MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 7, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:38 a.m. on Thursday, May 7, 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

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph M. Hogan, Assembly District No. 10
Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1
Assemblyman Mark A. Manendo, Assembly District No. 18
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Marion Ainsworth
Jon Sasser, Washoe Legal Services
Rocky Finseth, Nevada Association of Realtors
Randy Soltero, Sheet Metal Workers Union Local 88; Sheet Metal Workers Union Local 26
Jan Gilbert, Progressive Leadership Alliance of Nevada
Julianna Ormsby, Nevada Women's Lobby
Ernest K. Nielsen, Washoe County Senior Law Project
Shaun Griffin, Executive Director, Community Chest
Gail Tuzzolo, Nevada State AFL-CIO
Rhea Gertken, Nevada Legal Services, Inc.
Robert Correa, Southern Nevada Apartment Association
Susan Fisher, Northern Nevada Motel Association; Southern Nevada Multi-Housing Association
Roberta Ross, Northern Nevada Motel Association
Linda Howe, Manager, The Ross Manor
Gregory Peek, Northern Nevada Apartment Association
Dan Wulz, Legal Aid Center of Southern Nevada, Inc.
Bill Uffelman, Nevada Bankers Association
Stefanie Ebbens, Legal Aid Center of Southern Nevada, Inc.
Dan Musgrove, Sure Deposit
Dan Rudd, Sure Deposit
Ryan J. Works, Sure Deposit
Kim Robinson, Nevada Legal Services
George Ross, Bank of America
John Sande IV, Nevada Collectors Association
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce
Robin Keith, President, Nevada Rural Hospital Partners
Brett Kandt, Office of the Attorney General

CHAIR CARE:
I will open the hearing on Assembly Bill (A.B.) 251.

ASSEMBLY BILL 251 (2nd Reprint): Revises provisions relating to common-interest communities. (BDR 10-555)

ASSEMBLYMAN MARK A. MANENDO (Assembly District No. 18):
I bring forth A.B. 251. There are two parts to the bill. I will present the first part, and Marion Ainsworth will present the second part.

Several homeowners' associations (HOA) described a situation where they have an equal number of seats and candidates for their executive board. They said they did not need to have an election, which would save money. They are experiencing financial shortfalls right now with the foreclosures. So, the intent of the first part of A.B. 251 is to say if there are an equal number of candidates running and open seats, the HOA would not have to send out the ballots.

In full disclosure, I live in an HOA, but I do not serve on the board. Our revenue has taken a hit, and we are trying to find ways to cut without increasing dues.

You may have received an e-mail from Michael Buckley on Monday (Exhibit C). His e-mail stated the common-interest communities and condominium hotels support A.B. 251. He went on to say that page 4, lines 30 through 32 of the bill omit a time frame within which referenced disclosures must be distributed if the ballots are not mailed. He said the consensus was that distribution should be in the next normal mailing by the association, Exhibit C. If the Committee wants to consider it, that is fine with me.

Mr. Buckley said if we do not place the amendment, the Commission would be left with determining when such a mailing would be reasonably sent out under the circumstances. This would be a quick fix to say it would be distributed in the next mailing. This would be adequate.

CHAIR CARE:
We will take Mr. Buckley's e-mail as a proposed amendment from the sponsor.

ASSEMBLYMAN MANENDO:
That is the intent of A.B. 251. Page 6 of the bill is the area where Marion Ainsworth will testify.

CHAIR CARE:
That is section 2 of the bill. In your discussions with board members or members of HOAs in your District, is there any particular reason for the lack of candidates?

ASSEMBLYMAN MANENDO:
With public offices, it is hard to find someone willing to do the job. The board members are not paid, and they receive a lot of e-mails and telephone calls. Unfortunately, in some cases, they are harassed. I know one particular HOA who begged people to run, and they either have empty seats or the board members are convinced to run again because they cannot find new candidates. This may not happen often, but if it does, there would be a statute to protect them, and they could save a little money.

CHAIR CARE:
I was unaware until this Session when this Committee got jurisdiction over chapter 116 of the *Nevada Revised Statutes* (NRS) that board members can be sued for punitive damages. That may translate into a reluctance to hold office as a board member because punitive damages are not covered by insurance.

MARION AINSWORTH:
I am an office manager for Desert Inn Mobile Estates III. I am here for A.B. 251. The community association manager with several years of experience will hardly ever forget how to manage community associations. Chapter 116 of NRS and chapter 116 of the *Nevada Administrative Code* (NAC) require up to 60 hours and at least 20 hours instruction relating to federal, state and local law to be completed by individuals seeking a community association manager license. These requirements familiarize the individual applicant with the special requirements in Nevada and teach or refresh students with good management practices. Nevada Administrative Code 116.065 establishes the levels a community manager may seek. Nevada Administrative Code 116.175 establishes the requirement that any non-Nevada community association manager must work under a supervisor community manager for two years and further requires prior Nevada licensees to do the same. Community association managers with several years of experience who wish to reenter community association management should not be required to spend two years working under a supervising manager.

If these training obligations have been met many times in prior service as a community association manager in Nevada or another state, the applicant should only be required to prove their experience and pass a state examination to ensure the applicant has the understanding and knowledge required of a community association manager. We need community association managers now. We need to make it more reasonable for applicants to renew their licenses

without working for two years under a supervisor. Doctors, lawyers and certified public accountants only need to take refresher courses and pass the examination to be eligible to work in their field. Why should prior community association managers have to work two years with supervision?

I am requesting NAC 116.175 be amended to allow for this provision.

CHAIR CARE:
Does it ever happen that someone holding a certificate has the certificate revoked?

MS. AINSWORTH:
I do not know the answer to that question.

CHAIR CARE:
There is no opposition to this bill. It came out of the Assembly on a vote of 41 to 0. We have a proposed amendment as a concept contained in the e-mail from Mr. Buckley, Exhibit C. The consensus was that distribution should be in the next normal mailing for the association. This is in section 1, subsection 8 of the bill.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 251 WITH THE CONCEPTUAL AMENDMENT PROVIDED BY MR. BUCKLEY.
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> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
I will open the hearing on A.B. 313.

ASSEMBLY BILL 313 (1st Reprint): Makes various changes relating to tenants of property. (BDR 10-912)

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):
I am the sponsor of A.B. 313, which prohibits excessive late fees in leases. The bill also contains two provisions of A.B. 189, which were amended into this bill.

ASSEMBLY BILL 189 (1st Reprint): Revises provisions governing the eviction of certain tenants from property. (BDR 3-655)

Assemblyman Joseph M. Hogan, who sponsored A.B. 189, will speak to those provisions. The combined bills represent a compromise between tenant advocates and the Nevada Association of Realtors while the bills were on the Assembly Floor.

During my private life, I work at a nonprofit corporation, which provides services to union members experiencing temporary financial setbacks. We help these individuals raise late rent to avoid eviction. Following the last Session, it came to our attention that a number of the late fees our clients were asked to pay seemed outrageous.

