

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Fifth Session
March 27, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:05 p.m. on Friday, March 27, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chair
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblyman James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblywoman April Mastroluca, Clark County Assembly District No.29
Assemblywoman Bonnie Parnell, Assembly District No. 40
Assemblyman Paul Aizley, Clark County Assembly District No. 41

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Senator David Parks, Clark County Senate District No. 7

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Earlene Miller, Committee Secretary
Sallie Stoner, Committee Assistant

OTHERS PRESENT:

Jon L. Sasser, representing Washoe Legal Services and Washoe County Senior Law Project, Reno, Nevada
Ernest K. Nielsen, representing Washoe County Senior Law Project, Reno, Nevada
Dan L. Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada, Las Vegas, Nevada
Matthew Sharp, representing Nevada Justice Association, Reno, Nevada
Samuel P. McMullen, representing Las Vegas Chamber of Commerce, Las Vegas, Nevada
Lea Tauchen, representing Retail Association of Nevada, Carson City, Nevada
William Uffelman, representing Nevada Bankers Association, Las Vegas, Nevada
Janine Hansen, representing Nevada Eagle Forum, Elko, Nevada
Annette Amdal, Private Citizen, Las Vegas, Nevada
Julianna Ormsby, Private Citizen, representing the Nevada Women's Lobby and the League of Women Voters of Nevada, Carson City, Nevada
Rajat Jain, Actuary, Property and Casualty Section, Division of Insurance, Department of Business and Industry
Alfredo Alonso, representing HSBC, Reno, Nevada
Jane Heenan, Private Citizen, Las Vegas, Nevada
The Honorable Kathleen E. Delany, Judge, Eighth Judicial District Court, Clark County, Las Vegas, Nevada
Christina Diedoardo, Private Citizen, Las Vegas, Nevada
Denise Jay, Private Citizen, Las Vegas, Nevada
Judy Cox, representing the American Civil Liberties Union of Nevada, Las Vegas, Nevada
Nicole Harvey, Private Citizen, Sparks, Nevada
Joe Edson, representing the Progressive Leadership Alliance of Nevada, Carson City, Nevada
John Emerson, Private Citizen, Sparks, Nevada
John Hunt, Chairman, Clark County Democratic Party, Las Vegas, Nevada
George Flint, representing the Chapel of the Bells, Reno, Nevada

David Schumann, representing the Nevada Committee for Full Statehood,
Minden, Nevada

Shirley B. Parraguirre, Clerk, Clark County, Las Vegas, Nevada

Diana Alba, Assistant County Clerk, Clark County, Las Vegas, Nevada

Richard Ziser, Private Citizen, Las Vegas, Nevada

Michael Tanchek, Labor Commissioner; Secretary-Director, State Apprenticeship
Council, Office of Labor Commissioner, Department of Business and
Industry

Thomas J. Fronapfel, Administrator, Field Services Division, Department of
Motor Vehicles

Joel Flamenbaum, Private Citizen, Carson City, Nevada

Chairman Conklin:

[Roll called. There was a quorum.] We have a lengthy agenda today. We will
try to give one half hour to each bill. We will open the hearing on
Assembly Bill 366.

Assembly Bill 366: Makes various changes regarding deceptive trade practices.
(BDR 52-818)

Assemblywoman April Mastroluca, Clark County Assembly District No. 29:

I am here to introduce a consumer protection measure which expands the civil
remedies available to consumers who are victimized by deceptive trade
practices. *Nevada Revised Statutes* (NRS) 598.0915 to 598.0925 describe
deceptive trade practices. They include some 50 specific acts aimed at
deceiving and taking unfair advantage of consumers. These acts include phone
solicitations after 8 p.m., hiding water damage to goods, doing business
without a license, and intentionally misrepresenting the nature and quality of
goods.

The Attorney General's Office (AGO) has the power to investigate and seek
both criminal and civil penalties for deceptive trade practices; however, due to
staffing limitations, the Office focuses on larger schemes. It can only scratch
the surface of many of the smaller matters which occur daily. Recognizing
these limitations, the Legislature has already created a private right of action to
sue for violations of Chapter 598 of NRS. Current law allows for a prevailing
consumer to recover actual damages and be awarded attorneys' fees. Under
appropriate circumstances, some punitive damages are available under
NRS 42.005. Frequently, consumers have few actual damages and cannot
prove fraud which is necessary to get punitive damages. While the AGO can
seek a civil penalty of \$5,000 per intentional violation, they have limited staff to
pursue these cases. Therefore, there are few disincentives for those who

commit these crimes. The statutory damages authorized by A.B. 366 would give consumers the tools and incentives to pursue these people.

Assembly Bill 366 creates a new deceptive trade practice. Under NRS 598.0928, a person engages in a deceptive trade practice when in the course of his business or occupation, he knowingly misrepresents the legal rights, obligations, or remedies of a party to a transaction. That definition misses the case in which someone does not knowingly misrepresent, but takes advantage of the victim's inability to understand due to mental, physical, or language barriers.

Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada:

The bill arose because Ernest Nielsen of the Washoe County Senior Law Project identified difficulties with his senior citizen clients who were often taken advantage of because they were not able to track what was going on in a transaction. The current definition of a deceptive trade practice in section 3, subsection 8, of the bill is when a business knowingly misrepresents the legal rights, obligations, or remedies of a party to a transaction, and there is an actionable action. However, if the person does not knowingly misrepresent something, but knows the other party is not tracking and intentionally takes advantage of that, it changes the situation.

This bill does not create a new remedy. Subsection 1 of the bill talks about a private right of action. That already exists in current law in another chapter. The right to sue for attorneys' fees and the right to seek punitive damages are also in current law. There are three new things in this bill: the right to seek statutory damages in the amount of \$1,000 to \$5,000, the ability to seek equitable relief which could include rescinding the agreement, and the new deceptive trade practice.

There is some controversy about the way the bill came out, and we would be willing to work to resolve those issues. Most of the concern is about the affirmative defense in subsection 1, which was originally intended to apply only to the new statutory damages but applies to the entire cause of action.

Chairman Conklin:

On the last point you mentioned, which provision was that?

Jon L. Sasser:

The affirmative defense in section 1, subsection 2, applies to the entire cause of action opposed to the statutory damages. There is a conflict with current law seen in section 9 which is the current private right of action, and there is no affirmative defense mentioned in that section. The language would create an

inconsistency between two parts of our statutes if this affirmative defense is supposed to apply to the entire private right of action and not just to the statutory damages provision.

Chairman Conklin:

Should lines 19-26, on page 2, be descriptive of subsection 1, paragraphs (a) and (b)?

John L. Sasser:

That was our original intent. Others may feel a different remedy is more appropriate.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

What are examples of equitable relief in section 9?

John L. Sasser:

It goes back to old English common law. Equity is when the court orders the party to do something as opposed to paying money for damages. Equitable relief would be when the court says to undo the deal or cancel the contract. Another type of equitable relief by injunction orders one party to do something to clarify or remedy the situation.

Assemblywoman Gansert:

That would not be punitive damages?

John L. Sasser:

Punitive damages are not equitable relief. They are already authorized in statute. This bill is not adding punitive damages, and it is not new law.

Assemblywoman Gansert:

You have the \$1,000 fine for something that is not willful.

John L. Sasser:

The reason for that is there are certain violations in which someone did not do something intentionally, but they did not set up preventative systems for the problem. If in the affirmative defense someone says they made a bona fide error, notwithstanding the maintenance and procedures reasonably adapted to avoid such an error, it would be a defense. The fine would be appropriate, however, when they did nothing purposefully, but did not have the procedures in place.

Assemblyman Settelmeyer:
What was the third change?

John L. Sasser:
The new deceptive trade practice in section 3, subsection 9.

Chairman Conklin:
Are there any questions from the Committee? There are none.

