

## ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

MEETING HELD FEBRUARY 18, 1971

Meeting called to order at 2:47 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Dreyer, May, Olsen, Torvinen, Kean and McKissick. None absent.

SB 19 - Permits game wardens to issue citations for violations of fish and game laws. The committee heard testimony from GLEN GRIFFITH, Employee of Fish and Game Department, who stated that department has been using a simple citation and it has been called to their attention that the citation should be covered by statute to make it an official document. The citation he suggested using is patterned after Section 484.798 in the traffic code. He further stated that in line 19 of the bill, the word "of" should be "of".

Mr. Torvinen suggested that without a complaint the court doesn't have jurisdiction to proceed and suggested Mr. Griffith request the Attorney General's advice about the legality of the citation.

AB 164 - Regulates actions sounding in tort brought against employee or officer of state or political subdivision; and  
AB 209 - Requires attorney general to defend certain public employees or former employees.

ASSEMBLYMAN JOHN HOMER testified, and stated that the State Employees Association want the protection of the bill, so the attorney general would defend the employee in a suit brought against him in his official capacity as a state employee.

Committee members questioned if the attorney general would be required to defend an employee who, for instance, had been drinking on the job and then committed a wrongful act. Dr. Homer said they are not asking for him to be covered under a wrongful act, only for things occurring in the scope of his employment.

CHIEF DEPUTY ATTORNEY GENERAL JAMES H. THOMPSON stated there is a provision in Chapter 41 which exempts suit regarding construction of highways, but a supreme court decision has over-ridden that provision.

Mr. Fry asked if the Attorney General is prohibited from defending the employees now. Mr. Thompson replied there is no prohibition, but there is no requirement to defend either, and this would close the gap.

Miss Foote asked Mr. Thompson if AB 164 or AB 209 was preferred. He replied they would prefer AB 209, and distributed to the committee a suggested amendment to AB 164.

MR. OLIVER BOULTON stated that automobile claims are covered from the first dollar up with a limit of \$500,000 per claim, under

state insurance. Mr. Fry questioned if the automobile insurance should be reduced to \$25,000 per car. Mr. Thompson said he would think so, and the Spillers case indicated the state was remiss in paying for insurance over the \$25,000 limit for which the state could be sued. Mr. Boulton stated it would save the state a considerable amount of money if the policy limits were reduced to \$25,000.

Mr. Fry asked if the workload of the Attorney General's office would be greatly increased if the requirement to defend were enacted, and questioned Mr. Thompson about the conflict of interest that would arise if a suit involved both a state employee and the department for which he worked. Would the Attorney General defend the state employee or the department? Mr. Thompson said that if the employee was not acting within the scope of his duties, the Attorney General would use his discretion and not defend the employee. The Attorney General would have to defend if the employee and the department were in a compatible position.

Mr. McKissick suggested all the sovereign immunity bills be considered together, and further suggested that the State Board of Examiners be given authority to settle cases that are more than \$1,000. Mr. Thompson suggested the settlement limit for the Board of Examiners should be \$25,000. Mr. McKissick said he would like the bill to be amended to read that in cases over \$1,000 a six-month notice to the Board of Examiners would be required.

AB 138: Gives Public Administrators additional duties in certain counties. Mr. Fry explained the bill would be amended to take out lines 6-19 and 41-43 on page two, and to place the public administrator after the creditor in priority of claimants. ASSEMBLYMAN JOE DINI said he would go along with these amendments.

AB 199 - Defines crimes that are grounds for disciplinary action against real estate brokers and salesmen. ASSEMBLYMAN CORKY LINGENFELTER said the bill was recommended by the Real Estate Advisory Commission, and stated the restrictions in the bill are presently applied only to applicants for licenses, but are not applied to persons already holding licenses. He recommended passage and said the restrictions should be the same for holders of licenses as for applicants.

AB 4 - Removes criminal penalties for abortions performed by licensed doctors. ASSEMBLYMAN WILLIAM SWACKHAMER presented three amendments to the bill for the committee's consideration:

(1) States that no person or hospital will be required to participate in an abortion and they should not be liable for refusal to participate.

Mr. Swackhamer said the amendments follow the Hawaii statute on abortions. Mr. Fry said this amendment would protect nurses and other members of the staff if they did not want to participate in abortions. Mr. Swackhamer said it is a protection also for Catholic hospitals.

