

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

**Seventy-Sixth Session
March 7, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:36 p.m. on Monday, March 7, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Ira Hansen, Assembly District No. 32

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Patricia G. Barnes, Attorney, Reno, Nevada
Peggy Howell, Private Citizen, Las Vegas, Nevada
Ann McDermott, Chief Deputy Attorney General, Office of the Attorney General
Jan Gilbert, representing the Progressive Leadership Alliance of Nevada
Darliene Howell, Private Citizen, Las Vegas, Nevada
Samuel P. McMullen, representing the Las Vegas Chamber of Commerce
Robert A. Ostrovsky, representing the Nevada Resort Association
Tray Abney, representing the Reno Sparks Chamber of Commerce
Constance Brooks, Senior Management Analyst, Office of the County Manager, Clark County
David Fraser, representing the Nevada League of Cities and Municipalities
Nicole Rourke, Executive Director, Government Affairs, Clark County School District
Steve Walker, representing Lyon County, Douglas County, and Carson City
John Madole, representing the Nevada Chapter of the Associated General Contractors of America, Inc.
Fred Reeder, President, Reno-Tahoe Construction, Sparks, Nevada
Rebecca Gasca, representing the American Civil Liberties Union of Nevada
Shelley Chinchilla, Administrator, Nevada Equal Rights Commission
Dennis Perea, Deputy Director, Department of Employment, Training and Rehabilitation
Rocky Finseth, representing the Nevada Land Title Association
Sylvia Smith, President, Nevada Land Title Association
Bob Irwin, Owner, The Gun Store, Las Vegas, Nevada

Julie Butler, Records Bureau Manager, Nevada Department of Public Safety

Richard Brengman, Small Firearms Manufacturer, Gardnerville, Nevada

Chair Atkinson:

[The roll was taken, and a quorum was present.] We will open the hearing on Assembly Bill 90.

Assembly Bill 90: Makes various changes to provisions relating to employment practices. (BDR 53-277)

Assemblyman Tick Segerblom, Clark County District No. 9:

Assembly Bill 90 revises Nevada's antidiscrimination laws. It adds new types of discrimination to the law. It makes it unlawful to discriminate against an employee because of his or her physical appearance and makes bullying in the workplace unlawful. It creates technical changes to the law, which makes it workable. In its current format, it is impossible to use. I would like Patricia Barnes to give a presentation about workplace bullying, and then Peggy Howell in Las Vegas will testify about the personal appearance part of the bill.

Patricia G. Barnes, Attorney, Reno, Nevada:

I have legal experience in domestic violence and employment law. I have edited books on domestic violence and worked on class action cases. Last year, I began a legal blog about workplace abuse issues entitled "When the Abuser Goes to Work." Within a few months I had almost 2,000 hits on the blog. I became interested in workplace abuse when I arrived in Nevada in 2008 to work for an organization that advocates on behalf of domestic violence victims in the legal system. Much to my surprise, I thought there was a bullying culture in the organization. A coworker, a former victim of domestic violence, made a remark that angered the supervisor and for months was the target of a campaign that included criticism, public humiliation, isolation, and assignments with unrealistic deadlines. One day she came to work and found she had been moved out of her office of seven years, which had windows and a door, and into a glass cubical outside the elevator. She also had a new supervisor, who was the director of the department. The first thing the director did was give her an assignment on Friday that was due on Monday. She realized that there was no way she could do it even if she worked over the weekend. She began to cry and said she realized they were trying to fire her and she would rather quit than be fired. The director immediately took her resignation. The ironic part was the lack of consciousness about this type of management style. I wondered, if this were happening in this business, what was happening elsewhere? I started doing research on the problem.

I have submitted a PowerPoint ([Exhibit C](#)) on workplace bullying. The second slide states that this is a Nevada problem. The general duty clause of the Occupational Safety and Health Act requires each employer to furnish workers with employment and a place of employment that are free from "recognized hazards that are causing or are likely to cause death or serious physical harm to his employees" There is overwhelming research that workplace bullying can seriously affect both the emotional and physical health of the target. Stress on the job contributes to cardiovascular disease, muscular-skeletal disorders, and psychological disorders. The National Institute for Occupational Safety and Health says workplace bullying is a major occupational health concern. According to research in the *Journal of Occupational and Environmental Medicine*, health care expenditures are 50 percent higher for workers who report high levels of stress. How serious is workplace bullying? A new term has entered the American lexicon, "bullycide," referring to victims of bullying at schools and in the workplace who commit suicide. There was a case last year involving Kevin Morrissey, the managing editor of the *Virginia Quarterly Review* at the University of Virginia. He had called the human resources department and other university offices 17 times to complain about his boss. His coworkers called, and no one did anything. He shot and killed himself at the old school tower near campus last July.

