

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

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

The Senate Committee on Judiciary was called to order by Vice Chair Maurice E. Washington at 9:10 a.m. on Tuesday, March 27, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven A. Horsford

**COMMITTEE MEMBERS ABSENT:**

Senator Mark E. Amodei, Chair (Excused)

**GUEST LEGISLATORS PRESENT:**

Senator Warren B. Hardy II, Clark County Senatorial District No. 12  
Senator Dina Titus, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Gale Maynard, Committee Secretary

**OTHERS PRESENT:**

William R. Uffelman, Nevada Bankers Association  
George Ross, Bank of America

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Peter Krueger, Nevada Petroleum Marketers and Convenience Store Association  
Janet R. Phillips, President, Tahoe-Pyramid Bikeway  
Jeffery Burr  
Keith M. Lyons Jr., Nevada Trial Lawyers Association

VICE CHAIR WASHINGTON:

We call this meeting of the Senate Committee on Judiciary to order and start with Senate Bill (S.B.) 298.

**SENATE BILL 298**: Enacts provisions relating to civil liability for causing the injury or death of certain pets. (BDR 3-479)

SENATOR WARREN B. HARDY II (Clark County Senatorial District No. 12):

The intent of the bill is to remove the noneconomical damages found in section 1, subsection 1, paragraph (a) which will impact another part of the bill. The pet owners should have the ability to recover costs for care due to injury or death by negligence.

The exceptions to this are found on page 2, lines 14 through 22. This is the extent of the bill.

SENATOR CARE:

I want to be clear. We are striking section 1, subsection 1, paragraph (a)? Does the sponsor of the bill wish to have a \$5,000 cap on compensatory damages?

SENATOR HARDY:

I indicated I would be striking this part of the bill. There should be a cap, and I read it as the limitation on the noneconomical damages. I did not read the \$5,000 to be limited to any other damages.

SENATOR CARE:

The \$5,000 or less cap takes us into small claims court, and judges do not allow attorneys to be involved at this level. It yields a quicker resolution than someone filing in district court.

SENATOR HARDY:

The intent is to get a resolution quickly. I understand the bill allows for reasonable attorney fees, and it is unfortunate to go through this process for resolution. If the cap of \$5,000 keeps it in small claims court, that may be wise.

SENATOR WIENER:

I wish to make a statement. I do not have a family, but I have pet companions and they are my family. It is emotional when something happens to the pet who welcomes you home every night. Thank you for bringing this bill forward.

VICE CHAIR WASHINGTON:

If there is no one else to testify on S.B. 298, we will close the hearing and open on S.B. 302.

**SENATE BILL 302**: Revises provisions governing credit cards. (BDR 8-1173)

SENATOR DINA TITUS (Clark County Senatorial District No. 7):

Nevada is one of five states with no usury law; usury is defined as the practice of charging interest on borrowed money at an exorbitant rate. I submit my written testimony ([Exhibit C](#)).

One thing we can do is not to include a universal default clause.

This practice is getting more attention, and Congress is looking at legislation. Some credit card companies are changing their practices.

Credit card applications are being sent to college students and elderly persons. How many of us read the fine print? Some people are starting to do this, and consumer complaints are expected to rise 7 percent at the Office of the State Controller and 24 percent at the Federal Deposit Insurance Corporation (FDIC).

I would like to present an amendment ([Exhibit D](#)) which will be section 2.

VICE CHAIR WASHINGTON:

We get our credit scores and think we are doing well. How many times have any of us missed a payment? Are there any other questions for Senator Titus?

SENATOR MCGINNESS:

Senator Titus, your amendment encourages merchants to have customers pay by cash, is this prohibited?

SENATOR TITUS:

We reviewed statutes, and there is no protection from them doing this. There are some places that do and other states have enacted prohibitions against it.

