SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 18, 1977

The meeting was called to order at 8:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Bryan
Senator Dodge
Senator Foote
Senator Sheerin
Senator Gojack
Senator Ashworth

ABSENT:

AB 369 Raising limitation on number of permitted days of racing.

For further testimony on this measure, see minutes of meeting for April 4, 1977.

Assemblyman Jack Jeffrey stated that last session, when the bill was originally introduced, the number of days allowed for racing was inadvertently put in at 200 days instead of the requested 300. The problem that is arising is that when they went in for funding, their feasibility study and proposal was based on 300 days. In researching legislative intent, Mr. Jeffrey stated that testimony received had gone to 300 days but it was not included in the bill at that time.

No action was taken at this time.

AB 637 Changes number of witness required at solemnization of marriage.

George Flint, Nevada Wedding Association stated that this bill will save Washoe and Clark County's Marriage Commissioners and license bureaus a considerable amount of money. It will also lessen the inconvenience to approximately 15-20,000 couples who come to Nevada to be married.
Two witnesses at the marriage ceremony is a traditional and religious practice rather than one that is a legal matter. Most states have gone to the single witness.

Senator Ashworth moved a do pass.
Seconded by Senator Gojack.
Motion carried unanimously. Senators Bryan, Dodge and Sheerin were absent from the vote.

AB 529 Broadens definition of swindling in gambling.

Larry Hicks, Washoe County District Attorney testified in support of this measure and stated that this had been requested by the District Attorney's Association. In the gaming fraud prosecutions, they were running into the problem that they had to be able to prove that the person had won. Typically, what they could prove was that there had been a fraudulent scheme in action but they could not show whether there had been an actual win.

In response to a question from the Committee as to the wording of the bill, Mr. Hicks stated that he felt it gave them the authority they needed to move on these cases.

Senator Ashworth moved a do pass.
Seconded by Senator Dodge.
Motion carried unanimously. Senator Sheerin was absent from the vote.

AB 530 Enlarges definition of slot machine cheating.

Larry Hicks stated that this was the result of a decision handed down by District Judge Llewellyn A. Young in Humboldt County wherein he held that there was no prescribed manner in which to play a slot machine and therefore the scheme called "ratchetting was not illegal. This is a common practice where the principal operator fixes the machine to a point where it is ready to pay and then the accomplice steps up and wins the money. This is an attempt to break up that combination.
He also stated that they have had a problem with people who are employees of the establishment and who are caught in a conspiracy to steal. They have been claiming a defense based upon their employment, that they are entitled to have the cheating device. This language clarifies that the only tools, machinery, etc. that a person can have would be those that are in the furtherance of his employment.

Les Kofoed testified in support of this measure and concurred with Mr. Hicks remarks.

Senator Ashworth moved a do pass.
Seconded by Senator Dodge.
Motion carried unanimously. Senator Sheerin was absent from the vote.

AJR 3 Proposes election of Chief Justice by Justices of Supreme Court.

For testimony on this measure, see minutes of meeting for March 22, 1977.

AJR 3 Senator Dodge moved a do pass.
Seconded by Senator Gojack.
Motion carried unanimously. Senators Bryan and Sheerin were absent from the vote.

SB 510 Extends crime of pandering to include keeping in prostitution.

Senator Ashworth moved a do pass.
Seconded by Senator Foote.
Motion carried unanimously. Senators Dodge, Sheerin and Gojack were absent from the vote.

AB 210 Prescribes creditors' rights upon dissolution of corporations.

Robert Cox, attorney for Kaiser Industries, Corporation: Right now the corporation law in Nevada is deficient in that there is a lack of a method to identify and process claims that creditors may have in the event that a corporation dissolves. This state has a very attractive corporation law and we feel it is in the best interest of the state, as well as to the corporations that are now in the state, to have some method for identifying and processing those claims. At the present time the directors of a corporation, in the event of dissolution, are made trustees and as such, they become personally liable for failure to pay any creditor. As a result, they have to put aside a reserve to take care of contingent claims. Those reserves must be put aside for a perio of up to 6 years for contracts in writing, and so on down the line for the various other claims that might be filed against a corporation. There is legislation of a similar type applying to corporations in the event of insolvency that requires creditors to present a claim within a 6 month period and if that claim is failed to be presented within that time, the claim fails. Likewise in the probate code, there is a similar type of provision that requires creditors to present a claim within a 90 day period following publication notice to creditors.
This particular bill sets up a method for processing and identifying claims for dissolving corporations. It allows the trustees to give notice to all persons that they must file a claim within a 2 year period All people that are identified must be given direct notice, either by certified or registered mail. Once the claim has been filed, the trustees of the corporation can act on it. If they reject the calim, there will be a 60 day period within which that person can commence a law suit to recover on it. In the event that someone does not meet the time limit set out in the statute, for good cause shown, that person may be allowed to file the claim if the court so allows.
This satisfies a problem that presently trustees of a corporation face. They are really torn between, first of all, processing claims as fast as they can and taking the residuals and distributing them to the stockholders. In contraposition to that is their own liability. They must set aside enough assets to take care of any claims that might be filed. This will benefit the creditors, the stockholders and the trustees.

