

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

**Seventy-Sixth Session  
March 25, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 12:09 p.m. on Friday, March 25, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://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](mailto: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 Scott Hammond, Clark County Assembly District No. 13  
Assemblyman Paul Aizley, Clark County Assembly District No. 41  
Senator David Parks, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

James Overland Sr., President, Nevada Chiropractic Association  
Marsha Berkbigler, representing Chiropractic Physicians' Board of Nevada  
Derek Day, D.C., Private Citizen, Las Vegas, Nevada  
Joseph Robert Nicola, D.C., Private Citizen, Las Vegas, Nevada  
Robert Ostrovsky, representing Nevada Resort Association  
Pam Roberts, representing Nevada Women's Lobby  
Elvira Diaz, Private Citizen, Las Vegas, Nevada  
Lauren Scott, representing Equality Nevada  
Michael Ginsburg, representing Progressive Leadership Alliance of Nevada  
Jane Heenan, representing Equality Nevada  
Kathleen Delaney, Private Citizen, Las Vegas, Nevada  
Elisa Cafferata, representing Nevada Advocates for Planned Parenthood  
Affiliates  
Octavia Hamlett, Member, Progressive Leadership Alliance of Nevada  
Yasmina Aden, Private Citizen, Las Vegas, Nevada  
Denise Jay, Private Citizen, Las Vegas, Nevada  
Danielle Walliser, Private Citizen, Las Vegas, Nevada  
Toni Witten, Private Citizen, Las Vegas, Nevada  
Karen Grayson, Treasurer, Nevada Stonewall Democratic Caucus  
Aleta J. Dupree, Private Citizen, Las Vegas, Nevada  
Dane Claussen, Executive Director, American Civil Liberties Union  
of Nevada  
Joseph Guild, representing Nevada Court Reporters Association  
Cecilia Vohl, Certified Court Reporter, Reno, Nevada  
Barbara Johnson, Certified Court Reporter, Reno, Nevada

Lynn Stubbs, Vice President-North, Nevada Court Reporters Association  
Michel Loomis, Certified Court Reporter, Reno, Nevada  
Kevin Daniel, Court Reporter, Las Vegas, Nevada

**Chair Atkinson:**

[Roll was called, and there was a quorum present.] We will start out with a work session and then hear the three bills on the agenda.

**Assembly Bill 309:** Revises provisions governing insurance. (BDR 57-516)

**Marji Paslov Thomas, Committee Policy Analyst:**

Assembly Bill 309 creates the Office of the Consumer Advocate within the Division of Insurance. [Continued to read work session document ([Exhibit C](#)).]

**Assemblyman Ocegura:**

We worked extensively with insurers on this bill in the time between the original hearing and now. I think we have answered a majority of their questions. We are trying to improve transparency. The large group plans are pretty sophisticated in their negotiating and they are not under federal regulations, so we thought it was reasonable to amend the bill to exclude them. In section 3 we thought it was reasonable to allow them to submit the information by electronic mail rather than mail a hard copy. We shortened the timelines in sections 7 and 14. In the deleting of section 17, the law would have required a mailing after a rate increase; the federal requirement is 30 days, and it seemed reasonable to avoid duplication. Those were some of the compromise positions that we took. I think this is a good bill. I appreciate everyone who worked with me to get more transparency in health care.

**Chair Atkinson:**

Thank you for working with the opposition and coming up with a compromise.

**Assemblyman Horne:**

Are the criminal penalties mentioned in the bill misdemeanors?

**Assemblyman Ocegura:**

I believe so. As current law they are misdemeanors; the additional requirements in the bill would not change that.

**Assemblywoman Bustamante Adams:**

In your discussions were there any remarks regarding the confidential information that would be provided to the Consumer Advocate?

**Assemblyman Ocegüera:**

Yes, that issue did arise. The confidentiality of medical records and personal information would not be shared. None of that information would be available to the public or other insurers.

**Assemblywoman Carlton:**

I hope that through the Commissioner of Insurance and the Consumer Advocate, some of these terms will be explained to the public.

**Assemblyman Ocegüera:**

That is something we were trying to address in section 6. We want that to be user-friendly information. We have eliminated some other information that did not really make sense.

**Assemblyman Grady:**

The work session document states that it will create the Office of the Consumer Advocate; is this a new office and if so, would it require funding?

**Assemblyman Ocegüera:**

No, the Bureau of Consumer Protection already exists. We believe that we will qualify for about \$4 million in federal funds that would allow the Consumer Advocate to do this type of this work.

**Chair Atkinson:**

The Committee will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 309.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HICKEY AND KITE  
VOTED NO. ASSEMBLYMAN HARDY WAS ABSENT FOR THE  
VOTE.)

**Assembly Bill 156:** Revises provisions relating to process servers.  
(BDR 54-667)

**Marji Paslov Thomas, Committee Policy Analyst:**

Assembly Bill 156 prohibits a person from engaging in the business of a process server if the person is not licensed as a process server and has, because of certain violations, been issued a citation and order of abatement.

[Continued to read work session document ([Exhibit D](#)).]

**Chair Atkinson:**

The Committee will entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 156.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN HARDY WAS ABSENT  
FOR THE VOTE.)

**Chair Atkinson:**

We will take the bills out of order. We will now open the hearing for  
Assembly Bill 382.

**Assembly Bill 382:** Requires the Chiropractic Physicians' Board of Nevada to  
establish a preceptor program. (BDR 54-1006)

**Assemblyman Scott Hammond, Clark County Assembly District No. 13:**

The intent of this bill is to allow for a preceptorship program in the State of  
Nevada.

