

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
March 21, 2005**

The Committee on Government Affairs was called to order at 9:11 a.m., on Monday, March 21, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Eileen O'Grady, Committee Counsel

Michael Shafer, Committee Attaché

OTHERS PRESENT:

Terry Johnson, Deputy Director, Department of Employment, Training,
and Rehabilitation, State of Nevada

Susan Gray, Deputy Attorney General, Office of the Attorney General,
Department of Justice, State of Nevada

Billie Bailey, Chief Investigator, Nevada Equal Rights Commission,
Department of Employment, Training, and Rehabilitation, State of
Nevada

Keith Lyons, Jr., Legislative Advocate, Representing the Nevada Trial
Lawyers Association

Gary Peck, Executive Director, American Civil Liberties Union of Nevada,
Las Vegas, Nevada

Richard Siegel, President, American Civil Liberties Union of Nevada, Reno,
Nevada

Diana Glomb-Rogan, Legislative Advocate, Representing the League of
Women Voters of Nevada

Robert Desruisseaux, Community Advocate, Northern Nevada Center for
Independent Living

Jon Sasser, Attorney at Law, Washoe Legal Services, Reno, Nevada

Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada

Ray Bacon, Executive Director, Nevada Manufacturers Association,
Carson City, Nevada

Bob Ostrovsky, Legislative Advocate, Representing the Nevada Resort
Association

Irene Porter, Executive Director, Southern Nevada Home Builders
Association, Las Vegas, Nevada

Jim Wadhams, Legislative Advocate, Representing the Mortgage Bankers
Association of Nevada

Chairman Parks:

[Meeting called to order and roll called.] Before we start, I'd like to make a quick announcement. The Director of the Department of Conservation and Natural Resources, Allen Biaggi, and the State Engineer, Hugh Ricci, will be giving an overview presentation this afternoon on water studies in Nevada at the Committee on Natural Resources, Agriculture, and Mining. So, anyone who's interested might want to note that for their travels today.

This morning, we only have one bill in front of us, Assembly Bill 189.

Assembly Bill 189: Revises provisions relating to Nevada Equal Rights Commission. (BDR 18-406)

Terry Johnson, Deputy Director, Department of Employment, Training, and Rehabilitation, State of Nevada:

I'll be joined by Susan Gray and Billie Bailey in southern Nevada. I'll be presenting the bill, and they will be assisting with any questions the Committee might have. Billie Bailey is the Chief Investigator with the Equal Rights Commission. Susan Gray is the Deputy Attorney General who has been assigned to the agency over the past few years, and is actually the incoming administrator of the Equal Rights Commission effective this coming Monday. I look forward to introducing her to you formally.

The bill before you is Assembly Bill 189. This bill is pertaining to the Equal Rights Commission, which is an entity of the Department of Employment, Training, and Rehabilitation. This bill predominately is focused on fair housing and rendering Nevada's fair housing laws essentially equivalent with federal housing provisions. Additionally, it makes some changes to the other duties and authority to the Equal Rights Commission.

With regard to fair housing, the Equal Rights Commission does currently enforce housing provisions and discrimination of housing. However, over the years, since this is a General Fund-supported agency, there have, at times, been some resource challenges for them. Similarly, the federal government, with its Department of Housing and Urban Development (HUD), has jurisdiction over discrimination in housing as well. However, they have not had the personnel here in the state of Nevada. One of the benefits of this bill is that it will allow the State and HUD to enter into an agreement, whereby the discrimination laws in housing would be funded and enforced through an agreement between the two entities.

We do have a summary of each of the sections of this bill ([Exhibit B](#)). We'll proceed in doing so at this time, Mr. Chairman, with your indulgence.

Section 1 creates a new section under NRS [*Nevada Revised Statutes*] Chapter 233, relating to housing discrimination. Now, you'll see as we look through this bill and as we get to subsequent sections, that portions of Section 1 are actually comprised of sections that have come from other parts of the statutes with some minor modifications. As well, there has been some new language added that acts to bring Nevada's law into substantial equivalency with the Federal Housing Act. Additionally, Section 1 requires the Commission to attempt to conciliate or mediate all housing discrimination complaints, and it

requires that any settlements that allays from those discussions or proceedings be made public, unless the parties otherwise agree and the Commission determines that disclosure is not necessary. Additionally, Section 1 of this bill sets out procedures for obtaining relief and also establishes the remedies for housing complaints. For example, a plaintiff may elect to go to court to pursue these remedies or have the Commission itself hold a public hearing on the matter.

[Terry Johnson, continued.] There are five members of the Commission. They are appointed by the Governor to serve on the Commission. Additionally, the remedies that are available include both compensatory and punitive damages and attorney's fees. These provisions were previously included in the law under the Nevada statutes.

Section 2 of the bill, which begins on page 4, separates the public policy sections of Chapter 233 with regard to employment and public accommodation, which are also subject to the jurisdiction and other Commission, and distinguishes them from the housing section to clarify the difference between the two areas of jurisdiction. For example, the housing includes familial status as a protected class; however, it excludes age and sexual orientation. Then, when you look at the employment and public accommodations section, you'll see that, with regard to the Commission's jurisdiction, it does not include familial status and, as a housekeeping item, does add sexual orientation, which is currently the law and was added to Chapter 613 back in the 1999 Session.

