IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

KAZUO OKADA, UNIVERSAL ENTERTAINMENT CORP. AND ARUZE USA, INC.,

Real Parties in Interest.

Supreme Court No. 74591

District Court Case No. A-12-656710-B

APPENDIX IN SUPPORT OF ANSWER OF REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDAMUS OR ALTERNATIVELY, PROHIBITION FILED BY WYNN RESORTS, LIMITED

VOLUME XIII (RAPP 3001-RAPP 3027)

Steve Morris, Esq. (#1543)
Akke Levin, Esq. (#9102)
Rosa Solis-Rainey, Esq. (#7921)
Morris Law Group
411 E. Bonneville Ave., Ste. 360
Las Vegas, NV 89101
Telephone: (702) 474-9400

J. Randall Jones, Esq. (#1927)
Mark M. Jones, Esq. (#267)
Ian P. McGinn, Esq. (#12818)
Kemp, Jones & Coulthard LLP
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169
Telephone: (702) 385-6000

Attorneys for Universal Entertainment Corp. and Aruze USA, Inc.

David S. Krakoff (*Admitted PHV*)
Benjamin B. Klubes (*Admitted PHV*)
Adam Miller (*Admitted PHV*)
Buckley Sandler LLP
1250 24th Street NW, Suite 700
Washington DC 20037
Telephone No. (202) 349-8000

Attorneys for Universal Entertainment Corp. and Aruze USA, Inc.

J. Stephen Peek, Esq. (#1758)
Bryce Kunimoto, Esq. (#7781)
Robert J. Cassity, Esq. (#9779)
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Telephone: (702) 669-4600

Attorney for Real Party in Interest Kazuo Okada

APPENDIX IN SUPPORT OF ANSWER OF REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDAMUS OR ALTERNATIVELY, PROHIBITION FILED BY WYNN RESORTS, LIMITED

CHRONOLOGICAL INDEX

APPENDIX IN SUPPORT OF ANSWER OF REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDAMUS OR ALTERNATIVELY, PROHIBITION FILED BY WYNN RESORTS, LIMITED

ALPHABETICAL INDEX

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Morris Law Group, that in accordance therewith, I caused a copy of **APPENDIX TO ANSWER OF REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDAMUS OR ALTERNATIVELY, PROHIBITION FILED BY WYNN RESORTS, LIMITED VOLUME XIII (RAPP 3001-RAPP 3027)** to be served via electronic mail unless otherwise indicated below:

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Wynn Resorts, Limited

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89109

Attorneys for Stephen A. Wynn

Courtesy Copy Hand Delivered:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

William R. Urga, Esq.
Jolley Urga Woodbury & Little
330 S. Rampart Suite 380
Las Vegas, Nevada 89145

Mark E. Ferrario, Esq.
Tami D. Cowden, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy. #400
Las Vegas, NV 89169

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy. #600
Las Vegas, NV 89169

James M. Cole, Esq.
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005

Scott D. Stein, Esq.
Sidley Austin, LLP
One South Dearborn St.
Chicago, IL 60603

Attorneys for Elaine P. Wynn

Dated: December 22, 2017

By: /s/ PATRICIA FERRUGIA

asserted. And, he noted, the statute would address much uncertainty. Mr. Tompkins pointed out companies most vulnerable are the small companies. He explained the courts typically looked at case law to determine whether a person followed all the corporate formalities, such as whether the right minutes were kept; whether there was a separate board of directors; and whether there were always separate bank accounts.

Mr. Tompkins stated he has a chief financial officer whose job is to make sure those things get done. He reiterated it is the small business owners who have incorporated specifically to protect their individual assets who are the most vulnerable to having the corporate limitations on liability set aside because they did not follow the proper formalities.

Chairman James interjected, "So, the notion is that a small business owner decides to incorporate and forgets to keep his annual meeting minutes up-to-date, he is not as careful as he should be and there may be some commingling of assets or commingling of the books . . . These kinds of things occur, and those are not, alone, under this statute, a predicate for disregarding the corporate veil and the limited liability protection. He has to be, in addition, under this language, utilizing the corporation to perpetrate some kind of fraud."

Chairman James commented he did not suppose piercing the corporate veil comes up very often as an issue for large corporations. Mr. Tompkins responded that with subsidiaries there is a significant amount of uncertainty, but if this statute is passed, there will be a greater level of certainty for corporations.

Senator Care asked Mr. Tompkins to describe the kinds of corporate acts for which an officer or director should not be named as a defendant in a lawsuit. He said he would not want to give his constituents the impression because a business is willing to pay more money to incorporate in Nevada, it will get to "walk, scot-free."

Mr. Tompkins replied:

> Most of the problems occur not in terms of the corporation acting as a corporation, because directors typically are not directly liable for the acts of the corporation. For instance, if a corporation sells a defective product, it is the corporation that is sued; it is not the director. If a corporation pollutes a river, it is the corporation that is sued; it is not the director. Where director liability really comes in is in terms of mergers, acquisitions, issuances of stock . . . They are shareholder derivative suits that we are concerned about. So, I do not see that this has much, if any, effect at all in terms of whether a director would be liable to a consumer group or to a member of the public. What I see it doing is making it less likely that, in an extraordinary corporate transaction, the director will be caught up in the litigation, unless the plaintiff's lawyer actually has some evidence or some probable cause to believe that director has actually acted wrongfully.

Senator Care said, "I think the public needed to hear that."

Chairman James asked John Fowler to expound on the status of the Nevada laws in relation to Delaware laws, and the work done in prior sessions.

John P. Fowler, Chairman, Executive Committee, Business Law Section, State Bar of Nevada, explained the history of the Business Law Section's involvement with corporate statutes:

> In 1990, a firm I was then with was hired by Secretary of State Frankie Sue Del Papa to revise Nevada's corporate law. That study of Nevada corporate law, about a 350-page book, contained specific statutory suggestions for changes to Nevada corporate law . . . [in order to] try to become a competitor with Delaware and other states in ease of corporate convenience . . . Following that study, in 1991 a bill was written that was worked on by members of the then business law committee of the state bar, and worked over considerably by the Legislature itself, and it became a bill which started us on the road to improving Nevada's corporate laws for the entire country to use . . . Every session since, since 1993 and forward, the business law section has created a bill to improve Nevada's corporate and limited liability company statutes . . . It is an accomplishment that, I think, has taken us quite far . . . That and . . . the fact that we have retained a situation where there is not corporate or personal income tax, and the fact that the secretary of state's office has worked mightily to keep up and to be a customer-friendly office, as opposed to the archetypal governmental bureaucracy.
>
> We now have a substantial national presence in the corporate law world that brings real benefits to the state [and] it makes it easier for those doing business in the state to use our own state laws. It makes it easier for investment bankers . . . and those companies with assets that they can move to the state, to move them here and use our corporate statutes . . .
>
> In the 1999 Session, Senate Concurrent Resolution (S.C.R.) 19 [of the Seventieth Session] was passed, which created a special subcommittee that studied ways to improve corporate governance . . . and [establish] a business court.

SENATE CONCURRENT RESOLUTION NO. 19 OF THE SEVENTIETH SESSION: Directs Legislative Commission to conduct interim study of methods to encourage corporations and other business entities to organize and conduct business in this state. (BDR 534)

Mr. Fowler stated the S.C.R. 19 of the Seventieth Session committee work resulted in a number of bills, among them S.B. 51 and actions by the Nevada Supreme Court to create a business court in both Clark County and Washoe County.

SENATE BILL NO. 51: Makes various changes pertaining to business associations. (BDR 7-255)

Mr. Fowler continued:

> It has been a long history and a long effort, and it has to be continued; it is not something that can stop, because the corporate world does not stop. New processes, new kinds of ways of doing transactions come about and require a change in corporate and limited liability company statutes . . . I believe . . . the bill . . . shows a further movement in this direction, to make Nevada a friendly place for a corporation to put its charter and to do business.

Chairman James noted, in S.C.R. 19, John H. O. La Gatta, Lobbyist, Catamount Quantum LLC, had proposed the creation of a different kind of fee structure, "and that was the only part we did not do,

and is what is contained here. It is not exactly his proposal, but it is a permutation of it, and that is how this is a whole package [and] how John envisioned the outcome of it."