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

There is also an amendment ([Exhibit F](#)) to clarify the intent of the bill. In  
section 4, subsection 3, paragraph (a) of the bill we would like the words "other  
than" replaced with "including." We wanted to ensure those people  
participating in this preceptorship would be able to do everything that a licensed  
chiropractor can do, under supervision. We would like to strike all the language  
in section 2 and have "chiropractic adjustment" defined by *Nevada Revised  
Statutes* (NRS) 634.013. In section 2 we would like the term "manipulation" as  
defined by NRS 634.105. Also, in section 7 we would like to replace the words  
"but not" with "including." Those changes had to be made in order to  
effectively get the legislation that we wanted.

**Assemblywoman Bustamante Adams:**

Can you give me a reason why we would need a program like this?

**Assemblyman Hammond:**

There are several chiropractic colleges across the country, and there are about  
29 states that offer these preceptorships. It allows people who have already

finished their clinical work to receive training from a licensed chiropractor, enabling them to be better at their job. It is a way to ensure public safety for those who will be practicing chiropractics. It is another wonderful way to get some professionals to move to our state.

**Assemblyman Daly:**

This seems similar to an apprenticeship program. Is this compensated time?

**Assemblyman Hammond:**

From what I understand it is uncompensated. They are in the program to gain experience and work under someone in the field.

**Assemblywoman Carlton:**

I want to make sure that it is not your intent to allow these people to practice under the Good Samaritan Law. I want to make sure they will be covered and have some sort of medical malpractice insurance. I want to know that the patient will have options if something goes wrong.

**Assemblyman Hammond:**

I believe the students who will be coming here and practicing will be covered under the college they attended, and they will also be covered under the licensed chiropractor. Under the provisions of this bill they will be under the tutelage and direct supervision of the chiropractor they are working for.

**Assemblywoman Carlton:**

I want to be assured that these people are not going to practice under the Good Samaritan Law. So if it is your intention for that not to be allowed, I would like that on the record.

**Assemblyman Hammond:**

The intent of the bill is not to allow them to work under the Good Samaritan Law. It is to work under the supervision of the chiropractor.

**Assemblyman Ohrenschall:**

If this bill is approved and chiropractic students come out here to serve this preceptorship, will they have the same requirements in order to apply for licensure as a student who did not serve a preceptorship? Will the path to licensure change at all for them?

**Assemblyman Hammond:**

It will be the same process for everyone.

**James Overland Sr., President, Nevada Chiropractic Association:**

It is with hope and clarity that my testimony today will assist you in your decision to pass A.B. 382. [Read from testimony ([Exhibit G](#)).]

Data from the Chiropractic Physicians' Board of Nevada states that over the past five years, only one collegiate application has been submitted per year to be a chiropractic assistant. Only two applications have been submitted for a graduated chiropractor waiting to take their licensing examinations. In speaking with three chiropractic colleges in California, the supervisors of their respective programs identified that in 2010, over 250 students utilized this opportunity in other states; however, there was not one in Nevada.

Those schools and their directors stated they would like to see this program in Nevada, as they feel many of their students would participate. They further stated these students avoided Nevada due to our current unfavorable program. One college has Nevada listed as an observational state only. This bill would directly impact our economy in a favorable way with these proposed changes. Regarding the issue of monetary cost impact to our supervising chiropractors, there would be none. All colleges in the United States are currently insured by the National Chiropractic Mutual Insurance Company, which is the largest national malpractice carrier. As such, all of the students are covered for malpractice to protect the public. Additionally, this program would generally be available to those licensed Nevada chiropractors who carry their own malpractice insurance. This procedure would ensure another level of insurance to protect the public. In all cases, our licensing board would have the final say in approving or disapproving any applicant and/or supervising doctor.

The other aspect of this bill would allow those chiropractors who have graduated and applied to take our state licensing examination to have the same privilege as the participants of the preceptorship program. This group would impact our economy in a positive way. This bill will be favorable to our chiropractic profession in Nevada, it will improve the chiropractic colleges' viewpoint of our great state, and it will allow students and graduates taking our examination to consider relocating to Nevada to begin their chiropractic professional career. This bill will have a positive impact on the economy that now prohibits those soon-to-be doctors of chiropractic from even considering our state for their profession.

**Chair Atkinson:**

Any questions? [There were none.]

**Assemblyman Horne:**

Could you explain the training that a student would get? As a lay person, I read this bill and saw that it prohibits manipulation. What other chiropractic care is there that the student would be doing?

**James Overland:**

The student would be exposed to what the real world is. They have completed all of their clinical requirements. The next step in their professional career would be to take a state license exam so they could begin practicing in a particular state. They would be able to follow a supervising doctor, which would help them to tone their skills, gain confidence, and be aware of what is occurring in the current clinical situation.

**Assemblyman Hammond:**

For clarification, Assemblyman Horne, did you say the student would not be able to perform manipulation?

**Assemblyman Horne:**

I read where the student would not be doing adjustments.

**Assemblyman Hammond:**

Part of the amendment is to include manipulation. We want the students to be able to do everything that a chiropractor does.

**Chair Atkinson:**

Is anyone else here to testify in favor of A.B. 382?

**Marsha Berkbigler, representing Chiropractic Physicians' Board of Nevada:**

We are in favor of this bill; however, we have not had a full vote from the Board.

**Derek Day, D.C., Private Citizen, Las Vegas, Nevada:**

I would like to express my support for A.B. 382. This bill will allow qualified and soon-to-be graduates from a participating chiropractic college to practice during a period of time before graduation. The Nevada preceptor program will offer these doctors an opportunity to increase their clinical experience prior to entering private practice. This preceptorship will help to provide valuable insight into the daily management of a chiropractic practice. This will include procedures within the scope of practice, which are under the direct supervision of a fully licensed chiropractic physician. Additionally, this bill will help the Nevada chiropractors forge a mutually beneficial relationship with all of the participating chiropractic colleges.



