

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 28, 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 549 Provides for property lien for unpaid waste collection charges.

Bob Warren, Nevada League of Cities, testified in support of this measure. The problem that has prompted this legislation is that in order to meet federal and state codes, garbage has to be buried in a land fill. Some of the smaller communities discovered that they were not able to finance these sites, especially with the uncertainties in collection of the fee for garbage. They felt that this would be an effective mechanism to collect this fee and would allow them to guarantee repayment of equipment and whatever else was necessary to develop the land fill. He informed the Committee that this bill was supported by the League and by the White Pine County Commissioners.

Fran Breen, Nevada Banker's Association appeared in opposition to this bill. He stated that aside from the philosophical difficulties with having an extraordinary remedy for this type of thing, is that, the way the bill is worded, you cannot tell when the lien would commence. It would appear to mean that a lien would attach with the first time a pick-up is made from the property and that in a subsequent title search, there would be no way of knowing whether that property had a lien attached to it; no notice would be filed.

Assemblyman John Polish testified in support of this measure and concurred with Mr. Warren's comments.

In discussion by the Committee, they reiterated their philosophical opposition to allowing such an extraordinary remedy in these matters.

Senator Sheerin stated that this bill would not accomplish what White Pine County was seeking to do anyway. This would apply only after the land fill was developed and would not be of any assistance in funding it.

AB 549 Senator Dodge concurred and suggested that the best way to handle this problem would be through local ordinance mandating a fee for garbage collection and leverage could be applied by stopping other services that the city provided, such as water and sewer.

Senator Gojack moved to indefinitely postpone.
Seconded by Senator Dodge.
Motion carried unanimously.

AB 617 Authorizing Welfare Division of Department of Human Resources and licensed child-placing agencies to publish photographs of and personal information on certain children held for adoption.

Assemblyman William A. Kissam testified in support of this measure. He informed the Committee that he was a member of Aid to Adopt Special Kids (AASK), a non-profit organization that operates in Las Vegas. It is an intermediary service that brings adoptive parents and adoption agencies together, placing hard-to-place children, such as older ones, sibling groups, minority races and those with physical, emotional and mental handicaps. This bill will allow them to publish, in out-of-the-area newspapers and television, pictures of these children. This is part of a growing organization that intends to be nation wide.

Senator Bryan moved a do pass.
Seconded by Senator Gojack.
Motion carried unanimously.

AB 467 Authorizes service of certain subpoenas by mail.

Larry Hicks, Washoe County District Attorney and President of Nevada District Attorney's Association testified in support of this measure. He informed the Committee that this bill was being endorsed by the Association and all the law enforcement agencies in the state. He stated that this pertains only to misdemeanor cases. It is presently being done in Clark County and this is simply to clarify that procedure. Additionally, this will save the counties a great deal of money and time.

Senator Dodge moved a do pass.
Seconded by Senator Bryan.
Motion carried unanimously.

AB 662 Excepts certain substances from definition of "tear gas."

Bart Jacka, Assistant Sheriff, Las Vegas Metropolitan Police Department testified in support of this measure. With the crime problem the way it is, especially in a tourist-oriented

AB 662 state such as Nevada, that people, particularly women, need such a defensive device. He informed the Committee that they had had this unit analyzed in their laboratory in Las Vegas and it contains nothing more than cayenne pepper and rubbing alcohol solution and that it has no harmful affects whatsoever. He stated that Washoe County Sheriff Galley was opposed to the bill because he felt that if it were legalized it might fall into the hands of children. However he pointed out that their tests indicated that the contents would not produce any lasting, harmful effects and therefore they were in support of this.

Renny Ashleman, attorney from Las Vegas testified in support of this measure and distributed a letter from Attorney General Robert List which indicated his endorsement also. (see attached Exhibit A)

Jerry Golden, representative of Control Concepts, Inc., which manufactures these items, distributed for the Committee's review a memorandum from Wingerter Laboratories, Inc. regarding testing done on their proposed defensive repellent spray. (see attached Exhibit B) He stated that one of the most important aspects of their product was that it will not cause permanent damage. He further stated that this substance had been distributed to many of the cocktail waitresses in the Las Vegas hotels and that it had proved very effective.