Section 3, which begins on page 5 of the bill, defines familial status, sexual orientation, and then also establishes the unlawful discriminatory practices in housing, which is set forth in NRS 118.100.

Section 4, again, clarifies the difference between the housing and public accommodations, separating the two into different sections. It also enables the Commission to initiate complaints in housing, which is a component of the federal provisions as well. You'll see there at Section 4, with regard to public accommodations, the various levels of jurisdiction that the Commission has, and then a separate section there clarifying, with regard to housing, the authority of the Commission.

Section 5 of the bill clarifies that if a settlement is not reached in a housing discrimination complaint, the Commission is charged with investigating that complaint. That is a mandatory act. Section 6 was also done to ensure consistency with Section 1, which we initially went over. Section 7 of the bill is a housing section as well. It deletes references to another statute, which is related to employment complaints and what the Commission uses as a

prioritization process for disposing of those complaints. The items marked for deletion in Section 7 on page 7, specifically lines 14 and 15, were deleted to obtain that level of conformity with the federal Fair Housing Act [Title VII of the Civil Rights Act of 1968].

[Terry Johnson, continued.] You'll see that on pages 8 and 9, the language stricken for deletion is actually language that I mentioned at the outset has been largely moved to Section 1 of the bill, back up on page 3 and 4. Sections 8 and 9 remove references to those complaints—as I said, have been transferred—and also removes from this section references to administrative hearings for employment and public accommodation complaints, and also it deletes those remedy provisions that are included in Section 21, a little bit later in the bill. Section 10, which is on page 10, is amended to allow release of information from housing complaints in order to be consistent with Section 1. It is required with housing complaints in order to be consistent with Section 1, and it is, as well, required consistent with earnings to receive that level of equivalency with the federal Fair Housing Act.

Section 11 starts at the bottom of page 10, but it largely goes into page 11. This section excludes single-family homes sold or rented by the owner without the publication, posting, or mailing of any advertisement—again, consistent with existing federal law. Section 12, at the bottom of page 11, actually establishes a definition for "person" which mirrors, as well, the Fair Housing Act. You'll see additional language for the next couple of pages that is replicated in the Fair Housing Act. On page 12, Section 13, you'll see a provision that prohibits discrimination in real estate transactions and in the use of multiple listing services, real estate broker organizations, or other businesses that relate to the selling or renting of dwellings. Also, Section 13 excludes religious organizations and certain private clubs from the provisions related to housing.

In Section 14, you'll see an item marked for deletion on lines 38 and 39. That was done as a housekeeping and clarification matter. It actually duplicates language that is currently in existence in lines 33 and 34. That has been proposed for deletion to make for a clearer reading. In Section 15 on page 14, beginning with line 26, there's a provision that allows an individual to establish proof of a need for a service animal through documentation, that the animal performs a function that alleviates the effects of the owner's disability. While this language itself is not set forth in the Fair Housing Act, it is based on applicable case law. It was submitted to, reviewed by, and approved by the Department of Housing and Urban Development as being consistent with the overall objectives of the Fair Housing Act.

[Terry Johnson, continued.] Section 16 adds the terms “unlawful” and “practice in housing” for consistency in terminology throughout the chapter. Section 17 on page 15 creates a state “right to sue” to allow for a similar procedure that used by the EEOC [Equal Employment Opportunity Commission] for remedy of charges of employment discrimination. This section also indicates that a letter will be issued at the end of an investigation, and that is, of course, if the matter is not otherwise resolved through stipulation or at the request of the complainant. This section also requires the Equal Rights Commission to be permitted 180 days to investigate before a complainant can request a letter.

Section 18 is more of a housekeeping item, clarifying, in this portion of the statutes, that this pertains to the Equal Rights Commission housed within the Department of Employment, Training, and Rehabilitation. Section 19 just merely strikes “Nevada Equal Rights,” and instead looks to the “Commission.” Section 20, on page 16, just clarifies the Commission’s jurisdiction over unlawful acts that are prohibited by Chapter 613. The problem with Chapter 613 is that it contains a hodgepodge of labor law, employment laws, and unlawful employment practices. For the purposes of this bill and this agency, this section is being proposed to clearly identify the areas that are within the jurisdiction of the Equal Rights Commission, and those areas that are not in the Commission’s jurisdiction are also identified. There may be some items in there as well that could be within the Commission’s jurisdiction, but it may not be based on jurisdictions, for example. Section 20 is intended to clarify those provisions.

Section 21 provides for the remedies that are available through the district court. These were moved. However, the punitive damages here are capped at \$25,000, and attorney’s fees were added as additional remedies for those violations. Section 22 establishes a statute of limitations once a person has received their “right to sue” letter from the Equal Rights Commission. They basically have 90 days to act upon that, which is consistent with federal practice in this area, too. In addition, this section sets out that failure to obtain that “right to sue” from the Equal Rights Commission would be deemed a failure to exhaust one’s administrative remedies under the law—again, consistent with federal law on this topic.

