

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
April 27, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:11 a.m. on Friday, April 27, 2007, in Room 2149 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 Mark E. Amodei, Chair  
Senator Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Valerie Wiener  
Senator Terry Care

**COMMITTEE MEMBERS ABSENT:**

Senator Dennis Nolan (Excused)  
Senator Steven A. Horsford (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Barbara E. Buckley, Assembly District No. 8  
Assemblyman John Ocegueda, Assembly District No. 16  
Assemblywoman Debbie Smith, Assembly District No. 30

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Barbara Moss, Committee Secretary

**OTHERS PRESENT:**

R. Ben Graham, Nevada District Attorneys Association

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David Stanton, Deputy, District Attorney's Office, Clark County  
William R. Uffelman, President and Chief Executive Officer, Nevada Bankers  
Association  
David Stone, Nevada Association Services, Incorporated  
Mitch Gliner  
John P. Wanderer  
Ray White, Business and Professional Collection Service, Incorporated  
John P. Sande, IV, Nevada Collectors Association  
Marel Giolito, Nevada Collectors Association  
Jackie Glass, District Judge, Department 5, Eighth Judicial District

CHAIR AMODEI:

The hearing is opened on Assembly Bill (A.B.) 58.

**ASSEMBLY BILL 58 (1st Reprint)**: Revises provisions governing murder of the first degree. (BDR 15-935)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):

Assembly Bill 58 proposes to expand the number of offenses that constitute murder of the first degree. Under current Nevada law, a murder that occurs during the commission or attempted commission of another offense, such as sexual abuse, sexual molestation or abuse of a child, is considered murder in the first degree. Assembly Bill 58 proposes to add abuse of older and vulnerable persons to the list of offenses that comprise murder of the first degree.

CHAIR AMODEI:

Are pregnant women included in the list of vulnerable persons?

BRAD WILKINSON (Chief Deputy Legislative Counsel):

It would not include pregnant women.

R. BEN GRAHAM (Nevada District Attorneys Association):

Assemblyman Ocegura's testimony was more graphic in the Assembly dealing with people he had come upon in his work experience, and he made a compelling argument to proceed with this legislation. David Stanton, a deputy in Las Vegas who is an experienced prosecutor from both Clark and Washoe Counties, deals with these types of issues daily. I defer to him to explain what would happen if this bill is passed.

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DAVID STANTON (Deputy, District Attorney's Office, Clark County):

I am assigned to the Major Violators Unit and prosecuted murder cases in Clark and Washoe Counties for 15 years. Assembly Bill 58 fills in a hole regarding cases that mercifully do not occur frequently, but when they do, they are one of the most horrific factual cases. Murders committed during abuse of elderly or vulnerable persons will be added to *Nevada Revised Statute* (NRS) 200.030 under the first degree murder statute and the felony murder rule. The language of the bill would close the hole and properly address the responsibilities of individuals who abuse the equally vulnerable elderly persons that the child abuse portion of the statute also protects.

SENATOR WIENER MOVED TO DO PASS A.B. 58.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORSFORD, NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

\* \* \* \* \*

CHAIR AMODEI:

The hearing is opened on A.B. 127.

**ASSEMBLY BILL 127**: Revises provisions relating to interception of wire communications. (BDR 15-1049)

WILLIAM R. UFFELMAN (President and Chief Executive Officer, Nevada Bankers Association):

Assembly Bill 127 will make a Nevada law in which an individual can record a telephone conversation with a collection agent without notifying the agent they are doing so. This kind of provision exists in some other states, but typically it requires permission of both parties. The Nevada Bankers Association is opposed to A.B. 127.

CHAIR AMODEI:

What is your knowledge of other states in this regard?

MR. UFFELMAN:

I will provide you a summary of the laws of all the other states. An overriding number of states have two-party permission and the ability to alter a recording. At the present time, altering techniques are good and not as obvious as in earlier times. Federal law on collections is stringent on collection conversations, and there must be grounds for making the call. Debtors may attempt to get revenge against a collector by recording a call. On the other hand, the bill collector should not be doing certain things.

