The Senate Committee on Judiciary was called to order by Chair Greg Brower at 2:06 p.m. on Wednesday, May 13, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15
Assemblyman Brent A. Jones, Assembly District No. 35
Assemblyman Jim Wheeler, Assembly District No. 39

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Julia Barker, Committee Secretary
OTHERS PRESENT:

Caleb Harris, Disabled American Veterans; Veterans of Foreign Wars; United Veterans Legislative Council
Tony Yarbrough, Veterans of Foreign Wars, Department of Nevada; United Veterans Legislative Council
Kim Surratt, Nevada Justice Association
Melissa L. Exline
Marshal S. Willick
George Ross, Nevada Bankers Association

Chair Brower:
I open the meeting of the Senate Committee on Judiciary with the hearing on Assembly Bill (A.B.) 140.

ASSEMBLY BILL 140 (1st Reprint): Revises provisions governing certain domestic relations matters involving veterans with a service-connected disability. (BDR 11-519)

Assemblyman Jim Wheeler (Assembly District No. 39):
Assembly Bill 140 gets us in line with federal regulations of divorce regulations for disabled veterans on disability.

Caleb Harris (Disabled American Veterans; Veterans of Foreign Wars; United Veterans Legislative Council):
This bill codifies federal law. Federal funds for the U.S. Department of Veterans Affairs (VA) disability compensation are designated by federal law. Therefore, we believe the federal mandate should be applied. We have worked with Melissa Exline and Kim Surratt who opposed the bill in the Assembly to make sure we had good language. The Disabled American Veterans, Veterans of Foreign Wars and United Veterans Legislative Council support A.B. 140.

Chair Brower:
Could you give an overview of what this bill accomplishes?

Mr. Harris:
Disability compensation is being used in Nevada for alimony. An order will be set by the judge and later executed in a manner that if the veteran does not comply, he or she can be held in contempt of court. Federal law states disability
compensation cannot be attached, levied or seized in any way, shape or form during a divorce. This bill puts Nevada in line with federal law. Federal law does not dictate civil courts within State law, so the federal government will not tell us what to do in this situation.

I have submitted nine documents regarding this issue: a 2009 document from the California Senate Rules Committee about veterans’ benefits (Exhibit C); a California Legislative Counsel’s Digest about veterans’ disability benefits (Exhibit D); the Department of Health and Human Services, Division of Welfare and Supportive Services Child Support Enforcement Manual, Chapter I, General Provisions (Exhibit E); Arizona law dealing with marital and domestic relations, military retirement benefits; disability-related waiver (Exhibit F); Title 38 Veterans’ Benefits (Exhibit G); 42 USC section 659, Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations (Exhibit H); U.S. Supreme Court decision Mansell v. Mansell 490 U.S. 581 (1989) (Exhibit I); U.S. Supreme Court decision McCarty v. McCarty 453 U.S. 210 (1981) (Exhibit J); a fact sheet from the American Bar Association Family Law Section, Military Committee about VA payments and family support (Exhibit K); and Wyoming Senate File No. SF0046 protecting veteran disability compensation in divorce (Exhibit L).

Assemblyman Wheeler:
We submitted anecdotal evidence of this happening in the State on the Assembly side. This bill gets us in line with federal government guidelines. We have worked with the opposition, members on the other side of the aisle, including Assemblyman Elliot Anderson and Assemblyman James Oscarson, and attorneys. Everyone agrees on A.B. 140.

Chair Brower:
Many stakeholders spent a lot of time on this, and it looks like a good end result.

Tony Yarbr ough (Veterans of Foreign Wars, Department of Nevada; United Veterans Legislative Council):
I represent all 8,400 of Nevada’s veterans. We have spent hours on the bill language, working on both sides of the aisle and with opposition. We feel we have reached language to make this work. Veterans of Foreign Wars, Department of Nevada, and United Veterans Legislative Council support A.B. 140.
Kim Surratt (Nevada Justice Association): The Nevada Justice Association supports A.B. 140. After struggling with this for multiple sessions, we have satisfactory language. Can you poke holes in it? Can other family law attorneys find issues with it? Potentially. But it was the best product we could come to with a good compromise. It is good for everybody and helps us move forward so we can practice family law.

Chair Brower: How would this bill change a scenario involving these benefits?

Melissa L. Exline: I practice family law. We were opposed to the original draft creating anomaly in family law and preventing judges from looking at the big picture of all revenue streams coming into a community to make an appropriate consideration.

Chair Brower: Do you mean the marital community?

Ms. Exline: Yes, community property, to be clear. We support A.B. 140 with the changes because it is a true reflection of federal law. Under federal law, if you are receiving a service-connected disability pursuant to 38 USC chapter 11, Nevada courts have specific language saying you cannot attach, levy or seize that revenue stream in a divorce proceeding. The language is made more clean and clear in this bill and does not create the anomaly of my concern from a practitioner’s side, whether representing the disability recipient or the spouse. This codifies federal law.

Chair Brower: Does the bill remove veteran disability benefits from alimony consideration?

Ms. Exline: It is not completely removed from being considered in any way, shape or form. But it does take federal law and tell a judge that the benefits may not be attached, levied or seized under any legal or equitable process. That is federal statute; making it Nevada law does not harm or impact anything. There is the concern it could be viewed oddly by a family court judge. I appreciate that concern, but this bill only codifies federal law.
Ms. Surratt:
We have spent a lot of time talking with employees of U.S. Senator Dean Heller about the problems they were seeing with veterans across Nevada. That drove the need for this bill. There tends to be an extreme problem with practitioners and judges understanding and knowing this federal law exists. Even though it is in federal law and may not be necessary to include in State law, judges do not know this law exists. They were pleased to see we were doing a codification so more people will take notice and know what to do.

Chair Brower:
It is a good idea. The Legislature did that with campaign donations from foreign sources a couple of sessions ago. It was barred under federal law, but not everyone knew federal law precluded similar activity at the State level, so we included it at the State level. Sometimes it makes sense to do that.

Assemblyman Elliot T. Anderson (Assembly District No. 15):
I support A.B. 140. We had a good process of working together to fix issues and found a good compromise on this. We are thrilled with the result.

Chair Brower:
I know a lot of work has gone into making this happen. The Committee has received written testimony in support of A.B. 140 from Russ Murray (Exhibit M) and William Fox (Exhibit N).

Marshal S. Willick:
I am a family law lawyer in Las Vegas, practicing for over 30 years. I am the former chair of the Family Law Section of the State Bar of Nevada, the former President of the Nevada Chapter of the American Academy of Matrimonial Lawyers (AAML), a national authority on alimony and the author of the primary textbook in the U.S. on the subject of military retirement benefits. I have represented many military members over the years, have been involved in legitimate military divorce matters, am one of the creators of the Deployed Parents Custody and Visitation Act and am this year’s recipient of the Military Pro Bono Project Outstanding Services Award. I understand these issues both personally and professionally.

The problem A.B. 140 addresses does not exist. There has never been a known case in which a Nevada court has attached, levied or seized VA disability benefits. It does not happen. The claim that this codifies federal law is false.
The language in question is already federal law and full effect is a matter of preemption. It is codified. The purpose of this bill to take one sentence out of a federal statute and drop it into Nevada alimony law. It is designed to allow for a false argument to be made to the Nevada divorce court.

I have supplied the Committee with a background letter with a list of cases from various courts stating that the sentence extracted from federal law has nothing to do with child support or alimony (Exhibit O). It is about commercial creditors, and a wife and child are not commercial creditors. You have that list and legal analysis. Assembly Bill 140 gives a special advantage to a group of divorce litigants versus their spouses. In all divorce cases, every disability payment is the separate property of the person receiving it, military or civilian. It does not matter why the disability exists—a war wound or traffic accident. In all cases, the divorce court takes all separate property disability income into account when determining need and ability.

The proponents of this bill have a different idea of what this bill would do in a practical way. Sometimes, there was no disability at the time of the divorce and property divisions are final. If you were married for the full term in which a pension was accrued, it is split evenly. Those proposing this legislation want to retroactively reach out, take money already ordered to belong to his or her spouse, take it out of the spouse’s pocket and put it in his or her own pocket. Nevada has caselaw designed to prevent this. This excerpted language is designed to undo existing protections built into Nevada law for the protection of litigants. The National AAML formerly issued a resolution urging state legislators to reject bills such as A.B. 140. Every national expert in this subject, including Colonel Mark Sullivan who wrote the Military Divorce Handbook, is in full accord on this subject. There is no informed opinion or publication to the contrary.

This legislation is not about protecting veterans. It is about one group of divorced persons trying to find a way to cheat spouses. At best, this bill would do nothing, as Ms. Exline suggested. At worst, it would be used to falsely tell divorce courts not to award child support and alimony when such awards should be made. There is no legitimate reason to place this language in Nevada divorce law. I realize a lot of people have spent a lot of time trying to craft a political deal. I am not a politician; I am a substance expert. This wording can do nothing but mischief in the world of divorce courts in Nevada. It can only be misused and cannot serve any legitimate function.
Chair Brower:
I close the hearing on A.B. 140 and open the hearing on A.B. 288.

Assemblyman Brent A. Jones (Assembly District No. 35):
Nevada has gone through a housing crisis. Arizona and California housing markets have recovered but ours has not. Nevada is a ways away from getting back to where we were in 2007 and 2008. When we look back, we can see a number of reasons why this happened. One of the things that stand out is the fact that we enacted a number of laws adding uncertainty in financial markets. When we added uncertainty in financial markets, lenders were more reluctant to lend. Nevada is a relatively small state compared to others.

Assembly Bill 288 deals with lending procedures to bring back Nevada’s housing market. On the federal level, the most significant home loan laws fall under the Consumer Financial Protection Bureau (CFPB). Under the CFPB, laws are known as the final servicing rules that provide standards for large banks at the federal level. Large banks include those servicing 5,000 or more loans, such as Wells Fargo, CitiBank and Bank of America. There are various laws at the State level. Of particular importance was the U.S. Attorney General’s (AG) National Mortgage Settlement announced in February 2012 and set to expire in October. The Settlement included the attorneys general of 49 states, the District of Columbia and the federal government. Various banks agreed to certain servicing and foreclosure practices. The CFPB patterned its final servicing rules after the Settlement.

Various laws enacted by the Nevada Legislature included A.B. No. 284 of the 76th Session and S.B. No. 321 of the 77th Session. Senate Bill No. 321 of the 77th Session resulted in the law that A.B. 288 amends. For the most part, S.B. No. 321 of the 77th Session is in alignment with the AG’s Settlement. As Nevada State court judges decide cases, State law can differ from CFPB regulations. This bill lets large banks know what the law is and how they should proceed. The problem develops when a federal law exists and a state changes that law. Training employees on specific law and its practical day-to-day implementation could take months or years. As each state decides to change the law, large banks must interpret the law, adjust and retrain for that specific state. Multiply that by 50. This creates uncertainty and frustration for banks.
With uncertainty and frustration comes reluctance to participate in a particular market, resulting in less access and an inefficient market. This causes a slow recovery and lack of participation in a specific market. Nevada banks are adding overlays to the lending process because they have insecurities with State laws. We want to avoid this and have an efficient market providing easy access to banks so Nevada citizens can experience the American Dream, specifically the ability to own and sell their homes.

This bill aligns Nevada law with federal law for large banks. The first change adds section 10902 from 12 CFR Part 1026 of the CFPB to Nevada law. This is the most recent federal update to the CFPB’s final servicing rules. A bank or large servicer in compliance with the final servicing rules will be deemed compliant with Nevada law. This prevents conflicting State and federal laws.

The next change provides if the CFPB is repealed or lapses, Nevada law reverts to State law. There could be another big change at the federal level, and we could have a problem with the final servicing rules.

We have proposed amendments (Exhibit P) to bring Nevada law further into compliance with federal law.

George Ross (Nevada Bankers Association):
The CFPB rules apply to banks servicing 5,000 or more loans and to services servicing 5,000 loans or more. That is important because over time, loans are sold by original lenders to companies focusing on servicing. Bankers tried to make part of S.B. No. 321 of the 77th Session more clear and did not get as far as we wanted. We want to make the law more clear. The proposed amendment in Exhibit P makes A.B. 288 more clear in terms of what the sections deal with. Below the proposed amendment for informational purposes, we list what each section of 12 CFR Part 1024 does, so no one can say there has been sleight of hand. We want to make it clear what each section mentioned in this bill does. Legal cases deal with results from the law created by S.B. No. 321 of the 77th Session. Banks under CFPB rules will be in compliance with Nevada law as well.

For those of you familiar with the AG Settlement, you will see no dual tracking and timing of when a bank must contact a homeowner. The banks had concern over being caught between a rock and a hard place in a few years. Those familiar with bank litigation know of more than one situation where federal and
a state case support both sides of the law. It will be helpful to get more clarity in the law in this area critical for Nevadans.

