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# ASSEMBLY COMMITTEE ON JUDICIARY



## WORK SESSION DOCUMENT

MAY 2, 2003

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ASSEMBLY JUDICIARY

DATE: 5/2/03 ROOM: 3138 EXHIBIT L

SUBMITTED BY: ALICIA COMBS

1028

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

May 2, 2003

(Please note the list of speakers and summary of the discussion on each measure contained within this document do not represent an official record of the referenced meetings. For an official record, please see the minutes from the meetings of the Assembly Committee on Judiciary, which are available through the Legislative Counsel Bureau.)

The following measures may be considered during the Committee's work session:

- SENATE BILL 40, FIRST REPRINT (BDR 15-887 was requested by the Senate Committee on Judiciary). The bill was heard in Committee on April 30, 2003, and no action was taken.

**Senate Bill 40 prohibits the discharge of a firearm from a structure or vehicle under certain circumstances.**

Proponents/those testifying in support of the bill: Gayle Farley; Kristin Erickson, Nevada District Attorneys' Association; Jim Nadeau, Washoe County Sheriff's Office and Nevada Sheriffs' and Chiefs' Association; Don Henderson, Nevada Department of Agriculture; Robert Beach, State Director, United States Department of Agriculture, Wildlife Services.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to allow felony prosecution for discharge of a firearm within a structure or vehicle.

Proposed Amendments: Mr. Henderson and Mr. Beach proposed the following amendment:

- o Provide an exemption from the provisions for government personnel, in addition to the existing exemption for peace officers. (See page 2, subsection 3, lines 10 and 11). The intent of the amendment is to clarify that government personnel involved in lawful activity cannot be prosecuted under this section. An example was provided of government personnel in wildlife programs who unintentionally shoot and kill an endangered animal (such as a wolf) while lawfully shooting at other predatory animals (such as coyotes).

(A copy of the proposal is attached on blue paper.)

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- SENATE BILL 43** (BDR 4-378 was requested by Senator Terry Care). The bill was heard in Committee on April 15, 2003, and no action was taken.

**Senate Bill 43 adopts the Uniform Child Witness Testimony by Alternative Methods Act.**

Proponents/those testifying in support of the bill: Senator Care; Ben Graham, Nevada District Attorneys' Association.

Opponents/those testifying in opposition of the bill: Lisa Rasmussen, attorney.

Discussion: Testimony indicated the National Conference of Commissioners on Uniform State Laws drafted and recommends the measure to provide procedures for taking the testimony of children in criminal or civil proceedings and permitting a child, for good cause, to testify outside the courtroom and in the immediate presence of a defendant. Concerns were raised regarding the circumstances in which a child's testimony would be provided and protecting the integrity of those proceedings.

Proposed Amendments: No formal amendments were raised during the hearing, although Senator Care noted that the age of the "child witness" under the bill (defined under Section 5) may be an issue considered for possible amendment.

- SENATE BILL 48** (BDR 11-382 was requested by Senator Terry Care). The bill was heard in Committee on April 15, 2003, and no action was taken.

**Senate Bill 48 adopts the revision of the Uniform Child Custody Jurisdiction and Enforcement Act.**

Proponents/those testifying in support of the bill: Senator Care; Frank W. Daykin, Commissioner, National Conference of Commissioners on Uniform State Laws.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the National Conference of Commissioners on Uniform State Laws drafted and recommends the measure to revise the 1968 Uniform Child Custody Jurisdiction Act, which was adopted by every state. The revision brings the original act into compliance with the federal Parental Kidnapping Prevention Act.

Proposed Amendments: The following amendments were proposed:

1. **Clarify the intent of Section 22 Regarding Findings for Courts of Foreign Countries**—Amend Section 22, subsection 3 (page 4, lines 3 through 5) to clarify the intent that Nevada's courts are not required to defer to the findings of a court of a foreign country if the child custody law of a foreign country violates fundamental principals of human rights. Proposed by Assemblyman John C. Carpenter.

2. Definition of the word "person," proposed by Mr. Daykin *subsequent to the hearing to replace the amendment proposed during the hearing*. Mr. Daykin proposes to replace the definition of "person" under Section 14, page 2 (lines 40 through 44) to clarify that, for the purposes of the provisions added by Senate Bill 48, "person" includes governmental entities. Mr. Daykin's proposal is as follows:

Section 14: "Person" includes a government, a political subdivision of a government and an agency or instrumentality of a government or a political subdivision of a government.

~~Sec. 14. "Person" means any of the following:~~

- ~~1. A natural person.~~
- ~~2. Any form of business or commercial entity and any other nongovernmental legal entity, including, without limitation, a corporation, partnership, limited liability company, association, joint venture, business trust, estate, trust or unincorporated organization.~~
- ~~3. A government, a political subdivision of a government or an agency or instrumentality of a government or a political subdivision of a government.~~

3. Application to Orders for Protection Against Domestic Violence—Amend Section 46 of the bill, which authorizes registration of child custody orders from another state, to specify that an order for protection against domestic violence issued by a court in another state or jurisdiction that is registered under Nevada law (NRS 33.090) is not subject to the provisions of Section 46. Proposed by Assemblywoman Barbara E. Buckley subsequent to the hearing.