We frown on the practice of recording calls from bill collectors without providing notice. If there is concern about what the bill collector is going to say, the debtor only needs to inform the collector the call is being recorded. It puts the bill collector on notice, and it is at their own risk if they misbehave. An overwhelming number of collection calls are made in conformance with federal law.

SENATOR CARE:

Does federal or state law require the bill collector to identify himself as a bill collector upon commencement of the conversation?

MR. UFFELMAN:

That is my understanding of the federal law.

SENATOR CARE:

The recipient of the call would not be in a position of wondering whether the caller is a bill collector. If the bill collector is in compliance, he must make his identity known.

MR. UFFELMAN:

That is my understanding.

CHAIR AMODEI:

Were you present at the hearing in the Assembly?

MR. UFFELMAN:

Yes, I was.

CHAIR AMODEI:

In your opinion, Mr. Uffelman, is the gist of A.B. 127 to address abuses by bill collectors over the telephone?

MR. UFFELMAN:

A major proponent of A.B. 127 is a Las Vegas attorney whose law practice is built around suing debt collectors. Arguably, he is looking for victims. It is presumed that debt collectors are abusive people, and this is the only way the common man can protect himself from their abuse.

DAVID STONE (Nevada Association Services, Incorporated):

I am the owner of a collection agency in Las Vegas and present to voice my opposition to A.B. 127. I have been in the collection business for many years, and my company has been in business in Nevada for over seven years. If you were to check with the Division of Financial Institutions, Department of Business and Industry, you would see my company has an exemplary track record of doing business in Nevada.

Over my career, I have seen a lot. I have seen debtors do almost anything to avoid paying legitimate debts. I have seen counterfeit bankruptcy filings cover pages. I have seen letters claiming to be from my office which, in fact, were not. I have even seen my signature forged. Fraud and deceit by debtors is not that common, but it does happen. I have seen it.

In theory, the purpose of recording a telephone conversation is to corroborate the conversation. In this particular case, with this bill, it is intending debtors to conduct a sting operation by surreptitiously recording allegedly abusive and unlawful acting collection agents. Telephone recordings are extremely unreliable nowadays, especially when manipulation of telephone calls is as easy as a click or two on a computer mouse.

Assembly Bill 127 gives desperate or creative debtors license to record a manipulated conversation and then sue the agency based on that manipulated recording. There are two fundamental problems with this bill. Number 1, there exists a chain of custody of evidence problem. The aggrieved party is the only one to hold and maintain that single piece of evidence—the recording of the telephone call. The collection agency has no way of knowing if the person manipulated the recording. The agency has no way of verifying that the person allegedly being abusive on the recording is actually the debt collector. What

happens if it is determined the agency's debt collector is on the telephone, but that debt collector now lives in New York, Florida, California or Canada? What if the debt collector who now lives out of state or out of country is the only person who has the chance to dispute the validity and accuracy of the recording—a recording being held exclusively by the aggrieved party? What is an agency to do if they cannot find the debt collector who can dispute the validity of the recording—again, being held exclusively by the aggrieved party? Authentication of the recording is nearly impossible. This is grossly unfair.

Number 2, A.B. 127 is discriminatory and fails to offer the equal protection to which we are all entitled and provided under law. Why does a state and federally regulated collection agency not receive the same protections under the law afforded other industries? As a collection agency, we are licensed and monitored by the Division of Financial Institutions. Collection companies and managers are subject to comprehensive background checks. Agencies are audited every year by the Division of Financial Institutions. Collection companies are required to maintain bonds up to \$60,000 and most carry liability insurance, which is very expensive. All of this costs money.

Assembly Bill 127 would require every agency to purchase expensive equipment to record each and every telephone call and maintain those recordings for years in order to defend potential claims brought as a result of this bill. The increased cost, along with the already sky-high cost to do business, is way too much for some agencies to handle.

