

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVEAD STATE LEGISLATURE
April 28, 1981

The Senate Committee on Judiciary was called to order by Chariman Melvin D. Close, Jr., at 8:00 a.m., Tuesday, April 28, 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, Jr., Chairman
Senator Keith Ashworth, Vice Chiirman
Senator Don Ashworth
Senator Jean Ford
Senator William J. Raggio
Senator Sue Wagner

COMMITTEE MEMBER ABSENT:

Senator William H. Hernstadt

STAFF MEMBER PRESENT:

Sally Boyes, Secretary

SENATE BILL NO. 35:

Redefines "cheating" and increases penalties for gaming offenses.

Mr. Bruce Laxalt, District Attorney's Office, Reno, stated, by way of introduction this bill was an out-growth of the hearings of the interium committee on gaming. There were hearings on this bill before and utimately it went back to Mr. Daykin's office; we have Senate Bill No. 35 as a result of that.

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Basically the goals of the bill are:

1. To increase the penalties for gaming crimes.
2. Clear up the confusion and redundancy in the present version of Chapter 465.
3. Clear confusion with the difference between actual cheating in casinos and actual stealing from gambling games at casinos.

An attempt has been made in this bill to define cheating for the first time. These definitions of the gaming crimes are based on the definition of exactly what it is to cheat as opposed to what the present bill does-merely enumerating 1800 ways to cheat without defining exactly what it is to cheat. It should be pointed out very briefly the importance of this legislation, basically as Mr. Jefferson knows, there are many gaming cheats around and there are a few, one who was prosecuted and is in the Nevada State Prison who was able to take \$5000 a day out of casinos from slot machines without any problem. It is a very definite problem. With respect to Section one of the bill, this is the basic definition of a gambling game; anything that you can gamble at, including a slot machine and that should be pointed out.

The amendment on line three, page one of the bill adds, "any electronic device" in order to make clear that the newer electronic games that are coming out are, in fact, included within the definition of gambling game. That is the only amendment to the existing law that does not exist in Section one. Section two is the enforcement asked if the word gambling was allowed to be used. Section three of the bill deals with definitions. This will be an attempt to define what it means to cheat. This would be an amendment of the language of Senate Bill No. 35. Presently cheat is defined as "to alter the random selection of criteria which determines either the result of a game or the amount or frequency of payment" in a game. Because the selection of criteria is often not random but is, in fact, established by computer check or any other type of pre-established frequency of payment, line 18 of page one should be amended to read "cheat means to alter a random or otherwise pre-established manner or selection of criteria". Line 18, page one; "cheat means to alter the random", and then add after random "or otherwise pre-established manner of".

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Senator Keith Ashworth asked, if an electronic game does not have a random selection in predetermining how often it is to pay.

Mr. Laxalt stated that is the state of existing technology; a computer chip is put into a machine or a bank of machines which establishes a 97% payout.

Senator Keith Ashworth stated that gives the connotation there is not a random selection; there is a predetermined time when it is going to hit.

Mr. Ray Jefferson, District Attorney's Office, Las Vegas, stated he believed it was random within a predetermined time. What is trying to be conveyed is that if words to that effect are not in the bill, a competent defense attorney could say there is no random selection here, this is a predetermined criteria as a result of a computer chip and, therefore, it does not fall within the definition and there is no crime.

Senator Keith Ashworth stated that device itself would have a problem if it did not have a random selection.

Mr. Laxalt stated Mr. Jefferson is correct, it is, of course, random within a predetermined payout scheme.

Senator Don Ashworth stated the payout is random within a limit.

Mr. Laxalt stated the goal here is to basically define the word cheat for use in a criminal prosecution.

Senator Keith Ashworth stated he agreed that definition should be in the bills.

Mr. Laxalt stated a card game does not have a predetermined criteria, or the roll of the dice; it is entirely random.

Senator Keith Ashworth stated, why could there not be two definitions, one for cheating where there is a random selection and one for cheating a machine.

Mr. Jefferson stated this is not speculation. Competent defense attorney's have already said what would happen should an unaltered definition be in the bill.

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Senator Close asked what would happen if random were deleted, and Senator Ford asked how would this definition apply to something like poker?

Mr. Laxalt stated the random selection of criteria in a poker game is the result of the shuffling of the cards and distribution of cards to various players. Defeating that criteria would be accomplished by peeking at cards or having an ace up your sleeve.

Mr. Jefferson stated dealing seconds or marking the cards would defeat that.

Senator Ford asked if this was aimed at employees within the system who cheat or the public or both.

Mr. Laxalt stated this was aimed at everybody.

Senator Ford stated she could not see how this would apply to all the games listed. There are established rules for each one of the games as well as criteria; would a rule be just as applicable.

Mr. Jefferson stated established rules are a violation of those rules, they are not commissions to crime; that is the problem there.

Mr. Laxalt stated the essence of cheating opposed to stealing from a gambling game is defeating the random or otherwise pre-established criteria for determining who wins.

Senator Keith Ashworth stated he agreed with Senator Close's idea of resolving the problem by taking out random and not putting in "or otherwise", "computerized" or things like that.

Senator Raggio asked why "to alter the rules or selection of criteria which determines the result of gaming" could not be used in the bill.

Mr. Laxalt stated the problem was there are a lot of rules in gaming the violation of which does not automatically end up in cheating.

Senator Close asked Mr. Jefferson and Mr. Laxalt to discuss with Frank Daykin the proper language on this bill.

