

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fourth Session
February 9, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Friday, February 9, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8

STAFF MEMBERS PRESENT:

Kelly Gregory, Committee Policy Analyst
Lori Johnson, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Laura Adler, Committee Secretary

OTHERS PRESENT:

Ronald P. Dreher, Government Affairs Director, Peace Officers Research
Association of Nevada
Carolyn Sullivan
Jeanne Minnie
Redentor Villanueva, Ombudsman, Consumer Health Assistance, Office of the
Governor

Senate Committee on Commerce and Labor
February 9, 2007
Page 2

Michael B. Neville, Investigator, Washoe County District Attorney
Stephen Turner, Reno Police Sergeant, Retired, Peace Officers Research
Association of Nevada
Domenic Bravo, Vice President, Park Ranger Association of Nevada
Rick McLellan, Director Northern Region, Nevada Department of Public Safety
Association
Ed Flagg, President, Nevada Corrections Association
Barbara Gruenewald, Attorney, Nevada Trial Lawyers Association
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Rusty McAllister, President, Professional Fire Fighters of Nevada
James R. Jeppson, Washoe County
Jim Fry, Deputy Risk Manager, Risk Management Division, Department of
Administration
Robert A. Ostrovsky, City of Las Vegas
Harry Pappas
Alfredo Alonso, Alliance of Automobile Manufacturers
Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers
Association

CHAIR TOWNSEND:

We will open the hearing on Senate Bill (S.B.) 3.

SENATE BILL 3: Revises various provisions relating to the death benefits payable to surviving spouses of certain police officers and firefighters. (BDR 53-244)

RONALD P. DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):

I appear on behalf of the professional peace officers of our great State and their families. We request your support and passage of S.B. 3 ([Exhibit C](#)).

SENATOR HECK:

I want this on the record as to the intent, because it is also listed for Clark County and their potential fiscal note. We are talking about a peace officer or firefighter who is killed in the line of duty, and not someone who dies and would be eligible for presumptive benefits under chapter 617 of the *Nevada Revised Statutes* (NRS). Is that correct?

MR. DREHER:
That is correct.

SENATOR HECK:
Does legal counsel concur that that is the interpretation of this bill?

WIL KEANE (Committee Counsel):
"Yes, Senator."

CAROLYN SULLIVAN:

It has been nine years since my husband, George, was killed. For those who do not remember, he worked for the University of Nevada, Reno. On the night of January 13, 1999, Siaso Vanisi, who had been desiring to kill a police officer for a week prior to killing George, told friends and family of his plan. On that night George had just completed a traffic stop south of campus, pulled onto the campus grounds and stopped to make notes in his log book. Siaso Vanisi knocked on the patrol car window to get George's attention. I am told it is police procedure not to be in your vehicle when encountering a civilian asking for help. Upon exiting his car, George was immediately attacked with a hatchet about the face and head multiple times, and died at the scene. His personal belongings, including his duty belt and gun were stolen. These items were used by Vanisi in a convenience store robbery for money to leave the State in a stolen car for Salt Lake City, Utah, where he was soon apprehended.

At the time of George's death, our children's ages were 15, 11, 6 and 3. I am a registered nurse, and always worked part-time so I could be with the children, and today, I continue to work part-time for that reason. I am passionate about S.B. 3 for several reasons. We should honor those who work in law enforcement and fire protection in this State. Officers run toward danger, not away from it like the rest of us, thereby protecting us. It is important to honor the sacrifice of those officers left behind when they are killed in the line of duty. It was not just George who gave his life, his family also did, and we struggle with that every day. Most days, I am fine, but I had a brief meltdown as I prepared to testify on this bill. I am a single mother with teenaged children, and provide finances, emotional support, home repair, groceries, help with homework and many other things. There are people in the community who think it would be okay if this money went away.

When you talk about a divorce situation versus a line-of-duty death, you are not only talking about the sacrifice the officer and family made, but the loss of a family member, not just a separation of that provider. In a divorce, there is child support until the child is between 18 and 23 years of age. Additionally, that parent is still alive and can offer other forms of support. That is how things are different, because George is not here, it is all up to me.

In our society, many people believe it is all right to live together, but that is not my belief. The unintended consequence of failing to pass this legislation is that the surviving spouse may choose to live with someone rather than honor marriage because the financial resources go away. George and I talked many times about death and dying, as married couples should when one of them is in a dangerous profession. He said we would be all right if anything happened to him. We also talked about remarriage, and both agreed we would want the other to remarry, if they wished. I would like to know that I have that option, and not be concerned whether someone else could be financially responsible for my family.