- SENATE BILL 55** (BDR 13-874 was requested by the Senate Committee on Judiciary). The bill was heard in Committee on April 29, 2003, and no action was taken.

Senate Bill 55 revises the provisions governing the power of a settler and a beneficiary of a trust to alter certain statutory duties, liabilities, privileges and powers of a trustee.

Proponents/those testifying in support of the bill: John Sande, Nevada Bankers Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to allow more flexibility for settlers and beneficiaries with regard to inter vivos trusts, which are more frequently used in estate planning. Testimony indicated the change allowing trustees to sell property under certain circumstances without court approval would only be authorized if the trust instrument specifically created such authority for the trustee.

Proposed Amendments: None

Additional Information: Attached on green paper is a letter received following the hearing on the measure from Don Ashworth, Probate Commissioner in Clark County, expressing concerns regarding the legislation.

- SENATE BILL 70, FIRST REPRINT** (BDR 10-15 was requested by Senator Ann O'Connell). The bill was heard in Committee on April 29, 2003, and no action was taken.

**Senate Bill 70 increases the amount of the homestead exemption from \$125,000 to \$200,000.**

Proponents/those testifying in support of the bill: Senator O'Connell; Jim Wadhams, Southern Nevada Homebuilders Association; Brian Herr, Nevada Association of Realtors.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to increase the amount of the homestead exemption and more accurately reflect the value of homes in Nevada.

Proposed Amendments: Following the hearing, Assemblywoman Barbara E. Buckley proposed amendments to add additional exemptions designed to provide certain protections during bankruptcy proceedings.

1. Attached on pink paper is a chart listing several proposed exemptions for discussion.
2. In addition to the exemptions listed in the chart, Ms. Buckley suggested considering an exemption for automobiles in the amount of \$18,000.

- SENATE BILL 91, FIRST REPRINT** (BDR 15-319 was requested by the Senate Committee on Judiciary on behalf of the Nevada Sheriffs' and Chiefs' Association). The bill was heard in Committee on April 23, 2003, and no action was taken.

**Senate Bill 91 removes the element of knowledge from the crime of selling, giving, or furnishing alcoholic beverages to a person under 21 years of age.**

Proponents/those testifying in support of the bill: Bob Roshack and Stan Olsen, Nevada Sheriffs' and Chiefs' Association; Bruce Nelson, Clark County District Attorney's Office; Van Heffener, President, Nevada Hotel and Lodging Association; Mary Lau, Nevada Retail Association; Laurel Stadler, MADD.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to address a recent Nevada Supreme Court decision. Concerns were raised regarding the language under Section 1, subsection 3 providing an exception to the complete defense to the crime.

Proposed Amendments: No amendments have been submitted since the time of the hearing.

- SENATE BILL 94, FIRST REPRINT** (BDR 39-745 was introduced by the Senate Committee on Human Resources and Facilities on behalf of the Legislative Committee on Health Care). The bill was heard in Committee on April 23, 2003, and no action was taken.

**Senate Bill 94 provides for medical treatment in a medical facility other than a hospital under certain circumstances for certain allegedly mentally ill persons and for medical treatment for certain persons who are under the influence of a controlled substance.**

Proponents/those testifying in support of the bill: Janelle Kraft, Las Vegas Metropolitan Police Department; Kathryn Landreth, Chief of Policy and Planning, Las Vegas Metropolitan Police; Gary E. Milliken, Lobbyist, American Medical Response; Maureen Brower, Westcare; Victoria Riley, Nevada Trial Lawyers Association.

Opponents/those testifying in opposition of the bill: None.

Those testifying with a neutral position on the bill: Marsheilah Lyons, Research Division, Legislative Counsel Bureau.

Discussion: Testimony indicated Southern Nevada's Task Force on Hospital Overcrowding and Mental Health Coalition requested the measure through the interim Legislative Committee on Health Care. The bill is designed to address the increased volume of psychiatric patients in hospital emergency rooms, especially those who are awaiting medical evaluations. Testimony indicated the situation has resulted in a shortage of available emergency rooms that contributes to the divert status in southern Nevada. Concerns were raised regarding the civil immunity for private agencies under Section 2 of the bill.

Proposed Amendments: In response to Chairman Anderson's request for the parties concerned with the civil immunity for private agencies under Section 2 of the bill, the following proposal was submitted:

- o Delete subsection 4 of Section 2 of the bill, which provides civil immunity for private agencies.

- SENATE BILL 105, SECOND REPRINT** (BDR 15-375 was introduced by the Senate Committee on Judiciary on behalf of the City of Reno). The bill was heard in Committee on April 22, 2003, and no action was taken.