Section 23 clarifies that this section here applies only to complaints falling within the jurisdiction of the Equal Rights Commission. Section 24, which is on page 18, deletes references to the effective date. There are a couple of parallel sections that were in there that were scheduled to take effect at certain times, depending upon certain actions by the Governor, so this actually deletes references to these parallel sections. This bill actually brings to fruition some of those matters that have been discussed in previous sessions and takes it

forward. Section 24 deletes the section that previously existed for the Governor to assign the responsibilities of the Equal Rights Commission to other agencies, and that would comprise the extent to which sections are being totally repealed.

[Terry Johnson, continued.] That is the presentation of the bill. This bill would provide for a stringent partnership between the State and federal agencies to enforce discrimination laws in this state, and would it allow for the resources and allow for an agreement to be in place that would enable the Equal Rights Commission to go forward and carry this change. I think you'll find with just about any label law, particularly where there's a federal and state overlap, that citizens in this state tend to get more responsive service if they are dealing with their State agency rather than if they have to deal with their federal counterparts, or their regional counterparts of the federal government, in different parts of the country. We feel that this will provide for greater levels of service, better enforcement, and a better climate for citizens to enjoy public accommodation, employment, as well as housing, without regard to any protected standing that they may have. We look forward to looking at the Committee at processing this bill and certainly urge your serious consideration.

Chairman Parks:

It is obviously an 18-page bill, and it has some pretty complicated issues in it. I think there's certainly been a lot of work put into this bill, and I certainly applaud you and your department for the work that you've done. Are there any Committee members that have questions for Mr. Johnson at this point?

Assemblyman Hardy:

We've had a wonderful summary that you have prepared for us. What is new in this bill—in those sections that you summarized—which is not already in federal regulation, is that we are already putting in new words, new concepts, or new rights to sue by a state, or other states allowed in the statute to initiate a suit. Have other states done this, and if they have, what did they get from it, money? Where does it go and how is it spent? Why wasn't this concurrently referred to Judiciary, where they know what they're doing?

Terry Johnson:

If I can work my way backwards, I don't know, with regard to your last question. With regard to the resources that might be available, there is an amount—I believe it's about \$115,000—that would provide for initial contract, and I ask Ms. [Billie] Bailey to clarify if I missed that, but it would provide for an initial contract between the State and HUD with regard to enforcement of these housing complaints. As to any new items, this largely replicates federal law. Obviously, we're adding to that in, I believe, the section dealing with the State right to sue, a provision under state law that would allow a person to sue, but

those remedies are currently available under federal law, with the exception of the punitive damages, which are not capped under federal law. However, under state law, they would be capped at \$25,000. As to other states that have moved in this direction, I would ask Ms. Bailey or Ms. Gray if they are aware of any states that have pursued this type of arrangement and what the outcome was, if they are aware.

Susan Gray, Deputy Attorney General, Office of the Attorney General, Department of Justice, State of Nevada:

I am aware that other states do have a similar "right to sue" process that they have also mirrored off of the federal law. Off the top of my head, I couldn't tell you what those states are, but this is a fairly similar process to what the federal government does, and I think other states have adopted that process over the years.

Assemblyman Hardy:

How many states?

Susan Gray:

I'm sorry. I don't have that information.

Terry Johnson:

We'll be more than happy, if you would like, to get some additional information to clarify which states and the number of states.

Assemblyman Hardy:

I didn't hear a number. If they were able to sue, they got money? Where did the money go? How much money did they get?

Terry Johnson:

In the other states that they were able to sue? With your indulgence, we can supply that information or seek to locate it.

Chairman Parks:

Other questions? I think that this is probably going to be one of those bills that we're going to have to put quite a bit of work into. Mr. Johnson, did you have other individuals that you call on to make comment at this point?

Terry Johnson:

Not unless there's something that staff or counsel needed to clarify. There are some persons that we have spoken with prior to this hearing that I believe are prepared to offer some testimony in support of this legislation.

Chairman Parks:

Anyone in particular that you would like to lead off with? In that case, what I'll do is ask Susan Gray if she has any comments that she would like to make.

Susan Gray:

I was, fortunately, selected to become the new administrator of this agency. I'm looking forward to working with the Legislature in trying to improve our laws, so that we can provide better service to the citizens of the state of Nevada. I think this bill is a first step in doing that, both with housing and employment complaints. I just want to reiterate: we just want to work with you as best we can to come up with something that we can put into effect very soon.

Chairman Parks:

We would like to congratulate you on your appointment.

Assemblywoman Parnell:

Just a generic question for you. I don't know much about the Nevada Equal Rights Commission. Can you tell me who serves on it, and I'd like to know, in preparing this, was it controversial? Was everyone on the Commission supportive?

Terry Johnson:

There are five commissioners. They are appointed by the Governor. Under the statute, they're required to represent certain sectors of disabled community, as well as persons along ethnic and religious lines. The Commission did discuss this at a publicly conducted hearing. It appears to have enjoyed support at that level. To the best of my recollection, there were no persons who attended any of the hearings or meetings of the Equal Rights Commission that had any opposition to this measure.

Assemblyman Munford:

Where's your office located?

Terry Johnson:

The offices of the Equal Rights Commission are located in Las Vegas over on Tropicana Avenue, and we have offices in Reno.

