

The meeting was called to order at 9:05 a.m. Senator Close was in the chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

SB 182 Relaxes restrictions on use of fictitious names by professional corporations and associations.

Richard Bennett, Attorney at Law, Reno stated he was asked to testify by Senator Young on this bill as he had asked Senator Young to introduce it. He represents a very small corporation, made up of two therapists. They wish to do business under a fictitious name. Under the present statute they can no longer do so. The professional corporation statute says that "any professional corporation will contain a name of at least one of the stockholders" and goes on to say they can do business under a fictitious name identical to the corporate name, except you can leave out limited, etc. In the case of his clients, they have done business under a fictitious name that has acquired some good will and some identity in the community. They want to incorporate to obtain some of the tax benefits of a corporation. They want to have a pension and profit sharing plan. They are left with two choices, one of not incorporating or doing business under their fictitious name. There seems to be very little reason for the present prohibition against a professional corporation doing business under any fictitious name they might choose. Any other corporation can file under chapter 602, but right now it would appear from the statute that the professional corporation cannot do so. The only other alternative is to ignore the statute. It is a misdemeanor not to file a fictitious name if you are doing business under a fictitious name. So if they do continue doing business that way and don't file a certificate 1) they could be guilty of a misdemeanor and 2) there is a prohibition in Chapter 602 which says that "they cannot maintain a law suit on any cause of action arising from the business under which they are doing business under a fictitious name." There does not seem to be any valid reason for not passing a bill that would allow a professional corporation to do business under a fictitious name. Anyone can always call the Secretary of State's Office and obtain the names of any officers, directors or shareholders of a professional corporation. Usually with professionals the contact is one on one anyway, so people would have very little doubt as to who they are dealing with.

Senator Raggio moved that SB 182 be referred out of Committee with a "do pass" recommendation.

Seconded by Senator Ashworth.

Motion carried unanimously.

SB 9 Revises criminal penalties. (See Jan. 18 for previous testimony)

David Small, District Attorney, Carson City stated that his office's main concern is on page 39 Section 110. We get out of the "orchard, vineyard, garden" concept on that one, and unfortunately it now states "real property." This is where you speak in part of it, of persons entering real property for purposes of taking something. It is now a misdemeanor. Real property may include a house and in this state that is called burglary. It is certainly not a misdemeanor and we would suggest that this term be corrected in that regard. He would like to make sure you don't get into the tampering with a vehicle, grand theft auto situation. On page 11, Section 38 they would like the Committee to be aware that there are several bills now being drafted that will speak to the battery statute. This language is compatible with the amendments that are being composed.

Frank Daykin stated that in Section 110 on page 39, Mr. Small's point was well taken. What the Legislative Counsel Bureau would do would be to simply insert "under circumstances not amounting to burglary." This would then be covered by the burglary statute. That statute sets out houses, certain vehicles, but it would not refer to, say as an example, an open field. We would not want to allow two descriptions which could possibly fit the same offense in different sections.

Edwin E. Taylor, Jr., Deputy Attorney General, Criminal Division stated that basically this bill standardizes the penalties, of which there are three classes of felonies. He felt there were some incongruities with the bill. He then pointed them out by reading from his memo which he had submitted to the Committee (see attachment A). After taking these item by item, with input from Frank Daykin, it was the consensus of the Committee to have the two of them work together, to make the sentences and the fines standard with each other. Mr. Daykin will then bring the bill back to the Committee when these changes are made.

Steve McMorris, District Attorney, Douglas County stated that he wanted to bring one critical matter to the attention of the Committee. There is a proposed change to the arson statute to repeal 206.015 and 475.040 of the Statutes. This would create a problem unless 205.020, which is the third degree arson statute is amended to include "timber, crops, trees and vegetation." If it burns \$5,000 or more

it is a felony, but less than that would be a gross misdemeanor or a misdemeanor. 206.015 also has some language which appears to apply to destruction of trees, perhaps by fire. It talks about cutting down, destroying or injuring wood, timber, grain, grass or crops. Judge Howard McKibben's opinion in the Thaheld case was that 205.020 did not apply. This is the third degree arson statute, with regard to the burning of forrest land. In looking at the legislative history, Judge McKibben concluded that 475.040 was the only applicable statute in the State of Nevada. If he is correct on that, then you would be repealing the only statute that we now have. He feels that 205.020 talks about unoccupied personal property. In going through the history of the arson statute, it was not intended to apply to forrest land, timber and crops, but 475.040 did apply. He stated he disagrees as he doesn't feel that 475.040 was intended to apply to a fire started with malice, as in an arson statute.