The preceptor program will help to better educate our doctors regarding our state laws and the regulations for all chiropractors. This concept is a mentor-type relationship with an established doctor. My position is that this program will help to provide a net benefit for all Nevadans. Better trained chiropractors will help to reduce the number of adverse events to patients, and help to reduce any infractions that chiropractors may commit. This bill will encourage doctors to participate and practice in our state. This will help bring much needed small businesses to this state. I feel this is a reasonable bill, and I encourage you to support it.

When I started practice 15 years ago, I had been away from Nevada for 6 years. When I moved back, I could not wait to start practice. I found it was a real challenge. No one wanted to deal with a chiropractor who did not have a license. The way the system is designed now, what a doctor can do is very limited until he actually gets his license. I was stuck working construction for about six months while waiting to get my license.

**Joseph Robert Nicola, D.C., Private Citizen, Las Vegas, Nevada:**

When I graduated from chiropractic school, I wanted to return to my hometown, Las Vegas. The observation-only status put a significant economic impact on me, and created a substantial deterrent to returning to Las Vegas. No one wanted to hire me. I could not utilize my clinical skills and had to find another job in the interim. It was almost a year before I could get my license, which put a lot of stress on me and my family. If there had been a different system, it would have made my economic situation much better.

More important for the State of Nevada is the number of students who choose not to relocate here because of the economic stress, and there is a substantial number of them. From a practice standpoint, the preceptor program allows us to recruit some of the best and brightest, to grow our practice, serve our patients, and serve our community. When students find out that they are observation only, we cannot bring them here. That puts another impact on our culture in Nevada and is something we would like to change.

**Chair Atkinson:**

Any questions? [There were none.] Any other testimony in favor of A.B. 382? Anyone in opposition? Anyone neutral? [There was none.]

**Assemblywoman Carlton:**

I would request that when the regulations are drafted they include the Blue Book test so that the people coming in under this program understand the rules and regulations in this state. It is an open book test. I do not think

anyone ever fails it. It is just a matter of ensuring they understand the laws of this state, since they will be pseudo-practicing in this state.

**Marsha Berkgigler:**

Yes, that requirement will be included in the regulations.

**Assemblyman Ellison:**

Based on today's testimony, do you feel that some of the young people have started working here but never finished because they could not do the job training?

**Marsha Berkgigler:**

I think these types of programs are very beneficial, because they do allow people to practice what they have been trained to practice. Preceptorships are often used in several different fields. I think there are some people who will get to start their practice sooner.

**Assemblyman Hammond:**

For clarification, the definition of "chiropractic adjustment" is in *Nevada Revised Statutes* 634.014.

**Chair Atkinson:**

Section 7 in your proposed amendment is already existing law and not needed in the amendment.

**Assemblyman Hammond:**

For the record, we would not include section 7.

**Chair Atkinson:**

Any other questions? I will close the hearing on A.B. 382 and bring it back for a work session. I will now open the hearing on Assembly Bill 211.

**Assembly Bill 211:** Prohibits discriminatory employment practices based upon gender identity or expression. (BDR 53-272)

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

I am presenting Assembly Bill 211, which prohibits discriminatory employment practices based upon gender identity or expression.

[Read from testimony ([Exhibit H](#)).]

**Senator David Parks, Clark County Senatorial District No. 7:**

I am here today in full support of A.B. 211. Twelve years ago I brought before this legislature Assembly Bill No. 311 of the 70th Session, called the Employment Nondiscrimination Act. That particular bill did not have the legislation that we are looking for today, which relates to gender identity or expression. No one deserves to be fired, to be refused work, or to suffer harassment or violence because of who he is. Transgender persons and those who do not fit most other individuals' gender stereotype face this type of discrimination, and sometimes violence, without any recourse. Nationwide, almost half of the population has passed legislation that bans this form of discrimination in the workplace.

**Chair Atkinson:**

Any questions? [There were none.] We will now hear those wishing to testify in favor of this bill.

**Robert Ostrovsky, representing Nevada Resort Association:**

We are in support of this bill. Many of our hotels, through their own personnel policies, follow these rules and guidelines. We feel that all of our applicants and employees should be treated fairly and equally. This group of citizens in Nevada have, in a sense, been carved out of what the rights that every other citizen of this state has. We believe that this bill makes it very clear to all employers that it is very important to treat people with respect in all personnel actions. We very strongly support this bill. It is good for employers and good for our workers. It sends a message to the rest of the world about the way Nevada treats its citizens.

**Assemblyman Daly:**

There is no justification for discrimination. Do you know if there are any special accommodations that need to be made relating to transgender issues?

**Robert Ostrovsky:**

I do not have any specifics. I could ask whether any of our properties have made any accommodations. This bill is wisely written; it says we can have reasonable workplace rules as long as we measure people by their performance, what they contribute, and how they live with the same rules all employees do. Most accommodations we make are minor. If they are not, we can almost always find ways to work around the issues.

**Chair Atkinson:**

Any other questions? [There were none.]

**Pam Roberts, representing Nevada Women's Lobby:**

I am here to testify in support of A.B. 211. I am a former cochair and current Advisory Committee member of Nevada Women's Lobby.

[Read from testimony ([Exhibit I](#)).]

**Chair Atkinson:**

Any questions? [There were none.]

