MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
Seventy-Fourth Session
March 7, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m., on Wednesday, March 7, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Danielle Mayabb, Committee Secretary
Matt Mowbray, Committee Assistant

GUEST LEGISLATORS PRESENT:

Assemblywoman Debbie Smith, Assembly District No. 30

OTHERS PRESENT:

Jason Frierson, Attorney, Clark County Public Defender's Office
Cotter Conway, representing Washoe County Public Defender's Office
Joseph Turco, representing American Civil Liberties Union, Nevada
Ben Graham, Legislative Representative, Clark County District Attorney, Nevada District Attorneys Association
Mitch Gliner, Attorney, Las Vegas
Ray White, Business and Professional Collection Services, Inc., Reno
Liesl Ann Douillard, Vice President, Customer Relations, National Business Factor Group Inc., Carson City
David Stone, Owner, Nevada Association Services, Inc., Las Vegas
Bill Uffelman, President and CEO, Nevada Bankers Association
Marel Giolito, representing Nevada Collectors Association
John Wanderer, Attorney, Las Vegas
Kjelden Cundiff, representing Clark County Collection Services

Chairman Anderson:
[Meeting called to order. Roll called.] Let us turn our attention to Assembly Bill 116.

Assembly Bill 116: Revises provisions governing crimes involving certain controlled substances and other related substances. (BDR 40-420)

Assemblyman Carpenter:
A.B. 116 is one of many bills dealing with methamphetamine this session. It calls for the reduction of the amount of meth required for a conviction of trafficking. It also increases the minimum term of imprisonment from one to two years and the maximum from six to ten years. These amendments are controversial and subject to negotiation.

After speaking with the chief of police and other law enforcement personnel in Elko, it seems we have a revolving door situation in regard to the amount of bail required for traffickers of meth. Many of these pushers have access to so much money; they bail out immediately and are back on the street. I feel the bail must be substantial if we are to be able to detain the pushers and the traffickers. The bail could be set on a sliding scale according to the quantity of meth involved. I hope the bail question will be part of any meth bill that comes out of this session. I received information that the bail schedule in Elko is high;

however, the former judge was not following the schedule and the bail set was low, enabling the people to bail out immediately. The new judge in Elko is going to follow the schedule that they have; hopefully, he is going to increase the amount of bail so that we will not have the situation of the revolving door.

It is not in this bill, but we need to address how we are going to get the people who need treatment into a treatment center. With a DUI, if you have over a certain blood alcohol level, you have to go to treatment or at least find out if you are an alcoholic. Something must be done to try to get the people who need treatment into treatment. Because this drug is so addictive, they commit other crimes, so it takes several instances to get them to the point where we can get them into treatment.

Chairman Anderson:
Obviously, we are going to have to do something dramatic about the meth problem in our communities and its impact on the State. What about jail overcrowding at the local level? It is a big issue in both the Second and the Eighth Judicial Districts. We have heard testimony in another committee about moving the threshold. Why did you decide to drop it from four to three?

Assemblyman Carpenter:
I understand the question of jail overcrowding. If we are going to make any progress in this situation, we are going to have to find more bed space. Maybe we could do something else with some of the people who are in there so there would be bed space for these meth users. The reason I thought to drop it down another notch is that we might be able to catch those people who are really not traffickers, but people who need to get treatment. Whether that assumption is correct is open to negotiation and discussion. My feeling was that if it was lower, the judge would have a chance to say, "Well, you have to go to a drug court, and hopefully we can get some treatment for you." That was my reason. I understand that these are things that we need to discuss further.

Chairman Anderson:
Mr. Carpenter, is there anyone else you want to speak in support of the bill?

Assemblyman Carpenter:
No.

Chairman Anderson:
Is there anyone else in support of A.B. 116? [There was no one.] Mr. Frierson.

Jason Frierson, Attorney, Clark County Public Defender's Office:
I agree with Mr. Carpenter's concerns regarding the need for treatment of meth users, as well as the bed space. I also agree with him about the need to address the true traffickers. We are in opposition to A.B. 116 for a few reasons. Our trafficking statute does not necessarily correlate trafficking with possession. Low-level trafficking is currently four grams, which is essentially about the size of four packets of Equal. We believe, in a lot of instances, the people who are caught with this amount are people who have drugs for personal use and need treatment. They are not necessarily the traffickers the spirit of the bill is targeted at. Lowering the amount would only complicate that issue. Unfortunately, our statute requires mandatory prison time for all three levels of trafficking. It is our concern that most of those people, if they actually end up with four grams, do not have access to the kind of treatment that they need. Rather than getting treatment, they just go into the prison system. While we do agree there is a need to address the problem, and a particular need to address the addiction, treatment, and bed space, we do not believe that lowering that level is going to be effective.

I also spoke with Mr. Carpenter regarding the reasons behind the bill, and law enforcement's concern about the revolving door. There was a problem in that jurisdiction, and the judge was voted out. That was an example of our system working. People were dissatisfied with the way the judge was handling things. They put someone else in a position to address the problem who would adhere to the bail schedule which, in most jurisdictions, is already around $50,000 or more for the higher-level drug trafficking. We need to educate the people in our system in all aspects so they understand where the needs are and can address them in an effective way.

Assemblyman Horne:
If someone is arrested with three grams today, are they typically charged with possession or possession with intent to sell? What has been your experience?

