

The meeting was called to order at 9:07 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 292 Provides for periodic payments of certain damages recovered in malpractice claims against providers of health care.

Senator Close stated what they have done is changed the concept of what we had two years ago which provided that they had to put up the cash or appropriate security in a bank or trust company for the purpose of paying the person his future damages, and then the interest is to be added to that. Now they want to go to the annuity situation. This would mean that the person would receive periodic payments throughout his lifetime, but with no increment in the interest.

Senator Close feels the injured party should have his choice of which way he wants to go. Let him have an annuity situation or the flat amount plus interest. If he wants to take the chance that it runs out before his lifetime ends, then he can choose the flat payment. If future interest damages, say are \$100,000 and it is to be divided over his lifetime and he has 20 years to go, that is \$5,000 per year for life. The money is deposited in a trust or bank account and the interest that accrues is for the benefit of the injured party. If he dies before the 20th year the insurance company gets back that portion that is unused.

Senator Sloan questioned should not the insurance company have the alternative rather than the injured party?

Senator Close replied that would be up to the court to make sure the money is going to be there when the time came to pay it.

Senator Sloan stated Section 4 requires that,

Senator Close stated what we are doing is insuring that the principal remains for the remainder of the persons life. The bank would invest the money for him.

Senator Hernstadt stated it is one thing to get a bank T.C.D. it is different to pay the bank for the investment advisory fee.

Senator Sloan stated the investments, if any, are made by the insurance company and they are only obligated to pay the amount each year plus a predetermined amount of interest which the person would have gotten anyway. What are you going to do in the case of a doctor that gets a \$200,000 judgment against him that could not come up with the flat rate but could make the periodic payments over his life time.

Senator Close stated that the court would authorize the posting of the security which may not be cash, in which case there would be no interest earned on the security.

Senator Dodge stated he has an article which shows that within two months of settlement, 2-1/2 out of 10 claimants have nothing left, by two years that portion of claimants has risen to 7 out of 10, and within 5 years of settlement that has risen to 9 out of 10.

Senator Raggio stated that is not what this whole concept or idea was created for.

Senator Dodge stated that annuity should hold down premium costs and it should protect the injured party so he doesn't become a welfare case.

Section 6 - Senator Sloan stated "I think we have to clarify here that the judgment debtor has no right to come in and change the payments."

Section 7 - Senator Sloan stated "I thought this was the one they were concerned about causing litigation."

Senator Close stated both here and in Section 8, if he becomes delinquent the whole thing becomes due and payable. We should put in an acceleration clause, and give them 10 days notice, or something like that, to make the payment.

Senator Ford stated also we are changing the \$50,000 to \$100,000.

Senator Ashworth stated if you are going to have the acceleration clause then you can't have subsection 2 in section 8. The whole purpose is that these are supposed to be separate distinct payments, that does not accelerate the body of the entire annuity.

Senator Close stated, "I think what we intended, when we passed this two years ago, was to come back every month to compel the fellow to make the payments and you can hold him in contempt of court if he doesn't. You may still want to have the overall structured settlement that has been ordered and he may prefer that, rather than calling the whole amount due and payable. I will request the amendments and bring them back before we vote on this."

SB 267

Transforms justices' courts to courts of record.

Senator Close stated after "suitable person" add in "need not be certified shorthand reporter."

Senator Raggio stated we should have language in there that another person, other than a governmental employee's compensation, should not exceed what is paid to the shorthand reporter and make sure it tracks with the definition of a shorthand reporter. Also some language that will cover if the smaller counties do want to have an employee do the transcription.

Senator Close stated we will put in something like "regularly employed public employees should receive no additional compensation for recording or transcribing the proceedings." Then we have the last portion which says if he is a certified shorthand reporter and is employed to transcribe the proceedings, he is to be paid the same fees as applied in district court. Also we will remove Section 4, subsection 1 and 2 and put this language into Section 3. If there is no requirement for the shorthand reporters to keep their tapes then they may be destroyed 30 days after the time of appeal is up. Beyond that point of recourse there is no point in keeping the tapes and they ought to be able to dispose of them.

Senator Hernstadt moved that SB 267 be passed out of Committee with "amend and do pass" recommendation.