Ernest K. Nielsen, representing Washoe County Senior Law Project, Reno, Nevada:

We see a lot of consumer cases, and many of them are small issues and may not justify a major law suit. We have seen people with disputes concerning satellite dish purchases, security system purchases, or more typically, used car purchases. We had a person purchase a car, and the next day the dealer called her to say they had a more suitable car. The customer went to the dealer and found that after the transactions were over, she owned two cars and had loan payments exceeding 80 percent of her income. These remedies will help us unwind this type of transaction. Equitable relief is very important. Many of these cases should be heard in small claims courts. You cannot get punitive damages in small claims cases, but if you have a statutory damage of \$1,000, you redress that consumer's wrong and impose a deterrent to people who might be pursuing deceptive practices. I spoke with the Consumer Affairs Division this morning, and they think that this bill would help consumers and, because they are overwhelmed, would help people they cannot see especially in the area of contract law and workers' issues.

We have struggled a long time with the new substantive language in section 3. We have tried to use the elder exploitation statute in NRS 41.1395 to develop theories on some transactions. We have been most successful in cases where the customer has received services from a broker while buying a house and the broker violated the federal Real Estate Settlement Procedures Act, which has a one-year statute of limitations. With respect to the elder exploitation statute, there is a longer statute of limitation so we can bring that action through the Deceptive Trade Practices Act when there is an existing violation and a violation of federal law.

We are not making the merchant have a fiduciary obligation to the consumer. We are not even asking them to act in the consumer's best interest. We are just saying that if they notice a limitation, they are not allowed to take advantage of it. There are a lot of ways they can take advantage of someone, short of misrepresentation. This bill provides seniors who have some vulnerability a remedy in commercial transactions that they do not have now.

I believe the \$1,000 statutory damage enables a lot of self-help through small claims. The equitable remedy will enable courts to quickly unwind these deals where there would otherwise be unnecessary litigation.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Settlemeyer:

I am concerned about the amounts of the fees. For a house purchase, \$5,000 does not seem to be enough, and it seems to be excessive for a car.

Chairman Conklin:

A statutory damage is like a penalty. It is a fine and it is in addition to anything else. For example, if it was on \$100,000 and the cost of the loss was \$20,000, this is a penalty on top of the recovery. This is the penalty for violating this statute.

Assemblyman Settlemeyer:

How did they decide to use these amounts?

Jon L. Sasser:

The \$5,000 is the same amount that the Attorney General has the ability to ask for if they bring a court action. This puts the consumer in the role of a private attorney general and allows him to seek the same amount as the Attorney General would seek if they had the time to bring more of these cases. The \$1,000 fine was an effort to make a difference between an intentional violation and one that they should have had procedures in place to avoid.

Assemblywoman Gansert:

I have a question about the language in section 3, subsection 9. It talks about the incapacity of someone to understand the language or terms of an agreement. The language is very broad.

Chairman Conklin:

What you have to focus on in this bill is on page 3, line 44. You have to "know" that the other person is incapacitated or illiterate. If you do not know that, you are not in violation.

Assemblywoman Gansert:

It is still a concern.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Assemblywoman Mastroluca:

We need to include Mr. Wulz in Las Vegas.

Chairman Conklin:

All those in favor of the bill, please come forward.

**Dan L. Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada,
Las Vegas, Nevada:**

I am appearing as a concerned citizen and an attorney who represents low income consumers in matters involving deceptive trade practices. I have submitted written testimony ([Exhibit C](#)) and will be extra brief. I was involved in the initial discussions of the broad principles in this bill and support the concept of statutory damages. The equitable relief is needed to give a court all of the tools available rather than limiting it to damages. I have some differences with the way it was drafted by the Legislative Counsel Bureau and have suggested an amendment.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Matthew Sharp, representing Nevada Justice Association, Reno, Nevada:

We support A. B. 366. It is an important piece of legislation and provides consumers with additional rights. The intent of deceptive trade practices law is to differentiate ethical business from unacceptable and fraudulent practices. The problem is that, oftentimes, fraudulent acts committed on an individual may cause a small amount of economic damages, but for a large number of the population, they create a large amount of damages and an unfair position for the company engaged in the conduct. It becomes profitable, but the ethical company suffers. This levels the playing field.

From time to time legislators or Congress has differentiated certain types of activities that need to be deterred. A way to do that is in the form of statutory damages. One example would be the Fair Debt Collection Practices Act which provides that if you engage in certain activities that are unfair, there are statutory damages. Sometimes there is no damage, but it attempts to deter the activity.

In section 1, subsection 1, paragraph (c), I think the words "actual and consequential" should be replaced with "any." That would tie into section 9, subsection 3, paragraph (a), which refers to any damages.

Chairman Conklin:

On line 13 of page 2, where it says "actual and consequential damages," it should say "any damages." Is that correct?

Matthew Sharp:

That is correct, and the tie-in is on page 10 of the bill in section 9, which is the existing private right of action—in subsection 3, paragraph (a)—which says the court shall award him "any damages that he has sustained." When you use "any damages" in NRS 41.600, I think it should correspond with section 1 of this bill.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone wishing to get on the record in support of this bill? Is there anyone in opposition? Is there anyone to testify from the neutral position?

Samuel P. McMullen, representing Las Vegas Chamber of Commerce, Las Vegas, Nevada:

We always have concerns with the issue of expanding the civil action remedy that is in NRS Chapter 41. The first thing we looked at was whether this was necessary. *Nevada Revised Statutes* 41.600 seems already to have the sense of damages and remedies that are complete, although I know the interest of the bill sponsors was in statutory damages. That section has a reference to the damages an individual sustained. We do not have problems with section 3, subsection 9, other than making sure that it is clear what it is intended to do. We had some technical issues with the statutory damages. It appears the fines of \$1,000 or \$5,000 are nondiscretionary based on whether the act is willful or not. We have always had a problem with that because there is no sliding scale for really reprehensible conduct.

We are concerned about the affirmable defense. There is a *prima facie* case that the law has been violated and then the burden shifts to prove the negative. We have met with Mr. Sasser who explained some of the reasons, and we would be happy to continue to work with him. We believe that the administrative process and the remedies in Chapters 598 and 41 of NRS are sufficient. Our general objection is to increasing those and having a mandatory penalty that has no relationship to the level of wrong.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else wishing to get on the record in opposition to the bill? Is there anyone wanting to testify from a neutral position? Mr. Sasser, will you work with Mr. McMullen to see whether there is something that can be worked out on

this? We have a short time frame to do this. We will close the hearing on A.B. 366.

We will open the hearing on Assembly Bill 389.

Assembly Bill 389: Revises provisions governing the protection of personal identifying information. (BDR 52-772)

Assemblywoman Bonnie Parnell, Assembly District No. 40:

I bring you a bill which I believe is incredibly important for all of us. It is a bill dealing with identity theft. Assembly Bill 389 attempts to further protect your personal identity by prohibiting the use of a full credit card number on either the customer or the merchant copies of receipts. I would like to give you an illustration of two types of receipts that you might get at a restaurant or other place of business. One has the complete credit card number, an expiration date, a typed name, and a signature, and was given at a restaurant a week and a half ago. That is what I am trying to prohibit with this bill. Another illustration is of a receipt that only includes the last four digits of the credit card number.

A number of months ago I was out to dinner with a friend when I first came across this. The receipts made me realize the information that was made available. I was so alarmed that I contacted the Legislative Counsel Bureau's Legal Division to ask about it. A lot of people assumed that this was prohibited by January 1, 2008. Our current statute allows for the receipt to show either the expiration date or more than the last five digits. There has been a choice of having the expiration number or more than the last five digits of a debit or credit card. I am hoping to avoid the confusion and get clarity by the passage of A.B. 389.