SENATOR WIENER:

In the fine print, one of the qualifiers for triggering a universal default clause is checking your credit report. In recent years, there is a movement to be aware of our credit reports. Are we punished for inquiring about our credit rating?

SENATOR TITUS:

An inquiry for a mortgage, car loan or making payments late can trigger a default. On page 4 of my testimony, the fine print language reads "we may change the rates." I do not think looking at your credit report will trigger it.

VICE CHAIR WASHINGTON:

Is there anyone else to testify on S.B. 302?

WILLIAM R. UFFELMAN (Nevada Bankers Association):

Members of the banks who issue credit cards and representatives of the Nevada Bankers Association have met and discussed the bill.

The amendments we are requesting are found in my handout ([Exhibit E](#)). In effect, your credit card is renewed every month. A change notice is sent, and the user has the option of accepting or not accepting any changes being made to their credit card. This is the thinking behind the "without any further notice" language offered by Bank of America.

The word "solely" was put in so that if you were initiating a change in interest rate, it was not just because you were in default to another creditor.

Other language being added "that is not an affiliate or subsidiary of the issuer or creditor" means you may have multiple lines of credit with the same banks and affiliates. If you default on a car loan, this will allow the creditor to change the terms of your credit card. The interest rates are related to the risk; the credit card is an unsecured line of credit, and affixing an interest rate is the only protection the company has short of termination of your credit card.

We appreciate working with Senator Titus for the language. In terms of the amendments in [Exhibit D](#), I am not aware of any credit card merchant agreement that prohibits cash discounts, and our association has no objections.

SENATOR CARE:

I understand the risk assessment analysis as more credit cards are issued. Was the level of risk reduced when Congress amended the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005? It is more difficult now to get credit card debt discharged when filing Chapter 7, Title 11 of the United States Bankruptcy Code petitions.

MR. UFFELMAN:

I try to keep up with banking news. A surge in bankruptcy filings increased prior to the enactment; now the filings are down. There is a fee, and you do not get a clean slate. One of the things against recovery of debt relates to the increase of minimum wage. A multiplier attached to wages is, in effect, a free zone we cannot diminish below a certain level. Therefore, as the wages increase, the amount available for recovery diminishes. The concern is whether we are in a bind because the amount of money recoverable in any pay period will diminish due to the multiplier.

SENATOR CARE:

Senator Titus testified to the National Bank Act. If the credit card is issued outside Nevada and this bill became law, does it apply to a transaction where the issuing bank is outside Nevada?

MR. UFFELMAN:

The rules relative to a credit card are the rules in which the credit card is issued. This law will apply to cards issued in Nevada by a bank in Nevada. There are only two banks in Nevada issuing cards. The limitations would be on Nevada cards, not on cards issued to residents of Nevada.

SENATOR WIENER:

It is disconcerting to hear if the consumer settles a late payment, the interest rate will be accelerated. I have experienced bank mistakes, and the consumer pays the price by paying an escalated interest rate. What are the remedies for that?

MR. UFFELMAN:

Pick up the telephone, talk to a customer service representative and get the issue resolved. If you check your credit score, it does not trigger anything and it is your right. Actual application inquiries are the ones reported on the credit score. You may have shopped for a car and requested a credit score at several places; these count as one occurrence if it is in a 30-day block of time.

Interest rates on your credit card can be reduced by talking to a customer service representative. Some people may not succeed, but they can come down.

SENATOR TITUS:

I am sure if an error affected your interest rates and you read the fine print, you may get results. However, if it is a situation of a late payment made good, they are not likely to change your interest rate and it will stay with you until you pay the debt on the card.

If it were someone else's fault, I am sure you could get help, but it would not apply based on a late bill.

Only a few banks in Nevada issue credit cards. We cannot affect cards issued elsewhere, but there is a national movement to do this in other legislative branches. The public pressure applied to credit card companies has forced some to voluntarily change. Many people may not know this is public service and consumer protection information that is worthwhile.

