

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
April 12, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 8:34 a.m. on Friday, April 12, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Brian O'Callaghan, Las Vegas Metropolitan Police Department
Alan Lichtenstein, American Civil Liberties Union of Nevada
Julie Butler, Records Bureau Chief, Records and Technology Division,
Department of Public Safety
Bill Uffelman, President, Nevada Bankers Association
Terry Care
A. G. Burnett, Chair, State Gaming Control Board
Peter C. Bernhard, Chair, Nevada Gaming Commission

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Chair Segerblom:

The Committee will not be hearing Senate Bill (S.B.) 160 or S.B. 332 today. Senator Hutchison, what is the status of S.B. 138?

SENATE BILL 138: Authorizes irrevocable trusts and certain other entities to hold ownership interests in professional entities. (BDR 7-848)

SENATE BILL 160: Revises provisions governing deficiency judgments on obligations secured by certain residential property. (BDR 3-604)

SENATE BILL 332: Makes various changes relating to common-interest communities. (BDR 10-587)

Senator Hutchison:

I reviewed several letters between the interested parties. We may be able to resolve the disagreements in the future, but not today.

Chair Segerblom:

I agree, so we will not consider S.B. 138 today. I will open the work session on S.B. 278.

SENATE BILL 278: Establishes an expedited process for the foreclosure of abandoned residential property. (BDR 9-134)

Mindy Martini (Policy Analyst):

I have prepared a work session document for S.B. 278 that includes proposed Amendment 8255 from Senator Ford ([Exhibit C](#)). The amendment includes the revisions already discussed at the bill's previous hearing and adds two additional components. First, the provisions of section 4, subsection 3 provide for law enforcement to inspect the property to determine if it is abandoned. If it is determined to be abandoned, notice is served, and the homeowner has 30 days to contact law enforcement. If not contacted, law enforcement will issue a certification that the beneficiary of the property may use to expedite the process. Second, the amendment deletes section 4.5, which relates to the homeowner's voluntary abandonment process.

Senator Ford:

At the hearing, it was decided that we needed to identify a particular law enforcement agency that could make a visual inspection to assist with the

determination of abandoned property. We also cleared up some language. We attempted to add a provision that would have allowed for some late fees in the event the bank took too long to complete the foreclosure process, but we were unable to get that worked out.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 278.

SENATOR JONES SECONDED THE MOTION.

Senator Brower:

Have the law enforcement concerns with S.B. 278 been addressed?

Senator Ford:

Yes.

Chair Segerblom:

Mr. O'Callaghan, are you good with this amendment?

Brian O'Callaghan (Las Vegas Metropolitan Police Department):

We are not objecting to it, but our limited resources may make it difficult. I had a discussion with Senator Ford on this. The bill was designed to have the work done by the Constable's Office rather than the Las Vegas Metropolitan Police Department. We are too overburdened to take on this extra work now.

Senator Ford:

With the amendment, S.B. 278 allows the law enforcement agency to charge up to \$50 per inspection. I have heard from some constables that that amount would be more than sufficient to cover what we are asking them to do.

Chair Segerblom:

Constables do not get paid the way police officers do.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the hearing on S.B. 297.

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SENATE BILL 297: Revises provisions relating to certain crimes against older or vulnerable persons. (BDR 15-1005)

Ms. Martini:

I have a work session document for S.B. 297 ([Exhibit D](#)). There were no amendments for this bill. It has been noted that this measure is similar to Assembly Bill (A.B.) 55, which was amended and passed by the Assembly Committee on Judiciary on April 4.

ASSEMBLY BILL 55 (1st Reprint): Imposes an additional penalty for attempting or conspiring to commit certain crimes against older or vulnerable persons. (BDR 15-337)

The only difference between the two bills is that S.B. 297 imposes a prison term of 2 years and A.B. 55 imposes a prison term of 1 year.

Chair Segerblom:

I am proposing an oral amendment to change the term in S.B. 297 from 2 years to 1 year.

Senator Brower:

I believe that is the change contemplated by the chief sponsor of S.B. 297.

SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 297 WITH THE ORAL AMENDMENT FROM SENATOR SEGERBLOM.

SENATOR BROWER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the hearing on S.B. 321.

SENATE BILL 321: Enacts a "Homeowner's Bill of Rights." (BDR 9-748)

Ms. Martini:

I have prepared a work session document for S.B. 321 ([Exhibit E](#)). Senator Jones, who is the sponsor of the bill, has submitted three amendments to this bill, all of which are included in [Exhibit E](#). The first amendment, which was discussed at the first hearing of S.B. 321, is on pages 2 through 25 of [Exhibit E](#). It deletes sections 21 through 29 inclusive and reinstates *Nevada Revised Statute* (NRS) 645F.265. The second amendment, which is on page 26 of [Exhibit E](#), clarifies the term "mortgage servicer" to specifically not include a nonprofit corporation, as defined in NRS 678.070, that has foreclosed on 100 or fewer single-family residential real properties during its most recent prior annual reporting period. The third amendment deletes section 16, subsection 7 of S.B. 321, which relates to deceptive trade practice. This amendment would also add Senators Hammond and Hutchison as cosponsors.

We have also received an amendment from Jay Bloom, which is on pages 27 through 29 of [Exhibit E](#). This amendment would revise section 17, subsection 2 of S.B. 321 to include a new paragraph (e).