Additionally, A.B. 88, soon to be heard in the Senate Committee on Commerce and Labor, intends to meld in the federal Fair Debt Collection Practices Act into state law. With the passage of A.B. 88 into law, consumers will have even more protection. Assembly Bill 127 discriminates against an industry that pumps billions of dollars back into our economy every year. Assembly Bill 127 is anti-collection agency and anti-business.

**ASSEMBLY BILL 88 (1st Reprint)**: Revises provisions governing the collection of debts by collection agencies. (BDR 54-630)

I have a copy of the Federal Trade Commission's (FTC) 2007 report to Congress on the Fair Debt Collection Practices Act. In 2006, it received over 69,000 complaints. The report states:

The Commission recognizes that third-party collectors contact millions of consumers each year and, thus, the number of consumer complaints the Commission receives about such collectors is but a small percentage of the overall number of consumer contacts.

That is an exact quote from the FTC's report to Congress. The report says the FTC does not verify the 69,000 consumer complaints. It goes on to say:

We recognize, however, that not all consumers who complain to the Commission about collection problems have experienced law violations. In some cases, for example, consumers complain that a debt collector will not accept partial payments.

Such a demand is not a violation of the Fair Debt Collection Practices Act. I bring this up because 69,000 complaints to the FTC seems incredible. The problem is they do not know which complaints are legitimate.

Assembly Bill 127 is unnecessary, anti-business, discriminatory and does not offer the same equal protections to which we are all entitled. Finally, NRS 649.047 created the Collection Agency Advisory Board. The statute specifically states the purpose of the Collection Agency Advisory Board is to make recommendations to the Legislature concerning enactment of any legislation it deems necessary or appropriate relating to collection agencies. If it is the impression of certain Legislators that there is a problem with the collection industry in Nevada, I encourage the Legislature to utilize this already-created Board to help promote and suggest needed, constructive, legal and positive changes within the collection agency and not create shoot-from-the-hip legislation.

There is a requirement under the Fair Debt Collection Practices Act that a debt collector must disclose they are a collection agency and trying to collect a debt. That is required upon every communication. I ask you not to pass A.B. 127.

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):

I will read my prepared testimony ([Exhibit C](#)). I would like to show a brief ABC News video that recounts the growing problem and shows examples of what is happening in this country. I also submitted a *New York Times* article

entitled, "An Outcry Rises as Debt Collectors Play Rough," dated July 5, 2006 ([Exhibit D](#)).

After the Assembly hearing, the *Nevada Appeal* newspaper did an online interactive poll regarding this question and 592 people responded. We usually do not see that kind of response in a major newspaper, much less a newspaper the size of the *Nevada Appeal*. I was stunned at the result. It told me this is a big problem. Of the 592 responses, 92.6 percent were in favor of being able to record a debt-collection call.

CHAIR AMODEI:

Have you any information on other states with similar legislation?

ASSEMBLYWOMAN SMITH:

Thirty-eight other states have passed legislation allowing the recording of debt collection calls without disclosure. I will provide you a list of those states.

SENATOR CARE:

Does this apply only to collection agencies and not the lender itself? In other words, if a person owes money to a retailer, is it acceptable for the retailer to call the debtor?

ASSEMBLYWOMAN SMITH:

Assembly Bill 127 is constructed with the collection agency or a collector.

SENATOR CARE:

The way I read the bill, only the debtor can record the call. There was a case in which calls were made to relatives. In that event, the relative could not record the call, only the person who owes the debt. Is that correct?

ASSEMBLYWOMAN SMITH:

Assembly Bill 127 says the person who owes or is alleged to owe; therefore, relatives would be excluded. There have been cases where people who are not the debtor, or who are assumed to be the debtor, are harassed; the bill does not specifically address the wrong person or other people called by the creditor to get information. The Chair of the Assembly Committee on Judiciary indicated he personally had that experience and the bill does not cover it.