This is a national problem. Workplace bullying is where domestic violence and sexual harassment were in the 1970s. It is a widespread problem known to cause serious harm to individuals, employees, and society. A worker who is a target of bullying has no legal recourse unless he falls under the status of state and federal discrimination statutes. Things are changing. In 2003, California became the first state to consider a workplace bullying bill. Since then, bills have been proposed and are being considered in 20 states. The state senates of New York and Illinois approved bipartisan bills that later died in the house. It is a widespread perception that this is just a question of time. In January, in a *New York Law Journal* article, two management-side employment lawyers called it inevitable that the state will pass a workplace anti-bullying law and other states will follow. Many employment lawyers already advise their clients to adopt general harassment policies in anticipation of this law.

This is an international problem. Workplace bullying has been recognized as a serious problem internationally since at least the early 1990s, when a psychologist in Sweden, Heinz Layman, noticed the connection between workplace bullying and nurse suicides. The World Health Organization calls workplace bullying a "major public health problem." The International Labour Organization calls workplace bullying one of the "fastest growing forms of workplace violence." Several foreign countries and political subdivisions have adopted laws and/or regulations to address workplace bullying. Several

countries have incorporated bullying into their labor health and safety codes. International concern about workplace bullying is framed in terms of a worker's right to dignity. The Universal Declaration of Human Rights, which the United States helped to draft and signed after World War II, recognizes this right to dignity.

There is no universally accepted definition of bullying. There are common characteristics that have achieved widespread acceptance by the leading scholars on the topic. A workplace bully uses many of the same power and control tactics as a domestic violence abuser. He emotionally abuses the victim, puts him or her down, calls him or her names, and uses intimidation, coercion, and threats. He economically abuses the victim by meting out rewards without regard to merit or job performance. He isolates the employee by demeaning abilities to other managers or coworkers. When the abuse is pointed out, the bully inevitably makes light of it, minimizes it, or accuses the victim of being overly sensitive. Workplace bullies may be wired differently. In an article in *Time Magazine* last year, it was reported that brain scan research shows that when a bully sees a victim in pain, it triggers parts of his brain that are associated with pleasure.

A 2010 survey by the market research firm Zogby International found that 35 percent of workers have experienced bullying firsthand. That is 54 million workers in the United States. Other surveys show a higher percentage. In a 2007 nationwide poll by the Employment Law Alliance, 44 percent of employees said they had worked for a supervisor or an employer they considered to be abusive. About 80 percent of bullies have supervisory authority over the target; 62 percent of the targets are men and 58 percent are women. Research shows that bullying at work is four times more prevalent than sexual harassment.

Bullying exacts a significant health toll on the target. Some of the common impacts range from anxiety sleep disturbance to depression and suicide. According to a 2007 survey by the European Foundation for the Improvement of Living and Working Conditions, 40 percent of bullied workers suffer from multiple work-health-related problems compared to 15 percent of the working population as a whole. Workplace bullying is linked to real violence in the workplace. In Reno last year, an employee at a Wal-Mart store shot three managers. He told police he felt he had been treated unfairly.

The American Psychological Association reported in December that students who watched their peers endure verbal or physical abuse also suffered and became as psychologically distressed as, or more so than, the victim. Bystanders also may be more likely to take drugs and drink alcohol. The report

says that witnesses are often concerned that they may be bullied and may feel guilty for not intervening. Research shows witnesses experience fear, stress, and emotional exhaustion. Bullies often target employees whom they view to be a threat—often excellent workers who are well-liked. Witnesses want to play it safe to avoid becoming a target. Bullying reduces productivity and worker loyalty. Witnesses update their resumes; one researcher predicted two witnesses per target will resign.

The next issue is the impact on the employer. There was a story in the *New York Post* a couple of weeks ago that had a funny headline: "My Boss' Voice Made Me Vomit." The story was about a New York Housing Authority superintendent who had filed a whistle-blowing lawsuit against his boss. After he complained about his boss, she retaliated with a campaign of bullying. He said he was forced to see a doctor to get prescribed medication to calm his stomach and had to get psychiatric therapy. From the employer's perspective, there is nothing funny about this. The employer experiences higher health costs, increased employee sick leave, complaints to human resources, and lost work hours. The bully and the target often spend almost half of their time responding to each other. Poor morale, turnover, bad publicity that could discourage new employees, and of course the cost of litigation—all affect the employer. Workplace bullying costs American employers billions of dollars each year. Based on the replacement cost of those who leave as the result of witnessing or being bullied, one study estimates that for an organization of 1,000 people the cost could be \$1.2 million.

We need a law because workplace bullying is tolerated and sometimes even encouraged by employers. Only employers can stop workplace bullying, but they are not, despite the exorbitant costs. According to a survey by the Workplace Bullying Institute, 53 percent of bullied workers who reported workplace bullying to their employer said their employer did nothing. In fact, 71 percent of the reporters said that the employer retaliated against them. By passing a workplace bullying law you will ensure that Nevada employers do what they are already legally required to do under Occupational Safety and Health Administration (OSHA) standards, which is to provide a safe workplace. A law is needed to provide an incentive for employers to intervene, stop bullying, and create policies that foster dignity in the workplace. By passing a workplace bullying bill, you will also send a message to targets of workplace bullying. Excellent employees are often abused because they are perceived to be a threat. Their injuries are real. Workplace bullies intentionally destroy the target's physical, mental, and financial well-being. Targets of bullying should have meaningful recourse in the legal system. About 70 percent of targets of bullying are fired or quit. Americans want fair play and justice in the workplace.