Seconded by Senator Dodge.

Motion carried unanimously.

AB 141

Prohibits advertisement of prostitution where its practice is unlawful.

Senator Hernstadt stated, I have doubts about the constitutionality, but if we are going to do it at all, if you look at the personal ad sections in the review journal and sun, we should try and cover this. I will read you one of the ads, "Chocolate and Vanilla, Tina and Michelle, one scoop or two, a sweet treat you will never forget 739-6494." Now prostitution is supposed to be illegal in Clark County and yet you can take these two papers and see all kinds of ads such as these. Is there anyway we can cover this situation?

Senator Sloan stated I have some concerns about its constitutionality. There have been extensive hearings and hired experts and showed what the clear imports of these ads were. What these ads were trying to convey was that prostitution was legal in Clark County. What they are trying to get at is these ads not the personals. There are two situations one where the person gets the service which they are seeking where it is still unlawful, but the other situations lead a person to believe they are going to get the service and they don't. We had a couple of those cases in Clark County where there was transportation available to take them up to a brothel in Lincoln County and they would lure them in this way. I feel that this may suffer from over draft but Frank Daykin thinks this is the best we can so, so I am willing to try it and let the courts go to the expense of proving that it is unconstitutional.

Senator Hernstadt stated, If we are going to pass this bill I think we should cover these ads that are thinly disguised. They are so salacious just by the way they are drafted.

Senator Close replied, you can only reach so many things in the bill and what we are trying to do is reach the massive publication of houses of prostitution.

Senator Sloan stated if you do that, then you are really going to get into the unconstitutionality of it. You are reading something into it which is projective and either may or may not be so. With this bill, you are applying with objective criteria, that you do in fact establish that there is a house of prostitution.

Senator Ford questioned, what about that book "Brothels of Nevada" would that be covered under this?

Senator Close stated we are not saying it cannot be distributed, only in counties where it is illegal.

Senator Sloan stated, our concern is that there are books like "Brothels of Nevada." Do you think this suffers from constitutional problems, if this book is sold nationwide in drug stores and places like that and we are now banning that.

Senator Ford replied, "I don't think so, We are prohibiting by this bill, but not you or I for having it in our hand."

Senator Sloan stated what about the first amendment thing about a book that is in national circulation and the State of Nevada enjoins the sale and then allows it in 2 or 3 counties, is that not going to suffer from commerce clause difficulty?

Senator Ford replied, I don't think so because I don't think the commerce clause has ever been applied to prohibit the sale of genuinely criminal material. For example I don't think Utah, under the commerce clause can be stopped from prohibiting the sale of laetrille even though it is legally manufactured in Nevada.

Senator Sloan stated, but this book would not be illegal in any other state of the union.

Senator Close stated, but someone has to chose to bring the action.

Senator Sloan stated, I would think there would be some way to write it to get at the advertising and not the books.

Senator Dodge moved that AB 141 be passed out of Committee with "do pass" recommendation

Seconded by Senator Ford.

Motion carried unanimously.

AB 142 Creates crime of using minor in preparing pornography.

Senator Close stated the bill has been expanded to provide more than just using a minor in porno films, it includes actual performances. On line 10 "producing a performance" before it was just a film or photography.

Senator Sloan stated, there may be a problem with this as we just made the penalty in the other bill "life without possibility" because you were punished as if you had committed those crimes yourself.

Now you have a statute which gives it a substantially shorter penalty, the first time you get someone convicted of it, you will have them come back and say where there is a conflict they want to have the 6 years. That was in 305. Do you really want to make it life?

Senator Hernstadt replied, the thing that was picked up in the Lucas Loophole was the child prostitution ring, this is a little different. This tracks SB 9 where we picked up the "infamous crimes against nature" which is 1 to 6.

Senator Close questioned, if we have the language "a minor with previous chaste character", would that help any?

Senator Sloan stated, we should find out from Frank if there is a conflict. There is another problem because in here it says "simulated", so there could be no actual sexual contact at all, and under your suggestion that person would go to life in prison.