MITCH GLINER:

I am a Las Vegas attorney in private practice which involves, for the most part, suing debt collectors for various abuses. A court case in which I represented the plaintiff involved a protracted scenario regarding telephone harassment as well as other abuses ([Exhibit E](#)). District Judge Philip M. Pro, a conservative federal judge in Las Vegas, was involved. I bring that to your attention because it was a case and a decision ultimately rendered by an impartial judge as opposed to people testifying before the Committee who might be accused of bias.

I have probably filed 500 to 600 claims involving telephone abuse. Alleged abuse has run the course from simple harassment to claims of racial insult, deportation, threats to deprive single mothers of their children and incarceration. Not once in approximately 500 claims I have asserted on behalf of different plaintiffs has the debt collector conceded that any of these abuses were, in fact, conducted by the debt collector. There is a certain curious uniformity in each and every instance. The debt collector asserted these were all frivolous cases and, in each instance, the debt collector did no such thing.

Assuming for the moment I have done nothing but file 500 frivolous cases in these instances, you would think the industry would love to have the tape recordings. The recording would bring this type of deceit to the light of day and would exculpate all the innocent debt collectors who are doing nothing but conducting their business in a workmanlike, dutiful and reasonable fashion. I submit to you, if these recordings are made, everyone would be held honest and accountable for their conduct.

The Fair Debt Collection Practices Act has been in effect approximately 30 years. The reason debt collection is not regulated on a per-state basis is because Congress found under 15 USC section 1692 that the type of abuse we are discussing today was widespread and something had to be done. This legislation at the federal level did not incur in a vacuum. They felt marriages broke up, bankruptcies incurred and racial vigor was expressed in various calls that were deemed intolerable.

Most of my clients cannot defend themselves because they are people of modest means. In the majority of instances, they owe the debt; however, a substantial minority do not. They are often attacked on debts which they never incurred or debts that are 20 years old and time barred. I have had a few

notable exceptions in my practice, such as people of great wealth, means and influence.

One client asked me to convey his name to the Chair of this Committee through Assemblywoman Smith. The gentleman described himself as a good friend of Senator Amodei. He is the Chief Executive Officer (CEO) and chair of the board of one of the largest corporations in Nevada. In 2004 he employed me, explaining he was harassed by a debt collector who would call his wife, his secretary and his home on an obligation he did not owe. He could not make the debt collector cease. This client is a nuclear physicist, an Annapolis graduate and a very wealthy man who could easily afford to pay the \$90 sought, but he made a stand on principle not to pay. I would like Assemblywoman Smith to convey his name to the good Senator that this client would be happy to make himself available to discuss the nature of this harassment.

SENATOR CARE:

Mr. Stone said if A.B. 127 becomes law, collection agencies would want to record all telephone conversations. This implies that in the event of a dispute over what was actually said on a recorded conversation, the collection agency would also want to record it because it might verify their position about what was said on that particular version of the tape. It seems to me if A.B. 127 passes, collection agencies should also be able to record without two-party consent.

MR. GLINER:

I cannot speak for Mr. Stone, but everyone should be able to record calls. Collection calls should not be made with the expectation that anything can be said that could not stand the light of day. The same applies to the consumer. Consumers have an ethical and legal obligation to conduct themselves in a reasonable fashion. The U.S. Congress discerned collection agencies required this type of regulation. They were the ones committing widespread abuse that required this type of regulation from the beginning.

SENATOR CARE:

My telephone answering machine at home always gives the wrong date and time because it was set wrong at some point. It is unintentional; however, I can see it could become an issue in a recording for this purpose. If A.B. 127 became law, how would you get the recording admitted at trial?

