

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
April 28, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:37 a.m. on Tuesday, April 28, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Assembly District No. 41
Assemblywoman Bonnie Parnell, Assembly District No. 40
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada
Jon Sasser, Washoe Legal Services; Washoe County Senior Law Project

Senate Committee on Judiciary
April 28, 2009
Page 2

Elizabeth Neighbors, Ph.D., ABPP, Director, Lake's Crossing Center, Division of
Mental Health and Developmental Services, Department of Health and
Human Services

Ronald Dreher, Government Affairs Director, Peace Officers Research
Association of Nevada

Leah Tauchen, Retail Association of Nevada

Bill Uffelman, President and CEO, Nevada Bankers Association

Kay Kindred, Law Professor, William S. Boyd School of Law, University of
Nevada, Las Vegas

CHAIR CARE:

Assemblyman Aizley is present. I will open the hearing on Assembly
Bill (A.B.) 274.

ASSEMBLY BILL 274: Makes various changes regarding retail installment sales.
(BDR 8-819)

ASSEMBLYMAN PAUL AIZLEY (Assembly District No. 41):

I am here to present A.B. 274. Michele Johnson, Consumer Credit
Counseling Service is not available, but she has submitted a letter (Exhibit C).

CHAIR CARE:

We have the letter of Ms. Johnson.

MR. AIZLEY:

I will read from my testimony (Exhibit D). I was not intending to go through the
law step by step. I will say the beginning part of the law changes or refers to
definitions used. The significant part is in section 6 where we change the rules
for consumers loans. Those which do not include finance charges are also
included.

DAN WULZ (Deputy Executive Director, Legal Aid Center of Southern Nevada):

I will read from my testimony (Exhibit E). If the Committee has my testimony, I
have attached an example addressed by the legislation.

Chapter 97 of the *Nevada Revised Statutes* (NRS) applies where a finance
charge is made. The federal Truth in Lending Act is broader and covers not only
transactions where a finance charge is made but where a series of more than
four installment payments are made. The federal Truth in Lending Act addresses

disguised credit sales, whereas NRS 97 does not. The proposed legislation would change NRS 97 to be more like the federal Truth in Lending Act and not let people get away with disguised credit sales where they draw up the contract to say there is no finance charge, but there is a concealed finance charge.

It would require a level playing field for all car sales on credit. Sellers would all have to use the Nevada Administrative Code (NAC) 97 contract, which the vast majority does.

The second distinct topic deals with nonmonetary defaults. The NAC 97 contract, which is by the Division of Financial Institutions regulation, defines default to include the mere act of filing bankruptcy. The letter from Bruce A. Markell, U.S. Bankruptcy Judge, District of Nevada, along with the memorandum from his law clerk, John Eggum, explains how this works in the U.S. Bankruptcy Court ([Exhibit F](#), page 2). The Judge's law clerk proposed a solution to adopt section 5.109 of the Uniform Consumer Credit Code (UCCC) that Nevada has not adopted. The proposed legislation would adopt that one section and put it into NRS 97.

CHAIR CARE:

Mr. Wulz, could you walk us through the stories your clients have related to you absent this change in law.

MR. WULZ:

The one example attached to my testimony in [Exhibit E](#) is where someone bought a car for \$5,512. They put \$2,000 down and are supposed to make \$4,400 in payments: a \$500 payment and then \$200 payments due every two weeks. There is no finance charge, so the seller of the vehicle takes the position this is not a car sale on credit. They do not have to use the NAC 97 contract every other car dealer would ordinarily use. They can write this contract any way they want. One of the things they write is to say a default occurs on the day after payment is due; the NAC 97 contract has a provision that says you are not in default until payment is 30 days past due. This is one protection lost when a car dealer can use a contract other than the NAC 97 contract.

CHAIR CARE:

Any questions of Mr. Wulz?

SENATOR WIENER:

In section 4 you mentioned the reference regarding more than four installments. Why is the number four significant in this transaction?