**Elvira Diaz, Private Citizen, Las Vegas, Nevada:**

I want to start by quoting Genesis 1:31: "God looked at everything he made and found it very good." I met Nicole in line at immigration. She is the first transgender person I have met in my life. Later on I interviewed Nicole for a talent show event I was doing. She was happy because she had finally found her gender identity. She was so good in the television production. She was so happy that she could express herself. Later, when I spoke to her, she told me it was hard for her to find a job. I encouraged her to keep working hard and that I would give her a reference.

I learned later that she found a job. I was so happy for her. I went to an opening for a Latino radio station. When I got there, I could not find Nicole. She had changed; she dressed like a guy, a very handsome guy. Knowing what a transgender is, my conclusion is that sometimes we have ignorance, and do not understand that is how we express ourselves. She reached to me and told me that Nicole is still living in her, but she needs to have a job. For the last ten years, the only way she has been able to make a living is by becoming a man.

Six months later, I had Jessie. Jessie expresses himself as a boy. He is very handsome. I do not think he feels any discrimination; everybody has accepted him. I want you to approve A.B. 211 for Jessie's future. I do not want Jessie to have the same experience as Nicole. I do not want any more Nicoles here. I also want to support all the transgender people here and in Las Vegas. They are lovely and smart, and I want them to feel their full potential. I want them to be able to share themselves openly. I encourage people who do not understand transgender to go find out. It is very hard to understand. I am a chemist, and it is very hard to understand the genes, et cetera. Jessie became transgender because when I was pregnant, I had diabetes, a toxin in me that switched something in Jessie's brain. That is why he is transgender. It is very complex. Please support A.B. 211.

**Chair Atkinson:**

Any questions? [There were none.]

**Lauren Scott, representing Equality Nevada:**

I am an openly transgender person. I am here to encourage your support of A.B. 211. Many invalid assumptions are used to deny employment to transgender people. It is often assumed that our critical thinking is impaired and our decision making ability is flawed, because we express a different gender identity than the one we were assigned at birth. Thus it is assumed that we have no credibility and are not suitable for employment. I can assure you that regardless of gender presentation, transgender people have credibility. I will provide you with a few examples.

These are excerpts from a letter by Christian Dolan. He was unable to be here today due to family responsibilities. Christian graduated from college in 1987 and received a master's degree in 1994. He received a principal's certificate in 2002. His letter says, "I taught middle school for 16 years, was an assistant principal for 1 year, and was a central office administrator for 3 years. I left my career in the Washington, D.C., area when I decided to medically transition from female to male. My wife and I chose Reno as our home, because we loved Nevada and because it allowed her to be close to her family in the Bay Area. Once we settled, I decided I wanted to put my 20 years of experience in education to work for the Washoe County School District. However, it appears that those who reviewed my application were unable to get past the first page where I was asked to give the name under which I had previously worked. My work history and my professional recommendations are stellar. Since most would agree that Washoe County schools could use a strong experience in leadership, I cannot help but believe the reality of my situation as a "transman" is what is holding me back. I, and many others like me, want to be judged by our credentials, our work history, and our ability to perform a job, not by a name we used to have. It is vitally important to me that A.B. 211 is passed so that we will be free from employment discrimination."

I was an active member of the United States Air Force for seven years. I served three years in Nevada at the Tonopah test range and supported F-17 Stealth Fighter operations during Desert Storm. I was cleared top secret, and I was awarded two achievement medals and the commendation medal. I received my honorable discharge in 1994. I received a bachelor's degree a few years later. I began my transition in 1999. After the technology company I owned in Florida was acquired in 2002, I relocated to the Reno area in 2005.

In 2008 I was hired by a company in Sparks. I would like to read you an excerpt from a letter of recommendation from that company dated May 2009. It says, "Lauren was hired to design a large control system backplane which interfaced between a new biodiesel processor controller and its instruments, pumps, and heaters. In addition Lauren was given responsibility to set up the

manufacturing department, which is to produce the control backplane, including training personnel and defining workmanship standards and tooling requirements. Lauren completed a control system backplane on time and under budget. It functioned perfectly without any rework. She demonstrated superior technical knowledge, and the ability to prioritize design factors, planning, and implementation. Lauren required little supervision while keeping me advised of progress. Lauren communicated in a very accurate and professional manner with other engineering team members. I was very impressed by Lauren's judgment skills and understanding of the big picture. Her overall performance was nothing short of a ten. After five years, the business was forced to lay off its employees in March 2008. I recommend Lauren without reservation."

I can assure you the decision to accept and express gender identity against all the pressure of society is the most critical and difficult decision a person could ever make. Legally changing a name and simply being who you are within reasonable boundaries set by the employers should not be factor in the decision to employ an individual. Transgender people ask only for the opportunity to earn a respectable living by providing their diverse skills and experience to employers in Nevada. I urge you to support A.B. 211. Please help make this state a better place to live and work for all Nevadans. Thank you.

**Chair Atkinson:**

Any questions? [There were none.]

**Michael Ginsburg, representing Progressive Leadership Alliance of Nevada:**

I am here today in enthusiastic support of A.B. 211. Each and every day transgender Nevadans suffer prejudice and discrimination when doing such routine tasks as buying food, travelling, accessing health care, and applying for jobs. Unlike discrimination faced by others, transgender Nevadans currently have no means of legal recourse. In this era of shared sacrifice that we hear so much about, our transgender brothers and sisters have nothing left to sacrifice since they have been excluded from full participation in this state due to exclusion from even the most basic civil rights and economic opportunities.