We appear here on behalf of a client that has a particular problem. Kaiser Industries Corp. has put out a notice of dissolution and on Wednesday of this week they will be dissolving. As a result, in this sense, it is a special interest bill. We would therefore request that this matter could be handled as an emergency situation.

Senator Bryan: What happens when a corporation, following the period of dissolution consistent with the provisions of this proposed law, begin to honor and recognize certain claims and shortly before the expiration date provided, a substantial claim comes in which is later determined justified but there are insufficient assets to cover and satisfy that claim.

Mr. Cox: I suppose that is the same problem that occure right now. We have no set-up for that. The directors, as trustees of the corporation, have their own means for determining what claims they have. The trustees are not exhonorated but their liability is limited to the assets of the corporation. To be completely safe, they would distribut nothing until the 2 year period ran.

Senator Sheerin: Is any provision made for distinction between secured and unsecured claims?

Mr. Cox: Not in this bill. The general process is that secured claims are going to come up first because those assets are already tied up. For example, if there were a deed of trust on a particular parcel of property, I would assume that a creditor would commence foreclosure procedures. This just sets up a method for people filing claims.

Senator Sheerin: The way this is written, if a secured creditor receives a notice and does not file a claim, at the end of 2 years he is barred too.

Mr. Cox: I believe that is the case but they would be a known creditor and would receive notice by mail. There is no justification for someone having a legitimate claim, that is given notice, sitting on their hands and doing nothing.

Senator Close: If the note is not matured, why are you mandating that person to take some affirmative action?

Mr. Cox: I see the problem that you pose. At that point there would be no obligation for a person to file a claim. If the note is not due it is really not a claim and therefore he would not be barred after the 2 year period. That would be a continuing obligation that the company might have. But at any rate, it would seem to me that that would be taken care of. What I would recommend to any client getting notice, and that would certainly be a known creditor, that once that notice was given, you would go ahead and file your claim at that point and go forward with that.

Senator Sheerin: In bankruptcy you have 2 distinct procedures for secured and unsecured claims. It would seem to me that we should set up some kind of different procedure here. The note is the obligation and you can have all the security in the world but if you are barred on the note then you have no remedy.

Mr. Cox: Isn't this the same situation that would occur under the probate code whereby you have to file a claim within a 90 day period. Likewise, isn't it the same thing under the corporation statute dealing with insolvency where you have to file a claim within 6 months. I think it really isn't a problem area. If a corporation is going through dissolution and it is to the point that its assets are so small that it is not going to be taking care of its creditors, once notice is given, what will happen is an involuntary petition for bankruptcy will be filed so that there will be a system set up that can be followed.

Senator Close: What happens if an individual does not receive notice of the fact that he is a creditor of a corporation that is being dissolved?

Mr. Cox: If he is a known person and he has failed to file within that particular time period, all that he will have a right to get at are those assets that are left.

Senator Close: So if you have a creditor, and the directors and trustees are aware that he is a creditor, and they give notice to all the other creditors of the corporation except that one particular one, and as a result therof, all the assets are gone and the trustees have no individual liability.

Mr. Cox: If the trustees, in bad faith, intentionally avoid a known creditor I would say that you could go behind the statute and get at them personally. This was written and patterned after other states who have shown to have satisfactorily working patterns.

Senator Dodge: There are some IRS regulations that would prevail which would permit you to dissolve within a certain length of time so that you don't get a double shot on the tax payments on capital gains. Any corporation with any assets is probably going to be guided by whatever time the IRS allows so that they don't get into a substantially higher tax problem. My question is this. Assuming you put out the notice, you dissolve in a fairly short period of time, substantially ahead of the 2 year period, you set up a reserve and then you provide that the directors are not liable for payment of the claim, under those conditions, what motivation do the trustees have if they don't have personal liability to be sure that they set up an adequate reserve. You have no guidelines in here for what that reserve should be. They might just limit the reserve to the known claims, as they don't have any liability anyway.

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Mr. Cox: But of course you are looking to a fairly long period of time. What this speaks to is after the 2 year period has ended on a normal basis. If someone fails to receive notice, goes to the court and shows good cause, then at that point he is given a right to file a claim. The only time you are going to have someone coming to the court and claiming that, in good faith they failed to file a timely action, is after the 2 year period has run. The only other circumstance you would have would be where they would be notified of a rejection and failed to file the action within a 60 day period. That being the case, you are going to be fairly close to the early portion where the assets are not going to be distributed.

Senator Dodge: I would be satisfied if you conformed the holding of the distribution on reserve until the 2 year period has run.

Mr. Cox: Wouldn't that be the case though.

Senator Dodge: Not for IRS purposes if they have got to get this done faster.