Senator Close stated, we have put in here a 6 year penalty and a \$5,000 fine but 305 that Hernstadt introduced, seems to increase that to life without possibility where minors are involved with a 10 year minimum. We may have to conform to one or the other.

Senator Sloan stated, the bill was drafted originally only to cover the situation where you are using a minor in a real or simulated sense in the production of porno. Then the bill was expanded to get at the actual act which is covered by 305. If there was a case in which there was at least an actual sexual act would the defense attorney not be able to argue that you are entitled to a lesser penalty.

Senator Ford stated, yes, and for that reason they would have to be conformed, either excluding the list or penalty acts amounting to a violation of Senator Hernstadt's bill.

Senator Sloan moved that AB 142 be passed out of Committee with "amend and do pass" recommendation.

Seconded by Senator Hernstadt.

Motion carried unanimously.

AB 143 Revises test for obscenity and provides civil remedies.

Senator Close stated, there may be a problem because they are ordering them to destroy the material and how can you do that before you have a final judgment? Also where it says "owner and possessor" it should say "or" instead of "and" on line 19.

Senator Sloan moved that AB 143 be passed out of Committee with "amend and do pass" recommendation.

Seconded by Senator Hernstadt.

Motion carried unanimously.

Frank Daykin was called in to answer some questions on AB 143.

Senator Dodge questioned, does that mean that the local ordinance can be more stringent?

Mr. Daykin replied, yes. Further regulation means if its provisions do not conflict. If the regulations were less strict it would conflict.

Senator Sloan questioned, could a county now enact an ordinance under this bill which established a different standard?

Mr. Daykin replied, the purpose of this section is to allow any further regulation, not conflicting, so a different standard would conflict. If a more stringent standard existed it would not conflict, if in order to obey the more stringent standard one had to necessarily obey this.

Senator Sloan stated, assume that we had this in our law now and the present state law has the pre-Miller language, would it be your understanding that a county could adopt a Miller type ordinance which would have made it impossible to have an effective prosecution for obscenity, because the pre-Miller standard was different?

Mr. Daykin replied, if this provision had been in the law I think so, because the test of whether the provisions conflict is whether both of them can be obeyed.

Senator Hernstadt questioned, what good is it to have this in there?

Mr. Daykin answered, the zoning, Secondly if the supreme court, as it so frequently does, should change its mind this statute would say the legislature did not mean to preempt the field within the constitution only to set legislative minimum. On page 1, line 19, it seems that the "and" should be "or". I would believe that it should.

Senator Sloan stated, I was wondering if there was any constitutional requirement that you would have to have for both the owner and the possessor in the law.

Mr. Daykin replied, it should be "or" and it is in the very next line.

Senator Sloan stated, page 2, line 1, since we have taken out the power of the court to order a destruction upon unjunction we feel that on line 1, we should delete "and destroy".

Mr. Daykin, replied if you are taking out the authority to destroy, then it should come out because it would only be on an injunction.

Senator Close stated, page 2, line 7, we have added "allegedly obscene item or material after service" we have added "upon him".

Mr. Daykin replied, we want to make it clear that, let us say X bookstore was guilty of a misdemeanor by the fact that an injection or summons was served upon another bookstore. I would agree that the law would arrive at that result, but it was thought desirable to make quite clear.

Senator Raggio questioned, what does the effect of the service have as far as this subsection by making that person chargeable?

Mr. Daykin replied, in section 7, line 26, we have "the person is guilty of a misdemeanor if he knowingly does various things" this imports the element of knowingly.

Senator Close questioned, has section 5 been tested in the courts?

Mr. Daykin replied, as far as I know there has been no decision from the court of last resort either way. That was put into the statute in Utah and I have seen no decision from that supreme court or elsewhere.

Senator Hernstadt stated, in these cases where all of the money goes back to the city or county from these arrests it seems like it is a bounty type thing, is this then legal and if so why?

Mr. Daykin replied, it is legitimate because the U.S. Supreme Court has said that the judge must not derive a personal benefit from the finding or claiming of guilty. They have never objected to the fact that the fine make its way into the general fund of the community. Nevada of course provides for the violation of the penal laws of the state, they are sterilized as it were, into the state permanent funds, as other fines generally find their way into the general fund. This is merely one more element. It is like seizing a vehicle used to transport narcotics and selling it.