MR. WULZ:

That goes back to the history of the federal Truth in Lending Act, with which I am not familiar. I do know that is exactly what the federal Truth in Lending Act says. Congress decided if a transaction was payable in more than four installments, then it is covered by the federal Truth in Lending Act. But I am not aware of the magic in selecting the number four.

JON SASSER (Washoe Legal Services; Washoe County Senior Law Project):

I am speaking in favor of A.B. 274. Our organizations also deal with consumers who are going through bankruptcies and the purchase of vehicles and have experienced these same problems Mr. Wulz outlined.

The only thing I would add is to go more in depth into Judge Markell's letter and the practical implications this bill would have on people in bankruptcy. When you go into bankruptcy and you are buying a car, if you are up to date in those payments, the lender will force you into a reaffirmation agreement by saying if you do not sign up for it, the mere act of going into bankruptcy is defined as a default on your contract. They have the opportunity to repossess your car. Even though you have kept your insurance up to date, payments up to date and you need the car for work, you lose access to the car. This would take a provision of the UCCC, which defines default as only missing a payment or taking other steps to significantly impair the collateral. If you were taking the car across the international border to escape, they could step in and stop you. But unless there is some reason to believe you are not going to make payments or impair the collateral, then the court could find these reaffirmation agreements not in the consumers' best interests and choose not to enforce them.

Does that mean the person gets a free car? No. What the bankruptcy does not extinguish is the security interest the lender has in the car. If the buyer defaults on the contract under our new definition, the lender could then take the car back. As long as you make your payments, you could continue to keep that car.

The difference would be if you do default, you do not have a reaffirmation agreement. They get the security interest back, but there is no opportunity to

sue the consumer for a deficiency judgment, which would not be extinguished by bankruptcy because the reaffirmation had taken place.

CHAIR CARE:

If this becomes law, and we have the consumer who defaults, the seller has to go back to court to take possession of the car because the petitioner is in bankruptcy, correct?

MR. SASSER:

I will defer to Mr. Wulz, but I believe not. There is the right to repossess without going back. But there is not the right to sue for a deficiency judgment because the bankruptcy does not extinguish the security interest.

MR. WULZ:

That is correct.

SENATOR WIENER:

Mr. Sasser, this would basically be treating the person who has filed for bankruptcy the way you treat anybody else who has consummated the transaction in terms of the obligation to the seller?

MR. SASSER:

As you make your payments and do not do something else that impairs the collateral, like not keeping up your insurance as required, then you get to keep your car.

SENATOR WIENER:

That would be required of anyone transacting with that seller. So they are not being treated extraordinarily, they are being treated as any other purchaser of a vehicle as long as they maintained their obligation.

MR. SASSER:

That is correct.

CHAIR CARE:

I do not see anyone in opposition of the bill. Did you say there was no opposition in the Assembly?

Senate Committee on Judiciary
April 28, 2009
Page 6

MR. AIZLEY:
That is correct.

CHAIR CARE:
The bill came out 41 in favor, none against and one excused.

MR. AIZLEY:
That is correct.

SENATOR WIENER MOVED TO DO PASS A.B. 274.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CARE:
I will open the hearing on A.B. 61.

[ASSEMBLY BILL 61 \(1st Reprint\)](#): Requires notification of certain victims of crime of the discharge, conditional release or escape of certain persons from the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services. (BDR 14-339)

ELIZABETH NEIGHBORS, PH.D., ABPP (Director, Lake's Crossing Center, Division of Mental Health and Developmental Services, Department of Health and Human Services):

Assembly Bill 61 allows us to notify victims of crimes that were charged, where individuals were acquitted as not guilty by reason of insanity or where they were found incompetent without probability of attaining competence in a special section designated for particularly dangerous offenders who can be committed to Lake's Crossing Center.

This is an important bill. We have not had the ability to do this since those two statutes were put into law. We feel an obligation to protect those persons so they can have input when an individual is discharged on conditional release or discharged outright from our facility.