I am a big proponent that the here and now is always the right time to end an injustice, but sometimes public opinion is not always on our side. In this case, however, I am here to tell you that Nevadans are ready. Nevadans do support transgender equity. As part of our civic engagement work, Progressive Leadership Alliance of Nevada (PLAN) surveyed thousands of voters in every single legislative district across all demographics and party lines. The results were consistent, with more than three-quarters of the people in support of adding gender identity and expression to the state's employment nondiscrimination statutes. Also, over a three-month period, we conducted a

comprehensive study of discrimination experienced by transgender people in Nevada's eight most populous counties. You should have received the complete results. [There was not an exhibit of this study.] The findings reveal that discrimination and bias based on gender identity expression were experienced nearly universally among Nevada's transgender citizens. Discrimination in employment and public accommodations posed the greatest barriers and challenges for the respondents. At a time when the state's unemployment rate averaged 14 percent, unemployment for transgender Nevadans was more than double that rate. Even more profound, unemployment rates for black and Latino transgender people were more than four times that of the rest of the population. The rates of underemployment were also equally disturbing, with added effects upon disparities experienced by transgender people and those experienced by communities of color. These extraordinary disparities also fuel severe economic insecurity, food insecurity, homelessness, personal safety risks, and inadequate access to health care among Nevada's transgender communities. This is a clear issue not only for transgender equity but also for racial equity. For this reason A.B. 211 will be included in our Racial Equity Report Card of the 2011 Legislative Session.

As you have heard, this bill is not about whether to extend protections against employment discrimination; they already exist for virtually everyone but transgender Nevadans. The debate on this bill is about whether we can speak with one voice and tell Nevadans that they are to be treated as equals under law, valued as human beings, and treated with dignity and respect by their own government. We cannot, in good conscience, stand by and allow our fellow citizens to suffer mistreatment or to lose their jobs, not because of their abilities but because of fear and prejudice. We implore you to pass this Assembly bill without change as quickly as possible to allow all of us the opportunity to work safely and in peace.

**Assemblyman Ohrenschall:**

Does PLAN have any statistics about the cost to the state to not have qualified people be able to work because of discrimination as a result of gender identity or expression?

**Michael Ginsburg:**

I do not have those statistics readily available. I do know that some studies have been done on that very issue in other states. I will try to get those studies for the Committee.

**Chair Atkinson:**

Any other questions? [There were none.]

**Jane Heenan, representing Equality Nevada:**

I am here to testify in support of A.B. 211. I am a licensed marriage and family therapist in private practice and an adjunct instructor at College of Southern Nevada.

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

**Assemblywoman Bustamante Adams:**

I had the privilege of meeting Jane last year. I would like to thank her for being patient with me and educating me on the transgender community.

**Assemblyman Hickey:**

In either of the two jobs that you referenced that you lost, did you take legal action in any way? If there has been legal recourse, were you able to get some satisfaction? Why will this bill help you if you were not?

**Jane Heenan:**

I did not take legal action in response to the firings. I felt as if it was okay for them to do this. I did not see support in my community, in my culture, and in the law for me to show that this should not have happened. In terms of how this bill will help, I know many transgender people who feel as I have in the past, particularly in these instances, that it is okay that we are treated poorly. Among other things that this bill would do is to empower transgender people to stand up and say there is something we can do to participate more fully in our communities. When we are treated wrong, we can say the law is on our side. That is a huge shift.

**Chair Atkinson:**

Any other questions? [There were none.]

**Kathleen Delaney, Private Citizen, Las Vegas, Nevada:**

I am currently the sitting District Court Judge in Department 25 of the Eighth Judicial District. I am very proud to say that I am an ally of the transgender community in this effort to secure removal of barriers to employment and equal rights in employment. Through a mutual friend, I met Jane Heenan about ten years ago and was made aware of the fact that there is no legal protection for this community in our laws. I have been a practicing attorney for over 20 years. I spent approximately half that career as in-house counsel for Mirage Resorts, at the time the largest employer in the State of Nevada. I then transferred to the Office of the Attorney General and served as a Deputy Attorney General in the Bureau of Consumer Protection. I was elected to the Eighth Judicial District Court in 2008.



When I say I was not aware that the protections were not there, I say that in a very general sense, in that it seems to me so incredible to think that our state would not afford equal employment opportunity protection to all of those who need it. The only reasons to take employment action against someone, or to fail to hire someone, would be because of his lack of qualifications or his work performance. There is absolutely no justification. I worked for an employer that had zero tolerance for any form of discrimination. That employer and others have continued to have private policies that prohibit that form of discrimination. My main reason for speaking today is to add whatever weight my words might bring and to also share with you what this bill really is and to try to reinforce it.

My current job is all about justice and fairness. That is all that this bill is. It does nothing else but say that an employer in the State of Nevada cannot discriminate against someone because of who he is. What it really is not about is providing litigation opportunities. Individuals in this community are not looking for litigation opportunities; they are looking for work. This bill would remove the barriers that might be in place, whether it is through ignorance or intentional discrimination. Like every piece of civil rights legislation that has ever been approved on the federal or state level, this bill removes those barriers. People recognized there was discrimination, and there was a desire to remove those barriers so that individuals could come into the workplace. I was very interested to hear Mr. Ostrovsky talk about the Nevada Resort Association and why it supports this bill. When I was in-house counsel with Mirage Resorts, the Americans with Disabilities Act was first implemented. There was a concern about how it would be undertaken. The result was it was undertaken because we needed to remove barriers and get individuals into the workplace and realize that everybody can do the job. It is about how people do the job, not about who they are or what we might preconceive to be their limitations.

I want to reemphasize that this is about civil rights and equal employment opportunity, and nothing else. From my perspective, if the Assembly and the Senate do not pass this bill, it is tantamount to allowing discrimination to continue in the State of Nevada against the transgender community. The statistics are overwhelming that this is in fact occurring in our community, and you have the power to stop it. I strongly urge your support of A.B. 211.