Assemblywoman Karen Hayes informed the Committee that Mr. Golden had presented a demonstration before the Assembly Judiciary Committee, with the aid of the Las Vegas Metropolitan Police Department and that their Committee had been very favorably impressed. She urged this Committee's support of this measure.

Senator Gojack stated that she was opposed to these types of items in that they provided people with a false sense of security, She felt that the advertising used misled people into believing that the merchandise would do more than it actually does.

Senator Dodge moved a do pass.
Seconded by Senator Ashworth.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Gojack
	Senator Bryan		
	Senator Dodge		
	Senator Foote		
	Senator Sheerin		
	Senator Ashworth		

AB 744 Limits fees awarded to attorneys appointed to represent indigent defendants.

Tom Moore, representing Clark County and Russ McDonald, representing Washoe County, testified in support of this measure. Mr. Moore stated that this bill was designed to clarify some areas of legislative intent in that statute that provides for the payment of fees to attorney's appointed to represent indigents in criminal matters and as special prosecutors. The problems have arisen out of conflicts with the judiciary in Clark County and the County Commissioners. The areas they are seeking to be clarified are:

- 1) regarding the writ of habeas corpus brought between a preliminary hearing and the trial. It is their position that this type of writ should be an ancillary matter to the proceeding itself and therefore there would not be a separate fee for this;
- 2) the term "unusual" be deleted and insert "extraordinary" as the case law in Nevada uses extraordinary;
- 3) the court be required that the fees are reasonable and necessary. This tracks with present case law also;
- 4) in the situation where one attorney is substituted for another, there is the possibility of multiple liability for the statutory maximum. They would like to clarify that there is a right to one fee. In the event it is an extraordinary case, the attorney could go back and establish it as such to expand on the maximum and let the judge prorate the fees between the two attorneys.
- 5) the attorney be required to file a claim promptly. Sixty days was chosen because that is used in several districts in the federal system.

Mr. McDonald further commented that this is part of a judicial package, some of which the Committee has already acted upon.

In discussion by the Committee, they felt that the provision in this measure which called for the Supreme Court to appoint the attorney may be in conflict with another bill passed this session.

Senator Sheerin moved to amend (if there is a conflict) and do pass.

Seconded by Senator Ashworth.

Motion carried unanimously.

AB 30 Creates and broadens offenses related to motor vehicles.

Assemblyman Darrell H. Dreyer testified in support of this measure.

AB 30 Senator Dodge expressed concern over the situation where a pattern of conduct develops between two people in regard to permission to use an automobile and then they have a disagreement and the one wants to prosecute the other.

In discussion by the Committee, it was felt that these new provisions were already covered in existing statutes.

Senator Dodge moved to indefinitely postpone.
Seconded by Senator Sheerin.
Motion carried unanimously. Senator Gojack was absent from the vote.

The meeting was adjourned at this time and will resume upon adjournment of the general session.

The meeting was called to order at 12:10 p.m. Senator Close was in the Chair. Senator Gojack was absent.

AB 562 Permits perpetuation or transformation of charitable trusts and foundations.

For testimony on this measure, see minutes of meeting for April 26, 1977.

Senator Close informed the Committee that he had talked with Fran Breen of the Nevada Banker's Association in regard to presenting testimony as they had run out of time during the last hearing on the matter. Mr. Breen had stated that he would like to discuss the matter with the Committee but that he would only be reiterating what had been said previously and that he would not be able to tell the Committee his reasons for supporting it.

Senator Ashworth moved to indefinitely postpone.
Seconded by Senator Dodge.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Foote
	Senator Bryan		
	Senator Dodge		
	Senator Sheerin	ABSENT FROM	
	Senator Ashworth	THE VOTE:	Senator Gojack

ACR 28 Memorializes trustess of Max C. Fleischmann Foundation of Nevada to reconsider decision to distribute foundation's total assets and to terminate activities.

For testimony on this measure, see minutes of meeting for April 26, 1977.

ACR 28 Senator Dodge stated that he had talked with John Sandee about the possibility of, on the termination of this trust, creating some satellite trusts for charitable purposes.

Senator Bryan suggested amending the "whereas" clause to indicate some expression of the fact that Fleischmann had been a resident of Nevada and had expressed some commitment to the state and its political subdivisions; memorialize the trustees in making the distribution to continue the interest exhibited by Mr. Fleischmann by virtue of his founding the trust. He further added that he thought it had also been the intention of the Committee to delete language that indicates that it had not been his intention to terminate the trust in 1984.