In a 2007 survey 64 percent of Americans said they want laws that allow targets of workplace bullying to sue the bully.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Ohrenschall:

In the countries that have passed anti-bullying laws, have there been any studies to show that productivity has increased?

Patricia G. Barnes:

I am not aware of any. There are studies that show that bullied people spend a tremendous amount of their time responding to bullying and the witnesses' motivation and initiative also go down. There are studies that show that kind of reaction to bullying.

Assemblywoman Bustamante Adams:

How is workplace bullying different from a hostile work environment?

Patricia G. Barnes:

It is a hostile work environment for the target. It is an intentional effort to target an individual, to attack an individual's self-esteem and confidence, and to get the individual fired or demoted.

Assemblyman Segerblom:

This bill treats workplace bullying as a hostile work environment but takes away the motive. Currently, hostile work environment is illegal only if it is based on sex, age, race, disability, or national origin. This takes away those requirements and says if you are subjected to a hostile work environment, it is illegal. The employee has the right to correct the situation or file a hostile work environment claim.

Assemblyman Daly:

Can you give us an overview of what a "reasonable person standard" is?

Assemblyman Segerblom:

The employee has to give the employer a chance to correct the situation. The employee has to come forward and say he is being harassed and is subject to a hostile work environment. The employer has an obligation to investigate. If the allegations are founded, the employer can tell the abusing employee that he has to stop. If he does not stop, the victim has a causative action.

Assemblyman Daly:

So the "reasonable person standard" does not have to be extreme?

Assemblyman Segerblom:

It is a standard for what would be abusive to a reasonable person. If the abuser does something that is outrageous and intended to intimidate someone, it would be considered to be abusive by any standard.

Chair Atkinson:

Have other states instituted anti-bullying laws?

Patricia G. Barnes:

No state has adopted a bill.

Assemblyman Segerblom:

Many institutions have antiharassment policies that do not require any type of intent. Institutions have adopted this standard, but it is not in the law.

Patricia G. Barnes:

Many employment lawyers advise their clients to enact harassment policies because it is understood that the law will eventually pass.

Assemblywoman Carlton:

In the affirmative defense portion of this bill, if the harassment continues, does the employer take himself out of the situation? Does the employee have to sue his coworker?

Assemblyman Segerblom:

The abused employee has to complain to give the employer the opportunity to investigate and to right the situation. There are the same standards as in sexual harassment cases. The employee has to go to the Nevada Equal Rights Commission to file a complaint and use that administrative process. You cannot just go to court. It is a complicated process. This is the time to force employers to develop policies which require employees to come forward and require employers to reprimand the abusers.

Assemblywoman Carlton:

Under many personnel rules, if the employer disciplines the abusing employee, the employee who filed the complaint never knows about it because personnel matters are confidential. It is difficult when you give the employer this affirmative defense.

Assemblyman Segerblom:

I would be happy to amend the bill to say the employer is obligated to report the results of the investigation to the employee who made the complaint.

Chair Atkinson:

We will go to the person testifying in Las Vegas.

Assemblyman Segerblom:

Peggy Howell will describe the second element of this bill, which deals with personal appearance standards.

Peggy Howell, Private Citizen, Las Vegas, Nevada:

I have submitted testimony ([Exhibit D](#)). I was discriminated against 30 years ago when I was told that I had to lose weight or lose my job. There were no physical requirements for my job as a librarian and student counselor. Approximately two-thirds of American people today are considered overweight or obese. Job discrimination based on physical size could potentially affect more than 65 percent of our population. A study by Yale University in 2010 stated that discrimination on the job based on size has increased 66 percent in the last decade. Rudd Center at Yale University established in 2008 the vast need for public policy to eliminate this discrimination. Because of my volunteer work with an organization that is working to help bring about changes to these laws, I get letters from people who are discriminated against on the job. It was interesting to me to hear the provisions of Clark County schools because one of my examples is a veteran schoolteacher who was obviously treated badly by a principal who decided he wanted his staff to be "beautiful people." He picked on people who were overweight or whom he considered to be unattractive.

I want to read you another person's story. This is a prime example of the things that can happen to people when they are harassed and discriminated against because of their physical size.

Hello, my name is Alison, and I have an issue I need addressed. I was hired at a spa resort where many politicians, and famous and rich people, are members. I worked as a dedicated employee for three months over the holiday hours, and on January 2 I was called in a private meeting room by both managers, and was humiliated and ridiculed. I was told I never should have been hired due to my weight. I was told that I should at least wear nice and big enough clothes to cover my fat sufficiently, but that I should consider gastric bypass surgery, and many more cruel and malicious things. I am only 27 years old. I am a new mom of a 2-year-old. I work out, eat healthy, and have been trying my best to get in shape.