MRS. SULLIVAN:

I would like to make the point that if George had not been killed, but disabled or brain damaged and unable to return to work, his benefits would have stayed with him for as long he lived. If we divorced, he would still have his benefits. When the Public Employees' Retirement System (PERS) removed the remarriage penalty in 1999, they made the spouse an extension of the employee; thereby considering me as the retired employee. That is what this bill should do with the income from the State insurance program by considering the spouse as an extension of that employee, and the benefits should follow the spouse. There is no fiscal impact since Employers Insurance Company of Nevada (EICON) plans for these types of expenses. They cost the money out, thereby having no fiscal impact on the State. Over the years, I have received no cost-of-living increase; the amount is the same now as it was when George was killed. It is not a huge amount; I receive \$2,236 a month. When that amount is considered a piece of the pie, it is a nice slice, but raising four children can be very expensive. I also get 50 percent of his PERS retirement income based on 19 and a half years of employment before George was killed. I also work three days a week and am on call every other weekend. So you see, the EICON and PERS are not the only source of income needed to meet my family's expenses.

I fervently request that you support S.B. 3.

JEANNE MINNIE:

I support S.B. 3. My husband, Deputy Frank Minnie, who was with the Washoe County Sheriff's Department, was killed in the line of duty almost ten years ago ([Exhibit D](#)).

SENATOR HECK:

As an estimate, how many law enforcement officers that would be covered by this bill, lose their life in the State of Nevada on an annual basis?

MR. DREHER:

It can vary from year to year, but around one a year ([Exhibit E](#)).

SENATOR CARLTON:

In the interest of full disclosure, my husband works for the Department of Public Safety, and is now at a desk. In the PERS elimination of the remarriage penalty, was it for just police and fire, or for everyone included in the PERS?

MR. DREHER:

It was for everyone included in the PERS.

SENATOR CARLTON:

Recently in southern Nevada, an engineer at a hotel died in the sewer attempting to save a friend who had fallen in. Will this remarriage penalty still apply to that widow?

MR. DREHER:

Yes, it would. Philosophically, I am not opposed whatsoever. The same testimony provided this morning could be used for everybody in this State, because it has already been budgeted.

SENATOR CARLTON:

I would like to see addressed that anyone who sends their spouse off to work and does not have them come home that night, deserves the same benefit.

REDENTOR VILLANUEVA (Ombudsman, Consumer Health Assistance, Office of the Governor):

As a former claims adjustor, I can appreciate the gravity of the situation. Looking at the big picture, if you have a firefighter or law enforcement officer who died in the line of duty with a widow receiving benefits, empirically

speaking, why would we penalize that individual by ending benefits if they happen to fall in love with another person? For the record, I support S.B. 3 and the benefits should continue.

MICHAEL B. NEVILLE (Investigator, Washoe County District Attorney):

I have submitted a position paper ([Exhibit F](#)) in support of the bill. As a peace officer, I would want my wife to be able to remarry based on personal aspects of her life, and not have to rely on the financial impact of that decision. Testimony reminded me of Roselyn Lindley who is the widow of a shipmate lost aboard the USS Enterprise in 1969 during a flight deck fire. They were both very young. Particularly with young people, when a spouse is lost, especially in a violent situation, the survivor goes through an emotional roller coaster and a rebound relationship is not unusual. Roselyn remarried within a year of losing her husband and divorced in less than two years. To this day, she remains unmarried. If you transfer that situation to today's discussion, Roselyn would have lost that benefit, and would still be without any support.

STEPHEN TURNER (Reno Police Sergeant, Retired, Peace Officers Research Association of Nevada):

I agree with what Mrs. Minnie and Mrs. Sullivan had to say. When I was in charge of homicide, we dealt with the spouses in the aftermath of their husbands being killed. It is a chilling message throughout the police community. For every citizen in Nevada, if you are in a desperate situation, like a hostage situation, and a police officer is putting his life on the line by taking extraordinary risks to get you out of that situation, you do not want the officer thinking in the back of his mind that there is a spouse out there who did not get properly taken care of because of a loophole in the law.

It is in the best interest of our citizens and our State that anyone on duty does not have nagging doubts that if things do not work out after my death, if my spouse is going to be taken care of for the rest of her life—poor decision or not in selecting a subsequent spouse.

DOMENIC BRAVO (Vice President, Park Ranger Association of Nevada):

As a peace officer and park ranger, I have dealt with everything from people with guns, knife calls, domestic violence and violent situations. Among things I talked about with my wife this morning was the fact that I would want my children to have a father. As Mrs. Sullivan mentioned, she would never live with someone just to provide a father. She would remarry even if it meant losing the

benefit. I would rather her family and my family be taken care of, and I talk for all the association, peace officers, and firefighters.