**Senate Bill 105 makes various changes to the provisions pertaining to the crime of placing graffiti on or otherwise defacing property.**

Proponents/those testifying in support of the bill: Nicole Lamboley, City of Reno; Richard Bjelke, Sergeant, Reno Police Department; Gabrielle Carr, Reno City Attorney's Office; James T. Endres, National Council to Prevent Delinquency; Fred L. Hillerby, Washoe County Regional Transportation Commission; Jim Nadeau, Washoe County Sheriff's Office and Nevada Sheriffs' & Chiefs' Association.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony discussed the financial impact of graffiti on public and private businesses.

Proposed Amendments: The following amendment was proposed:

- Clarify language allowing aggregation of value of property damaged "*if one or more persons commit the offenses pursuant to a scheme or continuing course of conduct,*" proposed by Assemblyman William Horne. Clarify the language (on page 2, lines 6 and 7) concerning aggregation of value of property damage to specify that only the crimes of the individual offender can be aggregated. The purpose is to prevent an offender from being held responsible for another person's graffiti or tagging.

- SENATE BILL 197, FIRST REPRINT** (BDR 5-633 was introduced Senator Valerie Wiener). The bill was heard in Committee on April 22, 2003, and no action was taken.

**Senate Bill 197 repeals, reenacts, reorganizes and revises certain provisions relating to juvenile justice.**

Proponents/those testifying in support of the bill: Senator Wiener; Judge Dianne Steel; Leonard Pugh, Director, Department of Juvenile Services, Washoe County; Kirby L. Burgess, Director, Department of Juvenile Justice Services, Clark County; Willie Smith, Deputy Administrator, Youth Correctional Services, Division of Child and Family Services, Department of Human Resources; Lucille Lusk, Nevada Concerned Citizens; Katherine Kruse, Associate Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas.

Opponents/those testifying in opposition of the bill: None

Those testifying with a neutral position on the bill: Bradley A. Wilkinson, Principal Deputy Legislative Counsel, Legal Division, Nevada Legislative Counsel Bureau.



Discussion: Testimony discussed the statutory revisions under the measure designed to facilitate navigation of laws relating to juvenile offenders.

Proposed Amendments: None.

- SENATE BILL 199, SECOND REPRINT** (BDR 15-331 was introduced Senator Mike McGinness). The bill was heard in Committee on April 30, 2003, and no action was taken.

**Senate Bill 199 makes various changes to provisions pertaining to firearms to mirror federal statutes.**

Proponents/those testifying in support of the bill: Bob Roshak, Las Vegas Metropolitan Police Department and Nevada Sheriffs' and Chiefs' Association; Assemblyman Lynn Hettrick.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the measure was requested to mirror federal laws pertaining to firearms.

Proposed Amendments: The following amendments were proposed:

1. **Ensure the transfer and ownership of machine guns and silencers that is now legal is not affected by the bill.** The Nevada Sheriffs' and Chiefs' submitted an amendment to clarify that the intent of the measure is not to ban automatic weapons in Nevada. Instead, "the intent was to move illegal possession of a machine gun and silencer from the gross misdemeanor classification to the felony classification."

During the hearing, testimony indicated an amendment is requested to ensure that persons are not prohibited under the provisions of the bill from the possession or transfer of machine guns and silencers that is currently legal under state or federal law. Attached on yellow paper is the proposal to revise **Section 4, subsection 1(b)**, which amends NRS 202.350. However, Mr. Roshak indicated the amendment may need to be broader to accomplish the intent.

2. **Delete prohibition on sale under Section 1 to a person known to be "an unlawful user of, or addicted to, any controlled substance,"** proposed by Assemblyman Carpenter and Assemblyman Horne. (Language suggested for deletion is on page 2, lines 1 and 2.)
3. **Revise provisions governing manufacturing of knives,** proposed by Assemblyman Hettrick. Attached on lilac paper is a proposal from Assemblyman Hettrick to accomplish the following:

- a. **Amend NRS 202.350 to authorize the manufacture of switchblade knives in this state under certain circumstances. Require the board of county commissioners to hold a hearing before the sheriff issues a permit authorizing a person to manufacture or to keep, offer, or expose for sale any switchblade knives at a business located in the county.**
- b. **Specify that a manufacturer of switchblade knives in this state is authorized to sell such knives in this state to:**
  1. A person located in another state, territory or country;
  2. A person who is authorized by law to possess such a knife, for example a law enforcement officer or a member of the military; or
  3. A distributor. If switchblade knives are sold to a distributor, the distributor may only provide or sell such knives in this state to a person who is authorized by law to possess a switchblade knife, for example a law enforcement officer or a member of the military.
- c. **Revise the definition of a "switchblade knife." A "switchblade knife" is defined under existing law (see subsection 8(f) of NRS 250.350, provided below). Revise this definition to clarify that the definition does not include a knife that is held open by a spring or a spring action.**

NRS 202.350 - 8(f) "Switchblade knife" means a spring-blade knife, snap-blade knife or any other knife having the appearance of a pocket knife, any blade of which is 2 or more inches long and which can be released automatically by a flick of a button, pressure on the handle or other mechanical device, or is released by any type of mechanism.

- SENATE BILL 203** (BDR 6-612 was introduced by the Senate Committee on Judiciary on behalf of the Nevada Supreme Court). The bill was heard in Committee on April 30, 2003, and no action was taken.