To determine whether these were isolated incidents or constituted a pattern, we began to keep track of the lease provisions of all clients who came into our office. As you see from the Late Fee Database (Exhibit D), we first looked at the leases that came in between August 1 and September 5, 2007. Some leases charged a late fee ranging from $25 to $75 on Day 3. Others charged $25 to $100 when rent was five days late. Two leases charged $100 on Day 1 and another on Day 2. Most also had daily fees of $5 or $10 on top of the initial fee.

I asked Jon Sasser to see if the legal services programs were encountering the same problem. He reported they were seeing high late fees. I determined to seek a bill this Session to address the problem.

To expand the example, I have entered additional leases from 2007 and 2008 into our database, Exhibit D, for a total of 79 excessive lease provisions. They range from a low of $15 to a high of $125 on Day 3. The late fee ranged from $20 to $99 for those not charging a fee until the rent was five days late. Many landlords also charge a daily fee instead of or in addition to the fee after three to five days. These daily fees range from $5 to $25 per day.

It was common practice to see leases contain provisions where the clients were responsible for filing fees, legal fees and court costs if evictions were pursued. I entered those with a specific dollar amount into Exhibit D. For example, a client had a $275 legal fee provision, and another had a $150 court fee.

I asked the Legislative Counsel Bureau to research whether there were laws limiting late fees in other states. The laws in at least 11 states regulate the timing of late fees, the maximum amount or both. This bill was modeled after North Carolina, whose provisions were the most comprehensive.

Ironically, after all the advanced preparation on this bill, one of the more startling examples of excessive late fees occurred just prior to opening day. When I moved into my Carson City apartment at the start of this Session, the standard form lease I signed requires a late fee of $160 if the rent is three days late (Exhibit E). Like most tenants, I did not notice this provision until I moved in.

The late fees allowed in the first reprint are more generous than in the original bill. The compromise reached is reasonable, and I urge your support.

ASSEMBLYMAN JOSEPH M. HOGAN (Assembly District No. 10):
I was pleased to introduce A.B. 189, which sought to correct an imbalance in power between landlords and tenants regarding evictions. As Assemblywoman Pierce explained, sections 2 through 4 of A.B. 313 originated in A.B. 189, which passed out of Assembly Judiciary but died on the Chief Clerk's desk.

We are asking that A.B. 189, section 2 be deleted by amendment. The eviction process in Nevada, from the day a landlord delivers a notice asking a tenant to leave to the day a sheriff or constable puts a tenant out on the street, is the fastest in the Western United States (Exhibit F). Persons and families evicted in Nevada have little time to arrange for shelter and take care of their possessions. This bill would amend that to provide more time for people to either raise the rent money or make arrangements to move their family and avoid homelessness.

If a tenant falls behind in rent for one day, a landlord can give a five-day notice to pay or quit. If the rent is not paid by noon of the fifth day following service, the landlord can apply for an order from the court evicting the tenant within 24 hours. The process takes so little time in Nevada because of our summary eviction procedure. Instead of a normal lawsuit where the plaintiff files a complaint, which is followed by an answer, in the summary eviction procedure, the first paper is an affidavit filed by a tenant if there is a contest. If the tenant does not file that affidavit, the only paper is the landlord's request for the order of removal in 24 hours.

As introduced, A.B. 189 doubled all the notice times in Nevada statutes. It also provided a more humane process at the end requiring a constable or sheriff to give the tenant a five-day notice before actually evicting the family. Two provisions of A.B. 189 remain in A.B. 313. Section 3 of A.B. 313 lengthens the notice required where there is a breach of lease from a five-day to a seven-day notice. Section 4 of the bill expands the time within which the tenant must move if he loses the eviction issue from within 24 hours to 2 days. While these provisions are less than what is needed, they do move in the direction of restoring balance and fairness in this time of widespread unemployment.

JON SASSER (Washoe Legal Services):
I have provided you with written testimony (Exhibit G), and I will hit the highlights. I have prepared another document (Exhibit H) as an outline, and I will talk about the heart of the bill. Two parts of A.B. 189 remain in the bill. First, when you give someone a notice for breach of lease, the law provides a five-day notice and three days to cure the breach.

CHAIR CARE:
That is for nonpayment?

MR. SASSER:
No. The remaining portions of A.B. 189 in A.B. 313 have nothing to do with nonpayment of rent notices. The only notice changed would be for breach of lease, not the more serious problems you might have with someone carrying on an illegal activity or destroying the property. Nonpayment of rent notices would remain as they are because there was an error in A.B. 313 that resulted in the proposed amendment removing section 2 of the bill (Exhibit I). That amendment increases nonpayment of rent notices from five days to seven days. If section 2

comes out, the five-day notice would remain intact. We are not touching eviction notices for nonpayment of rent.

We request that breach of lease be increased from five days with three days to cure to seven days with five days to cure. New Mexico has 7 days to cure; Washington and Arizona have 10 days; Oregon has 14 days with 16 additional days to move. In the remainder of the Country, notices range from 3 days in Colorado to as high as 30 days in Washington, D.C., Maryland, Michigan and Mississippi. We are at the low end right now. We would move two days further to cure the breach of lease problem.

If you lose an eviction because you do not respond to the notice resulting in a default or you contest the eviction and have a court hearing, the statute permits an order of removal to be delivered to the sheriff or constable putting you out within 24 hours. The original A.B. 189 would have changed that to five days. Assembly Bill 313 changes it to two days. We are adding one day on post eviction. The 24 hours in Nevada is the shortest process in the West, Exhibit F. If we have two days, we would still be tied for the shortest process in the West with Colorado, Exhibit F. Other states would allow three to five days.

The extra day gives tenants time to get their property out and off the premises. That is an advantage to the landlord because otherwise the landlord would have to store the property, charge the tenant a daily storage fee and sell it at the end of the 30 days if the tenant has not paid the daily storage fee. The landlord avoids expense and hassle if the property is removed. It is an advantage to the tenant to have their property with them when they move to another place.

An argument against the extra day might be that the tenants would destroy the property, taking out their anger and vengeance on the landlord. That occasionally happens, but an implication that all tenants are bad actors is wrong.

Next, we address the issue of late fees. In my written testimony, I go through other tracking of late fees done by legal services programs, Exhibit G, pages 6 through 9. The original bill called for a late fee of 5 percent total, with 2 percent at Day 5 and an extra 3 percent at Day 10. That is changed in the compromise. Now, it would be a total of 7 percent—3 percent if three days late and an additional 4 percent if seven days late, Exhibit H. On weekly tenancy, we would allow 7 percent on Day 1, Exhibit H.

When both these bills were on the Assembly Floor, the Chairs of Judiciary and Commerce and Labor called in representatives of the Realtors Association and tenants. They asked if the differences could be resolved so they could send a bill to the Senate everyone agreed with. We worked this out with the Realtors. The other party was not allowed by their client to participate. It is my understanding they will oppose the bill today.