RICK MCLELLAN (Director Northern Region, Nevada Department of Public Safety Association):

Our members support S.B. 3. There should not be a remarriage penalty for surviving spouses of fallen officers.

ED FLAGG (President, Nevada Corrections Association):

We support this bill and would like to see S.B. 3 pass.

MRS. SULLIVAN:

Something I neglected to mention earlier is that George's killer, Siaosi Vanisi, was given the death penalty, and today he sits on death row in Ely. I can only imagine the millions of dollars we are spending on his defense to allow him appeal after appeal. It is nine years now and he is only on his second appeal. I just now figured out that if EICON continues to pay me \$2,236 a month for 30 years—George was killed when I was 40—they will have only paid me \$800,000.

BARBARA GRUENEWALD (Attorney, Nevada Trial Lawyers Association):

I had a client, Eloise Ritter, who came to me in 1999 when her firefighter husband died. We had to work to get her claim accepted. She has since gone through two significant relationships. Her comment was that this society makes you feel like you are doing something wrong to have a significant relationship, but not be able to remarry. She has to introduce this important person in her life as her significant other, and society looks at her as though she is not doing the right thing. We support S.B. 3.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):

We represent the 17 elected sheriffs and 12 chiefs of police in Nevada, and many state and federal law enforcement agencies. We want to go on record in support of S.B. 3. I am also historian for our Peace Officers Memorial and the Hoff Memorial. There are 101 officers' names on the wall. Of the 101 officers, 60 were murdered. It is the only profession I know of, other than a combat soldier, where someone intentionally tries to harm or kill you. I am told there are 50 to 60 firefighters who have been killed in the line of duty for law enforcement since 1861 in Nevada. That may not be a large number, but we do have a big problem to solve.

RUSTY MCALLISTER (President, Professional Fire Fighters of Nevada):

We stand in support of S.B. 3. I concur with Senator Carlton's remarks that when actuaries calculate numbers, they use worst-case scenarios. The worst case is a certain number of employees will pass away each year due to death on the job. The worst-case scenario is the surviving spouse would never get married. Those that do remarry put money in the bank for the company because they already calculated payments over the years based on surviving spouses not remarrying. It does not matter whether it is a police officer, firefighter or a construction worker.

CHAIR TOWNSEND:

This committee also oversees insurance and actuaries.

MR. KEANE:

Previously, when Senator Heck asked the question about whether this could only apply when a police officer or firefighter was killed in the line of duty. We said, yes, and that is technically correct. However, "in the line of duty" would be under 616A to 616D. We broadly interpret to be any kind of accident or injury that would be covered under workers' compensation, which would include instances that are not necessarily something you might think of as "in the line of duty" as in some of the more dramatic instances that have been brought up. Certainly, other accidents, and even occupational diseases under 617, which specifically allows for heart attacks, certain lung conditions and cancers, to be considered in the line of duty. So, those would be included, as well, under this bill as it is written right now.

CHAIR TOWNSEND:

I thought we had a serious debate in court over Officer Keith Hashimoto's death in 1996, because he was in a training exercise. That was resolved favorably as training exercises were included as in the line-of-duty issues.

MR. DREHER:

You are correct. Technically, he was on duty, and therefore covered under workers' compensation. It is not the intent of this legislation to cover the occupational disease aspect. The intent, as we put on the record, is if you die as the result of an accident, then your spouse should not be penalized. What the courts do is a different matter and we have no control over them, but this

legislative body does. If the bill needs to be clarified to do that, from our perspective, we have no problem doing that.

JAMES R. JEPPSON (Washoe County):

I agree with counsel regarding the application of this benefit due to the presumption benefits under the heart and lung bill. My objection to this bill is that it is unfairly discriminatory. As a former insurance regulator, I do not believe this would pass muster in review in any other type of insurance where a benefit is based on age, religion, sex, or in this case, occupation. If you are going to change this benefit, then change it for everyone. If we are going to apply this benefit to one class or one occupational class, then apply it to all of them.

SENATOR HARDY:

I agree on the equity issue. The main issue for me is there should not be any governmental barriers or decisions people have to make when they want to remarry. But, is there not a different level of obligation to first responders who put their lives on the line? I am a construction trade association president. To me, the government has no special responsibilities or obligations to me. I understand first responders also have other special benefits, and that is absolutely appropriate. My inclination is to support this bill to move forward so we can have a discussion about those other issues when we can talk about it in those terms. To me, we have a special obligation to first responders who put their lives on the line for us to take care of their families should they be killed serving us.