Lowell Smith, State Forrester stated that he would like to see 475.040 retained because of the non-malicious starting of a fire, such as a campfire left burning that ends up burning hundreds of acres. The main problem is with water-sheds. With the type of language in this section he feels it is most important to retain this, so the state can collect on forrest land.

Martin A. Kohler, representing the Gay Community of Nevada. He wished to state that on page 13, lines 19 to 26 imposes a fine which he feels is unfair. This is an attempt by the government to be a watchdog in one's own home. This penalty is trying to regulate sexual behavior in the bedroom, where it is no one's business. He personally would like to see all of NRS 201.090 stricken from the books, but if that is not possible to at least delete the \$5,000 fine from this statute. He feels no one should even be put in jail much less fined for their morals.

No action was taken on this bill at this time.

There being no further business the meeting was adjourned.

Respectfully submitted,

APPROVED:


Virginia C. Letts, Secretary

Senator Melvin D. Close, Chairman

TO: Senate Committee on Judiciary

FROM: Edwin E. Taylor, Jr. ~~ET~~
Deputy Attorney General
Criminal Division

DATE: February 9, 1979

SUBJECT: Senate Bill No. 9

Senate Bill No. 9 addresses some two hundred and forty sections of the Nevada Revised Statutes relating to crimes and punishments and, aside from grammatical changes, appears to be a comprehensive attempt to standardize fines and terms of imprisonment in all categories of crimes in the following manner: (A) fines are raised to \$250, \$500, \$5,000 and \$10,000 levels; and, (B) three classes of felonies are created, one imposing a 1-6 year term of imprisonment and a \$5,000 fine, the second imposing a term of 2-10 years or a term of 1-10 years and a \$10,000 fine, and the last imposing a term of 2-20 years and a \$20,000 fine -- additionally, certain minimum fines are removed in misdemeanor and gross misdemeanor crimes.

The Bill also makes changes in substantive areas by changes in language, or by elimination and repeal of numerous provisions of the Nevada Revised Statutes. Changes of substance are listed in Appendix A attached to this memorandum for the Committee's convenience.

To the extent that Senate Bill No. 9 is intended to bring uniformity to penalties in the sections it does address, it is not wholly successful. For example, NRS 212.090(1)(a) imposes a 2-20 year term of imprisonment but no provision is made for a corresponding fine (S.B. No. 9, page 43, lines 7-14). Other such examples are included in Appendix B attached to this memorandum. The Committee may wish to address these omissions and inconsistencies if complete standardization is deemed appropriate.

Lastly, some penal provisions of the Nevada Revised Statutes are not included in the Bill. Again, to the extent that the Bill is intended to be a comprehensive review of all crimes, it is not wholly successful. One such example is NRS 453.321 (sale of controlled substances) where a minimum term of 1-10 years and a \$2,500 fine remains unaltered. Thus, a defendant convicted of sales of LSD would be subject to a lesser fine than an 18-year-old defendant convicted of first offense possession of less than one ounce of marijuana (S.B. No. 9, page 58, line 17, raising the fine from \$2,000 to \$5,000). The Committee may wish to address such omissions.

Thank you for your consideration.

EET:sz

APPENDIX A

Bills Repealed

Some forty provisions of the Nevada Revised Statutes relating to substantive crimes are repealed by Senate Bill No. 9 [page 81, lines 41-47]. To a great extent the bill has eliminated numerous specific provisions concerning damage or destruction of personal property, I suppose now to be punished under the provisions of Nevada Revised Statutes Chapter 206, entitled Malicious Mischief, and, in particular, NRS 206.310, Injury to Other Property.

