

MINUTES OF THE  
MEETING OF THE SENATE COMMITTEE  
ON JUDICIARY

SIXTY-FIRST SESSION  
NEVADA STATE LEGISLATURE  
April 27, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:10 a.m., Monday, April 27, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman  
Senator Keith Ashworth, Vice Chairman  
Senator Don W. Ashworth  
Senator Jean E. Ford  
Senator William J. Raggio  
Senator Sue Wagner

COMMITTEE MEMBER ABSENT:

Senator William H. Hernstadt

STAFF MEMBER PRESENT:

Shirley LaBadie, Secretary

SENATE BILL NO. 271--Provides punishment for racketeering activities.

Assemblyman Jan Stewart advised the Senate Committee on Judiciary that the Assembly committee did not intent to further process A. B. No. 52 which had been previously discussed in committee.

Commander Kent Clifford, Metropolitan Police Department, Intelligence Bureau, advised the committee A. B. No. 52 and S. B. No. 271 were similar bills. He said he would support S. B. No. 271 with some proposed amendments. (See Exhibit C attached hereto.). The gaming industry supports the proposed amendments. Mr. Clifford stated he is only interested in illegal gaming activities and was not concerned with legal gaming which is what the industry had originally objected to.

Chairman Close stated the committee would review S. B. No. 271, section by section for proposed changes and clarification.

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With reference to Section 3, Mr. Clifford stated these activities are the ones suggested because they are most common in connection with racketeering. Numerous gangs are in existence in the Las Vegas area and these crimes are the ones most likely to occur. He said the bill was patterned after the Florida statute which had been passed and upheld in the court. All the crimes listed are felonies.

Mr. Clifford addressed what the bill intends to do. It provides if any two crimes are committed from the list, they have to be proven to be committed by a group involved in a racketeering activity. The list is extensive to cover all areas of concern. The main purpose of this bill is to hurt these criminals financially. The current law does not prevent them from going out and repeating crimes upon release because the monetary gain is so large. He stated he is trying to take the profit out of crime.

Senator Wagner asked if the bill extends the authorization to wiretap. Mr. Clifford answered it is addressed in the last section. It amends the current wiretap law in existence. Under this provision, it would have to be proven to the local district attorney that racketeering activities are being conducted. Then they have to prove that two or more crimes are involved, then the district attorney, if in agreement, would approve and take it to a local district court judge. He also would have to be convinced. There is a double safety valve. If approval is given, it is usually for a 30 day period. He stated he agrees with the current law on the books and follows the provisions of the law. They have to prove that every attempt has been made without the use of the wiretap before the district attorney is approached.

Chairman Close asked what the definition in Section 3, subsection 2 refers to. Mr. Clifford stated it is to cover the records which the illegal bookmakers are keeping or illegal documents in fraudulent selling of real estate.

Senator Raggio had questions regarding Section 10 relating to wiretapping. Mr. Clifford stated the definition of racketeering activity in Section 3, subsection 4 would have to be proven. Senator Raggio asked if there were two forged checks involved, would that be covered. Mr. Clifford stated in his opinion, it would not fall under the act. Chairman Close stated he recognized the intent of Mr. Clifford in the bill but needed a definition which is applicable statewide.

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Mr. Bryan Hutchins, Attorney General office, Criminal Division, stated he had been assigned to be legal counsel for the law enforcement assistance department, in that capacity, he worked on A. B. No. 52, the bill similar to S. B. No. 271. He said the purpose of this bill is to punish organizations involved in criminal activity in the state.

Mr. Hutchins stated in reference to "two crimes", it could cover two forgeries as referred to previously. Chairman Close stated the bill reads "engaging", it does not say convicted. Mr. Hutchins stated that is correct, the burden of proof would be the same, both crimes would have to be proven beyond a reasonable doubt. Chairman Close asked if he had been convicted of one crime and engaging in another, would the original one have to be proven again. Mr. Hutchins stated yes. A higher standard is required to prove racketeering activities. Mr. Clifford stated this definition was taken from the Florida statute which used the Federal statute and incorporated it in the bill and S. B. No. 271 incorporates both.

In discussion of "two crimes", Mr. Hutchins stated it could be the same type of crime, the distinction is two crimes are being proven, but also proving racketeering activities which shows a common element. Senator Keith Ashworth questioned the five year period. Mr. Hutchins stated that would be another problem with the prosecution because the jury or judge would have to determine whether certain incidences no matter how far apart they are, were in fact, connected. If the time period is narrowed down, a criminal organization which has been discovered for one crime, may wait for that period to commit another crime.

Chairman Close asked if Mr. Hutchins had a copy of the Florida act. Mr. Hutchins stated he did not have a copy in his possession. Chairman Close stated the definition of "racketeering activity" was too broad. Mr. Hutchins stated there is nothing in the bill which says that someone is being punished if he commits two crimes. To punish, you have to proceed under Section 6 and that states what is unlawful.

