

The meeting was called to order at 10:30 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 124 Limits incorporators to natural persons, precludes renewal of periods for reservation of corporate names, increases certain fees and removes requirement for certain publications.

William Swackhammer, Secretary of State, stated he would like to go through this bill with the Committee by section. Section 1. In the bill it states "not less than 3 persons", this should be "natural persons" as there is a difference between person and natural person.

Section 2. There has been quite a bit of difficulty with name reservation. The present law allows a name to be reserved for a corporation for a period of 30 days. It has been a practice for years to allow renewal of that reservation. There was an Attorney General's opinion, two years ago, that this cannot be done. So to be in harmony with other states, this bill would provide a 45 day reservation and also raise the \$2 filing fee to \$5. This also puts in language that makes it clear that the reservation cannot be renewed.

Senator Ashworth asked why they didn't want the renewal clause in the Statutes.

Mildred Johnson, with the Secretary of State's Office, stated their objection is that certain companies hold the corporate name for years, with no intention of ever filing corporate documents.

Senator Ashworth stated that could be remedied by allowing the 45 days. It is feasible that a corporation outside of Nevada would take that long in order to get their paper work together and get set up.

Senator Hernstadt stated he felt it would make it easier if it was 60 days for the whole thing. He has set up a corporation in as little as 3 days, and can't see how a person even out of state, couldn't get all their corporate papers together in 60 days.

Mr. Swackhammer stated that he didn't care about the time limit. What they are trying to preclude is someone hanging onto a name for years without ever using it.

Mrs. Johnson stated there are two particular corporate entities in Nevada that have been reserving the same name for over two years. When it is time to renew, they let it go for two days, and then come back in and reserve it again. It seems they never intend to qualify, or form corporations. We require them to send in a letter to reserve the name along with the \$2 fee. This allows them to hold the name for 30 days.

Mr. Swackhammer continued going through the sections. Section 3. This clarifies the language in the statute that states the person filing the corporation certificate must be an officer authorized by this state. Section 4. This is language clarification concerning annual lists. Section 5. This deals with the place where the acknowledgement is taken. Section 6. Most of this is language clarification. However, on lines 46 through 48, this deals with the revocation of the charter. We did not feel we could take an action on a corporation, even to dissolve it, if the charter had already been revoked. Section 7. This changes the fee. This was overlooked last session. Section 8. This has to do with the acknowledgement. The foreign corporation will now file with the county clerk in the county where they are doing business. Section 9. This also deals with the foreign corporation. A certified copy of the amendment must be filed by an authorized officer in that state. There must also be a filing of agreements and mergers to test the creation of the corporation. Sections 10 and 11. This merely removes certain dates that should not be in the act. Sections 12 and 13. This is merely language clarification. Section 14. This is an obsolete law for filing annual receipts. As of last week there were 39,056 in this state. The postage alone would be \$5,900 and he doesn't feel there is a useful purpose served by mailing receipts.

Senator Sloan felt this addressed more than a receipt. It states in the Statute there is to be a certificate authorizing the company to transact and conduct business.

Mr. Swackhammer stated that what they are trying to do is get away from sending out all these receipts. Receipts would only be issued for cash transactions, and there are very few of those.

Senator Hernstadt asked what happens in the case where an attorney handles several corporations. They may send in one check to cover ten corporations. They would only have one canceled check, and you couldn't put that check in each of those ten files. If the fee were raised he felt the 15¢ for each stamp to send a receipt, was worth the cost.

Helen Stecker with the Secretary of State's Office, stated that as far as identifying the corporations when there is one check covering several filings, that is done when it goes through the register. The corporate file number is on the back of the check. So you could in fact look up that canceled check.

Senator Raggio stated that does not satisfy him. The Statute has set it out that the receipt is a certificate authorizing the corporation to conduct business. He feels that \$5,900 is not exorbitant to satisfy the corporation, so they know they are in good standing.

After some discussion by the Committee they decided to have the name reserved for 90 days, and it couldn't be renewed for 3 months. They will also check with Frank Daykin about the certificate of corporate existence and make the language clear in this section without referring to all the chapters in the NRS.

Senator Don Ashworth moved that SB 124 be referred out of Committee with an "amend and do pass" recommendation.

Seconded by Senator Hernstadt.

Motion carried unanimously.

SB 129 Eliminates appeals from the granting or denial of writs of habeas corpus.

Judge Mike Griffen, representing the Judge's Association testified that at a meeting in December the Association requested a bill be introduced to limit pre-trial habeas corpus. SB 129 is the result of that meeting. It would deny appeals on writs. In the larger counties they are inundated by appeals. There are from three to five hundred appeals in the Supreme Court in a year. Only 2% to 5% are granted, and most of these are when the state has lost the issue down below. On a writ in Carson City, it takes about 3 weeks because you normally have to wait for the response from the state. Then there is another week for the preparing of the order and documents. Then it normally goes to the Supreme Court. Their turn around time on appeals is normally in the neighborhood of 45 days. What concerns the larger counties is that this prevents them from ever bringing anyone to trial. What we propose is that the appeal would be taken 15 days from the entry of the order and the transcript would be furnished immediately and then would stand submitted on the point of authority submitted down below. It would be a summary procedure. This would take place, as it is now, if section 7 was removed. The purpose of habeas corpus is to test why you are in custody and get a speedy resolution of that issue.

Senator Raggio stated that if you remove all the language in section 7, you are also denying the state the right of appeal. He doesn't feel that should be done.

Steven MacMorris, District Attorney for Douglas County stated that personally he would prefer to leave the procedure as it is. "Let us assume that the writ is filed, the District Judge hears the issue, and the state prevails. At that point if there is no appeal we are going to have a trial." He has found it is better to have an issue go up to the Supreme Court, have them make a decision on it, and have the case come back. Ordinarily what happens is the defense attorney tells his client, "we have taken up the procedural issue and we have lost", and they will just plead guilty. He thinks if their right to appeal is eliminated and the prosecution prevails, there will be many more jury trials. He also feels the way it is written the state would lose the right to appeal.

Bill McDonald, Humboldt County District Attorney stated that because someone takes a pre-trial writ that doesn't automatically stay the trial. He too was concerned about the state losing the right to appeal.

Geno Menchetti, Office of the Attorney General, stated there are writs filed daily from the prison. 95% of these are won, and those that we don't are appealed. He feels if this bill is passed it will really increase the workload from the prison.

Barbara Bailey, representing the Nevada Trial Lawyers Association, stated the Association agrees with Judge Thompson that writs delay the process and are always in favor of the defendant. The elimination of writs would provide quicker access to the Nevada Supreme Court for civil litigants. However, in criminal matters they are concerned about the right to appeal through the Supreme Court on the grounds that the trial proceeded on an information or indictment founded on sufficient evidence. Their concern is that a jury trial may be construed as a waiver of the right to complain on the sufficiency of the evidence.

Senator Close stated he had received a phone call stating that the Supreme Court Judges would be in favor of this bill. They do feel however that the state must have the right to appeal. Also, there is a letter from Frank Daykin, stating that the bill would be constitutional if enacted. (see Attachment A)

Senator Raggio stated that this bill should then be amended to give the state the right to appeal.

Senator Hernstadt moved that SB 129 be referred out of Committee with an "amend and do pass"

recommendation.

Seconded by Senator Ashworth.

Motion carried unanimously.

SB 27 Abolishes causes of action for seduction and criminal conversation.

See minutes of meeting of January 29, 1979 for testimony and discussion.

Senator Raggio moved that SB 27 be referred out of Committee with a "do pass" recommendation.

Seconded by Senator Hernstadt.

Motion carried unanimously.

SB 125 Permits district attorney to prosecute certain crimes involving securities.

Buster Sewell, Deputy Secretary of State, in charge of the Securities Division stated this is a request from the District Attorney's office that their division also be included in the criminal chapter. In reviewing other agencies such as Consumer Affairs, Insurance, etc., they all have the ability to have representation by both the Attorney General and the District Attorney.

Senator Hernstadt moved that SB 125 be referred out of Committee with a "do pass" recommendation.

Seconded by Senator Ford.

Motion carried unanimously.

SB 130 Provides appraisal rights in certain circumstances to corporate shareholders entitled to fractional shares.

Buster Sewell, Deputy Secretary of State, stated this legislation would give minority shareholders protection by use of an independent appraiser, to determine the value of their shares, if the company wishes to reverse split their stock.

Senator Close asked who is to pay for the appraisal?

Mr. Sewell stated there are already statutes that provide that this is determined by the court under Section 78.510.

Senator Hernstadt asked if this bill was an offshoot from the publicity over a local corporation who had a massive reverse split. The surviving shareholders were given an arbitrary amount.

Date: Feb. 2, 1979

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Mr. Sewell stated that it was, and this was when they became aware of the loophole in the law.

Senator Close stated he could see a problem with this. If there was a large corporation that had 10,000 stockholders, you could have one stockholder with maybe one share calling for an audit. This could cost a tremendous amount of money.

Senator Hernstadt stated that perhaps you could put in language stating "a majority of the fractional shareholders.

Mr. Sewell stated that the language had been used that is already in the Statutes on the basis of a merger or take over bid. He agrees, however, that one shareholder could very likely make it hard on the corporation.

Senator Close stated that perhaps it should be 20% of the shareholders, or something like that. Say if you had 5 shares of stock, there was a 5 to 1 split, you would have no problem. However, if you had 4 shares, then you would have a fractional share and would have to be paid in cash.

Senator Raggio stated he felt a single individual would seldom bring action. If it was a meaningful amount, it would mean that a number of them could get together and bring an action. He sees nothing wrong with the language as written.

Mr. Sewell stated that what they are after is that the corporation cannot arbitrarily set the worth of a particular share. On the public corporation, this is set by the Exchange Commission. We are trying to protect the unsophisticated investor that holds shares in a public corporation that has gone private, or a small corporation with three or four stockholders. He felt if this bill was amended to the 20% that it should also be mandated that all the fractional shareholders be listed in the circular or prospectus that is sent to the shareholders, so they know what action is available to them.

Senator Don Ashworth moved that SB 130 be "indefinitely postponed".

Senator Dodge stated he did not see where this bill was needed.

Senator Hernstadt stated the Committee ought to do something. Before the bill is killed we had better find out if there is some other remedy in the law to protect the minority shareholder.

Senator Close stated that we should put in "a fractional percentage of the sockholders have to agree" and also that notice of that right should be given.

Senator Ashworth withdrew his motion.

Senator Hernstadt moved that SB 130 be referred out of Committee with an "amend and do pass" recommendation.

Seconded by Senator Raggio.

Motion carried unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,

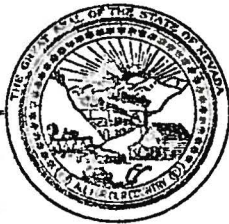

Virginia C. Letts, Secretary

APPROVED:

Senator Melvin D. Close, Chairman

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
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January 12, 1979

Hon. Michael R. Griffin
District Judge
Department One
198 North Carson Street
Carson City, Nevada 89701

Dear Mike:

Removal of the provision for appeal from the granting or denial of a writ of habeas corpus by the district court, as BDR 3-542 proposes to do, would essentially restore the law as it existed before 1953. So the law had stood since enacted in 1862. Under it, In the Matter of Sullivan, 65 Nev. 128 (1948), a lengthy opinion by Justice Horsey, summarized by the court at page 154, held that there was no statutory right of appeal, the constitution conferred none, and appeal was inconsistent with basic nature of the writ. Hence I believe BDR 3-542 would be constitutional if enacted.

Very truly yours,

A handwritten signature in cursive script that reads "Frank".

Frank W. Daykin
Legislative Counsel

FWD:cb

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S. B. 124

SENATE BILL NO. 124—COMMITTEE ON JUDICIARY

JANUARY 25, 1979

Referred to Committee on Judiciary

SUMMARY—Limits incorporators to natural persons, precludes renewal of periods for reservation of corporate names, increases certain fees and removes requirement for certain publications and certificates. (BDR 7-120)

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 corporations; limiting incorporators to natural persons; precluding renewal or reservation of corporate names for a period immediately after reservation expires and changing the period of reservation; increasing certain fees and prescribing a fee; barring certain actions by a corporation until it has filed a list of its directors, officers and resident agent; removing the requirement for certain publications; 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 78.030 is hereby amended to read as follows:
2 78.030 1. Any number of *natural* persons, not less than three, may
3 associate to establish a corporation for the transaction of any lawful busi-
4 ness, or to promote or conduct any legitimate object or purpose, under
5 and subject to the requirements of this chapter, by:
6 (a) Executing, acknowledging and filing in the office of the secretary
7 of state articles of incorporation, or a certificate of incorporation; and
8 (b) Filing a copy thereof, certified under the hand and official seal of
9 the secretary of state, in the office of the clerk of the county in which the
10 principal place of business of the company is intended to be located.
11 The county clerk may microfilm such copy for filing in his records rather
12 than filing the copy.
13 2. The articles of incorporation, or certificate of incorporation,
14 **[shall]** *must* be as provided in NRS 78.035, and the secretary of state
15 shall require **[the same]** *it* to be in the form so prescribed. If any articles
16 or certificates **[shall be]** *are* defective in such respect, the secretary of
17 state shall return **[the same]** *them* for correction.
18 SEC. 2. NRS 78.040 is hereby amended to read as follows:
19 78.040 1. **[The]** *Except as provided in subsection 3, the* secretary

Original bill is 8 pages long.
Contact the Research Library for
a copy of the complete bill.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S. B. 129

SENATE BILL NO. 129—COMMITTEE ON JUDICIARY

JANUARY 25, 1979

Referred to Committee on Judiciary

SUMMARY—Eliminates appeals from the granting or denial of writs of habeas corpus. (BDR 3-542)

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 the writ of habeas corpus; eliminating appeals from the denial of a writ of habeas corpus; 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 34.380 is hereby amended to read as follows:
2 34.380 1. Except as otherwise provided in this section, a writ of
3 habeas corpus may be granted by each justice of the supreme court or
4 judges of district courts at any time.
5 2. Each of the justices of the supreme court may issue writs of habeas
6 corpus to any part of the state, on petition by, or on behalf of any person
7 held in actual custody, and may make such writ returnable before himself
8 or before the supreme court, or before any district court in the state or
9 before any judge of the district court, as provided in section 4 of article
10 6 of the constitution of the State of Nevada.
11 3. A district judge may only issue writs of habeas corpus on petition
12 by, or in behalf of, any person held in actual custody within the judicial
13 district of the district judge to whom application for the writ is made, as
14 provided in section 6 of article 6 of the constitution of the State of
15 Nevada.
16 4. A district court shall not consider any pretrial petition for habeas
17 corpus:
18 (a) Based on alleged want of probable cause or otherwise challenging
19 the court's right or jurisdiction to proceed to the trial of a criminal charge
20 unless a petition is filed in accordance with NRS 34.375.
21 (b) Based on a ground which the petitioner could have included as a

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a copy of the complete bill.

SENATE BILL NO. 27—COMMITTEE ON JUDICIARY

JANUARY 17, 1979

Referred to Committee on Judiciary

SUMMARY—Abolishes causes of action for seduction and criminal conversation. (BDR 3-398)