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Mr. Laxalt stated Section four basically deals with penalties. The conviction of a second offense for the violation of the chapter, either by cheating or stealing would prohibit the trial court to suspend sentence or grant probation; there should be mandatory prison time for a second gaming offense which has been charged as such. By the time a gaming cheat is caught the first time, he has been at it for many many years. One man took approximately 7 million dollars out of Nevada slot machines over 8 years. He was finally caught but could not be prosecuted fully because it was his first offense; he received probation. This was an extreme case, but by the time a gaming cheat is caught on a first offense he usually has been at it for a while. By the time he is caught the second time the person has made a living off the industry for quite some time. Should a gambling cheat be caught and prosecuted a second time, it should be a non-probational offense. It should be pointed out that the defense would have to be alleged as a second offense.

Senator Don Ashworth asked if the only difference between the first and second offender is the probation and Mr. Laxalt stated yes, and in addition, Section four was meant originally to make clear that like the crime of escape, the attempt to violate the chapter would in fact be punished exactly like a completed act. Section two, lines nine through 12 of page two does not do that. All that is presently stated is existing law applying to principals and accomplices.

Mr. Laxalt suggested the following change in Section two, line 11, "each shall be punished for the", strike "violation" and insert "completed act". That should be the intent.

Senator Close asked what if the act was not completed and Mr. Jefferson stated just trying would be enough.

Mr. Laxalt stated each shall be punished for the completed act even though there was only an attempt.

Mr. Jefferson stated the law says, should a person try to escape from prison, even though the escape was not carried out, a person is still punished for the offense as though it was completed. Mr. Laxalt suggested that after the word "punished" the word "as" be inserted.

Mr. Laxalt stated section five is basically a redraft of

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N.R.S. 465.070. Basically Section five and six are new and the attempt has been made to define the crimes; N.R.S. 465.070 defines the various ways a person can steal from a gambling game as opposed to N.R.S. 080 and N.R.S. 465.083, cheating at a gambling game. He stated there are two ways a person can be illegal in a club and make money at it: 1) to defeat the random selection of criteria, or 2) go into a machine and drop the hopper.

Under N.R.S. 465.070 the attempt has been made to define three ways stealing can be accomplished. Section one of N.R.S. 465.070 basically will be of minimum application and will apply essentially to the club; that is to alter or misrepresent the outcome of the game. Section two, to place a bet after acquiring knowledge of the game, etc., applies to the past posting situation. Section three should be amended to read "to claim, take, or attempt" and then continue with the existing language. He stated, "based upon the outcome of the game" should be struck and "in or from a gambling game" should be inserted and then continue with the existing language

Mr. Laxalt went on to state the effect would be to outlaw free play of the machine, handing off in a card game and dropping the hopper. This would be the stealing provision. He stated Section six should be amended to take all reference to specific games out of the bill. The term "gambling game" would be substituted. Section "B" should be struck from the bill and Section "C" also; they are repeated further into the bill. Lines three and four on page three should also be deleted.

Chairman Close excused Senators Ford, Wagner and Don Ashworth to work as a subcommittee on guardianship. Senators Raggio, Keith Ashworth and Chairman Close would remain as a subcommittee to hear the bill.

Subsection two, beginning at line 10, the words "gambling game" should be substituted for "slot machine"; the language after "designed to" should read "be played with, to receive, or to be operated by". In lines 15 and 16 the words "gambling game" should be inserted for "slot machine". Line 22 should read "it is unlawful to use other than lawful coin" and "to violate the provisions of this chapter" that would include both cheating and stealing. Line 11 should also include "or authorized tokens or chips" before the words "lawful coin".

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Subsection three, line 23 which reads "while on the premises" should be stricken and should read "it is unlawful for any person who is not a fully authorized employee of a licensee acting in furtherance to have on his person or in his possession any device intended for use in the violation of the provisions of this chapter". Section four applies to keys and the only change would be on line 36, inserting the words "gambling game" for "slot machine" and adding "suitable for opening, entering, or affecting the operation of" and gambling game. In Section seven, N.R.S. 465.083 is deleted and inserted instead is "it is unlawful for any person to cheat". Section eight deals with the instruction and method of teaching. The amendments should be as follows: there should be a stipulation in regard to control agents having the knowledge of cheating; could only have any cheating device in their possession while in the course of their employment.

Mr. Jefferson stated a man or an employee that was authorized in a hotel was conducting a school to educate dealers.

Chairman Close stated if someone were to go into a club and saw this type of thing there could be a great deal of confusion over it.

Mr. Jefferson stated it could cause a potential problem.

Senator Keith Ashworth stated the employees should be protected in the scope of their employment. Mr. Laxalt agreed there should be some consideration made to handle that situation. Mr. Laxalt stated on lines 29 and 30, strike "which may be used" and insert "intended for use".

Senator Raggio stated "distribute" should also be added in line 18. Subsection two they requested to read continuously with the knowledge or intent that such information may be used to violate the provisions of this chapter. Mr. Jefferson stated if a school would be run for employees to learn how to spot a cheater it would not be used for violations of the provisions of this chapter; therefore, there would be no provision for prosecution. Mr. Laxalt stated a comma would be inserted and the sentence would continue as stated.

Chairman Close stated the language was very limiting and Mr. Laxalt stated there was a problem because of the constitution.

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Mr. Jefferson stated line 38 of N.R.S. 465.085 should also be included and again on line 43. Mr. Laxalt stated it would be more effective to just state N.R.S. 465 instead of listing specific statutes. Mr. Jefferson stated the same problem existed on page five, lines nine and 10.

Mr. Laxalt stated Section 10 deals with registration as a convicted person and makes irrelevant changes.

Mr. Jefferson stated N.R.S. 465.030, 465.040, 465.050 and 465.060 are covered under other existing law, therefore, they are not needed in this bill. Chairman Close stated in Section five, page two, that was in regard to the steering of people into a game. Mr. Jefferson stated he has only seen one case of this in the last eighteen years. Chairman Close asked how this would be prosecuted if this clause is removed from the bill. Mr. Laxalt stated should there be a person who brought a pigeon in and he knew there was to be a violation of the N.R.S., it is illegal to cheat; this would make that person a principal of that offense. The only problem would be, has cheating been defined clearly enough to state that cheating only takes place in a licensed atmosphere. The thing that is not handled in this bill is the possibility of having a private game that is rigged.