Senator Jones:

As I explained at the first hearing of this bill, Senator Hutchison already had a similar bill in the Senate Committee on Commerce, Labor and Energy, and since we passed that bill, there was no need for that additional language. I spoke with representatives of credit unions, and they explained that they were in a different circumstance than the national banks, in that you can walk into your credit union and talk to the person who granted the loan for your home. I therefore agreed that it made sense to exempt them from the term "mortgage servicer." With regard to my third amendment, Senator Hutchison said he and Senator Hammond could support the bill with this change.

Senator Hutchison:

Senator Brower should also be included as a cosponsor. We all felt this is a solid bill with the tweaks provided by Senator Jones' amendments. This is an important bill that will do good things for all our constituents.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 321 WITH THE AMENDMENTS FROM SENATOR JONES.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the hearing on S.B. 346.

SENATE BILL 346: Revises provisions relating to gaming. (BDR 41-1051)

Ms. Martini:

I have prepared a work session document for S.B. 346 (Exhibit F). We have received four amendments to this bill. The first amendment, which is on page 2 of Exhibit F, is from Chair Segerblom. The second amendment, which is on page 3 of Exhibit F, is from Senator Hutchison, and I have not seen it. The third amendment, which is on page 4 of Exhibit F, is from Lionel Sawyer & Collins. The fourth amendment, which is on pages 5 through 7 of Exhibit F, is from the Nevada Gaming Commission.

Senator Hutchison:

I believe the first part of Chair Segerblom's amendment would be covered by the subsequent amendments in which regulations are established. My amendment is in response to the concerns expressed by Peter C. Bernhard, chair of the Nevada Gaming Commission, in his letter (Exhibit G). Chair Bernhard's letter in turn prompted a letter from Richard Bryan from Lionel Sawyer & Collins (Exhibit H). My amendment is an attempt to encapsulate Mr. Bryan's response to Chair Bernhard's concerns. My understanding is that this would in fact address his concerns and still allow us to regulate this entity-betting product properly.

Chair Segerblom:

Have you talked to Mr. Bryan about this amendment?

Senator Hutchison:

Yes. I believe my amendment is consistent with what he proposed and even expands on his position.

Chair Segerblom:

Do you have an opinion about my proposal to study taxing the handle rather than the win?

Senator Hutchison:

That is fine with me. My motion would be to amend and do pass with my amendment and the provision from Chair Segerblom's amendment requiring the Commission to conduct a study on taxing the handle rather than the win.

Senator Jones:

I will be abstaining on this vote because a member of my family within the third consanguinity was involved in the bill.

Senator Brower:

I have had a chance to digest the amendments, but I have not conferred with Mr. Bryan. Assuming he and his team have no objections, I will support the amendment.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 346 WITH HIS AMENDMENT AND THE PROVISION FROM SENATOR SEGERBLOM'S AMENDMENT REQUIRING THE COMMISSION TO CONDUCT A STUDY ON TAXING THE HANDLE RATHER THAN THE WIN.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR JONES ABSTAINED FROM THE VOTE.)

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Chair Segerblom:

I will open the hearing on S.B. 388.

SENATE BILL 388: Revises provisions relating to crimes involving certain persons. (BDR 15-927)

Ms. Martini:

I have prepared a work session document for S.B. 388 ([Exhibit I](#)). We have received an amendment from the Department of Public Safety (DPS), which is on pages 7 through 31 of [Exhibit I](#). It deletes any reference to "the infamous crime against nature" and replaces it with "solicitation of a minor to engage in sexual conduct." We have also included a chart showing crimes relating to

sexual conduct with persons under the age of 18 on pages 2 through 4 of [Exhibit I](#).

Alan Lichtenstein (American Civil Liberties Union of Nevada):

We have submitted written testimony concerning the proposed amendment, which can be found on pages 5 and 6 of [Exhibit I](#). There is an existing law, NRS 200.364, section 5, which defines statutory sexual seduction as someone over the age of 18 having sexual relations with someone under the age of 16 years. The "infamous crime against nature" statute, NRS 201.195, conflicts with NRS 200.364, which states that it is impossible for someone under the age of 18 to consent to sexual activity. These two issues—the conflict of laws and the lack of equal protection as it relates to sexual orientation—are the reason we are litigating against NRS 201.195. Getting rid of that statute would resolve the problem. The amendment from the DPS would not resolve the problem. It would preserve the conflict where one law says the age of consent is 18 and another says the age of consent is 16.

With regard to the Adam Walsh Child Protection and Safety Act of 2006, it is our view that NRS 200.364 already puts Nevada within substantial compliance of that Act because of exemptions within the Adam Walsh Act. However, there is no way to logically approve this bill with the amendment from the DPS without getting rid of NRS 200.364. The two would be incompatible.

The suggestion that Nevada is currently in compliance with the Adam Walsh Act because of "the infamous crime against nature" provision is strange because that statute only covers homosexual activity and not heterosexual activity. That was a bit of sleight of hand by the DPS. It is our view that the Adam Walsh Act does not require each state to raise its age of consent for every type of sexual activity to 18. Other states are complying with the Adam Walsh Act without that. Our law substantially complies with it because for the purposes of sexual consent, people over the age of 16 are considered adults and able to consent. There is no conflict, and we would very much urge that [S.B. 388](#) be passed without the amendment. That would end our litigation.

Senator Jones:

Can you explain further for those of us who do not practice criminal law? I want to get rid of any language that is clearly directed at people because of their sexual orientation. If we get rid of this statute, are we legalizing any crime that would not otherwise be prevented?

Mr. Lichtenstein:

Getting rid of NRS 201.195 reverts to the generalized law of NRS 200.364, which says the age of consent for sexual activity is 16 regardless of whether it is heterosexual or homosexual activity. That is already in the NRS.