Assemblyman Munford:

If someone had a complaint, what is there first step? Give me a step-by-step process that would take if they had a complaint.

Terry Johnson:

If I could, Mr. Chairman, I would ask the agency's Chief Investigator, who I asked to be here for just such a purpose, give you an overview of how the complaint process works.

Billie Bailey, Chief Investigator, Nevada Equal Rights Commission, Department of Employment, Training, and Rehabilitation, State of Nevada:

[Described [Exhibit C](#).] I can walk you through when someone comes into make a complaint to the Commission. There's an appointment scheduled with an intake officer. This intake officer meets with them and sorts out what the Commission actually has jurisdiction over and what they don't have jurisdiction over. The issues that we do not have jurisdiction over, we forward them to the appropriate person that can help them. Based on the information that we can help them with, we bring the charge, and then the charge is set for a mediation, unless it looks like it's actually a probable cause finding from the very start, then it's assigned right into investigation. If it needs to go into mediation, it's forwarded from the intake officer to the mediator. The mediator has the respondent, the respondent's attorney, the charging party, and the charging party's attorney. There's an attempt to resolve the case at this point in time, before there's any initial investment. This is usually done by telephone conference, with all parties involved.

If the case is resolved, there is a contract drawn up. The contract says all of the details will be kept confidential. After it's kept confidential, the contract is drawn up. The case is then closed. It's not pursued in any way in court at all. It cannot be brought up again as a new charge. If it's not settled in mediation, which is the first attempt at resolution, the case goes to investigation. We have a separate investigator gather all the information necessary from the charging party and the respondent to reach a resolution, whether probable cause can be found or not. If it cannot be found, a letter to that effect informs the charging party where they fall short and what additional information they might provide that might change that finding. They've got 15 days to offer that additional information. If it's offered in that 15 days, the information is then reviewed by the chief investigator. If the chief investigator finds that this does change to a probable cause finding, there are certain actions that are taken.

If it's not a probable cause finding, it's under a third review by the administrator, and that's for consideration. If the administrator reviews the finding and agrees that it's still a no probable cause finding, a letter is sent out informing the charging party that EEOC, which is the federal government, can then have a fourth review of that file and offer whether they feel a violation has been found and discrimination can be proven. Anywhere along the way from the rebuttal, the reconsideration, or the substantial wipe review, those individuals

can say that there has now been enough information offered to show that discrimination did occur, and if this happens, there is a conciliation meeting scheduled. That conciliation meeting is the Deputy Attorney General, the Administrator, the attorney for the employer, and the attorney for the charging party, and the investigator then sits down and informs the employer where the discrimination happened and what the charging party is asking to bring this case to resolution. Does that answer your question?

Assemblyman Munford:

Yes, it does, but it's quite a process.

Chairman Parks:

Further questions? Not seeing any. Going down the list for persons who have signed in to speak, I believe the first person we have is Mr. Keith Lyons for the Nevada Trial Lawyers Association.

Keith Lyons, Jr., Legislative Advocate, Representing the Nevada Trial Lawyers Association:

We'd like to support this bill as it's currently written. We do have some proposed amendments, but not to the Fair Housing Act. It's my understanding with the bill that the federal government, in order to determine that the bill is essentially equivalent, has mandated that the Fair Housing Act portion of the bill contain only the language that is set forth therein. We're not proposing any changes at all to that. However, Section 21 of A.B. 189 specifically amends NRS 613.420 to define and clarify back pay, attorney's fees and costs, and punitive damages. I primarily practice in two fields: I'm active in the fields of family law and labor law. Each of those fields take up about 40 percent of my time in any given month. I've been practicing in the field of employment law for the last 13 years.

One of the problems with the Nevada statute as it currently exists and as it's being amended—the proposing amendment today—is it limits back pay to 2 years. The problem is, many times, trials in state courts will take over two years. I am in a case currently in Ely where my client's employment ended in July 2001. My opposition to the motion for summary judgment is being filed in Ely today. I anticipate the court will rule on that motion in the next two or three months, once the defendant has a month to respond. Assuming we survive the motion, we'll go to trial based on the defendant's calendar, in 2006. As defendant's counsel, I've already talked about the case. Therefore, part of the problem is when you limit back pay to 2 years, if it takes 4 years to go to trial. That's inequitable for the individuals that are litigating cases here in the State of Nevada.

[Keith Lyons, continued.] Furthermore, I would like to urge you to amend the statute also for employment law to incorporate the compensatory and punitive damage schemes set forth in 42 USC 1981(a). As you are aware, Chapter 613 of the NRS is, in essence, a mini Title VII, and, for that matter, the Americans with Disabilities Act [of 1990] and age discrimination. For Title VII, Americans with Disabilities Act, the federal government currently allows by statute compensatory and punitive damages. I've taken the language there straight from 42 USC [United States Code], section 1981. It would not allow any greater damages for the issues under Title VII of the Americans with Disabilities Act that they could concurrently get under federal law. It doesn't really expand the damages that are available to an individual party. It simply brings Nevada into the same realm that you can currently get damages for in the U.S. District Court.