**Assemblyman Ellison:**

As a judge, under the law that we are looking at right now, are you telling me you do not have enough authority to protect someone based on the laws already here?

**Kathleen Delaney:**

That is correct. It would obviously depend on each individual judge's interpretation, but if you look at the list of protected classes that are stated in our state's equivalent to Title VII of the Civil Rights Act, our state's antidiscrimination statute, gender and identity expression is not specifically listed. Sex discrimination is, of course, prohibited as part of the original Title VII. Sexual orientation is protected. But as you have heard speakers today say, gender identity and expression is a different thing. The laws currently do not offer that protection. We are talking about the removal of barriers. Could there be judges who would interpret our laws to have a broader application and provide a protection upon a lawsuit? It is entirely possible. The protection is not specifically stated.

What is more important is making employers aware that it is not permissible to do what was done in the example given by Ms. Heenan, which is stating, "You are qualified, we would love to hire you, but you are transgender, so we are not going to." In 1992, employers who decided not to hire someone who was deaf, blind, or had a disability—because they had a preconceived idea of what that person could do in the workplace—were told by the law you cannot do that. You must consider this employee and then hire and fire based on qualifications alone. That is what this law does. It removes barriers and it puts in place education for employers to give equal opportunity to these qualified individuals in the workplace. I would suggest to you at this time that our statute is incomplete. It is not all inclusive and may result in litigation being found against a transgender individual if he or she were discriminated against.

**Chair Atkinson:**

Can you repeat what you said at the end of your testimony?

**Kathleen Delaney:**

I was trying to illustrate a point. The point that I am trying to make is this legislation is necessary. I said if the Assembly and the Senate do not pass A.B. 211, it is my belief that it is equivalent to remaining silent and allowing discrimination to continue, because the statistics are overwhelming that this discrimination is in fact occurring in our state right now.

**Chair Atkinson:**

I feel your comment is inappropriate and unfair. This body is not allowing discrimination. I do not think we have decided where we are going to go with this bill, but we certainly are here to hear testimony on a late Friday to figure out where we are going to go with it. We certainly felt strongly enough to give it a hearing, because there are some bills in my Committee that we are not hearing. Give us the benefit of the doubt.

**Assemblyman Ohrenschall:**

Since the Americans with Disabilities Act (ADA) passed in Nevada, are you aware of a flood of litigation that has arisen? Often, when this type of legislation comes forth, opponents cite fears about lawsuits.

**Kathleen Delaney:**

No, we have not seen a flood of litigation. I have been on the bench since 2009, and I served as an employment law attorney for the bulk of my 20 years of practice. We did not have litigation that erupted after the ADA was implemented. What has happened is that employers have removed barriers and people have had equal opportunities. There were those who refused to comply, and there may have been some litigation that occurred. This is not a litigation opportunity; it is about equal employment and barrier removal.

**Assemblyman Ohrenschall:**

Assemblyman Aizley cited jurisdictions that have passed laws similar to this, banning discrimination based on gender identity and expression. Are you aware of a flood of lawsuits in any of those jurisdictions?

**Kathleen Delaney:**

I followed very closely the national statistics that are kept by the various organizations that track these things, and no, they absolutely have not had floods of litigation. Apparently there are very specific statistics in the materials provided ([Exhibit K](#)).

**Assemblywoman Kirkpatrick:**

What I am not hearing here is Nevada's statistics. If we are trying to make a Nevada law, frequently people want us to do what other states are doing, but I think in Nevada, we do not set out to discriminate against people on purpose. We rely on tourism from around the world. Where are the statistics for Nevada law? I can see in other parts of the country where it may be an issue. I want to know whether it is specifically in Nevada. When you were an attorney, how many people came to you about this issue?

**Kathleen Delaney:**

Mr. Ginsberg may be able to answer this. What I can tell you is that is exactly the thoughts that I had when I was a practicing attorney and working in a capacity where I would have known about this issue. I did not believe this could exist until I met Jane Heenan and I became involved in this community to try to assist. I have heard the many, many stories of what is occurring in our communities. Whether we can believe it or not, it does occur. The statistics that were gathered nationally certainly could be extrapolated over to Nevada numbers. I know two years ago when a bill was introduced, we tried to see if

we could put together an actual survey and get some Nevada statistics, and the expense was something the community could not undertake at the time.

**Assemblywoman Kirkpatrick:**

I am involved in all types of groups and we could have put together some numbers. I think that is only fair for us. I also felt as though you insinuated that if we did not pass this, you were going to go back and tell all the other judges that you could not make an opinion on this. I think that sends a bad message for our state. We rely on all different kinds of people at all different times. Our state is built on tourism. In my district, people will tell you they are out of work because they are too old. I look at everyone as equal across the board. It is really hard to do that based on an assumption. I think that in the last two years, we should have some numbers.

**Kathleen Delaney:**

I want to be clear that I am testifying in a personal capacity.

**Chair Atkinson:**

When you began speaking, you introduced yourself as a district judge, and then you began to speak. You did not say you were speaking as a private citizen.

**Kathleen Delaney:**

I would like to extend my apologies to you and the Committee and anyone else who may have been offended by my remarks. That was certainly not my intent. My remarks were to make clear to you that I have been dealing with this community and this issue for many, many years. I know for a fact that it is occurring on a regular basis. I know for a fact that we need this law. I am only testifying in my personal capacity. I just want you to be aware that it is occurring. The statistics are overwhelming nationally; they do include Nevada statistics because they are national statistics.