Senator Raggio asked that a special section be written pertaining to obtaining money under false pretenses. Chairman Close asked that Section five be entirely reviewed.

Mr. Laxalt stated that line 22 should read "any person who knowingly entices or induces another in any pretense, to go to any place where any gambling game is being conducted or operated, is in violation of the provisions of this chapter".

Chairman Close stated the meeting was now a subcommittee consisting of Senators Raggio, Keith Ashworth and Chairman Close.

SENATE BILL NO. 429

This bill regulates the sale of time-share estates and time-share licenses.

Mr. Dave Thompson, Plaza Resort Club, Reno, stated Section 47, subsection one, revolves around the land sales phrasing. Section 48, N.R.S. 90 is about securities and N.R.S. 119 is land sales.

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Chairman Close asked what was meant by a time-share not being a security. Mr. Thompson stated there has been some question in the past whether the time-share licensed type programs were possibly selling for a profit and whether there may be a security from the time-share.

Senator Raggio asked where the exceptions came from in Section 49. Mr. Thompson stated some of them came from the land sales act; the group reservation came from the model time-share act. The group reservation clause was amended as in Exhibit C. Senator Raggio stated the number 15 did not need to be in that subsection and instead of hotels, lodging facility could be inserted.

Mr. Thompson stated the intent of this was to exclude a situation where no sale was taking place. Mr. James Wadhams, Department of Commerce, stated the public offering statement must be kept accurate at all times. That is the reason for the 15 day time period in Section 50. Section 51 should be changed to six years instead of three and the number one should be deleted.

Mr. Peter Smith, attorney, stated there was no language in the public offering statement, Section 38 and 39, that require the division to do anything with amendments; the second problem is that there is no rescission period set up for material change for the people who have already bought property. They have no right to cancel. Should a foreclosure proceeding begin, those people have lost all rights to cancel the contract. Mr. Wadhams stated the developer has been asked to mail out any changes; at that time a rescission would be constituted.

Senator Raggio asked if a material change would affect in some way, a purchase. Mr. Thompson stated yes.

Mr. Richard Dreschsler, Plaza Resort Club President, stated the concept of a rescission period bothered him every time there was a material change because there are numerous changes that could happen in a short time period.

Mr. Jim Wadhams, stated Sections 39 and 40 could be amended to include "the division shall, before issuing any public offering statement or amendment"; this would make it clear that the division has to review the request.

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Chairman Close asked what would happen between the time of a request for a change and the time it is approved. Mr. Wadhams stated as he understood it, should a material change occur, the public offering statement would place the developer at risk for misrepresentation. As soon as a material change occurs, there is a period of 15 days or less for the division to review the change and bring the statement to correspond with the material facts.

Senator Raggio stated, under general contract laws rescision is available under certain classified circumstances; when misrepresentation is shown at the time of entering a contract, that would give a right of rescision under the contract.

Mr. Peter Smith stated there was a problem with the language in Section 47 and Section 51. The three day period should be stated in both sections. The committee agreed to add the three day limit to both sections.

Mr. Smith stated Section 53 should state that some one should be responsible for overseeing what selling people are saying. Senator Raggio asked if the language was generally accepted agency law. Mr. Smith stated the scope of his employment covers the sales activities. Mr. Wadhams stated he felt there was adequate language to come back on the developer and also the agency law would adequately protect the purchaser from sales activity misrepresentation. Chairman Close stated there should be further consideration on that because the developer should not think he has a shield when he actually does not.

Mr. David Hoy, Plaza Resort Club, Reno, suggested subparagraph one be deleted in Section 54 and have it read "a developer may not make any representation that the property", etc., and take out the word "inspected". Chairman Close stated subparagraph two would include the words other than appears within the offering statement, and subparagraph one would be deleted.

Chairman Close asked if advertising should be reviewed by the board in Section 55. Mr. Thompson stated that should come under the misrepresentation bill rather than have it addressed separately. Senator Raggio asked if the right to review advertising could conform to the public offering suit. Mr. Wadhams stated that was correct.

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Mr. Thompson asked that Section 56 be deleted.

The committee agreed that Sections 57 and 58 were acceptable. The committee agreed that Section 59 had several broad statements and there should be an exception in the statement in regard to the creation of a time-share property.

After lengthy discussion on Section 60, the committee agreed to delete that section because of the unfairness of another mortgage being placed on a time-share property and the time-share owners not being aware of it. Section 61 was also deleted. Section 62, subparagraph eight, "if the period is not potentially infinite" was deleted. Section 63, the words "the division may require" were added at the beginning of the section.

Chairman Close stated he felt the state division should review this bill and make sure that Nevadans are adequately protected.

Senator Raggio stated he felt full disclosure should be available to the purchaser, and a right of rescission should be allowed and some type of review should be available.

Section 64, subsection two, paragraph "C" was deleted because it was covered in Section 63, subsection five.

Senator Raggio stated the word lien should be more specific as to what kind of lien in Section 66. It was agreed that Section 67 would be changed from \$1,500 to \$2,500.

The committee agreed to amend Section 68 as follows: the word "application" was deleted and "public offering statement" was inserted; that part became effective was deleted and "delivered to the buyer" was inserted; subsection three was deleted and subsection four was added to give the right to seek rescission.

Section 69 deleted the words "except as provided in subsection two"; subsection two was deleted, paragraph "A" was deleted and paragraph "B" was changed to subsection two; the word "intentional" was changed to material.

Mr. Peter Smith stated the offenses in the bill were of a civil nature, not a criminal nature.

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There being no further business, Chairman Close adjourned
the meeting at 12:30 p.m.