**Senate Bill 203 enacts provisions concerning the separation and adjudication of certain small claims actions.**

Proponents/those testifying in support of the bill: Judge Ed Dannan, Nevada Judges Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to allow the severance of claims in small claims actions. If any counterclaim or other pleading raises any issue or claim which may not be adjudicated within the jurisdiction of the small claims court, the justice of the peace must separate the issues or claims, adjudicate those issues or claims where the court has jurisdiction, and require those where the court does not have jurisdiction to be filed as separate actions in the justice's court or district court.

Proposed Amendments: None.

- SENATE BILL 205, FIRST REPRINT** (BDR 15-1030 was introduced by the Senate Committee on Judiciary). The bill was heard in Committee on April 23, 2003, and no action was taken.

**Senate Bill 205 prohibits the impairment of a minor by the use of alcoholic beverages.**

Proponents/those testifying in support of the bill: Laurel Stadler, MADD; Sarah Stadler, Youth Coordinator for MADD; Jim Nadeau, Nevada Sheriffs and Chiefs Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to address situations in which minors have already consumed alcohol, which is not covered under existing statutory language prohibiting possession or consumption. Proponents noted that by adding "impairment" to the statutes, youth would be able to receive the evaluations and treatment for substance abuse prescribed in statute.

Proposed Amendments: None.

- SENATE BILL 207 FIRST REPRINT** (BDR 10-940 was introduced by the Senate Committee on Judiciary). The bill was heard in Committee on April 28, 2003, and no action was taken.

**Senate Bill 207 makes various changes concerning conveyances of property and wills and estates.**

Proponents/those testifying in support of the bill: Don Ashworth, Probate Commissioner, Clark County; Matt Torvinen, Nevada Trial Lawyers Association; Rocky Finseth, Nevada Land Title Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to update Nevada's probate statutes. Discussion focused on Section 1 of the measure, which is modeled after legislation in Arizona, and allows an owner of an interest in real property to convey his interest during his lifetime to one or more grantees, which becomes effective upon his death.

Proposed Amendments: The following amendments were proposed during the hearing:

1. **Expenses of personal representative**, proposed by Mr. Torvinen. Amend **Section 19** of the bill, as follows:

(NRS 150.010) The personal representative must be allowed all necessary expenses in the administration and settlement of the estate, and fees for services as provided by law, but if the decedent by will makes some other provision for the compensation of the personal representative, this shall be deemed a full compensation for those services, unless *before within 60 days after his appointment* the personal representative files a renunciation, in writing, of all claim for the compensation provided by the will.

2. **Revise language concerning creation of deed conveying interest in real property effective upon death of the owner**, proposed by Mr. Finseth. Attached on gray paper is a proposal to replace the language under subsection 1 of Section 1 of the bill (page 1, lines 3 through 7) to more closely mirror the language of Arizona's statutes.

- o In particular, Mr. Finseth noted a desire to specify that the deed must be recorded during the grantor's lifetime.
- o During the discussion of the amendment, Mr. Ashworth noted concerns with listing "all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges and other encumbrances." Mr. Finseth agreed to referencing only "liens" as is currently provided under Section 1 of the bill.

- SENATE BILL 297** (BDR 15-28 was requested by Senator Valerie Wiener). The bill was heard in Committee on April 25, 2003, and no action was taken.

**Senate Bill 297 makes various changes relating to personal identifying information.**

Proponents/those testifying in support of the bill: Senator Wiener; Tara Shepperson Ph.D., Executive Director, Nevada Cyber Crime Task Force; Paul Enos, Retail Association of Nevada; Lynn Chapman, Nevada Eagle Forum; Stan Olsen, Nevada Sheriffs' and Chiefs' Association; James Jackson, Consumer Data Industry Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure further strengthens Nevada's laws governing identify theft. Concerns were raised regarding Section 22 of the bill, and its application after January 1, 2006, to machines that electronically print receipts and that were in use before October 1, 2003.

Proposed Amendments: The Retail Association of Nevada submitted the following amendment, with the concurrence of Senator Wiener, after the hearing on the measure:

- o **Date for compliance for cash registers and other machines under Section 22 prohibitions on printing expiration dates and certain digits from credit cards—** Delete the compliance date of *January 1, 2006*, and replace this date with *January 1, 2008*. (See page 7, line 37.)

(A copy of the proposal is attached on salmon paper.)

- SENATE BILL 315, FIRST REPRINT** (BDR 15-435 was requested by the Senate Committee on Judiciary on behalf of the Attorney General). The bill was heard in Committee on April 29, 2003, and no action was taken.

**Senate Bill 315 provides that cigarette vending machines may be placed in public areas only if persons who are under 21 years of age are prohibited from loitering in that area pursuant to certain statutes.**

Proponents/those testifying in support of the bill: Cynthia Pyzel, Office of the Attorney General; Anthony Bandiero, Nevada Petroleum Marketers & Convenience Store Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to expressly ban cigarette vending machines except in gaming areas and bars where children under 21 are prohibited from loitering.

Proposed Amendments: None.