MR. JEPPSON:

I agree with what you said. The police officers and firefighters do receive extra recognition and extra benefits both at the state and federal level. I have been involved in workers' compensation insurance for almost 30 years in Nevada. There are certain presumptions and certain underlying principles as to what we are doing with workers' compensation, returning the injured worker to pre-accident condition. I could argue that on the marriage penalty, from an actuarial standpoint, the loss has been replaced upon remarriage. But that is not going to wash, because you cannot replace that kind of loss. I still believe under workers' compensation, if you are going to change a benefit, make it equal and apply it across the board. I would be willing to work with your representatives on this committee for any amendment to this bill to make that happen.

SENATOR HARDY:

I was trying to make a point for the record. I think we have a special obligation to those folks. However, I do not want to minimize your point, it is valid. It is something this committee needs to consider and make a hard decision on. Philosophically, I would tend to come down on the side of your argument, simply because no one should have a governmental barrier as to whether or not they remarry.

JIM FRY (Deputy Risk Manager, Risk Management Division, Department of Administration):

We signed in as being neutral. There are several points to weigh in on. Mr. Dreher is correct, there is no fiscal impact as it is projected out as though they would not remarry. However, if they did remarry, then we would receive money back on the reserves ([Exhibit G](#)). Counsel is correct that as the bill reads now, even though the intent is only for in the line of duty, it is including presumptive benefits. In agreeing with Senator Carlton, we have a fear in this State that if we give a benefit to one group of individuals using public funds, could this possibly bring a federal lawsuit that would be above the State tort cap?

CHAIR TOWNSEND:

You have an excellent point, but the committee cannot worry about who may sue us, otherwise we would never get anything done. It can be a tough call.

SENATOR HECK:

It could be perceived that in the current workers' compensation scheme, we have already done that by giving certain presumptive benefits to our public safety professionals. To the best of my knowledge, there has not been a court case challenging that, stating that everybody should receive those benefits. It is no secret that public safety holds a special place in my heart. These are the men and women running into a scene that everyone else is running away from, or entering a burning building that everybody else is evacuating. It may well be worth a little perspective when we look at the Federal Bureau of Investigation's *Uniform Crime Reports* from 1995 to 2004 in which 1,311 police officers have given their lives, 594 by felonious assault, 717 by accident. Likewise, from the National Fire Protection Association for the same time period there were 1,347 firefighters throughout the country, including a combined total of 411 on September 11, 2001. I would echo Chair Townsend's concerns that if we do not act because of fear of a lawsuit, that we are doing a disservice to the men

and women who go to work knowing full well they may not be coming home that day.

ROBERT A. OSTROVSKY (City of Las Vegas):

We are concerned about the language relative to the line of duty versus those that otherwise qualify as a presumptive benefit. We would, if this bill is processed, see that language cleaned up so "line of duty" is clearly identified as the purpose for this bill. We have had concerns by certain staff in the city that, again, this is a carve-out benefit for one class of employees. The policy decision you have to make is whether or not it rises to that level to identify that class of employees. It does leave a lot of other workers at the city exposed with their spouse of maybe having to face that remarriage penalty issue that Senators Hardy and Carlton expressed concerns about. It is hard not to argue that these professions do not rise to that level; clearly we have thought so in the past. As for the PERS benefits, your account is attached to you as an individual; workers' compensation is not that kind of benefit program. The PERS changes had good reasons, and the reasons here are probably good reasons. However, in this case they are different reasons, they are not the same reasons. I would argue actuarially, there is a different situation here than there is in the PERS where you have an individual account. Lastly, there is a cost involved, although relatively small and more of a policy decision than it is a dollar decision. If you took the definition and broadly said it covered all firefighters and police who qualify under workers' compensation, that is another issue. There are hundreds, maybe thousands of individuals who are receiving benefits. Then, there is the surviving spouse that goes back 50 years with all kinds of heart attacks and other things that occurred well after the person ceased to be employed in the professions we are speaking about. The city has those concerns, and recommends you focus on those policy issues if you are trying to resolve this issue.

CHAIR TOWNSEND:

There was discussion about the term, "in the line of duty." Mr. Dreher, Is it your understanding that the case previously discussed narrowed that down so there is case law on the term "in the line of duty"?

MR. DREHER:

It is my understanding that the language can be fixed, if needed, to take care of that problem. We would welcome Mr. Ostrovsky working with us to take care of it.

CHAIR TOWNSEND:

I am not comfortable with that because of the Officer Hashimoto case. There was case law that defined the crux of the issue as to "in the line of duty."

