do not use focus groups, particularly in complicated legal fights. No industry would not use every available tool at its disposal.

SEAN CLAGGETT:
Focus groups have been around for more than 30 years, when few lawyers used them since they were not well understood. They have become the standard of care for lawyers in the last decade.

In roughly 2010 to 2011, attorneys started training on both sides on how to conduct focus groups. They offer a party an opportunity to see how a jury will react to a case ahead of time. In my law office, we say the worst thing a lawyer can do is have his or her first focus group be the jury.

I act as an arbitrator and sit as a short-trial judge. I teach at the University of Nevada, Las Vegas, William S. Boyd School of Law as an adjunct professor. I am always surprised to see certain cases go to trial. Some folks believe there are too many frivolous lawsuits, which is certainly true. However, there are also frivolous defenses.

An attorney may think he or she has a valid case. However, if your focus group rejects the case, you know you should not go to trial—a decision that must be made early on. For ten years, I have been involved in large-scale cases for which everybody uses focus groups as part of the standard of care. To go without would constitute malpractice.

Live focus groups are not the only ones used. Technology has allowed great advancements for trial lawyers. Big-data focus groups have greatly reduced the cost of using groups. The defense typically uses expensive focus groups by putting together 40 or 50 people in a room. Attorneys play the part of the plaintiff presenting closing arguments. They present evidence, documents, whatever they think will benefit their case. Somebody playing the defendant does the same thing. The people break into four or five deliberation groups. The attorneys record the deliberations to get a sense of what the outcome of the case could be.

The problem is the companies that run those groups charge $8,500 for a single live focus group. The reason focus groups have become more accessible is we have learned how to conduct them for a much more affordable price. Big-data focus groups use 500 people for $25,000 to $30,000, generating 500 data points. The data points allow the plaintiff and defense to understand the true risks associated with the case. As they say, knowledge is power.

Sometimes you sit in court and shake your head, asking why is this case in trial? Maybe you say that because it seems like the case is ridiculous from the plaintiff's standpoint. At other times, you wonder why is the defense trying this massive case?

The reason is the attorneys are not utilizing the technology and information available to them through big-data focus groups. As an example, in mediation, the plaintiff and defense submit statements to the mediator, who sends the statements to be focus-grouped in a big-data format. The mediator receives the projected win rate: the likelihood the plaintiff will prevail and a range of value. The parties can then have a meaningful discussion about what fair resolution looks like.

A trial is not designed to result in astronomic, mind-boggling numbers. It is designed to make the plaintiff whole or to vindicate a defendant who did nothing wrong. However, bad decisions are routinely made, whether on the

plaintiff or defense side, to try cases that should not be tried. A lot of cases could be removed from the litigation process earlier by using focus groups. My firm has 80 such cases in our system.

Nevada does a great job of resolving cases before trial, but a lot of cases are not resolved. Focus groups are not being used effectively by all parties. We resolve a lot more cases today than we have historically because the defense is using focus groups. We understand the strengths and weaknesses of our cases and are laser-focused so we understand whether we can win cases.

Big-data focus groups have only been around for the last seven to eight years. No big trials are taking place in the State without the parties using live focus groups; big-data focus groups are not there yet. They reduce the case costs vastly since you are able to get so many more data points, creating a more accurate result. My firm has been able to accurately predict the outcome of 38 out of 40 verdicts in injury trials.

Facts matter. It is true an attorney can be completely unprepared and ruin his or her own case and hurt the client by being unprepared. With lawyers who take time to be prepared, trial results are predictable. At the end of the day, when you have enough data points, you know what the result will be.

I am a huge proponent of having focus groups be a recoverable cost because we need more lawyers engaging in the process. We need to give the defense the ability to go to their carriers and say, “You know why this is good? If we prevail, and we do this study and then the defense rolls the dice and loses, they’ve got to pay for this. And that is the way it works.”

We have the most robust offer-of-judgment laws in the Country. If you want to go to trial in this State, you take a big risk: if you lose, your attorneys’ fees and costs of the other side are going to be paid by the losing party. We have a system set up that says, “Listen, if you are going to go to trial, you better have all this information. There's a big risk if you lose.” It is appropriate in Nevada that you are going to take a big gamble if you do something, right? Well, we did that.

A recent Nevada Supreme Court decision dealt with trial costs. The justices indicated they wanted more cases settled. We have too many cases in the pipeline because the State population has become large. There are a lot of

people moving into Reno and Las Vegas. We must find the best way to adeptly reduce cases that go to trial.