Senator Jones:

Is the penalty the same?

Mr. Lichtenstein:

Under NRS 200.364, there is one penalty for any sexual activity with a person under the age of 16. I do not know if there is an increased penalty for homosexual activity with a person under the age of 16. Our concern is the difference in age. I do not think you can have a different penalty for homosexual activity than for heterosexual activity. The U.S. Supreme Court case of *Lawrence v. Texas*, 539 U.S. 558 (2003), precludes that.

Again, the statutory sexual seduction law is applicable to both heterosexual and homosexual activity.

Senator Ford:

I am confused. As I understand it, the DPS amendment would replace the phrase "the infamous crime against nature" with the phrase "solicitation of a minor to engage in sexual conduct." Do you have a problem with that?

Mr. Lichtenstein:

If that amendment is included, it raises the age of consent for both heterosexual and homosexual activity to 18 years. That is in conflict with the age of consent of 16 years that is in NRS 200.364. The two are incompatible.

Senator Ford:

Can we make them compatible? If we want the age of consent to remain 16, we can fix that throughout NRS 201.195 and replace the offending verbiage.

Mr. Lichtenstein:

If we keep NRS 201.195 but get rid of the specific reference to homosexual activity and raise the age to 18, it would be redundant because it is already in the statute, and the concern about the Adam Walsh Act would still be there. I do not think it is a concern, but there is no reason to have a separate law that does exactly what existing law does.

Senator Ford:

Your position is that compliance with the Adam Walsh Act already exists within statute; we do not need to change the verbiage of NRS 201.195 to address that issue. Is that right?

Mr. Lichtenstein:

That is correct.

Senator Ford:

It seems to me an argument to the contrary would mean that we had to have this act regarding the infamous crime against nature on the books to comply with the Adam Walsh Act in the first place. If not, why can we not just get rid of it? I understand your point; we should just get rid of NRS 201.195 because it has no applicability relative to keeping us in compliance with the Adam Walsh Act in the first place.

Mr. Lichtenstein:

Our position is that NRS 201.195 should disappear. The argument is that if you have a statute that raises the age of consent to 18, it is perhaps more compliant with the Adam Walsh Act. But we are talking about substantial compliance. Unless the State of Nevada is willing to raise its age of consent for everybody from 16 to 18, which we would certainly oppose—we would be throwing a lot of teenagers into jail for that one—then the solution is just to get rid of the antiquated NRS 201.195. That statute was left over from 1995 or 1993 when all homosexual activity, which had been illegal for everyone, was amended to only make it illegal when one of the participants was a minor. No one saw the conflict at that time.

Senator Ford:

I would like to hear from DPS on this issue. If we did not need NRS 201.195 to comply with the Adam Walsh Act in the first place, why do we need to keep it in and change the language in order to comply with the Adam Walsh Act?

Julie Butler (Records Bureau Chief, Records and Technology Division, Department of Public Safety):

Part of the Sex Offender Registration and Notification Act (SORNA) guidelines require that we have a statute to address solicitation of a minor to engage in sexual conduct. As part of our compliance packet to the federal Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)

Office, we referenced NRS 201.195 as evidence that we are in compliance with that requirement. It had nothing to do with the homosexuality component of the statute; we referenced it to prove we have a statute that covers solicitation of a minor. If you delete the statute, we will no longer have a statute that specifically addresses solicitation of a minor to engage in sexual conduct.

Senator Ford:

Does SORNA define minor as under the age of 18 years or under the age of 16 years?

Ms. Butler:

I do not know. We would certainly be willing to flesh that out.

Every year, we have to inform the SMART Office if our statutes have changed. If they have changed, the SMART Office makes a determination as to whether Nevada is substantially compliant with SORNA. This is the first I have heard of the issue of conflicting definitions of the age of consent. We were not trying to do any sleight of hand. We were merely trying to raise the issue that an unintentional consequence of striking the statute might be that the State loses its compliance with SORNA.

Senator Ford:

Nor do I think you were trying to do sleight of hand. I would like to get Mr. Anthony's opinion as to whether we need to be concerned about this issue.

Nick Anthony (Counsel):

Ms. Butler, do you reference the "luring" statute, NRS 201.560, as a solicitation crime? That statute prohibits luring a child under the age of 16; it is essentially the State's solicitation statute and applies equally to both sexes.

Ms. Butler:

My staff tells me we referenced NRS 201.195 to comply with the SORNA guideline for solicitation of a minor.

Senator Jones:

Does SORNA require that the crime be called solicitation? If so, we could just rename the crime in NRS 201.560 "solicitation" instead of "luring," which would be a more appropriate name in any case.

Ms. Butler:

My understanding from my staff is that the SORNA guideline specifically says, "Solicitation of a minor to engage in sexual conduct." The amendment we offered would certainly seem to fit that. Whether we could reference the luring statute or call it something else, the SMART Office would have to determine if it would accept that.

Chair Segerblom:

Whenever we change the statute, you have to advise the SMART Office, and it then decides if we still meet SORNA. You are just telling us that if we change the law, we have to report it, and we do not know what the SMART Office is going to say.

Ms. Butler:

That is correct. I just wanted to make sure the Committee was informed.

Chair Segerblom:

Can we dictate what you tell them? Could you say, for example, that the Nevada Legislature took out unconstitutional provisions, and other statutes cover the same area in a constitutionally mandated way?

Ms. Butler:

We can certainly make that argument.

Chair Segerblom:

Mr. Anthony, please confer with Ms. Butler and other interested parties to discuss a solution for what appear to be technical issues.