Chairman James asked Dean Heller, Secretary of State, to discuss issues related to his office, fee adjustments included in BDR 7-1547, and the role of resident agents. Mr. Heller stated his office has been a significant source of revenue for the state, and the studies and efforts made over the last 10 years have worked. He said the secretary of state's office has grown 10 to 15 percent per year, from approximately 5,000 corporate annual filings 10 years ago to approximately 50,000 today. He noted the average individual on the staff earned about $100,000 in revenue 10 years ago, and today each individual is earning about $350,000 in revenue for the state.

Mr. Heller said among the biggest clients in the secretary of state's office are the resident agents. He stated:

> [They] do a tremendous service for the state of Nevada. They work very hard in advertising the corporate services we provide . . . It was to everybody's benefit to bring them into the office . . . We probably had a half dozen or eight resident agents in the office, and they probably represented somewhere between 50,000 and 60,000 corporations here . . . and you asked them to give us an alternative . . . and they did discuss some of the filing fees with the office that had not been raised for 10 years and what we could do to raise some of these fees and still remain competitive . . . So, the filing fees and the changes, most of them came through their recommendations. A couple of them were reduced. It took some effort on our part, and one of the fees we did reduce was the annual fee . . . I anticipate our growth will continue. I think we will see a shift in the quality and the quantity of the kind of business we do . . . but, overall, I think this proposal takes us forward.

Chairman James said one of the things the resident agents pointed out is often people start a company and need an entity within which to create the start-up business, which may have a minimal, or even negative, net worth. That is the reasoning behind the fee schedule proposed in BDR 7-1547, he said. "So, people who are start-up companies or small businesses, or people who just want to get their entity going, are going to pay the minimum filing fee of $150, which they [the resident agents] represented was something they could aggressively market," he said.

Mr. Heller added,

> As you struggle with the policy issue here, of course we struggle with the administrative end of this . . . You have requested, and we are preparing, [information regarding] what the fiscal impact will be on our office . . . I think it will be a minimal increase. You are looking at our office, under this proposal, going from $22 million a year in revenue to somewhat over $60 million, or
> $130 [million] for the biennium. I think we can move forward with a minimal increase of six to eight additional employees in the office in order to handle this increase and the change in structure and the way we process some of this paperwork.

Chairman James said it is closer to $85 million or $87 million from the secretary of state's office, because what the Legislative Counsel Bureau (LCB) did in its projections was run just the corporations under Chapter 78 of NRS, which would generate $52 million. He said that does not include 40,000 other kinds of entities that would be on the same schedule. He stated, "[The] LCB did

that to leave it at a conservative projection; then the $52 [million] plus the $13 [million] from the additional fees, that is $65 million. It is a very conservative number . . . It accounts for absolutely no growth."

Senator Washington said he is concerned about start-up businesses of single women and minorities, and asked whether this proposal would become a hindrance or disincentive for them. Mr. Heller said the proposed fees were kept as low as possible, with these people in mind. This is not a new tax or a new fee; it is an increase in the filing fee for the annual list of officers, he said. He said a lot of proposals have been on the table, including a business tax proposal, all of which were rejected so people desiring to establish businesses in Nevada would not be faced with all sorts of fees. Mr. Heller pointed out, generally, liabilities are higher than assets for start-up companies, and this proposal is based on net worth.

Senator Porter echoed Senator Washington's concerns, saying he wanted to make sure Nevada is a place where not only the rich can get incorporated. "A lot of these smaller companies do not have major liabilities," he said, adding, "They really kind of 'pay as you go,' because they cannot afford the debt."

Senator Care asked whether financial records submitted to the secretary of state's office could be kept confidential. Chairman James responded the office can have the information remain confidential.

Senator McGinness asked whether the secretary of state's office has some sort of due process in place for determining net worth pursuant to section 31, subsection 4, of BDR 7-1547. Mr. Heller said his office is currently ministerial and accepts documents filed and signed under penalty of perjury, and would
have to put the language of the bill into place administratively. Chairman James stated whatever process the secretary of state's office puts into place would certainly comply with applicable procedural requirements, due process, and the rights of taxpayers.

There being no further business, the meeting was adjourned at 11:05 a.m.

RESPECTFULLY SUBMITTED:

Carolyn Allfree,
Committee Secretary

APPROVED BY:

_____
Senator Mark A. James, Chairman

DATE:_____

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-First Session
May 30, 2001

The Committee on Judiciarywas called to order at 7:55 a.m. on Wednesday, May 30, 2001. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. Portions of the meeting were simultaneously videoconferenced in Room 4401 of the Grant Sawyer Office Building, Las Vegas. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr.	Bernie Anderson, Chairman
Mr.	Mark Manendo, Vice Chairman
Mrs.	Sharron Angle
Mr.	Greg Brower
Ms.	Barbara Buckley
Mr.	John Carpenter
Mr.	Jerry Claborn
Mr.	Tom Collins
Mr.	Don Gustavson
Mrs.	Ellen Koivisto
Ms.	Kathy McClain
Mr.	Dennis Nolan
Mr.	John Oceguera
Ms.	Genie Ohrenschall

GUEST LEGISLATORS PRESENT:

Senator Maurice Washington, Washoe Senate District 2
Senator Valerie Wiener, Clark Senate District 3
Senator Mark James, Clark Senate District 8
Speaker Richard Perkins, Assembly District 23
Assemblyman David Goldwater, Assembly District 10

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Risa B. Lang, Committee Counsel
Deborah Rengler, Committee Secretary

OTHERS PRESENT:

Dean Heller, Secretary of State
Renee Lacey, Chief Deputy Secretary of State
Judge Scott Jordan, Second Judicial District Court, Family Division
Leonard Pugh, Director, Washoe County Department of Juvenile Services
Madelyn Shipman, Assistant District Attorney, Civil Division, Washoe County District Attorney; Legislative Representative, Nevada District Attorney's Association
John Morrow, Chief Deputy, Washoe County Public Defender
Dorothy Nash Holmes, Special Assistant to the Director, Department of Prisons
Glen Whorton, Chief, Classification& Planning, Department of Prisons
Steve Barr, Nevada Corrections Association
Clay Thomas, Deputy Chief, Division of Parole and Probation, Department of Motor Vehicles and Public Safety (DMV&PS)
Kirby Burgess, Director, Clark County Family and Youth Services
Willie Smith, Deputy Administrator for Youth Corrections, Division of Child and Family Services
Jan Gilbert, Progressive Leadership Alliance of Nevada (PLAN)
Bobbie Gang, Lobbyist, Nevada Women's Lobby
Dr. Jane Foraker-Thompson, Religious Alliance in Nevada (RAIN) and Episcopal Diocese of Nevada
Gary Crews, Legislative Auditor, Legislative Counsel Bureau, Audit Division
Rocky Cooper, Legislative Auditor, Legislative Counsel Bureau, Audit Division
Dr. Ted D'Amico, Medical Director, Department of Prisons
Rex Reed, PhD., Medical Administrator, Department of Prisons
Michael Bonner, representing self
James Bilbray, representing self
Kenneth Lange, Executive Director, Nevada State Education Association
Derek Rowley, Corporate Services Center
John Olive, President, Nevada Association of Listed Resident Agents (NALRA)
Rose McKinney-James, Clark County School District
Bob Crowell, Nevada Trial Lawyers Association (NTLA)
Bill Bradley, Nevada Trial Lawyers Association (NTLA)
Pat Cashill, Nevada Trial Lawyers Association (NTLA)
Danny Thompson, Executive Secretary-Treasurer, Nevada State American Federation of Labor-Congress of Industrial Organization (AFL-CIO)
Dave Howard, Reno-Sparks Chamber of Commerce
Kami Dempsey, Director, Government Affairs, Las Vegas Chamber of Commerce
Sam McMullen, Las Vegas Chamber of Commerce and the Retail Association of Nevada
Mary Lau, Executive Director, Retail Association of Nevada
Ray Bacon, Nevada Manufacturers Association

Chairman Anderson made opening remarks and noted a quorum was present.

Chairman Anderson opened the hearing on S.B. 137.

Senate Bill 137: Increases number of district judges in second and eighth judicial districts. (BDR 1-521)

Judge Scott Jordan, Second Judicial District Court, Family Division, spoke in favor of S.B. 137. Judge Jordan submitted statistics (Exhibit C) from the court indicating a dramatic increase in the number of family court cases; the numbers alone justified the need for a new judge.