MR. DREHER:

In Officer Keith Hashimoto's death on March 29, 1996, the issue was: "was he off duty?" Among the workers' compensation people, some were saying he was off duty because he was jumping out of airplanes, therefore he was not on the job. It was decided he was on duty because he had been training for all the practices they did in Special Weapons and Tactics (SWAT) during those periods of time. The issue was it was an accidental death. It was determined to be in the line of duty. Everyone knew they were doing SWAT training. The chief of police said he was on duty. The city looked at it as he was not on duty. The settlement for the widow and children was that he was on duty.

CHAIR TOWNSEND:

I am not sure these first responders are ever off duty.

MR. DREHER:

Having been involved with labor a long time and doing this from a different perspective, we argue a lot that we work 24 hours a day; and we do. However if an officer is, in fact, off duty and confronts a felony situation as has happened in bank robberies when the off-duty officer is in the bank, they put themselves on duty when they take action. There is a Nevada Supreme Court case that says if you use the tools of your trade, then you are putting yourself on duty as a law enforcement officer. In that event, that person would, in fact, qualify under these benefits once that is shown. If a firefighter sees a fire and goes in to help on his day off, we would say he was on duty. But there would still be somebody who would want to debate the issue.

MR. MCALLISTER:

This bill specifically did not mention chapter 617 of the NRS. It only mentions chapters 616A to 616D of the NRS. The point was made that it could bleed over into presumptive benefits. Ms. Gruenewald explained to me that anything under chapters 616A to 616D of the NRS also applies to chapter 617 of the NRS. This makes me question, because we are discussing making sure to define what "in the line of duty" death is. A few months ago, a Clark County firefighter had a heart attack in the fire station and died with the other firefighters working on him to try to save him. I am assuming he would fall

under the provisions of NRS 617.457, which is heart problems. Under that provision, even though he died in the fire station on duty, if he is covered under NRS 617.457, his spouse does not qualify for this.

CHAIR TOWNSEND:

You are talking about something we may or may not do. Under the way the bill is defined, did we not hear that you would automatically be covered because it does bleed over? I see your point.

SENATOR HECK:

As Mr. Dreher said, it was not the intent to bleed it over, correct?

MR. DREHER:

That is not the intent of the bill.

CHAIR TOWNSEND:

Mr. Keane is saying the bill is written in a manner that it does bleed over, because if you are covered under chapters 616 or 617 of the NRS, they tend to bleed together. Is that your interpretation?

MR. KEANE:

Correct, Senator. 617 has a provision at the beginning of the chapter that says benefits given under 616A to D apply to people who receive benefits under 617. And then, for police and firefighters under specific statutes, it specifies for heart attacks, for lung disease, and then cancer for firefighters, that those are specifically deemed in the course of employment.

CHAIR TOWNSEND:

We will close the hearing on S.B. 3. Committee, there were questions regarding the applicability of this vis-à-vis the last bit of debate. What is your pleasure?

SENATOR HARDY:

I think it is important we define it in the way it was intended. Having said that, I am going to state for the record, that I hope we can find a way, the State of Nevada, to afford to eliminate the marriage penalty for everybody—that is my hope. As I stated earlier, that should not be a decision somebody has to make in terms of deciding to remarry. My motion would be that we ask staff to amend

S.B. 3 to define clearly what "killed in the line of duty" means to specifically deal with the issues talked about today.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 3.

SENATOR HECK SECONDED THE MOTION.

SENATOR HARDY:

As I indicated for the record, I do think we have a special obligation to those who, as Senator Heck defines it, run towards the danger. Again, I hope we can find a way to remove that penalty for everybody in terms of the marriage penalty. I think the penalty is unfortunate. I have not had anybody in my family die in the line of duty; however, I lost a brother-in-law to brain cancer at 34 years old; so I know the tragedy of losing a family member and the impact that has on a family. It was devastating to all of us, but particularly to my sister and her three children. Thanks to the benefits they had through the union, they were okay. She subsequently met and married a great guy who can afford to take care of them; he is a successful dentist. If you were here during the 2003 Session, I introduced them and their eight children, so I know the financial burden that is on them. I also know what a blessing it has been for my sister to meet such a wonderful person and be able to get on with their lives.

Unfortunately, we are often faced with tough decisions in not being able to do what we would like to do because of financial restraints. I hope, Mr. Chair, we will have that discussion at length in an endeavor to remove that penalty for everyone. I would like to narrowly define it as I have indicated, and pass this bill out for consideration by the full Senate.

SENATOR CARLTON:

I wholeheartedly concur with Senator Hardy. Unfortunately, I am not going to be able to support this. In my 25 years of marriage, when my husband and I first met he was not carrying a gun. He was doing the same job, but he says he fought crime with a pencil. When we moved to Nevada, he became a sworn peace officer and carried a gun. One of the worst arguments we ever had was whether he would really be on duty 24 hours a day. If he took the children to the grocery store and I was at work, and he was carrying a gun, where does his responsibility lie? When I married him, he was not a peace officer and then he became one, and I had to learn how to deal with someone going to work wearing a bulletproof vest and carrying a gun; it was a strange experience.

In the workers' compensation world, what we do for people who get injured at work needs to be fair and across the board. As for the presumptive benefits, firefighters and police are exposed to things that, as a waitress, I am not exposed to; and I do not think those are unreasonable benefits. I have supported presumptive benefits before. Unfortunately, if someone dies at work, they are dead; that person is not going home that day. In the workers' compensation world, if we are going to do something for police and fire, the spouses of other people who have died at work need to be treated just as well. I want to support this. This is difficult for me to do, I could possibly benefit from this as the wife of someone, I have an obligation to speak up for those other wives or spouses who ultimately will not be allowed to benefit from this. Unfortunately, Mr. Chair, I will have to vote no.

CHAIR TOWNSEND:

I thought long and hard about this bill; not just because of my personal relationship with some of those who have lost their lives. Senator Hardy made a point of the loss of his family member. That does not change no matter how many times you get remarried, and whether they are rich or not; that family member cannot be replaced. With that I call for the question.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR TOWNSEND:

The hearing on S.B. 4 is now open.

SENATE BILL 4: Revises the provision related to express warranties for motor vehicles. (BDR 52-293)

HARRY PAPPAS:

Did you receive the color photos ([Exhibit H](#))?

CHAIR TOWNSEND:

This committee is familiar with this area of the law. The bill is three lines, and we have an outline of what traditionally goes on in court. If you could focus on the impact of the bill, that would help.

MR. PAPPAS:

I bought a new Harley-Davidson motorcycle as shown in photograph 'A', [Exhibit H](#), that cost a lot of money. It came with a three-year warranty. It had many small problems and I took it to the dealership.

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):

I put this bill in for Mr. Pappas, and he is the one who will give the testimony. I did look at the actual motorcycle, and saw everything that is in the photographs.

MR. PAPPAS:

There were several minor problems with the motorcycle that should have been taken care of under the warranty. As you see in the photograph, the tires are cracked. I took it to Harley-Davidson under warranty. They said they would not replace the Harley-Davidson tires as that was normal. By the way, the motorcycle has over 4,000 miles. Beside the aesthetics of the blemish, the cracked tires are a danger; they could come apart and I could be hurt.

On the second page, photograph 'E' shows the gas gauge. It cannot be read because it is full of water. Every time this motorcycle gets wet or I wash it, that gauge fills with water. When I took it to Harley-Davidson, they said that was normal. You do not have to have a Ph.D. in mechanical engineering to know those tires will eventually come apart with those cracks, and this gauge is going to fail. Photograph 'F' shows the speedometer that is not leaking water, and the clarity of the numbers and the dial.

In photograph 'G' is my Chevrolet Corvette, which has a problem with the drivetrain in that it clunks. The car has a six-speed transmission and the drivetrain clunks at each gear as I shift through, and even when I let off of the throttle. I took the car to Chevrolet who gave me the exact same line Harley-Davidson did, which is "it's normal." I find it funny that both manufacturers gave me the same story, the same line, "it's normal," almost verbatim.

CHAIR TOWNSEND:

I appreciate what you have shown us to set the stage. The bill talks about awarding buyers costs and reasonable attorney's fees. Did you go through litigation on this?

MR. PAPPAS:

No, but I intend to. That is the problem. I would like to litigate it, and I feel I will win, but I think the court costs should be paid by the manufacturer.

CHAIR TOWNSEND:

Is it not your understanding that the judge has the jurisdiction to award costs to the prevailing party now?

MR. PAPPAS:

My understanding is the judge may or may not. I would like the law to say, "It shall be awarded on the prevailing party," without the judge's discretion involved.

SENATOR HARDY:

You said you think it should be mandatory for the court to award to the prevailing party, but the bill says, the buyer. If the manufacturer prevails, they would not be eligible for court costs the way the bill is drafted. Is that your intent?

MR. PAPPAS:

The intent is the losing party should pay the bills; either the buyer or the seller.

SENATOR HARDY:

Mr. Keane, in statute, do we generally mandate something like this or leave it to the court's discretion, or both?

MR. KEANE:

"There are many statutes that award cost of legal fees."

SENATOR HARDY:

That mandate?

MR. KEANE:

"That mandate, certainly, there are. But generally, most cases, I don't know for sure, but I imagine most cases fall under the discretionary rule."