Mr. Anthony, would you summarize your conversation and suggest a solution?

Mr. Anthony:

There are current constitutional issues with NRS 201.195, solicitation of a minor for the infamous crime against nature, with regard to the issue of equal rights. There are also issues as to the age of consent within that statute. One solution of those impending constitutional concerns and possible caselaw considerations would be to repeal NRS 201.195 and change NRS 201.560 to refer to solicitation of a minor rather than luring. The parties agreed to continue looking at the age issue within the luring statute that currently applies to

children aged 16 years and younger to see if that age needs to be raised to address any considerations with the Adam Walsh Act and federal law.

Senator Jones:

That resolves my concerns. I also looked at the SORNA guidelines to make sure we are not in violation. The reference in SORNA is specifically to solicitation of a minor to engage in sexual conduct. There is no reference to luring within SORNA. I am comfortable that if we reword NRS 201.560 to solicitation, we will be in compliance with SORNA. We are not taking away any statute that would prevent solicitation of minors, and we will get to the intent of this bill, which is to take away a statute that discriminates based on sexual orientation.

I would also like to reiterate that we are not leaving a hole anywhere relative to the protection of children, and we will do our best to be compliant with the Adam Walsh Act. I want to make sure everyone who voiced opposition to this bill understands that. No loopholes are being opened, and no children are being left unprotected by our current statutory scheme. We are just removing discriminatory statutory references throughout.

Chair Segerblom:

Mr. Anthony, is that a conceptual amendment you just described?

Mr. Anthony:

Yes. If the Committee wishes to make that motion, we can draft it. The consideration would be removing NRS 201.195 as identified in the bill. We would also add a section to the bill regarding NRS 201.560, changing the name of the crime from luring to solicitation.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 388 WITH THE CONCEPTUAL AMENDMENT DESCRIBED BY
MR. ANTHONY.

SENATOR JONES SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BROWER, HAMMOND AND
HUTCHISON VOTED NO.)

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Chair Segerblom:

I will open the work session on S.B. 389.

SENATE BILL 389: Revises provisions relating to real property. (BDR 3-601)

Ms. Martini:

I have prepared a work session document for S.B. 389 (Exhibit J). This measure has received two amendments. The first amendment, which is on pages 2 through 4 of Exhibit J, is from Senator Segerblom. This amendment provides that if the documents requested are not provided within 60 days, the mortgagor or grantor of the deed of trust may file a notice with the Division of Mortgage Lending. The Commissioner of the Division of Mortgage Lending is then required to post the name of the mortgagee or the beneficiary of the deed of trust and the zip code of the real property on the Website maintained by the Division. The posting will be removed once the information is received and the provisions satisfied.

The second amendment is from Senator Hutchison, and it is described on page 1 of Exhibit J.

Chair Segerblom:

Senator Hutchison, could you explain your amendment?

Senator Hutchison:

My amendment follows your comment in yesterday's Committee meeting that we should look at something other than divesting the banks of their rights to the interest in the property. My amendment vests the discretion to take whatever actions deemed appropriate if those documents are not being produced in the Division of Financial Institutions, which is the regulator of the banks and the one that decides if they have a license or not. They can take whatever actions the Division deems proper, including the actions in your amendment, and promulgate or implement regulations as needed. I think we are on the same track. My amendment is just a little broader in terms of letting the Division do what it wants to respond to the situation.

Chair Segerblom:

You indicate the mortgagor or grantor should report the failure. That would mandate the Division to do it, I assume.

Senator Hutchison:
Right.

Chair Segerblom:
I appreciate the fact that the Division can create regulations, so I would support your amendment.

Senator Hutchison:
Mr. Anthony, my amendment strikes the remainder of subsection 2 and all of subsection 3 in section 1 of the bill. Do we need to keep subsection 4?

Mr. Anthony:
Yes. The terms defined in subsection 4 are referenced in paragraphs (e) and (f) of subsection 1.

Senator Ford:
I would like to make certain we are putting the authority with the right entity. The bill talks about sending a note to the servicer. I want to be certain that Senator Hutchison's amendment, which gives authority to the Division of Financial Institutions, also has authority over servicers and has the ability to promulgate and enforce regulations over them.

Bill Uffelman (President, Nevada Bankers Association):
The Mortgage Lending Division is the body responsible for mortgage servicers. The Division of Financial Institutions is not. Chair Segerblom's language is the right agency.

Senator Ford:
Maybe we need to include both entities.

Mr. Uffelman:
That is a belt-and-suspenders approach. You could certainly do that.

Senator Hutchison:
In that case, I would suggest the amendment be the one I proposed, with the addition that it reads, " ... set forth in section 1 to the State of Nevada Division of Financial Institutions or Division of Mortgage Lending as appropriate ... "

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 389 WITH THE ADDITIONAL LANGUAGE TO HIS AMENDMENT.

SENATOR JONES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the work session on S.B. 395.

SENATE BILL 395: Enacts the Uniform Collateral Consequences of Conviction Act. (BDR 14-22)

Ms. Martini:

I have a work session document for S.B. 395 ([Exhibit K](#)). An amendment was submitted by the Department of Motor Vehicles (DMV). The DMV's concern is with section 19 of the bill, which allows a person to petition for an order of limited relief from one or more of the collateral sanctions, such as a suspension or revocation of his or her driver's license. According to the DMV, this may allow some dangerous drivers to escape the loss of their driver's licenses. To eliminate the problem, the amendment would delete section 19, subsection 3, paragraph (b) of S.B. 395. This would provide that an order of limited relief may not be issued to relieve any motor vehicle license or driving privilege revocation, limitation or ineligibility.