- SENATE BILL 394** (BDR 15-1026 was requested by the Senate Committee on Judiciary). The bill was heard in Committee on April 24, 2003, and no action was taken.

**Senate Bill 394 revises various provisions relating to certain criminal statutes.**

Proponents/those testifying in support of the bill: Kristin Erickson, Nevada District Attorneys' Association; Jodi Tyson, Nevada Coalition Against Sexual Violence.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to address two separate decisions of the Nevada Supreme Court involving the crimes of manufacturing methamphetamines and annoyance of a minor. The measure also adds the luring of mentally ill persons to the existing crime of luring a child, through the use of a computer system or network, with the intent to engage in sexual conduct and replaces the term "obscene material" with the term "material harmful to minors."

Proposed Amendments: The following amendments were proposed:

1. **Expand definition of "sexual offense" for purposes of registration as a sex offender**, proposed by the Nevada District Attorneys' Association. Attached on ivory paper is a proposal to expand the definition of a "sexual offense" under NRS 179D.410 (Section 18 of the bill) to include the following crimes:
  - a. *Sexual conduct between certain employees of school or volunteers at school and pupil pursuant to NRS 201.540;*
  - b. *Sexual conduct between certain employees of college or university and student pursuant to NRS 201.550; and*
  - c. *A conspiracy to commit an offense listed under the definition of a sexual offense (including the two crimes above).*
2. **Revise list of chemicals under Section 29**, proposed by Assemblyman Jason Geddes. Amend Subsection 4 of Section 29 (pages 29 and 30) to delete the word "optical" as a modifier to "isomers" in order to broaden the chemicals referenced.
3. **Add prohibitions relating to the manufacture of the drug ecstasy to Section 29**, proposed by Ms. Tyson.

- SENATE BILL 433** (BDR 4-427 was introduced by the Senate Committee on Judiciary on behalf of the Nevada District Attorneys' Association). The bill was heard in committee on April 23, 2003, and no action was taken.

**Senate Bill 433 revises provisions governing the admissibility of certain evidence.**

**Proponents/those testifying in support of the bill: Bruce Nelson, Clark County District Attorney's Office; Tracy Birch, Las Vegas Metropolitan Forensic Laboratory.**

**Opponents/those testifying in opposition of the bill: James Jackson, Nevada Attorneys for Criminal Justice.**

**Discussion:** Testimony indicated that this measure was requested for efficiency in handling reports regarding the presence of alcohol or controlled substances in driving under the influence cases. Concerns were raised regarding whether persons involved in the testing would be required to sign under penalty of perjury. Concerns were also raised regarding the deletion of the facts required to be included in affidavits or declarations or reports under Section 2 of the bill.

**Proposed Amendments:** Mr. Jackson suggested the following amendments:

- 1. Facts Included in Affidavits, Declarations or Reports.** Reinstate the deleted language under subsections 2 through 5 of Section 2 of the bill (amending NRS 50.315). Provide that these documents may also include *any relevant fact*.
- 2. Signing Reports under Penalty of Perjury—**Require that any person signing the reports, which are authorized under the bill, must sign under penalty of perjury, in addition to the current statutory requirements.

AJWS-05-02-03

## S.B. 40—Amendment 2

Offered by the Nevada Department of Agriculture

- 2-9 3. The provisions of this section do not apply to:
- 2-10 (a) A person who lawfully shoots at a game mammal or game
- 2-11 *bird pursuant to subsection 2 of NRS 503.010. [; or]*
- 2-12 (b) A peace officer, or other government personnel, while engaged in
- 2-13 the performance of his/her official duties.
- 2-14 (c) A person who discharges a firearm in a lawful manner and
- 2-15 in the course of a lawful business, event or activity.
- 2-16

**Rational:** The Nevada Animal Damage Control Program (NADCP) is a wildlife conflict oriented, cooperative partnership between the State of Nevada and the U.S. Department of Agriculture. NADCP personnel frequently use shooting as a method for abating or controlling damage to property, resources or threats to public health and safety caused by wildlife. Because of the nature of wildlife/human conflict situations, this shooting routinely involves buildings, vehicles and aircraft.

NADCP is staffed by highly trained and specialized state and federal personnel and the act of shooting to control wildlife species is a function of their official duties. The existing provision in subsection (c) is geared toward businesses or other non-governmental events and/or activities, but is unclear and vague relative to the sanctioned activities conducted by NADCP. Because wildlife damage management activities can be disagreeable to some people or groups, not having a clearly worded exemption could result in unnecessary problems and conflicts in this established program.