MR. GLINER:

I have never done it. It has been prohibited in Nevada, and I never had the opportunity to gain admission of a tape like that because of the proscription. As a former prosecutor, I would imagine the evidentiary sufficiency would revolve around the reliability of questions, such as: Is this your tape? Did you make the tape? What date did you make the tape? There would have to be some corroborative oral testimony which would confirm the reliability of the tape. Beyond that, I could not give you any more interstitial input on the evidentiary input.

MR. STONE:

If the purpose of A.B. 127 is to stop abuse on the telephone, what better way is there to stop abuse than for a debtor to tell the collector the call is being recorded, which would put everyone on their best behavior? If the purpose of this bill is to get a collector in a gotcha-type situation, this is the perfect bill for that in order to keep consumer attorneys employed.

MR. GLINER:

Mr. Stone is 95-percent correct. The abuse would stop if a consumer notified a debt collector the call was being recorded. The problem is endemic to the industry. You want to catch these miscreants because, beyond the possibility that an individual might be compensated, maybe they will stop.

JOHN P. WANDERER:

I am a Las Vegas attorney practicing in the area of debtor-creditor law for approximately 30 years. One issue with A.B. 127, which has not been discussed, is the recording of telephone calls pertaining to collection agencies and collection agents. I looked in NRS 649 for the definition of collection agent and it appears to be much broader than collection agencies; it goes into the area of large collection departments for retailers and casino collections. I am not sure that is the intent. If you pass the bill, some consideration should be given to whether casinos want their employees recorded. Perhaps the Legislature thinks department stores and the MGM Mirage should also have their calls recorded.

The law needs to be written so agencies can record conversations. Presently, only one party can do it. I agree with both Messrs. Gliner and Stone that the best way to stop harassment is to require both parties to give notice they are recording the conversation. It is not a game of gotcha, and we are not out to get collection agencies. Collection agencies and collection people are the

linchpin of the credit industry. If they cannot collect debt, there will be no credit in this country.

One comment on the FTC report—yes, there are some 69,000 complaints, but it does not differentiate whether they are telephone complaints or a myriad of other complaints. The American Collectors Association hired a national accounting firm to review FTC complaints to determine what those complaints were—telephones, letters or simply debtors complaining because somebody is trying to collect money rightfully owed. Nobody knows the answer.

ASSEMBLYWOMAN SMITH:

I want to comment on the idea that if a caller is notified the call is being recorded, the calls and bad behavior will stop. I encourage you to think that through to the next step. It may stop one call, but the employee is obligated to collect the debt. I had contact with constituents who indicated they tried all kinds of measures to get calls to stop, but it did not happen. It is not a matter of gotcha; it is a matter of breaking the law. Threatening tactics are abuse of the law and a mechanism is needed to stop it. It is more than just stopping one telephone call; it is what will be done about abuse of their power and the law. This bill may be a remedy.

RAY WHITE (Business and Professional Collection Services, Incorporated):

I am from Business and Professional Collections Company Service, Inc. in Reno. I am against A.B. 127 for many of the reasons brought forth today. I agree with Mr. Wanderer that it would create a problem. In section 3, subsection 2 of A.B. 127, the term "collection agent" could mean anybody who works for any business. My company represents hospitals, medical offices and businesses in northern Nevada, and this bill would create problems for them. Telephone calls can be altered with technology. Things can be pulled out, changed and different types of messages inserted. The bottom line is, if a debtor wants to record a call, inform people it is being done and keep everybody honest. Abuse will cease if the debtor indicates the call is recorded.

There are tens of thousands of collectors in the United States; therefore, not everyone can be controlled. I have done this kind of work with law firms and all kinds of businesses, and our employees are monitored and watched. We try to create an acceptable atmosphere and treat people with dignity.

CHAIR AMODEI:

At what point does an overdue debt reach a telephone collection call?

MR. WHITE:

Based on the Fair Debt Collection Practices Act rules, people are given a 30-day disclosure time, which is indicated in the first notice. Telephone calls are not made until letters have been sent. If there is no response, we proceed with telephone calls. If a debtor asks us not to call them at work, the request is put into the computer system and they are not called at work. Most agencies try to comply; however, with so many debt collectors, there will always be some that will not follow the rules.