I am overweight, but by no means am I so huge that I need such a dangerous surgery. I was also told by the other boss that just because I am poor I need to hide that from the clients. I was told that when I compliment people, it shows that I am not used to being around nice things, and it makes me look like trash. I am not trash. I am a recovering bulimic, and had been sick with the disease for 10 years before I almost died from it and overcame it. I was straight, eating right without throwing up for 2 years now. However, after what they did to me, I have relapsed and I am slipping into anorexia. I hate my image, I have nightmares, it ruined my intimate relationship with my husband, and depression consumes me now. All of this because of what my trusted employer did.

There are laws in place that protect people of size in the State of Michigan and in six cities around the country. Some argue that changing the laws to protect fat people from discrimination on their jobs would open a floodgate of lawsuits. Michigan's law has been in place for over 30 years and there have been four lawsuits. Four lawsuits in 30 years do not create a flood of lawsuits that will tie up our courts with what some people feel is needless litigation. Public support of legal measures is high. The September 7, 2010, issue of the *International Journal of Obesity* published the results of the national sampling conducted by Yale University: 65 percent of men and 81 percent of women support legal measures to protect people of size from discrimination in the workplace, and especially legal measures that would prohibit employers from refusing to hire, terminate, or deny promotion based on a person's body weight.

I ask that you consider carefully the information you are being given today about the passage of A.B. 90. It is time for the antidiscrimination laws of Nevada to be updated. Please help us end discrimination now.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Kirkpatrick:

In section 4, subsection 6 of the bill, what types of things would not be listed? It appears to be very broad. Is it the same language that they use in Michigan?

Peggy Howell:

Do you mean that height and weight are the two defining factors for physical appearance?

Assemblywoman Kirkpatrick:

I am asking about the whole definition in lines 31 through 37. What would "physical mannerisms" include?

Peggy Howell:

The only addition to existing law in Nevada is including physical mannerisms and the definition of those mannerisms. These are not all changes, but are in existing law. Height, weight, and physical mannerisms beyond the control of the person are the only new additions.

Assemblyman Segerblom:

It is unlawful to discriminate based on a disability which would not affect a person's ability to do a job. This would deal with characteristics which would not prevent a person from doing his job, such as weight, height, or having a tic.

Assemblywoman Bustamante Adams:

Could you define what criteria would be a barrier for weight or height?

Assemblyman Segerblom:

It would not be about the physical characteristic, but about the discriminatory comments about the physical characteristic, such as the employer saying that they were going to fire someone because they were too fat or too short.

Assemblyman Hardy:

Some positions require certain physical characteristics, such as a police officer or fireman. If they do not meet the physical requirements, they can lose their jobs. Does this provide them an ability to sue?

Assemblyman Segerblom:

It is the opposite. There are occupational qualifications which an employer can set, but they cannot be arbitrary. The height standard for police officers was eliminated after women started to become police officers and it became evident that the height standard was not necessary to be a good police officer.

Assemblyman Hardy:

As a business owner, I have had employees who had to have certain physical abilities, yet I have not been able to fire an employee because he gained weight and was not able to do the things he was hired to do. Why is that different?

Assemblyman Segerblom:

If the employee cannot do the job, you can fire them. The employee has to be able to do the job. If he is unable to do the job, it is a legitimate cause for termination.

The final aspect of this bill is that it provides damages under Nevada's antidiscrimination law. It is illegal to discriminate under Nevada law for age, sex, race, religion, disability, or sexual orientation, but there is no remedy. There is no compensatory damage or back pay. No one can effectively sue under Nevada law. The sexual orientation law only applies to Nevada because it is not part of federal law. State and university employees are not covered by federal age laws or the Americans with Disabilities Act laws. If a state worker is fired because of his age or disability, he has no recourse.

Assemblyman Conklin:

Are there no statutes to protect state workers and university employees against age discrimination under federal law? Can they not sue for discrimination?

Assemblyman Segerblom:

That is correct, because there is no remedy.

Ann McDermott, Chief Deputy Attorney General, Office of the Attorney General:

The state is immune from discrimination suits in a federal forum.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else to testify in favor of A.B. 90?

Jan Gilbert, representing the Progressive Leadership Alliance of Nevada:

In 1999, we added sexual orientation to the list of identifiers that could not be discriminated against. This strengthens that portion of the law to give people civil remedies against discrimination. I urge your support of this bill.

Darlene Howell, Private Citizen, Las Vegas, Nevada:

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

Making employment decisions based on perceptions of physical appearance is discrimination.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else to speak in opposition?

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

I am going to speak to the physical characteristics and the abusive conduct parts of the bill. After conversations with the Las Vegas Chamber of Commerce, we wanted to make it clear that our testimony is not directed at anyone's dignity. It is difficult to testify against this bill because it addresses

very personal characteristics of individuals who apply for jobs. It is about a system and the policies and the procedures that this bill would raise. This bill changes all of the rules of employment discrimination in the State of Nevada. If you look at the definition in section 4, subsection 6, it is important to understand exactly how that definition is structured. We have tried to understand what is not included under the definition of physical characteristics. The last three include, but are not limited to, height, weight, and physical mannerisms. It would include anything that is determined to be a physical characteristic, either as the result of birth or natural biological development. It includes changes due to disease or injury, which is probably closer to the law already relating to disability. These kinds of laws are actually clear rules about how people should be treated to the extent that they can be identified to be in protected classes. This definition causes a lot of confusion about how it can be enforced.