Chair Segerblom:

When we heard S.B. 395 on April 10, a number of judges said this bill was a terrible thing, and I received written testimony from Judge David Clifton to that effect ([Exhibit L](#)). In the interest of trying to keep this bill alive, Terry Care, who is the Uniform Law Commissioner responsible for this bill, has a potential resolution.

Terry Care:

The Committee will recall that the objection from the courts and prosecutors was that the bill as originally drafted would impose certain burdens on them. We also had an issue with the fiscal impact on the Attorney General's Office.

No one voiced an objection to making a list of collateral consequences available to those about to enter a plea or be released.

Having said all that, my suggestion is to pass S.B. 395 without recommendation and rerefer it to the Senate Committee on Finance. Alternatively, you could delete the entire bill except for section 13, which is the list of collateral consequences and summaries, and have the Advisory Commission on the Administration of Justice do it. I do not know if there would be a fiscal impact on that. That would reduce the bill to making the list available for those who need to see it, primarily defense counsel.

In either case, if the bill passes out of this Committee either to the Assembly or to the Senate Committee on Finance, we will not tamper with it after that. The bill would simply be reduced as I described.

Chair Segerblom:

Is there a reason we could not amend it as you describe and pass it? Does it have a fiscal note?

Mr. Care:

There were fiscal notes from Carson City and the Attorney General's Office. There was some discussion from some of the counties about a minimal fiscal impact, but I do not recall the precise dollar figures. This amendment would remove all of that.

Senator Brower:

I also serve on the Uniform Law Commission, though I was not part of the deliberations on this issue. I do not agree with the policy for the reasons I stated at the previous hearing. I am not sure it is worth the Legislature's time, whether it is the Senate Committee on Finance or the Advisory Commission.

Senator Ford:

My philosophy is the more notice, the better, and I come from a personal perspective on this. As an undergraduate student who did not understand the consequences, I pleaded guilty to a charge of public intoxication when I had not been drunk. I ended up with consequences 5 years later, and if I had been advised about those consequences, I would not have pleaded guilty to something I had not done. It is important that people are given appropriate notice of consequences. I do not see anything wrong with notice, especially in

the way you have suggested it, Mr. Care. I would support an amendment along the lines suggested by Mr. Care.

Senator Hammond:

I agree that more notice is probably better, but in this case I cannot put aside the fact that there could be an infinite number of collateral consequences down the road and you cannot be made aware of all of them. It just brings back more problems later on. That is my concern.

Mr. Care:

To pick up on what Senator Ford said, the notice requirements of S.B. 395 would be gone, but the list of consequences would be available somewhere. If defense counsel wanted to know the consequences, he or she could look them up. The American Bar Association has already done an inventory of those consequences, as has the National Institute of Justice.

Chair Segerblom:

Mr. Anthony, could you identify a conceptual amendment for this bill?

Mr. Anthony:

I believe the amendment you are currently contemplating would be to delete the provisions in the bill except for section 13. Is that right?

Mr. Care:

Correct, along with the relevant definitions.

Mr. Anthony:

The appropriate motion then would be to amend and rerefer to the Senate Committee on Finance. The bill has a notice of eligibility for exemption, so it would be exempt. You could also amend and do pass as amended, then rerefer.

SENATOR JONES MOVED TO AMEND WITH THE CONCEPTUAL AMENDMENT STATED BY MR. ANTHONY AND REREFER S.B. 395 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR KIHUEN SECONDED THE MOTION.

Senator Brower:

Let me reiterate my concerns. I have known Mr. Care for a long time, and we agree on 95 percent of the issues, but we will have to agree to disagree on this one. The Senate Committee on Finance is overburdened with pressing issues, including the budget of this State. I do not think it needs to be burdened with another issue that does not belong in Finance.

THE MOTION PASSED. (SENATORS BROWER AND HUTCHISON VOTED NO.)

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Chair Segerblom:

I will open the work session on S.B. 415.

SENATE BILL 415: Revises provisions relating to gaming employees. (BDR 41-188)

Ms. Martini:

I have prepared a work session document for S.B. 415 ([Exhibit M](#)). An amendment from Senator Segerblom can be found on page 2 of [Exhibit M](#).

Chair Segerblom:

Mr. Anthony, did you discuss the amendment with the Gaming Control Board?

Mr. Anthony:

Yes.

Chair Segerblom:

Mr. Burnett, do you agree with this amendment?

A. G. Burnett (Chair, State Gaming Control Board):

We had a chance to look at it, and we would like to analyze it further. Virtually everywhere in NRS 463, including the employee registration process, it is built in that the burden of proof is on the applicant, the registrant, the person who is requesting the registration as a gaming employee. We are not sure what the effect of changing this would be. We are presently inquiring with the Attorney General's Office to ascertain its opinion on this. All the same, we do not have any strong objections to the amendment at this time.

Chair Segerblom:

"I will say for the record that if you come back with an explanation for why it's not appropriate, I will be happy to work with you to kill the bill or modify it, whatever you want."

Senator Hutchison:

I would like to hear from the Chair of the Nevada Gaming Commission on this amendment. This seems like a big policy shift.

Chair Segerblom:

Before you do, I want to point out that this is strictly for current employees, and the Board is taking away their privileges. It is not for people who want to be employed or for anybody else.