Chairman Parks:

In the last part, you referenced some section 1981. Is that included in the letter you provided ([Exhibit D](#))?

Keith Lyons:

I apologize. There were two typos in the letter ([Exhibit D](#)). It said that, rather than only allowing \$25,000 in back pay, it should actually be in punitive damages. And you'll see the statute, 42 USC 1981. It's actually subsection (a) of 42 USC 1981. That's in the first paragraph of the letter.

Chairman Parks:

I have that; I appreciate that. Further questions? Not seeing any, thank you. Do we have Gary Peck with the ACLU [American Civil Liberties Union] in Las Vegas?

**Gary Peck, Executive Director, American Civil Liberties Union of Nevada,
Las Vegas, Nevada:**

Professor Richard Siegel will be giving testimony for the ACLU on this bill. All I'd like to say is that the ACLU supports it as written, and it seems that we want an opportunity to review Mr. Lyons' proposed amendments, but in essence, all they do is bring state law into conformance with federal law, and we would likely support those proposed amendments and pledge now our willingness to work with any and all members of the Committee and with NERC [Nevada Equal Rights Commission] on any of the amendments as the bill moves forward. Professor Siegel can speak more on this.

Richard Siegel, President, American Civil Liberties Union of Nevada, Reno, Nevada:

As Mr. Peck has said, we are in overall support of the bill. I want to first start out with a little context who have indicated that you have a lot of questions about the Equal Rights Commission. The Equal Rights Commission was first established about 40 years ago in Nevada. It's important for all of you to know that it was created by the Legislature without any real funding, without any subpoena power, without anything remotely like adequate authority. It was intended to have a Nevada agency that did not effectively enforce the civil rights laws of the United States. My source for that is a fairly reliable one—a chapter that former president of the University of Nevada, Reno (UNR), Joe Crowley, wrote called *Sagebrush and Neon*, if any of you are interested about the history of how the Equal Rights Commission was established.

Gradually, the Equal Rights Commission has taken some of that essential authority, some of that essential funding power, along the way. For most of its history of 40 years, most attorneys have sought to avoid the Equal Rights Commission and reach the Equal Employment Opportunity Commission, or other federal agencies, because they had greater power. Now, we're being asked to have an essential equivalency in the housing area, and the ACLU strongly supports that. As long as we have the equivalent of the federal authority, the federal scope, we are prepared to go along with the sponsors of this bill with the idea that the best government is at home, as long as they have the effective power to operate.

I think we've seen by the testimony by the trial lawyer who spoke a few minutes ago that there is not yet equivalency in the employment area. Perhaps, as we look at this amendment, we will be able to achieve that essential equivalency in the employment area. Most of my involvement with this bill, through the ACLU, has been in employment. Most of the time, the attorneys have been telling me, "We simply do not have the remedies at the state level. I want to go to the feds." Their only real interest in getting has been to get the letter to sue and to get the letter to the EEOC. So, there is work to be done in the employment area. It looks like this bill is definitely a very positive bill, essentially, as written in the housing area.

Diana Glomb-Rogan, Legislative Advocate, Representing the League of Women Voters of Nevada:

[Read from [Exhibit E](#).]

We are in support of Assembly Bill 189, which, for the first time in our state, enables the Nevada Equal Rights Commission to address matters of housing discrimination, as well as employment and

public accommodation discrimination. We believe that fair housing is one of the cornerstones towards combating poverty and enabling people to live decent and productive lives. The League has supported the Fair Housing Amendment Act of 1998, which for the first time, among other things, prohibited discrimination against families with children. This provided a major opportunity for single moms with children to find decent and affordable housing. The Nevada Equal Rights Commission needs this bill to fulfill its mission for our state.

Robert Desruisseaux, Community Advocate, Northern Nevada Center for Independent Living:

We are in support of Assembly Bill 189, but I did want to take this moment to point out a couple of concerns that I do have. If you look on page 14, Section 15—where it is discussing tenant rights, line 26—there are a couple of problems here. One is that, with regard to service animals, current NRS defines a service animal as “an animal that was trained to perform a function.” Just in that definition alone, such things as therapy animals and companion animals would not be considered a service animal. The Fair Housing Law actually does not make reference to service animals at all. The Fair Housing Law makes reference to “reasonable accommodation.” Service animals and therapy animals are just a type of reasonable accommodation. The word “service animal,” as defined here, would not include some of those animals.

My concern is that, although we are in support of this bill, you’ve heard from others how much easier it would be to remedy these situations here locally, rather than at the federal level. I am concerned that that particular wording may leave out certain types of reasonable accommodations that someone may need. I have been in touch with Terry [Johnson] and am hoping they will pose that question to HUD, so that maybe we can get some clarification.

The way this came to my attention was that I was actually working on another bill and noticed everything was S.B. 36, and we were trying to amend current NRS to get it line with federal law. I had noticed all the changes we had made have been placed back in, so that bill looks like the original law. My understanding is, this wording needed to be that way because of current NRS. The timing was just a little bit bad. I believe that, had we been able to render those service animal NRS codes last session, this wouldn’t be an issue at all. I am concerned that the definitions for “service animal” and the use of “service animal” in this section may limit individuals’ remedies for reasonable accommodations.