Senator Raggio stated he had a problem with the defining of limitations so it is not misused. Mr. Hutchins stated that is a problem and the attorney general would want an amendment on this. They do not want to punish, per se the two crimes, they want to make it unlawful for a person to receive any proceeds derived from racketeering activities who has the criminal intent. Also it is unlawful through racketeering activities or collection of an unlawful debt to acquire or maintain any interest or control of any enterprise dealing in real property

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Senator Wagner asked about the list of definitions, she felt it was too broad. Mr. Hutchins stated the list does not cover all felonies, as previously stated. Mr. Clifford stated he had been under the impression they were and was what he had requested in the bill, that they could collect on those only considered felonies.

Chairman Close stated the Florida Statutes use the term "the pattern of racketeering" rather than racketeering activity. Mr. Hutchins stated the federal courts have construed the pattern to mean at least two acts. They have incorporated case law into this definition to clarify the law. He said the federal statute is much broader than this statute. Chairman Close itemized the list in the Florida Statutes for the committee.

Mr. Clifford stated, in regard to Section 5, there have been seven homicides in Clark County over the last two years relating to loan-sharking activities, this was done as an enforcement measure by the criminal so others would take notice. Chairman Close stated Nevada has no usury and if this suggestion is not adopted on the interest rate, how would loan-sharking be combated in Nevada. Mr. Clifford stated if there is no usury bill, they would be unable to.

Senator Keith Ashworth stated some language needs to be adopted to protect the legal gaming business, which is the collection of an unlawful debt. Gaming debts have never been declared legal in the State of Nevada. This would put markers in this class. Mr. Clifford stated he had no objection, he did not want to get into this area. He said the proposed amendment should take care of this issue. (See Exhibit C attached hereto). What this would do is take out the wiretap provisions for the extortion or collection of credit. This would eliminate the marker business. He stated in talking to the gaming industry, the only problem was that since markers were never declared legal debts, this might get into that area.

Senator Keith Ashworth stated Section 6 needed to be clarified also as to the collection of an unlawful debt, it goes back to the marker situation. Chairman Close stated that could be covered by language that a debt not issued by a licensed gaming authority, be drafted.

Chairman Close stated he did not feel Mr. Clifford had told the committee what the bill actually does or what is intended. He did not see where you have to prove two separate crimes in this proposed bill. Mr. Hutchins answered that nothing in the federal

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statutes or Florida statutes says that either, it is case law. In engaging in two crimes, you have to prove beyond a reasonable doubt the fact that those took place, whether or not a person has been convicted of a crime in the past. That is part of the burden of proof for the prosecution in bringing any racketeering prosecution.

Chairman Close stated Section 6, subsection 4 was too broad. Mr. Clifford stated when this is taken to court, these items will have to be proven.

Discussion of the committee resulted in a change of language on line 27 to read and, rather than or.

Chairman Close stated in reviewing the Florida statute with regard to Section 8 of S. B. No. 271, it is a civil remedy, not a criminal remedy in Florida. It provides for any circuit court, but line 35 of S. B. No. 271 provides for the district court. He asked why Florida adopted this as a civil remedy where S. B. No. 271 as drafted is a court acting as a criminal court. Mr. Hutchins stated he did not recall the Florida statute, but this section gives powers to district courts which they may not presently have. He stated this is a clarification that district court could enjoin violations and order penalties described above in the bill and below in the civil remedies. Chairman Close asked if this is a separate civil proceeding. Mr. Hutchins said all of the things that can be brought in one criminal trial is covered in Section 7, that could be in a criminal trial. All of the civil penalties on page 4 and 5, would be a separate proceeding.

Senator Raggio asked for a definition of "administrative inspection warrant" in Section 8, subsection 3 (a). Mr. Hutchins said this would refer to the inspection warrants for health and safety violations of manufacturing plants and so forth. Senator Raggio asked if this could be found in the law regarding administrative inspection warrant. Mr. Hutchins stated he thought so, it would probably be issued by a magistrate or judge.

Senator Wagner asked Mr. Clifford why he chose the Florida law over others presently in effect. He answered he had talked with the attorney general in Florida and it was indicated to him they had been very successful with the law.

Chairman Close asked if under Section 6, is it required to have a conviction under the racketeering section. Mr. Hutchins stated under case law in the federal statutes, one is not required, there is a separate burden of proof.

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Senator Wagner asked the definition of an estoppel in Section 8, subsection 8. Senator Raggio replied, it is some act or circumstance the occurrence of which prevents someone from pursuing a claim. Mr. Hutchins added if a person has been convicted in a criminal proceeding, he cannot deny any of the charges which have already been proven beyond a reasonable doubt.

Chairman Close asked for the reasons of the involvement of the attorney general in Section 8, subsection 9. Mr. Hutchins replied in subsection 5 and also 9, the jurisdiction of the attorney general is not expanded or restricted in anyway, it states when he does have jurisdiction over criminal proceedings, he can institute civil proceedings under this section. NRS 228 describes the powers of the attorney general, it says he can be requested to prosecute or assist the local district attorneys.