Chairman Anderson said there were currently 11 judges in the Second Judicial District Court and S.B. 137 would increase that number to 12. Of that 12; four were Family Court judges. Chairman Anderson read information from the Administrative Office of the Court's Annual Report, quoting statistics in Nevada for the Eighth Judicial District Court in comparison to the Second Judicial District Court.

Assemblyman Carpenter asked what had caused the substantial increase in juvenile filings. Judge Jordan said the growth in population of the county was the main contributor to that increase.

Leonard Pugh, Director, Washoe County Department of Juvenile Services, said since 1990 Washoe County had experienced approximately a 181 percent increase in person-related crimes and a 280 percent increase in other crimes. There were more juveniles under drug testing clauses, house arrest, and search clauses. Because juveniles were being held accountable for those offenses, it had resulted in higher levels of supervision and an increase in court time. Chairman Anderson said the increase was a result of previous legislation that allowed intervention at earlier stages. Mr. Pugh said that while the number of petitions being filed was increasing, since 1995 the commitment rate to state institutions had decreased significantly. Chairman Anderson said it was better to have more judges that cost less than the long-term cost of incarceration and the creation of lifetime criminals; it would actually result in a cost-savings.

Madelyn Shipman, Assistant District Attorney, Civil Division, Washoe County District Attorney, and Legislative Representative for the Nevada District Attorney's Association, spoke in support of S.B. 137. She said that while the cost of the judge was a state responsibility, Washoe County was ready to assume the cost of the support staff and space requirements. Chairman Anderson said there was also an "overcrowded" court facility question to be dealt with in Washoe County, namely, would court space be shared. Ms. Shipman said county management was aware of the current status and would have space available by January 2003. Judge Jordan said a committee was already impaneled made up of court representatives, general services, and county representatives to resolve the problem.

John Morrow, Chief Deputy, Washoe County Public Defender, spoke in favor of S.B. 137. He supervised the Family Court Division of the Public Defender's Office in Washoe County. The overcrowding problem in Family Court was having an impact on dealing with the families. Having another judge would help the families and "do good things" for them as far as getting cases in and out of the system quickly.

Chairman Anderson entertained a motion of do pass for S.B. 137.

ASSEMBLYWOMAN ANGLE MOVED TO DO PASS S.B. 137.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

Chairman Anderson noted S.B. 137 was already referred to the Assembly Committee on Ways and Means.

MOTION PASSED WITH MRS. KOIVISTO, MR. NOLAN AND MS. BUCKLEY ABSENT FROM THE VOTE.

Chairman Anderson opened the hearing on S.B. 193.

Senate Bill 193: Makes various changes concerning department of prisons. (BDR 16-311)

Dorothy Nash Holmes, Special Assistant to the Director, Department of Prisons, said a joint introduction of S.B. 193 was made on March 12, 2001. Ms. Holmes said there were four highlights:

1. Changed the name of Department of Prisons to Department of Corrections. Nevada was the last "state in the union" that used the "Department of Prisons," which had disqualified Nevada from some federal funds.
2. Created an offender management division using funds from an existing vacant and highly paid psychiatrist position. The offender management division would manage and coordinate all programming. There would be no fiscal impact; it would actually result in an $11,000 savings over the biennium.
3. Established a facilities orientation training in the prisons, teaching the officers how to do their basic job.
4. Implemented structured living, using a disciplined progressive opportunities approach, and unit management, a widely accepted management tool in corrections.

Chairman Anderson said S.B. 193 would go to the Assembly Committee on Ways and Means.

Glen Whorton, Chief, Classification & Planning, Department of Prisons, and Steve Barr, Nevada Corrections Association, were available for questions.

Chairman Anderson asked for questions from the committee members and further testimony. There being none, he closed the hearing on S.B. 193 and entertained a do pass motion.

ASSEMBLYWOMAN ANGLE MOVED TO DO PASS S.B. 193.

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

MOTION PASSED WITH MRS. KOIVISTO, MR. NOLAN, AND MS. BUCKLEY ABSENT FROM THE VOTE.

Chairman Anderson said he would present S.B. 137 on the Assembly floor.

Chairman Anderson asked Assemblyman Collins to present S.B. 193 on the Assembly floor.

Chairman Anderson opened the hearing on S.B. 194 and acknowledged Senator Maurice Washington, Washoe County Senatorial District 2.

Senate Bill 194: Makes changes pertaining to interstate compacts for supervision of offenders. (BDR 16-107)

Senator Washington said S.B. 194 was a bill for the Division of Parole and Probation (P&P) that had been worked on for the past 18 months. It provided for the ratification of the old interstate compact, under which Nevada was currently operating, for the supervision and movement of adult offenders from one jurisdiction to another. The current interstate compact had not been ratified in 50 years. The compact set up an interstate commission for adult supervision; it organized, operated, and set up rules of authority; and set up select members from the state council which might be non-voting members to include governors, legislators, state judges, attorneys general, and/or victims of crime. The ratification of that interstate compact must be completed by 35 states; 21 states had already ratified the new interstate compact. The interstate compact was necessary to enable Nevada to transfer offenders to or accept offenders from other states; it would give Nevada a voice on the commission. The Division of Parole and Probation (P&P) needed S.B. 194; the appropriation would be referred to the Assembly Committee on Ways and Means.

Chairman Anderson asked what was the policy question being addressed and how did it compare or change what was currently being done. Would Nevada surrender authority by complying with that compact?

Senator Washington said Nevada would not surrender any authority. Nevada could actually negate the compact by passing legislation that would exempt Nevada from the interstate compact. Nevada would maintain its jurisdictional authority as the state of Nevada. The interstate compact allowed Nevada an advantage in negotiating disputes and ratifying resolutions and preempted the federal government from taking over the supervision of adult offenders, including their movement from one state to another.

Chairman Anderson asked what the advantage would be to have a state senator and assemblyman sit on the commission. Would it become more political than administrative in nature? Senator Washington said the advantage to sitting on the commission would be to review the public policy and bring back to the legislative body new rules or issues that might be of concern. It would give Nevada a voice and a vote. Chairman Anderson said it was his understanding that the Chairman of the Senate Committee on Judiciary preferred that a common commission look at all such judicial questions, rather than working piecemeal.

Senator Washington said the interstate compact was already in existence, and Nevada was abiding by that interstate compact. S.B. 194 ratified that compact with new provisions to deal with the "new sophistication of mobilization and movement" of adult offenders. It allowed P&P to know the whereabouts of adult offenders and from what state they came. If they re-offended, it would give Nevada the jurisdiction, the power, and the authority to send the re-offenders back to their state of origin. It would be wise and prudent to have a legislator serve on the state council.

Chairman Anderson said Article 14 of the compact detailed the binding effect of the compact on other laws; "the compact had the force and effect of statutory law and take precedence over conflicting state law." Chairman Anderson was concerned that the compact could "override the actions of state law." Was there "prolonged discussion" in the Senate over that issue?

Senator Washington said there was a "long dialogue and concern" about the ratification of the compact and if it would supercede state authority. To assure that was not the case, the bill was amended to say the Nevada Constitution would supercede any rules or regulations promulgated by the commission. Senator Washington had served twice with the Council of State Governments (CSG) concerning the issue. Provisions were adjusted in the compact to make sure that states still had the

ultimate authority regarding the operation, implementation, and the use of the compact. Nevada was currently a part of the compact. Regardless of whether or not Nevada decided to ratify the compact, after the 35th state adopted the compact, Nevada would be bound by it anyway.

Assemblywoman Ohrenschall asked what was the point of having non-voting members on the commission. She asked Senator Washington to clarify why Nevada would be bound by the compact after the other 35 states ratified it.

Chairman Anderson clarified that Nevada was currently participating with the interstate compact, even though Nevada had not formally adopted the statutory conditions. Senator Washington said Nevada was part of the old compact. Chairman Anderson said if S.B. 194 moved forward, Nevada would continue doing what it had been doing. Senator Washington agreed.

Clay Thomas, Deputy Chief, Division of Parole and Probation (P&P), Department of Motor Vehicles and Public Safety (DMV&PS), said the state of Nevada was in compliance with the current interstate compact that had existed since 1937. S.B. 194 would ratify the contract that would hold all states to a "level playing field." It would ensure there was consistency with the interstate compact and addressing of public safety issues for individuals who traveled into or from Nevada. Nevada currently had a 2-to-1 ratio of offenders leaving Nevada compared to those entering Nevada. There were 2,303 supervised offenders outside of Nevada compared to 1,085 individuals who transferred into Nevada from other states.