Jason Frierson:
My experience is that if they are arrested with three grams, they are charged with low-level trafficking. Oftentimes, cases resolve because once they clear the additives out, the actual weight of the drug component is less than what it was originally weighed at. In those instances, the charge would be dropped down to a possession of a controlled substance. Whether or not it would be charged as intent to sell would depend on how it was packaged, possessed, and some of the factual circumstances under which they had that drug. Possession with intent to sell does require some indication of an intent to distribute, such as packaging it individually the way drug dealers typically sell it; however, trafficking does not require indication of intent. The low level of 4–14 grams

currently—and, if this were to become law, 3 to 14 grams—would encompass people without indication that they were actually selling or trafficking. It is just mere possession.

Assemblyman Horne:
Today, having four grams without any indication of packaging, et cetera, is not necessary to show trafficking. The fact that you have four grams is enough for the trafficking charge. With less than four grams, you cannot be charged with trafficking, but you could be charged with possession with intent to sell if there are other indications that you are trying to move it as a product—baggies, scales, et cetera.

Jason Frierson:
That is correct. If there was an indication of some kind of sale or movement, or factual circumstances suggesting someone leaning into a car to distribute to someone else, it could be charged as possession with intent to sell, but not as trafficking.

Assemblyman Horne:
Bail is typically set to ensure a defendant appears in court and to determine the safety of the community. Have you, in your practice, seen a large number of these defendants making bail? If so, do they then make bail and not appear?

Jason Frierson:
In my experience in Clark County, there might be a little more flexibility, but if it is well within the range of trafficking, they are not getting out. The bail is set at a level that ensures they stay in custody. There is mandatory time associated with it, so the chances of them not appearing are significant. Some of it depends on the circumstances. If there are circumstances that call the arrest into question, there might be a negotiation. That might be taken into consideration. If a defendant is arrested for drug trafficking and the case is factually sound, the bail is set at an amount that typically does not allow our clients the ability to bail out.

Assemblyman Mabey:
The bill also deals with the date rape drug, not just methamphetamine. So far, nobody has addressed that. What is your feeling about that portion of the bill? Is that a problem?

Jason Frierson:
In the past year and a half, I have never encountered a case involving the date rape drug. That brings some attention to the difference between possession and actual trafficking. There are often cases where people possess it for

personal use. In the case of the date rape drug, there would naturally be some other charges associated with how they would use that with someone else. The actual possession of it would be treated differently than the trafficking. The amount required for trafficking is so low that I do not imagine it would take very many pills to fill up four grams, as it is now.

Assemblyman Mabey:
I just did some research. The drug is not prescribed here in the United States. It was available a decade ago. People get it through Mexico in a milligram dose. In increments of one milligram, 3,000 pills are needed to get to three grams, so that is a huge amount of pills.

Assemblyman Cobb:
I thought it was interesting what you were saying about breaking the meth down, taking out all the excess elements, and getting directly to the actual amount of meth in those products they create. Do you have any idea what the percentages are? Is it mostly methamphetamine in those products, or is a lot of it this filler you are describing?

Jason Frierson:
It is a small percentage. If we have a defendant who has exactly four grams upon arrest, it is a good guess it is going to be less than that after some type of reweighing. It is typically less than two or three grams that would be extracted from a large amount. Even with four grams, additives may reduce it by a gram at the most, depending on how it was packaged and whether they weigh it with the packaging.

Assemblyman Cobb:
That might be an argument for lowering it to three grams, then, to make sure we are getting those people who are trafficking.

Assemblyman Segerblom:
What is the typical amount one would use in a sitting?

Jason Frierson:
Oftentimes, our clients who fall within that low-level trafficking have it for personal use. They usually do not have previous convictions for sale of controlled substances. Four grams is about four packets of Equal.

Assemblyman Segerblom:
If I were using the drug, how much would I use at any given instance? Would it be a gram or five grams?

Jason Frierson:
I do not know. I know what my clients possess at the time of arrest and what they tell me, which is a wide range of things. How much is needed for a single use, I do not know.

Assemblyman Segerblom:
To me, it would be relevant—if we are talking about the difference between possession and sales—how much three or four grams would constitute. If it is something you would use in one sitting, then I would be concerned about lowering it, but if it was enough for 20 uses, then maybe it would indicate sales.

Chairman Anderson:
Mr. Conway?

Cotter Conway, representing Washoe County Public Defender's Office:
We also oppose A.B 116. Our concern is, unlike the federal statute, this includes personal use, either actual or constructive. We are concerned that, if the intent of the statute is to get the traffickers, then that is what the language should deal with. We should deal with those who are transporting drugs into our State to sell. Without the manufacturers, distributors, or traffickers, we would have fewer users. Mr. Carpenter was hopeful that, by lowering it, we would catch more of the users and get them into programs. The problem is the statute calls for mandatory prison time. Drug court is not available for trafficking offenders. I agree with the intent of the statute. I want to see more impact on meth and its availability and use in our State. I do not believe this is the appropriate way of doing it because all we are going to do is get the low-level users and throw them into prison.

Chairman Anderson:
If we would take these people away from drug treatment programs rather than place them in drug treatment—is that your contention?

Cotter Conway:
Yes. That is my concern. There are programs in the prison; however, that is not what the person is going to be ordered to do. He is going to be ordered, under this particular scheme, to two years in prison.

Assemblyman Ohrenschall:
The three grams of one of these Schedule I controlled substances, is that the bulk discount amount, or is that the kind you would have for a week or one session? Would we be getting the casual user or the trafficker?

Cotter Conway:
That is a tough question. It is not uncommon for the personal users to be purchasing this amount on a weekly basis. The full-time users are using quite a bit on a regular basis. I cannot say for certain how much they are using in one session.

Assemblyman Ohrenschall:
You feel that this statute might actually capture folks who do not intend to sell?