There are bad landlords and good ones. There are bad tenants and good ones. Many tenants are transient, and many stay for years. Some landlords have family-owned businesses and are good members of their community. Others are large corporations who have harsh policies and do not talk to the tenants before they take action. I ask you to look at the process regarding where we stand in the West and decide what you believe is fair. The compromise reached by the Realtors and tenants is one I hope you will support.

CHAIR CARE:
Are the parties free to negotiate their lease terms?

MR. SASSER:
Yes, they are. Under Nevada case law, late fees are generally treated as liquidated damages claims. A court would look at whether they are so severe as to be void as a penalty. They could be stricken down in a court case if they seem to be extreme or excessive. This is an attempt to define what is reasonable, extreme or excessive in statute. If people like the place, and the rent seems fine, they do not dig much deeper. The late fee language is usually buried in the fine print. Very few people bargain over late fees.

CHAIR CARE:
Is there case law on the issue regarding what is reasonable or what threshold the court might consider to be unreasonable?

MR. SASSER:
I am not aware of any case law on late fees in leases. I know of one case about late fees in general in contracts, but it was not a lease.

CHAIR CARE:
Section 1, subsection 5 of the bill says, “If a late fee is imposed under this section, a landlord may only impose the late fee once for each late or partial payment.” In other words, it does not matter what the rate is. If someone is

evicted and the premises remain empty for three months, how do the landlords calculate that—10 percent three times or is it compounded?

MR. SASSER:
Some of the practitioners in the south would probably speak better to that. I have not seen that personally. This language was lifted out of a model statute from North Carolina. It clarifies that you cannot pile on and charge late fees on top of late fees. There would be one late fee for each late payment. It is a common practice to say there is a large late fee on Day 3 or 5 and an extra $5, $10 or $25 per day for every day after that.

CHAIR CARE:
It seems that a landlord would want a paying tenant and would be willing to work with a tenant who has missed the rent unless this is used as an excuse to get the tenant out. We had the bill in 2001 including certain provisions for those aged 60 and over exempting them from some of this.

MR. SASSER:
There are two bills related to those aged 60 and over. One included the ability to break a lease if the tenant needed to go into a nursing home. The other gave seniors extra time to leave under certain conditions.

In speaking with Mr. Finseth, the industry practice of the good guys gives a five-day grace period and charges approximately 7 percent on Day 5. Our discussion was, if the good guys are already giving a grace period, why not put that grace period into statute. Then, everyone would have to follow the industry practice of the good guys. Some landlords can work one-to-one with tenants. There are large corporate landlords in Las Vegas who have black and white rules the manager enforces.

ROCKY FINSETH (Nevada Association of Realtors):
Assemblywoman Pierce, Assemblyman Hogan and Mr. Sasser have accurately reflected the conversations that have ensued. For the record, we want to clarify that with respect to section 1, the late fees that can be charged, the 3 percent and 4 percent, it has always been our viewpoint that that is a cumulative effect. So, on the seventh day, the total that can be charged is the 7 percent. Otherwise, we are in support.

RANDY SOLTERO (Sheet Metal Workers Union Local 88; Sheet Metal Workers Union Local 26):
We support this bill. We have people being laid off. This bill would help many people get by in these tough times.

JAN GILBERT (Progressive Leadership Alliance of Nevada):
We support this bill. Both sides have worked diligently to come to a compromise. We are concerned about single mothers and homelessness. One more day might make the difference for people. They might be able to make that rent. The extra day could make the difference between homelessness or staying in their home.

JULIANNA ORMSBY (Nevada Women's Lobby):
We urge your support of this bill.

ERNEST K. NIELSEN (Washoe County Senior Law Project):
We support A.B. 313. We represent seniors. Many seniors who are either going through eviction or have already been evicted come to our office. One more day after a person has been evicted makes a big difference. When a person goes to court, they can be locked out of their home within the first 24 hours. The additional day enables organizations like ours to help get those people into transitional or emergency housing. The clients we serve are often vulnerable.

CHAIR CARE:
Mr. Hogan testified about an unlawful detainer action. When the five-day notice is posted, the tenant has "X" number of days to file an affidavit if he is going to contest the eviction. A hearing will be scheduled. That can prolong this period. The tenant can raise whatever defense he has for nonpayment of rent. Give us an idea in northern Nevada of the time it takes to get a hearing.

MR. NIELSEN:
A five-day nonpayment notice gets five judicial days plus three calendar days for mailing. By the end of that time period, the tenant either files an affidavit or does not. If he does not, the landlord can seek a nonhearing-based eviction order from the court by filing an affidavit. That makes approximately ten days.

SENATOR WIENER:
How does this interact with the legislation passed regarding seniors?

MR. NIELSEN:
That is applied to a no-cause notice—eviction for no reason in Nevada, which is generally a 30-day notice. That additional 30 days is discretionary. The additional 30 days is tagged onto the 30-day notice, so it is essentially a 60-day notice. It is used in the no-cause eviction because there is no contest. The landlord just wants the tenant to leave, and it is their right. Sometimes, it is difficult to find appropriate housing for seniors to meet their needs. The additional 30 days is having the desired effect, and we are more able to find people housing during that 60-day period. It has no interaction with this. You still have to pay your rent.

The practice of late fees on top of late fees is frowned on in Reno Justice Court. Many times the judges will say late fees cannot be charged on top of late fees.

SHAUN GRIFFIN (Executive Director, Community Chest):
I testified in support of A.B. 189, and I am here in support of A.B. 313. I run a nonprofit, and I see the people after this process is over. I have seen these individuals for 20 years. The last image I saw before walking in here this morning was a woman who woke up next to her grocery cart two blocks from here. How would we feel if we were in this situation? It is our obligation to watch out for those with no voice in this process. We have the harshest tenant legislation in the West. One day will enable a person to avoid homelessness. That means the reduction of time and money and the dignity of a human life being restored.

GAIL TUZZOLO (Nevada State AFL-CIO):
We support this legislation. More and more of our members are being laid off. When people lose their jobs, their lives are turned upside down. This extra time and relief from the burdensome late fees are helpful to our members. I was asked to also put on the record that the Nevada American Federation of State, County and Municipal Employees support this bill.

RHEA GERTKEN (Nevada Legal Services, Inc.):
I am testifying in support of A.B. 313. We support the extension of time after a person receives an order for summary eviction. It will give a person more time to remove their property from the premises, which should make landlords happy because they would no longer have to store the property and pay costs for

moving the property. People want to be able to take their property with them when they leave.

You raised a question about the hearing process. In Reno with nonpayment of rent evictions, the Reno Justice Court has set hearings one day after a tenant files the affidavit to contest the eviction. Someone could be evicted within two days of filing the affidavit if they have not paid their rent. The process is longer in Clark County. The court will generally set a hearing after the landlord files his affidavit in support of the eviction. If a tenant contests the eviction and requests a hearing in court, he wants to stay in the property. If the judge evicts him on that hearing day, he only has 24 hours to vacate unless the judge gives him more time to move his property from the unit.