There is a provision to do this ten days before the release occurs, and it is done only if the victim requests the opportunity to be notified.

VICE CHAIR WIENER:

I also noticed the provision about escape, in which you would not have a ten-day notice opportunity. How do you handle that now?

DR. NEIGHBORS:

We have not had an escape in over 25 years, but should such an event occur, we would immediately attempt to notify a person who was a victim of the offense of which that individual was charged.

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

I offer our support for A.B. 61 as I did in Assembly Judiciary. Years ago, I was a homicide detective for the Reno Police Department. I did much for victims' rights and continue to do so. This is another area where we have seen horrendous crimes occur. Someone accused of being or found to be mentally incompetent to stand trial was put into Lake's Crossing or other mental facilities and there was no escape clause. Victims would not be notified, and they would carry the mental pictures of what they went through.

This bill would take care of the victim's rights.

VICE CHAIR WIENER:

There are notice provisions for those who are being released from incarceration. Are there notification requirements if someone escapes a correction facility?

MR. DREHER:

There are, it is the same. They are in place. The concern I had on the Assembly side with the notification of the victims is this applies to the last current address. If you are a victim and you want to be notified of the person's release, you need to make sure you provide your current address in the future. People move in our State quite frequently. The bill says it goes to your last current address. We have to put the onus on the victims to provide future addresses if they want to be notified. Otherwise, the letter will go to the wrong address and the victim will never know. All of a sudden, that person may show up at the victim's door, and we do not want that.

SENATOR COPENING MOVED TO DO PASS A.B. 61.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

CHAIR CARE:

I will open A.B. 389.

[ASSEMBLY BILL 389 \(1st Reprint\)](#): Revises provisions governing the protection of personal identifying information. (BDR 52-772)

ASSEMBLYWOMAN BONNIE PARNELL (Assembly District No. 40):

Assembly Bill 389 attempts to protect your personal identity by prohibiting the use of full credit card numbers on both customer and merchant copies of receipts. You have been given a handout ([Exhibit G](#)). You will see two examples of credit card receipts. It is quite alarming. You will see why this was part of understanding the need for this bill.

On the left side of [Exhibit G](#), the one is a receipt I received a few weeks ago. It has the full credit card number, expiration date of the credit card number, the typed full name of the cardholder and the signature of the cardholder. Those are being given out or kept in numerous restaurants in this State.

When I first received one of these a few months ago, I was quite alarmed; it was on both the customer and merchant copy. I contacted our Legal Division, and they looked into it. We all assumed this had been corrected a few years ago. What we have in statute essentially says receipts may neither have more than the last five digits or the expiration date printed. There are people not in compliance with statute because you would have one or the other. The example you see has both the full credit card number as well as the expiration number.

This is frightening on many levels. As a consumer, I might take the receipt from having gone to dinner and toss it in a trash can, not realizing it had all of that personal identification information. What I found as troubling was a business had access to that information on multiple individuals.

This bill would prohibit the printing of the expiration date and any more than the last five digits of the account number of the card on the receipt retained by either the customer or the merchant.

The bill 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 this section, must be recovered in a civil action brought by the Attorney General or any district attorney. The funds collected would be paid to the State Treasurer for credit to the State General Fund. And any person who violates any order of injunction issued would be guilty of a gross misdemeanor.

The bill was amended in the Senate to address the issue of vendors who lease or sell these machines. Restaurants get machines, they are leased, and they do not understand the technicalities. This addresses the issue of vendors who sell or lease the machines that electronically print receipts. Section 1 of the bill prohibits a manufacturer or supplier from providing, selling or leasing a cash register or other device that does not allow the person to comply with the provisions of the bill. The amendment presented on the Assembly side came from the retail association.

Sections 3 and 4 reflect the need for varying effective dates. We have differences in which sections of the bill become effective. We would all agree this would be another step in limiting the opportunity for identity theft to take place. I urge your support.