GEORGE ROSS (Bank of America):

Bank of America does not practice universal default and never has. [Exhibit E](#) says "without any further notice" and "solely" fits the bill. "Solely" means you cannot use it as the only criteria. We are concerned about broadening the definition and the bank's ability to assess risk. With "solely," you have to have something else going on and begin to get a pattern.

"Without any further notice" means no additional notice is given.

SENATOR HORSFORD:

Mr. Ross, there is a lot of information that comes with your statement. What does the notice you are referring to look like? Is it something a consumer would understand? Is it clear the rate is changing?

MR. ROSS:

It is difficult to answer the question because the bank has not sent that kind of notice.

MR. UFFELMAN:

The change notices I have seen were clear, and rate changes are bolder and posted on the actual bill.

SENATOR HORSFORD:

The only thing I see in bold lettering is the amount I owe. I rarely see disclaimers in bold type where people can clearly understand. Giving additional notices on something when people do not understand the notices they are receiving—what is the point?

SENATOR WIENER:

If a mortgage payment is late but paid within 30 days, does the interest rate remain or is it reduced once the person has caught up? I have four places where my mail might get sent. If the person sorting my mail does not get it to me in time, I pay immediately, but I missed the due date. When does the interest rate return to the old rate without the overdue trigger?

MR. UFFELMAN:

When we talk about a phone or utility bill, as opposed to a mortgage or credit card payment, there is no requirement for a report to the credit bureau that you were late. If you requested a credit report, it would say 0 to 30, 30 to 60, 60 to 90 and over 90, regarding how many late pays you had. If after 30 days a cancellation notice was not sent, the likelihood a notice was sent to the credit bureau is slim.

The mortgage company operates the same way. Unless you are consistently late, it will start showing in the 0- to 30-day late category. At the same time, if you apply for a mortgage, the interest rate you get will reflect your record of payment.

I cannot say how a reported late pay will impact you in the long term.

SENATOR WIENER:

I am not talking about a credit rating. Based on Senator Titus's testimony, 9 percent to 24 percent seems like a high and accelerated rate for a long-term payment such as a car or mortgage. A person makes good on a late payment, but now has 56 years of penitence.

MR. UFFELMAN:

Once a person has made things right, it is not inappropriate to call customer service. The consumer credit counseling services help people who have problems. They will work with the consumer and creditors to get interest rates lowered.

Part of being a consumer is to be proactive and take steps to do something.

SENATOR TITUS:

All the research indicates that once the rate goes up, you have to pay off that card, at that rate, before getting a different rate. If you continue to use the card, you will be paying the rate a long time.

The only way to get out is cancel the card and pay off the debt. Then you can get another card. If they tell you this is not true, I have many articles on this subject which confirm what I am saying.

MR. UFFELMAN:

I am suggesting options.

SENATOR HORSFORD:

I understand the bankers' position, however, we are putting the onus on the consumer. What responsibility does the bank have when sending out credit card applications? There needs to be a balance of consumer awareness on good credit practices. Consumers have personal responsibility when entering into a contract to know their responsibilities. It is another thing when the rules change in the middle of an agreed contract. What role does the banking industry play to ensure credit awareness and education for consumers?

MR. UFFELMAN:

The consumer can be responsible by shredding credit card applications. I understand it is a temptation for some. The American Bankers Association and the FDIC make efforts to educate the consumer. The Nevada Bankers



Association has a program "Banking Is" available to teachers of high school kids. I have invested \$8,000 buying kits for school teachers to teach about banking, interest and credit. In the spring program, they teach children kindergarten through eighth grade to save. The fall program "Get Smart About Credit" targets high school children and their parents about credit responsibility. The industry and the regulatory bodies have distributed information for the consumer.

SENATOR HORSFORD:

In another career, I helped people obtain financial literacy. Specifically, the issue of entering into a contract, being late on payments with creditors and how this can affect your rate. Does the industry give this kind of information to its consumers before the situation occurs?