I have been a trial lawyer for 20 years. We need to encourage focus group use to decrease the number of trials, which will result in fair resolutions—whatever that may be—for both sides. We have studied cases in which data showed the plaintiff was going to lose. We told the attorneys, "We have done these studies. You can't try this case, you need to resolve it." We have had cases in which we have told the defendant, "You are going to get crushed. You should not try this case. It is going to get out of hand." The attorneys had not done focus groups and so took the risk ignorantly. That is not right nor fair to clients to go into a trial ignorant of what the outcome is likely to be. We owe it to our clients to tell them the risk of winning or losing and of the value. If we do not do that, we have fallen below the standard of care, which now involves focus groups.

Many judges already allow focus group costs to be recovered. In most of my trials, I get my focus group costs recovered because it is the standard of care. It is no different than taking a deposition, doing an examination of a plaintiff on the defense side or hiring experts. The time has come to update statute to the reality of where we are as a profession.

SENATOR NGUYEN:
I do not practice in this area of law, but I am looking at costs for focus groups. Are they discretionary or mandatory? Who makes the recovery decision after the conclusion of a trial?

MR. CLAGGETT:
It is vested in the judge, which is the right thing to do. The judge presides over these cases. A concern can be, "Hey, this case was kind of simple, right? Why did you spend $25,000 on focus groups?" The judge could say, "I do not think that is unreasonable. I think a focus group or two might have been reasonable." That is what the discretion of judges is for. They presided over the case and understood its complexities.

SENATOR OHRENSCHALL:
I also do not practice in this area of law. You mentioned focus group data for the plaintiff and the defendant might be able to encourage sides to settle. If they do not think they are going to prevail in a trial, attorneys can save a lot of fees for the clients, defendants and courts.

If the plaintiff and defense know they can use focus groups early on, might that save additional resources that could be spent on expert witnesses, investigators, depositions and derogatory requests for production of documents? If neither has a good defense or case, might those savings be higher?

MR. CLAGGETT:
We encourage the early use of focus groups; in my firm, we do focus groups before we even file the lawsuit because we do not want to waste anybody's time. Once you have enough information to file a lawsuit, you have the information necessary to run focus groups.

Most members of this Committee understand there are initial disclosures in civil litigation, enough information to run a focus group. You may realize right off the bat you have a big issue you cannot overcome and the case needs to be shut down. The defense may find out it has a major issue that means they should settle.

For example, if your client does not have the logs ready for a truck driver, that could be a big problem in litigation. The attorney could test that and say, "Hey, if it turns out that we can't produce this evidence because we do not have it, how does that impact us? Should we take the risk or should we settle?" Absolutely, those costs would and should be avoided because there are cases that should definitely settle early. Other cases cannot be settled for a variety of reasons. At least the client and attorney are educated going forward through the proper use and early use of focus groups.

SENATOR STONE:
I am not an attorney and this discussion has been eye-opening for me. The cost of litigation is exorbitant. If the offense and defense stipulate the losing party will pay for the focus group, would the judge honor that?

MR. CLAGGETT:
I have never had that discussion with any party. In the large-loss cases my firm is handling, that is understood. This is what ends up happening: Lee Roberts is a Las Vegas defense attorney who handles a lot of large cases. He and I both do focus groups. We know if there is a prevailing party, the focus group costs will be paid by the losing party. However, I have never had a discussion to stipulate that.

SENATOR STONE:
You mentioned this is now a standard of practice. Let us say you have an attorney in your firm you know has a losing case. It is recommended he does focus groups, and he says, "Absolutely not, we are not doing focus groups." He loses the case. Does that put him at risk for a malpractice case from his client who says, "You should have said we're going to lose this thing, and I spent $30,000 more than I probably should have"?

MR. CLAGGETT:
I am an expert in the field. Yes, the attorney has fallen below the standard of care, and the client would have a cause of action against him or her for malpractice for not conducting focus groups.

SENATOR STONE:
This is the first time I have heard of these types of focus groups. Is there legislation in other states governing the groups' qualifications and neutrality in reviewing a case? How is that ascertained? Attorneys can bring in professional witnesses to further their cause in cases. Could an attorney choose a focus group that is going to give the edge to his client over the opponent's client?

MR. CLAGGETT:
You can manipulate a focus group 100 percent. However, it provides no value to the person conducting the focus group to engage in that behavior. You want to know how you can lose, know your risk. Attorneys are hired for their judgment. Manipulating a focus group would make no sense.

The young attorneys I teach how to do focus groups oftentimes are terrible lawyers because they are scared to lose. They do not want to hear the bad. We tell them, "You have to embrace the bad, take it in, learn from it." What we see with young lawyers is they do their first focus group and then start advocating.

A level of education needs to take place among the focus group participants. We do our best to get people who reflect the community in which the litigation is pending. With live focus groups, you must have that inclusion. Certainly attorneys could manipulate a focus group, but it would be for his or her own information—and would constitute a complete waste of money. You would look foolish saying, "I have done all these focus groups, and I know I am going to win at trial" only to have messed the groups all up and then lose.