Jon Sasser, Attorney at Law, Washoe Legal Services, Reno, Nevada:

Washoe Legal Services is a private, nonprofit corporation in Reno that, among other things, represents claimants in fair housing cases. Just a couple of comments: I do support, in general, the movement by the Nevada Equal Rights Commission to now exercise its jurisdiction in housing discrimination cases. I also want to echo Mr. Desruisseaux's concern that we not make our state statute more restrictive than the federal Fair Housing Act, as to reasonable accommodation with service animals. I would concur in his remarks.

The other question I would raise, in addition to what Dr. Siegel said about historic distrust of the Equal Rights Commission because of its lack of enforcement powers: part of that distrust on behalf of lawyers has been because of its lack of funding and the backlog that it's had in cases for employment discrimination. I notice there is no fiscal note placed on this bill. My understanding, and I guess I would raise this question, is that's because we expect the federal government to pay the cost of this. They would put up \$115,000, I think that was said, to get us started, and then they'd pay for the cases Nevada investigates in the housing discrimination area. So, we would support it as if the agency is well funded, it can do its job well, but not if it becomes a bottleneck for lack of funding. I would raise that question, but we are generally in support.

Chairman Parks:

Questions from the Committee? I'm not seeing any. Is there anyone else who would like to speak in support of Assembly Bill 189? Not seeing anybody, is anybody in Las Vegas who would like to further comment on Assembly Bill 189? We'll go ahead and take those who have indicated opposition to Assembly Bill 189. The first person signed in is Lucille Lusk, Nevada Concerned Citizens.

Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada:

We do have some concerns on Assembly Bill 189, particularly dealing with specific provisions. The bill, as you have already seen, is already convoluted, so following it through can be a challenge, but we've spent a considerable amount of time doing some comparisons with the existing law and what changes.

If I could get you to go with me to page 5, lines 42 to 43, we have a concern about placing the power to initiate a complaint in the same agency that has the power to investigate and rule upon a complaint. It seems common sense that if the initiating authority also is the ruling authority, the outcome will almost always be in accordance with the initiated complaint. If we could then go to page 6, lines 15 through 17, those lines require the Nevada Equal Rights Commission (NERC) to investigate every housing complaint if a settlement has

not been formally reached. It is our view that NERC should investigate only those that have merit and, just to bring to your attention, it is very costly for money, time, resources, and personal stress to go through a public investigation if there is not merit for that investigation to be pursued.

[Lucille Lusk, continued.] Going to page 11, lines 17 through 22: in this area, single family home rentals and sales are exempted from the provisions of this bill if the person owns more than three homes. Although that's the case, a person who is renting their personal residence would be prohibited from even posting a notice that they prefer adults only in their home. I would just tell you that my husband and I had an occasion to go out of state for an extended period on personal business a few years ago. What this would do is make it so we couldn't even post a notice in the local Albertsons that we prefer to have adults in our home while we are away. Now, I have to tell you candidly that we ran into a family with children, but that's not really the point. The point is that there is a prohibition that simply does not make sense.

Finally, on page 17, lines 8 through 10: this is in the employment area, and here we have that employment law complaints are being directed into state courts. As you have been told, the penalties are being shifted from restoring benefits to which a complainant is entitled, to providing other payment and relief as is necessary to make him whole, and that includes punitive damages up to \$25,000. It could easily be interpreted to include pain and suffering, emotional distress, the kinds of things that have led us to frivolous lawsuits in many other areas.

One of the states that has gone this direction is California. I would urge the Committee to look at California's experience, in terms of what has happened in state courts there and the costs that has come as a result of this.

Assemblyman Christensen:

You mentioned California, to take a look at it. Is there one yellow flag that you can think of that would be helpful to share with the Committee?

Lucille Lusk:

I asked an employment attorney to review this. He indicated that the cases have absolutely skyrocketed and the awards have been huge. The cost to the state court in handling these cases has been huge. Unfortunately, he was unable to be here today. I was hoping that he would be able, and I'm hoping still that he will be able to provide the Committee with some of that information.

Assemblyman McCleary:

Lucille, I have a question on the part where you're talking about advertisements and publications. If I had a room, and I was just going to rent a room out, would that apply to me also?

Lucille Lusk:

It's my understanding from reading this that it doesn't apply to rooms. That's dealt with in a following section.

Assemblyman McCleary:

Only if I was going to rent my entire house?

Lucille Lusk:

That's my understanding.

Ray Bacon, Executive Director, Nevada Manufacturers Association, Carson City, Nevada:

Our concerns with this bill are primarily focused on one area, which has been a bit of a problem in some other states. Unfortunately, I don't have the details. I remember a conversation a couple years ago with one of the other states, and I can't remember which one. That is the situation where, especially in the employment law, you wind up with a suit in both federal and state court. Somehow, we are going through this transition. Until we get clear delegation from the feds, there should be something that says you've got to go one way or the other, but you don't get both.

That's our primary concern with this thing. It should be a situation where if somebody starts off in the state, federal, or Equal Rights Commission, then all of a sudden, because of funding or whatever, the employment area becomes dissatisfied, they can't, all of a sudden, jump into the federal system, because that just puts the employer on a treadmill of constant legal fees, and that's not reasonable. It's kind of a double jeopardy situation, if you will.