The bill would prohibit printing the expiration date and any more than the last five digits of the credit card number on the receipt that is either retained by the merchant or given to the customer. It also prescribes a civil penalty of \$500 and an additional penalty of \$1,000 per week for not correcting the violation. The money collected pursuant to the section must be recovered in a civil action brought by the Attorney General or a district attorney. The funds collected would be paid to the State Treasurer for credit to the State General Fund. Any person who violates any order or injunction issued would be guilty of a gross misdemeanor. After a discussion with the Retail Association of Nevada, we learned that it is not only the restaurant or shop owner who is in control of the machine used to print these numbers. An amendment has been proposed, therefore, to deal with the issue of vendors who lease or sell the machines that electronically print receipts. I am in agreement with the amendment.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Anderson:

I was here when this was put into effect. I thought we had tried to allow for the opportunity for some older businesses that might not have the newest electronic equipment. I see that this moves into an area of the law concerning the gross misdemeanor, which always troubles me. Is it the intention now, Ms. Parnell, that the large business owners no longer need this, but the small business owners are going to be left out in the cold?

Assemblywoman Parnell:

The amendment has phased-in dates. We did not want to immediately hurt the small businesses that may be leasing their machines which are printing out the full numbers. With the amendment from the Retail Association of Nevada, we will take care of your concerns. Just think what would happen if a restaurant had all of this information, even if only on a merchant's copy, and someone stole those or they were inadvertently tossed into a trash can. The information available to the general public could lead to expansive misuse of a person's personal identification. I do not think anyone here could estimate the damage and personal loss that identity theft has caused. I think it is our responsibility to do what we can to protect everyone in the state. When you hear the explanation of the amendment you will see that we are trying to take care of the population you are concerned about.

Assemblyman Anderson:

There was a compelling reason that we brought this in the first place. I believe it came from the Attorney General's Office at the time. Now we are going to give businesses additional time to do what we expected them to do by 2008 and to comply where they already failed.

Assemblywoman Parnell:

There is another issue. When that last piece of legislation was passed, it allowed for one of two things, but did not prohibit the use of all of the numbers. This bill tightens the language from the first piece of legislation and once again acknowledges that not everyone can immediately transfer that information.

Chairman Conklin:

Are we saying that no more than five numbers shall be printed on any copy?

Assemblywoman Parnell:

That is exactly the intent.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Lea Tauchen, representing Retail Association of Nevada, Carson City, Nevada:

We support the concept of A.B. 389 and propose an amendment ([Exhibit D](#)). Our members are committed to protecting the credit card information of their customers and are currently compliant with what is in statute. Many are already compliant with what Assemblywoman Parnell is proposing; however, for the remainder of the businesses to become compliant, some changes will be required to their existing software and potentially their existing equipment. Not all businesses use the same software or equipment. Typically, the larger businesses own their equipment and have the ability to program their software so the changes will be simple for them. Typically, smaller businesses lease their equipment and do not have that ability, so they rely on the vendors to make the program changes to keep them compliant. Our concern is that a business would be penalized without having the ability to bring its equipment into compliance.

Subsection 1 of the proposed amendment would apply to those businesses that have the ability to make the change, and would give them until July 1, 2009, to bring this additional component into compliance. Subsection 2 would give the vendors of such equipment until October 1, 2009, to provide new equipment or new software that would have these changes and make them compliant. Subsection 3 would apply to the businesses that have to go to their vendors to have upgrades made, and it would give them until January 1, 2010.

We believe this amendment would provide adequate time for the businesses to become compliant and allow them to remain committed to protecting the credit card account information of their customers.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

How many of these machines are there? What percentage of companies lease a system, and are they leased for short- or long-term periods? I am surprised there are still old ones out there. What would it cost to switch over?

Lea Tauchen:

I do not have specific information available. One of our concerns is that with the changeover, the vendors would potentially victimize smaller businesses by handing them older equipment because they could not afford better equipment. The cost would depend on each contract.

Assemblywoman Gansert:

I know there is a fee per transaction, but I do not know if there is an expense just for the equipment.

Assemblyman Settlemeyer:

Can you tell me the standard rental time frame?

Assemblywoman Parnell:

We were really concerned about that. We thought about long-term contracts and discussed language, so once the drop-dead date arrived there was some way that the business owner would not have to pay any additional fees to finish out that contract period.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else to testify in support?

William Uffelman, representing Nevada Bankers Association, Las Vegas, Nevada:

We support the bill as amended by the Retail Association of Nevada and look forward to its completion.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Janine Hansen, representing Nevada Eagle Forum, Elko, Nevada:

We have long supported legislation to protect people from identity theft. We first worked with Senator Wiener with some of her issues. We support measures that protect us from identity theft. I am concerned about the civil penalty found on page 2, line 25, because of my own experience of being charged with a civil penalty. It is very difficult for individuals to defend themselves. They have no jury, and they lose their constitutional rights with a civil penalty. I am not an expert on this, but I am an expert on the fact that in my personal experience you have to hire an attorney, it costs a great deal of money to defend yourself, and you do not have the regular constitutional rights which would be afforded to you in a criminal case. I have concerns about that, but I am very supportive of this concept of protecting us from identity theft.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone who wants to speak in favor of A.B. 389? Is there anyone to testify in opposition? Is there anyone to speak from a neutral position?

ASSEMBLYMAN OCEGUERA MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 389.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

Is there any discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY AND HORNE
WERE ABSENT FOR THE VOTE. ASSEMBLYMAN ANDERSON
VOTED NO.)

Ms. Parnell, we will assign this to you on the floor.

We will open the hearing on Assembly Bill 418.

Assembly Bill 418: Establishes provisions governing credit reporting relating to
medical bills. (BDR 52-947)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No.1:

I brought this bill for my constituent, Annette Amdal. Since we started discussing this bill, with the job loss in our state, it is even more relevant that this bill move forward. The bill says your medical collections records cannot be used to hinder you in finding a job, in setting your insurance rates, or in renting or leasing a house or apartment to you. Jeanette K. Belz of Property Casualty Insurers Association of America has submitted an amendment ([Exhibit E](#)) which I approve. The reason we chose five years in the amendment is because we believe people should be responsible for their medical debts. In the next five years there are going to be a lot of people who lose their jobs and can no longer pay for their insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits or may run into unintended consequences. For those of us who have insurance, if we have a major catastrophe, the co-pays could outweigh our resources. You will hear Ms. Amdal say if you have a \$100,000 medical bill and \$80,000 is paid by insurance the \$20,000 balance could ruin your life. When I was about 24 years old, I tried to get a job and was denied because of my credit rating. My concern is that if we do not allow people with medical debt to work or rent homes, how will they ever be able to pay the medical bills?

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

I realize that medical bills are very substantial and you can declare bankruptcy because of them. If you declare bankruptcy, can it still affect your rates, or does this bill preclude that if your bankruptcy is forced by medical bills?

Assemblywoman Kirkpatrick:

I would hope that people would try to pay their debts. With the federal rules, it is a lot harder to declare bankruptcy today. We could ask the Legal Division to obtain that information. That was not our intent. Our intent was not to hinder people who are trying to get back on their feet.

Assemblywoman Gansert:

Then they would not totally use the medical bills as the reason for this?

Assemblywoman Kirkpatrick:

That is correct.

Assemblyman Settlemeyer:

Would this affect national credit rating scores in the State of Nevada?

Assemblywoman Kirkpatrick:

I do not believe so. *Nevada Revised Statutes 686A.680* already talks about the uses and limitations of consumer credit reports, and this is an additional criterion that we are adding to it.

Assemblyman Goedhart:

I see that if a medical bill is less than five years old, they cannot take it into account, but if it is more than five years old they can use it in their calculations. Some people have medical bills haunting them for a long time. I have seen situations where it falls off the credit report and is later added back on the credit report.

Assemblywoman Kirkpatrick:

I think if you start with inches eventually you will get to that mile. Last session we struggled to even take into consideration some of the things on credit reports. I thought that this time giving people five years would help. I believe people should pay their debts.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Oceguera:

I appreciate what you are trying to do, and it makes a lot of sense to me, especially narrowing it to medical bills. In the public safety arena, we do an extensive background check that includes financial history because we do not want someone in the police or fire departments who has trouble paying his bills. The "medical bills" narrows it for me, but the "unpaid or unsettled" broadens it again to somebody who maybe just does not pay his bills. Is there some in-between language we could consider?