1. NRS 1.280 relates to penalties of judges or justices of the peace who steal, alter or deface any document, etc., which belongs to a public body and the punishment therefore.
2. NRS 200.420 deals with the punishment and disfranchisement for dueling.
3. NRS 200.800 deals with penalties for the use of explosives for the purpose of damaging or destroying state property and the penalties imposed therefore.
4. NRS 202.850 deals with prohibitions for tampering with fire-alarm apparatus and transmitting a false alarm penalty provision.
5. NRS 206.015 deals with the definition and punishment prescribed for destruction of crop, trees, etc., belonging to another person or to the state.
6. NRS 206.025 deals with destruction of buildings or outer buildings, fences, etc., and the punishment appropriate thereto.
7. NRS 206.060 deals with the destruction or damage to fences or gates, etc., and the punishments appropriate thereto.
8. NRS 206.090 deals with the crime of placing a building on property without the consent of the owner and the punishments appropriate thereto.
9. NRS 206.100 deals with the crime of removing soil or stone from any property without consent and the punishments appropriate thereto.
10. NRS 206.110 deals with the crime of damage or destruction of sewers and drains and the punishment appropriate thereto.
11. NRS 206.120 deals with the crime of destruction of utility mains, insulators and cables, including shooting, destroying electric power line insulators and punishment appropriate thereto.

12. NRS 206.170 deals with the crime of damage to tools, engines, etc., and the punishment appropriate thereto.
13. NRS 206.180 deals with the crime of the destruction or removal of works of art or literature, etc., and the punishment appropriate thereto.
14. NRS 206.190 deals with the crime of the removal or destruction of monuments in parks or cemeteries, etc., and the punishment appropriate thereto.
15. NRS 206.230 deals with the removal or destruction of monuments on property other than public property and the punishment appropriate thereto.
16. NRS 206.240 deals with the crime of injury to baggage by a person or corporation engaged in the transportation of baggage and the punishment appropriate thereto.
17. NRS 206.250 deals with the crime of destruction or removal of any wood or lumber or watercraft, including boats, etc., belonging to another and the punishment appropriate thereto.
18. NRS 213.170 deals with the crime of perjury or subornation of perjury in connection with application for pardon, parole and the penalty therefore.
19. NRS 246.080 deals with the crime of a county clerk who falsifies or steals any record and the punishment appropriate thereto.
20. NRS 247.400 deals with the crime of any county recorder who steals or alters any public record and appropriate penalty thereto.
21. NRS 248.070 deals with the crime of a sheriff who allows a prisoner to leave incarceration and it shall be deemed an escape and the sheriff shall be fined up to \$10,000, e.g., allows to go free with reason.
22. NRS 248.080 deals with the crime and the punishment for inhumanity to prisoners by sheriff or a jailer.
23. NRS 248.260 deals with the crime of any sheriff who shall steal or embezzle or alter any public records and the penalty appropriate thereto.
24. NRS 253.130 deals with the crime of any public administrator who steals or alters any public document and the punishment appropriate thereto.

25. NRS 281.200 deals with the crime of any public officer who shall steal or alter any public document and the penalties appropriate thereto.
26. NRS 350.053 makes it a perjury to falsely swear before the board of examiners, penalties are the same as for criminal perjury.
27. NRS 360.290 deals with county officers or witnesses who refuse summons relating to census or taxation, who are guilty of a misdemeanor for first offense, gross misdemeanor for the second offense and if they falsely swear shall be guilty of perjury.
28. NRS 361.270 deals with the crime of a person who gives a false statement concerning taxable property, that person is deemed guilty of perjury and punished according to the criminal statutes.
29. NRS 361.440 deals with any county officer who neglects or fails to comply with the provisions of NRS 361.375 to NRS 361.435 and the penalties applicable thereto.
30. NRS 361.785 deals with the crime of an officer who fails to comply with the requirements concerning lost tax receipts and the penalty applicable thereto.
31. NRS 412.586 deals with the crime of perjury committed by an individual who makes a false statement upon enlistment to the state militia.
32. NRS 422.330 deals with the crime of an individual who makes a false statement concerning the receipt of financial assistance from the state welfare administration for another person.
33. NRS 452.280 deals with the crime of destruction of any monument, gravestone, etc., in a cemetery and the penalties appropriate thereto.
34. NRS 467.175 deals with the crime of any promoter, etc., of a boxing or wrestling match who makes a false statement shall be guilty of perjury.
35. NRS 475.040 deals with the destruction of timber or crops, etc., and refers to NRS 193.155 as the reference criminal provision, in addition to any civil action.
36. NRS 483.540 deals with the crime of any person who makes a false statement on a drivers license application, etc., shall be guilty of the crime of perjury.