MR. UFFELMAN:

The notice language Senator Titus read in [Exhibit C](#), page 4, is common to every credit card contract available. She mentioned that Citi, Chase and other banks have done away with the clause due to public pressure.

Understanding what that language means is explained in the curriculum on "Get Smart About Credit" available to high school children. Do those credit card companies that do not practice universal default clause spend time explaining that to customers? I do not know.

SENATOR HORSFORD:

Are there subsidiaries owned by the larger banking institutions practicing universal default clause?

MR. ROSS:

To my knowledge, there are none.

MR. UFFELMAN:

None of the banks I represent are engaging in universal default.

SENATOR TITUS:

This needs pursuing. If you have a car loan, mortgage and credit card with the same bank and are late on the car payment, your interest rate is increased on the credit card. Within that same institution, when you make good on the late payment, what is their policy to reduce the interest rate on the credit card?

MR. UFFELMAN:

Honestly, the bank providing the multiservice is likely to fix this sooner than working with third parties.

MR. ROSS:

There are two sides to this story. One side is that banks want customers. In the scenario Senator Titus brought up, the bank may not want to lose the customer and let it go. The other side is when you receive credit card offers. You can take advantage of the zero percent offered and use it to your advantage.

We need education, and it is given in the public schools so everyone is not victimized. There is a problem whether you get credit or not. There needs to be a balanced approach to the issue.

SENATOR TITUS:

One of the things mentioned by Mr. Ross is that maybe a person is a good customer and the bank wants to keep them, while there might be someone else they do not want to keep. If this is the case, some people might be treated differently than others.

VICE CHAIR WASHINGTON:

If there is anyone else to testify on S.B. 302, please come forward.

PETER KRUEGER, (Nevada Petroleum Marketers and Convenience Store Association):

I support the amendment by Senator Titus on cash discounts, [Exhibit D](#). You have heard testimony on merchant agreements. In the petroleum industry, merchants are not permitted to offer a cash incentive if they take credit.

Six to eight years ago, the contract listed a cash price and a discount price and this was ruled out because of credit card issuance and merchant agreements. The merchant agreements are different from consumer agreements.

Allowing service stations in our industry to offer both a cash and credit price would be good for the consumer and the business.

VICE CHAIR WASHINGTON:

If there is no further testimony, we will close the hearing on S.B. 302 and open the hearing on S.B. 378.

**SENATE BILL 378**: Limits the liability of certain nonprofit organizations and their agents, employees and volunteers under certain circumstances. (BDR 3-1318)

JANET R. PHILLIPS, (President, Tahoe-Pyramid Bikeway):

Nonprofit is broad and diverse, and I engage in a small segment involving trails. Nevada's slogan "American's Adventure Place" is largely due to nonprofit groups identifying trails, historic markers and locations and publishing maps to make it possible for visitors to find the outdoor adventure place.

The public and private partnerships work well. A group known as the Western Trails Research Association places historic monuments where pioneering events occurred. Another group is the Truckee Meadows Trails Association that advocates and helps build trails around the Reno-Sparks area. There is also the Tahoe Rim Trail group along with the one I represent.

A liability cap would make it possible for them to have insurance or bear the risk of being uninsured. Clubs have events and rely on waivers to protect them from liability. Dealing with trails open to the public is not feasible. This bill will help all in the trail advocacy groups.

JEFFERY BURR:

I have been working with Senator Hardy on this matter, and I am involved with charities in Nevada. I support S.B. 378. Other states have enacted laws limiting damages charities would pay when tort actions have been filed against them. This would also allow charities to obtain the insurance needed to operate in Nevada. They are vital in our state and society.

SENATOR HORSFORD:

I need to disclose for the record that I serve as an executive director of a nonprofit charitable foundation.

SENATOR HARDY:

For the record, I would also like to disclose serving with a nonprofit agency, the Boy Scouts of America. I do not have any more to add. Mr. Burr's testimony has said it all.