Assemblywoman Ohrenschall asked for clarification regarding whether Nevada could drop out of the interstate compact. Mr. Thomas said there was always the potential to drop out, but Nevada would then have no voice of authority and could become a dumping ground for offenders, without any recourse for the state.

Chairman Anderson clarified that because Nevada was part of the compact, Nevada did not retain the supervision expense for those offenders transferred to other states, and Nevada could charge those offenders coming into Nevada for their supervision. Before any individuals were transferred in or out of Nevada, paperwork was exchanged detailing supervision requirements and any special conditions ordered by the states.

Chairman Anderson asked how a state could send an individual into Nevada without Nevada authorities knowing it. Mr. Thomas said there was an obligation to register, but under the existing compact, there were no sanctions against a state that failed to comply with the compact. With the ratification of the new compact, a state that willfully ignored the compact would be held accountable. Mr. Thomas recounted the Nevada request and transfer process and paperwork.

Chairman Anderson asked if there were any questions from committee members. There being none, he entertained a motion to do pass S.B. 194.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS S.B. 194.

ASSEMBLYWOMAN ANGLE SECONDED THE MOTION.

MOTION PASSED WITH MRS. KOIVISTO, MR. NOLAN, AND MS. BUCKLEY ABSENT FROM THE VOTE.

Chairman Anderson asked Assemblywoman Ohrenschall to present the bill on the Assembly floor.

Chairman Anderson opened the hearing on S.B. 232.

Senate Bill 232: Provides for collection of information on economic background of each child referred to system of juvenile justice and requires each juvenile probation department to determine whether children of racial or ethnic minorities and children from economically disadvantaged homes are receiving disparate treatment in system of juvenile justice. (BDR 5-573)

Senator Valerie Wiener, Clark County Senatorial District 3, presented S.B. 232, one of four bills requested by the A.C.R. 13 Interim Study Committee on Juvenile Justice, which she had the privilege to Chair during the last interim. S.B. 232 proposed to expand the existing information collected by the juvenile courts and juvenile probation to include data on the juvenile's economic background. To eliminate a large fiscal note, local juvenile probation departments would analyze the information collected to determine whether children of racial or ethnic minorities and children from economically disadvantaged homes were receiving disparate treatment in the juvenile justice system. Based on the information, departments would develop appropriate recommendations to address any such disparate treatment. The results of their analysis and recommendations would be submitted to the Division of Child and Family Services (DCFS). Once the DCFS had received the counties' reports, those reports would be compiled into a single publication.

Senator Wiener submitted letters from Ms. Willie Smith, Deputy Administrator, Youth Correctional Services, Division of Child and Family Services (Exhibit D), and from Kirby Burgess, Director, Department of Family and Youth Services (Exhibit E), both supporting S.B. 232.

Senator Wiener said the issue was very important to both the A.C.R. 57 (1997-1998) and A.C.R. 13 (1999-2000) Interim Committees on Juvenile Justice. It was agreed that the legislature should take steps to address that concern, especially as it impacted the juvenile justice system, young people, families, and communities.

Chairman Anderson said the bill applied to counties with over 400,000 in population or counties with under 100,000 in population. As such, what happened to Washoe County? Mr. Pugh replied that Washoe County had a probation department within its juvenile services; Washoe County considered themselves a local juvenile probation department because it was one of their divisions.

Mr. Burgess said Clark County Family and Youth Services had a probation division within their agency and they were ready to participate in the process. It should be noted that the information was not being collected to place blame; rather, it was an effort to keep youth out of the system. A recent report by a national consultant said that Clark County was doing a better job of keeping ethnic minority youth out of the juvenile justice system. That data would help determine what was being done and why it was done.

Chairman Anderson asked how current information was being gathered and analyzed. Mr. Burgess said Clark County had a computer system called "Family Tracks" that collected data on every child that entered the juvenile justice system. With a "tweak" to the system, the data required for S.B. 232 could be analyzed. Chairman Anderson asked how it was anticipated that the courts would get involved in the purpose of the legislation. Mr. Burgess said they currently tracked a youth upon entry into the juvenile justice system, at the detention facility, during the filing of the petition by the

juvenile division of the District Attorney's Office in Clark County, as well as at all court hearings and dispositions. Chairman Anderson clarified that Mr. Burgess had taken that upon himself; the courts were not doing it for him. Mr. Burgess said his department had a good partnership with the court system, and every court action was captured for analysis.

Mr. Pugh said in Washoe County every court order was entered into the juvenile system and included when a petition was filed, what actions were taken on that petition, and what the ultimate court action was. All of that data could be retrieved. Washoe County did not currently collect the economic background on juveniles, and it might be difficult to get the parents to disclose that information. Washoe County did track minorities in the referrals to the department. Statistics included juveniles booked in the detention centers, detained at the detention centers, and committed to the state training centers. Mr. Pugh felt the legislation was important and said Washoe County had volunteered existing resources and was adding resources to implement the provisions of S.B. 232.

Assemblyman Carpenter asked what information would be considered when collecting data on economic background. Mr. Pugh said he understood an amendment to the original bill listed the economic data to be collected. It was important to make sure that those families that could not provide certain levels of supervision or lived in lower socioeconomic areas where the crime rates were higher were not treated any differently than those who had stable, higher income homes. Mr. Burgess said income guidelines could be used as a factor. Assemblyman Carpenter said he felt "things were being taken too far" that might interfere with doing programs for the children. Income should not matter as it related to the programs. If the children had the same problems and the same needs, the side issues were not needed.

Chairman Anderson said economic diversity of the juvenile population, relative to their access to the system, had been discussed, and there had been a number of pieces of legislation that dealt with juvenile rights. Senator Wiener said that juveniles and their access to the system had been a consideration. She believed that while gathering data, if it were discovered that there was a substantial disproportionate number of children in the system from very low socioeconomic backgrounds, some of the preventative programs could be geared toward those neighborhoods and populations. The law already required that information, except economic background, be provided to the state.

Willie Smith, Deputy Administrator for Youth Corrections, Division of Child and Family Services, said she wanted to address Assemblyman Carpenter's question. Currently, except for economic background information, all the data that was needed to make determinations was available along with the information as to what services the youth were receiving when they came through the system. She believed the data collection would make sure that all children got the services they needed. Ms. Smith said the state employee who was responsible for working on the data was paid by federal dollars, and that individual would continue to assist with the responsibility for that data.

Assemblyman Carpenter said he wanted to make sure that what was "viewed as an evil" was not cured by allowing the children to fall through the cracks. He emphasized that "all" children needed to be taken care of. Mr. Pugh agreed with Assemblyman Carpenter, and there was no intention to exclude anyone from receiving any service. Mr. Pugh believed prevention programs, available to anyone within the community and focused at keeping children out of the system, would benefit everyone in the community.

Assemblywoman Ohrenschall asked for clarification as to whether more information was being gathered about the juveniles than had been gathered before. Senator Wiener said the state already substantial data on each juvenile collected by the local authorities, and the economic background information would be in addition to that data. For purposes of analysis, there would be three substantial components: ethnic, racial, and economic background. Assemblywoman Ohrenschall asked if that information would be used for any other purpose or only for the study. Senator Wiener said it really was not just a study; rather, it was a way of doing business. It would include collecting data, doing an analysis, developing recommendations, and passing the information to the state where a statewide report would be compiled. Assemblywoman Ohrenschall asked if there was any chance that the information could be used to prove a "family was too poor." Senator Wiener said that was not the intent of S.B. 232; it was to gather data to keep children out of the system. Mr. Pugh said he dealt with the delinquency court, which did not deal with custody issues.

Chairman Anderson made comments regarding the lack of statistical information from the courts on a regular basis. Having that information would backup the intention to keep children out of the prison system. Chairman Anderson did not propose to put the prison system out of business; he just would like it to have a smaller population. Ms. Smith said the intent was to obtain information in order to make better decisions.

Jan Gilbert, Progressive Leadership Alliance of Nevada (PLAN), said she supported S.B. 232. She felt it would be a tool for planning, prevention, and services, and it would benefit all the communities.

Bobbie Gang, Lobbyist, Nevada Women's Lobby, said she supported S.B. 232.

Dr. Jane Foraker-Thompson, Religious Alliance in Nevada (RAIN) and Episcopal Diocese of Nevada, said she supported S.B. 232.