Mr. Cox: Normally you would want it handled in a 2 year period anyway. Most states handle it within a 6 month period. If someone waits 2 years and then comes in, the trustees, stockholders and other creditors should n't be put in a position of having to wait for someone else to act. If anyone files a claim within that 2 year period, that is going to be taken care of. If the assets have been distributed, the trustees remain on the hook. So if you are talking about adequately protecting people for a 2 year period, those people are protected. This only talks to the situation where someone has failed to file a cliam within the prescribed period. If you have a cliam filed within that 2 year period, th directors are still going to be on the line. That is the assurance that there are going to be assets enough set aside. There are 2 circumstances: the rejected claim where someone has failed to file an action within the 60 day period and I would suggest that if someone has been given notice of a rejected claim and fails to file within a 60 day period, normally they are going to come right to the court very shortly; and anybody else that may receive notice, directly by mail or by publication in a paper, that they have a 2 year period from the time of public tion within which to act. The trustees are directly on the line during that 2 year period. If would only be after the 2 year period that they would come in. First of all, they have to get the right to bring such an action. Most people are not going to get such a right because they are not going to be able to show good cause. What you are concerned about is having personal liability. Any director who is going out and distributing the assets of a corporation is going to put himself directl on the line. That is the same circumstance we have now. You only exemp him in the event the 2 year period has run.

Senator Close: What happens if the corporation dissolves, sends notice to the creditors, receives the claims back, commits these assets to certain creditors and thereafter rejects other creditors becuase there are not assets available for further distribution because they have either been distributed, committed or reserved for contingency. Then the rejections are sent out and within 60 days a valid, bona fide

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creditor files his claim. Then what happens.

Mr. Cox: That would be taken care of the by bankruptcy laws because in that event, it would be considered a preference. An involuntary petition in bankruptcy could be filed. Those assets could be called in from the creditors. No preference can be given within, I believe it is 4 months prior to the distribution of assets.

Senator Close: But they have 2 years before they have to reject a claim The first month after they decide to dissolve, they send notices and distribute the assets to their friends. Thereafter they wait more than 4 months, they wait more than a year because they have 2 years within which they have to do all these things, and then they send out notices of rejection and all the assets are gone; they have been given to creditors or reserved for contingency. Then what happens.

Mr. Cox: I would suggest that wouldn't occur becuase if you have a corporation that is so beset by creditors, normally before you even get to the point of dissolution it is going to be taken care of becasue they are going to be in a bankruptcy situation. Once claims start coming in, and this is just the normal process, when a corporation starts to go under, they are immediately thrown into bankruptcy; either the creditors, the stockholders or the corporation itself can do it.

Senator Dodge: Where else in the bill do we actually set up some sort of formula for the amount of reserve that the directors are going to make a decision about keeping. Is it clear that if they underestimate that, that they are personally liable?

Mr. Cox: I think that is clearly the case within that 2 year period. It is not in this particular bill. It is another portion of the corporation law, NRS 78.595 where the trustees are made jointly and severally liable for the debts owing by the corporation at the time of dissolution

Senator Dodge: Do you refer to that somewhere in here as far as a separate procedure?

Mr. Cox: I suppose there is no necessity to. This will be part of the dissolution sections. The only exception to this particular joint and several liability is the exception that is built into subsection 6 and that only applies in one case.

Senator Close: On section 3, it says "at any time after dissolution." There should be some time limitation here. If we are talking about 2 years it should at least say 2 years. I would say that it should be more than 2 years. I think it should say "promptly" or something like that after dissolution.

Senator Bryan: The only argument against that would be that none of these triggering mechanisms are engaged unless they begin publication. If they don't do so, then their liability remains as it presently is in the law.

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Senator Dodge: The only thing in here that says anything about the fact that they are not liable is in Section 6 which is limited specifically to the late claim filed after the 2 year period or the rejected claim.

Senator Ashworth: What kind of a cliam would there be that the claimant wouldn't file or the corporation know about?

Senator Bryan: There could be a tort action. Somebody could slip and fall in the parking lot and in that event, you would have 2 years under this statute of limitations to bring the action. At attorney representing that kind of claimant would not ordinarily be thinking "I wonder if this corporation is going through dissolution proceedings."

Mr. Cox: It would still leave personal liability for the trustees.

Senator Sheerin: Personal liability only up to the amount of the assets of the corporation.

Senator Bryan: I think that is fair. Assuming a corporation goes through the properly prescribed procedures to dissolve and there is no attempt to defraud, there ought to be some reasonable cut-off. You should not be able to keep that kind of thing open in perpetuity.

Senator Sheerin: It seems to me that if a corporation elects to dissolve, the notice to creditors should be given immediately so that the 2 year period can begin running.

Senator Dodge: I don't see that that is a problem becuase it seems to me that if they want to get this wound up as soon as possible, they are going to go ahead with that publication of notice. If they don't, all they do is extend the time.