Cotter Conway:
Absolutely. That is my experience. The traffickers who come through my office usually have 28 grams or more. That is a true trafficker. When we get the possession type cases, they are normally within four to five grams. Those are the users and there does not appear to be any intent to pass on those drugs.

Assemblywoman Allen:
Is there any amendment that you could foresee that will make this bill acceptable? Maybe leaving the sentence at one year and requiring mandatory rehabilitation? Is there something you might find more acceptable?

Cotter Conway:
The first step would be to do away with the possession portion of it, or at least put possession with intent to do those things. Otherwise, you would be making a major change if you stated that low-level trafficking offenders will have mandatory treatment. I would be agreeable to that, but it would be changing the intent of the statute. They wanted to get the traffickers and put them away. If you wanted to take level one trafficking and make it not a mandatory prison sentence, but treatment, I would be agreeable to that. Then we would be trying to get these people treatment before we send them to prison.

Assemblywoman Allen:
It is a worthy discussion for the Committee.

Chairman Anderson:
It is also predicated on the belief that there are treatment providers. In some of the areas, with the loss of federal support for treatment, providers have disappeared. Only in Clark County are they able to stretch the dollars for treatment.

Mr. Conway is suggesting we change the statute relating to level one trafficking, changing it from a felony to a non-felony and mandatory treatment. That is a possible solution.

Assemblyman Goedhart:
In here it says "not less than one year," and they want to make it "not less than two years." In that language, does the person who is sentenced actually have to serve that whole year, or do they get time off for good behavior? How does that work?

Cotter Conway:
Under the sentencing scheme that came from this Legislature, he has to serve two years. The good-time credits that are given by the prison go against the high-end of the sentence. The minimum sentence in this particular scheme would be two to five years. The good-time credits would go against the five years. He would get time served credits toward the two years if he was sitting in jail awaiting sentencing.

Chairman Anderson:
That is one of the issues facing the Select Committee. The Truth in Sentencing Bill set the minimum as something you have to serve. With meth, the need for treatment tends to be longer than it is for other drugs.

Joseph Turco, representing American Civil Liberties Union, Nevada:
There is a trend developing in this session. A common thread runs through committees discussing prison overcrowding or a well-rounded approach to drug use, particularly meth use. Then there is this bill, which seems to go against that trend. I was advised to use a visual, but you have done that for us already. The difference is one packet of sugar. That amount does not make a drug trafficker. There are actual ways to prove drug trafficking—by bust operations, owe lists, or other factual ways. This is another enhancement and opportunity for prosecutors, perhaps, to overcharge as leverage in plea bargaining. If that is what it is, is that not manipulative? If that is what it is, let us call it that. Those tactics are the ones that have been used for years. It has been shown in this session that they do not work. It is time to give new approaches a chance.

I agree with the issue of the revolving door. If that is a judge issue, this bill does not address that. You do not need to be arbitrarily labeled a dealer in order to be put into the system to get treatment. In fact, as we heard, it is counterproductive. Under the new proposals out there, the system focuses on immediate and serious treatment. Indeed, the bill might even be counterproductive.

Assemblyman Cobb:
I agree that we can discuss whether three or four grams rises to the level of trafficking. Certainly, you agree at some point the mere possession of large quantities of drugs shows intent to traffic, can you not?

Joseph Turco:
I even agree that one gram with factual evidence of attempting to sell is trafficking. In another instance, four grams could be for personal use. If you are labeled a trafficker, you are not going to get the treatment you need.

Assemblyman Cobb:
But, at some point a large quantity rises to the level of trafficking.

Joseph Turco:
Yes, but not three grams.

Chairman Anderson:
Anyone else in opposition? [There was no one.] Anyone else wishing to speak on this bill?

Ben Graham, Legislative Representative, Clark County District Attorney, Nevada District Attorneys Association:
One of my units is the drug court program. We have drug court nearly every day with hundreds of people coming before it. The main emphasis is not necessarily what you are charged with whether it is trafficking, possession for sale, or some other criminal activity, if it can be shown that the person has a drug problem. Not all traffickers or sellers have drug problems. They are not precluded from getting into drug court if it is demonstrated they have a drug problem and would benefit from drug court. Approach it from a reality standpoint, not from what some of the detractors are trying to emphasize.

Chairman Anderson:
In Clark County, they have a large volume in treatment, and protocols for that. Now there are people in other counties trying to duplicate that; they have a tendency to follow the statutory language more precisely. We may need to tweak this; a lot of concessions were made when the drug court program was originally put in place. Meth has added an unusual dimension to its evolution.

I will close the hearing on A.B. 116. We will open the hearing on Assembly Bill 127.

Assembly Bill 127: Revises provisions relating to interception of wire communications. (BDR 15-1049)

Assemblywoman Debbie Smith, Assembly District No. 30:
This bill provides an additional exception to the two-party consent requirement that is currently in statute with regard to recording a telephone conversation.

This bill will authorize a person to record any telephone call concerning a debt that is owed or is asserted to be owed by the person if the call is initiated by a collection agency or agent. Further, the person who records the call is not required to obtain consent of the collection agency or agent to record the call or provide notice the call is being recorded.

Recently, it has reported that the rise in consumer debt has been accompanied by a sharp increase in complaints about aggressive tactics by debt collection agencies. This has our government regulators concerned. In 2005, the Federal Trade Commission (FTC) reported that it received 66,627 complaints against third party debt collectors—nearly six times the number of complaints in 1999. There have been several news stories recently detailing these activities, calling our attention to this issue. This appears to be an important consumer protection issue, based on what we are seeing in our country with regard to the rise in debt and practices of collection.