**Chair Atkinson:**

Does someone else have those statistics?

**Michael Ginsberg:**

As part of our submitted written testimony [there was no exhibit], we have the transgender community needs assessment survey, which is the largest survey of its kind to date. It encompasses Nevada's eight largest counties. As much as we would like to think that we are a color-blind society, we are in fact not. Nor are we a transgender-blind society. We would like to think that much of this discrimination does not occur. In that report, 65 percent of the respondents indicated that they had experienced workplace discrimination because of their gender identity and expression. As I had referenced, the

unemployment rates were literally double among the transgender communities when compared to the total population. In transgender communities of color, that rate was four times higher than the total population.

**Assemblyman Horne:**

I think it depends on the type of statistics you are looking for. If it is the number of claims about employment discrimination, and transgender is not a part of the identifiable in the list of class protection, you may not have the statistics to show the numbers of discrimination that are occurring. If you go to an attorney because you were fired for being transgender, the attorney says he cannot represent you, that you do not have a claim because you are not part of a protected class. I do not know if anyone is taking note of those statistics. Whereas when you are in a protected class, and you file those claims, that is a readily attainable number. Also, if passed, we might actually see a reduction in lawsuits because once it is in the law and an employer knows and sees that, the discriminatory practices may diminish. I do not know if there is data to support that theory, but that is what my gut tells me.

**Kathleen Delaney:**

I agree with you 100 percent. Thank you. That is one of the reasons why there would not be statistics; people do not complain because they do not believe they have a right to. The statistics that I want to reference nationally to extrapolate to Nevada, and the specific ones that PLAN has gathered, clearly show a statistically higher impact on the transgender community for the lack of this law.

**Chair Atkinson:**

Any other questions? [There were none.]

**Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates:**

When my mother served in the Assembly, she never believed in singling out any individuals for discriminatory treatment. I think she would be in support of this concept. I would like to thank the members of the Committee and Chair Atkinson for scheduling this hearing. This is an important, long-standing issue in Nevada.

As a fourth-generation Nevadan, I take great pride in the fact that this is a state where I have always felt we judge people on their individual merit. I believe that all of you are exemplifying that. I would also share with you that Planned Parenthood in Nevada is making it a priority to specifically address transgender health issues. The reason for that is we are hearing from our transgender patients that they have difficulty accessing health care at every level. Anybody

can catch a cold, or a sinus infection, or strep throat. Sometimes it is very difficult for these individuals to get past the fact that they have changed their name, or changed their gender. It is a somewhat small population, and sometimes they cannot even talk about the fact they that they have a cold or a raging fever because the health care professional is so caught up in their issues of being a transgender individual, which has nothing to do with having a sinus infection. In other cases, there are some specific health needs that are unique to this community, such as reproductive or hormonal issues, as you have heard from some of the testimony. We are working very closely with this community to ensure that we can provide the specific care they need, and hopefully share what we learn with other health care providers. We are supporting this bill because most of our clients do not have health insurance. Most health care providers are looking for insurance. As we all know, insurance is often related to employment. Self-sufficiency, taking care of your family—all of these issues are directly related to employment. I would ask you to help me create a Nevada where transgenders are judged as you have judged the people testifying today—on the individual merits of their work and their credentials. [Written testimony also provided ([Exhibit L](#)).]

**Assemblyman Hickey:**

The statement was made that the last time legislation was passed, we had left a certain protected class out. In your estimation, are we missing anyone else now that we possibly ought to be considering?

**Elisa Cafferata:**

I am not an attorney. The stories you have heard today relate that people originally did not even think they had a legal right to ask to be treated on an equal basis. Are there other people who are being lumped into a group and being discriminated against? I have no idea.

**Chair Atkinson:**

Any questions? [There were none.]

**Octavia Hamlett, Member, Progressive Leadership Alliance of Nevada:**

I recently faced employment discrimination. I went on a job interview, and I was elated because their policies did not have a gender marker when I read the application. It stated they were very inclusive in their practices. I went there with my "A" game. I wanted this position. When I got to the interview, I found out there were two positions available. During the interview, a sergeant was there. My interview went extremely well. I felt very energetic about it. My work experience is in the gaming and casino field; I felt as if I aced that interview. I was telling everyone, "This is my job." I felt a little confused because the sergeant was asking me questions, even though I did not qualify

for that position. It made me feel uncomfortable. The young lady doing the interview and I connected on so many levels, and she even said that I was a great candidate for this particular job. I did not get the job, and I felt it was probably because I am a transgender. When I had to put my born name on the application, I could tell I was not going to get the job. Needless to say, I did not get it.

I want to be able to support myself. I am very intelligent. I would be a great asset for any company, but because of who I am, I am not given the chance to prove myself. That is why I support this bill.

**Assemblyman Ellison:**

How many people applied for that job?

**Octavia Hamlett:**

I am not aware of the total number, but I know when I got there, there were about five people there with me.

**Assemblyman Ellison:**

What was the job position?

**Octavia Hamlett:**

It was customer service.

**Assemblyman Ellison:**

Right now, whenever anyone applies for a position, there are hundreds applying for the same position.

**Chair Atkinson:**

Any other questions? [There were none.]

**Yasmina Aden, Private Citizen, Las Vegas, Nevada:**

I was employed at a medical institute in Las Vegas. I have a college degree from Ohio State University. I am a transgender male to female. I strongly believe I have lost my position as an executive assistant for the employer that I was working for based on my gender identity. This is why I am here today. This bill is very important to many individuals like myself.

**Chair Atkinson:**

Any questions? [There were none.]