CHAIR CARE:

Assemblywoman Parnell, in section 1, subsection 1 says, "a manufacturer." I look at my credit card receipts, and my recollection is there may be four or five digits. It would seem to me a legitimate manufacturer is not going to have anything but equipment that only prints four or five digits. How is it there are some out there that print more? Is this an older machine?

ASSEMBLYWOMAN PARNELL:

What is interesting is the realization we had received a receipt with all of this information. I have had the same thing happen approximately four or five additional times at different restaurants. This is not a single issue. They are most likely mom-and-pop kind of places, and I think the retail association will address this more.

They have been leased or supplied a machine that does not comply with statute, which is why it was important to capture the population. It has been allowed to continue. I could tell you right now of four local small restaurants in Carson City that have this practice. If you go there today, you would have all of that information either on both copies or one of the two copies of your receipt.

CHAIR CARE:

In section 1, subsection 3, it is a gross misdemeanor for violation of an order or injunction as opposed to contempt. Do you have a preference that it be a crime to violate an order or an injunction?

ASSEMBLYWOMAN PARNELL:

We discussed this a lot on the Assembly side. The important part of this is we have to be firm. We cannot say, we are going to fine you \$100 and if you continue to violate the provisions of the law, nothing is going to happen. We felt we needed the strengthening if you continue to violate statute.

CHAIR CARE:

In section 2, "except as otherwise provided in this section, if a person" Could that be a clerk at the cash register, the business itself or both the business and the employee?

ASSEMBLYWOMAN PARNELL:

The Retail Association might be the best one to answer that.

CHAIR CARE:

Section 2 says, except as otherwise provided in this section, "if a person accepts credit cards ... the person shall not" Are we talking about a person if the employer is liable for the conduct of the employee?

ASSEMBLYWOMAN PARNELL:

If you look at section 2, subsection 3, page 3, line 20, it says, "A person who violates any provision" This would be good to clarify because we are thinking business and not the person who is actually in charge of printing the receipt at that particular time.

CHAIR CARE:

Okay, we may want to work on this.

Senate Committee on Judiciary
April 28, 2009
Page 11

ASSEMBLYWOMAN PARNELL:

I would be happy to work with you.

SENATOR WIENER:

That provision you are talking about was my bill. This was the first one I did in identity theft. As you notice, the language we struck on page 3, section 2, subsection 3, starting with line 15, I wanted it to be effective as soon as possible. No more than five digits could be included. The later date was to accommodate the concerns of small retailers in particular. We are working with the retail community in mind to come into compliance

ASSEMBLYWOMAN PARNELL:

It was shocking when we realized you had done the work in 2003 and given the time until January 1, 2008. When I first brought it to the attention of Legal, they said that all became effective January 1, 2008, and such receipts should not happen. Here I have the receipts. Now we need to figure out what to do to make sure this does cease.

SENATOR WIENER:

The request to extend the effective date did not involve a restaurant; it was a small retailer. The time line was in the transition for small retailers that needed to upgrade equipment, not restaurants but small retailers. We do not know that retail is not complying, but you caught it on the restaurant side. Everybody needs to comply.

LEAH TAUCHEN (Retail Association of Nevada):

We are here in support of A.B. 389. Our members are committed to protecting their customers' personal identity information. The sample receipts you saw do not come from our members. In polling our members, we found they are in compliance with statute, and many are already doing what Assemblywoman Parnell is proposing.

To address your question, Mr. Chair, the larger businesses typically have control over their equipment and software that program the receipts printed electronically. It is the smaller businesses that fall out of compliance because they will sometimes opt for lower-priced, out-of-date equipment. This will help bring them all into compliance regardless of their size.