We support the compromise regarding the late fee provisions of A.B. 313. We generally represent disabled people and single mothers with small children living in subsidized apartment complexes. In our subsidized tenancies, most of our tenants pay a portion of their income as rent. It is usually 30 percent. We have seen landlords charging upwards of $900 in late fees, when our clients are only paying $75 as their rental portion. The housing authority has already paid the rent. In most cases, they do pay on time. The landlords enter into contracts with the housing authority to receive those payments. We have tenants who pay $33, and landlords are charging $815. This is part of my written testimony (Exhibit J, page 2). We have seen landlords charging large sums in cases where they have already received a big portion of the rent. We support a limit on the ability of landlords to charge excessive late fees and daily fees on top of that.

It would be more beneficial for landlords to keep a tenant in a property continuing to pay the rent. We have landlords who continue to charge the daily fees well into the next months, even if the tenant is trying to pay the rent on time. If the tenants must continue paying the excessive late fees, they will have more difficulty paying their rent on time.

CHAIR CARE:
Section 5 of the bill states section 1 applies only to a rental agreement entered on or after July 1. Assuming this bill becomes law, would the provisions of section 1 apply to renewals or modifications of current leases after July 1? We should pose that question for purposes of legislative history and intent.

MR. SASSER:
Part of the compromise with the Realtors was to make sure we covered contracts going forward. A renewal or modification is a new contract and would be covered by that language. If that is not broad enough, I believe the Realtors would support tweaking it slightly.

SENATOR WIENER:
Regarding subsidized housing where the housing authority pays a substantial portion of the rent, does it have liability for these excessive late fees?

MS. GERTKEN:
The housing authority has liability for any late payments they make. If a landlord wants to challenge the housing authority for late rent, they can do so. That is included in the housing assistance contract the landlord enters into with the housing authority. The housing authority has no obligation for the tenant's portion of the rent, and the tenant has no obligation for the housing authority's portion. The tenant is responsible for his payment and any late fee he has agreed to pay depending on his portion of the late payment.

SENATOR WIENER:
The contract for the housing unit has two people with obligations?

MS. GERTKEN:
Yes. There are actually two contracts involved in subsidized housing. There is a contract between the housing authority and the landlord. This primarily relates to 42 USC chapter 8 tenant-based Housing Choice Voucher Program. The landlord enters into a separate contract with the housing authority. The tenant is a beneficiary of that contract. That contract is separate from the lease, which the tenant then enters into with the landlord. The housing authority is not a party but reviews the lease, and it has to be approved. There are two separate contracts that interact in a subsidized chapter 8 tenancy.

SENATOR WIENER:
Have you dealt with any circumstances where the housing authority has been late with its portion of the rent?

MS. GERTKEN:
Yes, we have. There are different circumstances when a housing authority might be late with its portion of the rent. It is a government agency that has a

lot of paperwork to get through. Sometimes, the initial payments can be late. If a tenant, for some reason, is terminated from the program but reinstated, it might take time for the housing authority to reissue those payments. After the initial payment, it is rare for the housing authority to pay late if it is an established payment.

SENATOR WIENER:
When the housing authority is late, have you found the landlords to be cooperative?

MS. GERTKEN:
We have seen landlords who have been understanding. If they have a good relationship with their tenant, they know it will be cured. We have seen landlords who have been willing to wait for the housing authority's payment and expect the tenant to continue paying his portion on time. We have also seen the exact opposite where, once the landlord does not receive payment from the housing authority, he issues an eviction notice to the tenant immediately. Sometimes, they charge the tenant for the late fee because the housing authority's portion has not been paid. We are usually able to help them resolve the problem. Some landlords are not willing to work with the tenants. They think the tenant is obligated to pay the late fee on behalf of the housing authority. They also seek the tenant's eviction because of rent the housing authority has not paid.

ROBERT CORREA (Southern Nevada Apartment Association):
We have heard several extremes of late fees—from $20 to just recently of $900 on a rent of $75. The apartment industry in Las Vegas and nationwide is having a hard time. Our average occupancies in 2006 were 95 percent. Now, it is 89 percent in Las Vegas. Revenues are down 6 percent to 10 percent. Apartment businesses are starting to fail and foreclose.

The numbers need to be decided, but they need to be fair on both sides. One of the primary reasons for the late fee is to encourage people to pay on time. It should be a significant number to serve its purpose. A 2-percent late fee on rent of $1,000 would be $20, which is not significant enough to make a difference. A late fee of $160 might be 16 percent on $1,000 rent, which is excessive. The 7 percent to 10 percent makes more sense as an incentive to pay on time. Please make sure, when you do decide, it serves the purpose of the definition of a late fee.

Lease or rent contracts disclose what the late fee would be if rent is paid late. Hopefully, people read that. In our industry, we only make money if people are living in the apartments, paying their rent on time and not being evicted. We do work with people because of the hard times. An occupied apartment where someone can pay and get through a hard time makes sense to us financially, morally and ethically. However, we cannot do it for the same person every month. In working with people, housing laws require us to be consistent with everyone.

If a tenant is given a no-cause, 30-day notice, there is something bad going on. They are either destroying the property or possibly disturbing their neighbors. They know they are going to leave, so their behavior gets worse. I encourage we stay with the 30-day notice.

CHAIR CARE:
I ask the opponents of the bill to confine themselves to sections 1, 3 and 4. Section 1 of the bill relates to the late fees. Sections 3 and 4 relate to the time contemplated in the first reprint of the bill. I have a proposed amendment that does not seem to read off the first reprint (Exhibit K). Am I wrong on that?

SUSAN FISHER (Northern Nevada Motel Association; Southern Nevada Multi-Housing Association):
No, you are not. The Northern Nevada Motel Association represents over 6,500 individual units. In Southern Nevada, there are just under 150,000 individual units. Even though we have presented an amendment, we do oppose A.B. 313 in its entirety. If you process this bill, we ask you to consider the amendment we presented, Exhibit K.

Your Committee Counsel pointed out that we put a redundancy in section 1, line 3 of our amendment, Exhibit K, where we included the language "entered into after the effective date of this act." We do not need that language. We are asking that you consider, for month-to-month, moving it to 7 percent and for week-to-week contracts to 15 percent, not to exceed 7 percent per day. You could charge 7 percent, 7 percent and 1 percent up to 15 percent, or 5 percent, 5 percent and 5 percent up to 15 percent. We are asking for this because we need a hammer and the incentive to get people to pay.

I would like to clarify for the record where Mr. Sasser presented the amendment to delete section 2, Exhibit I, it would not delete the entire section. It would

only delete the new language. Mr. Sasser assured me yesterday it only deletes the italicized language.

CHAIR CARE:
That is the way I read it. We are not disturbing existing law.