Peter C. Bernhard (Chair, Nevada Gaming Commission):

[Exhibit G](#) reflects on this issue. If the burden of proof is to be shifted, it may hurt employees and registrants. If the specific standards are met, there is no discretion for us to consider mitigating circumstances such as the length of time since an offense that would otherwise be disqualifying. We consider rehabilitation efforts and their effectiveness. We consider the circumstances of the particular offense that has resulted in the objection being filed. If we go by a different standard of proof, we may not be able to afford employees that flexibility.

The second issue I am concerned about is that our action is designed to deal with the conduct of the employee going forward. We are trying to predict whether past acts are relevant predictors of future conduct. In many cases, we have bad actors in a previous sector of their lives. Do we give them a second chance? It is hard to prove whether a person is going to be a danger to the industry in the future; none of us can predict that. Many times, we are confronted with situations where we have to take a leap of faith. If employers, counselors and others supporting an applicant say, "We want to give this person a second chance," we may use our discretion to move forward and say, "Even though you've done terrible things in the past that would disqualify you for a position of trust in gaming, we'll give you a second chance." If we are held to a strict burden-of-proof standard, the employees will be hurt by that.

The point of my communication to you yesterday was that there are plenty of due process provisions included in the gaming registration process. We agree

that there should be independence of the hearing examiners who actually hear the evidence, take testimony under oath and admit exhibits. I do not object if we add a prohibition against any contact between the Board agent who is the prosecutor of the objection and the hearing examiner who hears the testimony. If that is a flaw, let us fix it by adding a specific requirement that the hearing examiner not have substantive contact with the Board agent or the employee before hearing the evidence. However, I do not think changing the law to impose a burden-of-proof standard for these alleged violations on the Board is going to further the protection of the gaming industry.

My final point is that many of the incidents we consider are years or decades in the past. Someone may have a series of wrongful acts, criminal prosecutions, serious crimes that were pleaded down to gross misdemeanors or even a no-contest plea in his or her past. In those cases, how does the Board meet its burden of proof? Is the Board going to have to find the victim of a crime that occurred 10 years ago? Is the Board going to have to find the investigative officer or the police officer, who may have retired or died? If we impose that burden rather than giving the Commission discretion, we may have some situations where people are allowed to work in the gaming industry when their integrity, honesty or accountability has been seriously questioned in the past, and they would be a danger to the gaming industry and the interests of the State.

That is why we have raised the objections. We understand the Chair is willing to give us an opportunity to look further into this issue and deal with it as the bill proceeds. That is the appropriate forum for us to pursue the issues.

Chair Segerblom:

Based on your testimony, I will withdraw the bill. Some issues are worth looking at, and I appreciate that you and Chair Burnett will look at them. You have given me some ideas, and I will incorporate them and bring this measure back at the next Legislative Session.

Mr. Burnett:

I will note that the issues you raised in our earlier conversation have already been addressed.

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Chair Segerblom:

I will close the work session on S.B. 415 and open the work session on S.B. 418.

SENATE BILL 418: Revises provisions relating to pari-mutuel wagering.
(BDR 41-1106)

Ms. Martini:

I have prepared a work session document for S.B. 418 ([Exhibit N](#)). An amendment was submitted by Senator Segerblom, and it can be found on page 2 of [Exhibit N](#). This amendment would do two things. First, it would place the provisions of the bill in NRS 463, which covers licensing and control of gaming, rather than NRS 464, which covers pari-mutuel wagering. Second, it would revise the effective date of the measure to be upon passage and approval for purposes of amending regulations and on January 1, 2014, for all other purposes.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 418.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BROWER AND HAMMOND VOTED NO.)

* * * * *

Chair Segerblom:

I will open the work session on S.B. 425.

SENATE BILL 425: Repeals certain provisions relating to pari-mutuel wagering.
(BDR 41-1111)

Ms. Martini:

I have prepared a work session document for S.B. 425 ([Exhibit O](#)). We have received two amendments to this bill. The first amendment, on page 2 of [Exhibit O](#), is from Senator Hutchison; it just came in this morning, and I have not had a chance to read it. The second amendment, on page 3 of [Exhibit O](#), is from Lewis and Roca, and it reinstates the provisions of NRS 464.075.

Senator Hutchison:

Let me explain my amendment. When we first heard this measure, it was stated that although rebates are prohibited under our statute, they can be exempted from that prohibition. The policy question became whether we should continue to prohibit rebates but allow them to be exempted or instead allow rebates and let the Nevada Gaming Commission set regulations. This amendment addresses the concerns raised by Chair Bernhard. It would allow us to permit rebates, payoffs and bonuses and gives the State Gaming Control Board and the Commission authority to regulate them.

Senator Jones:

Thank you, Senator Hutchison; I think you got where I wanted to go on this. My only concern is that the original bill did not have an effective date because it was just a deletion. I do not see an effective date in your amendment, and I want to make sure we give the Board and the Commission time to weigh in and adopt regulations. Did you have a time frame in mind?

Senator Hutchison:

I would suggest July 1, but I am open.

Mr. Bernhard:

Statute said rebates and other benefits were prohibited unless the Commission approved them; this amendment reverses that to say they are permitted unless the Commission objects to them. I would like the regulatory agencies to have the ability to look at this, take testimony from the public, go through workshops, and adopt regulations that will govern rebates before the ability to grant rebates goes into effect. It would make sense for us to get a full record on that so we know what types of rebates might present regulatory problems and could resolve them through regulation. I would prefer that the status quo remain in effect until the regulations have been adopted in accord with our procedures. That can be done quickly and efficiently as long as everyone in the industry will cooperate and present testimony for us to make a reasoned decision.

Chair Segerblom:

What is your definition of "quickly and efficiently"?