Bob Ostrovsky, Legislative Advocate, Representing the Nevada Resort Association:

I'd like to restrict my comments only to Sections 20 and 21. By far, I'm not an expert in housing. I'm not even a novice. There are other people here who are going to comment regarding that. Just on the employer side: when I read this bill, I had confusion and I still have a little bit of confusion as to what the Commission can use as a remedy and what the courts can use as a remedy. What they've done, when they eliminate the language found in Section 8 on page 8 and 9, talks about what the Commission can impose as damages and what the court can impose as damages. Clearly, there's some language allowing

the court to award punitive damages, and the Commission had other kinds of remedies available to it.

[Bob Ostrovsky, continued.] I would be happy to work with the parties, but we would oppose expansion of punitive damages. We only think that leads to more litigation and fewer settlements in getting the process done. That needs to be carefully looked at, to make sure that we craft something that permits those who are truly damaged to receive reasonable compensation. The amount of that compensation is a very important policy issue and gives the employer incentive to settle if there is something wrong, but it's not such an incentive that they would settle cases they ought to otherwise defend themselves. I would like to talk to the moving people about how to work that in this section of law. I think they moved it, but I'm very unclear as to what the Commission's responsibility will be.

Thirdly, in Section 20, where it puts a negative into the statute on line 17, it says that the complaint is not based on discrimination, but you have the right to go to district court. You have the right to go to district court all the time anyway. I'm not sure what happens when the Commission, when the claim is not based on discrimination, doesn't say that there was a finding that there was no discrimination. I read this as it doesn't meet one of the tests because it doesn't relate to marital status, sex, or race, so I'm not sure where that language is heading, and if that isn't more confusing than what's in there now. I didn't speak to the Division before I testified. If we get a little time to work on this bill, I'd be happy to do so.

**Irene Porter, Executive Director, Southern Nevada Home Builders Association,
Las Vegas, Nevada:**

I think in hearing the testimony today, many of the questions we had might have been answered. However, I think you'll also find from the testimony today this great deal of confusion about this bill, not an understanding, because there was no communication to many of the stakeholders in this area prior to the initiation of this bill. As an example, the Home Builders Association of Southern Nevada represents approximately 95 percent of all the new housing built, yet we knew nothing about this bill in advance, nor have we had a conversation with the Nevada Equal Rights Commission.

I did make a phone call to the state director of HUD. He was somewhat enlightening as to what they were trying to accomplish with the bill. I specifically asked him about the field of new housing, because that's what I deal with. The director of HUD told me that there had been virtually no discrimination complaints filed in the last several years in new housing in

southern Nevada. A majority of what he had seen, and that was a limited amount, had been in rental housing.

[Irene Porter, continued.] The Southern Nevada Home Builders Association has a 30-year history of working with fair housing. We were instrumental in getting the agreements signed in 1975 with HUD on affirmative marketing. We administered an affirmative marketing program through the Home Builders Association. We are members of the Community Resourcing Board (CRB). We strongly support the field of not having discrimination in housing. I think if any of you know the building industry, and you know builders, they are capitalists. They are business people. Very frankly, if you can qualify for a home and you can make the down payment, most builders don't care if you have 6 heads and 4 stripes. It's about selling you a house. I talked to a builder, a representative, over the weekend, and said, "Who have you sold to in the last 3 weeks?" They said that they had closed on houses for an Iranian couple, an Israeli couple, 3 partner couples, 3 Asian couples, and some families as well.

We certainly don't support discrimination in any manner. We have some confusion on various sections. I have information that was sent to us from an attorney, some of our builders, on some various sections throughout this bill. I think that if the Chairman and the members of the Committee would be amenable, it might be some kind of a workshop on the legislation, so that all the parties that have testified today can better resolve those differences, the questions that we have, and perhaps suggest amendments to this legislation to make it work better for everyone.

We also need to know how it's going to work in conjunction with the Affirmative Marketing Program. We still have the responsibility under federal law to administer the marketing and the sales of homes, making sure there are education programs. We do them continually. We need to have some education programs and work with the Nevada Equal Rights Commission on this. We don't know how they tend to pay for those education programs. I know they talk about the \$115,000, but that goes towards enforcement. I think they are going to have to conduct some education programs as well on this new act, and relate to the industries they will be regulating. I can go into very specifics on where our questions are. I don't believe the Committee probably needs to know this at the current time. We'd like to work on getting these differences and the information resolved and put out to the people that really need it.

Assemblyman Christensen:

Based on how you addressed a few points, do you feel like we really need this bill?

Irene Porter:

I didn't think so before today. I do know that in the field of housing, HUD does not have any investigators in Nevada. You do have to go to Los Angeles, and it is better to do it in this state. We don't know how much the Nevada Equal Rights Commission is going to be able to do this bill at the current time. I'd rather see it here than go to Los Angeles to get something administered. But I can tell you that maybe, as a part of this, we need to take a look at the Nevada Equal Rights Commission itself. Maybe there should be more people on that Commission. Maybe it should be a broader representation than the five that were instituted at the very inception. I don't know enough about the Commission to think that even has to be done, but it may well be so, because it seems to be the same as it always been, and they are taking out a ton of responsibility here. I think you also have to take a serious look at the money involved. I think they're going to find this is going to cost them a whole lot more than the \$115,000 plus a fee for each case in the housing area.