(2) In Section 4 of the bill, states that abortion means operation to terminate intentionally a pregnancy, where the fetus is not viable.

Mr. Swackhamer defined "viable" as having begun to move. He said this would limit the abortion to being performed before the 20th or 21st week of pregnancy. Mr. Fry stated he did not like the use of the term "viable" because viability means life, and the committee had heard testimony that indicates a difference of opinion about when life begins. He would prefer a time limit of 20 weeks. Mr. Swackhamer suggested the Hawaii statute be researched as to time limitations.

(3) The abortion would have to be performed in an accredited hospital with a joint JCHA rating, but in counties with a population of less than 10,000, would have to be performed in a state-licensed hospital.

Mr. Swackhamer stated this would discourage "abortion hospitals" being set up. He said hospitals having less than 25 beds cannot get accreditation, but the small counties have some fine hospitals with less than 25 beds, and this amendment would provide that they have to be only state-licensed.

Mr. Lowman suggested if someone wanted to set up an abortion hospital, he could very well set one up in a county of less than 10,000 population. Mr. Torvinen stated that he had more faith in the health department than to think they would license an "abortion mill" hospital.

Mr. Olsen asked how the state would finance abortions to be performed on welfare recipients, and suggested the bill be referred to the Ways and Means Committee. He also advocated limiting the amount a doctor could charge for an abortion.

The committee agrees with the concepts of the amendments, and will further study the amendments, as to wording, and research the Hawaii statutes before taking further action.

SB 79 - Enacts criminal sanctions against owner of trespassing livestock. The committee heard testimony from BRIAN FIRTH, who suggested amending the bill so that "willfully" on line 21 would be changed to "with intent to vex or annoy" because willfully is too difficult to interpret.

Mr. Fry said Senator Dodge had proposed an amendment to the bill deleting "livestock" and inserting the words "swine, sheep or poultry".

ASSEMBLYMAN NORMAN GLASER addressed the committee, and said there are problems with animals loose in Nevada because so much of Nevada is open range land. Mr. Torvinen suggested a statute should be enacted defining "open range" areas and "semi-urban" areas.

AB 115 - Absolves domestic animal owners from liability for third party's negligence in allowing such animals on highways. MR. GLASER said if a fence is on a freeway or highway the highway department has the duty to fix the fence, but otherwise the duty of repairing the fence is on the landowner. He suggested there should be a time limit for determining the time a landowner would have to repair the fence after notification that repair was needed. Mr. McKissick said the trial lawyers are in favor of the bill, but the wording "third party negligence should not be imputed to ..." is vague.

AB 48 - Repeals penalty provision for recording deed without collecting real property transfer tax. Mr. Torvinen suggested the bill should be amended to state that the recorders should refuse to record the deed if the tax is not paid, and if he continues to record them after non-payment of tax, he would be guilty of malfeasance. Mr. Torvinen moved "Amend and Do Pass". Seconded by Mr. Lowman. Carried.

AB 124 - Increases rights of limited partners and excludes limited partnerships from filing certificates of fictitious or assumed name. Mr. McKissick moved that the bill be amended to delete the last two lines in the bill. Seconded by Mr. Dreyer. Carried. Mr. McKissick moved the committee then recommend "Do Pass." Seconded by Mr. Dreyer. Did not carry.

Mr. Lowman moved that SB 79 be indefinitely postponed. Seconded by Mr. Torvinen. Carried. Mr. Fry will suggest to Senator Dodge that local ordinances be enacted to handle the provisions of the bill.

Mr. Fry moved that AB 115 be indefinitely postponed. Seconded by Mr. Lowman. Carried.

Re. AB 272, Mr. Lowman moved "Do Pass", seconded by Mr. Olsen. Carried.

Mr. May moved that AB 209 be indefinitely postponed. Seconded by Mr. Lowman. Carried.

Re. AB 199: Mr. Lowman moved "Do Pass", seconded by Mr. May. Carried.

There being no further business before the meeting, it adjourned at 4:56 p.m.

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484.795

TRAFFIC LAWS

an authorized person and refuses to give his written promise to appear in court as provided in NRS 484.799.