CHAIR AMODEI:

Do your debt collector employees work from your office or their homes?

MR. WHITE:

Our employees work from the office and their activities are monitored.

CHAIR AMODEI:

Are you allowed to block your telephone number when you make a call?

MR. WHITE:

We do not block our telephone numbers.

CHAIR AMODEI:

Let us say your number is not blocked, you call my workplace and I have caller identification that informs me the telephone number belongs to you. It seems to me that would be a prima facie violation of calling at the workplace. Could you elect to block your telephone number from your office?

MR. WHITE:

We identify ourselves when we make calls; therefore, we do not get involved in the blocking process. We try to make sure we reach the right person. There are pros and cons about blocking. People probably use it at times to ensure they get the right person and not allow others to know who is calling, such as the employer. Blocking is a benefit in that regard. When we only have one contact number and it is at the workplace, we would not want the employer to know we are calling; in those situations, the call would be blocked to protect the rights of the debtor.

SENATOR MCGINNESS:

I have read reports that Americans have more debt today than ever before and people are only able to pay the minimum charge. Obviously, in the debt collection business, that is good news. Have you seen a greater number of Americans in trouble with credit cards, mortgages and so forth?

MR. WHITE:

That is true nationwide; however, in northern Nevada, our business is much the same as it was five years ago.

JOHN P. SANDE, IV (Nevada Collectors Association):

Assembly Bill 127 presumes collection agencies are evil and the Legislature needs to select them apart from other industries and invade their civil rights which have been codified in statute and interpreted under the Nevada Supreme Court. This is not the case, and I do not think many other states do this.

It has been presented that 38 other states have similar legislation; however, those states do not single out any specific industry. Several industries are going through some type of regulation concerning predatory lending practices. Attorneys engage in unscrupulous tactics to do certain things. Will we allow every industry to be scrutinized by recording conversations? Why do we have legislation selecting only one industry? There are policy problems with it.

If this type of legislation passes, it will increase fees debtors incur litigating these types of claims. There will be a lot of testimony and a chain of facts to determine whether the recording is authentic and whether the recording is actually the two people in the conversation; there will be experts verifying the voices and so forth. It will become costly to partake in litigation. Most of the debtors are of meager means and cannot afford huge legal fees.

The federal government became involved in this type of litigation because much of it is accomplished through interstate commerce. Many telephone calls come from out of state. If Nevada passes a law allowing conversations with debt collectors to be recorded and the debt collector calls come from a state that does not allow it, has the debtor violated the law in that state and become subject to criminal penalties? The federal government is involved because they recognize this is an interstate business and interstate laws must be consistent across-the-board.

MAREL GIOLITO (Nevada Collectors Association):

I am the president and CEO of Credit Bureau Central and represent the Nevada Collectors Association. The ABC News video presented by Assemblywoman Smith showed a debt collector trying to collect a past-due car payment at 3 a.m. I doubt the person was a third-party debt collector or working for a collection agency; he was probably working for the creditor himself. There is a difference.

Debt collectors are aware of contact times. A debt collector may not contact a debtor at work if he is asked not to call there. A debt collector may not contact a debtor at a time inconvenient to the debtor, particularly in Nevada where people have 24-hour work schedules. The debt collector in the ABC video may have been a reposessor, a first party or from a state that does not require licenses for collection agencies. I ask you to take the ABC video with a grain of salt. There have been other news stories more positive to the industry.

My company has approximately 40,000 inbound and outbound calls a month. I have never heard from the FTC. We are talking about a minimum of 500,000 calls a year. The increase in complaints to the FTC has direct correlation to the increase of debt in this country. There has been an increase in bankruptcies. Nevada ranks high in foreclosures and other types of credit agreements. There are trillions of dollars every year in medical debt. One major credit card company wrote off over \$2 billion in debt last year. There is a problem with granting credit in this country which may lead to higher activity in the collection industry.