CHAIR CARE:

Mr. Wilkinson, because of the clarification we need for section 2, subsection 1, we will put this on the next available work session. The intent is the business is the one not to accept credit cards. The employee may not have any idea; you have to wonder what duty the employee has to be familiar with the law. I see no opposition to the bill.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):

We support A.B. 389. The irony of [Exhibit G](#) is Assemblywoman Parnell was given the merchant's copy. We do not know what the customer's copy said relative to that one strip. As you work on the definition as to who is liable, person or business, it does need to refer to the enterprise because physicians' offices accept these. Often you do not get this kind of receipt. If they are Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant, then you probably do. A medical invoice from the doctor's office, veterinarian or similar office doing a credit card transaction has opportunities to violate this law. This needs to be fixed.

CHAIR CARE:

I will close the hearing on A.B. 389 and open the hearing on A.B. 280. I have been working with Assemblyman Tick Segerblom on this bill. Assemblyman Segerblom handled it on the Assembly side. University of Nevada, Las Vegas, Law Professor Kay Kindred is in Las Vegas. She is a Uniform Law Commissioner and has been active with the Uniform Interstate Family Support Act (UIFSA).

ASSEMBLY BILL 280: Enacts revisions to the Uniform Interstate Family Support Act. (BDR 11-571)

Ms. Kindred, I do have your statement dated March 24 ([Exhibit H](#)).

CHAIR CARE:

The UIFSA has been around for awhile. Approximately 28 states have the 1998 revision. There was an amendment in 2001, and the other 22 states have that. I would direct your attention to section 91, the last section of the bill. "This act becomes effective on the date that the provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance is ratified by the President and the United States deposits

its instrument of ratification.” That is a little unusual for a bill, but there is a reason for that, and I will leave it to the proponents to explain.

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):

Mr. Chair, I brought this bill on your behalf. Professor Kindred is an expert, so I will go back to my Committee.

CHAIR CARE:

Ms. Kindred, the Committee has copies of your March 24 statement, [Exhibit H](#), that was delivered to the Assembly.

KAY KINDRED (Law Professor, William S. Boyd School of Law, University of Nevada, Las Vegas):

I would like to walk through that summary and read from my testimony, [Exhibit H](#).

SENATOR WASHINGTON:

I profess to you I do not know anything about UIFSA. Can you explain if this bill is enacted, if one is married to a foreigner, they have children, separate or divorce, this act would allow the federal, state or foreign country to collect on child or spousal support?

PROFESSOR KINDRED:

It is serving the same purpose with respect to foreign countries as our domestic version of UIFSA. The existing version Nevada and other states have adopted allows for enforcement of support orders in other states. When you have an order issued on the domestic side by one state, that order can be enforced in another state on its terms. The same thing would be happening for foreign orders. A party who has been issued a foreign order would be able to enforce the order in the United States or an order issued in the United States would be enforced in other foreign countries that were also parties to the Convention. It eases that process and makes enforcement more consistent and effective across international boundaries.

SENATOR WASHINGTON:

I understand. With our child support enforcement, wages are deducted from one's paycheck automatically. Would that same procedure be in place?

PROFESSOR KINDRED:

There are a number of enforcement mechanisms in place, separate and apart from this particular UIFSA, to the extent that in foreign countries, they would continue to apply. I mentioned the Title IV-D systems earlier. That is the broader system of enforcement. The mechanisms for enforcement that exist within countries have commonality with respect to the Convention. Those kinds of enforcement mechanisms will still be in place and will apply to foreign orders. Specifically, whether that means garnishment or withholding of wages in all instances, that will depend on the enforcement mechanisms in the country.

SENATOR WASHINGTON:

Does this Uniform Act supersede state and federal law?

PROFESSOR KINDRED:

This Uniform Act is already in place. The Uniform Interstate Family Support Act is in place in all 50 states. It is the law that controls domestic interjurisdictional disputes. All this amendment does is add provisions that allow the same kind of enforcement or management of foreign interjurisdictional disputes.

CHAIR CARE:

There is no opposition to the bill.

SENATOR WIENER MOVED TO DO PASS A.B. 280.

SENATOR PARKS SECONDED THE MOTION.

Senate Committee on Judiciary
April 28, 2009
Page 15

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CARE:
The Committee is adjourned at 9:36 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____