Assemblywoman Kirkpatrick:

With the current unemployment situation, I do not know how you change the wording. Maybe we could say they have to provide an explanation. I am worried that in the next few years there are going to be a lot of Nevadans with these problems. I am willing to work with you on language to tighten it up.

Assemblyman Oceguera:

That is probably all it would take. In my employment, we ask for an explanation on some of those issues. Maybe that would help.

Annette Amdal, Private Citizen, Las Vegas, Nevada:

[Read from prepared testimony ([Exhibit F](#)).]

Chairman Conklin:

Thank you, Ms. Amdal, for sharing your story with us. We appreciate it and recognize how hard it must be. It is important for us to hear. Are there any questions from the Committee? There are none.

Assemblywoman Gansert:

It sounds like this affects their credit rating. I wonder if the bill should be directed to the effect of medical bills on credit rating versus employment. When you apply for a job, do they run a credit report, or do they ask you about that type of debt?

Assemblywoman Kirkpatrick:

Ms. Amdal's story is unique, but it has happened to a lot of people. I know they do it in employment and it needs to be considered. You would not want someone with a lot of debt to be the Chief Financial Officer of a large hotel. That is why I included employment, insurance, and lease or rental agreements in the bill. It is already in the debt collection part of the law but it is not very clear, so that is why we worked within this statute.

Chairman Conklin:

If a credit report is pulled, you do not get just the score. People would pull the whole report and review it because they are looking for something specific. Because medical bills are not reported by a credit entity like a credit card company or a bank, but are usually reported by a service entity like a hospital or a doctor's office, I am guessing it will probably be something that is easily identifiable.

Assemblywoman Gansert:

Is there information on an application, or are they pulling information from a third-party source?

Chairman Conklin:

That is correct. Is there anyone to testify in support of A.B. 418?

Matthew Sharp, representing Nevada Justice Association, Reno, Nevada:

We are in support of A.B. 418. It is helpful to the people we represent. A person gets injured due to no fault of his own and then accrues a mountain of medical debt that cascades and affects his credit rating. Many employers run credit reports, and the credit score is affected because of the medical debt. This is a way to provide a check and balance system so the employer can look at the big picture and not penalize these people because they have medical bills which they could not control.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Julianna Ormsby, Private Citizen, Carson City, Nevada:

I am here in support of Ms. Amdal. I worked with her at the University and know her personally. I want to thank you for hearing this bill today and Mrs. Kirkpatrick for her work on this. I know how hard Ms. Amdal has worked on behalf of the thousands of people who could be affected by this.

Assemblywoman McClain:

I know Annette Amdal well and know that she has really struggled. I do not see this as anything gigantic that will affect business. It seems like the right thing to do. I know Ms. Amdal tried to talk to our Congressional people and did not get very far. I think this is a way we can help a lot of people get back to work and not be penalized for something they had no control over, not to mention the effects on insurance rates.

Jon L. Sasser, representing Washoe Legal Services and the Washoe County Senior Law Project, Reno, Nevada:

Our clients are mostly low income people who are struggling in these hard times. We see people having difficulty getting housing because of credit scores which are often attributed to high medical debt. We think this would be a wonderful thing for our clients, thank the sponsor for bringing the bill, and ask your support.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

How can you tell from the credit report if someone is working on the debt or not?

Matthew Sharp:

When the credit report is pulled, catastrophic medical bills are identifiable. When people attempt to work out payments, it is sometimes reflected on the report itself. There is supposed to be a process so people look at the whole picture. If you have catastrophic medical bills with an otherwise responsible credit history, it should be taken into account.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else to speak in favor of the bill? Is there anyone to speak who opposes the bill? Is there anyone to speak from a neutral position?

Rajat Jain, Actuary, Property and Casualty Section, Division of Insurance, Department of Business and Industry:

I want to make one clarification. From an insurance perspective, I think there is a misperception that I heard in testimony today. Credit scores are not used in insurance scoring. When people talk about credit scores, they are usually talking about the Fair Isaac Corporation (FICO) scores which lenders and banks use. Insurance companies have their own model. They use credit-based insurance scores.

Chairman Conklin:

Every session we have many witnesses whose insurance rates increase because their FICO score went up. We would certainly like clarification, and maybe that means some files need to be audited.

Rajat Jain:

The insurance companies utilize your credit information on a selective basis, but FICO scores are not generally a piece of that information. Insurance companies take pieces of credit information from credit reporting bureaus and have their own proprietary models that process the information and calculate a three-digit score. Different insurers could give you different scores, but they have no meaning outside of the insurance company's model.

Chairman Conklin:

Is it correct that in the State of Nevada anyone who is governed by the Division of Insurance is not allowed to use medical bills as part of their internal credit scoring for the determination of rates of insurance?

Rajat Jain:

That is not what I am implying.

Chair Conklin:

I am not going to move this bill. Ms. Kirkpatrick and you probably need to meet and find out exactly what the limitation is so she can address it within the confines of this bill and within the confines of the Division of Insurance.

Rajat Jain:

I would be happy to do that.

Assemblyman Arberry:

If you call some insurance companies they obtain your FICO score. If your scores are low, they will not insure you. If you live in an area where the income is less than the poverty level, it is the same thing.

Chairman Conklin:

Is there anyone else wishing to speak from the neutral position? We will close the hearing on A.B. 418. We will open the hearing on Assembly Bill 472.

Assembly Bill 472: Revises provisions concerning the collection of credit card debt. (BDR 8-1137)

Ernest K. Nielsen, representing Washoe County Senior Law Project, Reno, Nevada:

This is a relatively simple bill. Chapter 97A of the *Nevada Revised Statutes* which deals with credit cards is the focus of this bill. We added the assignees to those credit card issuers to the scope of the Chapter. We added a number of things that have to be in the complaint when a lawsuit is filed. We also indicated that no default can be taken without having all of the indicia of proof

associated with the claim. I was made aware that there may be a problem because this bill would only cover a few credit card issuers because it can only cover state-chartered banks.

Our focus is clearly on the assignees because that is where the problem is. We would work with anybody to clear up the potential limitations that exist. We have many clients who come into our office who have been sued by somebody, and the complaint is unclear about what it is. We rarely see the identification of the original creditor or account numbers, and we do not know much about the claim. As a result, the person does not have a clue what the claim is about. This bill helps cut down on a lot of interactions between our office and attorneys' offices that represent these collection agencies. For people who do not seek our assistance, it enables them to see in the complaint exactly what the debt is about.

There is an amendment ([Exhibit G](#)) proposed by Mr. Wulz of Legal Aid Center of Southern Nevada which substitutes "default date" in place of "date of the last transaction." I am in agreement with that amendment and would encourage the Committee to make that change as well. This bill will remedy a lot of uncertainty that consumers have when they are sued by a firm that is third or fourth down the line in terms of assignments. It will help resolve these situations quickly.

Vice Chairman Atkinson:

Are there any questions from the Committee? There are none.

Dan L. Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada, Las Vegas, Nevada:

I have submitted written testimony ([Exhibit H](#)) and a requested amendment. I would like to add that we see on average two or three people per day who walk into our offices who have been sued by a debt buyer regarding a credit card. Typically, the individual does not recognize the entity suing them. We look at the complaint which contains almost no information about the original creditor or the nature of the debt. There is a great need for A.B. 472. The Legal Aid Center of Southern Nevada has been awarded the contract to staff the Self-Help Center at the Regional Justice Center which is scheduled to open in October 2009. We anticipate perhaps a half dozen people per day will walk into the Center under similar circumstances. In the absence of this bill, the staff will be handicapped in intelligently assisting those people.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Anderson:

Section 3, subsection 1, paragraph (c)(2), refers to the account number originally assigned by the issuer. Are you going to be able to see only the last four digits of the credit card number?