Senator Bryan: Assuming we put in a time limit here, within 30 days after dissolution, what sanction attaches to the corporation that does not comply with the notice?

Senator Sheerin: The sanction would be that they would not be able to extinguish the debts.

Mr. Cox: The question if have is if they fail to give that notice, would they never have an opportunity to then extinguish the debt.

Senator Sheerin: Then there would be the other statute of limitations - 6 years on a written contract, 4 years, whatever.

Mr. Cox: I really don't see that as a problem. Practically speaking, sissolution is going to be by certificate of dissolution. An attorney is going to be involved, there is always going to be notice given so that they can cut off their liability. This is an opportunity so that they can cut if off. If they don't take advantage of that, the liablity continues.

Senator Close: Line 12, page 1, "if different" seems to totally without meaning.

Mr. Cox: If different that the place of office. The registered office is different than the principal place of business. If there is a different registered office and different place of business, it has to be published in both. This is giving greater notice. Registration as such is not a term in the corporate statute.

Senator Bryan: The original bill contemplated something that was more akin to the probate situation. You had 6 months to file a claim; if you didn't file within that time you were generally barred and presumably within that 6 month period of time, all the assets would be held. At the end of the 6 months you take a look at the creditors and if the legitimate creditors claims exceed the amount of the assets, then presumably all creditors would have the amount of their claim reduced ratably to the amount that was there. Which seems fair. Mel's point is that the bill as now drafted would authorize a preference to those guys that got in there first. In effect, no change from the present law.

The meeting was adjourned at this point and will resume upon adjournment of the general session.
The meeting was called to order at 1:15 p.m. Senator Close was in the Chair.

Mr. Cox: There are particular provisions of the corporation act that deal with some of the problems that you were talking about. First of all, under NRS 78.600, one of the rights that a creditor has, if he feels like he is going to be in some way dealt with unfairly, he can go to the court and the court has the power to appoint a trustee. The othe one, NRS 78.610 actually sets up a program for ratable payment of creditors. Remember again that this 2 year period has to go before we release any of the trustees from their potential liability.
I have proposed an amendment for each area that you had a concern on: Page 1, delete lines 6-7 and insert "within 60 days after the dissolutio of a corporation, the corporation or the persons constituted trustees thereof, shall give notice" then continuing on line 8 "requiring all creditors to present their claims in writing." This takes care of the problem of requiring a corporation to come up with the notice.
Another provision that can be put in here, and that is the penalty aspect suggested by Senator Sheerin would be, continuing on line 8, at the end of that sentence "Failure to give such notice within the prescribed time shall preclude a corporation from using the notice provisions of sections 2-6 inclusively to limit its liability." As a result the liability would not be cut off. They could still give the notice at a later time because that has another effect on another suggestion I make here but it is not going to be able to limit their liability if they don't act within that period of time so that there is some impetus for them to give that notice. It is a mandatory requirement that they shall give notice within a 60 day period.
Another question you raised was the dual notice. The language "registered office or the principal place of business" was clear. I don't know what the origin of this language was but in reading the corporation statute, principal place of business is always the same as the resident

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agent. I don't find a term such as "registered office" so what I suggest is, on line 12 after the ending part of dissolution ("tion") put a period and strike the rest of the sentence.
Senator Close suggested that there was some problem that corporations might not give notice and the time period might not begin to run, so I would like to insert on page 2, line 25 after the word "claim" delete the period and say "within 30 days after the claim is filed by certified mail." Going to the end of the sentence, it then goes on to explain what the notice shall contain but I wanted to take care of the circumstance where no such notice is given. "If the claim is not rejected within the 30 days, it shall be deemed rejected provided that the 60 day period within which to commence an action shall not begin until the notice of rejection is mailed." This takes care of 2 things. First of all, it takes care of the unsettled question, what happens to a claim if it is received and it is not acted on. Right now that is not answere by this statute. It provides it is deemed rejected for someone who doesn't receive it but likewise it doesn't start the time period running so the person still has his rights protected. He doesn't have to file his action.

Senator Dodge: What about the situation where the notice is mailed and the guy doesn't receive it. Can that by any defense? If you mail it to the last known address and mail it certified, I don't think you ought to have an obligation to seek him to the ends of the earth or indefinite ly.

Mr. Cox: I think that will be taken care of. First of all, the reason I inserted this requirement of registered or certified mail was for proof purposes so it is quite clear when the period starts to run. Second of all, when you are giving this notice, remember you are giving it to somebody that has already filed a claim so they have given their last known address and it should be a very current address because you are required to give notice within 30 days.
The next area is perhaps the most difficult because this is the area where a number of you have raised the question of what happens when you go ahead and pay all of your friends and there is no money left over First of all, as I have indicated, under 78.610 there is already a statutory requirement that all debts be ratably paid so there is already that obligation. But beyond that question the only thing that I could really come up with is setting aside some sort of fund. This is just some of my preliminary thinking on it but under 78.610 I would like to add language to the first portion of that like "a corporation shall be required to reserve an amount equal to all rejected claims plus 10% of such amount for a period of (some time) following the publication of notice to creditors as required under NRS" and that would refer back to the act that we are talking about here. The idea is to set aside a sum; you have a number of claims that will be made against the corpora tion and you are required to reserve that amount. For those people who have not filed claims, you set aside another contingency for an additional 10%. The claims that you are going to honor, you are going to already have the funds set aside for. It is the rejected claims and the ones that may take action that we are really concerned about here.

