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ASSEMBLY COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

MAY 6, 2003

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ASSEMBLY JUDICIARY

DATE: 5/6/03 ROOM 3138 EXHIBIT J

SUBMITTED BY: ALAN COMBS.

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

May 6, 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 186** (BDR 3-446 was introduced by the Senate Committee on Judiciary on behalf of the Nevada Attorney General). The bill was heard in Committee on May 1, 2003, and no action was taken.

Senate Bill 186 imposes a fee upon the obligor each time an employer withholds income for payment of support for a child.

Proponents/those testifying in support of the bill: Leland Sullivan and Gary Stagliano, Welfare Division, Nevada's Department of Human Resources; Don Winne, Office of the Attorney General; Noel Waters, Carson City District Attorney.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the measure imposes a new fee of \$2 upon a person who has an obligation for child support each time payment for support is withheld from his income. The monies are to be placed in a separate account to be administered pursuant to the regulations of the State Welfare Administrator, and the account is to be distributed among each enforcing authority pursuant to State regulation.

Proposed Amendments: None.

Additional Information: Attached on blue paper is additional information concerning child support caseloads requested by Assemblyman Don Gustavson.

- 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 green paper.)

- SENATE BILL 298, FIRST REPRINT** (BDR 7-987 was introduced by the Senate Committee on Judiciary). The bill was heard in Committee on May 5, 2003, and no action was taken.

Senate Bill 298 makes various changes to provisions pertaining to business to:

- Amend existing fees of the Secretary of State and establishes new fees for business entities within the state;
- Provide that it is the intent of the Legislature that the fees increased pursuant to the amendatory provisions of this bill must not be increased again for a period of at least ten years following the bill's enactment; and
- Allow for a limited partnership to register as a recognized limited-liability limited partnership ("LLLP") business entity.

Proponents/those testifying in support of the bill: Derek Rowley, Nevada Resident Agents Association; Assemblyman Chad Christensen.

Opponents/those testifying in opposition of the bill: Matt Sharpe, Nevada Trial Lawyers Association; Representatives of direct marketers including Avon, Mary Kay, and Alticor.

Discussion: Testimony indicated that this measure would ensure that Nevada remains economically attractive to business filings and would encourage filings by reducing the

initial filing fee on the front end, yet raising fees on the back end to promote revenue and growth for the state.

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

1. **Exempt direct marketers**, proposed by James Jackson on behalf of Direct Sales Association. The proposed amendment to address Sections 81, 82, and 83 of the bill (which amend Chapter 364A of NRS—Business Tax) would add a new section to specify the following:

A person who meets the requirements in NRS 612.144(1)(a) is exempt from the provisions of this chapter.

Following is a copy of NRS 612.144:

NRS 612.144 “Employment”: Services performed by person selling or soliciting the sale of products in certain circumstances excluded.

1. “Employment” does not include services performed by a person who:

(a) Directly sells or solicits the sale of products, in person or by telephone:

(1) On the basis of a deposit, commission, purchase for resale or similar arrangement specified by the administrator by regulation, if the products are to be resold to another person in his home or place other than a retail store; or

(2) To another person from his home or place other than a retail store;

(b) Receives compensation or remuneration based on his sales or the services he performs for customers rather than for the number of hours that he works; and

(c) Performs pursuant to a written agreement with the person for whom the services are performed which provides that he is not an employee for the purposes of this chapter.

2. As used in this section, “product” means a tangible good or an intangible service, or both.

In the alternative, Mr. Jackson suggests retaining NRS 364A.160, which would be repealed under the bill. Following is a copy of NRS 364A.160:

NRS 364A.160 Exemption for natural person with no employees during calendar quarter. A natural person who does not employ any employees during a calendar quarter is exempt from the provisions of this chapter for that calendar quarter.

2. **Concerns Regarding LLLP’s.** Mr. Sharp raised concern for Sections 47 and 48 of Senate Bill 298, which address the liability of partners under an LLLP. Section 47 specifies that a partner of an LLLP is not individually liable for the debt or liability by way of acting as a partner. Section 48 specifies that no partner of an LLLP is individually liable for a debt or liability of the LLLP unless the partner acts as the alter ego of the LLLP.

- SENATE BILL 315, FIRST REPRINT** (BDR 15-435 was requested by the Senate Committee on Judiciary on behalf of Nevada's 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 383, FIRST REPRINT** (BDR 38-194 was requested by Senator Raymond C. Shaffer). The bill was heard in Committee on May 5, 2003, and no action was taken.

Senate Bill 383 requires adults employed by entities that provide organized activities for children to report child abuse.

Proponents/those testifying in support of the bill: Ed Cotton, Division of Child and Family Services, Nevada's Department of Human Resources; May Shelton, Washoe County; Jodi Tyson and Terri Miller, Nevada Coalition Against Sexual Violence.

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

Discussion: Testimony indicated this measure would ensure reporting of child abuse by another group of persons with frequent contact with children. Proponents of the measure also expressed support for the original version of the bill, which included volunteers of such organizations and raised the penalty for failure to report child abuse.

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 pink 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 434, FIRST REPRINT** (BDR 2-303 was introduced by the Senate Committee on Judiciary on behalf of the State Treasurer). The bill was heard in Committee on May 5, 2003, and no action was taken.