Senator Harris:
What happens to the banks when the settlement expires in October?

Mr. Ross:
We will be under CFPB rules.

Senator Harris:
If state and federal laws diverge, does that potentially put banks in a hard situation?

Mr. Ross:
Laws would diverge as caselaw develops. We could end up with decisions contradicting CFPB rules. We want to avoid that situation.

Senator Harris:
Are you asking the Legislature to include federal rules into Nevada statute regarding how servicing and servicers treat clients?

Mr. Ross:
That is what we are asking. The banks follow those rules and get in trouble if they do not. That creates a problem if there is a difference between State and federal law. A problem last Session involved concerns if CFPB goes away. People thought if Republicans took the Senate, one of the first things they would do was get rid of the CFPB. That did not happen, and banks have to follow CFPB rules. We included a proposed amendment to A.B. 288, making it clear if the CFPB were abolished, banks would fall under State law. That clarifies the problem from last Session.

Senator Harris:
Are we still holding services accountable for the way they service loans and when people have difficulty? Those services are still required to follow those guidelines and banking practices codified in S.B. No. 321 of the 77th Session.

Mr. Ross:
Yes. All sections under CFPB rules that we have in Nevada law must be followed by banks. That is why we wanted to make this more clear. It is a
limited but important area where the CFPB would be followed. We want to ensure a person could not argue that law and claim State law did not have to be followed. This is the only area that trumps State law and only happens if caselaw diverges.

Senator Harris:
What are the penalties for failing to comply?

Mr. Ross:
I do not know.

Senator Harris:
Can you find that out and let me know?

Mr. Ross:
Yes.

Chair Brower:
I close the hearing on A.B. 288 and open the work session on A.B. 201, A.B. 301 and A.B. 419.

ASSEMBLY BILL 201 (1st Reprint): Revises provisions governing eminent domain. (BDR 3-960)

ASSEMBLY BILL 301: Prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. (BDR 10-533)

ASSEMBLY BILL 419 (1st Reprint): Clarifies the applicability of the Uniform Unclaimed Property Act. (BDR 10-1104)

Patrick Guinan (Policy Analyst):
I have work session documents for A.B. 201 (Exhibit Q), A.B. 301 (Exhibit R) and A.B. 419 (Exhibit S) summarizing the bills. There are no amendments. Assembly Bill 457 was removed from the work session.

ASSEMBLY BILL 457 (1st Reprint): Revises provisions governing reports required to be submitted by various entities. (BDR 1-937)
SENATOR HARRIS MOVED TO DO PASS A.B. 201, A.B. 301 AND A.B. 419.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR KIHUEN WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on A.B. 49.

ASSEMBLY BILL 49 (1st Reprint): Revises provisions governing crimes. (BDR 15-158)

Mr. Guinan:
I have a work session document summarizing the bill and three proposed amendments (Exhibit T). The proposed amendments supported by the Chair were submitted by the Nevada Attorney General’s (AG) Office, clarifying provisions and language in the bill.

Chair Brower:
The first two amendments were proffered during the bill hearing by the Nevada AG’s Office. The third amendment has been worked out.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED A.B. 49.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR FORD VOTED NO. SENATOR KIHUEN WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on A.B. 69.
ASSEMBLY BILL 69 (1st Reprint): Revises various provisions relating to the Judicial Branch of State Government. (BDR 1-497)

Mr. Guinan:
I have a work session document summarizing the bill and proposed amendment (Exhibit U). The proposed amendment adds Nevada Revised Statute 17.155 to the list of repealed sections.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED A.B. 69.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR KIHUEN WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on A.B. 128.

ASSEMBLY BILL 128 (1st Reprint): Creates a power of attorney for health care decisions for adults with intellectual disabilities. (BDR 13-418)

Mr. Guinan:
I have a work session document summarizing the bill and proposed amendment (Exhibit V). This conceptual amendment was discussed by several Committee members after the bill hearing.