Senator Bryan: Do you set aside an amount equal to the amount of the claim or a percentage of the contingency?

Mr. Cox: I don't know and that is the problem. Let's say somebody file a claim for $17 million that has no foundation. That is the problem I see here. I think the bill as it now stands protects creditors because for that 2 year period they can still go back. But if we are talking about setting aside some money, maybe we can work with language of this type. One of the problems I have if we are going to set aside a fund, I think we ought to cut down on the period of time. None of these other states have a timer period beyond 6 months. This would accomplish another purpose. If you have 6 months, as in a probate or solvency action you have a period of time where everything has to be acted on. It is not unreasonable to cause people to come forward within that period of time. They can still come back, under this bill, at a later time but that would be your requirement, to set aside a sum of money for a period

Senator Close: If you go to the 6 months, then I would think that you shouldn't issue any money until the time was up and then go ahead and distribute it against all the claims that had been filed.

Senator Bryan: And if you do, you do so at your own peril.

Mr. Cox: On concept that would cause me difficulty, and again this is the special interest aspect, is if we delay any payment. I think we ought to certainly set aside enough money to take care of all rejecte claims.

Senator Bryan: You can distribute just as you do in an estate but if you distribute and you find that there are later claims which are validl supported and there is insufficient money to pay them, you do so at your own peril.

Mr. Cox: Maybe what we could do instead of setting aside any money, and this was my initial concept, is an amendment to 78.610 and make it so that you don't pay anything for a 6 month period and if you do so you do so at your own peril. If you go to a 2 year time period, that really creates a problem. That is a long period of time for not paying any creditors. That is unreasonable.

Senator Bryan: This is like a corporate death.

Mr. Cox: There is a very strong analogy and that is set forth in the memo I distributed (see attached Exhibit A).
The final area, and this is key to Kaiser Industries, is the applicatior What I have suggested is to make the provisions of sections 2-6 inclusive of this act apply to the dissolution of corporations after January 1. That is a purely arbitrary date.

Senator Dodge: How about saying that "any corporation that has not filed its publiction prior" but tie it back to section 4. In other word

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that you can file a publication at any time after the passage and approval of the act even though you have started dissolution.

Mr. Cox: The real problem is that is the language that the Assembly initially rejected. I think that is how the bill should apply because it doesn't make any sense not to apply it that way.

Senator Dodge: And that addresses the thing we were talking about with other corporations that didn't want to get involved in that 7-8 year period.

Mr. Cox: They could come back. It really isn't fair to corporations that may be at a 3 or 4 year point. I don't see any problems doing that

Senator Dodge: Is there any problem in doing that, Frank?

Frank Daykin, Legislative Counsel Bureau: No, I think constitutionally that could be done.

Senator Dodge: We could make it effective upon passage and approval and say that any corporation, after the effective date of this act, shall be able to avail themselves of the procedure established in section 4. That is the publication procedure that triggers the 2 year deal.

Senator Bryan moved to amend and do pass.
Seconded by Senator Dodge.
Motion carried unanimously. Senators Sheerin and Gojack were absent from the vote.

SB 412 Replaces rape and other sex-related crimes with offense of sexual assault.

For testimony on this measure, see minutes of meeting for April 5, 1977.

Frank Daykin, Legislative Counsel Bureau: Sexual assault with an element of force or else a condition of the victim such that force is dispensed with, if substantial bodily harm results, that is punishable by life imprisonment with or without parole. If there is no substantial bodily harm, it is either life with parole or a definite term of 5 or more years. These are the penalties that are now in the bill and also coincides with forcible rape. Then, infamous crimes against nature, which you are reviving by these amendments ...

Senator Bryan: The infamous was in?

Mr. Daykin: It was subsumed under sexual assault and now we are treating it as a separate crime.

Senator Bryan: What are you calling it?

Mr. Daykin: Infamous crime against nature unless you wish to call it sodomy or something else.

Senator Close: That was Frank's decision. He said that was the only way he could really put it in there.

Senator Bryan: There was strong sentiment to eliminate that language.

Mr. Daykin: We can call it anything you like and define it.

Senator Bryan: A rose by any other name...

Mr. Daykin: Infamous crimes against nature in Nevada is really sodomy and as long as we define sodomy to inlcude the necessary elements here that our court has held to be included in the infamous crimes against nature, we are okay.