Senate Bill 434 exempts from execution by creditors certain money held in a trust forming part of a qualified tuition program under certain circumstances.

Proponents/those testifying in support of the bill: Office of the State Treasurer.

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

Discussion: Testimony indicated this measure prevents a creditor from executing a judgment against a trust forming part of a qualified tuition program unless the money in the trust was deposited after entry of judgment, or the money on deposit will not be used by any beneficiary to attend college.

Proposed Amendments: None.

- SENATE BILL 436, FIRST REPRINT** (BDR 7-982 was introduced by the Senate Committee on Judiciary). The bill was heard in Committee on May 5, 2003, and no action was taken.

Senate Bill 436 makes various changes to the provisions pertaining to business.

Proponents/those testifying in support of the bill: John Fowler, Business Law Section, State Bar of Nevada; Scott Anderson, Office of the Secretary of State.

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

Discussion: Testimony indicated this measure is the omnibus measure presented each session by the Business Law Section to update Nevada's business statutes. Testimony also indicated that the concerns of the Office of the Secretary of State were addressed through amendment in the Senate Committee on Judiciary.

Proposed Amendments: The following amendment was discussed during the hearing:

- **Changes to Fictitious Firm Name Statutes.** Concerns were raised in a document submitted to Chairman Bernie Anderson (a copy of which is attached on yellow paper) regarding Sections 263 and 265 of the bill. Section 263 deletes the requirement to provide a street address on a certificate or a renewal certificate. Objections were also raised to the deletion of the notarization requirements from Sections 263 and 265.

**CHILD SUPPORT ENFORCEMENT PROGRAM
CASELOAD SFY03**

JULY 2002	TOTAL CHILD SUPPORT CASES	109,527
AUG 2002	TOTAL CHILD SUPPORT CASES	109,865
SEPT 2002	TOTAL CHILD SUPPORT CASES	110,144
OCT 2002	TOTAL CHILD SUPPORT CASES	110,605
NOV 2002	TOTAL CHILD SUPPORT CASES	111,853
DEC 2002	TOTAL CHILD SUPPORT CASES	113,830
JAN 2003	TOTAL CHILD SUPPORT CASES	115,277
FEB 2003	TOTAL CHILD SUPPORT CASES	115,827
MAR 2003	TOTAL CHILD SUPPORT CASES	118,628

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**CHILD SUPPORT ENFORCEMENT PROGRAM
CASELOAD TOTALS
SFY98 – SFY02**

SFY98	TOTAL CHILD SUPPORT CASES	84,456
SFY99	TOTAL CHILD SUPPORT CASES	79,277
SFY00	TOTAL CHILD SUPPORT CASES	94,856
SFY01	TOTAL CHILD SUPPORT CASES	117,192
SFY02	TOTAL CHILD SUPPORT CASES	109,971

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.



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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.

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.*
- ~~17-~~ 19. An attempt *or a conspiracy* to commit an offense listed in subsections 1 to ~~16~~ 18, inclusive.
- ~~18~~ 20. An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.
19. 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.
20. 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

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)

SB 436, Introduced by the Senate Judiciary March 24, 2003, amended and Passed by the Senate April 24, 2003; and scheduled to be heard by the Assembly Judiciary on May 5, 2003

The following sections are found on Pages 147, 148 & 149 (the last three pages) of this lengthy bill:

Sec. 263 NRS 602.020 Contents and requirements of certificate and renewal certificate.

Proposes to remove street address requirement for natural person, and use mailing address only.

Proposes to remove street address requirement for each partner who is a natural person, and use mailing address only.

Proposes to remove the street address requirement for a trustee of a trust, and use mailing address only.

Proposes to replace the signature requirement for an artificial person from "a person required to sign the annual filing" to a person "authorized to sign the annual filing whether or not listed therein"

Proposes to remove the notarial requirement for the person(s) signing the certificate.

We strongly object to these changes!

How can the county clerk's office provide the public with information needed to serve a lawsuit, if necessary, if a street address is not required by law? Only an artificial person, on file with the Secretary of State, will have a resident agent available for accepting service in the case of a lawsuit. The removal of the notarial requirement compromises the credibility of the document.

These changes will eliminate the protection provided to the public when doing business with any firm that is not a legal entity on file with the Secretary of State of Nevada.

The following statement can be found at the beginning of the printed version of NRS 602. Currently this is found in Volume 31.

*The purpose of the fictitious name statute "is to prevent fraud and to inform the public of the true identity of those with whom the public conducts business."
Brad Assocs. v. Nevada Fed Fin. Corp., 109 Nev. 145, 848 P.2d 1064 (1993)*

Sec. 265 NRS 602.055 Certificate of termination.

Proposes to remove the notarial requirement.

We strongly object to this change! The removal of the notarial requirement compromises the credibility of the document. As with the original certificate, the removal of the notarial requirement will make it very difficult to provide the public with accurate ownership information as required of the county clerk by NRS 602.

Our office has contacted each of the Nevada county clerks regarding this bill, who have indicated their support of the above position regarding SB 436. Only the Clark County Clerk expressed some concern regarding this position as it relates to future electronic filings, but we believe those concerns will be addressed in NRS 720, the statute covering digital signatures.

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