MS. FISHER:
When we are talking about a difference in eviction for nonpayment and eviction for breach of contract, if you do not pay your rent, you have breached the contract because it is in the contract. Landlords go over the contract section by section. In Exhibit E presented to you, the tenant had initialed on each place relating to the late fees.

CHAIR CARE:
Section 1, subsection 3 of the bill says:

> If the tenancy is from week to week and the rent is overdue, a landlord may charge a later fee not to exceed 7 percent of the weekly rent. As used in this subsection "tenancy" does not include occupancy of any transient lodging for less than 30 consecutive calendar days.

That is a public accommodation as opposed to an apartment. Do you have instances where motels fall under NRS 118A even though you are a public accommodation?

ROBERTA ROSS (Northern Nevada Motel Association):
Yes. People live in what you consider permanent residency. Even after the 30 days, they still pay week by week if that is what they choose. Some pay biweekly. If a landlord wanted, they could allow a person to pay one day at a time as long as there is not a break in service. That would put them back to a 30-day stay.

I am here representing weekly renters who live at motels. In Washoe County, there are over 6,000 units between 20-day extended stay motels to motels that can rent to permanent residency weeklies. In those motels, once a year the Reno Area Alliance for the Homeless has been doing a survey in the County on the homeless people. A report put together by the City of Reno two years ago is important. I am quoting from the document.

> Locally many families turn to weekly motels when they are unable to secure an apartment because of the cost of the rents and the deposits or their rental histories. In January of 2003, more than 4,000 people were living in weekly motels in the Reno-Sparks area, including 87 families. ... The social environment these families are exposed to, the weekly motels, frequently house significant criminal activity, including drug use, distribution and prostitution.

People who own the motels, including me, are automatically considered slum lords. The Reno Area Alliance for the Homeless talks about how bad the people are whom they see living in these units. Some people question what good the motels are. The motels house people for whom the cost of a regular apartment is too high. They cannot get the deposit money together, and they have bad rental histories. They have no credit history, are former prisoners and are bad people. Section 1, subsection 3 of A.B. 313 says, if the tenancy is from week to week and the rent is overdue, a landlord may charge a fee not to exceed 7 percent. The cost of many motel rooms is $100 per week. That means when we have a risky tenant, we can only charge them $7. That is not an incentive for these people. Many times, the people who live in these units do not understand how to control their own money. We oppose the bill entirely, and the 7 percent does not give these people incentive to pay their rent.

Section 1, subsection 3 of the bill, says, "... As used in this subsection, 'tenancy' does not include occupancy of any transient lodging for less than 30 consecutive calendar days." So, we also get put under Reno-Sparks Convention and Visitors Authority (RSCVA) rules. Under those stays, if they have not paid a month at a time or over a ten-day contract, they say this does not apply to them. If a person stays after those 30 days, they still pay week to week. That puts us into section 1, subsection 5, which says, "If a late fee is imposed under this section, a landlord may only impose the late fee once for each late or partial payment." If we can only impose a late fee once, on a weekly rental we can only impose $7. It does not give us the ability to charge a tenant $5 today and $5 tomorrow until he catches up with the rent.

Section 3 of the bill relates to the difference between the premises being used as a residence for seven days or five days. We do not like the extension of those days because it is not just one more day as Mr. Sasser presented.

LINDA HOWE (Manager, The Ross Manor):
I oppose A.B. 313. Proponents of this bill, especially sections 3 and 4, indicate they are gaining one more day. It is not one more day. I have provided a calendar exhibit (Exhibit L). The law provides that, if we do the eviction on one day, we wait five judicial days. That means Saturdays, Sundays and holidays are excluded. It turns into ten days before that eviction can take place. We file the same day, and by the time that eviction can be completed, it is 14 days. It is not seven days like the new law proposes.

The individual who is subject to the eviction for breach of contract has had several warnings, both written and verbal, prior to getting the eviction notice. The court requires us to provide all written and verbal testimonies to the court indicating what the problem is. Extending the time for service for another 7 days, which now means 14 days, works against landlords and other tenants in that community. The judge already has the discretion to allow the tenant to stay over ten days. They do not need these additional days.

SENATOR WASHINGTON:
If the judge already has discretion to allow the tenant to stay longer, based on Exhibit L, he could extend this 14 days beyond 14, 21 or 30 days.

MS. HOWE:
That is correct. If the tenant appeals and we go before the judge, the judge usually asks the landlord if he is willing to allow additional days. If the circumstances the tenant provides indicate to the judge he should be allowed more time, that can be done.

SENATOR WASHINGTON:
Do you know under what extenuating circumstances a judge would grant additional days?

CHAIR CARE:
A tenant who has received a five-day notice files in justice court. It is not unusual for a justice court judge to inquire about the facts and make a determination that is not necessarily found in law, but might be considered practical or reasonable under the circumstances. It can be on a case-by-case basis.

GREGORY PEEK (Northern Nevada Apartment Association):
We are opposed to the bill generally. The current situation is fair, but we are okay with the scenario Assemblywoman Pierce presented for late fees. On the issue of extending the time it takes to evict someone, what is one day? Bad situations make bad laws, and we cannot legislate for the extreme of either side. There are bad actors on both sides of this issue. Please keep the current law when it comes to the eviction process.

I will give you two examples. Last month, I had a single mother with two kids living next door to a sex offender. The roommate lied on the application. This caused us a lot of problems. It took us a long time to get that person out. Tell me that one day did not matter to that mother with two kids.

We had a tenant who was having people come to his apartment at all hours of the night. He was a drug dealer. We contacted the police, and they arrested him. He threatened my staff. We put restraining orders on him. I lost three tenants because of him, in addition to him.

Those are the extremes, and we have extremes on both sides. The current law is fair regarding the eviction process.

CHAIR CARE:
I will close the hearing on A.B. 313 and open the hearing on A.B. 472.

ASSEMBLY BILL 472 (1st Reprint): Revises provisions concerning the collection of credit card debt. (BDR 8-1137)

MR. NIELSEN:
This bill amends NRS 97A, which deals with credit card debt. It solves a significant issue that plagues our clients when they are sued and do not know what the debt is about because there is nothing other than the assignee's name as a plaintiff.

CHAIR CARE:
Does it say there is a debt owing to a plaintiff?

MR. NIELSEN:
Generally, there is no identification of the original issuer or original account number. This is what the bill is trying to correct. Without knowing who the

original issuer of the credit card was, we do not know who has purchased something. The issue is to enable the person being sued for a credit card debt to know which debt or what credit card company was the basis for the lawsuit. Purchasers buy these debts. This bill adds a requirement that when those purchasers sue the consumer, they must include the identification of the original issuer of that credit card in the complaint. They must include the last four digits of the account number and the assignees who have been involved with this chain of ownership and their account numbers, if they are different. Lastly, they must include the date of the default. This way, the consumer can understand what the debt is. This bill would resolve many issues we see.