Ernest K. Nielsen:

We think it will be sufficient because people can usually recognize whether it is their debt from the last four or five digits.

Assemblyman Anderson:

Section 3, subsection 5, says "No judgment, including by default, may be entered unless the standards of proof in this section have been met." If the account number is one of the standards of proof, it raises my concern.

Ernest K. Nielsen:

I think that we can accommodate that issue, but I do not have an answer for your concern.

Chairman Conklin:

Are you referring to the five digits mentioned in the previous bill?

Assemblyman Anderson:

I am thinking of that requirement. If a merchant does not have proof of the entire number of the credit card, is that sufficient?

Chairman Conklin:

Mr. Yu, can I ask you to look this up. The previous bill, Assembly Bill 389, talks about a business transaction. This bill talks about account numbers which are not always the same. Is this a business transaction, or is this a different transaction between a debtor and a creditor? I would like to have an answer before we vote on the bill.

Assemblywoman McClain:

How could somebody go after them for a collection if they do not have all of that information?

Ernest K. Nielsen:

Sometimes they do not have it, and that is part of the problem.

Assemblywoman McClain:

The guy that is collecting has to have that information.

Ernest K. Nielsen:

They do not always have it, and that is one of the problems. When we push them, sometimes they dismiss the cases because they cannot come up with some of the information. There are a lot of cases out there in which judgments are being enrolled when there is no information to support the judgment.

Chairman Conklin:

Are there any questions from the Committee? There are none. Are there others in support of this bill?

Alfredo Alonso, representing HSBC, Reno, Nevada:

We do not have a problem with expanding the provisions to include purchasers. There are a couple of issues that I would like to work on with Mr. Nielsen and the bankers to come up with some solutions. One of the issues we have is the information issue. As the issuer, we may not know or be able to get some of this information. We are the issuer, not the creditor, in some cases. As a state chartered bank, this may apply to us. We would like to address these questions before there is a final version.

Chairman Conklin:

Are there any questions from the Committee? There are none.

William Uffelman, representing Nevada Bankers Association, Las Vegas, Nevada:

The notion of including the creditor rather than the issuer reflects that a bank has bought a bank. The elements of proof that are being asked for are difficult to obtain because of changes and renumbering systems. In the end, the creditor needs to be able to prove the debt was the debt of the borrower who is now in the legal action. Are these four simple lines the best way to do that as opposed to having sufficient information to identify the debt and be sure the debtor is in fact the person who was sent the information? We support the concept of the bill.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else in support of the bill? Is there anyone in opposition to A.B. 472?

Janine Hansen, representing Nevada Eagle Forum, Elko, Nevada:

My concern is the change adding third parties to this so a third-party collection agency stands in the same position as the bank. They do not have the original debt item. The credit card companies often sell paper for pennies on the dollar. These third-party debt collectors attempt to collect the debt. They never have to provide proof of the debt. This bill would make the burden of proof much

weaker, so it would be difficult if not impossible for people to defend themselves.

The third-party debt collector cannot produce a competent witness to declare that you are indeed the debtor and that he has personally maintained the records of your account in the normal course of business. In other words, the third-party collector, not the original issuer, is now able to file an affidavit that he is the custodian of the records that were issued by the bank. The debt collector, not the bank, is able to say that the records were made in the course of business. How does a debt collector, who does not have the original information on the debt, know that? He has no direct knowledge of it and could be making up the records. The bank could be selling him bad records. The necessity for the bank to produce a competent fact witness is bypassed or reduced, so this changes the standard of proof. My concern is that this gives the third party more ability, with less proof, to go after the debtor.

Chairman Conklin:

What this does is create a higher burden of proof on the collector and the creditor. There are companies that own a certain amount of credit. They sell the debt. The new company that owns it has the same standard of responsibility of proof that the previous company did. They have to be able to prove that you owe them money. This is creating a standard that when you buy debt you have to have the history with it. It is a consumer protection more than a protection for the business.

Janine Hansen:

If that is correct, then I support the bill.

Chairman Conklin:

My legal staff agrees with my information. Are there any questions from the Committee? There are none. Is there anyone else wishing to oppose this bill? Is there anyone to testify in the neutral position? We will close the hearing on A.B. 472.

We will open the hearing on Assembly Bill 184.

Assembly Bill 184: Prohibits discrimination with regard to gender identity or expression. (BDR 53-792)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:

I am here to present A.B. 184. The bill extends existing protections related to discrimination against a person's race, color, creed, sex or sexual orientation, among others, by prohibiting discrimination based upon a person's gender

identity or expression. In this bill, gender identity or expression is defined in section 1, subsection 4, as the "gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth."

Many areas covered in this bill pertain to discrimination in the workplace. This bill prohibits discrimination by employers and requires employers to allow an employee to appear, groom, and dress in a manner consistent with the employee's gender identity or expression. The bill would prohibit discrimination in the workplace. By enacting this legislation, Nevada will join several other states in recognizing gender identity and expression and preventing discrimination against such persons. The states I am aware of are Washington, Vermont, Rhode Island, Oregon, New Mexico, New Jersey, Minnesota, Maine, Iowa, Illinois, Hawaii, Colorado, and California.

I have three speakers with me today including Senator Parks. Jane Heenan is a Licensed Marriage and Family Therapist and an adjunct instructor for the College of Southern Nevada. She self identifies as transgender and with Kathleen Delany was responsible for bringing the need for this legislation to my attention. Kathleen Delany has previously appeared before the Committee in her former capacity as a Senior Deputy Attorney General with the Bureau of Consumer Protection and now serves as a District Court Judge in the Eighth Judicial District Court in Clark County. Both are here to speak in their personal capacity and to provide information to help the Committee fully understand the necessity and importance of A.B. 184. I have presented an amendment, ([Exhibit I](#)) and there is also going to be a correction of the amendment.

Chairman Conklin:

I have held all of the bills to the same standard today and allocated 30 minutes to each. I have to give the opposition the same amount of time. I want you to know so we get concise testimony. I have about ten sign-in sheets with a lot of people in support and opposition. We will include that in the record so we will know who was here and who was in support and opposition.

Assemblyman Aizley:

The amendment would entirely delete sections 17 through 23. It would amend section 14, subsection 1, paragraph (c) on page 10, lines 29 to 33, to add the words "sexual orientation" which we believe were omitted. The third part on the amendment sheet is to be ignored.

Senator David Parks, Clark County Senate District No. 7:

I am appearing today in support of A.B. 184. Ten years ago, I brought before this Legislature Assembly Bill No. 311 of the 70th Session, the Employment Non-discrimination Act. Prior to submitting my bill draft request, I solicited

input from a fairly large number of individuals regarding its content. The consensus was that if I wanted to get the bill passed, I would have to redraft it and take out the gender identity language. I was repeatedly told that it would be difficult enough to get legislators to approve a non-discrimination bill for lesbians and gays. I was told that if we could get the bill passed, we could come back the next session and add the transgender protection language. That never happened. Adding gender identity protection to the state's employment non-discrimination statute is long past due. We hear a lot in this building that it is not the right time. We all know there is never a right time, but there is now. Let us do it now and give those people who are terribly discriminated against the protection that they desperately need.

I would like to close by sharing a comment made to me by one of our colleagues. As I was going around counting the votes that I needed to get the bill passed in the Senate, I approached Senator Bernice Mathews. I started to tell her that I was asking for her support on the bill. She cut me short and said, "Oh honey, you have my vote." She proceeded to say, "Let me tell you, a person who would discriminate against one person will discriminate against any person." Today let us make it illegal to discriminate against people who are transgender.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Anderson:

I want to go on record as agreeing with Senator Mathews. I am disappointed that we are not going to make the full stride while I am in this House.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Jane Heenan, Private Citizen, Las Vegas, Nevada:

I am here to testify in support of A.B. 184.