Chairman Anderson closed the hearing on S.B. 232 and entertained a motion to do pass S.B. 232.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS S.B. 232.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

Assemblyman Gustavson said he did not believe the economic background information needed to be collected, and he indicated he would vote against S.B. 232.

Chairman Anderson asked that the motion be withdrawn.

ASSEMBLYWOMAN OHRENSCHALL WITHDREW THE MOTION TO DO PASS S.B. 232.

ASSEMBLYMAN CARPENTER WITHDREW THE SECOND.

Chairman Anderson opened the hearing on S.B. 241.

Senate Bill 241: Revises provisions relating to determination of whether certain offenders constitute menace to health, safety or morals of others. (BDR 16-435)

Gary Crews, Legislative Auditor, Legislative Counsel Bureau, Audit Division, said in the first week of the current legislative session, he presented an audit report on the Department of Prisons Sex Offender Certification Panel. An executive summary of that report was submitted to the committee (Exhibit F). Problems had been identified and reported to the Assembly Committee on Judiciary. Recommendations were made regarding revision of statutes to address who should be responsible for the program, who would be responsible to appoint members to the certification panel, and what the qualifications of those members should be. A Bill Draft Request (BDR) was submitted with Department of Prison language, but the Audit Division's concerns were addressed.

Rocky Cooper, Legislative Auditor, Legislative Counsel Bureau, Audit Division, said he was available for questions.

Assemblyman Carpenter asked for clarification on Section 1, specifically, how the observation would be carried out. What was involved in certifying that a prisoner had been under observation? Mr. Crews said the Department of Prisons should answer that question.

Chairman Anderson asked if a subsequent audit was planned for that department as part of the regular scheduled audits. Mr. Crews said every two years there was a risk assessment of all state government agencies, identifying each department's goals for the next two years. It would be based on a number of factors. Mr. Crews believed he would return to do another audit.

Chairman Anderson acknowledged Rex Reed, PhD., Medical Administrator, Department of Prisons. Dr. Ted D'Amico, Medical Director, Department of Prisons, joined Dr. Reed at the witness table. Chairman Anderson said there was concern in the change of behavior of the Department of Prisons in their implementation of the new provisions for supervision of sex offenders. Dr. D'Amico said a sex offender program had already been started in Lovelock. The program identified 400 individuals, who were offered the program and were currently participating in the program. The program at Lovelock was scheduled to last approximately one year. A maintenance program had been established in southern Nevada with 200 individuals. The total number of sex offenders in the system at the time was 1,500.

Assemblyman Nolan said a bill had been passed out of the committee requiring treatment for sex offenders. Because the bill had a fiscal note, it was in the Assembly Committee on Ways and Means. That bill made the treatment mandatory, and Assemblyman Nolan asked why the mandatory provision was taken out of S.B. 241. Dr. D'Amico replied someone told him it had been taken out, but that was hearsay. Dr. D'Amico felt it was an important factor for the bill; however, whether it was in or out, the program would still be run, and it was expected to be very effective.

Chairman Anderson said the fiscal note was $13,754 for S.B. 241. That was not a part of the discussion, since Judiciary was a policy committee not a money committee, and S.B. 241 would go to the Assembly Committee on Ways and Means. Assemblyman Nolan was not concerned with the fiscal note. He was concerned with the process where inmates may not be identified as sex offenders, not participate in treatment programs, and be released without any treatment.

Dr. Reed said the fiscal note for S.B. 241 was for the Department of Prisons. The Division of Mental Health also had a fiscal note. Dr. Reed had spoken with the Legislative Counsel Bureau that should have submitted an impact statement.

Chairman Anderson said the fiscal note was not the concern. S.B. 241 was proposing a cleaner process, which would hold the prison system more clearly responsible for "ascertaining the condition of sex offenders." Dr. D'Amico said the new emphasis was toward care and programs, and some very reliable outside federal funding sources were being developed. Dr. D'Amico felt it was important that the Department of Prisons accepted ownership of the program in order to create procedures and protocols. Chairman Anderson noted there was another fiscal note to cover expenses for the State Motor Pool.

Chairman Anderson closed the hearing on S.B. 241 and entertained a motion to do pass S.B. 241.

ASSEMBLYMAN NOLAN MOVED TO DO PASS S.B. 241.

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

Assemblyman Carpenter said it was very important that all that could be done was done. It was important to make the best possible decision using highly qualified people to conduct the evaluations. Assemblyman Carpenter felt the language in S.B. 241 made it a good piece of legislation. Chairman Anderson agreed that with the audit recommendations and the new direction of the Department of Prisons, S.B. 241 was a strong step forward that would include better follow-through on the issue.

MOTION PASSED WITH MS. BUCKLEY, MR. COLLINS, AND MS. McCLAIN ABSENT FROM THE VOTE.

Chairman Anderson asked Mr. Nolan to present the bill on the Assembly floor.

Chairman Anderson entertained a motion to do pass S.B. 232.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS S.B. 232.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

Assemblyman Gustavson repeated his opposition to the bill saying he did not believe there was a need to collect more information. Assemblyman Carpenter said that collecting information, handled in the correct manner, would be a positive step.

A ROLL CALL VOTE WAS CALLED AND THE MOTION PASSED 10-2 WITH MS. ANGLE AND MR. GUSTAVSON VOTING NO, AND MS. BUCKLEY AND MR. COLLINS ABSENT FROM THE VOTE.

Chairman Anderson recessed the meeting at 9:39 a.m.

Chairman Anderson reconvened the meeting at 10:04 a.m., opened the hearing on S.B. 577 and acknowledged Senator Mark James, Clark County Senatorial District 8.

Senate Bill 577: Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

Senator James said legislation had been processed each session updating and upgrading to ensure that Nevada's corporate laws were the best, the most inviting for business, the fairest, and the most

equitable in the country. Senator James gave a brief description of what had happened over the last couple of years in corporate law. It had been a rare occasion when the fees were increased for Secretary of States transactions, the last raise in fees being in 1989. The fee increases in S.B. 577 were modest increases. The intent was to guarantee that Nevada was the "domicile of choice" for corporations around the country. Work was accomplished with the S.C.R. 19 Interim Committee of the Seventieth Session, with recommendations resulting in a number of bills that had been processed through the Senate Committee on Judiciary. Senator James believed S.B. 577 would generate approximately $30 million in the biennium for the General Fund budget. Senator James reported it was the Governor's desire to utilize these funds to assist in providing raises to the teachers in Nevada.

Senator James said S.B. 577 would accomplish many purposes. He highlighted a number of provisions of the bill and additional key data:

1. Schedule of fees
2. Liabilities of those who serve as directors of corporations as seen in the doctrine of alter ego or piercing the corporate veil
3. 172,000 corporations in Nevada
4. 35,000 bankruptcies last year in Nevada
5. Adherence to the corporate fiction
6. Required corporate formalities

Chairman Anderson interrupted Senator James and indicated that Risa Lang, Committee Counsel, had prepared an *Explanation of Senate Bill No. 577* (Exhibit G). Nick Anthony, Committee Policy Analyst, had prepared a summary on the *Polaris v. Kaplan* Nevada Supreme Court Case (Exhibit H).

Senator James made closing remarks, noting that a Senate amendment deleted the wording, "clear and convincing evidence" leaving the evidence standard at "preponderance of evidence" to show liability under the statute.

Senator James submitted the following exhibits without testimony:
Exhibit I – Video from Senate Judiciary Hearing May 22, 2001
Exhibit J – Letter from S. Craig Tompkins, a director of a number of public companies, in support of S.B. 577

Assemblywoman Buckley said she supported the provisions of the bill that increased the fees. As far as the liability provisions, she had lots of questions. In Section 1, where it said a court determined the issues, was it the intent to eliminate the right to a jury trial? Senator James said that was not the intent. Assemblywoman Buckley asked if it was the intent to take the decision away from a jury and place it in the hands of a judge. Senator James said S.B. 577 did not do that. Assemblywoman Buckley reported there had been some legal opinions to the contrary.

Assemblywoman Buckley called attention to provisions applying to the alter ego doctrine and added, "Why would we want to change a good law that said justice was to be the determining factor?" Senator James said many creditors would also require a personal guarantee in addition to a corporate guarantee. Fraud was not allowed; otherwise there was a predictable rule. That was justice. Assemblywoman Buckley believed "justice" was in the first version that came out of the Judiciary Committee.

Assemblyman Brower agreed with Assemblywoman Buckley's comments, but he was concerned about any lawsuit that might be prohibited as a result of S.B. 577. Senator James countered S.B. 577 prohibited no type of lawsuit.