SENATOR CARE:

I am looking at section 1, subsection 1, paragraph (b) and do not know if this means an activity carried on by the nonprofit organization or something else. As an example, if there is a busload of Boy Scouts on their way to a campsite and the driver's negligence causes an accident, this would be an activity by the nonprofit or one of its agents as opposed to a campsite where a couple of scouts injure themselves. In other words, on one hand you have the conduct by the organization, on the other, it is the scouts. Is there a distinction in the bill or is it for any activity?

SENATOR HARDY:

That is a valid question. The intent is to be narrow in scope. It will be difficult to provide a blanket exemption on these things. I am open to discussions and amendments in order to make this bill a reality. Maybe Mr. Burr has some input.

MR. BURR:

On page 2, line 13 of the bill, it states "arising out of an act or omission within the scope of their agency, employment or volunteer service." The bill is meant to cover activities in question, the slip and fall in a scout camp and the negligent bus driver who caused an accident.

SENATOR HARDY:

The dollar amount of \$100,000 was chosen to be consistent with a previously drafted bill.

SENATOR WIENER:

I am looking at section 1, subsection 2. Can you explain it to me?

MR. BURR:

The intent is that certain charity functions carry significant commercial activities for their purposes. In that instance, the limitation should not apply. When you are consistently involved in commercial activities, the standards of liability should be raised. If commercial use is occasional, then maybe the \$100,000 liability should be covered by the bill. We are open to amendments.

SENATOR HARDY:

An example may be the activities of which Senator Horsford and my associations are involved. We do not want the same narrow exemption for them as for these other groups.

SENATOR WIENER:

The term commercial can be defined in many ways. It can be determined by activities in a calendar year or the number of people served. You can do one event in a year that would qualify as primarily commercial. I need to understand how this language would be carved for definition.

MR. BURR:

We could add the term regular commercial activity. What we are trying to address is a charity that is involved in regular, consistent, commercial activity. An example would be operating a store on a regular basis and would have a higher standard. I agree if there is a charity with an event once or twice a year, it should be covered under this exemption. Would it clarify if we amend for a distinction of this fashion?

SENATOR HARDY:

From a policy perspective, it needs to be clear. The term commercial activity is broad. I would have no objection from staff for language.

VICE CHAIR WASHINGTON:

There are two more to testify from Las Vegas.

KEITH M. LYONS JR. (Nevada Trial Lawyers Association):

We oppose the bill. I am involved in nonprofit organizations. There is a danger in limiting liability and the harm to the individuals hurt.

Recently, there have been several cases where nonprofits have hired employees. The box was checked that they committed a felony, let us say for child abuse, and the nonprofit agency forgets to verify this information. Is the person who failed to properly check the background to the scope of his ability at fault? Yes.

There is case law in Nevada, *State Department of Human Resources v. Jimenez*, 113 Nev. 735 (1997). Part of the testimony said it was foreseeable that someone could commit criminal acts within the scope of their authority.

This limits liability for the nonprofit to \$100,000. This does not compensate a child who deals with extensive psychotherapy and emotional harm.

If nonprofit associations preserve our trails, negligently design a footbridge and it collapses, the physical injuries may be \$50 to \$60,000 in medical care or

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more. The injuries would be compensated as I understand the act, but the emotional damage suffered would be limited to \$100,000.

As a result of these issues, we do not believe it is in Nevada's best interest, nor would it serve the public, to have nonprofits that do harm be limited to \$100,000 in liability. If they cause harm, they should be responsible for the full extent caused.

VICE CHAIR WASHINGTON:

If there is no further testimony for S.B. 378, we are adjourned at 10:36 a.m.

RESPECTFULLY SUBMITTED:

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Gale Maynard,  
Committee Secretary

APPROVED BY:

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Senator Maurice E. Washington, Vice Chair

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