Assemblyman Christensen:

When you say that it will cost them a lot more, you mean to implement the provisions of the bill?

Irene Porter:

Yes. I know there is going to be education involved. I know the kinds of money we spend in southern Nevada on affirmative marketing, and they're going to have to do some things so that people understand what it's all about.

Jim Wadhams, Legislative Advocate, Representing the Mortgage Bankers Association of Nevada:

I draw your attention to page 13, lines 20 through 29. What these sections do is bring in not only the primary lending, but the secondary market for lenders into the Equal Rights Commission's jurisdiction. We were unaware of this. Of course, we saw the bill on March 9, but we were previously unaware of this expansion of the authority, and would certainly be willing to participate in any additional workshops that might be conducted.

Keith Lyons:

I would like to clarify a couple of the points that were made. One of the points was made that this would greatly include or could increase the compensatory and punitive damages. It was made by one of the gentlemen that spoke, I believe it was Mr. Ostrovsky. One of the issues is, in Nevada, the Nevada Supreme Court ruled in *Chavez v. Sievers* [118 Nev. 288 (2002)], in order to be covered under our statute, you must have 15 or more employees, which is the same limit set forth under federal law. So, with the caps that I am proposing, those would be exactly the same caps under federal law. There is no attorney

representing an individual in the state of Nevada—but there's a compensatory or punitive damage claim that—who is going to settle the claim without that. The aspect that will make it harder to settle cases, I think, is actually a misnomer. In Nevada, you have exactly the same coverage as you have under federal law. I just wanted to correct that misnomer.

[Keith Lyons, continued.] There was another individual testifying about the runaway verdicts in California, I believe it is. California does not have a cap on compensatory and punitive damages; at least, that is my understanding. If you enact the proposal that I have submitted on behalf of the Nevada Trial Lawyers Association, those caps are the same as federal law, and they would stop a runaway verdict on those issues.

Terry Johnson:

I just wanted to offer a couple of summary comments and just to thank the Committee for its interest in and its thoughtful inquiries with regard to this proposed legislation. I wanted to let the chairman of the Committee know that we'll certainly be looking to work with and talk over some areas of common ground with all the persons that testified here today, with regard to some of the issues that have been raised. We've had a chance to speak with some folks already, and we'll look at the issue of service animals, and the degree to which S.B. 36 may have had an impact on some of these areas too. With regard to the concerns about one agency having the power to initiate a complaint and resolve a complaint, I would represent to you that that is not an uncommon practice in administrative proceedings to typically have those functions combined in an agency. There are certain due process provisions that are already fully adequately addressed through the Nevada Administrators Procedure Act, but nonetheless, we look forward to talking with Ms. Lusk about some of her remaining concerns, along with the other gentlemen.

In summary, this is a necessary bill. I would love to be able to sit here and tell you, as someone who spent all of my adult life in the state of Nevada, that I look forward to the day we don't have an Equal Rights Commission in the state of Nevada. Regrettably, we're not there yet. So, this bill is necessary, and we do need to proceed and we hope this Committee does so. We do look forward to providing you with some information that would process this bill and aid in its processing, because I think these functions would better serve the citizens of Nevada at the level closest to the citizenry, which is consistent with the State's strategic plan as well.

Chairman Parks:

Questions for Mr. Johnson? I'm not hearing any. I'm going to put a priority on this bill. I want to go back to when I first ran for office; I was interviewed. When asked what kind of legislation I'd be interested in, one of the areas that I indicated was improving the Nevada Equal Rights Commission. The response that I got from the panel that was interviewing me was that I had to be nuts, and further, that I had to be crazy if I wanted to pursue anything in this area. I think it is important legislation. At this point, I don't know if I want to put it into a subcommittee, or exactly how I want to handle it. What I think I'll do is ask my Committee Manager to do some follow-up, and we're going to ask each of you to provide us with the sections that you had some problems with. We'll try to organize that, and then we'll have it as either a hearing here or we'll set up a workshop to work on this bill, but we certainly want to make this one of the better bills of this session. With that, we'll go ahead and close the hearing on Assembly Bill 189. With that, we are adjourned [at 10:22 a.m.].

RESPECTFULLY SUBMITTED:

Michael Shafer
Committee Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 21, 2005

Time of Meeting: 9:11 a.m.

Bill	Exhibit	Witness / Agency	Description
N/A	A	Government Affairs Committee	Agenda
AB 189	B	Terry Johnson, Department of Employment, Training, and Rehabilitation	AB 189 Section Summary
AB 189	C	Terry Johnson, Department of Employment, Training, and Rehabilitation	Department of Employment, Training, and Rehabilitation Nevada Equal Rights Commission Flowchart
AB 189	D	Keith Lyons, Jr., Nevada Trial Lawyers Association	Letter to Victoria Riley
AB 189	E	Diana Glomb-Rogan, League of Women Voters of Nevada	Written Testimony