[Read from prepared testimony ([Exhibit J](#)).]

I advocated for Assembly Bill No. 311 of the 70th Session in 1999.

[Continued reading prepared testimony.]

Transgender people's internal identity does not match their assigned sex at birth. Many transgender people undertake a medical process to change their outward physical expression. Because transgender people are different from

gay, lesbian, and bisexual people regarding sexual orientation, particularly in the eyes of the law, the addition of gender identity and expression to Nevada's statutes is essential. The consequences of not having specific employment protections in the law have been detailed in a variety of studies. Research in San Francisco in 2006 showed the unemployment rate among transgender persons to be 35 percent.

[Continued to read from prepared testimony.]

The problems we face as transgender persons have an impact on the larger society by increasing the financial burdens on state programs, because we are often denied the opportunity to help ourselves.

[Continued to read from prepared testimony.]

Let me assure you that protections like those found in A.B.184 are not new, and they have been around since the 1970s.

[Continued to read from prepared testimony.]

Research conducted by the Peter D. Hart Research Association in 2007 showed that 72 percent of Americans agree with the statement that "fairness is a basic American value, and employment decisions should be based solely on qualifications and job performance." Such support for equal job protections and opportunities has been consistent over the past several years. A similar study in 2002 by the Hart group found that 59 percent of Americans favored implementing laws like this.

[Continued to read from prepared testimony.]

Chairman Conklin:

Are there any questions from the Committee? There are none.

**The Honorable Kathleen E. Delany, Judge, Eighth Judicial District Court
(Clark County), Las Vegas, Nevada:**

I know how important equality in employment is in this state and to the citizens of the state. The bill as we currently have it with the proposed amendments simply allows gender identity expression to be one of the enumerated reasons why employment discrimination cannot take place. It only addresses employment discrimination. In the drafting process, things can change. We have resolved any and all legitimate disputes that we know were raised concerning the language in this bill by removing those sections that dealt with driver's licenses. We have come forward with a bill today that would effectuate

antidiscrimination in employment and close the gap that occurred ten years ago. I was not aware until I heard from Ms. Heenan that this protection was not already available under Nevada law. Once it was determined that it was not available under Nevada law, we began to put together this piece of legislation.

I am taking remarks from the introduction of Assembly Bill No. 311 of the 70th Session in 1999, and I think these words are still true today. It prohibited discrimination based on sexual orientation and said, "it will ensure that the capability to obtain and maintain employment will depend only on an individual's ability and willingness to work." In the past, Nevada has responded when it found its citizens were being denied employment for reasons that were arbitrary and unfair. That is all this bill is going to do, but it is profoundly important to this community. I implore and encourage you to support Mr. Aizley and reward this community for waiting for this long-overdue protection.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone to speak in support of A.B.184.

Christina Diedoardo, Private Citizen, Las Vegas, Nevada:

[Read from prepared testimony ([Exhibit K](#)).]

I am also licensed in California. In making long-term career decisions, the fact that in California I am protected on all of these grounds does weigh in my considerations. For these reasons, I respectfully request that you support, amend, and pass A.B. 184.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Denise Jay, Private Citizen, Las Vegas, Nevada:

I am here in support of A.B. 184. While attempting to apply for a job on March 20, 2009, in the Las Vegas Valley, I experienced first-hand the effects of employment discrimination based upon my gender identity. I was sitting in front of an office reception area waiting for my turn to be called for an interview. As I waited, I overheard the office manager who was doing the interviews instruct the receptionist to inform me that I was not the type of person they would like to have working for the company, and furthermore, it would be appreciated if I would leave the premises immediately without an interview. The receptionist relayed the information in the waiting area in a loud voice in front of approximately 20 other applicants for the position. I asked if I could use the restroom and was told it would be best if I would leave and seek the use of a public restroom at the gas station down the street. The position I was applying

for involved work that I have performed very successfully in the industry for over 20 years. I am more than qualified to perform the duties and the tasks of the position.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Judy Cox, representing the American Civil Liberties Union of Nevada, Las Vegas, Nevada:

I am here to testify in support of A.B. 184 ([Exhibit L](#)). In 1999, when the American Civil Liberties Union of Nevada fought for the bill that added sexual orientation to the employment non-discrimination statutes, our intention was to fight for the most inclusive bill possible. After ten years, it is time to end that fight. In 1999, one of the biggest arguments against adding sexual orientation was that it would open a flood of litigation. After ten years, that has proved to be untrue.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Nicole Harvey, Private Citizen, Sparks, Nevada:

I am an attorney licensed to practice in Nevada. I sent an email in support of this bill ([Exhibit M](#)). I am not transsexual, I am not transgendered, but I have experienced gender identity discrimination. As I appear today is how I look everyday at work. I have been told by an employer in the past that I am not feminine enough. My employer bought my clothes and suggested that I wear makeup. It made my work life very difficult.

I am here to talk to you about why this bill is an important bill to help employers in Nevada. Employers are lobbying hard against this bill under the misconception that there is currently no threat of liability for discrimination on the basis of gender identity or gender expression. It is true there is no federal or state statute explicitly prescribing discrimination on this basis, but courts more and more are construing the protections of Title VII to include gender identity and gender expression claims. I provided a handout to all of you to show as succinctly as possible the evolution of these cases beginning with the *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984) case in which the Seventh Circuit Court said that Title VII did not apply to these claims, through the *Price Waterhouse v. Hopkins*, 490 U.S.228 (1989) case where Title VII now does apply to these claims.

There are two cases in our own Ninth Circuit that say if you discriminate against someone because their gender identity is inconsistent with their sex, that falls

under Title VII protections. I am employed as a defense attorney, but not every employer can afford an attorney like me to review and draft their policies, to educate and update their managers and supervisors, and to let them know that they can be liable now under Title VII for this kind of discrimination. Many of these employers in Nevada are hard working people who have built their businesses from the ground up and know more about their trades than they know about how the law will affect their employment practices. Many of these employers do not find out until they are in court, or until they lose on a motion to dismiss, that they can be held accountable for this kind of discrimination.

Passing this bill into law would provide Nevada employers with statutory notice that there is liability for gender expression and gender identity claims. It would give employers an opportunity to anticipate issues and to create policies that would protect them in the event of such claims. It would bring Nevada in-line with the evolving federal law, specifically these Title VII protections under the Civil Rights Act.

Chairman Conklin:

We have your handout and appreciate your succinct testimony. Are there any questions from the Committee? There are none.

Joe Edson, representing the Progressive Leadership Alliance of Nevada, Carson City, Nevada:

The Progressive Leadership Alliance of Nevada (PLAN) is a 15-year-old coalition of groups working for social, civil, and environmental justice in the Silver State.

[Read from prepared testimony ([Exhibit N](#)).]

On a personal note, I would like to reiterate Senator Parks' statement on this bill. When I was transferred to the Antioch Company's West Coast Distribution Fulfillment Facility in Sparks, the first civic engagement I took part in concerned Assembly Bill No. 311 of the 70th Session. I contacted my assemblyman, former Assemblyman Greg Brower, and advised him of my experience with domestic-partnership benefits that I received through my company. Assemblyman Brower voted for that bill. It is with great pleasure and pride that I stand in support of the extension of the bill to include gender expression and identity.

Chairman Conklin:

Are there any questions from the Committee? There are none.

John Emerson, Private Citizen, Sparks, Nevada:

I am a semi-retired United Methodist minister and part-time chaplain for Circle of Life Hospice. I want to urge your passage of A.B. 184 because I think it is important for the voice of the religious community to be heard. I am a non-paid lobbyist and can only speak for myself. I am astonished that we have to have such a bill as this to advocate for. A number of decades ago we were advocating for people of color and women. We won those battles, and now we have this battle. I urge your support of this bill. I am persuaded that it is in keeping with the constitutional provisions for equal protection under the law. I think it is morally the right thing to do. I encourage your support and passage of this legislation.