Senator Wagner asked if Section 20 regarding wiretapping was being extended. Mr. Hutchins replied it gives the investigators a tool in investigating racketeering which is difficult to prove. This says any felony can be investigated or offense which is made a felony by the provisions of this act and the only things made a felony are listed under Section 6 of this act, also Section 4 which relates to usury. Anything which specifically says there is a penalty and a felony is involved, that would be covered under the wiretap provision.

Chairman Close stated the lenders had proposed an amendment to S. B. No. 271 regarding the usury section. He would consider it in the redrafting of the bill.

Mr. Clifford stated his proposed amendment 4 Exhibit C, if it does not refer to markers, then he requested that the bill not be amended to read as such. Chairman Close stated if the bill is passed, an exception could be provided throughout for markers by a licensed gaming establishment.

Mr. Clifford summarized his support of the bill by saying all the things happening because of racketeering are taking a great toll on the community and this is why he requested the passage of S. B. No. 271.

Mr. Hutchins stated the attorney general has not been the sponsor of A. B. No. 52 nor S. B. NO. 271, however the attorney general does support the concept of the bill.

Mr. Hutchins stated there were some specific problems with S. B. No. 271 which he would address. The bill says that a person can

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be convicted of racketeering when he conspires to commit several of these crimes. There is a legal problem in that a conspiracy statute already exists in Nevada. Something is needed to make it clear to which statute a person would be subject. He advised the committee he had drafted an amendment to A. B. No. 52 to the conspiracy statute which states if the conspiracy is an act subjecting a person or persons conspiring to liability for participation in the racketeering, then he would be subject to punishment according to that statute.

Mr. Hutchins referred to extensive list of crimes listed, the federal statute includes all felonies. Chairman Close asked which of the list were not felonies. Mr. Hutchins stated on page 2, (bb), (cc), (gg), (hh), and (ii), would either be a felony or misdemeanor depending on types of possession. He felt some additional crimes could be included, such as assault and battery when a weapon is used or certain types of violent types of assault and battery, also statutory sexual seduction may be included. He felt some of the crimes listed are vague such as page 2, line 1, line 3, lines 4 and 5. Some of these areas need to be more specific. Additionally some of the crimes are over-broad. Line 7, with relation to violation of chapter 463 should be more specific, line 11 should also be included. These should refer to a specific statute.

Mr. Hutchins stated on page 3, line 22, this should be cleared up so a person would not be punished for attempting to violate some of these crimes. He suggested if it is clear it relates to the crimes already described in Section 6, there is no problem. Chairman Close stated this section is too broad and should be changed.

Mr. Hutchins stated there are some good provisions such as civil and criminal which were included in the redraft of A. B. No. 52. He had researched the federal statute and Arizona statute and clarified the language. He suggested these be used in S. B. No. 251.

Chairman Close suggested a redraft of the bill be prepared from the comments received in the hearing and present them to the committee. Mr. Clifford and Mr. Hutchins stated they would work together along with Mr. Robbins Cahill, Nevada Resort Association.

Mr. Cahill stated they support the intent of the bill but had suggested some of the proposed amendments. He was concerned with the last section and the interpretation of wiretapping. Time had been devoted to this during the last session, by the interium committee on gaming and by this session. This may open up the

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area wider than intended. He stated he would work with the sponsor of the bill and the attorney general to work out an understanding on the proposed bill.

The following bill drafting request was presented and received for committee introduction.

BDR 41-1293 (S.B. 610)

Clarifies applicability of licensing requirements where gaming interest already subject of license is placed in trust.

There being no further business, the meeting adjourned at 10:30 a.m.

Respectfully submitted:

Shirley LaBadie  
Shirley LaBadie, Secretary

APPROVED BY:

Mel. D. Close  
Senator Melvin D. Close, Chairman

DATE: April 29 1981



SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Monday, Date April 27, Time 8:00 a.m.

S. B. No. 35--Redefines "cheating" and increases penalties for gaming offenses.

S. B. No. 271--Provides punishment for racketeering activities.

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: April 27, 1981

EXHIBIT B

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME

ORGANIZATION & ADDRESS

TELEPHONE

Ray Bellard  
11

Clark Co DAs office  
11

Amendments to S.B. 271

EXHIBIT C

1. Amend Section 3, page 2, lines 7-8 to read as follows:

"(w) Any unlicensed gambling activity in violation of Chapter 463 of  
of NRS;"

2. Amend Section 3, page 2, line 49 to read as follows:

"(b) In unlicensed gambling activity that is violative of Nevada or  
federal law."

3. Add as a new subsection 12 to Section 8 on page 5, following line 37  
the following language:

"(12) Nothing contained in Section 8 shall deprive a secured creditor  
of the defendant of any rights, remedies or interests."

4. Delete Section 9 on page 5 and where references to "sections 2 to 9"  
appear throughout the bill substitute "sections 2 to 8."