In discrimination law, the burden is on the employee to say that he is a member of a protected class. The burden then shifts to the employer. It is the obligation of the employer to show that the action taken was not because of what is in *Nevada Revised Statutes* (NRS) 613.330. Probably all individuals have a physical characteristic that is important to them. Even if an employer based his actions on nonphysical characteristics such as attitude or work ethic to find the best individual for the job, someone could always say that a decision was really made because of a particular physical characteristic. On page 9, line 44, it refers to mannerisms "beyond the control of the person," which is difficult to determine. I was asked, would this mean, if you have a liquor business, that you could not deny employment to a person who was addicted to alcohol? I said that I do not see how you would not have to do that with this bill.

Our major issues are not understanding exactly what the bill means and changing the whole workplace in terms of what people have to think of for hiring decisions. I do not know if it has any real benefits. A business has to make decisions about employment, capacity, and performance on the basis of a large scale of variables. An employee could file a claim based on his feeling that a decision was really made because of a physical characteristic. I think you have to think about equal-rights claims, which would blossom under a standard that broad. The indication that an employee would utilize this would result in increased filings in the state courts. On page 2, line 26, it says "the court shall award the prevailing party damages." That is probably the normal language for something like this, but the mandatory nature of those damages, including the back pay, is beyond the Nevada statutes. There currently is a way of doing this in federal court for all of these issues that are covered. In our law there is a

section that allows you to go to state court to restore your rights. It is not as if you do not have remedies at the state court level.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Robert A. Ostrovsky, representing the Nevada Resort Association:

I was the person in charge of personnel when the MGM Grand Hotel in Las Vegas opened in 1973 and the MGM Reno opened in 1976. I was the Senior Vice President of Human Resources covering both hotels and Bally Manufacturing. I have a long history of human resources administration in collective bargaining and nonunion settings. I have hired, disciplined, and terminated tens of thousands of employees. I think I understand a lot of the issues that had to be enforced in the workplace and which have evolved over time. Every employee handbook that I see today has language about the expectations for the employee and the supervisor and what methodology is available to resolve issues for collective bargaining employees and nonunion employees. I cannot imagine that any of the employers we represent would support harassment on the work site. It results in bad customer service and bad product. All issues that disturb the workplace hurt the employer.

In section 2, Assemblyman Segerblom indicated that employers would have the right to investigate and take corrective action in case of a complaint. It's true; they can. But the bill also says if the conduct is "especially egregious or severe," then you proceed to immediately file a claim. I do not know what "especially egregious or severe" is, but it is clearly something the courts will decide because it is the employee against the employer. It is not the abuser, but it is always the employer who faces the consequences for the actions of the people who work for them, because they are responsible for those people.

Section 3 presents the question concerning the appropriate venue to hear one of these matters. I did not realize certain classes of employees may not have access to courts. Maybe that is an issue we should sit down and talk about. It is inappropriate if people do not have remedies. But the way this bill is drafted, every employee who has a complaint will have the right to go to state court. Currently, they do not have that right, but they may go to federal court. The Legislature must determine the appropriate place to resolve matters relative to the provisions of Title VII of the Civil Rights Act of 1964. It has been with the federal courts until now.

I believe that this bill will eliminate from anyone's handbooks or policies the right of an employer to make any decisions about appearance standards at the time of applying for a job. A well-trained job interviewer is looking at

everything. He looks at your resume, your skills, and how you handle yourself in a stressful situation. I think all of those things are going to lead to litigation. According to Patricia Barnes, Nevada would be the first state to have this type of law. There is no agreed-upon definition, so who makes that definition? If the employer has no definition and has difficult decisions to make on his own, is some judge or jury going to think that ought to be a good definition? None exists there now. She said that abuse included unrealistic deadlines, criticism in the workplace, and moving an office. An employer who does any of these things may be subject to accusations of abuse.

I have met with the bill sponsor and expressed my concerns about bona fide occupational qualifications. They are difficult to enforce. I have always told people to be very careful before you try to apply those rules, because they are very narrowly focused and you need to be ready to prove them in court. It is difficult for employers. I do not want potential employers who want to come to Nevada to say that Nevada has a quirk in its employment statutes.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Carlton:

Are you familiar with the Michigan law?

Robert A. Ostrovsky:

I have never heard of it and did not know there was such a law on the books.

Assemblywoman Carlton:

Mr. Ostrovsky has led us to believe that he thinks that if people do not have a remedy, we need to fix it, as they do under the sexual orientation provisions we heard earlier. Are you in support of some kind of remedy for those people?

Robert A. Ostrovsky:

Yes. If a law does not have a remedy, it becomes ineffective. Therefore, I would support trying to craft something that would make sense.