Chairman Conklin:

Are there any questions from the Committee? There are none. I have extended well beyond my length of time for this bill. Is there anyone else wishing to testify in support?

Julianna Ormsby, representing the Nevada Women's Lobby and the League of Women Voters of Nevada, Carson City Nevada:

Both organizations I represent have long traditions of fighting for human and civil rights. We fully and enthusiastically support A.B. 184 and its proposed amendments.

John Hunt, Chairman, Clark County Democratic Party, Las Vegas, Nevada:

Last November, a very magical thing happened. Although these are very difficult times for all of us, I think our country said that we had to move in a direction where everybody is created equal. On that day in November, a dream came true that anyone could become President of the United States. As Chairman of the Clark County Democratic Party, I believe any bill that is going to treat someone equally is so important. Whether you are a Democrat or a Republican, what happened last November was basically an indication of a direction we want to go. In the past, it was very difficult for these types of bills to even see the light of day. When times change, we have to seize the moment. Although we have some very difficult times to address and some very serious problems regarding the economy, we cannot forget that this is also an opportunity to right wrongs. This is an opportunity. On behalf of all of the Clark County Democratic Party, the people of Clark County, and everyone who is for equality, I support this bill.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else wishing to get on the record in support of this bill? I recognize that there are a lot of people here in support, and I have a list of all of you. Will those in

support, here and in Las Vegas, please stand. [Many did.] Give yourselves a round of applause.

George Flint, representing the Chapel of the Bells, Reno, Nevada:

I am representing the wedding chapel industry statewide. I am happy to say that with the removal of sections 17 through 23, the potential havoc that could have happened in the wedding industry will not. The driver's license will continue to be used without question. We can support this bill now.

Chairman Conklin:

Are there any questions from the Committee? There are none. We will move to the opposition.

Janine Hansen, representing Nevada Eagle Forum, Elko, Nevada:

It is with great trepidation that I testify on this bill. I have had a history of persecution over issues like this. I have been physically attacked and had death threats, and my children have been attacked. I go by my maiden name because of the threats. I had satanic pornography put all over my windows at my office and have indeed experienced complete intolerance by those who oppose my points of view. I feel we are moving into a position of reverse discrimination. My brother lost his job for this. This is not a one-way street. Intolerance swings both ways. For several years I could not go to any public meeting without a bodyguard because of threats and being continually stalked and harassed. The reverse discrimination is real and continues.

In the *Nevada Constitution*, in an ordinance that cannot be repealed, it says perfect tolerance of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship. What we have in this bill is another opportunity to put people who have a particular religious belief under scrutiny and deny their rights in reverse discrimination by the state. We have a case as recently reported from New Mexico in Focus on the Family's *Citizen* of people who refused to take pictures in their business of same-sex ceremonies. They were sued, and the state human rights commission ruled unanimously against them for \$6,600 in attorney fees and forced them to comply. We often look at discrimination, but not the freedom to discriminate for any reason. We have to balance that with the freedom of religion, the freedom of speech, and the freedom of association outlined in the *United States Constitution* and protected explicitly in the *Nevada Constitution*. While some members of the community understand how violating a person's right to his own conscience is bad, most do not think it should apply to the rights of Christians. This bill is one more step towards reverse discrimination if the peoples' right to religious beliefs is not upheld. We see this going on all around the country. I lodge my sincere

concerns having been a continual object of intolerance, reverse discrimination, harassment, persecution, and death threats. We oppose this bill.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Anderson:

Have you noted in many of the states which have already passed similar legislation that there is an inordinate level of lack of protection for you compared to the rights you currently enjoy in Nevada?

Janine Hansen:

I believe the persecution of those who believe as I do is definitely increasing. We saw this during the California Proposition 8 campaign where those who opposed that initiative had their names and addresses posted on the Internet and were targeted for specific discrimination and persecution. Hundreds if not thousands of people gathered around the Jesus Christ of Latter Day Saints (LDS) temples in an attempt to close them and harass people going in and out. I believe that there are increases being reported, such as this one in Focus on the Family's *Citizen*, by other organizations that are public law firms protecting Christians. There is definitely an increase in this type of discrimination and an increase in reverse discrimination occurring throughout the nation. I believe it is happening, as I read and watch what is going on.

Assemblyman Anderson:

Do you believe that people who fall in this protected group are non-Christian, or are or are not allowed to participate in a denomination as afforded to you?

Janine Hansen:

They have the right to choose whatever they want, and I would not interfere with their right to choose their religion. However, I should say that would be fundamental, conservative Christianity, including some perhaps non-traditional Christian religions such as LDS, who would scripturally, fundamentally, and doctrinally oppose homosexual activity and behavior within the confines of their religion.

Assemblyman Atkinson:

It appears that you may be unclear about this topic. I find it alarming that every time we talk about affirmative action or equal rights issues, people like you begin to talk about reverse discrimination. Can you explain what you mean about that in respect to this bill?

Janine Hansen:

I am sorry if my testimony has not been understood by you today. I feel very deeply about these issues and have come here at some personal risk. My concern with this is that employers, who may because of their religious points of view refuse to hire a particular person, would now be subject to the laws of the state and reverse discrimination. They will be forced to hire people who violate their religious belief. Reverse discrimination does happen; for instance, my brother, Joel Hansen, lost his position in a law firm when he was told to either stop his advocacy on these issues or he would be fired. He left the firm and established his own practice which has turned out to be a blessing in disguise. There are others like the couple in New Mexico who refused to take wedding photos of a couple because of their religious belief and are now being sued. That is what I am talking about. If people refuse to do this, their own religious beliefs that are protected by the *Nevada Constitution* and the *Constitution of the United States* will be violated, and they will be forced to hire people with whom they feel uncomfortable.

Assemblyman Atkinson:

Are you talking about religious belief or equal rights? If someone does not hire a person or does not do something, are you saying it is based on their religious beliefs or their belief that they should not be hired because of their gender? Do they both go hand in hand?

Janine Hansen:

I thought I made myself clear.

Assemblyman Atkinson:

You have not, and that is why I am asking you a question. My question is, are you saying this is based solely on a religious issue or based on the extent of the language in the bill? I am not sure you have read the bill, but I understand what you are saying about religious beliefs.

Janine Hansen:

I have read the bill. Employers who have a particular religious point of view will not be regarded or their rights protected by this bill if they determine not to hire a transgender person because it may violate their religious beliefs. There is no protection for them under this bill as I read it. Even though religion is in the bill, I find that the interpretation of it will result in reverse discrimination against those employers who would choose not to hire someone, or, the other circumstances which are outlined in the bill, because of their religious beliefs. Is that satisfactory?

Assemblyman Atkinson:

Yes, that is satisfactory, thank you.

Assemblyman Horne:

I am unfamiliar with which religion says it would be permissible to discriminate against transgender. Where is that?

Janine Hansen:

I am not here today to represent my church or anyone else's church. However, I will tell you about my own personal opinion. I am a member of the LDS church. In our church, we have the "Proclamation on the Family." This is considered to be doctrinal. Those in the church are expected to support it. We also believe in the *Old Testament* and the *New Testament* which both clearly state in the *King James Version* significant concerns about homosexually connected behavior.

Assemblyman Horne:

I did not say homosexual; I said transgender.

Janine Hansen:

I understand what you said, and you asked me about my opinion and my religion, and I am trying to answer you.

Assemblyman Horne:

I am asking as to this bill.

Janine Hansen:

I am trying to answer you. I know that you do not agree with me, but I have listened tolerantly all day to everyone else, and I am trying to explain my position. These foundational beliefs create a doctrinal, foundational position for those in my religion and would make it very difficult for them to be forced to hire someone under this circumstance. Because the scriptures refer to "like unto it" as well regarding these things, that would make it particularly uncomfortable and distasteful for them to lose their right of freedom of religion and be forced under this to hire someone with whom they did not feel they were compatible or could work well. I am sure my answer will not satisfy you, but I am also very confident in the fact that it is my right to believe this and that right is protected, at least it used to be protected.