Senator Hernstadt stated, on line 6, this archiac language. It does not take care of the hottest item right now which is video tapes and video discs. Since you specifically say phono record of tape recording the implication is that this is an audio material and the other two terms should be inserted to cover that material. When we had our hearing we were given really gross and obnoxious material (he then presented an issue of Playboy and Playgirl) and asked Frank Daykin is this covered by the Miller standard? Would these ordinary magazines fall under such situations? Is this kind of thing permissible in your opinion?

Mr. Daykin opened to the center fold of Playgirl and stated that it is not blatantly offensive and the centerfold of Playboy is not blatantly offensive, "it may not appeal to my puriant interest. I would think that would not cover either of the items offered in evidence."

There being no further business, the meeting was adjourned.

Respectfully submitted,

APPROVED"


Virginia C. Letts, Secretary

Senator Melvin D. Close, Jr., Chairman

SENATE BILL NO. 267—COMMITTEE ON JUDICIARY

FEBRUARY 27, 1979

Referred to Committee on Judiciary

SUMMARY—Transforms justices' courts to courts of record. (BDR 1-1493)

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 justices' courts; transforming them to courts of record; 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 1 of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2 to 7, inclusive, of this act.
- 3 SEC. 2. 1. *The judge of any district court and the justice of the peace*
- 4 *of any justice's court may appoint one certified shorthand reporter, to*
- 5 *be known as the official reporter of their court, and to hold office during*
- 6 *the pleasure of the judge or justice of the peace appointing him.*
- 7 2. *The official reporter shall, at the request of either party or of the*
- 8 *court in a civil action, and on the order of the court, the district attorney*
- 9 *or the attorney for the defendant in a criminal action, take down in short-*
- 10 *hand all the testimony, the objections made, the rulings of the court, the*
- 11 *exceptions taken, all arraignments, pleas and sentences of defendants in*
- 12 *criminal cases, all statements and remarks made by the district attorney*
- 13 *or judge, and all oral instructions given by the judge. If the court reporter*
- 14 *is directed by the court or requested by either party, he shall, within a*
- 15 *reasonable time after the trial of the case or as may be designated by the*
- 16 *court, reproduce the record or those portions of the record which have*
- 17 *been requested and certify it as being correctly reported and transcribed,*
- 18 *and, when directed by the law or court, file it with the clerk of the court.*
- 19 SEC. 3. *The official reporter of any district court or justice's court*
- 20 *shall attend to the duties of his office in person except when excused for*
- 21 *good reason by order of the court. Any order excusing the official*
- 22 *reporter must be entered in the minutes of the court. Employment in his*
- 23 *professional capacity elsewhere is not a good reason for which a court*
- 24 *order excusing his absence may be issued. When the official reporter of*
- 25 *any court has been excused in the manner provided in this section, the*

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a copy of the complete bill.

ASSEMBLY BILL NO. 141—ASSEMBLYMEN STEWART, HAYES,
HORN, SENA, FITZPATRICK, BRADY, TANNER AND
FIELDING

JANUARY 19, 1979

Referred to Committee on Judiciary

SUMMARY—Prohibits advertisement of prostitution where its practice
is unlawful. (BDR 16-31)

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 crimes against public decency and good morals; prohibiting
the advertisement of prostitution where its practice is unlawful; providing
a penalty; 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 201.430 is hereby amended to read as follows:
2 201.430 1. It [shall be] *is* unlawful for any person or persons,
3 company, association or corporation doing business in this state to
4 advertise [,] *a house of prostitution* in any public theater, or on the
5 public streets of any city or town, or on the public highway, [any
6 resort where females congregate for the purpose of illicit intercourse.]
7 *or in any county, city or town where prostitution is prohibited by local*
8 *ordinance or where the licensing of a house of prostitution is prohibited*
9 *by state statute.*
10 2. Any person or persons, company, association or corporation
11 violating the provisions of this section shall be punished:
12 (a) For the first offense, by a fine of not more than \$500.
13 (b) For any subsequent offense, for a misdemeanor.
14 SEC. 2. NRS 201.440 is hereby amended to read as follows:
15 201.440 Any person, [or persons,] company, association or
16 corporation doing business in this state who [shall knowingly aid, abet,
17 solicit, encourage, permit or allow] *knowingly aids, abets, solicits,*
18 *encourages or allows* any person, [or persons,] company, association
19 or corporation to advertise *a house of prostitution* in their place of
20 business [,] by any device, any roadhouse, or resort where females
21 congregate for the purpose of illicit intercourse,] shall be punished:
22 1. For the first offense, by a fine of not more than \$500.
23 2. For any subsequent offense, for a misdemeanor.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 142