Assemblywoman Carlton:

Mr. McMullen, would you agree with that?

Samuel P. McMullen:

There is a remedy in the equal rights laws in the State of Nevada that creates a mandatory administrative remedy, so I do not agree. We are talking about if they have full access to court for damages.

Assemblywoman Carlton:

If the clients you represent felt wronged, are there any barriers to them going to court to seek redress? Have we denied them rights to go to court, or is it just the employees?

Samuel P. McMullen:

There are times when we are not allowed to go directly to court because there is a state regulatory process, or some other administrative process, which you have to go through before you can go to court. That is true for the people I represent as well as for the citizens. The question is whether those processes are adequate to put people into the positions they should have been in without the discrimination.

Tray Abney, representing the Reno Sparks Chamber of Commerce:

When I sent the bill to members of my chamber of commerce, they were very concerned with the nebulous language, especially on page 2, where it talks about the legitimate business interests of the employer and what is "especially egregious or severe." What is considered to be verbal conduct which is humiliating? We are worried about the broad and subjective nature of the language of this bill and the lawsuits that will result. We talk a lot about creating jobs in the private sector to help put people back to work. I think this bill would make employers nervous about whether they are going to cross this language. It is definitely a good jobs bill for attorneys, but it dampens job creation.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Constance Brooks, Senior Management Analyst, Office of the County Manager, Clark County:

We encourage and support a healthy work environment and are sensitive to the intent of this bill. We are opposed to A.B. 90 from an implementation perspective. We have a balance in the workplace policy and an administrative guideline that are in place and work successfully for us. We do not know how this bill would work in alignment with our policies. In section 3, regarding the damages in the provisions of Title VII, damages are capped at \$300,000 for entities the size of Clark County. This could bring those caps into question.

Chair Atkinson:

Are there any questions from the Committee? I see none.

David Fraser, representing the Nevada League of Cities and Municipalities:

I am appearing in opposition to A.B. 90. We do not condone the types of behaviors that have been described in this hearing. We have grievance and complaint procedures in place to address these issues. I agree with the others who have testified. Our concerns have to do with the broad definition used here as well as the new protected classes that are being created. We feel the bill is duplicative of Title VII of the Civil Rights Act of 1964. We clearly support a friendly work environment, but we do not support this bill.

Nicole Rourke, Executive Director, Government Affairs, Clark County School District:

The Clark County School District supports a safe working environment. The district has an extensive policy on harassment and workplace discrimination. That policy gives our staff three avenues of grievance, which are through their supervisor, through their union process, or through our office of diversity and affirmative action. We are in opposition to A.B. 90.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Steve Walker, representing Lyon County, Douglas County, and Carson City:

The human resources director of each county I represent has reviewed this bill. They are all in opposition for the reasons already stated. The Lyon County human resources director has a handbook that addresses bullying in the workplace and feels that is where the issue needs to be addressed.

John Madole, representing the Nevada Chapter of the Associated General Contractors of America, Inc.:

We feel that employers are being encumbered with more and more regulations. Much of this bill is vague and difficult to define. We typically represent employers with 20 to 50 employees. This creates hardship.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Ellison:

Throughout the state we hear from businesspeople that red tape and regulations are killing small business.

John Madole:

That is our concern. Our biggest fear is that people who have the wherewithal to stay in business are about ready to give up. We have a building supply company in Reno that recently sent out a bulletin to its customers to settle

accounts by March 31, because the people there see nothing on the horizon to make them want to stay in business. They may not be quitting business because of the regulations, but how many regulations do we pile on these small businesses before more say they give up?

Fred Reeder, President, Reno-Tahoe Construction, Sparks, Nevada:

I own a small general engineering/contractor business based in Reno. I employ about 50 employees. I see the intent of this bill as good, but I feel it is putting an unreasonable burden on the employer. It puts me in a position where I fear frivolous lawsuits and the impact it will have on insurance premiums and my business. I fear this may drive me to not want to stay in my small business. I fear this bill immensely.

Chair Atkinson:

Is there anyone else to speak in opposition? I see none. Is there anyone to speak from a neutral position?

Rebecca Gasca, representing the American Civil Liberties Union of Nevada:

We are neutral to this bill, but there are portions of the bill with which we definitely disagree. We disagree with the physical characteristics section, which is broad. Physical impairments are protected under the Americans with Disabilities Act, but physical characteristics including weight are not. The Supreme Court has stated that the employer is free to decide which physical characteristics or medical conditions that are not impairments are preferable to others, just as they are free to decide that some limiting, but not substantially limiting, impairments make people less suited to a job. The abusive conduct language can be vague and confusing. There are important mechanisms in this bill that would be available to individuals who otherwise have no ability to seek redress for their grievances, particularly for the protected classes such as sexual orientation, which is a class that does not have remedies under federal law. State law provides additional protections. The Nevada Equal Rights Commission (NERC) offers some opportunity for individuals to seek redress of grievances, but I disagree with Mr. McMullen's testimony regarding the services of NERC. During the last emergency session, the Legislature substantially cut the funding to NERC. The decisions made this legislative session will likely further undermine the efforts that NERC could provide to remedy situations that arise. However, those remedies do not allow for any civil suits, as this bill would allow. Without these changes, there are little teeth involved in these protections. I hope that you will consider working on that section so that individuals who are protected may be able to hold their employers accountable.