CHAIR CARE:
This would become effective July 1. Are we stating that if this becomes law, it would apply only to those actions commenced after the effective date of the bill?

MR. NIELSEN:
That is correct.

DAN WULZ (Legal Aid Center of Southern Nevada, Inc.):
To clarify, a lot of credit card debt is bought by debt buyers, who will be the plaintiff named in the complaint. If they do not refer to the original issuer, the credit card number or date of default, the defendant does not know whether there are any defenses or affirmative defenses, such as the statute of limitations. We see this on a daily basis in our office. We have the contract for the new self-help center at the Regional Justice Center in Las Vegas, and we anticipate there will be dozens of people coming there with a similar problem. We support A.B. 472.

CHAIR CARE:
This bill passed out of the Assembly in first reprint on a vote of 42 to 0.

BILL UFFELMAN (Nevada Bankers Association):
Financial institutions collecting on their own debt are exempt from the bill because they make reference to the credit card and presume the consumer would recognize it, as opposed to the collection agency referring to its file number.

CHAIR CARE:
Hearing nothing further, I will entertain a motion.

SENATOR WIENER MOVED TO DO PASS A.B. 472.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the hearing on A.B. 491.

ASSEMBLY BILL 491 (1st Reprint): Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-948)

ASSEMBLYWOMAN MARILYN K. KIRKPATRICK (Assembly District No. 1):
The Assembly Committee on Government Affairs was asked to introduce this bill. There were some issues on how the constables' process was working. I have been working with the Legal Aid Center of Southern Nevada. I had a constituent who had her wages garnished and received the notice the day after. Therefore, she had no ability to pay her bills or buy groceries because the garnishment had taken effect.

STEFANIE EBBENS (Legal Aid Center of Southern Nevada, Inc.):
I will read from my written testimony (Exhibit M). We are not introducing anything but a different procedure that balances the needs of the debtors, courts, constables and creditor.

In section 6 of A.B. 491, we are asking to extend the time to 20 days for a judgment debtor to file his claim of exemption. We are also asking to extend the time for the creditors from five days to eight days to file their objection. All these compromises have been addressed in proposed Amendment 4791 (Exhibit N, original is on file in the Research Library).

CHAIR CARE:
When I first saw the bill, I was hoping there would not be any substantive changes to chapter 21 of NRS. Last Session, the homestead exemption was raised to $550,000.

I will close the hearing on A.B. 491 and open the hearing on A.B. 512.

ASSEMBLY BILL 512 (1st Reprint): Revises provisions relating to security deposits for the rental of real property. (BDR 10-921)

I will disclose that Mr. Musgrove is employee of my law firm. Mr. Works is an associate in my firm, and I will abstain on this bill.

DAN MUSGROVE (Sure Deposit):
Assembly Bill 512 changes NRS 118A to allow for surety bonds to be used between tenant and landlord. When the statute was originally crafted, it did not contemplate such a product. Sure Deposit is a nationwide company working its way through states to make sure best practices are followed.

DAN RUDD (Sure Deposit):
I am the Chief Operating Officer and cofounder of Sure Deposit, a New Jersey-based company. Our company has been offering bond alternatives to security deposits in 40 states, including Nevada, since 2000. We work with landlords so that, once they have approved a resident's application for a lease, they offer the resident a choice. They require a security deposit but also offer the Sure Deposit program so the tenant can enroll in a bond program. Instead of paying a security deposit, they pay a premium to a bonding company. The program is optional. We are the market leader, and as such, I have established some best practices. For example, our company insists that our clients make it an option to residents, not a mandatory condition of a lease. We insist our clients do not use the program as a way around the protections afforded residents in landlord-tenant laws.

We try to do nothing in our business to impede the rights of tenants or limit the responsibilities of landlords. This bill clarifies and codifies into law to make sure that we and other companies do not act in any manner detrimental to tenants in Nevada.

CHAIR CARE:
Is this mostly commercial property?

MR. RUDD:
These are all multifamily apartments, and they are all monthlies. Most of our clients in Nevada are large multifamily operators.

CHAIR CARE:
A potential tenant is told about the program by the landlord?

MR. RUDD:
Yes. For example, a tenant would be approved for the lease. We do not get in the way of the approval. Then, the landlord would advise the tenant they require a $1,000 security deposit; however, the tenant could enroll in this program as an alternative to the $1,000 security deposit. If a tenant enrolls, the premium is paid one time to the bonding company who covers the landlord. If the security deposit is $1,000, the premium would be $175.

SENATOR MCGINNESS:
Are other surety companies operating in the State?

MR. RUDD:
We have had competitors come and go. At the moment, one other company has filed with the Insurance Division to offer a competitive product.

SENATOR MCGINNESS:
Does this legislation give you any advantage over any other competitor?

MR. RUDD:
No. It takes our best business practice of not letting a landlord use our product to circumvent protections in the landlord-tenant law for tenants. It makes sure our competitors do the same.

SENATOR PARKS:
Is your rate set on the basis of the deposit you cover?

MR. RUDD:
Yes. The rate is based on the coverage amount and not on any other factor. Our rates are filed with the Insurance Division. Our minimum coverage is $500, and

the rate is $87.50 for $500 coverage. If it is a luxury apartment, and the security deposit is $2,000, the rate would be $350.

SENATOR PARKS:
Would you give security for pet deposits as well as other aspects of security?

MR. RUDD:
The main use of our product is the exact same things and nothing more or less than a security deposit would cover. We do have clients who use our product as an alternative to pet deposits.

SENATOR PARKS:
Is there a difference for someone who signs a lease and moves in for 2 years versus someone who signs a lease and moves in for 20 years?

MR. RUDD:
I can only speak for our product. We have one payment one time for the life of the residency. In a sense, it favors people with longer residencies.

RYAN J. WORKS (Sure Deposit):
Since October of last year, Mr. Sasser and the Legal Services people have worked extensively with us in crafting the best practices language. Any issues that previously existed have been vetted.

MR. SASSER:
Mr. Works is correct, we have been talking since October. Legal Services had mixed feelings about the proposal at first. On the positive side, instead of having to set aside $1,000 for a security deposit, they would only have to set aside $175 to get into the apartment. We had concerns about the way the bill was first drafted. With the program, the tenant would pay $87.50 toward his $500 security deposit, and they stand in the tenant's shoes if he damages the property. The tenant first has the opportunity to pay the damages, but if not, they stand in the tenant's shoes. We were concerned that the tenant have an opportunity to see an itemized list of any claimed damages and an opportunity to object to that list before someone paid money on the tenant's behalf and then came back on the tenant for the remaining balance. The tenant does have that opportunity the way the bill is written.

We were concerned that if money was paid on the tenant's behalf but nothing further happened, the tenant's credit would not be damaged because that debt would not be reported to credit agencies. Section 2, subsection 5 of the bill clarifies that before something could be reported to the credit agency, they would have to sue the tenant and get a judgment.