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 seduction and criminal conversation; abolishing causes of action therefor; 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 41.370 is hereby amended to read as follows:
- 2 41.370 The remedies [heretofore] provided by law for the enforce-
- 3 ment of actions based upon alleged alienation of affections and breach
- 4 of contract to marry [.] before March 5, 1943, and for alleged seduc-
- 5 tion and criminal conversation before July 1, 1979, having been subjected
- 6 to grave abuses, caused extreme annoyance, embarrassment, humiliation
- 7 and pecuniary damage to many persons wholly innocent and free of any
- 8 wrongdoing, who were merely the victims of circumstances, and having
- 9 been exercised by unscrupulous persons for their unjust enrichment, and
- 10 having furnished vehicles for the commission or attempted commission
- 11 of crime and in many cases having resulted in the perpetration of frauds,
- 12 it is hereby declared as the public policy of the state that the best
- 13 interests of the people of this state will be served by the abolition thereof.
- 14 Consequently, in the public interest, the necessity for the enactment of
- 15 NRS 41.370 to 41.420, inclusive, is hereby declared as a matter of
- 16 legislative determination.
- 17 SEC. 2. NRS 41.380 is hereby amended to read as follows:
- 18 41.380 All civil causes of action for breach of promise to
- 19 marry, [and] alienation of affections, *seduction and criminal conversa-*
- 20 *tion*, are hereby abolished; but this section [shall not abolish any such
- 21 cause of action which accrued prior to March 5, 1943.] *does not abolish*
- 22 *any cause of action for seduction or criminal conversation which accrued*
- 23 *before July 1, 1979.*
- 24 SEC. 3. NRS 41.390 is hereby amended to read as follows:
- 25 41.390 1. All [such] causes of action *for seduction or criminal*

Original bill is 4 pages long.
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a copy of the complete bill.

SENATE BILL NO. 125—COMMITTEE ON JUDICIARY

JANUARY 25, 1979

Referred to Committee on Judiciary

SUMMARY—Permits district attorney to prosecute certain crimes involving securities. (BDR 7-921)

FISCAL NOTE: Effect on Local Government: Yes.
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 securities; authorizing the district attorney to prosecute certain crimes; 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 90.190 is hereby amended to read as follows:
2 90.190 1. Any person who willfully and knowingly violates any
3 provision of this chapter shall, upon conviction, be punished by a fine
4 of not more than \$5,000, or by imprisonment in the state prison for not
5 less than 1 year nor more than 3 years or in the county jail for not
6 more than 1 year, or by both such fine and imprisonment. No indict-
7 ment or information may be returned under this chapter more than 5
8 years after the alleged violation.
9 2. The administrator may refer such evidence as is available con-
10 cerning violations of this chapter to the attorney general [.] or the dis-
11 trict attorney, who may, with or without such a reference, institute the
12 appropriate criminal proceedings under this chapter.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S. B. 130

SENATE BILL NO. 130—COMMITTEE ON JUDICIARY

JANUARY 25, 1979

Referred to Committee on Judiciary

SUMMARY—Provides appraisal rights in certain circumstances to corporate shareholders entitled to fractional shares. (BDR 7-649)

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 corporations; providing appraisal rights in certain circumstances to holders of specified proportion of outstanding shares before reduction in total number; 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. Chapter 78 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 SEC. 2. *Stockholders holding, in the aggregate, 15 percent or more*
4 *of the outstanding shares of a corporation organized under the pro-*
5 *visions of this chapter have the right to demand an appraisal of the fair*
6 *cash value of the shares if a reduction of the number of the outstanding*
7 *shares of the corporation is to be accomplished by the payment of cash*
8 *to persons otherwise entitled to become holders of fractions of shares.*
9 *This demand must be made at or before the meeting at which the reduc-*
10 *tion is approved, or before or with the consent to act without a meeting.*
11 SEC. 3. 1. A proposal to reduce the number of outstanding shares of
12 a corporation organized under the provisions of this chapter must not be
13 adopted unless:
14 (a) *The notice of the meeting or request for consent to act without a*
15 *meeting included notice of the proposed reduction of shares;*
16 (b) *A list containing the names and addresses of all of the stockholders*
17 *was made available to any stockholder on request; and*
18 (c) *The notice or request for consent included a statement of the right*
19 *of the stockholders to demand an appraisal and of the availability of the*
20 *list of stockholders.*
21 2. *If a corporation plans to reduce the number of outstanding shares*

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.