We feel A.B. 127 discriminates against one type of industry, which is our main opposition to it. At one time, there was a move in Nevada to change two-party consent for telephone recording to one party, but it did not go anywhere. Our position is to make it across-the-board and do not discriminate against one type of business. Do not make us a target or a victim of unscrupulous consumers or attorneys.

MR. WANDERER:

Under the Fair Debt Collection Practices Act, it is a violation to tell a third party you are a debt collector collecting a debt. There are a whole line of recent federal cases that go under the acronym of FOTI, *Foti v. NCO Financial Systems, Inc.*, 424 F.Supp.2d 643, 653 (S.D.N.Y. 2006), which was the primary case that held it is a violation of the Fair Debt Collection Practices Act

to even leave a message on a telephone recorder that you are from a collection agency. This upset the industry because the only way debtors can be contacted is by directly talking to them.

Chase Bank hired its in-house attorneys to handle debt collection. They are exempt from the Fair Debt Collection Practices Act and tout the fact they make collection calls in the middle of the night and do everything else precluded from attorneys, such as myself, or collection agencies in Nevada or anywhere else.

The reason the number of complaints to the FTC are up this year is the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which is the last amendment to the federal bankruptcy law that cut down bankruptcy filings by over 50 percent. If they cannot file bankruptcy, they are stuck with the debt. It exposes them to the creditors. I represent creditors and could tell you about some of the most unfair and ridiculous laws the federal government has passed in regard to consumers. These are some of the ramifications.

Mr. Sande touched on an important point. If the statute said either party could record calls, a large number of interstate collection calls would put out-of-state collection agencies at a disadvantage because they would be violating their home state laws even though it is allowed in Nevada.

CHAIR AMODEI:

The record on A.B. 127 for additional written submittals will be open until Tuesday, May 1, at 5 p.m. The hearing is closed on A.B. 127 and opened on A.B. 77.

**ASSEMBLY BILL 77 (1st Reprint)**: Makes various changes concerning the competency of defendants. (BDR 14-801)

JACKIE GLASS (District Judge, Department 5, Eighth Judicial District):

I am here to request passage of A.B. 77, which makes changes to current competency laws. It is straightforward and tightens up the language to make the law consistent with the U.S. Supreme Court decision regarding *Dusky v. United States*, 362 U.S. 402 (1960), which sets the standard for everybody in the country. It makes the procedure more efficient; the District



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Attorney, the Division of Parole and Probation and Dr. Elizabeth Neighbors from Lake's Crossing Center for the Mentally Disordered Offender agree.

MR. GRAHAM:

Our office and District Judge Glass have been working hand-in-hand over the last months to craft the language in A.B. 77 and feel it is an effective way to deal with recent court decisions, as well as coinciding with other legislation on which we have been working. We concur with District Judge Glass's testimony.

SENATOR WIENER:

What changes were made on A.B. 77 in the Assembly? Was it what you agreed to in your drafting stage?

MR. GRAHAM:

It was primarily wordsmithing.

DISTRICT JUDGE GLASS:

The Assembly Committee on Judiciary told us the difference between an "and" and an "or." Therefore, in the first draft, we did not have the ands and the ors in the right place. Thanks to the work of the Assembly Committee on Judiciary, the ands and ors are now in the right place.

CHAIR AMODEI:

The hearing is closed on A.B. 77 and opened on A.B. 483.

**ASSEMBLY BILL 483**: Revises provisions concerning the enforcement of judgments. (BDR 2-1408)

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):

Sometimes bad things happen to good people—illness, medical catastrophe, people overwhelmed with debt—A.B. 483 deals with the issue and proposes to add two items to the list of exempt property, personal property, including cash up to \$1,000 per debtor, and earned income tax credits.