Senator Bryan: Why did we have to brackett out that infamous crime against nature? What mechanical problem in our discussion required that In the amendment you are proposing, the original bill has infamous crime against nature under sexual assault specifically. Sexual penetration means cunnilingus, fellatio or any intrusion and so forth.

Mr. Daykin: That we would not be changing.

Senator Bryan: Well if we're not changing it then why are we getting into infamous crimes against nature in a specific category?

Mr. Daykin: The reason is that sexual assault involves an element of force or else the unconsciousness and in order to reach consensual conduct of the nature of cunnilingus, fellatio or whatever you wish to call it, you need to put that, either the infamous crimes against nature or some other word to mean those types of conduct with the element of force being present.

Senator Bryan: The committee made two policy judgments. We concluded that we did not want to legalize homosexual relations. On the question of heterosexual relationships between adults, that we wanted to decriminalize. The present law of of ICAN (infamous crimes against nature does not decriminalize that.

Mr. Daykin: No it does not. If Senator Bryan has correctly stated the sense of the committee, this is going to go homosexual only. We then have the offense of homosexual conduct which would be consensual only because if it is not consensual it comes under sexual assault. That would be punished by imprisonment from 1-6 years and that is appropriately less than the sexual assault. Then we have what was in the original bill called statutory sexual assault, which you changed to staturoy sexual imposition and finally seduction. Now the next question that must be determined is, especially in light of what we just discussed, is that to be limited to sexual intercourse in the normal sense

or is it to include all or some of the elements of what used to be ICAN.

Senator Bryan: Statutory sexual seduction? I'd like to hear your comment on that but it seems to me that all of that should be inlcuded in there because by definition, with statutory sexual seduction you are talking about a person who, in a legal sense, is incapable of consenting

Senator Close: But not all of the things though Frank. One of the reasons we are defining that in separate is because of the heavy petting situation.

Mr. Daykin: Then we would go back to a former definition that would include sexual intercourse in the ordinary sense, cunnilingus, fellatio, whether or not they were homosexual, but whether or not they were homosexual, wouldn't it?

Senator Bryan: Because the heterosexual relationship is equally subject to criminal sanctions; the statutory sexual seduction. Hetero or homo, it doesn't make any difference there because the element of consent is not legally possible. One thing we did not want to do was make digital penetration subject to this type of criminal sanction.

Mr. Daykin: Right, and that is why we limited it to cunnilingus, fellatio and normal sexual intercourse. That offense, so defined would, unless we changed the present bill in the amendment, be punished by 1-10 years in prison if the offender is 21 years or over but it would only be a gross misdemeanor if the offender is under 21; which is the present law and the present bill.
The fourth category of offense involved here is the lewd act upon the body of a child under 14 years of age. There was confusion in the minds of the bill drafter, collectively, as to whether that was to be broadened to include lewd acts upon the body of any person.

Senator Bryan: It is reciprocal under the present law isn't it?

Mr. Daykin: Yes but limited to the body of a child under 14 and the penalty for it under present law is heavy; 1-10 years. I would recommend leaving it as it is.

Senator Bryan: Would we want to change the crime of sexual molestation, which is presently a misdemeanor?

Mr. Daykin: That is not brought in here at all.

Senator Close: With the amendment you have to us before plus these changes, we can act on the bill now and wait until the amendments are done before going to the floor.

Senator Ashworth moved to amend and do pass.
Seconded by Senator Bryan.
Motion carried unanimously. Senators Sheerin, Dodge and Gojack were absent from the vote.

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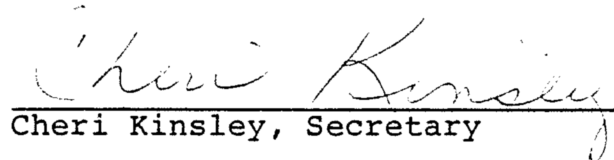
There being no further business, the meeting was adjourned.

Respectfully submitted,



Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

MEMORANDUM

To: The Senate Judiciary Committee

From: William K. Woodburn

SUBJECT: A.B. 210

April 8, 1977

I

INTRODUCTION

A.B. 210 was introduced as a part of a group of bills submitted by Secretary of State Swackhamer and prescribes creditors' rights upon dissolution of corporations.

A.B. 210 would amend Chapter 78 of NRS by adding provisions which would permit the trustees of dissolved corporations to give notice, by publication and by mail, requiring all creditors of the dissolved corporation to present their claims in writing to the trustees for disposition. (Sections 3 and 4) Any creditor or claimant who failed to respond within the time allowed (not less than six months) following notice would be barred from suing on the claim. Any creditor or claimant whose submitted claim was rejected by the corporation would have 60 days within which to commence an action on the claim or be barred from suing. (Section 5).

Persons who did not file their claim or commence an action within the time allowed could obtain relief by applying to the district court where for good cause shown the Court could permit them to file or to commence an action. (Section 6).

EXHIBIT A

II

PRESENT LAW

NRS 78.580 permits a corporation to dissolve by a majority vote of the stockholders. If a majority of the stockholders approve and a copy of the resolution is filed with the Secretary of State, the corporation is dissolved. Once dissolved, the corporation is no longer in existence for the purpose of continuing the business for which it was established.

Under NRS 78.590, the trustees of the dissolved corporation have a duty to collect the outstanding debts, sell the property of the corporation and divide the money among the stockholders after paying the corporation's liabilities and obligations. However, NRS 78.595 also makes the trustees of a dissolved corporation jointly and severally responsible for the debts owing by the corporation at the time of the dissolution.

The absence of a method for identifying and processing creditors' claims in an expeditious manner places the liquidating trustees in the awkward position of fulfilling their duty to pay creditors and stockholders in a timely manner without incurring personal liability for failure to pay claims that might possibly be presented several years after the dissolution. Thus, the trustees must determine when to distribute the moneys of the dissolved corporation with no method for identifying and fixing the total amount of creditors' claims against the dissolved corporation.

Presently this delay may be as much as six years for a claim based upon a written contract; four years on an oral

contract; three years on a statutory liability; two years on a personal injury claim. From these time periods, it is apparent that with the present open-ended claim period comes a problem of possible six-year delays and periods of contingent liability for a dissolved corporation and its trustees. Additionally, even if an action is commenced six years after dissolution, the current court calendar might not bring resolution for three to four years after the filing of an action. During that time period, stockholders and possibly other creditors will have been denied money that is rightfully theirs because of the trustees' inability or reluctance to distribute without knowing whether all creditors' claims have been satisfied or provided for by reserve account.

III

EFFECT ON OTHER STATUTORY PROVISIONS

The principal effect of A.B. 210 will be to reduce the time period in which creditors or claimants may commence an action on their claims. The bill will not deny creditors or claimants their right to commence an action, but only will require them to do so possibly sooner than anticipated in order to expedite the dissolution process. Obviously, known creditors, such as banks and suppliers, will be easily identified and their claims processed quickly. The difficulty arises from unidentified claimants who may present claims several years after dissolution or with known claimants who have elected not to commence an action until the very end of the limitations period. The liquidating trustees must guess as to possible claims and guess

as to whether a known claimant is either going to sue or drop the claim. In order to protect themselves, the trustees must hold back sufficient money to satisfy these potential claims. The delay in payment to stockholders and creditors may exceed six years.

It is helpful to consider an example of how the proposed process would work. If a corporation dissolved on July 1, 1977 and elected to use this procedure, the trustees would notify all creditors and claimants. If the trustees elected to use a six-month period (the minimum time allowed), the creditors of the dissolved corporation would have to submit their claims by January, 1978. All claims accepted by the corporation would be paid then or funds set aside for future payment. The statute of limitations for these claims would be unaffected. Any claims rejected by the corporation would bring notice to the claimant who would then have 60 days to commence an action.

Thus, in this example, a person with a rejected personal injury claim against the corporation whose injury occurred July 1, 1976 would have the statutory period for commencing an action reduced from two years to one year and eight months under A.B. 210. A person with a rejected written contract claim based on a contract breach occurring July 1, 1972 would have the statutory period for commencing an action reduced from six years to five years and eight months. The only persons affected to any degree would be those whose disputed claim arose just before the dissolution and even then the only burden is for a claimant to act rather than sit on his legal rights to the detriment of others.

Additionally, should a claimant miss the notice or fail to commence an action within the required time the district court could grant relief for good cause and permit the action.

IV

SIMILAR NEVADA STATUTORY PROVISIONS

Nevada corporation law presently provides such a method for resolution of claims in a corporate insolvency proceeding. NRS 78.675 requires all creditors to present and make proof to the trustee of their respective claims against the corporation within six months from the date of appointment of the trustee. All creditors and claimants failing to do so are barred from participating in the distribution of the assets of the corporation.

Nevada probate law contains a provision to protect the estate and heirs that is somewhat analagous to the dissolved corporation situation. NRS 147.040 requires all persons having claims against the deceased to file their claims with the clerk of the court within 90 days of publication of notice to creditors. If a claim is not filed within 90 days, the claim is forever barred and the claimant may not sue on the claim. Furthermore, when a claim is rejected in whole or in part, the claimant must bring suit within 60 days or again be forever barred from suing on the claim.

It is apparent from the above provisions that the effect of A.B. 210 on the Statute of Limitations period will be no different than that under our Probate Code and under our corporate insolvency provisions. A.B. 210's purpose is identical

to the purpose behind those two provisions, i.e., to have claimants come forward and present their claims so that the legal obligations of the liquidating trustees, insolvency trustees, or executors and administrators can be fulfilled in a reasonable amount of time. The beneficiaries of such a procedure will be the creditors and stockholders of the dissolving corporation.