Senators Close, Bryan and Sheerin will review this matter with the bill drafters and draft the appropriate language.

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

AB 76 Permits either spouse to receive alimony without limitation and modifies criteria for determining disposition of property and making temporary and separate maintenance awards.

For testimony on this measure, see minutes of meeting for April 19, 1977.

Senator Dodge stated that he was opposed to this measure. He did not feel, as a matter of policy, that the state of Nevada ought to indicate any change from the social attitude that a man is not still the head of the household.

Senator Bryan noted that the only real change that this bill makes in the law is that it is now reciprocal, which he felt was appropriate.

Senator Sheerin stated that he liked the provisions of the bill which pertain to temporary support because there is a definite need in the law for this.

Senator Dodge moved to indefinitely postpone.
Seconded by Senator Ashworth.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Bryan
	Senator Dodge		Senator Sheerin
	Senator Foote	ABSENT FROM	
	Senator Ashworth	THE VOTE:	Senator Gojack

AB 201 Regulates landlord and tenant relationship in mobile home parks

For testimony on this measure, see minutes of meeting for April 20, 1977.

The Committee began reviewing the bill, section-by-section, and made the following amendments.

SECTION 2

Senator Close suggested that this be conformed with existing law in this area (NRS 118.200) governing relationships between landlord and tenants.

Senator Bryan concurred but felt that because of the differences between the apartment and mobile home park situation, that paragraphs (a) through (g) should be retained.

SECTION 3

Line 4 should be amended to refer to NRS 118.230 rather than 118.240.

Senator Bryan felt that on lines 12-13, it should be contrary to public policy to require a tenant to sign a document which eliminates the landlords' responsibility for something that he did.

Senator Close concurred but suggested that it should be limited to those things that are within the landlords' control and that this should also be reciprocal.

SECTION 4

Paragraph (c) should be amended to the effect that, upon request, a tenant will be notified of a change in ownership. They will have Mr. Daykin draft language to that effect.

Senator Dodge further suggested that the agreement should provide who the representative or agent of the owner is, for purposes of carrying out this section.

SECTION 7

Subsection 1, increase to 48 hours and amend to provide for circumstances wherein the manager was "acting with due diligence and for causes beyond his control."

Senator Sheerin noted that this was a departure from common law. The Committee concurred but felt it was appropriate in this instance.

In subsection 2, Senator Dodge felt that the rent should be abated. Senator Bryan agreed but felt that it should be made clear that the common law doctrine of constructive eviction does not apply; in order to abate the rent you would have to move out.

AB 201 In was the consensus of the Committee to delete subsection 2 and insert something to the effect that you need not vacate the premises in order to have the benefit of subsection 1.

SECTION 8

It was the consensus of the Committee to delete the reference to the consumer affairs division with regard to arbitration and insert instead "in accordance with uniform arbitration law in NRS."

SECTION 9

Senator Sheerin felt that subsection 6 should be deleted as it is in conflict with NRS 118.260.

Senator Bryan stated that he interpreted this to mean that after 60 days, if the tenant hadn't given written consent to abide by new rule then the landlord could evict him; whether or not he had breached the rule.

Senator Sheerin disagreed and stated that he interpreted it to mean that if the tenant breaches the rule after 60 days, that the landlord cannot evict him. Senators Dodge and Ashworth concurred with his interpretation.

After further discussion, it was the decision of the Committee to amend this subsection to coincide with existing law and to clarify its intent. That being, that if, after 60 days when the rule becomes effective with or without the tenant's consent, should the tenant breach that rule, the landlord would then have the right to evict him.

End of discussion on this measure. No action was taken at this time.

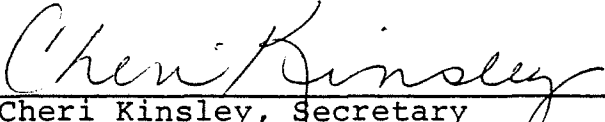
The Committee discussed what their policy was to be regarding the retention of the tapes of the meetings.

Senator Dodge felt that after they had been transcribed, they should be erased. It was his opinion that inasmuch as they are open to public scrutiny that someone could take their comments out of context and use them against them. He also felt that their retention inhibited freedom of discussion.

It was the consensus of the Committee that the tapes should be erased after they have been transcribed.