There does not appear to be a downside to the bill to me. The exception is very narrowly constructed. If there is no bad behavior occurring, the agencies are not affected. I have provided the Committee with the July 2006 *New York Times* article (Exhibit C), as well as a copy of a court case that will be referenced in the following testimony (Exhibit D).

I have, in Las Vegas, Mitchell Gliner, who is prepared to testify about experiences in this State with regard to debt collection practices.

Chairman Anderson:
We also have a summary of the case (Exhibit E). Who produced the summary?

Assemblywoman Smith:
Mr. Gliner.

Chairman Anderson:
The collection agencies have become so aggressive that, even if you are listed as a reference, they are calling you. They are harassing people at work. If they do not get an immediate response, they begin to go through the other telephone numbers provided. I was under the impression that you could not call someone with whom you did not have a business relationship. Apparently, that does not apply to the credit card companies or collection agencies. I mention that so that the other people coming to testify might explain how they are able to do that. I am a little appalled by it.

Assemblywoman Smith:
I have heard those stories. Many consumers do not realize, when they go to a doctor's office, for example, and write down the next of kin or whom to contact in the event of an emergency, that it can turn into something else down the road. We all know the problems that exist with medical debt collection. It does become an issue.

Chairman Anderson:
They are bad practices. We will turn to Mr. Gliner.

Mitch Gliner, Attorney, Las Vegas:
Since 1993, I have practiced exclusively under the Fair Debt Collection Practices Act (FDCPA), the federal statute which governs the activities of various debt collectors. In that time, I have filed 500 claims involving abuse from third-party debt collectors. The *Kuhn* case [865 F.Supp. 1443 (D.Nev. 1994)] supplied by Assemblywoman Smith was my first published opinion. It was decided by Federal Judge Pro in 1994. Judge Pro is a conservative jurist who decided, in that case, that the telephone harassment was so profound that it warranted an instruction for punitive damages. It is representative of the type of continued abuse that has permeated the industry in the intervening 13 years.

There is something comical about the opposition to this bill. In the hundreds of cases I have filed where we have alleged telephone abuse, in every instance the debt collector absolutely denies that any of the alleged abuse has taken place. For example, they make threats that a consumer will be thrown into prison, a mother will be deprived of association with her children, or a consumer will be deported. Not once has a debt collector in litigation admitted that type of harassment has taken place. What strikes me is why in the world the debt collection industry would be opposed to this. If they have acted in a serious, thoughtful, and law-abiding fashion, these recordings would simply exculpate their activities as opposed to inculpate them. If we all agree that there is nothing to hide, why not have these recorded conversations? To the best of my knowledge, 48 states in the country do not require two-party consent. Those states are functioning fine without any constitutional problems.

When the federal statute was established back in 1977, the original congressional findings and declaration purpose found there was widespread abuse. Congress has not rescinded this statute. As Ms. Smith described, there has been an inundation of subsequent complaints to the FTC. The FDCPA has a punitive provision which will allow a law-abiding debt collector to sue any plaintiff who brings a case frivolously. The notion that this is somehow a draconian change which will limit the efficacy of law-abiding debt collectors is fatuous.

Finally, I have represented a broad spectrum of clients. Most of my clients are of modest income, but I have also represented the CEO of Nevada Power, who alleged this type of telephone abuse. This abuse is indiscriminate. These folks want their money. While the majority of debt collectors are law-abiding, there is a substantial component that is not. This group will strong-arm, extort, and intimidate people into paying money. One thing I find particularly egregious is that they will take time-barred debt and report it on credit reports. That is illegal. Very few people have the recourse or the knowledge to file a lawsuit against a debt collector to have them take it off. They will call these debtors and tell them they are not going to take it off the report until such time as the debtor pays it, whether it is time-barred or someone else's claim.

The intended legislation is consistent with the statutes of 48 other states. It is good for all of this to come out in the sunlight. Both the debtor and the debt collector would be recorded, and that type of discourse would subject to honest scrutiny.

Chairman Anderson:
This would be limited to those conversations which involve this particular industry. It is not a broad spectrum that would include all conversations.

Assemblywoman Smith:
That is correct. The bill is written narrowly so that it involves this one type of act.

Assemblywoman Gerhardt:
Could you clarify what you meant by time-barred?

Mitch Gliner:
In most states, there is a statute of limitations that operates to terminate the enforceability of a debt. For example, for most written contracts in Nevada, it is six years. If someone incurred a credit card debt in 1995, even though the debt might be theirs, it is no longer collectible. Our Legislature and the legislatures of various states have concluded there is a point where you want to give people a fresh start, and they do not have to be held accountable for debts that are 10 or 20 years old. What I have found is that many debt collectors will buy these old debts, re-age them subsequently, and report them on credit reports outside the statute. Very often, you are dealing with consumers who are unsophisticated and feel they have no recourse. For example, they may want to buy a home and want to remove something from their credit report or reflected as paid before they can buy the home, or they may want to establish new credit with some other financing entity. What will happen is that the debt

collector will leverage these sensibilities, knowing full well that the average consumer does not know they can get a lawyer. If the debt is $300–$400, the consumer does not want to retain a lawyer for $5,000 in order to satisfy what is ostensibly a legitimate debt on a credit report.

Chairman Anderson:
How do they get by the statute of limitations by reawakening an older debt? Do they merely repost it?

Mitch Gliner:
Yes. It is insidious. In Nevada, you can request that a time-barred debt be paid as a moral obligation as opposed to a legal one. If I had lent $200 to you 20 years ago, I could still request repayment of that despite the fact that the statute of limitations has expired. These debt collectors will report the debt on credit reports as of the date they acquired the debt. That will allow them to report it for another six or seven years. It is illegal, but most consumers are not in the position to immediately remedy it.

Assemblyman Ohrenschall:
If a debtor records one of these conversations and he is being harassed, is that recording admissible? Or would it be if this were passed?

Mitch Gliner:
What you are talking about now are the federal rules of evidence. It would be admissible. There are evidentiary predicates that require you must establish the reliability of the recording. There are a variety of other evidentiary considerations.

Assemblyman Ohrenschall:
Would that recording currently be admissible without this bill, or would the state statute need to be amended at all? Does it not make a difference?

Mitch Gliner:
I do not know. I have never attempted to enter into litigation a recording that might have been made in contravention of the statute. I can only conclude that, if the bill is passed, the recordings will be entered into evidence in federal court without any problem.

Assemblyman Ohrenschall:
You think this would help someone who is being abused by a creditor?

Mitch Gliner:
Absolutely. I represent plaintiffs who feel they have been aggrieved by debt collectors. I am not here to assuage the sensibilities of the debt collection community. It would occur to me that, since the brunt of the opposition to this bill is that many consumers will lie and feign abuse, it would be to the benefit of the collection industry. If you have the tape and some consumer alleges abuse and there is no abuse, the efficacy is dual by its nature. It helps both sides and ensures honesty.

Assemblyman Segerblom:
Are you aware of what the law is with respect to one-on-one taping of conversations in Nevada?

Mitch Gliner:
I am not versed in that.

Assemblyman Segerblom:
It is my understanding that one party can currently tape something if it is one-on-one. This would just change this to...

Chairman Anderson:
Mr. Segerblom, I believe that is in the digest on the front of the bill. The law recognizes exceptions to the requirement of a two-party conversation. You have to inform the person in all cases other than:

> interception of wire communication made pursuant to a court order...consent of one party in an emergency situation...offenders in an institution or facility with a person outside the facility, and public utility recording telephone calls relating to emergencies and service outages.

Those are current statutes. Nevada, unlike almost every other state, does not allow recording without informed consent. That is what this issue is.

Assemblywoman Smith:
I did not know the answer. I thought Mr. Segerblom was referring to in person conversations.

Assemblyman Segerblom:
I was indicating that the law in Nevada is that you can tape-record a conversation without disclosing to the other side. In this particular limited instance, this would be consistent with the current law.

Chairman Anderson:
I think that conversation is separate from this. You are supposed to inform the other person you are recording. Wiretapping is done by a court order. I do not think that is the intent of this bill.

Assemblyman Horne:
If you and I were standing next to each other, I do not need permission to record you. It is different when you are on a telephone line. You do not have a right to privacy out in the open. If you are sitting at a lunch table, you could be recorded.

Chairman Anderson:
Anyone else in support? [There was no one.] We will go to the opposition.

Ray White, Business and Professional Collection Services, Inc., Reno:
We try to do everything we can to be fair with debtors. I have heard that debtors are so abused, but we try to respect the debtors we contact in our office. At any time, a debtor can request that they not be contacted. They have that right. A.B. 127 is probably not necessary. As far as the billing process goes, probably 99 percent of the accounts are valid. Sometimes there are billing errors, but we try to resolve those. We monitor our people and what kinds of conversations they are having on the phone. Debt collectors should have the same rights as everyone else. This bill would provide no protection for them. Our FDCPA has 50–60 pages about protecting debtors, and that is adequate. In addition, Chapter 649 of *Nevada Revised Statutes* (NRS) already obligates collection agencies to follow guidelines to treat debtors with respect. On occasion, there are situations where out-of-state agencies or foreign countries are trying to collect bills and may become abusive. It is difficult to protect all of the debtor's rights. Collection agencies do not own receivables. There are a few that buy receivables, but most are representing businesses to reduce their loss. They use the agencies because they do not want to handle that part of the receivable process.

We hope the Committee will not approve this bill.

Chairman Anderson:
Harassment is not the practice at the organization you work for. Why would there not be opportunity for the consumer who feels that they are being harassed to record the conversation? When this rare abuse would occur, why would it not be in the best interest of collection agencies to make sure they were following the due diligence that your department is?

Ray White:
If we are recording a call that we have initiated or received from a debtor, we tell them we are going to record. Likewise, if the debtor is going to be recording, they should give the collection agency notice, so that things are on the same level.

Chairman Anderson:
There are debt collection agencies in other states that seem to be able to follow this. Why would Nevadans not have the same opportunity?

Ray White:
It could create a situation where people could be set up to say and do certain things. When everybody knows they are being recorded, it makes it a fair playing field.

Chairman Anderson:
If you record your employees for quality control to make sure they are doing what they are supposed to do, is it possible for those records to be subpoenaed and brought to court?

Ray White:
I am not sure what the law requires in that regard.

Assemblyman Horne:
I would like to hear about the harm that would result should this pass. I have heard you say that the consumer would not have to give you notice, but you have to give them notice. Is that the only harm that you would experience?

Ray White:
I could envision situations where there might be more litigation involved in this whole process.

Assemblyman Horne:
But would that litigation not stem from the fact that a consumer has a recording of harassment?

Ray White:
That is probably true, but they can stop the conversation anytime they want to. That allows them to discontinue any further contact. By passing the law, you end up removing someone's right. It would be a disadvantage.

Assemblyman Horne:
I am uncertain which right you are talking about that the debt collectors would lose. You responded that they would be able to hang up. I think that is part of the problem. If a debtor or guarantor believes they are being harassed and were to just hang up each time harassment occurred, that does not solve the problem. It eventually ends up in litigation and they have no evidence to prove they were being harassed. With this bill, they can make the allegation and back it up. I do not see how in that scenario—and that is what the spirit of this bill is supposed to address—debt collectors have lost their rights. An established and credible debt collection agency has no fear of a right being lost because you operate above board.

Ray White:
I cannot see any reason why the agency cannot be aware that the conversation is being recorded. I do not see what disadvantage that puts the debtor in.

Assemblyman Segerblom:
You indicated that you are subject to having your supervisor listen in on your conversations on a random basis?

Ray White:
The way our office is set up, we have a supervisor in the middle of all the collectors. They can hear everything that is said. We have that in addition to recording conversations. If you have this type of arrangement, you do not have the abuses that might occur if people are allowed to call from home and do their collection work that way.

Assemblyman Segerblom:
Does the supervisor with a headset listen in to both sides of your conversation?

Ray White:
No. The supervisor in our area hears the conversations as they go on within the office.

Assemblyman Segerblom:
Just the one side?

Ray White:
Right. All of the people are trained and certified to do the right thing. Most of the larger agencies belong to the American Collectors Association. They follow guidelines and rules on how to handle things. You will find abuses along the way, but most agencies try to be fair and reputable.

Assemblyman Conklin:
At the onset of this hearing, the Chairman commented about calls made not only to the debtor, but to the reference. That is covered under the Do Not Call Act. Nobody has a right to call somebody who is listed on that if they are not the guarantor of the debt. That is considered a deceptive trade practice. It is important to get that on the record.

Chairman Anderson:
It is a deceptive trade practice. We recognize that occasionally agencies outside the State often make use of that.

Assemblyman Conklin:
In the discussion of that particular statute, one thing that was compelling was the fact that these calls are being made into somebody's private life. They are not being made at work or in public, but in the sanctity of peoples' private homes where they have family. On the one hand, we might think that a business has certain rights, but under the *United States Constitution* businesses do not have the same rights that individuals have in this country. A person at home in a property they own on a phone line they pay for should have certain control over that. I respect the fact that a business may be owed a debt and has the right to collect it. I do not want to stop them from doing that. I also respect the fact that I have certain rights over the area of my domain. I do not think it is a compelling argument to suggest that there is an equal right here between a business and an individual in this country.

Liesl Ann Douillard, Vice President, Customer Relations, National Business Factor Group Inc., Carson City:
The law is something we take very seriously. We are governed by the FDCPA, the FTC, and the NRS. The Nevada Financial Institutions Division (FID) regulates us. One more thing we have to implement will only increase our expenses, lawsuits, and things like that. We monitor phone calls, but we would also have to record to protect ourselves from future frivolous lawsuits. The bill also states "any collection agent." That would include all my clients. We are mainly a medical agency. Now the doctors' offices and medical groups will also have to be concerned about this law. Our company feels that it will increase costs that will go down the line.

We are given debts to collect that the consumer incurred. We have no choice but to do what we have to in order to collect them. We do this ethically and morally. There are always two sides to the story. There are good people and bad people, good companies and bad companies. I do not feel everyone should be punished for what bad companies are doing. This will not help the situation,

but confuse it. People can instigate a bad conversation and try to get us to say things we should not. This is not the proper way to handle this problem.

Assemblywoman Gerhardt:
A few times I have heard the comment about instigating a bad conversation. If that did occur, it would be recorded. It would be clear that the consumer was trying to provoke somebody. I do not see that as a valid argument.

Liesl Ann Douillard:
If somebody is good at what they do, they can instigate something. I see it in the media every day. You can interpret something differently. If something is coming out of a conversation, it goes ugly, and the debtor instigates it, it could be misconstrued in a court of law. If the agency itself does not implement recording of every conversation and put the cost of doing this into effect, the person who is recording us could probably change that tape somehow. With the electronic devices we have today and the ability to manipulate a tape, I can see everything going differently. I am not an expert. I was a collector for a short time. I have been instigated to lose control of the conversation and end the conversation. They will continually try to get you to a place you should not be. It will be clear on the record.

Assemblywoman Gerhardt:
In my personal experience, I routinely have to call different businesses. Right before you are put on hold, there is a recording saying that your conversations can be recorded. That is a routine practice for a lot of businesses. If this law were to be passed, there would be the assumption that conversations would be recorded on the other side, so I really do not see the difference.

Chairman Anderson:
We will turn to David Stone.

David Stone, Owner, Nevada Association Services, Inc., Las Vegas:
I am here in opposition to A.B. 127, and to offer another perspective on the bill. I have been in the collection business for many years. My company has been doing business in Nevada for over seven years. If you were to check with the FID, you would see that my company has an exemplary record of doing business in the State. We play by the rules. I have seen debtors do almost anything to avoid paying legitimate debts. I have seen counterfeit bankruptcy filing cover pages. I have seen letters claiming to be from my office that were not. I have seen my signature forged on documents. Fraud and deceit by debtors is not that common, but it does happen.