37. NRS 535.120 deals with any person who causes injury to a dam, bridge or other structure similar in nature and the punishment appropriate thereto.
38. NRS 536.110 deals with the crime of any person who injures or destroys any canal, aqueduct, etc., and the punishment thereto.
39. NRS 647.095 deals with any junk dealer who receives property he reasonably should know belongs to a public utility or a city or county government or other governmental agency is guilty of receiving stolen property and the punishment appropriate thereto.
40. NRS 647.145 deals with any secondhand dealer, etc., who receives property he should reasonably know belongs to a public utility or governmental agency is guilty of receiving stolen property and the punishments appropriate thereto.
41. NRS 664.035 deals with the crime of any clerk or bank employee who upon issuance of a certified check fails to insure that there is sufficient money in the bank to cover the certified check as issued and the penalties appropriate thereto.
42. NRS 704.810 deals with the unlawful removal of or damage to public utility property and refers to NRS 193.155 as the appropriate criminal penalty provision.
43. NRS 705.470 deals with the crime of the unlawful destruction or damage to railroad cars, etc., and the references to NRS 193.155 as the appropriate penalty provision in the criminal provisions.

Changes of Substance Within Senate Bill No. 9

Senate Bill No. 9, within its pages, changes or eliminates certain provisions of the Nevada Revised Statutes to include:

(a) NRS 199.460 [page 7, lines 47-48] -- an officer is subject to possible misdemeanor prosecution if he fails to permit an arrested to communicate with friends or an attorney "at reasonable times and intervals". What would constitute "reasonable" visitation is probably so vague as to constitute inadequate notice of the prohibited conduct and be unconstitutional. This is a change of substance.

(b) NRS 206.040 [page 39, line 24] -- the change of language to "real property of another" is a change of substance with the danger that this section, creating a misdemeanor, supplants the burglary statute, a felony, in certain instances.

(c) NRS 705.200(2) [page 79, lines 38-48] -- an entire crime carrying 1-10 years and a \$5,000 fine is eliminated. Another change of substance for no apparent reason.

(d) NRS 707.130 [page 81, lines 37-40] -- eliminates reparation to telegraph company of 100 times actual damage, when the cost of repair or placement of a \$4 component may through labor and transportation costs well exceed that multiple.

(e) NRS 206.220 [pages 39-40] -- makes state protected from removal of boundary markers and corner stones.

(f) NRS 207.080 [pages 40-41] -- removes junk dealers and secondhand dealers from certain specific receiving stolen property penalties.

(g) NRS 475.100 [page 66, lines 35-48] -- substantial change in language which now makes false alarm equivalent to voluntary manslaughter if death or serious bodily harm results from the false alarm.

(h) NRS 539.780 [page 71, lines 13-27] -- eliminates destruction and damage portion of the statute which deals with canals, reservoirs, construction work, etc.; also NRS 704.800 [pages 78-79] -- amendments eliminate similar destruction provisions, and NRS 707.130 [page 81, lines 14-40] which related to damage to telegraph equipment.