No action was taken at this time, however.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:



State of Nevada
Office of the Attorney General
Capitol Complex
Supreme Court Building
Carson City 89710

Robert Eist
Attorney General

April 26, 1977

The Honorable Melvin D. Close, Jr.
Chairman, Senate Judiciary Committee
Nevada State Legislature
Carson City, Nevada 89701

Dear Mel:

I have two pressing concerns that lead me to urge thorough consideration of A.B. 662:

1. In our Nevada society with its 24-hour operation, wide open spaces and the tendency of its residents and visitors to carry cash, violent personal crimes such as muggings, robberies and rapes are all too frequent. Any legislative change which will help deter such crime is welcome provided that the substance employed is not permanently harmful.
2. The fear of being a victim of crime has caused many of the citizens to arm themselves, although many are ill-equipped to handle deadly weapons. This can cause--and has caused--accidental injury or death in indiscriminate use of firearms. This accentuates police problems and leads to a public outcry to ban firearms, contrary to the strong desire of Nevada sportsmen, collectors, target shooters and others who cherish their frontier heritage.

I am convinced that the legislation before your committee would be a major step forward in our collective battle against crime, in that it would provide our citizens with a proven means of self-protection without the use of deadly weapons. A.B. 662 would allow Nevada men and women--like the citizens of

The Honorable Melvin D. Close, Jr.
April 26, 1977
Page 2

many other states--to have a self-defense device which, when employed, would protect their person against an attacker without causing any permanent injury or damage.

I am advised that the Clark County Metropolitan Police Department has conducted thorough laboratory and practical tests on the substance, found it to be extremely effective without any harmful after effects whatsoever, and has endorsed this approach to self-defense.

The enactment of A.B. 662 will make available to the citizens of Nevada the same non-harmful defensive devices now available to citizens of many sister states. In an era when more and more people are fearful of walking in darkened parking lots, shopping in the evenings or strolling along neighborhood streets, any step toward non-permanently harmful self-defense can only contribute to a lessening of our crime rate and an increase in safety on our streets.

Sincerely,



ROBERT LIST
Attorney General

1820 N. E. 144th Street
Drawer L, North Miami, Florida 33161

2nd

REPORT OF: TESTING OF DEFENSIVE REPELLENT SPRAYORDER NO. 11065.1
(1273)

CLIENT: Control Concepts, Inc.
PROJECT: Evaluation of defensive repellent spray
SAMPLE: Repellent spray, various concentrations
SAMPLED BY: Client and received on November 7, 1973
REPORTED TO: Control Concepts, Inc. 1001 E. Sample Rd. Suite 5
Pompano Beach, Fla. 33064 ATT: Mr. A. E. Carracino

RESULTS OF ANALYSIS

Laboratory Number: C-10832
Sample Number: 2

The client submitted for second test series Nebulizer repellent spray in two concentrations: 1.0% and 0.35%. The repellent was tested for effectiveness on human and domestic animals.

1. Humans

The spray resulted in acute irritation of the breathing organs, having the feeling of some burning, coughing and uncomfortableness. Irritation of the eyes was up to 30 minutes, noticeable from the moment of spray. The Nebulizer spray spread around the room in a relatively short period of time.

2. Animals

The effect on animals was, in a way, stronger than to humans. The general effect was to cause confusion, running around the room in a frenzied manner and rubbing the face with the paws. It was noticed the lasting effect upon animals, by handling and using the spray device, caused fear and running away.

Conclusion

As indicated on our first report, there was no significant differences noticed between both strengths, the 1.0% and 0.35%. The effect upon human and animals was approximately the same. Both sprays were noticeable up to 30 minutes, if sprayed in rooms, however, after this period of time, no permanent effect or injury remained.

Respectfully submitted,
WINGERTER LABORATORIES, INC.


Dr. J. Andrew Zusevics
Director of Laboratories

AS A MUTUAL PROTECTION TO CLIENTS, THE PUBLIC AND OURSELVES, ALL REPORTS ARE SUBMITTED AS THE CONFIDENTIAL PROPERTY OF CLIENTS, AND AUTHORIZATION FOR PUBLICATION OF STATEMENTS, CONCLUSIONS OR EXTRACTS FROM OR REGARDING OUR REPORTS IS RESERVED PENDING OUR WRITTEN APPROVAL.