The purpose of recording a phone conversation is to corroborate it. In this particular case, it is intended to allow debtors to surreptitiously record alleged abuse and unlawful acting collection agents. Recordings of phone calls are extremely unreliable, especially when the manipulation of a phone call recording is as easy as a click of the mouse. This bill permits a debtor to conduct a sting operation by recording a collector without their knowledge or consent. This is a recipe for disaster. It gives desperate or creative debtors license to record a conversation, manipulate it, then sue the agency based on that manipulated recording. A debtor could have an accomplice call him, passing himself off as a collector. The agency would then need to prove that the person calling was not a collector of the agency. How does one prove the recording is not true? How does one prove something did not happen? Additionally, collectors come and go. It could be months before a collection agency discovers one of its collectors was recorded. By the time the recording comes to light and with the collector gone, it could be difficult or impossible to locate that collector in order to verify the accuracy of the recorded conversation. With the recording only in the hand of the aggrieved party and the agency's impossible task of proving something did not happen, the bill puts agencies in a vulnerable position without having the ability to authenticate the recorded call. This bill is grossly discriminatory. Why does a highly regulated collection industry not receive the same protections under law afforded to similar highly regulated industries, such as the real estate, stock broker, or legal industries? Why are these industries afforded different protections under the law? None of these industries is immune to abuse. The FDCPA is very specific with respect to whom the federal law is intended to protect. The FDCPA refers only to consumers, meaning ordinary people with consumer debt which is limited mostly to family, personal, and household obligations. Who is A.B. 127 trying to protect? The definitions in the bill are extremely vague. With such definitions, A.B. 127 could easily apply to anyone from Mr. Smith who failed to pay a consumer debt to the multibillion dollar casino that is refusing to pay its commercial debt to the slot machine makers. What is it that the bill drafter intended?

Chairman Anderson:
Do you keep a log of the calls that are made?

David Stone:
Yes.

Chairman Anderson:
Do you have a set of protocols for your employees to follow that includes things they should and should not say, specifically when engaging in those kinds of discussion or how to avoid the conflicts that could result from somebody who is under stress because of the telephone call itself?

David Stone:
Most certainly. The percentage of instances that result in abusive types of conversations is limited. With all due respect to Mr. Gliner, he is almost the complaint department. All he hears are these unusual situations where there is abuse on the phone.

Chairman Anderson:
You do have a protocol for the people you hire and train. You might find that even after you have hired somebody and trained him, he is just not suited to the job.

David Stone:
Yes.

Assemblyman Horne:
I was curious about how often debt collectors actually record conversations.

David Stone:
It is extremely expensive to record all phone calls. If it appears that a phone call is getting to the point where we need some sort of protections, then we record. Otherwise, most phone calls are not recorded.

Assemblyman Horne:
Are they recorded on a tape or digitally?

David Stone:
It is usually done on a computer, digitally.

Assemblyman Horne:
I would be curious to see the cost increase for digital recording.

David Stone:
There would be a cost in order to record all phone calls and have the hardware to store all of that for an indefinite period of time—which is what we would have to do with respect to this bill because we do not know when a claim would come up—because our software and hardware would have to be significantly enhanced.

Assemblyman Mabey:
I am curious if you know anyone who has done your business in another state where a law like this has been passed, and what has happened.

David Stone:
The states that allow this do not allow for the surreptitious recording of phone calls. That puts the collector on notice. You would have to tell the debt collector they are being recorded, which would allow the debt collector to also record the conversation. The problem with this bill is the chain of custody. The debtor is the only person who has access and physical control of the recording. They can do whatever they want with it, and it will then be impossible for an agency to prove that what is on the recording is not accurate. We have no problem, in theory, with people recording our phone calls because we are confident in what we do. I have a problem in being unable to refute a recorded phone call. If someone comes in and presents a phone call that claims we threaten them with imprisonment, I want to be able to present my phone call message that shows it never happened, or that the voice on the tape provided to us by the debtor is the voice of someone who does not even work for me.

Assemblyman Mabey:
If we pass this, you are saying we will be the only state where you would not have to notify the collector they are being recorded.

David Stone:
I am not sure about all the states. The states that do allow this allow there to be ample protections as far as that piece of evidence goes.

Chairman Anderson:
In the original testimony, it was indicated that 48 states allow the recording of one-way conversations. We will get verification of that. If that is true, then it would be the more common practice.

Bill Uffelman, President and CEO, Nevada Bankers Association:
We are opposed to the bill because there are banks in this State that operate call centers that engage in collection. The bill, as written, is a bad bill.

Chairman Anderson:
Placing this into statute sounds as if we will only be mirroring what is the common practice in other states. Are you aware that in other states this is an accepted practice?

Bill Uffelman:
I have gotten a mixed message on that. Somebody today stated that 48 states permit that. That is contrary to information I have from other places.

Chairman Anderson:
If you will supply that information to Ms. Chisel, that would be helpful. I would ask that you also share it with Ms. Smith, the author of the bill.

Joseph Turco:
Let me make perfectly clear, though I rise in gentle opposition to this bill, that I in no way represent bankers or credit companies or debt collectors. The ACLU is primarily concerned with the *U.S. Constitution* and the first ten amendments thereto. Whenever we get into the area of surreptitious recording, we have to look at these things very carefully. I have heard debt collectors' conversations with customers and some of them are truly horrifying. It is appropriate to stick it to the debt collectors who do that. We need to think carefully about how we are going to do it. Sure, plaintiffs' lawyers get that good "gotcha" moment on tape, and that is great evidence. When I was preparing for this, I spoke to Dr. Siegel, the President of the Board of the American Civil Liberties Union (ACLU) of Nevada. He talked to me about Nevada's history with surveillance since the 1960s. The Justice Department went after our leading industry in this State—the casinos—forces coalesced, and there was resistance to that kind of surveillance. A libertarian view arose regarding surreptitious recording, surveillance, and these sorts of things. As a tradition, I am told, Nevada tries to avoid this sort of thing. I said, "But, Dr. Siegel, we are not talking about the government surreptitiously recording the people. This is a person-to-person sort of recording." He said, "But people spying on people is bad precedent. What is to stop the debt collector from surreptitiously recording the customer?" And, in fact, the debt collectors' people were right here raising that equal protection argument. They want the same rights. That is a danger—the corporation surreptitiously recording customers might be the next step.

I was assured by Assemblywoman Smith of narrow construction, and it is comforting. I was given assurances that this bill is limited to debt collectors and the right to record goes only one way from the customer to the debt collector. "Function creep" has a way of insinuating itself into these laws. The Chairman spoke about references being called. References are not in the bill. They will be next, I guess. What about the debt collectors? Do they have the right under equal protection to record surreptitiously? It is not worth abandoning core principles for the "gotcha" moment—which is rare, we think. There are alternatives.

Mr. Chairman, you indicated a subpoena, but I submit to you a subpoena is not even necessary; a mere discovery request will do. Another alternative is to mandate the credit company to record all of its conversations. You will not get your "gotcha" moment, but you will not have harassment either. We see no reason why a customer would not advise their debt collector that the

conversation is being recorded because, voilá, you say that and the harassment stops. I have nothing further.

Assemblyman Horne:
Could you provide this Committee with a very short line on where you believe it is an equal protection violation of the *Constitution* in this bill?

Joseph Turco:
I will endeavor to do so. I did not come here to make an equal protection argument.

Assemblyman Horne:
I heard you say that.

Joseph Turco:
The debt collector wants the same rights. He raised it. It is something you have to consider. There are unintended consequences. The people who prepared this bill are good government legislators—everyone cares about the ordinary lives of average citizens. I appreciate that. What I am here to, however unpopular, is try to remind people of unintended consequences. The creditors coming back in and saying we want the same rights is a real possibility. They will coalesce and come back here.

Assemblyman Horne:
You questioned what would stop the debt collector from surreptitiously recording as well. We have that in statute—that is what would stop them.

Chairman Anderson:
I would hope that you are able to put together a few statements relative to the request from the Vice Chair, so that we can have that distributed to the Committee.

Marel Giolito, representing Nevada Collectors Association:
I do not have anything in addition to offer. We are in opposition to this bill because of the discriminatory issues separating one business from all other businesses.

John Wanderer, Attorney, Las Vegas:
I have practiced and have been involved in the debt collection industry for more than 30 years. I am not here on behalf of any particular client. The purpose of this bill ostensibly is to protect debtors against abusive calls. I do not believe the abusive calls are that great anymore since the advent of the FDCPA in 1977. There are probably some abusive calls. This bill is a bad bill because it is

not directly addressing how to stop abusive calls. What you are doing when you allow surreptitious recording of calls of a potentially abusive debtor is facilitating federal litigation pursuant to the FDCPA. That does not help stop abusive calls. I would suggest to you that, if you are going to allow debtors to record telephone conversations, you make it a requirement that the debtor state that he is doing so. If there is an abusive call, I guarantee that will stop it. That is much more effective than facilitating federal litigation. Additionally, it seems to be inappropriate to allow debtors to record the conversations when the collection agency cannot do so. A collection agency cannot record that call unless the other party consents to it. This is a two-party consent state and there is no exception in the statute for collection agencies.

Another matter I wish to discuss about the statute is that it refers to collection agencies or a collection agent. We all know what a collection agency is, but what is a collection agent? Is that the lawyer who is calling from the casino to somebody who gave the casino bad markers? Is it the collection department for the department store? All of these commercial enterprises have their own collection departments. You have an obligation to define "collection agent."

Mr. Turco referred to it as being a narrowly drawn statute. It only refers to the collection industry. How broad is the collection industry? Are you talking about Ford Motor Company's call center in Las Vegas or CitiBank's call center? I do not know, but I think you need to determine exactly to whom this statute is going to be addressed.

In Section 4, paragraph 1(a) it says "concerns a claim." I would suggest that you make it read "a consumer claim" and not involve yourself with the commercial collection debt industry. That is an entirely different animal. You do not have claims filed for abusive telephone calls to a business because it does not typically happen.

There was some discussion about a claim being time-barred. Most of the cases under the FDCPA I have read hold it as a violation for a debt collector to attempt to collect a debt where the statute of limitations has run out. If it is going on in Nevada, those are separate matters that can be brought under the FDCPA. They are certainly not going to be addressed by your allowing one-way wiretapping.

Chairman Anderson:
Questions for Mr. Wanderer? [There were none.]

Kjelden Cundiff, representing Clark County Collection Services:
I am a licensed qualified manager in the State of Nevada. I have been operating a collection agency for six years.

Chairman Anderson:
Do you have a prepared statement?

Kjelden Cundiff:
No. I simply wanted to clarify one point that was brought up early on in the discussion regarding the contact of third-party references. It is clearly defined in the FDCPA that that is a valid and viable way to collect a debt. We are entitled to contact third-party references for location information, not to collect on the debt.

Chairman Anderson:
Anyone else who needs to get themselves on the record? [There was no one.] We have a handout for the Committee from Monday's meeting (Exhibit F).

This was a document that was requested by Mr. Horne relative to the presentation you heard on hate crimes. It was the slide presentation from Mr. Stoops on A.B. 83. We will have this added to the record.

We are adjourned [at 10:31 a.m.].

RESPECTFULLY SUBMITTED:

Danielle Mayabb
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 7, 2007 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A	********	Agenda
	B	********	Attendance Roster
AB 127	C	Assemblywoman Smith	Article
AB 127	D	Assemblywoman Smith	*Kuhn v. Account Control Technology*
AB 127	E	Mitch Gliner	Summary of *Kuhn*
AB 83	F	Michael Stoops, National Coalition for the Homeless	Presentation from March 5, 2007