Those are the main protections we sought, and they are in the bill.

CHAIR CARE:
I will entertain a motion.

> SENATOR PARKS MOVED TO DO PASS A.B. 512.
>
> SENATOR COPENING SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATOR CARE ABSTAINED FROM THE VOTE.)

* * * * *

CHAIR CARE:
I will reopen the hearing on A.B. 491.

MR. NIELSEN:
We see many examples of how the process goes wrong when people want to claim their social security money as exempt from execution or garnishment. The centerpoint of this bill is the process described in NRS 21.112. There are so many parts to this once a person files his affidavit. If the creditor wants to challenge it, he has to file a motion for a hearing. If the creditor does not file that, the sheriff is supposed to release the property after a certain number of days. If the creditor does file the motion for hearing, the court is supposed to set the hearing in ten days. The problem is that sometimes things get mixed up. We have had cases that take 100 days because something goes wrong with each of those pieces.

One good example is sometimes a creditor might file an opposition to the affidavit, rather than a motion for hearing. As a result, the sheriff is afraid to release the property back to the debtor even though there was no motion for

hearing. Additionally, that document does not signal the court to set a hearing in ten days.

This bill cleans that up, and we hope it clarifies what people are supposed to do.

The bill enables people whose money is not in the account to be protected by the same process. The bill also says this process is not the exclusive remedy to claim an exemption. Washoe County has a lot of problems with this, and we urge the Committee's approval of this bill.

MR. SASSER:
My role was to act as a catalyst to get the parties together. Everyone is happy to live with this bill.

CHAIR CARE:
Section 2 of the bill, page 2, line 7 says "... reasonably identifiable as exempt ... ." How do you determine what is reasonably identifiable?

MR. NIELSEN:
Section 2, subsection 1, paragraphs (a), (b) and (c) list the reasonably identifiable sources the bank would observe. Mr. Uffelman will talk more specifically about that. There may be an issue still lingering regarding reasonably identifiable. The intent of the bill is to be specific and have a limit. Only those federal checks from the U.S. Treasury identified in the bill are those that would be reasonably identifiable.

CHAIR CARE:
Section 5 of the bill also has exempt proceeds received from a private disability insurance plan. Is that the case in other jurisdictions?

MS. EBBENS:
Reasonably identifiable relates to electronic or direct deposit only. It does not include the paper checks being deposited by the individual, but electronic deposits transferred automatically from the U.S. Treasury.

The bill is modeled after a measure in Arizona regarding proceeds from a private disability insurance plan. It addresses the situation when you are receiving disability insurance payments prior to being approved and receiving social

security disability. It relates to the period between your wages and your disability payments received for a debilitating injury.

CHAIR CARE:
Section 9, subsection 2 of the bill adds the language on page 19, lines 2 through 8. Years ago I had a judgment, and in attempting to execute on the judgment, I attempted to garnish a bank account. The interrogatories came back from the financial institution saying there was nothing in the account. I knew the person was employed, so I tried it again a couple of weeks later. I got enough money to satisfy the judgment. With that story in mind, I am looking at the new language in section 9.

MS. EBBENS:
We have addressed those concerns with the creditors regarding the limitation on the amount of levies allowed on a bank account specifically. The provision prohibits the current practice of a judgment debtor bringing his bank statements and financial picture to the creditor or the creditor's attorney to give them an indication of his financial picture.

We are stating that if there is a dollar of money available to be attached by the creditor in excess of those exempt limits, they can file as many writs of execution as it takes to satisfy that judgment. If within one calendar year, two submissions have been made and no property has been attached, the debtor can file for a hearing, and the issue can be addressed in court. There is a limitation that, if everything in the account is exempt, only two per calendar year can be filed. If there is $1 extra, they can file until that judgment is satisfied.

KIM ROBINSON (Nevada Legal Services):
We support this bill because it changes the myth some people have about exemptions when it comes to execution on their property. Our experience is with clients who have limited funds. Our clients are income eligible based on a 125-percent poverty level. By the time our clients come to our office, their funds have already been taken from their account without their prior knowledge. As a result, they are left without access to those funds for long periods of time. For example, a client came into our Reno office. She had a debt of $247. She had $150 in her bank account. A writ of execution was served on the bank but not on her until later. The bank levied on the account in the amount of $247. She did not have $247 in her account, and they charged her overdraft fees of

$37 per day in addition to the $75 bank levy fee. This resulted in bank overcharges of over $500 more than the original debt before the money was eventually returned. The bank charges were not forgiven.

While the money may be eventually returned through the affidavit process and filing for exemptions, the bank charges assessed against the client in the meantime are not forgiven or given back. This creates hardships for our limited-income clients and often puts them in the position of having to choose between putting food on the table or paying their rent.

Just last week, we had a client in the Reno office who had $700 in her bank account, which was a direct deposit of her social security. The $700 was taken from the account, and by the time the bank fees were assessed, less than $200 was returned to the client.

Sometimes the account is not just frozen by the bank, it is actually passed on to the creditor. When we go through a hearing and it is determined those funds are exempt, we have to try to get those funds back from the creditor. We had a case where the creditor was ordered by the court to return the funds by December 19, and the creditor failed to comply with that court order. The money was not returned until January 5.

This is an important bill. It is critical the exemptions this body has previously recognized have validity.

MR. UFFELMAN:
Page 2 of the mock-up, Exhibit N, lists 13 items and any others provided by federal law that are exempt. We are talking about electronic deposits of these funds. If there are no exempt funds, it kicks over to the $1,000.

GEORGE ROSS (Bank of America):
When Bank of America looked at the long list of items that could be exempt, it was concerned because many other states have a shorter list. This is a manual process, and Bank of America is concerned about the list because when funds come in electronically, they are not always easily identified. They are concerned they might miss one of these. Therefore, they would like not to be held liable if they miss one of these exempt accounts. Bank of America is providing a service they are legally required to provide. If someone misses the funds in an account, they would like to not be held legally liable, and the sole obligation and

responsibility for the financial institution would be to correct the execution of the writ going forward. I have a proposed amendment (Exhibit O). I have a second proposed amendment (Exhibit P) regarding unsworn declaration.

CHAIR CARE:
Has everyone seen both proposed amendments?

MR. ROSS:
Yes. Exhibit P simplifies matters. Nevada Revised Statute 53.045 allows unsworn declarations to be used for all matters in Nevada. We would like to clarify in case the court documents have not yet caught up with the law; we would like put a line into the law to say that when replying to a writ of execution or garnishment, a financial institution may use an unsworn declaration pursuant to NRS 53.045.

MR. UFFELMAN:
These are the exempt monies. It is in effect $1,000 of these federally statutorily exempt monies and the $1,000 wild card. We have not added anything to what was not already exempt. It is an effort to streamline the process so you are not taking away what you will end up having to give back.

SENATOR WIENER:
There were concerns about the electronic versus the paper deposits.