Respectfully submitted:

Sally Boyes

Sally Boyes, Secretary

APPROVED BY:

Melvin D. Close, Jr.

Senator Melvin D. Close, Jr., Chairman

DATE: *May 15, 1981*

SENATE AGENDA

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Tuesday, Date April 28, Time 8:00 a.m.

S. B. No. 429--Regulates sale of time-sharing estates and time-share licenses.

SENATE COMMITTEE ON JUDICIARY

DATE: April 28, 1981

PLEASE PRINT	PLEASE PRINT	PLEASE PRINT	PLEASE PRINT
NAME	ORGANIZATION & ADDRESS		TELEPHONE
Peter Smith	Bob W Mosser - Counselor		
DAVE COOK	TOUREX L. V.		
ANDREW BROWN	Doughs Court		
Clare Johnson	Claremont Club		
Jean P. Moore	Real Estate Division		885-4250
TIERRE D'ARMENT	PLAZA RESORT CLUB, Reno		323-1069
DAVID HOY	" " " "		796-2000
M Van Kirk	Private citizen		
Thylen Hume	Real Estate Division		885-4289
Jim Wedham	Department of Commerce		885-4250

SENATE BILL NO. 429—SENATOR RAGGIO

March 18, 1981

Referred to Committee on Judiciary

SUMMARY—Regulates sale of time-share estates and time-share licenses. (BDR 10-495)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

Explanation—Matter underlined is new; matter in brackets [] is material to be omitted.

AN ACT relating to property; providing for regulation of the sale of time-share estates and licenses; providing for the rights of developers and purchasers; 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:

Section 1. Title 10 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to [68] 70, inclusive, of this act.

Sec. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to [26] 27, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 3. "Administrator" means the real estate administrator.

Sec. 4. "Developer" means any person who offers to dispose of or disposes of his interest in a time share not previously disposed of.

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Sec. 5. "Director" means the director of the department of commerce.

Sec. 6. "Division" means the real estate division of the department of commerce.

Sec. 7. "Hearing officer" means a member of the staff of the department of commerce whom the administrator has appointed as a hearing officer.

Sec. 8. "Independent parcel" means a parcel of real property which is not part of any project.

Sec. 9. "Manager" means any person, other than all time-share owners or the association, designated in or employed pursuant to the time-share instrument or project instrument to manage the property in which time shares have been created.

Sec. 10. "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire a time share, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a time share in property not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the property is located.

Sec. 11. "Person" means a natural person, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture or other legal or commercial entity.

Sec. 12. "Project" means real property, subject to a project instrument, containing more than one unit. A project may include units that are not time-share units.

✓ Sec. 13. "Project instrument" means one or more [recordable] documents, by whatever name denominated, applying to the whole of a project and containing restrictions or covenants regulating the use, occupancy or disposition of units in a project, including any amendments to the document but excluding any law, ordinance or governmental regulation.

✓ Sec. 14. "Purchaser" means any person, other than a developer or lender, who purchases a time share. [who by means of a voluntary transfer acquires an interest in a time share other than as security for an obligation.]

Sec. 25. "Time-share property" means one or more units or independent parcels subject to the same time-share instrument, together with any other real estate or rights therein appurtenant to those units.

Sec. 26. "Time-share unit" means a unit in which time shares exist.

Sec. 27. "Unit" means that portion of a project which is designated for separate use.

✓ Except as otherwise provided in subsection 28.4
Sec. 28. 1. ^{of laws} This chapter applies to all time shares created in units and independent parcels within this state:

(a) On or after July 1, 1981; and

(b) Before July 1, 1981, with respect to events and circumstances which occur on or after July 1, 1981.

2. Nothing in this chapter affects the validity of, or rights and obligations created by, provisions of any time-share instrument, document transferring an estate or interest in real property, or contract which existed on July 1, 1981.

3. The time-share instrument of any time-share property created before July 1, 1981, may be amended to accomplish any result permitted by this chapter if the amendment is adopted in conformity with the applicable law and with the procedures and requirements specified by the instrument. If the amendment grants to any person the rights permitted by this chapter, all correlative obligations, liabilities and restrictions of this chapter also apply to that person.

✓ 4. [This chapter does not apply to time shares in property located outside this state.] Any project for which a Public Offering Statement has been applied and received, prior to the effective date of this chapter, under the provisions of Chapter 119 of N.R.S., does not require registration under this chapter; but, by January 1, 1982, the developer must submit to the division a written addendum to the Public Offering Statement detailing arrangements for management and operation pursuant to section 63 of this chapter, upon which time the division will re-issue a Public Offering Statement under the provisions of, and subject to the jurisdiction of, this chapter.

The fee for the addendum shall be \$250.00

Sec. 29. Except as provided in this chapter, provisions of this chapter may not be varied by agreement. Rights conferred by this chapter may not be waived. A developer may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or of any time-share instrument.

Sec. 30. 1. The division may adopt regulations necessary for the carrying out and enforcement of the provisions of this chapter.

2. The division may adopt regulations exempting any project from the provisions of this chapter if it finds that enforcement of those provisions with respect to the project is not necessary in the public interest and for the protection of time-share owners and prospective purchasers.

Sec. 31. The division may employ legal counsel, investigators and other professional consultants necessary to the discharge of its duties under this chapter.

Sec. 32. For any proceeding held pursuant to a provision of this chapter, the administrator may appoint a hearing officer from the staff of the department who shall act as his agent and conduct any hearing or investigation which may be conducted by the administrator pursuant to this chapter.

Sec. 33. The administrator or his hearing officer may:

1. Take testimony and other evidence concerning all matters within the jurisdiction of the division pursuant to this chapter;
2. Administer oaths;
3. Certify to all official acts;
4. For cause, issue subpoenas for the attendance of witnesses and the production of books and papers.