Senator Harris:
Senator Hammond and I talked about power of attorney for health care. I have dealt with clients in several capacities and know the power of attorney for health care form is difficult for many people because it is drafted in the negative. This requires a lot of explanation to clients. We concluded that because of its clarity, this language would be good to have for everybody in Nevada so everyone understands the choices when looking at end-of-life decisions.
Chair Brower:
The proposed amendment repeals the statutory example for a power of attorney for health care form and substitutes the new power of attorney for health care form contained in A.B. 128 for all health care decisions. That amendment is being drafted and will be available before the bill goes to a vote on the Senate Floor.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 128.
SENATOR HAMMOND SECONDED THE MOTION.
THE MOTION PASSED. (SENATOR KIHUEN WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on A.B. 239.

ASSEMBLY BILL 239 (2nd Reprint): Regulates operators of unmanned aerial vehicles in this State. (BDR 44-8)

Mr. Guinan:
I have a work session document summarizing the bill and Proposed Amendment 6998 (Exhibit W). The proposed amendment was proposed by Assemblyman Elliot Anderson, the bill sponsor, and the Chair has requested a clarification to be included in that amendment.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED A.B. 239.
SENATOR HARRIS SECONDED THE MOTION.
THE MOTION PASSED. (SENATOR KIHUEN WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on A.B. 263.

ASSEMBLY BILL 263 (1st Reprint): Revises provisions governing the custody and support of children. (BDR 11-199)

Mr. Guinan:
I have a work session document summarizing the bill and proposed amendments (Exhibit X). The proposed amendment was offered by the bill sponsor, and Senator Hammond proposed an amendment to section 16 of the bill.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 263.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR KIHUEN WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on Senate Bill (S.B.) 291.

SENATE BILL 291: Provides for the determination of damage awards in certain civil actions. (BDR 3-951)

Mr. Guinan:
I have a work session document summarizing the bill and Proposed Amendment 7154 (Exhibit Y). The proposed amendment was offered by the Committee.

Chair Brower:
The bill gets at the collateral source rule. Proposed Amendment 7154 takes a different approach from the original bill. It provides that a plaintiff in a typical personal injury case will be allowed to blackboard all past and future medical expenses. That is found in section 1, subsection 1, paragraph (a). Paragraph (b) provides that the jury or other finder will award a verdict based on all special and general damages, economic or noneconomic, the plaintiff presents to the
jury. The court will enter into a judgment based on the verdict. In paragraph (c),
the amendment provides the defendant can file a motion with the court to
reduce the judgment to reflect certain collateral source payments made to the
plaintiff by collateral sources. The subsequent provisions and subsections
address the issues of how medical payment insurance will be handled and how
premiums would be reflected.

A new provision is added in Proposed Amendment 7154 wherein the plaintiff
will receive a credit for 1 year of premiums paid in order to obtain the health
insurance policy at issue. Section 1, subsection 1, paragraph (d),
subparagraph (2) addresses copays. The court would have the discretion to
increase the amount of a judgment in any amounts the court deems appropriate
for good cause shown. Section 1, subsection 3 addresses medical liens. This is
a commonsense approach, the product of a lot of negotiation and different
drafts. It may not make every interested party in this issue completely happy,
but it is a good compromise from the original bill language.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 291.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR FORD VOTED NO. SENATOR KIHUEN
WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on S.B. 296.

SENATE BILL 296: Revises provisions relating to exemplary or punitive
damages in certain civil actions. (BDR 3-940)

Mr. Guinan:
I have a work session document summarizing the bill and Proposed
Amendment 7246 (Exhibit Z).
Chair Brower:
The bill takes a different approach from the original idea. What remains is the idea that upon the filing of an action, a claim for punitive damages would only be allowed upon an application by the plaintiff and a determination by the court that prima facie evidence supports a claim for punitive or exemplary damages. That concept remains the same from the bill.

Deletion of the language addressing the idea of governmental approval as a bar to a claim for punitive damages is different. It simplifies the approach by including product liability claims under existing statutory caps on punitive damages. The existing cap in NRS 42.005 would not apply to a product liability claim if one of four different exceptions applies. Each exception is laid out in section 3, subsection 2, paragraph (a).

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 296.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR FORD VOTED NO. SENATOR KIHUEN WAS ABSENT FOR THE VOTE.)

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Chair Brower:
I adjourn the meeting of the Senate Committee on Judiciary at 3:02 p.m.

RESPECTFULLY SUBMITTED:

__________________________
Julia Barker, Committee Secretary

APPROVED BY:

__________________________
Senator Greg Brower, Chair

DATE: ___________________________
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</table>