MR. UFFELMAN:
The paper deposit is just tracking. With electronic deposits, there is at least something that says U.S. Treasury or Department of the Army. It is something you can identify.

MR. ROSS:
My client tells me the electronic deposits are not all as clearly identified as Mr. Uffelman suggests. That is the reason for bringing the amendment.

JOHN SANDE IV (Nevada Collectors Association):
My client was concerned that we would affect commerce and the willingness of business to extend credit to consumers by overbroad language in this bill. We have been trying to tighten things up. We have come to a good spot.

In section 2, subsection 2 of the bill, we are taking the wild card exemption and making it self-effectuating so the bank does not garnish any of that money. The bill tries to accomplish that. However, we are still within the notice, and in the statute, it says a person is entitled to an exemption of public property not to exceed $1,000. We want to clarify in statute that $1,000 is being moved to the front end, and rather than a debtor claiming that exemption, we are automatically giving it to them. They cannot later come back and say they have another exemption for $1,000 for personal property. We want that on the record or include something in the statute to clarify that we are making that portion of the exemption self-effectuating.

CHAIR CARE:
If you are going to propose something, let everyone else see it.

TRAY ABNEY (Director, Government Relations, Reno-Sparks Chamber of Commerce):
For full disclosure, I was not involved in this on the Assembly side. I was made aware of this bill last month when a member contacted me about his concerns. The Chamber is always concerned about any bill that has a potential to make it more difficult for members to conduct business, including the collection agencies, or for members to receive the money they are owed. Current law and this bill do not just apply to large corporations. We are also talking about small guys and small creditors.

One of my members pointed out his concern about the $1,000 wild card exemption. This is already in state law. He is concerned someone could open a $1,000 bank account at Bank of America and open another one at Wells Fargo. He could have several bank accounts, all of which are exempt from judgment.

ROBIN KEITH (President, Nevada Rural Hospital Partners):
The hospitals are all struggling. We are not in the business of harassing people who cannot pay their bills. We do have a patient population who can pay their bills, but choose not to. I want to put us on record as being opposed to any legislation that impedes our ability to collect from people who do have an ability to pay.

CHAIR CARE:
I will close the hearing on A.B. 491. I will open the work session. We will address A.B. 46 (Exhibit Q, original is on file in the Research Library), page 2.

ASSEMBLY BILL 46 (1st Reprint): Makes various changes concerning the right of certain persons to purchase or possess a firearm. (BDR 14-271)

LINDA J. EISSMANN (Committee Policy Analyst):
Assembly Bill 46 concerns firearms for people who have pleaded guilty but mentally ill or acquitted by reason of insanity, but have a court order saying they are no longer. They have an ability under this bill to petition the court to possess a firearm. There was no opposition to the bill. The only questions that arose from the Committee concerned the requirement that a petitioner cannot file a petition until five years after the date of the order and may not petition for rehearing should their original petition be denied until two years after. The Committee expressed some interest in reducing those time frames. There was no specific amendment.

CHAIR CARE:
Let me read this into the record.

> A private record should not be turned over to federal administration. It is pledged to eliminate American gun rights. This bill would not provide the needed due process, and though amended from its original version, does not go far enough in ensuring that innocent law-abiding citizens do not become inadvertently entrapped into becoming felons.

SENATOR WASHINGTON:
My concern with the bill is the time limit, the five years.

MS. EISSMANN:
It is in section 7, page 7, line 31 of the bill. There is also the two-year limitation in section 7, page 8, line 30.

CHAIR CARE:
Most questions from the Committee members dealt with that petition scheme.

SENATOR WASHINGTON:
The bill is a good bill. I would like to reduce that time on the petition.

CHAIR CARE:
As I recall from testimony, there had to be some provision because of relief from disabilities.

MS. EISSMANN:
I received an e-mail from Brett Kandt indicating the Attorney General's Office was okay with reducing those amounts. The amounts are not set in the federal requirements. The Committee can change them if they wish.

SENATOR WASHINGTON:
I would prefer to cut down that five-year wait to maybe two or three years.

BRETT KANDT (Office of the Attorney General):
Just to confirm, those time frames are not established in federal law. Those are time frames you can establish as you see fit, both the five-year we proposed and then the two-year on the petition for rehearing, which can be reduced as you see appropriate.

> SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 46 WITH THE AMENDMENT TO REDUCE THE FIVE-YEAR PERIOD TO THREE YEARS IN SECTION 7, SUBSECTION 3.
>
> SENATOR COPENING SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
We will address A.B. 116, Exhibit Q, page 3.

ASSEMBLY BILL 116 (1st Reprint): Revises provisions concerning compensation for victims of crime. (BDR 16-1)

MS. EISSMANN:
This bill related to contributory conduct. There was no opposition to the bill per se, except there was debate about contributory conduct. You will notice my comment in Exhibit Q, page 3 regarding Mr. Nix. I did not receive an amendment from Mr. Nix. He objected to excluding all domestic violence crimes from contributory conduct considerations and suggested delegating discretion to the Board of Examiners on those and other policy matters concerning the Victims of Crime Program. Senator Washington suggested an amendment that would allow the compensation officer to consider the provocation, consent or

any other behavior of the victim. In speaking with legal counsel, the language in bold italics, Exhibit Q, page 3 is the language Mr. Wilkinson suggested would address Senator Washington's suggested amendment.

SENATOR WASHINGTON:
After conferring with Mr. Wilkinson, we came up with this simple amendment in section 2, subsection 2 of the bill that will leave some discretion with the officer.

> SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 116 ADOPTING THE AMENDMENT CONTAINED IN THE WORK SHEET.
>
> SENATOR McGINNESS SECONDED THE MOTION.

SENATOR WIENER:
When this was proposed during the hearing, based on the testimony, my understanding would be that even though the proposal and the amendment would create discretion, I do not understand how this would change the current practice because the hearing officer already has the ability to do this. That would bring us back to what we are already doing.

> THE MOTION FAILED. (SENATORS CARE, PARKS AND WIENER VOTED NO.)

* * * * *

CHAIR CARE:
I will entertain another motion.

> SENATOR WIENER MOVED TO DO PASS A.B. 116.
>
> SENATOR PARKS SECONDED THE MOTION.

SENATOR WASHINGTON:
I understand my colleagues' concern, but I have concern with the word "shall." We deal with the courts often, and many times we take away their discretion to determine the mitigating and other circumstances surrounding not only domestic

violence but other issues. When we mandate certain things, it is hard to retract it once it is placed into statute. I will vote against the motion.

THE MOTION FAILED. (SENATORS COPENING, McGINNESS AND WASHINGTON VOTED NO.)

* * * * *

CHAIR CARE:
We will put A.B. 204 and A.B. 233 on another work session.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

ASSEMBLY BILL 233 (1st Reprint): Makes various changes concerning scrap metal. (BDR 54-53)

CHAIR CARE:
There being nothing further to come before the Senate Committee on Judiciary, we are adjourned at 11:10 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: