MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-Third Session
May 6, 2025

The Committee on Judiciary was called to order by Chair Brittney M. Miller at 8:02 a.m. on Tuesday, May 6, 2025, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 3 of the Nevada Legislature Hearing Rooms, 7120 Amigo Street, 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/83rd2025.

COMMITTEE MEMBERS PRESENT:

Assemblymember Brittney M. Miller, Chair
Assemblymember Elaine H. Marzola, Vice Chair
Assemblymember Lisa K. Cole
Assemblymember Joe Dalia
Assemblymember Cecelia González
Assemblymember Ken Gray
Assemblymember Alexis M. Hansen
Assemblymember Melissa R. Hardy
Assemblymember Selena La Rue Hatch
Assemblymember Cinthia Zermeño Moore
Assemblymember Hanadi Nadeem
Assemblymember David Orentlicher
Assemblymember Erica P. Roth
Assemblymember Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Melanie Scheible, Senate District No. 9

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Committee Policy Analyst
Karly O'Krent, Committee Counsel
Daniel Delap, Committee Counsel
Aaron Klatt, Committee Manager
Nicholas Fischer, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Justin Watkins, representing Nevada Justice Association
Ben Cloward, Attorney, Cloward Trial Lawyers, Las Vegas, Nevada
Vicki Ozuna, Private Citizen, Las Vegas, Nevada
Riley Clayton, Private Citizen, Las Vegas, Nevada
Matt Walker, representing Howard Hughes Holdings, Inc.
Tommy Ferraro, representing Southern Nevada Homebuilders Association
Nick Shepack, Nevada State Director, Fines and Fees Justice Center
Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson
Jeffrey S. Rogan, representing Clark County
Angela Knott, Deputy Public Defender, Legislative Liaison, Washoe County Public Defender's Office
James J. Martines, Vice Chancellor and Chief General Counsel, Nevada System of Higher Education
Patricia Charlton, Chancellor, Nevada System of Higher Education
Jim DeGraffenreid, National Committeeman, Nevada Republican Party
Kimberly Fergus, Private Citizen, Las Vegas, Nevada
Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chair Miller:
[Role was called. Committee rules and protocols were explained]. We will begin today with Senate Bill 303 (1st Reprint). I am opening the hearing on Senate Bill 303 (1st Reprint), which revises provisions relating to civil liability to persons using certain premises for recreational activity under certain circumstances.

Senate Bill 303 (1st Reprint): Revises provisions relating to civil liability to persons using certain premises for recreational activity under certain circumstances. (BDR 3-1021)

Justin Watkins, representing Nevada Justice Association:
I am pleased to present Senate Bill 303 (1st Reprint). We submitted an amendment via email and you should have copies in front of you [Exhibit C]. This amendment language is actually the complete bill. We term it as a "rewrite" of the bill in total. The blue sections are new, the black sections are existing law, and the red are deletions.

I am going to start off by giving a little bit of a background as to why this bill is being presented today, and then turn the presentation over to Ben Cloward and his team, along with one of their clients, Vicki Ozuna, to describe what is happening in a case that is actually in court right now to further illustrate the need to clarify the Legislature's intent for recreational immunity. Then, I will come back, walk you through specific language in the bill, and answer any questions you may have.

I will start off by indicating the purpose of the recreational immunity statute—which was enacted in Nevada in 1963—was originally to incentivize rural, private landowners to make available their open land and water to the public for free without having to worry about liability for any injuries or damages caused by people who are recreating on that land. When looking at the intent, Nevada courts specifically stated recreational use statutes generally apply to premises in rural, semi-rural, or nonresidential areas and to injuries incurred by an activity enumerated in the statute that can be pursued in the true outdoors.

In response to that interpretation, in 1995, the Legislature expanded recreational immunity to any premises. For nearly 30 years after the Legislature expanded recreational immunity, there was not a lot of misinterpretation or disagreement about who this statute applied to. I have been practicing for 20 years now, and never did I see a private, for-profit company working on land that would otherwise be recreational claim this recreational immunity. It was cities, it was states, and it was rural landowners who usually used this argument of recreational immunity, and it was applied.

What happened, and why we are here today, is late last year in a case called *Abbott v. City of Henderson*, the Supreme Court of the State of Nevada ruled that a mother, who was walking with her child and supervising her child on a playground and fell due to a hazardous condition on the ground, could not pursue her claim against the City of Henderson because the city was protected under recreational immunity. Just so we are clear, nothing in this bill would change that ruling. However, the Nevada Supreme Court in dicta—which is basically language or comments that have nothing to do with the ruling itself—left open the possibility of an argument for the first time by these private, for-profit enterprises; they should be protected from liability based on the immunity the City of Henderson was afforded in that case.

Before I walk through the language, I will turn this hearing over to Ben Cloward, and then attorney Riley Clayton will be up here as well, along with Vicky Ozuna. As you can see, apparently in order to be an attorney in the state of Nevada, you must not have any hair. Hopefully you do not confuse any of us.

Ben Cloward, Attorney, Cloward Trial Lawyers, Las Vegas, Nevada:
I represent the Ozuna family. In particular, I am here today with Vicky Ozuna, the widow of Anthony Ozuna, who lost his life in September of 2020 as a result of some out-of-state companies cutting corners during the construction process. In a moment, I will allow Mrs. Ozuna to share the details of how her husband lost his life. Our firm was hired to assist her in the litigation process to hold those companies accountable for very clear shortcuts they took, which my partner, Riley Clayton, will also address. My role today is to simply share the brief, procedural history which led to the current issue.

In August 2022, a lawsuit was filed against four large national companies, three of them being incorporated in Delaware and one being incorporated in New York. Over the next 18 months, several amendments to the complaint and amended answers were filed. In all, there were approximately nine amended answers filed by the defendants to the complaint. In none of those nine answers was the recreational use statute ever asserted as a defense. In fact, prior to this case, in my 17 years of litigation on behalf of plaintiffs as well as representing defendants, no road construction company or the like has asserted this statute as a defense. However, as a result of the *Abbott* decision, all of the out-of-state companies in Mrs. Ozuna's case rushed to the courthouse and asked the judge to give them permission to amend their answers to assert the recreational use statute as an affirmative defense to deny the Ozuna family recovery for the death of their beloved husband, brother, and father.

We believe this is not in harmony with the legislative intent, and certainly is a major departure from the way this statute has been read and understood by both plaintiffs and defendants for the last 30-plus years, as evidenced by the fact this defense was not included in any of the first nine answers or amended answers until after the *Abbott* decision. With that brief procedural background, I will now turn the time over to Mrs. Ozuna to explain what happened to her husband. We sincerely appreciate the hard work and service that each of you offer to the citizens of Nevada. Thank you for allowing me to be heard on this important issue.

Vicki Ozuna, Private Citizen, Las Vegas, Nevada:
I am a resident of Clark County, and I am here today on behalf of myself and my family to respectfully urge you to support greater clarity and fairness in Nevada's recreational use statute. I dedicated 28 years of my life to public service with the City of Las Vegas, working mostly in the field of code enforcement. In 1998, I became a code enforcement officer, and when I retired in 2022, I was proud to be serving as code enforcement manager. Throughout my career I worked in several departments, with a primary focus on ensuring enforcement of city ordinances designed to protect public safety and maintain community standards were held. In my professional experience, I have seen firsthand how crucial proper protocol is in keeping people safe, and how quickly things can go wrong when these protocols are ignored or bypassed. Today, however, I speak not only as a former public servant, but as a wife and mother whose life has been forever changed by a devastating and preventable tragedy.

My husband's name was Anthony Ozuna. He was a lifelong Nevadan and a devoted and loving father to all five of our children, three of whom he was proud to call his biological own, though he cherished each and every one of them with his whole heart. He was the rock of our family. He was kind, funny, dependable, and so full of life. We shared a beautiful life together, filled with laughter and love. Everyday moments became treasured memories. Whether we were running errands, relaxing at home, or taking family vacations, we were at our best when we were together; he made everything feel complete.

Anthony worked for many years as a journeyman sheet metal worker, a career he took great pride in. He retired in 2017, and we looked forward to a long and well-deserved chapter of rest, travel, and enjoying the fruits of his labor. Sadly, that time was far too short. After retirement, Anthony focused even more on his health. He had diabetes, and one of the most effective ways he managed his condition was through cycling. Riding his bike was not just a hobby, it was a critical part of his health routine. It helped him manage his blood sugar and keep his body strong. What began as exercise quickly became something he loved. For nearly three years he rode almost every day with his brother, Andrew, and his sister, Cindy, usually early in the morning. Anthony took every safety precaution seriously, from wearing a helmet and reflective clothing, to using flashing lights and proper cycling shoes, and following all traffic laws. He studied road safety and took it to heart. He was not only a passionate cyclist, but a responsible and experienced one.

That morning, I received a phone call from his sister, Cindy. That is why what happened on the morning of September 1, 2020, was so unthinkable. She did not give any details, she just said there had been an accident and that I needed to get to UMC [University Medical Center] Trauma Center right away. I was just stepping out of the house to head to work, and I called out to my daughter and asked her to come with me. The drive to the hospital was something I barely remember; I just kept thinking, Let him be okay. When I saw him for the first time, I was completely unprepared. A strong, vibrant man I had shared my life with was lying in a hospital bed motionless and could not speak. They advised me he was paralyzed from the neck down. It was the most terrifying moment of my life. I could barely process what I was seeing. It did not feel real, but it was.

Over the next 11 days, our family endured the kind of pain no one should ever have to go through. We learned every bone in Anthony's neck had been broken. He underwent an emergency surgery that lasted nine hours, a surgery meant to help him retain his ability to breathe on his own. After the surgery, he was put on a ventilator, and then, due to COVID-19 protocols, we were told we could no longer stay by his side. Anthony, the most compassionate, loyal, and loving man I have ever known, lay alone in that hospital for days without the comfort of his family, without knowing we were there praying for him and loving him. The next time we were allowed into the hospital he had suffered a stroke. The hospital gave my daughter and I just 30 minutes with him. The doctors told us he was likely half brain dead, and they also suspected he was now blind. That was the moment I knew my Anthony,

the man who loved me, loved life, his family—he gave everything his all—was gone. On September 9, after much grief and pain and full reflection, our family made the decision to remove him from life support. On September 11, the day before his sixty-third birthday, Anthony was removed from life support and passed away.

What makes this all more tragic is the fact it did not have to happen. We later learned the construction crews working in the area had begun placing cones and barricades before they were authorized to do so under the approved traffic control plan. At that hour, the sun was just rising over the mountains. The glare on that stretch of road was blinding. Anthony told his medical team he did not see the cones; he struck one and crashed. Had the construction crews waited as they were required to do, this accident likely never would have happened. To make matters worse, I have since learned the construction companies involved are trying to avoid responsibility by citing the *Abbott v. City of Henderson* case. Anthony was doing everything right, using proper safety equipment, and following the rules of the road. It was the construction crews who broke protocol. Their negligence directly caused his death, and now they are trying to hide behind a technicality.

My husband's life mattered. He was a husband, a father, a grandfather, and a man who lived with dignity, responsibility, and love. He did everything right; he deserved better; we all deserve better. We hope to ensure no lives are devalued by legal technicalities. Thank you for your time and listening to our story.

Riley Clayton, Private Citizen, Las Vegas, Nevada:
I would like to provide a little bit of factual background to give a little more context and insight into the story, and why clarifying *Nevada Revised Statutes* (NRS) 41.510 is necessary. In the Ozuna case, certain contractors needed to upgrade their underground cable network in the City of Las Vegas. To perform this work, the contractors needed a construction permit and an approved traffic control plan. The work would be conducted on Elkhorn Road, which is a major street in Las Vegas, and has two lanes going in each direction with bike lanes on each side of the travel lanes. The contractor submitted a traffic control plan to the city. The plan even included closing off the bike lane for this particular project. The proposed traffic plan specifically indicated the time for set up and take down of the cones and barricades. It says hours of set up, 7 a.m. to 5 p.m., when school is out, and then between bell times when school is in session. The same traffic control plan also said this plan is void if there are no flaggers.

In this case, the city has testified that setting up cones before 7 a.m. would violate the traffic control plan, failing to have flaggers out on this site would void the traffic control plan, and they expected these contractors to strictly comply with the traffic control plan. Vicki testified correctly that her husband was out on the road at about 6:30 in the morning. The construction crew had started setting up these cones, these signs, at 4:30 in the morning. I asked this contractor in his deposition why he set up these cones in violation of the traffic control plan. He testified, This is how I was taught by my employer, RoadSafe Traffic Systems, and I needed to set these up as early as possible because I had some 12 other setups that needed to

be done that morning. The motive was clear; this was done for profit, not for safety. Had these contractors complied with the traffic control plan, as they told the City of Las Vegas they were going to do, this horrific, horrific, tragic accident would not have occurred. Now, these contractors are seeking immunity protection under NRS 41.510.

Chair Miller:
We are deeply sorry for what you have experienced, and thank you so much for coming today and sharing with us. Before we move on to questions, is there anything else you would like to address that is in the bill or the proposed amendments?

Justin Watkins:
I will walk through technically what the proposed conceptual amendment does. The intent of this proposed conceptual amendment is to address three things—to whom does recreational immunity apply, what kind of land or where does it apply, and for what activities. If you look to section 1 of the proposed conceptual amendment [Exhibit C], this is discussing two of those items, who and where. The "who" are two different categories of owners. The first is the state of Nevada or any political subdivision thereof. That is cities, counties, state, RTC [Regional Transportation Commission]—the language is throughout our statutes. The second is private owners in rural areas who make their land available to the public for free.

We have a very limited category of the who; the "where" is, in regard to the state of Nevada, those lands that are intended for recreational use. You see in section 2 of the bill, how we determine what lands are intended for recreational use. If they are included in the city, county, or state's recreational plan, designated or permitted for such; or a part of a trail system that is included or intended for in the recreational plan. It is the state of Nevada, any political subdivision, on their recreational land, and private, rural landowners who provide their open land for free to the public. That is the "who" and that is the "where."

When you look into section 3, that is defining with specificity what we mean by those private, rural landowners, and making clear that does not apply to private urban or semi-urban landowners in residential or residential areas. Section 4 of the bill discusses what that immunity means. This is existing language. It means they owe no duty to keep the premises safe; it means they do not extend any assurances the premises are safe; and there is no duty of care or ground of liability for injury to the person, with the exceptions that are currently in statute. Those exceptions include willful or malicious failure to guard or warn against, for injuries suffered if the landowner is paid, or injuries caused by the person for whom the permission is granted to enter the land.

We have now added two additional sections to these exceptions to liability. The first is—we are now in section 4, subsection 6, paragraph (d)—we want to ensure the immunity that is being provided to the State of Nevada is limited to the State of Nevada, and nobody who occupies or uses the lands that would otherwise and are provided for immunity for the State of Nevada, extend to anybody but the State of Nevada. If the State of Nevada allows somebody onto the land—they are using the land, they do not get recreational immunity.

There is sort of a concept in law that the protections do not run with the land, they are individualistic. You have to satisfy all three grounds—you have to be the type of person who has the immunity, it has to be the kind of land that is protected, and the activity must be the type that is contemplated. The existing language in regard to recreational activity is in statute now. You see all the listings; that is a non-limiting list.

You will see we have added some clarifications as to recreational immunity that does not include utilitarian activities performed for work or transportation, meaning a person on a bike may be recreating, but is not necessarily recreating just because they are on a bike. A person walking may be recreating but is not necessarily recreating depending on the purpose for which they are walking. Lastly, you will see in the final section 6, as part of working with stakeholders, we are attempting to address a concern from state entities that, despite having immunity, they are sometimes kept in cases where the issue of immunity is not resolved at the district court level and they are stuck and have no appeal rights until the case is done, which can be quite expensive. In this instance, when the court either applies or refuses to apply immunity, either party can take the case directly to the Nevada Supreme Court to have the Nevada Supreme Court decide that issue right then and there so the parties and the Judiciary are not wasting resources in moving a case forward that otherwise should not exist. I submit myself to questions.

Assemblymember Cole:
This is very interesting, and I cannot wait to do more of a deep dive on the amendment. My question is on section 4 of the amendment, subsection 6, paragraph (d), where we are talking about the protections provided in section 2 are limited to the State of Nevada and political subdivisions and shall not extend to any other person or entity leasing, occupying, or using said premises. In my younger days I used to run a lot of half marathons. What happens if you have a race group who are running, or even a cycling event, are those guys protected?

Justin Watkins:
Wonderful question, and it does a good job of showing what the intent of this is. In that situation, let us assume that a bike race or marathon is on state, city, or county property, and the race organizers were permitted by that entity. The state or the city or the county would be immune from liability; the race organizers would not.

Assemblymember Cole:
Are they immune now under any law?

Justin Watkins:
My interpretation is no. For the last 30 years my interpretation has been no, there is no immunity for a private, for-profit enterprise that engages in commerce of recreation. However, the dicta of *Abbott* has empowered some litigants to make the argument.

Assemblymember Yurek:
Our hearts go out to you, ma'am, for your loss. I appreciate what this bill is attempting to do, provide additional clarity the Supreme Court kind of left open. I also want to tell you personally, as I have been lobbied by the folks on this, I appreciate the effort that has gone to provide clear language that will satisfy the intent I think you have clearly established here through this presentation of the conceptual amendment.

To make sure the record is abundantly clear, I would like to have you affirmatively or negatively answer this specific question. Other than the rural piece which has already existed and has been interpreted for a long time, with respect to this kind of new language clarifying immunity to the State and its political subdivisions, that very specifically what you mean by that is, immunity would be granted to those entities—on recreational properties as defined, for recreational activity as defined—to the State of Nevada and all of its political subdivisions. That would include the counties of this state, the municipal agencies or entities of this state, all of the cities, and other political subdivisions as you have articulated are used throughout the statute and it does not pass through anybody else, but it would specifically provide the immunity this statute contemplates for those entities.

Justin Watkins:
Correct.

Chair Miller:
I think he was looking for the word affirmative, but we will go with correct. I do not see any additional questions at this time, so I will open testimony in support. Is there anyone in Carson City, Las Vegas, or over the phone who would like to testify in support of S.B. 303 (R1)? [There was no one.] I will open opposition testimony in Carson City.

Matt Walker, representing Howard Hughes Holdings, Inc.:
We are in opposition today on the bill as presented. We are still absorbing the amendment. Mr. Watkins and the Nevada Justice Association have been kind enough to continue a dialogue, as Summerlin develops large-scale, recreational infrastructure such as our 200-plus-mile trail system, 90-acre Grand Park, et cetera. We are still in conversation about how we can maintain the ability to deliver public infrastructure open to the public at no cost that functions similarly to some of the lands captured in the bill as redrafted, while still under the ownership of a master plan developer, and we appreciate their patience and diligence in continuing that conversation.

Tommy Ferraro, representing Southern Nevada Homebuilders Association:
The Southern Nevada Homebuilders Association respectfully opposes S.B. 303 (R1) as amended. While we appreciate the intent of the bill, we are concerned that removing liability protections for private parks and residential common areas may have unintended consequences. We encourage further discussion to ensure community access and safety can be balanced without discouraging investment in shared spaces.

Chair Miller:
Is there anyone else in Carson City who would like to oppose S.B. 303 (R1)? [There was no one.] Is there anyone in Las Vegas or on the phone who would like to oppose S.B. 303 (R1)? [There was no one.] I will open neutral testimony. Is there anyone in Carson City, Las Vegas, or on the phone for neutral testimony [There was no one.] I welcome the bill presenters back for any final remarks.

Justin Watkins:
Thank you for your time and your indulgence with the late amendments. I would be remiss if I did not extend my gratitude to all the cities and counties and state entities who have worked so hard with me on coming up with this language. As indicated, I will continue the conversations with those in opposition to see if there is a way we can both promote good public policy and development of recreational opportunities for the state of Nevada, while also developing good public policy to ensure safety standards are met.

Chair Miller:
I will close the hearing on S.B. 303 (R1). Next, we have Senate Bill 359, which makes various changes relating to traffic offenses.

Senate Bill 359: Makes various changes relating to traffic offenses. (BDR 43-900)

Senator Melanie Scheible, Senate District No. 9:
Thank you for allowing me back in front of the Assembly Judiciary Committee. This is not even my last presentation in front of you, we are just in the middle. I am very happy to be here presenting Senate Bill 359. Senate Bill 359 is a follow-up bill to Assembly Bill 116 of the 81st Session, which decriminalized minor traffic offenses. I stand by our decision to decriminalize minor traffic offenses; it is the right thing to do, it is good for Nevadans, and in doing that we have to develop a process for handling these new civil infractions.

Over the past four years, I have been working in the courts and with the courts to figure out some of the successes and pitfalls of the ways we have been handling them and figure out ways moving forward that we can do even better. I have my copy of S.B. 359 in front of me, and I also have a copy of the amendment you should all have [Exhibit D]. I am going to walk through them together so we are all on the same page about what the proposal is. You will notice the amendment comes from Clark County. They have been fantastic partners in getting a whole group of stakeholders together to try to make sure we make this policy as good as it can be.

By way of background, I did work with representatives from Clark County; representatives from the Clark County District Attorney's Office; the Nevada District Attorneys Association; representatives from Washoe County from the Second Judicial District Court—so the Washoe County courts; the Eighth Judicial District Court—so the Clark County courts; the Judges of Limited Jurisdiction—so the justice court; justice of the peace, and municipal judges throughout the rest of the state; the City of Henderson and the Henderson City Attorney's Office; the Nevada Supreme Court; and public defenders from Washoe County.

I do not remember having Las Vegas Metropolitan Police Department at the table, but I know I have discussed this amendment with representatives from there. We have really tried to include everybody, and certainly there may be additional stakeholders who have feedback and input I am more than happy to accept. I wanted to give you that background before I walk through the bill with you.

Starting with section 1, it is pretty meaty; it adds a whole new section to Chapter 484A of the *Nevada Revised Statutes* (NRS). Chapter 484A of the NRS is the civil infraction statute. The new section we are adding outlines the process for having a contested hearing on a civil infraction. At this point in session, you are all familiar with a number of different kinds of hearings; you know what a preliminary hearing is, you are familiar with eviction hearings, summary eviction hearings, and evidentiary hearings. Another hearing the court conducts is a contested hearing on a civil infraction.

If I were driving 10 miles-per-hour over the speed limit—which obviously I would never do, I would, but I have not—and got a ticket for driving 10 miles-per-hour over the speed limit, and my ticket was handed to me personally, it has instructions on it for how to handle the ticket. Let us say, for whatever reason, I want to fight the ticket. I do not think I was going 10 miles an hour over or I think there is something else wrong with the ticket. Maybe I am looking at it and I can see they have the wrong make and model of my car, the ticket is not in my name—there is something wrong with it and I want to contest the ticket. Much to my client's chagrin, there is no process to simply tell the court they are wrong and get your ticket dismissed. In fact, you have to have a hearing. Section 1 of the bill outlines how that hearing is supposed to be processed.

Looking at section 1 of the proposed amendment [Exhibit D], let us read through the amendment to understand the process we are agreeing should be in place for civil infractions. The hearing should be conducted by any court—we are removing "magistrate" and replacing that with "court"—and it should follow the rules adopted by the Nevada Supreme Court.

If you move to the second page, we are going to allow anybody to acquire a subpoena. That could be the prosecuting attorney for the State or the city, which could be the attorney for the person who is contesting the ticket, or the person who is contesting the ticket themselves. A subpoena is basically a strongly worded letter to a witness that tells them to come to court. In pretty much every court, there is a process for obtaining a subpoena. If I am a private citizen and I am contesting my speeding ticket, generally there is a form I fill out. I apply to the court, and say, Hey, court, will you please tell Greg Baylor to show up in court March 5, he is my witness. The court will then issue a subpoena. The reference to the Nevada Supreme Court rules allows for the courts to develop their own rules for how a person makes that request.

Section 1, subsection 3, clarifies that at the hearing, evidence can only be taken after somebody has been sworn in and they make an oath to be truthful. Every party can call their witnesses, introduce exhibits, cross-examine witnesses, and offer rebuttal evidence.

Section 1, subsection 5, paragraph (c), which you see in green—I want you to look at the amendment because in purple is what was in the original bill, in green is what we are suggesting to replace it with—is simply a statement about the rules of evidence that apply in a contested civil procedure or a contested civil infraction hearing. We have had confusion in the courts about how they are supposed to conduct these hearings. They are not trials. The standard of proof is not the same as a trial because nobody is going to end up with a criminal conviction at the end of the case. Nothing has to be proved beyond a reasonable doubt, it only has to be proved by a preponderance of the evidence, which means a lot of the trial rules we have for criminal procedure do not apply to a civil infraction. Section 1, subsection 5, paragraph (c) is language I believe is borrowed from Arizona's civil infraction statute, indicating it is a less formal proceeding than a trial on a criminal case, and the acceptance or admission of evidence is up to the judge.

The heart of section 1, subsection 5, paragraph (c) is, it has to have probative value to a fact at issue. Essentially, it has to be relevant to the case and the judge gets to make the determination of whether or not it is probative, whether or not it is reasonable, whether or not it is the kind of evidence a normal person would rely on. That gives the court the ability to say, This evidence does not rise to the level of being reliable enough for me to utilize it; or it allows the court to say, I understand this is not a criminal proceeding and I do not expect you to bring in an expert to testify to whatever it is you are arguing, I will accept your representations as evidence. Section 1, subsection 4 allows for hearings by phone or by video. That is section 1.

In section 2 of the bill, if you look at the bill itself, it only had one little, teeny, tiny change on line 26 changing the "may" to a "must," but the courts caught me and so we had to expand this section. They really were great partners. What we have done in the new section 2 is clarify what happens when a person has both a civil infraction and a criminal complaint at the same time. I will also personally say this has happened a lot more than any of us expected. The courts may have the numbers, but when we discussed this back in 2021, when we were passing A.B. 116 of the 81st Session, we threw in this section 2 like, Oh, I guess that could happen. Now, it is a daily occurrence in both Washoe County and Clark County, so we had to figure out how to deal with it and this is what we have come up with.

We want the two cases to stay together, the civil infraction and the criminal complaint. A common example of this is when somebody is cited for reckless driving or for having expired insurance or not having insurance; those two are both criminal citations, but often they also come with something like failure to signal or having a broken taillight or talking on the phone while you are driving. Someone gets pulled over for using their cell phone, which is a civil infraction, and then they get hit with that criminal citation for not having insurance or not having a license.

What we propose to do in section 2 is allow for those to be consolidated into a single complaint. There were a couple of issues with requiring them to be consolidated, with some courts being unwilling, and some courts being unable to combine those due to technological restraints. Basically, we are encouraging the courts to keep them together. In order to

facilitate that, what section 2 says is, they can be consolidated at any point in the proceedings on the motion of a party or the court's own motion. That consolidation does not even necessarily have to mean the complaints are going to be combined into a single document. It can just be the criminal complaint and then the civil complaint could be numbers four and five on the judge's docket that day.

The really important part is, if there is going to be a hearing on them, that is where section 2, subsection 2, paragraphs (a) and (b) come into play. What we are envisioning is, judges will be able to hear the evidence on both infractions at the same time. Because the criminal infraction has to be proved beyond a reasonable doubt, the criminal procedure rules would apply. The court would hold a full trial—witnesses would have to be sworn, there would be no admissible hearsay, the judges would have to follow the rules of criminal procedure when it comes to allowing witnesses to testify, when it comes to evaluating the probative value of evidence and making a determination. However, the standard of proof will still remain only a preponderance of the evidence for the civil infraction.

In practice, what this would look like is, if somebody is contesting their ticket in its entirety, the court would hold a trial, the prosecuting attorney would bring in the evidence that the person was driving without insurance, they would also present any evidence they have at the time of the broken taillight, and then the judge would make a determination on both of them. In order to find the person guilty of driving without insurance, which would have to have been proved beyond a reasonable doubt. In order to find them responsible for driving with a broken taillight, which would only have to be proved by preponderance of the evidence.

This is something judges do every single day. Like we just talked about, there are 100 different kinds of hearings. Throughout the state of Nevada, judges preside over eviction cases, and preliminary hearings, and bail hearings, and evidentiary hearings, and calendar calls, and motions to dismiss every day, and those all have different standards. Judges are very accustomed to having one standard for one kind of case and a different standard of proof for a different case. What is a little bit unique here is, they are taking all of the evidence at once, because the alternative would be to present all of the evidence, close the trial, open up the hearing, and present all the same evidence. We are not going to make the courts do that. That is what section 2 of the bill does. Moving on, there is also section 2, subsection 3, which talks about hearing those things at the same time, which I think I already explained.

Section 3 of the bill—we are not making any changes with the amendment. Section 3 is really just conforming changes to allow for the cities and the counties and the State to issue these citations, which they are already doing. Section 4 pertains to the bond somebody has to post in order to get one of these hearings on a civil infraction. Currently, that bond is being set at the amount of the citation. If I got that civil infraction citation for talking on my cell phone, I would have the option to either pay a $250 fine or post a $250 bond and get a court date. Section 4 allows for those bonds to be set at a lower amount, so you are not paying the whole fine and then going to court, and if you win, getting reimbursed. Section 4 also allows a prosecuting attorney to represent the state.

Section 4, subsection 3—if you are looking at the amendment, because this is not in the original bill—is on page 6 of the amendment and has an important stipulation in it. It allows an attorney to appear on behalf of their client in a trial or in contesting a civil infraction, and it clarifies by doing that, the person who chooses not to come to court and instead has their attorney appear for them stipulates they are the person who received the citation. As an attorney, I could not go to court without my client and then argue, My client's name is Joe Smith, but my client is not Joe Smith, so you gave the citation to the wrong person. If you are going to argue identity, you have to be there. That is what section 4, subsection 3 says. In section 4, subsection 4, we did make a change about the subpoenas because we put the subpoena power in section 1.

Section 5 is clarifying peace officers basically have two choices when it comes to these civil infractions—they can either fill out the affidavit that explains the evidence they would have presented in court, or they could come to court. If they choose to do neither of those, the judge can dismiss the case, unless there is other evidence like a third-party witness who comes to testify. This has been an issue, at least in Clark County. We think it is because there is just a little bit of a lack of clarity on how these hearings are supposed to work.

The purpose here is to try to make it clear that there are two options. If you are a peace officer and you issue a citation to somebody for talking on a cell phone, not signaling properly, and you want that citation to stick, you either have to show up, or you have to respond by mail to the form the judge sends you. If you do not do either of those things, be prepared for your case to be dismissed and you cannot complain about it. That is essentially what that part says. We added section 4, subsection 8, clarifying nobody will be awarded attorney's fees. Even though these are civil cases, we are not going to do attorney's fees on traffic tickets.

Section 5 is really just conforming changes, and section 5 clarifies if the prosecuting attorney wants to reduce a criminal charge down to a civil infraction, they can do that at any point. For example, they might want to negotiate a criminal citation down to a civil infraction. It is something my clients only ask me to do every single day, three times a day. The statute was not clear that the prosecutor could do that at any point during the case, so we removed that language. You see it removed in the bill; it is lines 32 through the end of the bill. On the amendment it is pages 7 and 8. We removed that language about having to do it in advance so they can do it at any time.

We also added a section 6, which clarifies how the money is to be collected by either the municipal court or the justice court pursuant to this section. We also added a section 7 which pertains to driving under the influence (DUI) charges. Basically, section 7 says, if the civil infractions arise out of a DUI and that DUI is ultimately dismissed, anything that was criminal has to be reduced to a civil infraction in that case if it is not dismissed entirely. We also added a section 8. The counties already have the ability to create traffic rules and to

create misdemeanor traffic offenses. It was not clear if they had the ability to create civil infractions. It only seems fair if we are going to allow them to impose criminal penalties for traffic violations, we should also allow them to impose civil penalties for traffic infractions—section 8 gives them that power.

Section 9 allows for the case where someone is not contesting the ticket. I had to make sure I was clear on which section this was. The courts and the prosecutors have been desiring to allow people to plead online, to plead without going in front of a judge, to streamline their process and still allow people the benefit of the bargain of reducing their citations from criminal citations to civil infractions. Section 9 would allow them to do that, and then they can pay everything before the due date and get their case closed so the court does not have to wait the full 90 days someone is entitled to if they want to close their case out earlier. I think that covers the main, if not all, sections of the bill.

Chair Miller:
Are you sure?

Senator Scheible:
No.

Assemblymember Cole:
I think this is kind of a neat cleanup bill based on real life and what you have experienced. My question is on page 2 Exhibit D at the top where we are talking about who can get the subpoenas. I am curious, in what situations would the court be issuing subpoenas in these cases?

Senator Scheible:
The court could, if they felt it was appropriate, develop a system where if the prosecutor does not want to come to court for the contested hearing, the court could issue a subpoena to the peace officer to appear. We have been trying to figure out if the peace officer issues a citation, the person who is cited goes and gets a court date, if a prosecutor is not going to be involved—and some of them do not want to be involved—how in the world is that peace officer supposed to know about the court date? At this point in time, I am not aware of any courts that are issuing the subpoenas themselves, but this would allow for that process if that were how they wanted to fashion their system.

Assemblymember Nadeem:
If there are two hearings together, the civil hearing and the criminal hearing, what is the benefit of it? Is that going to save the court time, and the person who has been responsible for this? How does it go?

Senator Scheible:
Exactly. It saves the court time, it saves the person who is contesting their ticket time, and it also prevents an issue which we have been seeing where people have two different court dates and they actually do not realize it. They go to the first one, they think everything is taken care of, and they miss their second court date. By having them together, we will avoid that oversight.

Assemblymember Hansen:
I appreciate a really great bill explanation of going through the sections. You remind me of your dad, who was a good teacher. As part of A.B. 116 of the 81st Session—I remember it well, supported it—glad we see how this plays out. Sometimes we need to come back and fix things and so I appreciate that. In section 7—I think I need an actual example to help me understand it—the very first part about driving while under the influence of alcohol, "unless pursuant to a plea negotiation, if the charge of driving while under the influence of alcohol and/or a controlled substance or prohibited substance is dismissed"—I get that part—"or reduced, any civil infraction charged as a misdemeanor shall be reduced to a civil infraction." Could you clarify that for me, and maybe give a specific example where that happens?

Senator Scheible:
I am trying to think of a fact pattern. I am looking in the audience for the people who provided this language to me. I definitely have clients who are stopped for DUIs and also have those insurance infractions—maybe there is a speeding infraction involved—and so if they are originally charged with a misdemeanor DUI and a misdemeanor speeding, if the DUI is dismissed, then pursuant to section 7, that speeding should also be reduced to the civil speeding infraction.

Chair Miller:
I will open it up for testimony. We will start in Carson City, beginning with anyone who would like to testify in support of S.B. 359.

Nick Shepack, Nevada State Director, Fines and Fees Justice Center:
We are here today in support of S.B. 359. Last session, we passed bipartisan legislation that would have ended the bond; however, that was vetoed by the Governor. This piece of legislation takes an important step in dealing with a bond we do not believe should exist, but understand, due to the political climate, we need to take baby steps.

We believe courts that are good actors will in fact reduce this bond and make it easier for individuals who are seeking to challenge their tickets but maybe do not have the money or the wherewithal to go through the process to ask for a reduction to actually pay that bond and be able to challenge that ticket. This bill is a good step in that direction. We appreciate the sponsors' work on all other sections, especially the ability to turn a criminal traffic citation into a civil citation, which is something we have hoped to see for a long time. For those reasons we are in support.

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:
I want to thank the Senator for convening the working group. I believe we have gotten to a really good piece of legislation. I also want to thank Mr. Rogan, who is sitting here with me, for all the work he has done on this bill as well.

Jeffrey S. Rogan, representing Clark County:
As has already been alluded to, there were a lot of people who were involved in this. It is a very dry bill, but it is a very important bill, because for the last four years or so we have been finding issues that have come up we did not anticipate when we decriminalized a lot of these traffic tickets. Everyone had their stake in this. What you see is just all the issues that have arisen we have attempted to resolve. I am sure we will probably be back in front of you next session with some more. Thank you, Senator, for putting in the hard work on this, and all the other municipalities, as well as the courts.

Chair Miller:
It seems like you covered every tedious scenario you could. Is there anyone else in Carson City, Las Vegas, or on the phone who would like to testify in support of S.B. 359? [There was no one.] I will open opposition testimony. Is there anyone in Carson City, Las Vegas, or on the phone who would like to testify in opposition? [There was no one.] I will open neutral testimony. Is there anyone in Carson City who would like to testify in neutral on S.B. 359?

Angela Knott, Deputy Public Defender, Legislative Liaison, Washoe County Public Defender's Office:
We are neutral today with S.B. 359. We were originally in opposition because of the mandatory language in section 2. Since that is now permissive, we have removed our opposition, though I am still very intrigued to see how the process will really work with the real practice of the Washoe County Public Defender's Office in balancing both a criminal complaint and a civil infraction. We remain neutral and we are very thankful for the Senator for all the other sections of this bill.

Chair Miller:
Is there anyone else in Carson City, Las Vegas, or on the phone for neutral testimony? [There was no one.] The Senator has waived closing remarks so I will go ahead and close the hearing on S.B. 359. I will open the hearing for Senate Bill 406 (1st Reprint), which revises provisions relating to civil liability.

Senate Bill 406 (1st Reprint): Revises provisions relating to civil liability. (BDR 3-1022)

James J. Martines, Vice Chancellor and Chief General Counsel, Nevada System of Higher Education:
I am here to present Senate Bill 406 (1st Reprint). What I would like to do this morning is first run over why this bill is important, give you some background, and then get into exactly what the bill does and afterward get into a little bit about what the bill does not do.

I am sure everybody remembers spring 2020, the COVID-19 pandemic. Governor's orders, federal orders, we were required to shut down all of our institutions of higher education. What we did at that point was—as so many other institutions across the country—all education moved to remote learning. We were provided tort immunity by the Legislature at that time; what we were not provided was contract immunity for compliance with the government orders. What happened was, there have been over 200 class action lawsuits filed across the country alleging students had "quasi contracts" for in-person learning when they paid their tuitions and fees. Those class action lawsuits are demanding repayment of all tuition and fees for all students who were enrolled at that time.

What this bill does is provide immunity for compliance with the governmental orders. Briefly, exactly how does it do that? It is providing a very limited immunity for very specific purposes. When I say that, I mean this is only immunity for claims arising out of tuition and fees paid only during the spring 2020 semester. It is also only for money damages, and it is also only for acts and omissions that took place during the 2020 spring academic semester that were reasonably related to public health and safety and were performed in good faith efforts to comply with the COVID-19 Emergency Declaration and subsequent orders and directives.

The bill also sets forth the compelling state interests that are the public policy points we want to point out in the bill. Those are to protect the State Treasury, to ensure the stability and sustainability of our higher education institutions, and—what I think is one of the most important ones is—encouraging future compliance with governmental orders in public health crises.

Turning quickly to what the bill does not do. The bill does not create immunity for vaccines or decisions made around vaccines, does not create immunity for any physical harm or torts, it does not create immunity for equitable remedies, and it does not create immunity for acts and omissions that were not in compliance with a government directive at that time.

I know I went through that really quickly, but it is a fairly short bill. There is not a lot to go through, but we do not take asking for immunity lightly. This is a reasonable bill that is very narrowly tailored to achieve compelling state interests. This bill will ensure institutions in the future continue to follow government orders in public health crises, and we are not setting public policy that says, In a public health crisis, hear the government orders but comply at your own risk. I am happy to answer any questions and ask for the Committee's support.

Chair Miller:
I have a few clarifying questions. I remember the exact date—it was Friday, March 13, when at least Clark County School District (CCSD) shut down. I was actually at CCSD headquarters that day, so I remember it was March 13, but I know the college and university semester is often shorter than what K-12 is. Since you are saying this is just the spring semester, when did that spring semester end? What was the date?

James Martines:
I do not have the exact date, but the spring semester would have ended, I believe, in May.

Chair Miller:
In May. The beginning of May or the end of May?

James Martines:
I may have to phone a friend.

Chair Miller:
I know most of our K-12 in the state are now done before Memorial Day, so I am just wondering.

Patricia Charlton, Chancellor, Nevada System of Higher Education:
Our typical spring semester ends on or about the middle of May. Commencement season is in full bloom, beginning even this week, so it is usually around that time. There may be some classes—particularly it happens in the Allied Health area—that may continue through the end of May because of the clinical coordinating of hours students have to participate in.

Chair Miller:
You mentioned in your presentation, we are just talking about immunity for following the government instruction. We will go to member questions first, and then I will follow up.

Assemblymember La Rue Hatch:
I was, and still am, a teacher when this broke out and we went on the never-ending spring break because Washoe County was on spring break and we just never came back. I remember at that time, it was confusing and there were suddenly government mandates and, Are we going back, are we not? It was a very fluid situation, so I understand what you are talking about. Why is this immunity only for the spring 2020 semester? We know COVID-19 lasted longer than that, so what are you targeting about that semester specifically?

James Martines:
The reason we are only targeting that one semester is because it is the only semester where students did not have advanced notice we were moving to remote learning. Every semester after that, when they enrolled, it was clear they were enrolling only for remote classes.

Assemblymember Cole:
Similarly, my son was actually in college when this happened, he was at NAU [Northern Arizona University]. I do not know if they are experiencing the same issues or not—probably—but my question has to do with sections 3 and 4, where we are talking about the retroactive application to current litigation. I am just curious as to how this will work, how this will help for you in practice, and if that ties into the level of scrutiny we are talking about because I noticed we have some intermediate scrutiny going on in the first section.

James Martines:
This is retroactive immunity for any claims that are not final on the date it is enacted. What that means is, it is retroactive for any of those claims, and it also sunsets within five years. There is a clear end date for the immunity as well. We made this bill very, very narrowly tailored specifically to overcome constitutional scrutiny. As you can see, it is only for very specific, limited circumstances. The governmental interest is very clear. We are confident this bill will survive constitutional scrutiny. It has also been addressed in other parts of the country—the First Circuit [U.S. Court of Appeals for the First Circuit] has ruled the retroactivity is permissible in this format, and we are hoping to get similar rulings in Nevada if it is challenged.

Assemblymember Gray:
Thank you for meeting with me the other day, I got a lot of information. One of the questions that comes up for me, though, is actual damages. Has anybody been able to prove that because of the breach of contract, their education was actually harmed? Have they compared grades across anything? It is one thing to breach, but it is another thing to prove damages.

James Martines:
The short answer is no. We have been in litigation, we are still in discovery, we are still challenging the fact that there is a contract. It would be a long time before we get the damages, but when we do get the damages—I do not want to talk too much about the ongoing litigation—damages is a very complex issue with these types of cases across the country because you are certifying a class, treating all students exactly the same. Students still received credits, many students graduated, these are all things that were of value students received. What students paid in terms of tuition and fees is going to be different for all students across the state. It is a very complicated issue. I think if we were to get there, it would take a long time and sustained litigation to get those answers, and I think that is why we see so many settlements across the country in these types of cases. They are just very complicated.

Assemblymember González:
I was also a student during this time, and I struggled a lot with online education. You spoke about national settlements and national litigation, but is there any current pending litigation in any of our entry institutions for this?

James Martines:
Yes, we do have one case that we are currently litigating in the state. It is the only case right now, there could potentially be others, but that is the reason why we are bringing this bill at this time, because we think it is ripe. We have seen some good outcomes throughout the country, some commonsense bills that have come out of other states, which really help protect the state's coffers and set good public policy.

Assemblymember González:
I am trying to understand because I am also not aware—but I love this Committee—when we implement this, would that bar anyone who comes forward once this bill passes, if this bill were to pass, from being able to receive damages for that claim?

James Martines:
It would provide us immunity like the other immunity statutes. They could still file a complaint, we would just have to then plead the defense of immunity. Yes, it would prevent them from getting damages, but again, only in those very limited circumstances that are set forth in the bill.

Assemblymember Hansen:
I think all of us measure life now in terms of pre-9/11, post-9/11, and, unfortunately, now pre-COVID-19, post-COVID-19. This is all fresh in our memories. I am very grateful this is very narrow. It is just that semester, which if I recall is the end of January to about the middle of May, for the most part, for the university systems or the school systems; and one case in Nevada, but I think you mentioned multiple in the United States. To clarify, these are taxpayer dollars that will pay these class action lawsuits if they are settled or they go to court, but it seems like most class actions sometimes get settled.

For a student who is claiming they want to recover, they are not going to get 100 percent back if they are part of these cases, right? I do not know if you can answer this, but in a class action lawsuit, the attorneys might recover anywhere from 40 to 60 percent of, say, the tuition if the student did not get that back, but did students get their money back who asked for it in this time frame?

James Martines:
I think there were two questions there, one related to the amount in class action lawsuits that go back to the plaintiff class. I cannot speak to any case exactly, what the plaintiff's lawyers have negotiated in their contracts or what their fees ultimately may be, but I think we all have general knowledge of class action lawsuits. Many of us have been in them, and we see what our checks are at the end of the day. I think a lot of it is eaten up by costs and attorneys' fees.

I believe the next question was, were students able to drop and get refunds? All of our institutions have refund policies and drop dates. During this semester, those strict deadlines for drop dates and refunds were all waived. I am not aware of any students who requested to drop and not continue their courses online who were denied. Those were administrative remedies. To go to Assemblymember Gray's previous question, when we talk about damages, that is a big part of that conversation also—when you certify a class like this, how many of the class actually exhausted their administrative remedies to get refunds at that time?

Assemblymember Nadeem:
What is the current situation regarding the other states? Do they get immunity or are they still fighting—not the institutions and not a particular college, it is regarding the states.

James Martines:
Our bill is closely based on the state of Massachusetts. They have had the most favorable outcomes. In the state of Massachusetts, they were able to get their case dismissed and it was upheld by the First Circuit. We have gotten some good case law out of the First Circuit that we are hoping to cite in anything that comes out of this bill.

Assemblymember Roth:
I am hoping you can just tie back in the public policy purpose of this bill. Looking in section 1, there is the legislative declaration of the purpose of this. Can you speak to that a little bit more in why we need to ensure our institutions of higher education can respond to any future health crises?

James Martines:
It is really important for me to make sure we are setting good policy and everybody understands the public policy points we are really trying to make here. There are three set forth in the bill: one, we are a state entity. The Legislature approves our budget; we do not have millions of dollars in profits we are holding on to. It is all taxpayer dollars. If we were to continue these types of cases, and we did have a judgment of some sort, we would be back to the Legislature asking for funds and appropriations for that purpose, instead of asking for immunity to resolve the situation.

The second is—the most important one I think—as you stated, allowing institutions to comply with government orders and still not be liable for it. I think the Legislature did that in the special session when tort immunity was granted. We kind of saw where liability was open to us, we knew we had to comply with these orders, people could get COVID-19 by being in the same place, there were certain things we could not control, and immunity was granted. I think in hindsight, had we known these situations would arise, the Legislature would have also probably granted contract immunity for strict compliance.

Finally, the reason why I think it is really important is, we are talking about contracts, alleging breach, which the strict compliance of the contract was impossible. Of course, that is part of the litigation as well, but its litigation costs money. It costs taxpayer dollars and it is significant. By coming here and trying to ask the Legislature to make good policy when it comes to the expenditure of these types of dollars, in this specific situation I think this is setting good public policy.

Assemblymember Gray:
So, you are going to the litigants of this case and restating the facts, followed by a question of this. Right now, the litigants are a single plaintiff represented by a law firm saying it is a class action suit, which has not been certified as a class action, and then the defendant is the Nevada System of Higher Education (NSHE). Why is the defendant NSHE when they were forced to break the contract by the Office of the Governor? Why has the Governor's Office, or the former Governor's Office, not been named as a defendant?

James Martines:
The short answer is because that is who they named. I would anticipate that as this litigation proceeds, the State may be named as a necessary party in the litigation as we get through those arguments of impossibility. As of right now, we have not pushed the issue to force the State into it. I think that may not be the best thing for NSHE to do in terms of our camaraderie with our State. Ultimately though, I do think those are valid questions in the litigation, and at some point, if the litigation continues, we would have to get into those questions of necessary parties.

Chair Miller:
Many members did touch upon, or responses were given to their questions, so I did hear students still had the opportunity to earn that credit. During that spring semester, in many situations I had coworkers who were thinking, That is it, I am retiring, there is no way I can turn on a dime and do this online. Obviously, college is by choice, as opposed to K-12. Were there students who did decide to withdraw for that semester? I imagine because it was almost a month before the end of the semester that it would probably be past the withdrawal date. How did these colleges and universities handle that?

James Martines:
I do know there were students who chose to drop and withdraw when we were moving remote. I do not have numbers, but if that is something you would like me to request, I can do so from the institutions, but the short answer is yes, there were students who withdrew for whatever reason. They did not want to continue remote. Remote learning was not a cost-saving measure by any means for these institutions. It was more expensive to change on a dime and implement new ways of instruction.

Chair Miller:
I do not necessarily need the number of students who withdrew, I am just getting at if they were allowed to without penalty. I know there is a point where you can withdraw without it impacting your grade, obviously, withdraw with full refund. I am just wondering if students were able to do so.

Patricia Charlton:
Yes, our Board of Regents actually implemented a policy during that time in which students for that spring semester could file appeals and modified refund processes, if the student considered that would be in their best interest.

Chair Miller:
During your presentation you brought up a breach of contract. Can you explain what this contract is that the class action lawsuit is referring to?

James Martines:
This is a quasi contract, so there is no written contract anywhere. The allegations across the country are, these are quasi contracts for in-person learning and the institutions of higher education breached that contract when they moved to remote learning. The allegations are

also to the effect that every pamphlet that showed a facility, any advertisement, these are all things students relied on for their payment of tuition and fees and therefore they are all part of this contract. You can imagine, with eight institutions across the state and many, many pamphlets and advertisements of what each school offers, the discovery on going through every document that may or may not be part of a quasi contract can be voluminous.

Chair Miller:
That month or so leading up to COVID-19, I was teaching English, and I had sixth graders. All my classes read *Fever 1872* [*sic*] about the true story of an epidemic that broke out. Then I had another class reading *The Fun They Had*, which is a very dystopian story about schools being eliminated and students being taught completely by robots. I had my debate class debate the idea of virtual and online learning versus traditional classroom learning.

When the epidemic did hit and the schools closed down, all my students thought I somehow knew this was going to happen. Is this why you prepared us with these stories? And I said, Absolutely not, I had no idea any of this was coming. I also reminded them, You do have a foundation on this, and you already took a position on what you felt about virtual learning. At the end—we had two months left—we were able to revisit the students' original positions from the debate on where they landed on virtual learning.

Assemblymember Hansen:
We talk about this being narrowed very specifically to that semester, and I know—I am going to bring up the V-word and that hornet's nest—the reason this is important is, it just deals with students impacted in that semester. For those who had concerns over a mandate on the COVID-19 vaccine to be a student, that did not come until December 31, 2021, correct?

James Martines:
That is correct.

Assemblymember Hansen:
And that is a separate issue if a student or people have a problem. Has that since been repealed?

James Martines:
One thing the Board of Regents never had authority to do is address student vaccines. That was all done at the state level, so it was never anything we dealt with anyway. I believe they were implemented and then it was repealed thereafter.