Chair Atkinson:

Are there any questions from the Committee? I see none. Are there others in the neutral position?

Shelley Chinchilla, Administrator, Nevada Equal Rights Commission:

It is our mission to protect the welfare, prosperity, health, and peace of the people of the State of Nevada and to foster their rights to reasonably seek, hold, and obtain employment without discrimination. If A.B. 90 were to pass into law, it would be the Commission's great honor to continue this mission with these provisions. My colleagues and I believe there would be a significant fiscal impact for the Commission with the passage of this bill. The Commission staff consists of 14 full-time employees. Six of the employees investigate all cases of discrimination in Nevada, including employment, public accommodation, and housing. Over the last 18 months, the Commission's average monthly pending inventory was about 652 cases. Typically, we receive a little over a 1,000 new cases annually, of which 96 percent are employment cases. We believe that adding protections for bullying as well as provisions related to physical characteristics, as described in the bill under employment discrimination law, would significantly increase the number of new cases we receive. The new protected categories, including the bullying section of the bill, are far-reaching as employment protection. We would be honored to continue our mission with the inclusion of A.B. 90, but we feel it would require additional staffing to properly and effectively resolve these cases in a timely manner. A fiscal note was not requested of the Commission, but we did submit one this morning.

Chair Atkinson:

Who prepared the fiscal note?

Shelley Chinchilla:

It was a collaboration among Mr. Perea, our financial management department, and I.

Chair Atkinson:

How did you come up with these numbers?

Shelley Chinchilla:

We are making an assumption that our caseload could double. We are looking at a potential caseload of 1,000 in a year, with 96 percent being employment discrimination, and we would need five additional investigators.

Chair Atkinson:

This does not make much sense to me. The bill says no effect on the state or local government, and then you arbitrarily come up with a number. This is an unsolicited fiscal note.

Shelley Chinchilla:

I apologize for the lateness of that. We feel confident that there would be a significant fiscal impact. We are making an estimate. There is only one state that currently has this type of legislation. We feel this bill is so general and far-reaching that it could potentially affect us and our caseload in a major way.

Chair Atkinson:

I feel your fiscal note is far-reaching.

Dennis Perea, Deputy Director, Department of Employment, Training and Rehabilitation:

The reality is that we do not know what kind of impact this would have because the legislation has not been passed across the country. When we initially looked at this bill, we thought the bullying would have to be based on the mannerisms and characteristics that were put in the bill. Now that we know that bullying in its own right is a basis for discrimination, it would be impossible to know how many cases we would get. We receive many cases in which people are being mistreated, but not on the basis of a protected class. Now they would be covered, so the caseload would increase dramatically.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Carlton:

Are you seeing people with problems who are not in protected classes and you cannot address their issues?

Dennis Perea:

Yes, we see cases all of the time where people have been mistreated, but it was not based on one of the protected classes. By adding the bullying language to this bill, it would cover anyone who claims to have been mistreated.

Assemblywoman Carlton:

Is that how you determined your fiscal note?

Dennis Perea:

A bill like this was introduced in the 74th Legislative Session, and I tried to work with Labor Commissioner Michael Tanchek to see how many cases they

see versus what we see, to try to estimate how many cases we would take. At the time, the Commissioner said if he inherited the responsibility, he would have to have an organization the size of the Nevada Equal Rights Commission to handle the caseload.

Assemblywoman Carlton:

Apparently, there are problems out there and people are asking for help.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else to testify on A.B. 90? We will close the hearing on A.B. 90 and open the hearing on Assembly Bill 214.

Assembly Bill 214: Revises provisions governing certain disbursements of money from escrow accounts. (BDR 54-1016)

Rocky Finseth, representing the Nevada Land Title Association:

I am here with Sylvia Smith, who will present Assembly Bill 214.

Sylvia Smith, President, Nevada Land Title Association:

Last session this Committee approved legislation ensuring that the consumers of real estate transactions were protected by requiring good funds be deposited into an escrow account before we could disburse any funds in a real estate closing. Since the law went into effect, I am happy to report, there have been no reports of any kind of loss to consumers due to good funds not being deposited. However, we have found a couple of areas that this bill will clarify. Section 1, subsection 2(b) ensures that the funds will be drawn on United States currency. We have seen more foreign investors buying real property over the past two years. Section 1, subsection 3 clarifies that all federal laws must be complied with when funds are disbursed from an escrow account.

The Nevada Land Title Association is concerned about ensuring that all of our licensed agents comply with part 229 of Title 12 in the Electronic Code of Federal Regulations, which deals with the availability of funds drawn from any bank in the Federal Reserve System. We have a proposed amendment ([Exhibit F](#)) that clarifies the disbursement and the availability of funds. We will continue to work with the Chair on the language.