APPENDIX B

1. NRS 200.480(2)(c)(3) [page 11, lines 34-37] -- 1-6 years, but a \$10,000 fine.
2. NRS 202.820(2)(b) [page 21, lines 13-14] -- no \$10,000 fine imposed on 2-20 year term.
3. NRS 207.250(3)(a) [page 42, lines 23-25] -- reduces term from 1-10 years to 1-6 years instead of raising the fine level from \$5,000 to \$10,000. This is the reverse of the changes elsewhere where the fine is raised, lowered or added to correspond to the term of years.
4. NRS 212.090(1)(a) [page 43, lines 7-14] -- 2-20 year term, but no provision for \$10,000 fine.
5. NRS 119.330(2)(b) [page 45, lines 31-33] -- 1-6 year term, but \$10,000 fine.
6. NRS 453.411(3)(a) [page 60, lines 15-16] -- leaves \$2,000 fine on 1-6 year term.
7. NRS 453.411(3)(b) [page 60, lines 18-19] -- increases \$1,000 fine to \$5,000 while leaving a 1-year county jail sentence. Consistency would indicate that the \$1,000 fine on a gross misdemeanor punishment should be retained.
8. NRS 692C.480(3) [pages 77-78] -- retains 2-year maximum term and \$10,000 fine.
9. NRS 695A.580 [page 78, line 17] -- retains minimum fine while elsewhere they have been eliminated, e.g., NRS 212.180, NRS 4.220, NRS 392.400 and NRS 704.640.
10. NRS 200.220 [page 9, lines 17-18] -- 1-6 year term but \$20,000 fine.
11. NRS 453.316(2) [page 57, lines 3-12] -- no provision for fine on a 2-20 year term.

The bill does not address numerous sections of the Nevada Revised Statutes to include for example:

(a) NRS 196.010 [Treason] -- no fine imposed on 10 year to life sentence.

(b) NRS 200.330 [Kidnapping] -- no fine imposed for second degree kidnapping carrying a 1-15 year term.

(c) NRS 200.380 [Robbery] -- no fine imposed on a 1-15 year term.

(d) NRS 200.390 [Attempt to Kill by Poisoning] -- no fine imposed for 1-20 year term.

(e) NRS 205.750 [Burglary with Explosives] -- no fine imposed for 1-20 year term.

(f) NRS 453.321 [Sale of Controlled Substance] -- remains unaltered and unstandardized in some particulars.

(g) NRS 205.010, 205.015, 205.020 and 205.030 [Arson] -- no fines imposed for first, second and third degree arson or for arson with intent to defraud insurer carrying 1-15 years, 1-10 years and 1-6 years terms of imprisonment. NRS 205.025, fourth degree arson, is singled out in the bill for the imposition of fines [page 24, lines 9-10].

SENATE BILL NO. 182—SENATOR YOUNG

FEBRUARY 2, 1979

Referred to Committee on Judiciary

SUMMARY—Relaxes restrictions on use of fictitious names by professional corporations and associations. (BDR 7-590)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to professional corporations and associations; relaxing restrictions on the use of fictitious names; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 89.040 is hereby amended to read as follows:
2 89.040 1. One or more [individuals,] *persons*, each of whom is
3 authorized to perform the same professional service, may organize a professional corporation in the manner provided for organizing a private
4 corporation under chapter 78 of NRS. The articles of incorporation
5 [shall] *must* contain the following additional information:
6 (a) The profession to be practiced by means of the professional
7 corporation.
8 (b) The names and [residence] *residential* addresses of the original
9 stockholders and directors of the professional corporation.
10 (c) A certificate from the regulating board of the profession to be
11 practiced showing that each of the stockholders and directors is duly
12 licensed to practice such profession.
13 2. Notwithstanding the provisions of NRS 78.115, a professional
14 corporation of fewer than four stockholders may have a board of directors
15 of fewer than three members, but of at least one member.
16 3. The corporate name of a professional corporation [shall] *must*
17 contain the words "Professional Corporation" or the abbreviation "Prof.
18 Corp.," or the word "Chartered" or "Limited" or the abbreviation "Ltd."
19 The corporate name [shall] *must* contain the last name of one or more
20 of its stockholders. [; but the] *The* corporation may render professional
21 services and exercise its authorized powers under a *fictitious* name [which
22 is identical to its corporate name, except that the words or abbreviations
23 set forth in the first sentence of this subsection as part of the name of
24