(Added to NRS by 1967, 1211)—(Substituted in revision for NRS 484.722)

**484.795 When peace officer has option to take person before magistrate.** Whenever any person is halted by a peace officer for any violation of this chapter and is not required to be taken before a magistrate, the person shall, in the discretion of the peace officer, either be given a traffic citation, or be taken without unnecessary delay before the proper magistrate. He shall be taken before the magistrate in any of the following cases:

1. When the person does not furnish satisfactory evidence of identity or when the peace officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court;
2. When the person is charged with a violation of NRS 484.701, relating to the refusal of a driver of a vehicle to submit such vehicle to an inspection and test;
3. When the person is charged with a violation of NRS 484.755, relating to the failure or refusal of a driver of a vehicle to submit the vehicle and load to a weighing or to remove excess weight therefrom; or
4. When the person is charged with a violation of NRS 484.379.

(Added to NRS by 1967, 1211; A 1969, 1509)—(Substituted in revision for NRS 484.723)

**484.797 Arrest of nonresident.**

1. All of the provisions of this chapter apply both to residents and nonresidents of this state, except the special provisions in this section, which shall govern in respect to nonresidents.

2. A peace officer at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a nonresident of this state and who is involved in the accident when, based upon personal investigation, the peace officer has reasonable cause for believing that the person has committed any offense under the provisions of this chapter in connection with the accident, and if the peace officer has reasonable cause for believing that the person will disregard a written promise to appear in court.

3. Whenever any person is arrested under the provisions of this section, he shall be taken without unnecessary delay before the proper magistrate, as specified in NRS 484.803.

(Added to NRS by 1967, 1211)—(Substituted in revision for NRS 484.724)

**484.799 When person may be given 5-day notice to appear in court.**

1. Whenever a person is halted by a peace officer for any violation of this chapter punishable as a misdemeanor and is not taken before a magistrate as required or permitted by NRS 484.793 and 484.795, the peace officer may prepare in quadruplicate a written traffic citation in the

Hold for Bob Haguer  
SNEA

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## BILL DRAFTING AND AMENDMENT REQUEST

[Please use separate sheet for each request]

To the Legislative Counsel:

From Attorney General Robert List and Senator Archie Pozzi

Date February 3, 1971

Please prepare a bill/amendment as follows:

NRS 41.039 is hereby amended as follows:

1. An action which is based on the conduct of any employee or appointed or elected officer of [a political subdivision of] the State of Nevada or a political subdivision thereof while in the course of his employment or in the performance of his official duties may not be filed against such employee or officer unless, prior to the filing of the complaint in such action, a valid claim has been filed, pursuant to NRS 41.031 to 41.038, inclusive, against the political subdivision for which such employee or officer was authorized to act.
2. No award for damages in such action may exceed the sum of \$25,000 to or for the benefit of any claimant, nor shall such award include any amount as exemplary or punitive damages or as interest prior to judgment.
3. A judgment against the State of Nevada or a political subdivision of the State of Nevada in an action brought under NRS 41.031 shall constitute a complete bar to any action or any execution of a judgment against such employee or officer arising out of the same subject matter, and whose act or omission gave rise to the claim.
4. The remedy against the State of Nevada or its political subdivisions provided in NRS 41.031 shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or officer or his estate whose act or omission gave rise to the claim.

ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

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Date February 18 Time p.m. adjournment Room 240

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
AB 115	Absolves domestic animal owners from liability for third party's negligence in allowing such animals on highways.	
SB 79	Enacts criminal sanctions against owner of trespassing livestock.	
SB 2	Increases public administrator's bond in certain counties.	
SB 19	Permits game wardens to issue citations for violations of fish and game laws.	
AB 48	Repeals penalty provision for recording deed without collecting real property transfer tax.	
AB 199	Defines crimes that are grounds for disciplinary action against real estate brokers and salesmen.	
AB 124	Increases rights of limited partners and excludes limited partnerships from filing certificate of assumed or fictitious name.	
AB 138	Gives public administrators additional duties in certain counties.	
AB 164	Regulates actions sounding in tort brought against employee or officer of State or political subdivision.	
AB 209	Requires attorney general to defend certain public employees or former employees.	

\*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date \_\_\_\_\_ Time \_\_\_\_\_ Room \_\_\_\_\_  
Subject \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_ Room \_\_\_\_\_  
Subject \_\_\_\_\_