Assemblymember Hansen:
I just wanted to clarify those time frames and who has the authority to make those decisions?

Chair Miller:
I am judging this through the K-12 lens—when were the classrooms or the physical space for the colleges and universities open again?

James Martines:
I may go to our chancellor for that question.

Patricia Charlton:
We actually received guidance in probably late May or early June that for certain programs of study—those that were high demand, such as certain health care, emergency medical services, public safety—because of the nature of those first responders, we were able to begin to bring them back into the learning space. However, we had to do that with all of the requirements regarding social distancing, mask wearing, et cetera. We began that in the summer of 2020 because we had to actually modify classroom spaces, and in some cases we were not able to get PPE [personal protective equipment] for those individuals and those students who needed to be on campus.

We were able to begin in June for certain programs of study that were actually listed in directives from communication, I think, via a letter from the Governor. Then, we had already begun implementation of some balance for the fall of 2020, again making those classroom modifications. We actually had to take our normal class size, which could be an average of 25 and we no longer could have 25 individuals because our rooms were at basically fire code, and we had to remodify classroom spaces in order to bring some of those classes back in the fall.

Chair Miller:
Did I just hear class sizes of 25?

Patricia Charlton:
That is just one class size; however, some of our classes could be upward of 300 students.

Chair Miller:
I will open testimony in support. Is there anyone in Carson City, Las Vegas, or over the phone who would like to provide support testimony on S.B. 406 (R1)? [There was no one.] I will open opposition testimony, beginning here in Carson City.

Jim DeGraffenreid, National Committeeman, Nevada Republican Party:
I am here today on behalf of the Nevada Republican Party in opposition to S.B. 406 (R1). Senate Bill 406 (1st Reprint) is somewhat contradictory, simultaneously presented as a very narrowly tailored bill, but at the same time as a situation that can result in a large liability creating a compelling state interest. If the scope of the bill is truly narrow, then this very fact is an argument against the protection of the State Treasury being a compelling interest as added in Amendment No. 143.

We greatly appreciate the concerns raised by Senator Krasner on this bill regarding the state interest and narrowness of the effect. Section 1, subsection 4, contains a long list of items that are covered beyond tuition, which argues against the bill being narrowly tailored. If the

bill is indeed limited to actual monetary damages relating to tuition and fee estimates for a single semester in 2020, and if punitive damages are excluded, then it seems the dollar amounts involved would not rise to the level of a compelling state interest.

We have serious concerns in general over providing immunity for actions taken during the 2020 pandemic response, as those actions have since been shown to be excessive and not evidence-based. Nevada's response was excessive compared to other states such as Florida and South Dakota, which followed a more evidence-based approach rather than the inconsistent and arbitrary response in Nevada. Anytime a government takes excessive and arbitrary actions as Nevada chose to do in 2020, citizens must have the ability to petition for redress of their grievances and damages.

We are sympathetic that NSHE was acting on orders from the state but, unfortunately, due to other immunity, it seems like the contract actions may be the only avenue remaining for redress. If this is narrowly tailored, then it likely does not rise to the level of compelling interest, and we are opposed to setting any precedent for other government agencies to seek future immunity for inappropriate actions.

Chair Miller:
Is there anyone else here in Carson, Las Vegas, or over the phone who would like to provide opposition testimony on S.B. 406 (R1)?

Kimberly Fergus, Private Citizen, Las Vegas, Nevada:
First, I would like to point out, does anybody read the public opinions because there is 100 percent on the no votes and there are over 11 pages. However, my testimony is, I stand in firm opposition to S.B. 406 (R1). This bill is a retroactive shield for bad decisions made during the COVID-19 pandemic, decisions that disrupted students' lives, degraded their education, and drained families financially. Universities closed campuses, cut services, and delivered subpar instruction while charging full tuition. Now, this bill seeks to block students from pursuing justice through the courts. That is not protecting public health, that is protecting political mistakes. If those actions were justified, they should be defended in court, not erased by legislation. Immunity is not accountability. I urge you to vote no on Senate Bill 406 (1st Reprint).

Cyrus Hojjaty, Private Citizen, Las Vegas, Nevada:
I will echo the previous and future callers.

Chair Miller:
I will open neutral testimony Is there anyone in Carson City, Las Vegas, or on the phone who like to provide neutral testimony on S.B. 406 (R1)? [There was no one.] I will welcome the bill presenter back for any final remarks.

James Martines:
I think we have discussed a lot of the opposite points of the points we just heard in opposition. When it comes to the state interests, the United States Supreme Court has spoken on this issue in *General Motors Corp. v. Romein*. The United States Supreme Court determined that retroactive legislation must have a legitimate legislative purpose furthered by a rational means. When we look to the statements in the bill—I personally think we can agree, even if there were arguments against whether or not these are compelling state interests—they are all legitimate governmental interests, at least.

When it comes to any bad decisions or disagreements with the government orders that did come out, I would just reiterate those were not our decisions. We were required to comply with the government orders, we did so, and I think it is bad public policy to say the institutions of higher education should be responsible for liability for such compliance.

Chair Miller:
I will close the hearing on S.B. 406 (R1). Lastly, we have public comment. Is there anyone in Carson City or Las Vegas who would like to provide public comment? [There was no one.] Is there anyone on the phone who would like to provide public comment?

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
I am going to speak about the tragic and preventable death of my brother, Thomas Purdy, who was asphyxiated while in the custody of Washoe County Sheriffs' Office on October 4, 2015. We removed him from life support on October 8, 2015, because he was brain dead. Thomas was a devoted son and brother and my best friend. His life should never have been cut short by those sworn to protect him.

On the night of his murder, he was arrested at the Peppermill casino for trespassing where he was a guest. Thomas was put in the RIPP Hobble restraint in the hogtie position by Reno police, against every page of the device manual that states, never use to hogtie human beings. Despite repeatedly pleading, I cannot breathe. After over 40 minutes of being hogtied, four deputies got on his neck and back murdering him. Video captured him begging for medical assistance, telling them they were going to kill him, and begging for help. "They are going to kill me. Please do not do this guys, please." The Washoe County medical examiner ruled my brother's death a homicide due to complications of excited delirium, and noted, absent the positional restraint and force used against him by law enforcement, he would not have died.

In 2021, the American Medical Association explicitly stated the current evidence does not support excited delirium or excited delirium syndrome. The American Medical Association opposes the use of these terms due to concerns about the term being used to justify excessive force, particularly in law enforcement. The cornerstone of our justice system is accountability, and when someone dies in state custody, there must be a transparent, impartial review, and criminal charges and prosecution when appropriate.

In Washoe County, this process [unintelligible] the absence of any type of review for jail deaths, creates a telling message that deputies are above the law and the lives of incarcerated individuals do not matter. Our family's wrongful death lawsuit resulted in monetary settlements, but money cannot restore Thomas's life, nor can it substitute for criminal accountability.

Chair Miller:
Next caller. [There was no one.] I will close public comment That concludes our agenda for the day. This meeting is adjourned [at 9:48 a.m.].

RESPECTFULLY SUBMITTED:

_____
Nicholas Fischer
Committee Secretary

APPROVED BY:

_____
Assemblymember Brittney M. Miller, Chair

DATE: _____

EXHIBITS

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 303 (R1)	C	Justin Watkins, representing Nevada Justice Association	Proposed conceptual amendment
S.B. 359	D	Jeffrey S. Rogan, representing Clark County	Proposed amendment