We have done a lot over the past few years with regard to Nevada's exemption statutes. We added \$500,000 in retirement options and adjusted the homestead limit; however, we have not done as much for people at the lower end of the scale. Assembly Bill 483 is an attempt to rectify that.

Earned income tax credits is an important anti-poverty program run by the federal government for the working poor. At the present time, Nevada's statute exempts assistance programs run by the state; because the federal government shifted this program and does the administration, our bankruptcy courts found earned income tax credits are not subject to the public assistance credit. The Honorable Linda B. Riegle of the United States Bankruptcy Court for the District of Nevada, issued that decision last year. One of our pro bono bankruptcy attorneys discovered it, pointed it out to me and thought the Legislature should take a look at it.

The other item is with regard to cash on hand, also called a wild card and 37 states have it. I submitted a handout entitled "State Wild Card Exemptions" ([Exhibit F](#)) which shows the states and what they are. It ranges from a low of \$300 for Pennsylvania to Texas which has \$60,000. Federal bankruptcy law exempts \$975. What is it for? Why would you allow a debtor to keep cash? Because the classic case involves people who need to pay their rent and utility bills. This is a small amount to make sure in the transition period they have the essentials of life.

CHAIR AMODEI:

Is the wild card \$1,000 single and \$2,000 married the way the law is drafted at present?

ASSEMBLYWOMAN BUCKLEY:

Yes, the statute is written with regard to one debtor; therefore, if one person of a married couple files bankruptcy, they would get one exemption, if both file together, they would both get one exemption.

CHAIR AMODEI:

Do you have any feel for the earned income tax credit range or the typical effect in a refund context?

ASSEMBLYWOMAN BUCKLEY:

There was testimony on the Assembly side from Thomas H. Fell with Gordon & Silver, Limited, who handles many of our pro bono cases. He said the average is about \$300.

MR. WANDERER:

I have no problem with the provision having to do with the earned income credit; however, I have some comments on the wild card. This creates a personal property floating exemption, such as a homestead, which the Legislature over the years has, in its wisdom, increased up to \$500,000. I have concerns if it is \$1,000 now, in 2 years it will be greater, and soon we will end up with something like Texas, which is \$60,000 and has very few provisions for execution on funds.

The question was raised: Who enjoys this? Assemblywoman Buckley said in the bankruptcy court, there is what is termed stacking. If there are two debtors, husband and wife, they each get a \$1,000 exemption. Under state law, if you had a judgment against the husband and the money was in a bank account, it would be presumed community property. We would be able to levy on half of it unless both claimed an exemption. In other words, under community property law, the \$1,000 exemption would simply be split.

I have trepidation we are going down a road we do not necessarily want to go in regard to the wild card aspect, particularly in light of the recent U.S. Supreme Court decision. The Nevada Supreme Court changed the law. Previously, when wages might be exempt if they went into a bank account, you could reach those wages, but the Nevada Supreme Court recently held no. Therefore, if we want to keep a floor under people, now we do not have the ability to touch wages even though they are in a bank account. Even if they are commingled, the Nevada Supreme Court said if they can be readily identified or traced, they are still exempt. That is an added benefit for debtors and one with which I do not quibble, even though I represent creditors. I try to be protective of consumers irrespective of whom my clients might be.

CHAIR AMODEI:

Is the majority of your concern on the wild card that we do not have one now, and if we establish one, it is there for future adjustment?

MR. WANDERER:

I think that is what will happen. People do not like creditors collecting money. They like to go to banks and borrow, but when the bank tries to collect, they do not like it. I primarily represent banks and financial institutions from around the country. They are considered bad guys when they try to collect money that has been borrowed.

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CHAIR AMODEI:

The hearing is closed on A.B. 483. There being nothing further to come before the Committee, the hearing is adjourned at 10:28 a.m.

RESPECTFULLY SUBMITTED:

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Barbara Moss,  
Committee Secretary

APPROVED BY:

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Senator Mark E. Amodei, Chair

DATE: \_\_\_\_\_