Assemblyman Oceguera asked why the corporate veil was not predictable. Senator James said the Nevada Supreme Court case in 1987 set the standard, and hundreds of cases had been decided applying that standard.

Assemblywoman Ohrenschall noted the *Polaris* decision proved that corporate fiction was utilized to "sanction fraud or promote injustice." Did that mean there would be immunity unless fraud could be proven? Senator James said S.B. 577 did not provide immunity. The lower courts required proving fraud, while the higher courts only required proof of injustice. Assemblywoman Ohrenschall felt S.B. 577 would "raise the bar" from not needing to demonstrate fraud to absolutely proving fraud. Senator James agreed. Assemblywoman Ohrenschall asked if S.B. 577 eliminated gross negligence or wanton and woeful disregard, standards that came close but were not fraud. Senator James said the liability was to a third party, and they would need to show fraud.

Chairman Anderson noted he had received a conflict notice affecting S.B. 51 that made various changes pertaining to business associations and increased fees for document corrections.

Dean Heller, Secretary of State, said he wanted to read the conflict notice and return an explanation of the conflicts. He did not see it as a major conflict or that it should hold up the bill, but he was willing to work with the committee to resolve any conflicts. Chairman Anderson wanted assurance that the dollars were generated as intended; the Legal Division would compare S.B. 51 and S.B. 577. Mr. Heller said there were new articles in S.B. 51 that were not included in S.B. 577. Ms. Lang said there were three substantive conflicts that would need to be resolved; otherwise S.B. 51 and S.B. 577 would be made consistent.

Michael Bonner, an attorney in Las Vegas, was asked by Senator James to speak on the advantages of corporations choosing Nevada as their domicile. That involved comparing the Nevada statutes to the Delaware statutes. S.B. 577 clarified issues and strengthened protections as detailed in *Nevada Revised Statutes* (NRS) 78.307. Mr. Bonner suggested that the language "promote injustice" should be deleted.

James Bilbray, former Senator, Chairman of the Senate Committee on Taxation and practicing attorney, had represented clients and sat on public boards where suing directors was used by many people as a method to recover what was perceived as wrong doings. If Nevada wanted more businesses to come into the state, benefits must be offered; protections for the directors was such a benefit.

Assemblyman Carpenter asked if Delaware had in their law what Nevada wanted to put into their statutes. Mr. Bonner said Delaware had a similar version of liability protection; however, Nevada provisions were better.

Assemblywoman Ohrenschall disclosed she was a director of a number of Nevada corporations, and she had assisted in creating many incorporations. Despite that, she would participate and vote.

Kenneth Lange, Executive Director, Nevada State Education Association, spoke in support of S.B. 577.

Chairman Anderson recessed the meeting at 10:56 a.m. to go to the Assembly floor session. The meeting would reconvene at 4:00 p.m. to continue testimony on S.B. 577.

Chairman Anderson reconvened the meeting at 4:15 p.m., made opening remarks, and noted a quorum was present. Chairman Anderson continued the hearing on S.B. 577.

Derek Rowley, President, Corporate Services Center, spoke in favor of S.B. 577.
Mr. Rowley voiced concern over rumored changes that could strip the indemnification provisions from the bill, making it a special interest amendment in favor of one or two groups.

Chairman Anderson declared such allegations were not allowed, and he asked who had made such accusations. Special interest legislation was not done. Chairman Anderson took personal affront at Mr. Rowley's remarks and voiced concern about his further testimony.

Mr. Rowley continued his testimony. He said the indemnification provisions were vital to making the package work. Mr. Rowley said Nevada was not for sale with the bill, the bill did not prevent criminal prosecution of corporate officers or directors, the bill did not prevent personal liability of corporate officers or directors where fraud existed, and the bill did not prevent individuals from holding corporations responsible for damages incurred. What the bill would do was codify the existing Nevada legal decisions and add a new level of predictability to Nevada's corporate statutes.

Mr. Rowley said there was a liability crisis in the country today. The indemnification provisions of S.B. 577 should be kept whether the fees were increased or not. Mr. Rowley believed there were misconceptions that the corporate filings were stable and the revenues from these filings were predictable. The truth was that corporate filings were a barometer of the economy. While an 8 percent annual growth in corporations was estimated by the Secretary of State's office, Nevada experienced a negative growth through the first quarter of 2001. It was not understood how price-sensitive the incorporation industry was today. There was a great deal of competition for new incorporation, and the ease of the Internet made it simple for price comparison from state to state, service for service. Mr. Rowley said he supported S.B. 577 as written, but he could not support S.B. 577 if the indemnification provisions were removed.

Chairman Anderson said S.B. 577 provided an opportunity to take case law and put it into the relevant statute. He asked if that would be objectionable. Mr. Rowley said it would not necessarily be objectionable. In the effort to promote or market Nevada for business purposes, his company was pleased with the current provisions. The impact of the increased fees was unknown; however, to justify those fees, he believed an additional benefit was needed to keep Nevada at the forefront of the incorporation industry.

Assemblywoman Buckley asked if Wyoming had recently raised their fees. Mr. Rowley said Wyoming raised their renewal fees, creating a $40 increase over the original incorporation fees. Assemblywoman Buckley verified that S.B. 577 did not increase the renewal fees. Mr. Rowley agreed. Since the increase in revenue was based on an increase in new corporate filings, it would be necessary to "sell" Nevada on a continuing, on-going basis in order to generate the revenues.

Chairman Anderson asked Mr. Rowley if he was familiar with the *Polaris v. Kaplan* case. Mr. Rowley said he had only read a summary of the case.

Assemblyman Carpenter asked what kind of corporation would be concerned over a $50 difference in fees. Mr. Rowley said the typical “mom and pop” operation or “people with a good idea” made up a vast majority of the Nevada corporations. They were very conscientious about costs, running their business on a shoestring; they were people with a dream.

Assemblyman Brower said there seemed to be a disconnect between “the stick” of increased fees and “the carrot” of the liability law. Mr. Rowley said the language in Section 1 stabilized the expectation of companies regarding indemnification, and it did not change anything the courts were not already enforcing. Section 3, subsection 7, was very important. Assemblyman Brower then asked what the pitch or “the hook” would be when marketing Nevada. Mr. Rowley said he would pitch low fees and costs, the Nevada tax structure, liability protection, and indemnification provisions. The liability protection was a big deal for individuals.

Chairman Anderson said it was clear there was concern about retaining Section 3, subsection 7, as a crucial provision of the bill, and no other additions were needed for the bill. Mr. Rowley had no other concerns about the bill as long as the indemnification provisions were retained in the law.

Assemblyman Carpenter asked if Mr. Rowley had been talking about income tax laws. Mr. Rowley said he was talking about the lack of a state corporate income tax. Assemblyman Carpenter asked if Wyoming had a state corporate income tax. Mr. Rowley replied Wyoming did not. Assemblyman Carpenter asked if Delaware had a state corporate income tax. Mr. Rowley said Delaware had a state corporate income tax of 8.7 percent.

Assemblyman Collins asked what it would cost Nevada if people went to Wyoming to incorporate. Mr. Rowley said the way the bill was currently written, it was not significant if Nevada lost a large number of corporations to Wyoming. An individual who took a corporation to “domesticate” in Wyoming could do so for approximately $200, and Wyoming had provisions in their law that allowed that corporation to carry its corporate history with it as if it had always existed in Wyoming.

Chairman Anderson asked Mr. Rowley if his company would recommend more corporations in Wyoming over Nevada if the fees increased. Mr. Rowley said his sale staff did not make that decision; they provided the information, and the decision was left up to the customer. Chairman Anderson asked if the “mom and pop” corporations understood the indemnification provisions that Mr. Rowley was trying to protect. Mr. Rowley said they might not have a full understanding of those provisions, which was even more reason to have those provisions in place.

John Olive, President, Nevada Association of Listed Resident Agents (NALRA), represented 35 resident agent companies that collectively represented 50,000 to 55,000 corporations organized within the state of Nevada. Mr. Olive spoke in support of S.B. 577. The value of codifying case law would allow prospective incorporators to assess the likelihood of success in defending themselves in a case in which they might be drawn in as defendants. Mr. Olive said that the indemnification extension would essentially substitute for the lack of heritage of corporate jurisprudence until the business court had sufficient case law to provide a similar depth of jurisprudence as seen in Delaware.