V

OTHER STATE ENACTMENTS

The provisions of A.B. 210 are not unique. As can be seen from the attachments to this memorandum, at least five other states, New York, New Jersey, Connecticut, Michigan and Arkansas, have enacted nearly identical provisions. Other jurisdictions, including California, accomplish the same objective by imposing more stringent requirements on creditors through court supervision of the dissolution process. In California, the court enters an order requiring all persons interested to come forward and present their claims. Any person claiming to be interested as a creditor may appear before the court at any time before the expiration of thirty days from the publication of the notice. If a person fails to appear, that person's claim is barred.

VI

SUMMARY

Under our present corporation law, creditors of dissolved corporations have no right to notice of dissolution and call for their claims; trustees have no method of ascertaining and fixing the extent of claims or possible claims against the dissolved corporation; and stockholders and creditors experience unnecessary delay in distribution or payment to them of the money of the corporation.

A.B. 210 would provide a process requiring creditors or claimants to come forward in a timely fashion to assist in the expeditious dissolution of the corporation and payment of all creditors and stockholders in a reasonable time. Furthermore, trustees would be relieved of the uncertainty in distribution and would be able to fulfill their duties responsibly and quickly.

The effect on those few creditors or claimants with claims arising just prior to the dissolution would be to reduce the period in which they could commence an action, but the benefit to be derived for the majority of creditors and stockholders appears to outweigh the inconvenience to those few.

OTHER STATE ENACTMENTS

New York Business Corporation Law §1007, provides as follows:

> "At any time after dissolution, the corporation may give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Such notice shall be published at least once a week for two successive weeks in a newspaper of general circulation in the county in which the office of the corporation was located at the date of dissolution. On or before the date of the first publication of such notice, the corporation shall mail a copy thereof, postage prepaid and addressed to his last known address, to each person beleived to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation. The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect to any claim against the corporation, its assets, directors, officers, or shareholders, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or shareholders has any defense or counterclaim. . . .

* * *

Memorandum

> Any person whose claim is, at the date of the first publication of such notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this Section of Section 1008. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation on the date of the first publication of such notice, and all claims which are so filed but are disallowed by the court under Section 1008, shall be forever barred as against the corporation, its agents, directors, officers and shareholders, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of the creditor who shows satisfactory reason for his failure to file his claim and so provided."

New Jersey Business Corporation Act §14A:12-12 provides:

> "At any time after a corporation has been dissolved, the corporation, or a receiver appointed for the corporation pursuant to this chapter, may give notice requiring all creditors to present their claims in writing. Such notice shall be published three times, once in each of two consecutive weeks, in a newspaper of general circulation in the county in which the registered office of the corporation is located and shall state that all persons who are creditors of the corporation shall present written proof of their claims to the corporation or the receiver, as the case may be, at a place and on or before a date named in the notice, which date shall not be less than six months after the date of the first publication.
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> (2) On or before the date of the first publication of the notice, the corporation or the receiver, as the case may be shall mail a copy of the notice to each known creditor of the corporation.
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> Section 14A:12-13. Any creditor as defined in §§14A:12-12(3) who does not file his claim as provided

> in the notice given pursuant to §14A:12-12, and all those claiming through or under him, shall be forever barred from suing on such claim or otherwise realizing upon or enforcing it, . . .
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> Section 14A:12-14. If the corporation, or the receiver of a corporation appointed pursuant to his chapter, rejects in whole or in part any claim filed by a creditor, the corporation or the receiver,as the case may be, shall mail notice of such rejection to the creditor. If the creditor does not bring suit upon such claim within 60 days from the time such notice was mailed to him, the creditor and all those claiming through or under him shall, except as otherwise provided in this chapter, be forever barred from suing on such claim or otherwise realizing upon or enforcing it."

Michigan Business Corporation Act, §841 provides:

> "After a corporation has been dissolved, the corporation, or receiver appointed for it pursuant to this chapter, may give notice requiring all creditors to present their claims in writing. The notice shall be published once in each of three consecutive weeks in a newspaper in the county in which the registered office of the corporation is located. The notice shall state that all persons who are creditors of the corporation shall file their claims in writing with the corporation or the receiver at a place on or before a date named in the notice, which date shall be not less than six months after the date of the first publication.
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> Section 842. On or before the date of first publication of the notice prescribed in §841, the corporation or the receiver shall mail a copy of the notice to each known creditor of the corporation.
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> (2) Except as otherwise provided in this act a creditor who does not file his claim as required by the notice, and all persons claiming

through or under him, are forever barred from suing on the claim or otherwise realizing upon or enforcing it.

Section 843. If the corporation or the receiver of a corporation appointed pursuant to this chapter, rejects in whole or in part a claim filed by a creditor, the corporation or the receiver shall mail notice of the rejection to the creditor. The notice shall state that if the creditor does not commence an action on the claim within 60 days after the notice was mailed to him, the creditor and all persons claiming through or under him, except as otherwise provided in this chapter, are forever barred from suing on the claim or otherwise realizing upon or enforcing it. Failure to commence such an action is a bar to enforcement of the claim."