**Agency Contact:** Robert H. Beach, State Director, USDA Wildlife Services at (775) 784-5081.

April 3, 2003

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**EIGHTH JUDICIAL DISTRICT COURT**

CLARK COUNTY

200 SOUTH THIRD STREET

LAS VEGAS, NEVADA 89155-0001

CLARK COUNTY COURTHOUSE

(702) 455-4675

DON W. ASHWORTH  
PROBATE COMMISSIONER

April 30, 2003

Assemblyman Bernie Anderson, Chairman  
Assembly Committee on Judiciary  
Legislative Building, Room 3127  
Carson City, Nevada 89701

Re: SB55

Dear Chairman Anderson:

I have been asked by Assemblywoman Barbara Buckley through Allison Combs, Principal Research Analyst for the Legislative Council Bureau, to respond in writing in reference to said Bill. Prior to Ms. Combs contacting me yesterday at the request of Assemblywoman Buckley, I was not familiar with this Bill at all. Ms. Combs at the request of Assemblywoman Buckley contacted me and Mr. Gardner Jolley, the Chairman of the Nevada Bar Legislative Committee for Probate and Trust matters during the year 1999. I was a member of that committee and I am also the Probate Commissioner for Clark County.

First, it should be noted that the amendment requested under this Bill is an amendment to the Uniform Trust Act. Our committee was always hesitant to amend any portion of a uniform act unless there was some cogent reason for that to be done. SB55 would allow a trust to be drafted waiving the requirements as set forth in NRS 163.050.

NRS 163.050 concerns itself with self dealing by a trustee in the performance of his fiduciary duties under the trust. Prior to our committee amendment to this section in 1999, this statute allowed no self dealing by a trustee under any circumstances. After careful consideration our committee proposed the amendment which was passed by the 1999 Legislature which allows self dealing by a trustee to be approved by the court prior to the self dealing transaction taking place. What this amendment accomplished in reality was that a trustee could enter into self dealings but only after a petition had been filed with the court and after interested parties receiving notice of the hearing on that petition. This gave all interested parties the opportunity to come before the court and voice their acceptance of this self dealing transaction or their opposition.

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Assemblyman Anderson  
April 30, 2003

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It should be noted that the courts in the past have always been adverse to self dealings by a fiduciary. The courts were concerned with the abuse that was possible in these types of transactions. The committee was of the opinion that as long as all interested parties had notice of the self dealing transaction and agreed to allow the transaction to go forth that the court should have authority to approve that transaction. The problems that we see with SB55 is that it allows the trust document to provide for a waiver of all self dealing transactions without the safeguards as provided in NRS 163.050.

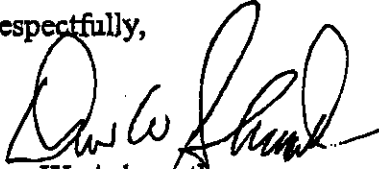
Our concerns are as follows:

1. Many times a waiver provision such as the one proposed in SB55 becomes a boiler plate provision which is placed in many trusts without adequate explanation to the settlor as to its consequences.
2. Under many circumstances the successor trustee appointed in the trust document to serve upon the settlor's death declines to serve in that capacity and someone else is often appointed trustee who is not acquainted with the settlor at all.
3. NRS 163.050 as it presently stands is certainly not a carte blanche allowing the prohibition against self dealing by a trustee to be waived in its entirety but the requirements of this section are not so onerous that if a self dealing transaction is in the best interest of all parties concerned it is not too difficult to obtain an order from the court approving that action.

Mr. Jolley joins with me in this opinion and we certainly conclude that the safeguards placed in NRS 163.050 should not be waived simply by placing such a provision in the trust itself.

If we can be of any further assistance to you in this matter please so advise.

Respectfully,

  
Don W. Ashworth

DWA:se

cc: Assemblywoman Barbara E. Buckley  
Legislative Building, Room 1102  
Carson City, Nevada 89701  
Fax: 775-684-8522  
775-684-8537

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**Suggestions for Revisions in Nevada Exemptions**

**Note:** Under Nevada law, federal exemptions listed in Section 522(d) of title 11 of United States Code are not available to Nevada citizens when they file bankruptcy in Nevada, N.R.S. § 21.090.3. Yet as shown below, some needed exemptions (veterans' benefits, for example) exist in the federal exemptions that do not find a counterpart in Nevada law.

NRS Section	Current Exemption	Reason for change
21.090(b)	Household goods -- \$3000	Needs to be increased to reflect inflation. Related federal exemption is \$8,625 (11 U.S.C. § 522(d)(3))
21.090(q)	\$500,000 in retirement accounts	Pending federal law would increase this to \$1,000,000 (See § 442(e), H.R. 975, 108 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. 107(2003)), and would preempt lesser state exemption in bankruptcy cases
	Suggested New Exemption	Reason for change
	a social security benefit, unemployment compensation, or a local public assistance benefit	In federal exemptions, 11 U.S.C. § 522(d)(A)
	veterans's benefits;	In federal exemptions, 11 U.S.C. § 522(d)(B)

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	a disability, illness, or unemployment benefit	In federal exemptions, 11 U.S.C. § 522(d)(C)
	an award under a crime victim's reparation law	In federal exemptions, 11 U.S.C. § 522(d)(11)(A)
	a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor	In federal exemptions, 11 U.S.C. § 522(d)(11)(A)
	a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor	In federal exemptions, 11 U.S.C. § 522(d)(11)(B)
	a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor	In federal exemptions, 11 U.S.C. § 522(d)(11)(C)

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	a payment, not to exceed \$16,150, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent	In federal exemptions, 11 U.S.C. § 522(d)(11)(D)
	a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor	In federal exemptions, 11 U.S.C. § 522(d)(11)(E)

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**AMENDMENT TO SB199**

Submitted by Stan Olsen

Las Vegas Metropolitan Police Department & Nevada Sheriffs' and Chiefs' Association

**PROBLEM:**

Section 4, subsection "b" currently states that automatic weapons are essentially banned in Nevada. This was not the intent of this bill. The intent was to move illegal possession of a machine gun and silencer from the Gross Misdemeanor classification to the Felony Classification. The section should be amended to allow for the legal transfer of these weapons.