SENATOR CARLTON:

Mr. Pappas, would not you be a little concerned that if you went to court and lost, that you could end up with both bills? Do you not think that might stop

someone who may not have the resources from going to court; that an attorney may persuade them from going because it could end up costing them \$15,000 or \$20,000 whereas fixing the vehicle would only cost \$500? Could this possibly do more harm than good by doing that?

MR. PAPPAS:

I understand what you are saying, but I do not know what the alternative would be. I could take these manufacturers to court, maybe win the issue, then I have to pay the attorney fees, and that is no victory. The losing party ought to pay. I do not know how else to do it. If a judge will not award attorney fees and court costs, then the consumer is not going to take these matters to court.

It will cost me thousands of dollars for an attorney and expert witnesses. The Harley-Davidson tire is \$150, the gauge is \$150 to \$200, and the Corvette's drivetrain is \$2,500 to repair. If I have to pay thousands of dollars for an attorney, expert witnesses and court costs, and the judge will not award me my fees, why would I bother to take this to court in the first place?

SENATOR CARLTON:

You just made my point. If the judge will hear arguments, and I do not claim to fully understand judiciary, but just because you are right, does not mean you will win in court. I would be concerned that the everyday person who may not have the resources, the expert witnesses, that this would prohibit them from making their argument.

MR. PAPPAS:

I see your side. Then what is the alternative?

SENATOR CARLTON:

It is allowing the judge to hear the arguments and make the determination. You can still petition the judge to have the manufacturer pay your attorney's fees, if they intentionally blew you off.

MR. PAPPAS:

I agree. But what if it is not mandatory to get your attorney's fees, then how do you force the judge to give you those fees, if he does not do so?

SENATOR CARLTON:

My understanding is, you make your argument, the manufacturer makes their argument, and the judge then decides who gets the costs. I understand you are

looking for guarantees, and I would like guarantees, too, but I would not want this to prohibit someone from going to court because they would be afraid they would have to pay someone else's attorney's fees.

MR. PAPPAS:

I think what prohibits people from going to court right now is the fact that you have to hire an attorney for thousands of dollars and the expert witnesses to go to court. If you are not going to get those fees returned to you, should you prevail, you are not going to take the risk to go to court.

SENATOR CARLTON:

I had a similar experience with my daughter and a car crunch. We ended up not going because there was not enough value involved. Sometimes, it is the devil in the details.

SENATOR HARDY:

What year is the Harley?

MR. PAPPAS:

It is a 2004.

SENATOR HARDY:

Your concern is the dry rot on the tires?

MR. PAPPAS:

Yes. Correct. And there are 4,500 miles on it.

SENATOR HARDY:

My family was in the tire business for 50 years, and dry rot has never been a warranty item. I do not see that as a manufacturer defect, I see that as weather wear.

MR. PAPPAS:

I disagree, Senator. Everything on that motorcycle is under warranty, including the tires. So if the tires dry-rot within the warranty period, then they should be replaced.

SENATOR HARDY:

I understand that is your opinion. I am illustrating dry rot has never been an issue tire companies warranty.

MR. PAPPAS:

Under Harley-Davidson, the tires are warranted for the expressed term of the warranty, and there is no exception for dry rot.

CHAIR TOWNSEND:

You said these tires were \$100 each. How much would it cost to repair the gauge?

MR. PAPPAS:

I was given a price of around \$200.

CHAIR TOWNSEND:

That is \$400 and some of your time. It cost us \$700 to \$1,000 to draft this bill. Do you think the relationship here is a little skewed? I cannot speak to the Corvette issue, but I can speak to what you have just stated.

MR. PAPPAS:

No. I do not think it is skewed at all. I do not understand at all how you made that statement, because if this is happening to me, it is happening to lots of other consumers. There is nothing unfair about this. These machines are expensive and I paid for the warranty. When these manufacturers will not honor the warranties, what are we supposed to do? There is no other recourse but to go to court.

Let me add this. It is not the Chevrolet or Harley-Davidson dealers, they have been outstanding. The dealers have sympathized with me when I brought in these machines; they said they have received lots of complaints and had lots of arguments from consumers because the manufacturers will not honor these warranties. The dealerships would like to help, but the manufacturer will not pay them back, so they cannot help me. This is a problem with the manufacturers.

As for the \$700 to draft the bill; I do not know, what is a consumer supposed to do now? Just walk away?

CHAIR TOWNSEND:

That is not the issue. If you read your bill; all it says is there will be reasonable attorney's fees and costs provided. If you litigate this with or without this bill, and you lose, you pay anyway.

MR. PAPPAS:

I understand that. That is the risk a consumer will take. If the manufacturers do not want this risk, then they should fix things before we go to court. They just say that is how it is, that is how it is designed; and you know that is a load of smoke.