Chairman Anderson asked how the bill would impact the resident agent industry. Mr. Olive said a study was done at the Advanced Research Institute at University of Nevada, Las Vegas to project the impact of the proposed $500 franchise fee. It was determined that the franchise fee would have precipitated an estimated 80 percent exodus of corporations from the state of Nevada. The study would need to be revised with the increase of fees to reflect their impact; it was estimated there would

be some reduction in the number of corporations being formed. Chairman Anderson queried, that by offering the limited liability as provided in S.B. 577, how many additional companies would be attracted to Nevada. Mr. Olive quoted growth projections of 12 to 15 percent.

Assemblyman Brower stated Section 2, page 2, would eliminate a current statutory provision that allowed a corporation to include in its Articles of Incorporation certain liability limiting provisions. Mr. Olive agreed. Assemblyman Brower said Section 3, subsection 7, page 3, addressed the same issue, only making it automatic. Mr. Olive agreed. Assemblyman Brower said the bill would then achieve the same result as current law; it would not be a substantive change in the law. The real issue addressed by the bill would then be the alter ego doctrine in Section 1. Mr. Olive said Section 3, subsection 7, might seem redundant with Section 2, but it was the same spirit as Section 1 that codified current case law; Mr. Olive agreed with Assemblyman Brower's assessment of the bill.

Rose McKinney-James, Clark County School District, offered "unqualified" support for S.B. 577. Ms. McKinney-James believed the funding from the bill would be used for salaries for teachers and to fund those programs and services that had been curtailed.

Bob Crowell, Nevada Trial Lawyers Association (NTLA), supported the fee and funding mechanism set forth in S.B. 577, but was concerned about the corporate immunity. S.B. 577 changed the corporate immunity statutes in Nevada in three ways:

1. Codified the alter ego doctrine or piercing the corporate veil, by changing the case law with respect to proof required to pierce the corporate veil.
2. Extended the officers' and directors' immunity currently in Nevada law to other individuals.
3. Shortened the statute of limitations for bringing actions against officers and directors from three years to two years.

Bill Bradley, Nevada Trial Lawyers Association (NTLA), posed a scenario involving Chairman Anderson and Assemblyman Carpenter for purposes of explaining the ramifications of forming and operating a corporation in Nevada, and, unfortunately, of experiencing fraud in their dealings with another corporation.

Pat Cashill, Nevada Trial Lawyers Association (NTLA), said Nevada had 44 years of corporate case law going back to 1957. The key to the judicial history in Nevada on that issue was the court took the position that there was no fixed criteria to use the alter ego doctrine to pierce the corporate veil. The *Polaris* decision talked about a number of factors that "would sanction fraud or promote injustice" and could lead to piercing the corporate veil:

1. Under-capitalization
2. Co-mingling of funds
3. Unauthorized diversion of funds
4. Treatment of corporate assets as individual's own
5. Failure to observe corporate formalities

Mr. Cashill went on to suggest language retentions and deletions in S.B. 577. He was "gravely" concerned and believed it would be bad social policy to enact the bill as written.

Chairman Anderson asked how the "Bubba and the Cowboy" corporation would be affected if S.B. 577 was enacted. Mr. Bradley agreed the corporation would be left "holding the stick." The importance of the *Polaris* decision (Exhibit K) was seen where the Supreme Court elected to follow

the "promote injustice" standard. Trying to prove fraud was an extremely tough burden; fraud was a state of mind, and it was tough to prove a state of mind. Mr. Bradley believed it was important to amend S.B. 577 to include the language "or promote injustice."

Assemblyman Brower asked why a criteria "less than fraud" would be allowed to be used as the standard to pierce the corporate veil. Mr. Crowell said it was difficult to articulate what constituted fraud or the various circumstances that might lead to or give rise to an injustice sufficient to pierce the corporate veil. He believed the Supreme Court answered that question on page 3, Section [2][3] of Exhibit K where it stated, "It is not necessary that the plaintiff prove actual fraud. It is enough if the recognition of the two entities as separate would result in an injustice." The *Polaris* decision continued on the top of page 4 of Exhibit K, "There is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case." Mr. Bradley said there were circumstances where it "may not be fraud," but you knew it was wrong. Assemblyman Brower said, "If it walks, talks, and swims like fraud you should be able to prove fraud."

Assemblyman Collins reminded the committee to look at the bigger issue of S.B. 577. Was the issue to deal with the *Polaris* decision or find money for the teachers? Mr. Bradley was in support of funding teacher salaries; however, it was not necessary to significantly change a strong 50-year judicial doctrine in order to accommodate that fee increase. That was why NTLA was offering an amendment.

Assemblyman Manendo asked if S.B. 577 had been in place a couple of years ago, how would that have affected the "Harley Harmon incident" in southern Nevada? Mr. Cashill said the current language in Section 3, subsection 7, page 3, provided immunity to officers or directors for any action committed as an officer or director. He did not believe it was the intent to extend immunity "that far." Mr. Cashill suggested some "limiting" language should be inserted that would limit the immunity to corporate activities in a legitimate sense. Mr. Bradley said Section 3, subsection 7, stated, "unless otherwise provided in NRS…" and that included mortgage and securities issues; there was some protection because it referred to existing provisions in the NRS. Without an amendment, Section 3, subsection 7, would eliminate third party damages, and that was not the intent. Mr. Cashill said there was an inconsistency between existing law in Section 2 that limited the liability and Section 3, subsection 7 that seemed to extend unlimited immunity.

Assemblywoman Buckley asked, when viewing the issue of fraud versus injustice, what definition of fraud would be used if the language of S.B. 577 was approved. Would it be the common law definition of fraud or the definition in NRS 42.001? Mr. Cashill said in the case *Lubey v. Barba* the common law definition was used as a standard. He did not know whether the statute or the common law definition would apply in any case. Assemblywoman Buckley said perpetrators of fraud could "get away with it" by saying there was "no intentional misrepresentation" to deprive a creditor. Mr. Cashill agreed.

Assemblyman Brower disagreed, saying he believed, in a case of "looting the corporation," fraud could be proven. Assemblyman Brower said Section 3, subsection 7, did not give unlimited immunity because it said, "unless it was proven there was fraud, intention misconduct or known violation of the law." Mr. Crowell disagreed with Assemblyman Brower and submitted an amendment (Exhibit M) that clarified a director could not be shielded from liability for acts outside the corporation, which left intact the rights of a third party.

Chairman Anderson asked for an explanation of the Loomis letter (Exhibit L). Mr. Cashill recalled the circumstances of the case and subsequent judgment against Lange Financial Corporation. The Loomis family had great difficulty collecting the judgment amount, but was able to use the alter ego doctrine to reach through numerous corporate shells to reach the assets of the corporation in order the satisfy the judgment.

Mr. Crowell made closing statements regarding the proposed amendment (Exhibit M) from the NTLA. It included five sections:

1. Rewrote Section 1 using language drawn directly from the *Polaris* decision.
2. Amended language in Section 3, subsection 7, to clarify that the immunity from liability extended to an officer or director only "to the corporation or its stockholders" and to include the word "or" when listing the two actions that might cause liability.
3. Changed the effective date language to include "shall apply to claims that arise after October 1, 2001" in Section 59, subsection 2(b).
4. Changed Section 8 to restore the statute of limitations to three years.
5. Deleted Section 55 since legislative intent should not be a part of the bill.

Chairman Anderson asked if the proposed amendment (Exhibit M) had been shared with Senator James. Mr. Cashill said they "talked."

Assemblyman Oceguera asked for clarification from Mr. Bradley concerning comments made relating to Section 2, and to Section 3, subsection 7. Mr. Bradley reiterated the changes as outlined in the NTLA proposed amendment (Exhibit M).

Assemblyman Carpenter said on page 3, line 21, the NTLA proposed to delete "unless it is proven that," and asked why would the NTLA want that taken out. Mr. Bradley said that was a typo; it was their intent to retain that language.

Chairman Anderson clarified the language of the proposed amendment and asked the NTLA to submit a clean copy with any additional changes.

Danny Thompson, Executive Secretary-Treasurer, Nevada State American Federation of Labor-Congress of Industrial Organization (AFL-CIO), said Clark County had a critical need for 1,200 new teachers in 2001-2002, but they had only been able to recruit 500. Mr. Thompson shared statistics regarding high school dropouts, prison inmates, low teacher salaries, portable classrooms, and lack of books. The problem could not wait; it needed to be solved in the current session. The problem was not going away!