Section 4, paragraph "b" currently states:

*Manufacture or cause to be manufactured, or import into the State, or keep, offer or expose for sale, or give, lend, possess or use a machine gun or a silencer;*

Suggested amendment added to Section 4, paragraph "b" after the word silencer.

*unless the transferor and transferee have completed the appropriate application for transfer as approved by federal law;*

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## Anderson, Bernie Assemblyman

**From:** Hettrick, Lynn Assemblyman  
**Sent:** Tuesday, April 29, 2003 3:31 PM  
**To:** Anderson, Bernie Assemblyman  
**Subject:** FW: Proposed Amendment to SB 199

Bernie,

Brenda E-mailed me these suggested changes.

*Lynn*

-----Original Message-----

**From:** Erdoes, Brenda  
**Sent:** Tuesday, April 29, 2003 12:51 PM  
**To:** Hettrick, Lynn Assemblyman  
**Subject:** Proposed Amendment to SB 199

Attached is the proposed amendment to place the provisions of AB 423 into SB 199 with the additional changes discussed in Assembly Judiciary (as you will see, I did not stick entirely to the proposed changes, particularly in sub 3 where I think Mr. Anderson was attempting to deal with the Sheriff attempting to hold a public hearing rather than making the Board of County Commissioners the entity issuing the permit or deciding who should be issued a permit):

1. **Clarify that certain knives manufactured in Nevada may be purchased in-state**, proposed by Assemblyman Hettrick. Revise the new language under subsection 5 of the bill (page 2) to authorize a manufacturer of switchblade knives in this state to sell such knives in this state:
  - a. To a person who is authorized by law to possess such a knife, for example a law enforcement officer or a member of the military.
  - b. To a distributor. If switchblade knives are sold to a distributor, the distributor may only provide or sell such knives in this state to a person who is authorized by law to possess a switchblade knife, for example a law enforcement officer or a member of the military.
2. **Revise the definition of a "switchblade knife,"** proposed by Assemblyman Hettrick. A "switchblade knife" is defined under existing law (see page 3 of the bill at lines 43 through 45 and page 4 of the bill at lines 1 through 3). Revise this definition to clarify that the definition does not include a knife that is held open by a spring or a spring action.
3. **Hearing by the County Commission**, proposed by Assemblyman Bernie Anderson and Assemblyman William Horne. Revise the new language on page 2, subsection 5 of the bill, which would authorize the sheriff to issue a permit to manufacturer of switchblade knives and to hold a public hearing on the application. Instead, require the board of county commissioners to hold a hearing on the application to manufacture switchblade knives. In addition, if the board approves the application, require the county to issue a business license, where appropriate.

Please let me know if you have any changes or questions. Brenda



Proposed  
amendment to SB 199

**Proposed Amendment to Senate Bill No. 199 (Second Reprint)**  
(Submitted by Assemblyman Hettrick)

Amend sec. 4, page 4, by deleting line 1 and inserting:

***"4. Upon written application, the sheriff of any county may issue a permit authorizing a person to manufacture or to keep, offer or expose for sale switchblade knives at a business located in the county if the person demonstrates good cause for requesting such authorization. Before issuing such a permit, the sheriff shall request the Board of County Commissioners for the county to hold a public hearing concerning the issuance of the permit. If the sheriff authorizes the business to sell switchblade knives, the permit must limit the persons to whom such knives may be sold to:***

- (a) A person located in another state, territory or country;***
- (b) A person in this state who is authorized by law to possess a switchblade knife in this state, including, without limitation, sheriffs, constables, marshals, peace officers and members of the Armed Forces of the United States when on duty; or***
- (c) A distributor whose business has been issued a permit pursuant to this subsection by the sheriff of the county in which the business is located, for sale or other distribution only to a person included in paragraph (a) or (b)."***

5. Except as otherwise provided in subsection 5, this".

Amend sec. 4, page 4, line 15, by deleting "{6} 5." and inserting "6."

Amend sec. 4, page 4, line 19, by deleting "{7} 6." and inserting "7."

Amend sec. 4, page 4, line 25, by deleting "{8} 7." and inserting "8."

Amend sec. 4, page 5, line 5, after "mechanism." by inserting:

***"The term does not include a knife which has a blade that is held in place by a spring if the blade does not have any type of automatic release. "***

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Proposed Amendments to SB 207  
Nevada Land Title Association  
Contact: Micki Johnson, President, (702) 378-1247

The Nevada Land Title Association has tremendous concerns with respect to SB 207, as currently written. If passed, the title industry will be unable to insure real property that is subject to probate because the industry would not know if a deed was floating around and might surface after probate was finalized.