Rocky Finseth:

We have been working with the Legislative Counsel Bureau on the language in this amendment, and there may need to be a small change.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone to speak in favor of A.B. 214? Is there anyone in opposition? I see none. Is there anyone to testify from a neutral position? Seeing none, I will close the hearing on A.B. 214. We will open the hearing on Assembly Bill 217.

Assembly Bill 217: Repeals provisions governing the interstate sale of certain firearms. (BDR 52-596)

Assemblyman John Ellison, Assembly District No. 33:

I am here to ask for the Committee's support on A.B. 217. This contains language to clean up laws which have been in Nevada since 1968. They are the Firearms Owners' Protection Act of 1986 and the Gun Control Act of 1968, regarding the sale of firearms. You can go to a gun show and purchase a firearm, but if you are from a state that is not contiguous to the State of Nevada, you could not buy that gun in Nevada. This bill will clean up the language in the laws.

Assemblyman Ira Hansen, Assembly District No. 32:

I am here to support Assemblyman Ellison in his position. These are archaic laws that go back to 1968. With the passage of this bill, it will no longer be illegal for a gun dealer in Nevada to sell to someone who resides in a state that is not contiguous with Nevada. In theory, a Nevada resident could also not purchase a gun in a state that is not contiguous to Nevada. This will put us in line with all of the other states and federal laws. It will restore a right that was taken away in 1968 and should have been restored in 1986.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Bustamante Adams:

Why was this law enacted in 1968?

Assemblyman Ellison:

There was a federal law which was overturned by most states. There is a law that says states can sell guns as long as they follow the guidelines set by the Brady Handgun Violence Prevention Act. This is a financial issue, and we were unaware of it until gun dealers came to us.

Assemblyman Daly:

Could we just get rid of the contiguous part of the bill? Would the other language in the law still be useful?

Assemblyman Hansen:

This language was taken from the National Rifle Association and was used in other states. In either case it would eliminate an unnecessary restriction that is no longer part of federal law.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Grady:

Do the other Western states have this language?

Assemblyman Ellison:

Yes, they do. Many people did not realize that Nevada had not changed the law. Under the federal law, we are still protected by the Brady Bill.

Chair Atkinson:

Is there anyone else to testify in favor of A.B. 217?

Bob Irwin, Owner, The Gun Store, Las Vegas, Nevada:

We are a large firearms retailer. We get a lot of business from tourists. This bill does not have any new language; it simply eliminates a section of the *Nevada Revised Statutes* (NRS). In 1968, the federal government passed a law that said gun sellers could not sell long guns (rifles or shotguns) to residents of states that are not contiguous. That was a control measure. Now we are all computerized and can work across the United States and can easily obtain background checks. The federal government removed that law in 1986, but Nevada passed its own version of that section at the same time. Currently, this law restrains my trade against gun shops in other states. The bill works both ways. When a Nevada resident goes to any state that is not contiguous and buys a long gun, the sale is often made because no one knows that Nevada has this law. I am sure many Nevadans are violating the law by buying a gun out-of-state. This is an old law that needs to be removed. I urge you to pass this bill and put me on a level playing field with my competitors in other states.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Horne:

Did Nevada pass another bill in 1986 keeping this portion of the bill after the federal repeal? When was the Brady law enacted?

Bob Irwin:

The Brady law started out as requiring background checks on handguns and was later amended to include all firearms. It now covers the guns addressed in this bill.

Julie Butler, Records Bureau Manager, Nevada Department of Public Safety:

The Brady Handgun Violence Prevention Act was passed in 1993. At that point it applied to handguns only. The permanent provisions of the Brady Act took effect in 1998, and those provisions also apply to long guns.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Richard Brengman, Small Firearms Manufacturer, Gardnerville, Nevada:

I have been manufacturing firearms for about 15 years. This bill would help me to sell my product to a larger number of states with fewer issues.

Rebecca Gasca, representing the American Civil Liberties Union of Nevada:

We are here in support of this bill. We are one of the few affiliates across the nation that takes a proactive stand supporting the second amendment right to bear arms. This is a decision that our organization came to following the *District of Columbia v. Heller* case in 2008 coupled with a very clear, poignant view in the *Nevada Constitution* which implicitly states that the people are allowed to bear arms for protection and other lawful purposes. This is not a unique situation in that Nevada maintains many laws on its books that are out of sync with federal legislation as well as Supreme Court decisions. We hope the Legislature will see fit to move forward to update our statutes.

Chair Atkinson:

Is there anyone else to testify in favor of A.B. 217? Is there anyone to speak in opposition? Is there anyone to speak from a neutral position? Seeing none, I will close the hearing on A.B. 217. Is there any public comment? I see none.

The meeting is adjourned [at 3:30 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 7, 2011

Time of Meeting: 1:36 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 90	C	Patricia Barnes	PowerPoint
A.B. 90	D	Peggy Howell	Prepared Testimony
A.B. 90	E	Darlene Howell	Prepared Testimony
A.B. 214	F	Sylvia Smith	Proposed Amendment