Chairman Conklin:

I think we are getting a little off the subject.

Assemblyman Horne:

I understand, Mr. Chairman. There are probably more people than just me who would find it offensive that someone would use the shield of religion and Christianity to support discriminating against others. Concerning family values, I do not know of any person who is transgender or homosexual who has not come from a family themselves, and many were raised with various religious backgrounds and churches, including, and I am sorry to say, the LDS faith. They are everywhere. It is offensive when every time we hear something like this they try to use it as a shield as if it makes it alright, and then say it is reverse discrimination as if to say that if we are not allowed to discriminate, you are discriminating against us. It is just silly.

Chairman Conklin:

The beauty of living in America and living in Nevada is that we can express ourselves regardless of how much we disagree. Are there any questions from the Committee? There are none.

David Schumann, representing the Nevada Committee for Full Statehood, Minden, Nevada:

I am in opposition to this, but first, I want to clear up some misinformation. All boy children are born with X and Y chromosomes. All girl children are born with two X chromosomes. No surgeon can change that. The term that one of the witnesses used, "the sex that is assigned at birth," is incorrect. When my son was born in 1981, at three months of gestation, the doctors told us his sex. It was not assigned to him by the state. It was determined by the arrangement of the chromosomes, and it was known six months before he was born. It was not assigned at birth; it was immutable. No matter how I fix my hair, no surgeon can change me. I am a boy for life. That is what I was born, and that is how I will die.

To deal with Mr. Horne's question, there is a verse in *Leviticus* that says, "He who lies with a man as with a woman commits an abomination in the sight of the Lord." I think it is discrimination to force people who do not necessarily want to have a girl using the men's room to have to hire them. I like girls, but I would not be comfortable using the men's room with someone who is transgendered. That person is a girl until the day "it" dies.

Assemblyman Horne:

Please do not call them "it." They are people.

David Schumann:

They are?

Assemblyman Horne:

"People" not "it." "It" is offensive.

David Schumann:

It may be offensive to you, but it is offensive to me. You cannot come along and call yourself a boy if you are a girl.

Chairman Conklin:

Stop. I am the chairman, and I will tell you when it is your time to speak. I realize that this may be offensive to some, just as other testimony may have been offensive to some. We will finish this hearing and be brief.

David Schumann:

This is forcing people to accept something that they have strong feelings about, and I do not believe it is the function of any legislative body from the Congress down. We are who we are. We have been that way since birth and will die that way. No legislative body can say that we are anything other than what we were when we were born. If I dye my hair pink or blue and somebody does not want to hire me because of it, it is their right. I think we should continue to have that right.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Shirley B. Parraguirre, Clerk, Clark County, Las Vegas, Nevada:

We signed-in in opposition to this bill due to sections 17 through 23 which have to do with the driver's licenses. Since there is a proposed amendment to delete them, we have no opposition to the bill.

Chairman Conklin:

Do the people next to you have the same testimony?

Diana Alba, Assistant County Clerk, Clark County, Las Vegas, Nevada:

I concur with Mrs. Parraguirre's statement.

Richard Ziser, Private Citizen, Las Vegas, Nevada:

The employment side of this is what Janine Hansen was attempting to explain. There are religious rights in the *Constitution*. People who hold sincere religious beliefs should not be forced to hire someone who will promote something different from their beliefs. That should be an accepted thing, and I do not understand the questioning back and forth as to what discrimination is and what it is not. It is pretty obvious. Senator Parks referred to Assembly Bill No. 311 of the 70th Session in 1999. We fought very hard against that bill. They said

there would not be a slippery slope to where we are now. We are there. We use the terms gender identity or expression here, and I am not sure what we are talking about. How can you identify with something that is not there? You can go to sacred scriptures from all of the major religions that show that God knitted together the human being in the womb. That is not the issue I am discussing today. I want to make it clear that it is very problematic when you say that someone who can gender identify can decide whether they are male or female just by believing it is true. The issue of restrooms and locker rooms has been brought up.

There appear to be some people who are confused on how you define male and female. I will tell you that you are going to create lawsuits and a lot of problems when you force the acceptance of transgender people. I have a wife and a daughter. They too have rights. They have the right to walk into a facility that says "female" and not have a person and excuse the biological definition....

Chairman Conklin:

Mr. Ziser, we are aware of the body parts and the issue. What we have is a difference of opinion. What we have here is a right to believe. It is called "liberty," and you can read about liberty for the last thousand years. That liberty is to have any belief that we want. We are having an argument about who gets to believe what and who gets to enforce their belief. Where does it say that I have a right to employ people who think like I do and believe what I do? That is discrimination. We are not going to convince each other. Let us not discount each other's beliefs either. Somebody is going to feel discriminated against.

Richard Ziser:

The reality is that when a female is in a restroom, we do not want a male in that same room. This bill will allow that to happen. I am not saying that they cannot be, nor do, what they want. You as legislators are going to make a decision, and when you do you will be allowing a male to be in the same restroom as my wife or daughter. That is a problem, and I think the public of this state would be outraged when they find out we are talking about allowing this activity to take place in the State of Nevada.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else to speak in opposition to this bill? Is there anyone in the neutral position?

Michael Tanchek, Labor Commissioner; Secretary-Director, State Apprenticeship Council, Office of Labor Commissioner, Department of Business and Industry:

I believe the first part of this bill deals with the apprenticeship programs. I have not heard anything from any of our programs about their positions on the bill. I have discussed it with the United States Department of Labor. We have an audit issue with them that they have to concur with anything that deals with apprenticeships. There does not appear to be anything in this bill that will conflict with federal law. I am neutral on the bill.

Chairman Conklin:

Are you referring to section 1 of the bill? Will you please notify our staff as soon as you hear something about the federal statutes and how they apply here?

Michael Tanchek:

Yes, I am referring to section 1. After talking to the regional director, there does not appear to be anything that would conflict.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Thomas J. Fronapfel, Administrator, Field Services Division, Department of Motor Vehicles:

I agree with Mrs. Parraguirre and Diana Alba in the Clark County Clerk's Office. With the elimination of sections 17 through 23, the Department is neutral on the bill.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Joel Flamenbaum, Private Citizen, Carson City, Nevada:

I am a former state employee and now a full-time student at the University of Nevada, Reno. It is extremely important to clarify some information. We no longer live in a "pink and blue" world. This is a result of education, technology, and scientific advancement. Everyday there are approximately 43 million new arrivals into this world. One in one thousand of these new babies have gender ambiguity that can be corrected through therapy and/or surgery. This is a decision that is made by the parents of these children. For people to testify that we are in a male and female world is wrong and can be proven by science.

Chairman Conklin:

Are there any questions from the Committee? There are none. I am going to close the hearing on A.B. 184 and bring it back to Committee. Is there anything else to come before the Committee at this time?

Meeting Adjourned [at 4:07 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Commerce and Labor</u>			
Date: <u>March 27, 2009</u>		Time of Meeting: <u>1:05 p.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 366	C	Dan L. Wulz	Prepared Testimony
A.B. 389	D	Lea Tauchen	Proposed Amendment
A.B. 418	E	Jeanette K. Belz, Property Casualty Insurers Association of America	Proposed Amendment
A.B. 418	F	Annette Amdal	Prepared Testimony
A.B. 472	G	Dan L. Wulz	Proposed Amendment
A.B. 472	H	Dan L. Wulz	Prepared Testimony
A.B. 184	I	Assemblyman Paul Aizley	Proposed Amendment
A.B. 184	J	Jane Heenan	Prepared Testimony
A.B. 184	K	Christina Diedoardo	Prepared Testimony
A.B. 184	L	Judy Cox	Prepared Testimony
A.B. 184	M	Nicole Harvey	Written Statement
A.B. 184	N	Joe Edson	Prepared Testimony