Sec. 34. 1. Process issued by the administrator extends to all parts of the state and may be served by any person authorized to serve process of courts of record.

2. A person who serves any process is entitled to receive compensation allowed by the administrator. This compensation may not exceed the fees allowed to a sheriff for similar service.

Each witness who appears by order of the administrator is entitled to receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount must be paid by the party at whose request the witness was subpoenaed.

Sec. 35. 1. The district court in the county in which a hearing is to be held may compel the attendance of witnesses, the giving of testimony and the production of books and papers as requested by any subpoena issued by the administrator.

2. If a witness refuses to attend, testify or produce any papers required by a subpoena, the administrator may report to the district court in the county in which the hearing is pending by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed in the manner prescribed in this chapter;

(c) The witness has failed and refused to attend or produce the papers required by subpoena before the administrator in the cause or proceeding named in the subpoena or has refused to answer questions propounded to him in the course of the hearing, and asking an order of the court compelling the witness to attend and testify or produce the books or papers before the administrator.

3. The court, upon petition of the administrator, may enter an order directing the witness to appear before the court at a time and place to be fixed by the court in the order. The time fixed must not be more than 10 days after the date of the order. The order must command the respondent to show cause why he has not attended, testified or produced the books or papers before the administrator. A certified copy of the order must be served upon the witness. If it appears to the court that the subpoena was regularly issued by the administrator, the court may enter an order that the witness appear before the administrator at the time and place fixed in the order and testify or produce the required books or papers. If the witness fails or refuses to obey the order, the witness may be held in contempt of court.

Sec. 36. 1. The administrator may, in any hearing before him, cause the depositions of witnesses to be taken in the manner prescribed by the Nevada

of Civil Procedure for like depositions in civil actions in a district court of this state and, to that end, may compel the attendance of witnesses and the production of books and papers.

2. The clerk of the district court in the county in which any hearing is held shall, upon the application of the administrator, issue commissions or letters rogatory to other states for the taking of evidence therein for use in any proceedings before the administrator.

3. Any party to any hearing before the administrator may compel the attendance of witnesses in his behalf at the hearing, or upon deposition, upon making request for a subpoena to the administrator and designating the name and address of the person or persons sought to be compelled to attend and testify.

✓
4. The administrator shall classify as confidential certain records and information obtained by the division when such matters are trade secrets, including, but not limited to, lists of prospective purchasers and lists of purchasers with whom a sale has been consummated. This power is subject to the limitations and protective measures of NRS 49.325.

Sec. 37. All money received by the division pursuant to this chapter must be deposited in the state general fund. Money for the support of the division in the carrying out of its duties pursuant to this chapter must be provided by direct legislative appropriation and be paid out as other claims against the state are paid.

Sec. 38. Any developer proposing to offer or sell in this state time shares in a project or independent parcel which is intended to have more than 12 time shares shall submit to the division an application in writing which contains:

1. The name and address of each person who owns or controls an interest of 10 percent or more in the project.

2. The name, principal occupation and address of each officer, director, partner, owner, associate or trustee of the developer.

3. The legal description of the property involved in the project.

chain of title on file in office
4. A statement of the condition of title to the project, particularly including all blanket encumbrances thereon, together with payment terms and any

incidents of acceleration of the encumbrances. For the purposes of this subsection, "blanket encumbrance" means a deed of trust, mortgage, judgment, option to purchase, contract to sell, lien, security agreement, financing statement or a trust agreement affecting real or personal property comprising more than one interest within a project. The term does not include any lien or other encumbrance arising as the result of any tax.

5. A statement of the terms and conditions on which it is intended to dispose of the time shares, together with copies of the instruments which will be delivered to a purchaser to evidence his interest in the project and of the contracts and other agreements which a purchaser will be required to agree to or sign.

6. A statement of the provisions, if any, that have been made for public utilities in the proposed project, including water, electricity, gas, telephone and sewerage facilities.

7. A statement of the use or uses for which the proposed project will be offered.

8. A statement of the provisions, if any, limiting the use or occupancy of the units in the project.

9. A general description of the units, including the developer's schedule of commencement and completion of all buildings, units and amenities or, if completed, a statement that they have been completed.

10. As to all units offered by the developer in the project:

- (a) The types and number of units;
- (b) Identification of units in which time shares have been created; and
- (c) The estimated number of units in which time shares may be created.

11. A statement or reasonable estimate, if applicable, of the amount of indebtedness which has been or is proposed to be incurred by an existing or proposed special district, taxing area or assessment district within the boundaries of which the project, or any part thereof, is located, which is to pay for the construction or installation of any improvement or to furnish

community or recreational facilities to the project, and which is to be obtained by ad valorem tax, by assessment or by a special assessment or tax upon the project or any part thereof.

12. If applicable, any current budget and a projected budget for the time shares for 1 year after the date of the first sale to a purchaser. ~~The budget must include at least:~~

(a) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement;

✓ (b) The projected liability for time-share expenses, if any, by category of expenditures for each time share;

(c) The projected liability for time-share expenses for all time shares; and

(d) A statement of any services not reflected in the budget which the developer provides or expenses that it pays, and whether the developer has provided financial assurances.

13. Any initial or special fee due from the purchaser at time of sale, together with a description of the purpose and method of calculating the fee.

14. A description of any financing offered by the developer.

15. A statement of any pending suits material to the project or the developer of which the developer has knowledge.

16. Any restraints on alienation of any number or portion of any time shares.

17. A description of the insurance coverage or a statement that there is no insurance coverage provided for the benefit of time-share owners.

18. Any current or expected fees or charges to be paid by time-share owners for the use of any facilities related to the project.

19. The extent to which financial arrangements have been provided for the completion of all promised improvements, if such arrangements have been made.

20. Such other information as the developer may desire to present.

21. A completed application for a public offering statement in such form and containing such additional information as the division may require.

22. Any governmental restriction which would prohibit reconstruction of the project in the event of condemnation or destruction which would limit the size or character of the project.

23. The fees prescribed by this chapter.

Take it →
Sec. 39. 1. The division shall, before issuing any public offering statement ^{or investment ~~statement~~} under this chapter to any developer, fully investigate all information placed before it as may be required pursuant to this chapter and, if in the judgment of the division it is necessary, shall inspect the property which is the subject of the application. All reasonable expenses incurred by the division in carrying out such an investigation or inspection must be paid by the applicant, and no [license] permit may be issued until these expenses have been fully paid.

2. Payments received by the division pursuant to this section must be deposited in an investigative account. The administrator shall use this account to pay the reasonable expenses of agents and employees of the division in making the investigation, inspections or reinspections under this section for which the payments were received. The administrator may advance money for such expenses when appropriate.

3. Each expenditure from the investigative account must be audited, allowed and paid as other claims against the state are paid.

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Sec. 40. 1. The administrator shall make an examination of the application ^{and shall} and shall, unless there are grounds for denial, issue to the developer a public offering statement authorizing the sale or lease or the offer for sale or lease in this state of time shares in the project. The public offering statement must contain the data obtained in accordance with section [37] 38 of this act and other information which the administrator determines is necessary to carry out the purposes of this chapter. The administrator may publish the public offering statement.

2. The administrator may deny a statement if he finds that:

The developer has failed to comply with any of the provisions of this
ser.

(b) The sale of the estates or licenses would constitute misrepresentation,
deceit or fraud.

(c) The developer is unable to deliver the title or other interest
contracted for.

(d) The developer has failed to show that the time shares can be used for
the purpose for which they are offered.

(e) The developer has failed to provide in the contract or other writing
the use or uses for which the time shares are offered, together with any
covenants or conditions relative to them.

(f) Provisions for management or other services pertaining to common
facilities in the offering are unsatisfactory.

(c) →

Sec. 41. 1. If the administrator finds that grounds for denial exist, he
shall issue an order so stating to the developer not later than 30 days after he
received the application.

2. If the administrator issues an order of denial, the developer may appeal
to the director who shall, within 5 days after receiving the appeal, determine
whether grounds for denial exist. If the director finds that grounds for denial
exist, he shall confirm the denial.

3. If the director confirms the denial, the developer may request a
hearing. The director shall appoint a hearing officer who shall conduct a
hearing within 30 days after the director received the appeal and either confirm
the denial or order a public offering statement issued.

Sec. 42. If it appears to the administrator that an application or any
amendment thereto is on its face incomplete or inaccurate in any material
respect, the administrator shall so advise the developer within 30 days after
the filing of the application or the amendment. Notification suspends the
effective date of the application or the amendment until 30 days after the
developer files the additional information which the administrator requires.
Any developer[,] who receives a notice pursuant to this section may request a

and the hearing must be held within 20 days after the request is received by the administrator.

✓ Sec. 43. 1. The administrator may issue an order directing a developer to cease engaging in activities for which the developer (is not licensed) has not received a permit under this chapter.

✓ 2. No [unlicensed] developer who has not received a permit and who has violated any of the provisions of this chapter may engage in any activity regulated by this chapter after receiving an order in writing from the administrator directing him to cease doing so and stating that, in the opinion of the administrator, the activity has not been licensed.

✓ 3. Within 30 days after receiving such an order, a person may file a verified petition with the administrator for a hearing, alleging that the order precludes him from engaging in a substantial portion of his business [as a licensee] under this chapter.

4. The administrator shall, within 10 days after receiving the petition, bring an action in a district court of the State of Nevada in the county in which the activity is occurring to enjoin the person from continuing that activity pending the completion of hearings as prescribed by this chapter. The administrator's order to cease must be rescinded upon the entering of a decision by the court or 10 days after the administrator receives the petition unless the administrator brings an action within that time.

Sec. 44. 1. Within 30 days after receiving an order directing him to cease an activity, a developer may file a verified petition with the administrator for a hearing before the administrator. The petition does not require an allegation that the administrator's order precludes the developer from engaging in a substantial portion of a business as a licensee under this chapter.

2. The administrator shall hold a hearing within 30 days after the petition has been filed, unless the party requesting the hearing requests postponement.

3. If, after a request for a hearing, the administrator does not hold a hearing within 30 days or does not render a decision within 45 days after submission of the matter, the order expires.

Sec. 45. 1. Whenever the administrator believes that a person has violated any order, regulation, license, permit, decision, demand or requirement, or any of the provisions of this chapter, he may bring an action in the district court in the county in which the person resides or maintains his principal place of business or, if the person resides outside the state, in any court of competent jurisdiction within or outside the state, against the person to enjoin him from continuing the violation.

2. The administrator may intervene in any action involving a project or a time share if intervention is necessary in the public interest and for the protection of purchasers.

Sec. 46. If the time-share owners are to be permitted or required to participate in any program for the exchange of occupancy rights among themselves or with the owners of time shares in other projects, or both, the public offering statement or a supplement delivered with the statement must fully and accurately disclose information about the program including, but not limited to, the terms, conditions and costs.

Sec. 47. 1. Any purchase of a time share is voidable by either party thereto without penalty for 3 days after ^{the} the date of purchase or the day on which the purchaser receives the public offering statement, whichever is later.

2. If either party elects to cancel a contract pursuant to this section, he may do so by delivering notice thereof to the other party in person or by mailing notice by prepaid United States mail to the other party.

3. The developer shall immediately return all payments which he has received, and the purchaser shall return all materials which he has received in good condition, reasonable wear and tear excepted. If the materials are not returned in good condition, reasonable wear and tear excepted, the developer may deduct the reasonable cost of the materials or the cost of repairing them, whichever is less, and return the balance to the purchaser.

Sec. 48. 1. Any project for which a public offering statement has been applied for and received does not require registration under chapter 90 or chapter 119 of NRS or any other state law which requires the preparation of a public offering statement or substantially similar document for distribution to purchasers.

2. A time share is not a security for the purposes of chapter 90 of NRS solely because the price at which the owner may sell or exchange the time share is not restricted by the time-share instrument.

Sec. 49. A public offering statement need not be delivered to a purchaser in the case of:

1. Any transfer of a time share by any time-share owner other than the developer; *or his agent*
2. Any disposition pursuant to court order;
3. Disposition by a government or an agency of government;
4. A foreclosure or deed in lieu of foreclosure;
5. Disposition of a time share in a project situated wholly outside this state, if all solicitations, negotiations and contracts took place outside this state and the contract was executed outside this state;
6. A gratuitous transfer of a time share;
7. Group reservations *made for 15 or more people as a single transaction between a hotel and travel agent or travel groups for hotel accommodations, where deposits are made and held for more than 3 years in advance.*

Sec. 50. The developer shall request the administrator to amend or supplement the public offering statement within 15 days after any material change in the information required by section (37) 38 of this act. *Buyer's name*

Sec. 51. The public offering statement required to be provided to a purchaser by this chapter must be delivered to and reviewed with each purchaser by the developer or sales representative before or at the time of sale of any 1 time share. The developer shall obtain from the purchaser a signed receipt for the public offering statement and keep the receipt and copies of all documents relating to the purchase on file for at least 3 years after the date of sale. These records are subject to inspection by the division.

Sec. 52. No officer or employee of the division or any association, firm or corporation with which an officer or employee is associated may act as a sales representative of a project.

Sec. 53. The developer is responsible for the acts of each sales representative and any other person whom he employs or engages to represent him if the acts are performed within the scope of the employment or engagement.

Unless he knew or should have known of the acts of his sales representative outside the scope of his employment.

Sec. 54. A developer may not:

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1. Refer to the division or to any officer or employee thereof in offering or selling a time share; or

2. Make any representation that the time-share property, unit or independent parcel has been inspected, approved or otherwise passed upon by the division or any other official, department or employee of the state. *Other than agencies with the approval of the division.*

Sec. 55. The owner, publisher, licensee or operator of any newspaper, magazine, television or radio broadcasting station or network of stations or the agents or employees of any such owner, publisher, licensee or operator of such a newspaper, magazine, station or network of stations are not liable under this chapter for any advertising of any time share carried in the newspaper, magazine or by the television or radio broadcasting station or network of stations, nor are any of them liable under this chapter for the contents of any advertisement.

Not a part of the division's jurisdiction

Sec. 56. 1. Except as expressly modified by this chapter, a time-share estate:

(a) Which confers possession during a potentially infinite number of separated periods of time is an estate in fee simple and has the character and incidents of an estate in fee simple at common law.

not

(b) Which confers possession during 5 or more separate periods of time over a finite number of years which equals 5 or more, including options to renew, is an estate for a term of years and has the character and incidents of an estate for a term of years at common law.

2. Each time-share estate constitutes for all purposes a separate estate in real property.

Sec. 57. 1. Each time-share [estate] project must be [separately] assessed [and taxed] as one property.

2. Notices of assessments and bills for taxes must be furnished to the [manager of the time-share property, if any, or otherwise to each owner of a



time share) resident agent or management agent for the association of time share owners. (A manager is not) The association of time share owners shall be liable for the taxes on a time-share estate project.

3. The aggregate assessed valuation of the time-share estates in a time-share property must not exceed the valuation of a physically similar property not divided into time shares, and the assessed valuation of a property must not be increased because it is used for time-share licenses.

Sec. 58. A document which transfers or encumbers a time-share estate may not be rejected for recording because of the nature or duration of that estate.

except as provided (over)
Sec. 59. A building code or a zoning, subdivision or other ordinance or regulation may not prohibit the creation of time shares or impose any requirement upon a time-share property which it would not impose upon a similar development under a different form of ownership(.); except that the foregoing provisions shall not prohibit local governments from enacting business license regulations regarding time shares or from requiring that time share projects obtain a conditional use permit from the appropriate zoning authorities prior to locating time share projects in a district that is primarily zoned for residential use.

Multistate recorded and 2nd tiered minimum

Sec. 60. 1. A time-share license:

1. 1. 1.
(a) Is a contractual right to occupy premises described in the license at times stated. The contractual right ceases to be effective if the property in which the license otherwise confers a right is sold upon foreclosure of a mortgage or pursuant to a power of sale created by a deed of trust.

(b) Is not a recordable interest. A county recorder may not index a time-share license in a real estate index or with deeds and other conveyances unless the recorder maintains only one series of books constituting his official records.

(c) Does not create a lien or security interest in the property in which the license confers a right, and is not entitled to any priority in any foreclosure, bankruptcy or other proceeding involving the property.

2. Each sales representative or other person who offers to sell a time-share license shall disclose the provisions of subsection 1 in:

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- (a) The offering;
- (b) Each instrument which creates a time-share license; and
- (c) As required by regulations adopted by the division.

ent / Sec. 61. Time shares may be created in any unit unless expressly prohibited by the project instruments.

Sec. 62. A time-share instrument which creates more than *12* ^{*tracks*} time shares in a time-share property must contain or provide for:

1. A legally sufficient description of the time-share property and the name or other identification of the project, if any, within which it is situated;
2. The name of the county or counties in which the time-share property is situated;
3. Identification of time periods by letter, name, number or a combination of letters, names and numbers;
4. The liability for time-share expenses and any voting rights assigned to each time share, and, where applicable, to each unit in which time shares are not created;
5. If additional units or independent parcels may become part of the time-share property, the method of making them a part of the property and the formula for allocation and reallocation of the liabilities for time-share expenses and of voting rights;
6. Any restrictions on the use, occupancy or alteration of units or the alienation of time shares;
7. The ownership interest, if any, in personal property and provisions for care and replacement;
8. In the case of time-share licenses, the period for which the units affected are committed to those licenses and exactly what occurs in relation to those units at the end of the period, if the period is not potentially infinite; and
9. Any requirements for amendments of the time-share instrument. The time-share instrument may provide for any other matters the developer deems

appropriate.