ASSEMBLY BILL NO. 142—ASSEMBLYMEN STEWART, HORN,
SENA, FITZPATRICK, BRADY, TANNER, HAYES, FIELD-
ING AND WAGNER

JANUARY 19, 1979

Referred to Committee on Judiciary

SUMMARY—Creates crime of using minor in
preparing pornography. (BDR 16-30)

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 crimes against the person; creating the separate offense of using a minor in producing pornography; broadening the definition of sexual abuse; providing a penalty; 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 200 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.
3 SEC. 2. *A person who knowingly uses, promotes, entices or permits*
4 *a minor to simulate or engage in or assist others to simulate or engage*
5 *in any performance of sexual intercourse, lewd exhibition of the genitals,*
6 *fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-maso-*
7 *chistic abuse, masturbation, or penetration of any part of a person's*
8 *body or of any object manipulated or inserted by a person into the*
9 *genital or anal opening of the body of another for the purpose of pro-*
10 *ducing a performance, film, photograph or any other representation, is*
11 *guilty of a felony and shall be punished by imprisonment in the state*
12 *prison for not less than 1 year nor more than 6 years, or by a fine of not*
13 *more than \$5,000, or by both fine and imprisonment.*
14 SEC. 3. *A child is not abused or neglected, nor is his health or*
15 *welfare harmed or threatened for the sole reason that his parent or*
16 *guardian, in good faith, selects and depends upon nonmedical remedial*
17 *treatment for such child, if such treatment is recognized and permitted*
18 *under the laws of this state in lieu of medical treatment.*
19 SEC. 4. NRS 200.5011 is hereby amended to read as follows:

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

A. B. 143

**ASSEMBLY BILL NO. 143—ASSEMBLYMEN STEWART, HAYES,
HORN, SENA, BRADY, TANNER, FIELDING AND WAGNER**

JANUARY 19, 1979

Referred to Committee on Judiciary

**SUMMARY—Revises test for obscenity and provides civil remedies.
(BDR 16-29)**

**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 crimes against public decency and good morals; revising the test for obscenity; exempting certain institutions and persons from prosecution for obscenity; providing for an injunction as an alternative to criminal prosecution and for other civil remedies; prohibiting certain displays; providing penalties; 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 201 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 11, inclusive, of this act.
3 SEC. 2. *The provisions of NRS 201.250 to 201.254, inclusive, NRS*
4 *201.256 to 201.265, inclusive, and sections 3 to 11, inclusive, of this*
5 *act do not apply to those universities, schools, museums, medical clinics,*
6 *hospitals or libraries which are operated by or are under the direct con-*
7 *trol of the state, or any political subdivision of the state, or to persons*
8 *while acting as employees of such organizations.*
9 SEC. 3. 1. *The district attorney or city attorney of any county or city,*
10 *respectively, in which there is an item or material which he believes to be*
11 *obscene, may file a complaint in the district court seeking to have the*
12 *item or material declared obscene and to enjoin the possessor and the*
13 *owner from selling, renting, exhibiting, reproducing, manufacturing or*
14 *distributing it and from possessing it for any purpose other than personal*
15 *use.*
16 2. *Those sought to be enjoined are entitled to a trial of the issues*
17 *within 10 days after joinder of issue and a decision shall be rendered by*
18 *the court within 10 days after the conclusion of the trial.*
19 SEC. 4. 1. *If a final judgment declaring an item or material obscene*
20 *and an injunction are entered against its owner and possessor, the judg-*
21 *ment or injunction shall contain a provision directing the owner or*

Original bill is 7 pages long.
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a copy of the complete bill.