SENATOR STONE:
The selection of the focus group is similar to selecting a juror. In court, where an attorney can veto a person for whatever reason, both sides must come to a consensus on which jurors they pick.

MR. CLAGGETT:
A focus group is better than a jury. With a jury, attorneys perform jury selection, and both sides get to deselect people. In a focus group, we take them as we find them, the most random people. You may have somebody in your focus group whom you would not seat on your jury because they might say, "I think every plaintiff is entitled to a bunch of money." Conversely, you do not want somebody on a jury who is going to say, "I believe that nobody should ever get any money for pain and suffering regardless of the facts." In a focus group, you get to hear what people think and understand why they feel that way. You start to educate yourself the more you start to understand.

When I get ready to do a trial, I take pains to watch both MSNBC and Fox News together. You hear vernacular being used on particular news stations. When you run focus groups, it is education on those little things, those nuances that count. The side benefit of doing focus groups is it makes you a much better trial lawyer.

We have so few trials in the State that lawyers get to do. A group of us do a lot of trials and other attorneys do not. Doing focus groups ahead of time will make young lawyers better advocates for clients because they will be more comfortable in front of strangers. That goes for the plaintiff and defense. The latter needs that more because the plaintiff has already done a good job of conducting focus groups. The plaintiff bar is probably more comfortable with the jury selection process. The defense needs to start practicing this more by using focus groups.

SENATOR HANSEN:
Nevada Revised Statutes 18.005, subsection 17 provision states "Any other reasonable and necessary expense" can be part of a verdict. Since focus groups are already standard practice, I do not understand why you want to put S.B. 252 in statute. Are there judges who do not like focus groups? From your description, they are a great idea.

MR. CLAGGETT:
Yes, there are judges who misunderstand focus groups. About 20 years ago, a case before the Nevada Supreme Court involved a request for focus group reimbursement. The justices said, "Look, at this time, this is not the standard of care. It may become the standard of care, but right now it is not." And so we do not think it falls under that catchall provision cited by Senator Hansen.

Now focus groups are the standard of care. Adding them to NRS 18.005 as a line-item reimbursement expense is prudent. It reflects all the other standard care you see in reimbursements as the standard of care expected of a lawyer. It is time for statute to catch up with the reality of the standard of care.

SENATOR HANSEN:
Could a focus group of 500 people technically be considered legitimate? What if the losing side is billed for 500 people when 15 may have been more than sufficient?

MR. CLAGGETT:
The cost of conducting a big-data focus group is much cheaper per person than a standard in-person focus group. I did focus groups for a large comparative negligence case that went to trial in 2016. We ended up running about 20 in-person focus groups. My brother created software in which we could take all the information from the focus groups and create algorithms of what ended up being patterns we were seeing. The cost to do those 20 focus groups was about $85,000. The verdict in the case was quite large so it warranted the expense. However, I had just under 200 data points. We can now get 500 data points for a third of that cost. A 15-person focus group is better than nothing and is still going to help you.

SENATOR HANSEN:
When you do live focus groups, do you sometimes have somebody who is excessively talkative and overbearing?

MR. CLAGGETT:
Yes, you could have people who are overbearing and others who are quiet and do not like confrontation. Quiet people have just as powerful voice in the group as those who need to be overbearing. In live focus groups, what often happens is you do not hear what quiet people have to say. It is different in a big-data focus group because people are participating from the sanctity of their own

homes on computers. You hear what everybody has to say and better understand how they really feel. That is why the data is more accurate.

What we have learned over the last 5 years is the outcome of the trial is when you get to about 400 to 500 data points, the outcome of the trial is quite predictable. Then you know you should resolve—not try—the case, resulting in savings for everybody.

SENATOR HANSEN:
What is the average size of a focus group and the average cost?

MR. CLAGGETT:
In a live focus group, the average size is ten participants and costs about $4,000 for four hours. That includes recruiting group members, paying them, renting a facility to conduct the focus group, paying the group coordinator and any additional overhead costs like lunch, drinks or anything else.

When you do focus groups with 40 to 50 people, you break them up into plaintiff and defense sides. The average cost is $75,000, which I consider cost-prohibitive. That used to be the only way we could try to figure out the outcome. Historically, focus groups were hindered because they were not good at predicting value and outcome. When I learned to do focus groups 15 years ago, that is what I was told. The value of case data has changed all that. We now know the outcome and values of cases, which is the game changer.

SENATOR HANSEN:
If two parties split a focus group cost of $30,000, it is $15,000 each. If they know the likelihood of trial success for each side and its outcome, both sides would be crazy to go to trial. Why would clients take that risk?

MR. CLAGGETT:
They should not. Nothing means more to me than the Seventh Amendment. The right to a civil jury trial is critical. However, at the same time, we owe a responsibility to our clients to tell them when they should not go to trial. Using focus groups allows us to do that.