Mr. Bernhard:

I think 6 months would be adequate. That would allow us to schedule workshops, take testimony, get it transcribed and have public hearings in the north and south.

Senator Jones:

I suggest an effective date of October 1.

Senator Hutchison:

That is fine. My amendment says rebates and bonuses are permitted, and people can do that now. The Commission can adopt regulations regarding this. The intent is to get these rebates going now—test the market and see what kind of response we get, and then have the Commission regulate if there is a problem. If that is not the sentiment of the Committee, we need to make some adjustments.

Chair Segerblom:

If the deadline is October 1, we do not need to do rebates before that. Let us make it contingent upon regulation, with the regulations being due by October 1.

Senator Hutchison:

So this amendment would allow rebates beginning October 1, and then go forward from that point.

Chair Segerblom:

The regulations would be promulgated by then.

Senator Jones:

If the regulations are not promulgated by then, rebates would still be allowed starting October 1.

Senator Hutchison:

We are setting a date by which this law would allow for the rebates and the other activities permitted. As Mr. Bernhard indicated, he understands there is a deadline in terms of the regulations, and if those regulations are not enacted by then, the law kicks in and rebates can proceed.

Mr. Anthony:

To reiterate, the bill would be effective on passage and approval for purposes of adopting regulations, but October 1 would be the effective date.

Senator Jones:

Correct. However, the Commission can promulgate regulations on this issue today under NRS 464.075.

Senator Hutchison:

It sounds like the sentiment is to have the effective date be October 1. That gives the regulators enough time to promulgate regulations, but rebates can start on October 1. With that in mind, I would amend my amendment to include an effective date of October 1.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 425 WITH THE EFFECTIVE DATE OF OCTOBER 1.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Segerblom:

We need to go back to S.B. 278 and make a technical correction to the amendment.

SENATOR FORD MOVED TO RESCIND THE PREVIOUS ACTION TAKEN ON S.B. 278.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Senator Ford:

We would like to make one additional change to S.B. 278. As opposed to designating law enforcement to do visual inspections of abandoned property,

we would like to allow the municipality, county or city to designate an agency to do it. It might be code enforcement, for example, that would go out and do the visual inspection. That leaves it to the discretion of the municipalities and also leaves the opportunity for law enforcement or whoever wants to participate to do this.

Mr. O'Callaghan:

We agree. I think it will work out for everybody, county and city alike.

Senator Brower:

This makes a good bill even better.

SENATOR BROWER MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 278 WITH THE AMENDMENT DESCRIBED BY SENATOR FORD.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Segerblom:

I will open the work session on S.B. 421.

SENATE BILL 421: Requires a court to excuse a juror for cause under certain circumstances. (BDR 2-1109)

Ms. Martini:

I have prepared a work session document on S.B. 421 ([Exhibit P](#)). The amendment from Peter C. Neumann on pages 2 and 3 of [Exhibit P](#) does three things. First, it clarifies that the provisions apply only to civil cases. Second, it deletes section 3 of the bill, which pertains to criminal cases. Third, it provides for a sunset on the measure of June 30, 2015.

Senator Ford:

I suggested the sunset provision because we heard there was a lot of opposition to this bill. It may disrupt courts and cause many trials on jury selection, but it could also expedite the process and provide benefits for a better judicial system.

I can support this law if we include a sunset provision and watch how it affects the judicial system and the administration of justice over the interim.

Senator Hutchison:

I was struck by the Nevada District Judges Association's view on this. The Association noted that unlike other states and the federal court, Nevada already gives lawyers the right to inform their peremptory challenges through the participation of supplemental voir dire. The judges were concerned about broadening the fair and impartial standard, which is known, to something unknown, and about the repercussions of that uncertainty. The judges know this area well. I am going to give them quite a bit of deference, and I cannot support the bill even with the amendment.

Senator Brower:

I agree with Senator Hutchison. This is an interesting issue, and as we heard when the bill was first heard, it has apparently been a problem in Mr. Neumann's practice. I have tried a few cases in my time, though not as many as Mr. Neumann, and I respect his views on this. But when judges do not follow caselaw in this regard, as Mr. Neumann explained to us the other day with his citation to the recent U.S. Supreme Court case, the Supreme Court will reverse them. There is nothing like being reversed to help district court judges follow the law in this regard. I would not support a change in the law even for a temporary period of time.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 421.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BROWER, HAMMOND AND
HUTCHISON VOTED NO.)

* * * * *

Chair Segerblom:

I will open the work session on S.B. 416.

SENATE BILL 416: Revises provisions governing gaming. (BDR 41-1104)

Ms. Martini:

I have prepared a work session document regarding S.B. 416 ([Exhibit Q](#)). We have received several amendments for this bill. The first amendment, from Senator Segerblom, is on page 2 of [Exhibit Q](#). This amendment provides for the Gaming Policy Committee to conduct a study of establishments that have been granted a restricted license. The sum of \$15,000 from the State General Fund would be appropriated to support that study. A report of findings and recommendations would be forwarded to the Nevada Gaming Commission and the State Gaming Control Board on or before June 1, 2014.

The second amendment is from Lionel Sawyer & Collins and is on page 3 of [Exhibit Q](#). It would allow a mobile gaming licensee to obtain a sports book license. The third amendment is from American Wagering, Inc., and is on page 4 of [Exhibit Q](#). It would delete sections 1, 2 and 4 and leave laws in place permitting account wagering where the technology uses a kiosk. The fourth amendment comes from the Nevada Resort Association and is on pages 5 and 6 of [Exhibit Q](#). It amends sections 3 and 5 of the bill. The final amendment comes from Golden Gaming and is on pages 7 through 10 of [Exhibit Q](#). It would revise sections 2 and 4 of the bill.