ALFREDO ALONSO (Alliance of Automobile Manufacturers):

While I understand Mr. Pappas' issue and sympathize with his particular problem, I can tell you this is more of a rarity than the norm. This bill will set up a system where people will simply sue rather than go through the process. That is not good for anybody. Clearly the discretion of the judge is important. With respect to Mr. Pappas' issues, through the Alliance of Automobile Manufacturers, I contacted General Motors, and they are doing research into his particular problem. I hope this can be fixed, if possible. We would be opposed to anything that encourages litigation.

WAYNE A. FREDIANI (Nevada Franchised Auto Dealers Association):

This bill relates to actions brought pursuant to NRS 597.600 to 597.630, which deal with repairs to conform to express warranty, including our lemon law buyback. The bill simply states that if such an action is brought by the buyer, and the buyer prevails, the court shall award the buyer cost and reasonable attorney's fees. If you are going to be fair in this bill, you would say that if the manufacturer or its agent or the authorized dealer prevails, it should also be entitled to reasonable attorney's fees. However, it does not seem appropriate to put in a new provision requiring a court to award attorney fees. Currently in Nevada law, in the absence of an offer of judgment circumstance, the prevailing claimant who recovers less than \$20,000 can receive attorney's fees. What Mr. Pappas is saying in terms of total costs, it is obviously less than \$20,000.

I would also concur with Mr. Alonso that there is a mechanism in Nevada through the lemon-law provision that allows a party such as you, Mr. Pappas, to go through the dealer and the manufacturers to get this remedied within a one-year provision. I would encourage that somehow there be dialogue with the manufacturer as it relates to the Corvette. I cannot speak to the Harley-Davidson as I do not represent the motorcycle industry. As to the

Corvette, it would be wise for you to try to continue to do that and see if between yourself, the manufacturer and the dealer, this can be resolved.

CHAIR TOWNSEND:

Mr. Pappas, if you have pencil and paper, this is what he referred to: NRS 18.010, that is in the Civil Procedures portion which awards attorney's fees. That was the reference to prevailing party recovers less than \$20,000 or a court finds that one party deserves to be sanctioned or raises a frivolous matter, attorney's fees can be awarded. The NRS 597.688 is our lemon law buyback and civil action statute, which states they may commence an action in court of competent jurisdiction for the recovery of his actual damages, costs and reasonable attorney's fees; and for any punitive damages the facts may warrant.

MR. PAPPAS:

I am aware of those statutes you mentioned and the lemon law. The issue is for example, the clunking in the Chevrolet's drivetrain happened after a year and still under warranty. I do not know if it would be reasonable to go under the lemon law on the motorcycle for just the tire and the gauge. The statute says the court "can" award attorney's fees and reasonable costs, and it ought to be changed to "shall."

SENATOR HARDY:

This is a simple issue to me. In my opinion, we ought to look at similar types of potential lawsuits or opportunities for lawsuits and see what the statute says. If the statute says in those cases, the judge "shall," then we ought to consider doing it here. If not, then we ought to be consistent in the statutes.

CHAIR TOWNSEND:

Have you contacted the Office of the Attorney General relative to the Bureau of Consumer Protection under NRS 597?

MR. PAPPAS:

No, I have not.

CHAIR TOWNSEND:

That does not cost anything, because as a taxpayer you have already paid for that service. I suggest you contact the Attorney General's Office, and ask them for the deputy attorney general who handles actions regarding NRS 597, or go

through consumer affairs. Mr. Campos is the new head of the Consumer Affairs Division. He is located in Las Vegas, listed under State of Nevada, Department of Business and Industry, Consumer Affairs Division. Ask Mr. Campos to look at this and he will contact the deputy attorney general who represents that segment of the law and his division. That should only take a couple of days. After that if you could alert Senator Cegavske to let her know the results, or one of my colleagues in southern Nevada or me, then we can proceed from there. It is important to find out if this can be resolved quickly after you find out from them. That way you do not have to litigate anything.

MR. PAPPAS:

I have had a lot of correspondence with the manufacturers. I already paid a lot to have attorneys send letters to Harley-Davidson and Chevrolet. Their response was they were flat not going to do anything about it, because it is "normal" for these machines. Regarding something Senator Hardy said: there are statutes that say attorney's fees "shall" be awarded. I do not see why this should be any different.

Senate Committee on Commerce and Labor
February 9, 2007
Page 24

CHAIR TOWNSEND:

Hearing no further testimony, the hearing on S.B. 4 is closed.

There being no further business before this Committee, the meeting is adjourned
at 9:54 a.m.

RESPECTFULLY SUBMITTED:

Laura Adler,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____