SENATOR HANSEN:
That makes sense. You always have the check of judges ultimately determining what is a reasonable recoverable expense.

PAUL MORADKHAN (Vegas Chamber):
The Vegas Chamber opposes S.B. 252. We have concerns about the additional cost of focus groups. It could result in case litigation from both the defendants and the plaintiffs and, as you heard, recovery is already allowed at the discretion of the judge.

MISTY GRIMMER (Nevada Resort Association):
The Nevada Resort Association shares the same concerns about S.B. 252 as the Chamber. It is no secret litigation costs are high, and the bill will artificially inflate that.

Nevada Revised Statutes 18.005 provides a list of costs that are already recoverable. The costs are objectively reasonable and necessary expenses in nearly every case, such as photocopies, postage, interpreter services, etc. Focus groups are dissimilar because the cost is discretionary and not an essential part or necessary part of litigation.

Mr. Claggett and Senator Hansen pointed out the judge already has discretion to include focus group costs if he or she believes it is a reasonable recoverable cost for the prevailing party. That should stay in judges' hands and not be put in statute.

CHERYL BLOMSTROM (Nevada Trucking Association):
For the reasons my colleagues have stated, the Nevada Trucking Association opposes S.B. 252. The cost of litigation is one of the most expensive things we deal with as an industry. In Nevada, the average trucking company has four trucks; they are hardly big operations. To contemplate the added expense of a focus group if it proves to be a necessary component makes litigation costs go up. Insurance companies will, by their nature, add that cost to the price of insurance for everyone.

BRYAN WACHTER (Retail Association of Nevada):
The Retail Association of Nevada echoes the comments of previous testifiers in opposition to S.B. 252.

JEFF ROGAN (Clark County):
During this discussion about focus groups, we need to recognize counties and political subdivisions of the State are also defendants in many different types of lawsuits involving tort claims. They are different than the private entities Mr. Claggett represents. Clark County is subject to a statutory tort cap of about $200,000. We also have certain immunities private defendants do not have.

Our concern is if S.B. 252 also applies to political subdivisions, that will incentivize the use of focus groups, which as Mr. Claggett mentioned are prohibitively expensive for our smaller-value cases with $200,000 caps. Our research shows most of these types of focus groups are used in larger-value cases of hundreds of thousands or millions of dollars. If we start applying focus group costs to political subdivisions, those costs will add up quickly at $8,000 per focus group.

Clark County is not likely to use them because of our evaluation of the expense of the focus group versus the potential damages we would be paying does not make economic sense for us or taxpayers. In Mr. Claggett's view, the extent to which focus groups are justifiable is because both sides use them. That is not true for the State and its political subdivisions.

We would ask the Committee either to oppose the bill or impose more reasonable limitations of perhaps $3,500 when focus group costs are collected against political subdivisions or the State. We already do that for expert witness fees in NRS 18.

BRIAN PARTRIDGE (Creditor Rights Attorneys Association of Nevada):
The Creditor Rights Attorneys Association of Nevada is a trade group of attorneys who represent creditors in all State courts from Main Street to Wall Street, justice courts to the Supreme Court. We are interested in keeping litigation costs in check as a matter of professional responsibility.

The Association opposes S.B. 252 for most of the reasons that have been addressed. Statute allows recovery at the discretion of the court. Professionally run focus groups are expensive to set up, manage and interpret. Nothing in statute requires safeguards for big-data focus groups or anything else of that nature to give the court guidance on what would be a reasonable group size or how they should be organized or conducted.

Senate Bill 252 would give people with deep pockets a blank check to convene at least one focus group to stress-test strategies. Poorer parties would not be able to cover those initial costs, which is not fair or reasonable under the circumstances. Mr. Claggett said use of focus groups is a standard of care. I would think there would be malpractice liability fees. I have never tried a $100,000 case, nor have I used a focus group to tell me how or whether my client should settle the case. That does not constitute malpractice.

The standard of care may be different depending on the type of litigation you are dealing with, whereas this bill and its proposed amendment, Exhibit H, would apply to civil litigation cases of all types, shapes and sizes.

CHAIR SCHEIBLE:
We will close the hearing on S.B. 252. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 2:08 p.m.

RESPECTFULLY SUBMITTED:

_____
Pat Devereux,
Committee Secretary

APPROVED BY:

_____
Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
S.B. 34	C	2	Patrick Guinan	Work Session Document
S.B. 37	D	3	Patrick Guinan	Work Session Document
S.B. 39	E	3	Patrick Guinan	Work Session Document
S.B. 190	F	3	Patrick Guinan	Work Session Document
S.B. 223	G	3	Patrick Guinan	Work Session Document
S.B. 418	H	5	Senator Melanie Scheible	Proposed Amendment