Chair Segerblom:

We have had two hearings on S.B. 416, but we have not been able to reach a good conclusion as to how to strike a balance between these two industries. My proposal is to amend the bill and rerefer it to the Senate Committee on Finance. However, I want to also deal with the mobile gaming issue because that was undisputed. That would be covered by the amendment from Lionel Sawyer & Collins on page 3 of [Exhibit Q](#). If we could get that change in the record, then I do not think we have to deal with it any further.

Senator Brower:

Could you explain your amendment? I am not sure I quite follow.

Chair Segerblom:

My amendment asks that the Gaming Policy Committee conduct a study of this issue between restricted and nonrestricted gaming, and it also asks for a sum of \$15,000 from the General Fund to pay for that study. The purpose is twofold. First, it allows the Gaming Policy Committee to learn more about the issue. Second, it buys us some time. We are dealing with two substantial industries in the State of Nevada, and where we strike the balance between restricted and

nonrestricted gaming is critical to the future of Nevada. I am uncomfortable striking that balance today.

Senator Hutchison:

You are proposing we adopt your amendment, which adds two sections to the bill, and also the amendment on page 3 of [Exhibit Q](#).

Chair Segerblom:

Right. The testimony was that it was an inadvertent decision by the drafters of the bill initially to take out the mobile gaming piece. This amendment clarifies that issue. Mr. Anthony, could you explain what a motion to rerefer does?

Mr. Anthony:

The motion being contemplated would be to adopt your amendment and the amendment from Lionel Sawyer & Collins, which is a technical correction, and rerefer the bill to the Senate Committee on Finance. Based on the amendments, [S.B. 416](#) may be eligible for exemption and would survive today's deadline. The motion is amend and rerefer.

Senator Hutchison:

Is there any appetite for passing the bill with the Lionel Sawyer & Collins amendment alone?

Chair Segerblom:

No.

Senator Jones:

I just wanted to put on the record that I had my struggles with this bill. I've talked to both sides a lot over the last couple of weeks, and I had asked for some additional time; and over the last couple of days, I had the opportunity to visit kiosks and understand what they do, visit Dotty's and do the research that I think is necessary for me to get there in voting on this bill. And I think I am comfortable with voting on the bill today without the amendment.

SENATOR FORD MOVED TO AMEND WITH THE AMENDMENTS OFFERED BY SENATOR SEGERBLOM AND LIONEL SAWYER & COLLINS AND REREFER [S.B. 416](#) TO THE SENATE COMMITTEE ON FINANCE.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR JONES VOTED NO.)

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Chair Segerblom:

I will open the work session on S.B. 192.

SENATE BILL 192: Enacts the Nevada Preservation of Religious Freedom Act to prohibit governmental entities from substantially burdening the exercise of religion. (BDR 3-477)

Ms. Martini:

I have prepared a work session document for S.B. 192 ([Exhibit R](#)). We have received an amendment from Senator Cegavske, which is on page 2 of [Exhibit R](#).

Senator Ford:

During the hearing on S.B. 192, we heard testimony in opposition voicing concerns that the bill could be used as an end run around our antidiscrimination statutes. To assure that that was not a possibility and to make it perfectly clear for this record, it should be known that this statute in no way intends to offer an opportunity to discriminate against any individual under any classification as listed in our statutes. I worked with Senator Cegavske and Senator Hutchison on this, and I am convinced in my own mind that this statute as amended would do two things: protect religious freedom and restore a higher standard that existed for decades before the U.S. Supreme Court changed the standard, and also protect individuals from unlawful discrimination as defined in our statutes. I look forward to supporting it.

SENATOR HUTCHISON VOTED TO AMEND AND DO PASS AS AMENDED S.B. 192.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the work session on S.B. 314.

SENATE BILL 314: Provides that the right of parents to make choices regarding the upbringing, education and care of their children is a fundamental right. (BDR 11-880)

Ms. Martini:

I have prepared a work session document on S.B. 314 ([Exhibit S](#)). The one amendment submitted for this measure has been withdrawn, so there are no amendments.

SENATOR HAMMOND MOVED TO DO PASS S.B. 314.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

Is there any public comment? Hearing none, I will adjourn the meeting at 12:13 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	2		Agenda
	B	5		Attendance Roster
S.B. 278	C	14	Mindy Martini	Work session document
S.B. 297	D	1	Mindy Martini	Work session document
S.B. 321	E	29	Mindy Martini	Work session document
S.B. 346	F	7	Mindy Martini	Work session document
S.B. 346 S.B. 409 S.B. 415 S.B. 425	G	9	Peter Bernhard	Letter re: S.B. 346, S.B. 409, S.B. 415 and S.B. 425
S.B. 346	H	2	Richard Bryan	Letter re: Senate Bill 346
S.B. 388	I	32	Mindy Martini	Work session document
S.B. 389	J	4	Mindy Martini	Work session document
S.B. 395	K	4	Mindy Martini	Work session document
S.B. 395	L	3	David Clifton	Problems with S.B. 395
S.B. 415	M	2	Mindy Martini	Work session document
S.B. 418	N	2	Mindy Martini	Work session document
S.B. 425	O	3	Mindy Martini	Work session document
S.B. 421	P	3	Mindy Martini	Work session document
S.B. 416	Q	10	Mindy Martini	Work session document
S.B. 192	R	2	Mindy Martini	Work session document
S.B. 314	S	2	Mindy Martini	Work session document