Therefore, we suggest the following amendments to the measure:

Page 1, Section 1, lines 3 - 7

- ~~1. The owner of an interest in real property may create a deed that conveys his interest in real property to a grantee which becomes effective upon the death of the owner. Such a conveyance is subject to liens on the property in existence on the date of the death of the owner.~~

Replacement language:

1. A deed that conveys an interest in real property, including and debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the interest to the designated grantee beneficiary effective on the death of the owner subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime. Said deed must be recorded during the grantor's lifetime.

Proposal: Delete existing language and substitute replacement language.

Reason: The proposed language better clarifies that the deed must be recorded prior to the grantor's death and must state that it is not effective until the death of the grantor.

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S.B. 297

Amendment proposed by the Retail Association of Nevada

Amend section 22, page 7, line 37 by deleting "*January 1, 2006.*" and inserting "*January 1, 2008.*"

This amendment will give retailers with older cash registers and other equipment two additional years to update their machines so they will truncate debit and credit card numbers on printed receipts.

We have discussed this with Senator Wiener and she approves of the amendment.



*Strategic Positioning  
Governmental Relations  
Public Affairs*

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*Las Vegas, Reno, Carson City*

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SB 394

APRIL 17, 2003

TO: ASSEMBLYMAN BERNIE ANDERSON, CHAIRMAN OF ASSEMBLY  
JUDICIARY AND COMMITTEE MEMBERS

FROM: KRISTIN ERICKSON AND BEN GRAHAM, NDAA

RE: REQUIRING CONVICTED SEX OFFENDERS GUILTY OF CRIMES  
ESTABLISHED IN NRS 201.540, 205.550 AND CERTAIN  
CONSPIRATORS TO REGISTER AS SEX OFFENDERS UNDER NRS  
179D.410

FROM TIME TO TIME THE LEGISLATURE HAS MANDATED THAT ONCE A  
PARTY IS CONVICTED OF CERTAIN OFFENSES, THEY MUST REGISTER  
AS A SEX OFFENDER UNDER 179D.410. THERE ARE CURRENTLY 20  
OFFENSES THAT REQUIRE REGISTRATION ONCE CONVICTED.

OVER THE PAST SEVERAL LEGISLATIVE SESSIONS THE LEGISLATURE  
HAS EXAMINED AND TAKEN A DIM VIEW OF TEACHERS AND OTHERS  
IN AUTHORITY AND IN CONTACT WITH CERTAIN STUDENTS, HAVING  
SEX OR CONSPIRING TO HAVE SEX WITH THEIR STUDENTS.

EVEN THOUGH THE LEGISLATURE HAS FOUND SUCH CONDUCT IS A  
SEXUAL OFFENSE, VIOLATIONS WERE NEVER PLACED IN THE STATUTE  
REQUIRING REGISTRATION AS A SEX OFFENDER.

IT IS URGED THAT THIS COMMITTEE CORRECT WHAT IS MOST LIKELY  
AN OVERSIGHT AND AMEND THE ATTACHED LANGUAGE INTO NRS  
179D.410 VIA SB 394.

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NRS 179D.410 "Sexual offense" defined. "Sexual offense" means any of the following offenses:

1. Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.
2. Sexual assault pursuant to NRS 200.366.
3. Statutory sexual seduction pursuant to NRS 200.368.
4. Battery with intent to commit sexual assault pursuant to NRS 200.400.
5. An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this section.
6. An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this section.
7. Abuse of a child pursuant NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
8. An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
9. Incest pursuant to NRS 201.180.
10. Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.
11. Open or gross lewdness pursuant to NRS 201.210.
12. Indecent or obscene exposure pursuant to NRS 201.220.
13. Lewdness with a child pursuant to NRS 201.230.
14. Sexual penetration of a dead human body pursuant to NRS 201.450.
15. Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.
16. Annoyance or molestation of a minor pursuant to NRS 207.260.
17. *Sexual conduct between certain employees of school or volunteers at school and pupil pursuant to NRS 201.540.*
18. *Sexual conduct between certain employees of college or university and student pursuant to NRS 201.550.*
19. An attempt or a conspiracy to commit an offense listed in subsections 1 to 16 18, inclusive.
20. An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.
21. An offense committed in another jurisdiction that, if committed in this state, would be an offense listed in this section. This subsection includes, but is not limited to, an offense prosecuted in:
  - (a) A tribal court.
  - (b) A court of the United States or the Armed Forces of the United States.
22. An offense of a sexual nature committed in another jurisdiction, whether or not the offense would be an offense listed in this section, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a

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sex offender because of the offense. This subsection includes, but is not limited to, an offense prosecuted in:

(a) A tribal court.

(b) A court of the United States or the Armed Forces of the United States.

(c) A court having jurisdiction over juveniles.

(Added to NRS by 1997, 1654; A 1999, 1299; 2001, 2796)

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