Discretionary Powers
Sec. 63. A time-share instrument must prescribe in detail reasonable arrangements for the management and operation of the time-share property and for the maintenance, repair and furnishing of units, which may include but need not be limited to provisions for the following: *if not included in instrument*

1. Creation of an association of time-share owners, if such an association is to exist.
2. Adoption of bylaws for organizing and operating the association, if such an association is to exist.
3. Payment of costs and expenses of operating the time-share property and maintaining the units.
4. Employment and termination of employment of the managing agent, if one is employed.
5. Preparation and dissemination to the time-share owners of an annual budget and of operating statements and other financial information concerning the time-share property.
6. Adoption of standards and rules of conduct for the use and occupancy of units by the time-share owners.
7. Collection of assessments from owners to defray the expenses of management of the time-share property, maintenance of the units and reserves for replacement of items that become lost or unusable.
8. Comprehensive general liability insurance for death, bodily injury and property damage arising out of or in connection with the use of units by time-share owners, their guests and other users.
9. Methods, if any, for providing compensating periods of use or monetary compensation to time-share owners if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation.
10. Procedures for imposing a monetary penalty or suspension of time-share owner's rights and privileges in the time-share property for failure of that owner to comply with provisions of the time-share instruments or the rules of the association with respect to the use of the units.

11. Employment of attorneys, accountants and other professional persons, as necessary, to assist in the management of the time-share property.

Sec. 64. 1. A time-share instrument may provide for a period during which the developer or a managing agent selected by the developer may manage the time-share property.

2. If the time-share instrument provides for such a period, it may include provisions for:

(a) Termination of that period by action of the association.

(b) Termination of contracts for goods and services for the time-share property or for units within it which were entered into during that period if such contracts were made.

not (c) ^{if not provided} regular accounting by the developer of the association, if any, as to all matters that affect the time-share property.

Sec. 65. No judicial action for partition of a unit may be undertaken except as may be permitted by the time-share instrument.

Sec. 66. If a lien other than a deed of trust or mortgage becomes effective against more than one time-share estate, any time-share owner is entitled to a release of his time-share estate from the lien upon payment of his proportionate liability for the lien in accordance with liability for time-share expense unless he or his predecessor in title agreed otherwise with the lienor. After payment, the managing entity may not assess or have a lien against that time-share estate for any portion of the time-share expenses incurred in connection with that lien.

Sec. 67. The division shall collect the following fees[.]:

1. For each application for a public offering statement, \$250.
2. For each time share in the project to which an application applies in excess of 50, \$5.
3. For each application for an amendment to a public offering statement, \$250.

U $\frac{500}{750}$

2500

The division may not collect more than \$1,500 for time shares pursuant to subsection 2 for any one application.

Sec. 68. 1. Where any part of the application, ^{public offering statement} when that part became effective, ^{contained in the application} contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, any person who purchases a time share covered by the application from the developer during the time that the application remained uncorrected may recover his damages from the developer in any court of competent jurisdiction unless he knew of the untruth or omission.

2. Any developer or sales representative who sells a time share in violation of this chapter or by means of a public offering statement which contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, is liable to the purchaser of the time share for his damages.

3. The amount recoverable under this section may not exceed the sum of the purchase price of the time share and reasonable appraiser's costs, court costs and attorney's fees.

Sec. 69. 1. Except as provided in subsection 2, any person, who violates a provision of this chapter is guilty of a gross misdemeanor, and, if a partnership, association or corporation, shall be punished by a fine of not more than \$10,000 for each offense.

~~2. Any person who:~~

(a) Sells or attempts to sell in this state any time share by means of intentional misrepresentation, deceit or fraud; or

(b) Obtains or attempts to obtain a public offering statement from the division by means of intentional misrepresentation, deceit or fraud, is guilty of a gross misdemeanor.

3. Any officer or agent of a corporation or member or agent of a partnership or association, who personally participates in or is accessory to any violation of this chapter by the partnership, association or corporation is guilty of a gross misdemeanor.

Sec. 70. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect

other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and, to this end, the provisions of this chapter are severable.

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Senate Bill 429 - Proposed Amendments:

Page 2, between lines 18 and 19, add: "Public offering statement" means that report issued by the division pursuant to section 39 of this chapter.

Page 3, line 10, section 27, add after the word "state" , any other state, or foreign country:

Page 3, lines 25 and 26, section 27 - Delete this paragraph in its entirety.

Page 7, between lines 33 and 34, section 39, add: (g) The developer has failed to demonstrate, to the satisfaction of the administrator, that adequate financial arrangements have been made for the protection of the public.

Page 8, line 33, section 43, after the word "postponement" add: The request for postponement must be in writing and received by the division no less than 5 days prior to the scheduled date of the hearing.

Page 8, line 36, section 43, after the word "expires" add: , except in the event of postponement as set forth in subsection 2 of section 43.

Page 9, line 46, section 50, delete the numeral "1".

Page 10, line 24, section 55, after the word "estate" add: is one:.

Page 10, lines 47 through 50, section 58, delete this section in its entirety.

Page 11, line 19, section 60, after the word "instruments" add: or by local zoning ordinances.

Page 11, lines 42 and 43, section 61, delete "if the period is not potentially infinite;"

Page 13, lines 9 and 10, section 66, delete this sentence in its entirety.