Dave Howard, Reno-Sparks Chamber of Commerce, spoke in support of S.B. 577 with some reservations; he felt the bill did not do enough. Although it was believed that the bill was written to attract new corporations to Nevada, no one had discussed attrition if the economy "goes down the dumps;" there was no guarantee that the economy would continue to encourage growth. And even though Mr. Crowell said the bill would not be retroactive, Mr. Howard felt the provisions of the bill would also apply to those who were already incorporated.

Kami Dempsey, Director, Government Affairs, Las Vegas Chamber of Commerce, spoke in support of S.B. 577 as written. She said it was a first step to finding a solution to help teachers obtain a salary increase without negatively impacting the economy and disproportionately hurting small businesses. The Las Vegas Chamber of Commerce and the business community recently completed a position

paper outlining their intention to work during the interim to find a tax package that would fulfill the state's financial needs over the next ten years.

Sam McMullen, Las Vegas Chamber of Commerce and the Retail Association of Nevada, said S.B. 577 contained a very serious issue. Mr. McMullen spoke in support of the bill, but he did not believe it needed an amendment. He reiterated his commitment to work during the interim on a package to be presented to the legislature at the Seventy-Second Session. Mr. McMullen said the bill had been looked at from both sides, as defendants and as plaintiffs, and he believed it to be a fair statement of the law, one that needed to be secured and passed in its current form. He said the real issue was sanctioning fraud; promoting justice was vague and too broad.

Chairman Anderson asked if Mr. McMullen had heard the testimony of the Secretary of State regarding the conflicts between S.B. 51 and S.B. 577. Mr. McMullen said he did not have a problem with conflict amendments; he did have a problem with changing the bill as written. Chairman Anderson stated there were time factors in the bill that may have led to a misunderstanding of the real intent of the bill. Mr. McMullen said he had no problems with the effective date of the law relating to claims. Chairman Anderson asked if Mr. McMullen participated in the drafting of the bill. Mr. McMullen said he had not.

Assemblyman Collins reiterated his question related to the "real issue" under discussion. Was it a test or was it a precedent with strings? Mr. Collins asked, "Are we doing the right thing?" Mr. McMullen said the real question should be, "How do we guarantee that we actually get out of this bill what we said we were going to get out of it?" In order to increase fees, new provisions were necessary to drive revenue, to secure it, and to expand it in the future.

Assemblywoman Buckley verified the fees that would increase and those that would remain the same. It was good to be a business-friendly state; it was good for the economy. She questioned why an $80 increase required the kind of immunity provisions that could hurt other Nevada businesses? Mr. McMullen did not believe those immunity provisions would hurt any existing Nevada businesses; they were good for Nevada business. In his judgment, he did not think the trade was $80 for those provisions; rather, it was a resolution of budget issues, a marketing tool, and a clarification of current law.

Assemblyman Brower said he did not see the linkage between the fee increase and the change in policy. Regardless of whether the fees were increased, the proposed change in the law was a good policy change for Nevada. Mr. McMullen confirmed that would be good for Nevada. What people wanted most of all was to know what the rules of law were. It would be good for new corporations and would be clarification for existing corporations.

Chairman Anderson asked if Delaware or any other state had similar provisions. Why not take case law and put that into statutory provision? Mr. McMullen said Delaware did have more case law to rely on, but that might not be the question. It was easy for Delaware to attract corporations, especially on the east coast. Nevada needed to create a better attraction for corporations.

Chairman Anderson said the advantage of case law was that once it was on the books, it was there. Like common law, you could continue to make reference to it as it continued to evolve. Case law became a much more reliable predictor of behavior in a litigant society. Mr. McMullen disagreed. The issue was whether or not the stream of revenue was secured. Out-of-state corporations did not want case law to be a determining factor, as they could be the next case. Those corporations wanted

to know that the rules were secure. Chairman Anderson said the question was then whether public policy should be put at-risk to fund education. Mr. McMullen did not think there was any risk; it was a clear statement of the policy.

Mary Lau, Executive Director, Retail Association of Nevada, said the issue of increased fees had been brought forward previously without result, and now that issue was being revisited.

Chairman Anderson asked for further testimony. There being none, he announced the committee would be recessed until 9:30 a.m. tomorrow morning. The testimony phase was at an end. The committee was waiting for additional information from the Legal Division regarding the fiscal impact and those sections in conflict.

Assemblywoman Koivisto asked, if it was such good policy, why had it never come up before. The question was discussed among committee members. Chairman Anderson queried about an interim committee study done by Senator James. Assemblyman Brower was not aware of any Bill Draft Request (BDR) recommendation nor did he recall it being a discussion topic at any of the meetings. Assemblyman Manendo said the interim study committee broke into several panels, and the issue was not raised on his panel.

Ray Bacon, Nevada Manufacturers Association, said during the Business Law Committee, chaired by Mr. Taylor, discussed adding certainty to the law in two separate subcommittees. Mr. Bacon did not recall that specific issue being discussed.

Mr. McMullen said those types of issues were discussed, but until raising fees became a viable option, the counterbalance of those provisions was not necessary.

Chairman Anderson recessed the meeting at 6:46 p.m. until 9:30 a.m. the next morning.

Chairman Anderson reconvened the meeting at 10:00 a.m., the following day, made opening remarks, and noted a quorum was present. Discussion of S.B. 577 resumed.

Chairman Anderson drew attention to a letter from the Secretary of State's office (Exhibit N) that was submitted in response to the request made by the committee. The letter brought clarity to the provisions of S.B. 577 as to when the various sections would apply and why there were different dates for implementation.

Chairman Anderson announced a short recess to handle trouble with the Internet connection; the meeting reconvened in three minutes.

Renee Lacey, Chief Deputy, Secretary of State, said currently initial lists were currently not required for LLCs, LPs, and entities other than corporations; they only filed annual lists. S.B. 51 would require them to submit initial lists, resulting in the need for additional staff in order to maintain the 10-day money-back guarantee.

Chairman Anderson cautioned that conflicts might exist between S.B. 51 and S.B. 577 that would require amendments to make them consistent. As such, the dollar amounts currently in S.B. 577 might not be in the final draft. Mr. Lacey said that issue had been discussed with the Legal Division that would be preparing the amendment. Ms. Lang said S.B. 51 had already been enrolled, but would be amended to be consistent with S.B. 577.

Assemblywoman Buckley said the appropriation in Section 58 seemed excessive. Ms. Lacey said new positions had been discussed with the Fiscal Division, and most would come out of the Special Services Funds. The request to use those Special Services Funds for technology or positions in the office had to go through the Interim Finance Committee. The appropriation in Section 58 came from the portion that went into the Special Services Fund and not from the portion of the increased fees that would go to the General Fund to assist the teachers. Anything over $2 million that remained in the Special Services Fund at the end of the fiscal year went to the General Fund. The appropriation also included estimated funding for leased space. The additional staff, besides reviewing forms and preparing for the new services and the additional review required by the new services, would also staff a counter service that would provide a 2-hour and 24-hour expedited document service.

Assemblywoman Buckley asked why that funding had not been included in the separate bill where the new services were proposed and the new staff was requested. Ms. Lacey said requiring the new lists for LLCs and LPs was a new service not previously proposed. The Secretary of State's budget had been closed; 20 new positions were requested, and the Assembly Committee on Ways and Means approved 12. The Committee on Ways and Means asked the Secretary of State's Office to obtain funding for the remaining staff through S.B. 577 since the additional staff would be needed for the proposed services in the bill.

Assemblyman Manendo asked why the proposed amendment by the NTLA was approved by the Senate Judiciary Committee and then was taken out. Chairman Anderson verified that the proposed amendments presented to the committee were the same amendments that had been presented in the Senate. Mr. Crowell said the amendment presented in the Senate had been slightly different; it had been passed and then reconsidered the next day. He did not know why. Chairman Anderson requested that the amendment be redrafted, with a clean copy provided to the committee. Mr. Crowell submitted a new copy of the proposed amendment (Exhibit O) for the committee's consideration.

Chairman Anderson recessed the meeting at 10:26 a.m. to be reconvened upon the call of the Chair. There being no further business on that day, the meeting was adjourned at 2:30 p.m.

RESPECTFULLY SUBMITTED:

Deborah Rengler
Committee Secretary

APPROVED BY:

_____

Assemblyman Bernie Anderson, Chairman

DATE:_____