**Denise Jay, Private Citizen, Las Vegas, Nevada:**

Thank you for giving me the opportunity to come and speak to you concerning a matter that is of great importance to me. Two years ago I came before the Nevada Legislature to tell my story. I had applied for employment in my field of education and training, only to be asked to leave the premises before ever being given the chance to interview for the available position, simply because of who I am as a member of the transgender community in the State of Nevada.

In the last two years I have applied for over 500 positions in my field of study, only to be denied every time simply because of who I am. In order to survive, I have had to settle for a job far below my education and skill level. In the employment position that I currently hold, I am confronted daily with harassment from my coworkers and management leaders. I am constantly reminded that I could face being reprimanded or, even worse, terminated. Even though I have taken and excelled at all the pre-qualification testing for further promotion and advancement, I have been told that these opportunities would be withheld from me simply because management did not feel that the other employees would be able to respect someone like me in a leadership position. Therefore, I continue to be assigned to menial roles and job assignments.

In these difficult economic times in Nevada, I, like everyone else, desire simply to be able to earn and maintain a decent and honorable living, and to live and work without the fear of prejudice or persecution. In closing, I would like to say I am someone. I am someone's child. I am someone's sister. I am someone's brother. I am someone's father. I am someone's mother. I am not different from others. Why does my preference have to be dissected? Why do I have to worry about being accepted? I qualify for equal opportunity. I am a voice in my community. I ask you to hear me. My voice asks for a change. I breathe and bleed like all of you. I am someone.

**Chair Atkinson:**

Any questions? [There were none.]

**Danielle Walliser, Private Citizen, Las Vegas, Nevada:**

I am a 31-year resident of Las Vegas, Nevada. I am also a licensed architect in Nevada, Pennsylvania, and California. Previously identified as a transgender woman, I now have a gender identity of female. I come to you not to speak about the legal issues involved, because I am not an attorney. I have had a hard time coming to terms with my own gender identity issue during the course of my life. It took me over 50 years to really understand what I needed to do as a transgendered person. That is behind me now. I can tell you there is no greater elation in someone's life than to come to terms with one's true gender



identity. I am here to urge you to pass A.B. 211, adding important protections for gender identity and expression into Nevada state law.

As an architect, I am very proud of my accomplishments in Las Vegas. I cannot go anywhere in the Las Vegas Valley without being able to point to or look at a project, a park, or a school that I did not have a hand in helping create during one of the greatest periods of growth in this state. As an architect, I would like to try to convey a message that somehow gets lost in programming. A lot of people come to architects with preconceived ideas about what solution they will present to problems. They come to us at a design committee meeting with that in mind. During the course of my career, I have entertained design ideas, and led many design committees, which often tend to set low expectations by virtue of stereotypes. For example, one wants a building for public use, such as a transportation center, near a low-income area. There are those who would say, "Build it of concrete block and materials that are extremely durable because the people who will use it are not going to respect it. It will become a maintenance nightmare, so do not give them any real facility of quality." I can tell you that, in design, people tend to live up to expectations that are set for them. I have found in my career, if you present people with a facility that has an inherent quality, logic, and functionality about it, people tend to rise to the occasion and embrace the facility with a sense of place.

The same is true with gender identity. The state is in a position to set a level of expectation. Send a message with the addition of these provisions that this is what we expect of all employers. We will not attempt to tell you how to accomplish it, but rather we are going to stand behind this right as a civil right and allow people to determine that in their own organizations. Transgender individuals should have some recourse.

**Chair Atkinson:**

Thank you. Any questions? [There were none.]

**Toni Witten, Private Citizen, Las Vegas, Nevada:**

I am in favor of A.B. 211. To give you a little background, I have resided here in Nevada since September 2010. I am originally from California, where I was employed as a traffic enforcement officer at San Diego International Airport for just under ten years. My duties encompassed everything from traffic control and assisting other law enforcement agencies to conducting inspection of commercial vehicles, homeland security work, and enforcing metropolitan transit laws, airport authority codes, and California vehicle codes. When I decided to relocate here, I began my search for employment. I have some pretty good credentials. I began looking at different security companies and put in a few applications in the public sector. I also began to look at the hotels and casinos

for employment. I cannot speak to statistics or studies, but I can tell you from my personal experience, I have experienced discrimination here.

I submitted an application for a position at a major hotel-casino here as a maintenance dispatcher. My duties in San Diego as a traffic enforcement officer included running a small public safety dispatch center. I was very accustomed to radio dispatch and etiquette and protocol; on paper I looked great. They called me for an interview. I reported to my interview on time in professional attire. I was met by a human resources representative who seemed puzzled by my appearance. I had the interview with the human resources representative and the manager of the maintenance department. I was asked about customer service, my qualifications, and my experience. I answered all their questions. The maintenance manager said my answers were spot on. He said my qualifications were excellent for the job. They began to ask me about scheduling and when I could start. Then the question came up of my first name. My legal first name is Anthony. The human resource representative wanted to know why my name was Anthony. I had to explain that I am transgender. With that explanation, she said "I will walk you out. Follow me." I did. She took me to a different entrance, through a back service entrance by the trash compactors. I never heard back from them. I continued to check the status of that position for about the next month. It was never filled. There is definitely an issue here, and I think that passage of A.B. 211 will give employers, at the very least, an incentive not to discriminate. I am a human being. I am a father. I have a four-year-old daughter. I want a chance at that brass ring like everyone else. I do not want special protections; I want equality. I just want the American dream, and I think this is the first step.

**Karen Grayson, Treasurer, Nevada Stonewall Democratic Caucus:**

The name given to me by my parents on October 28, 1956, was Kevin Griffith. My birth certificate lists my gender as male. From the age of four I knew I was not like other boys. I knew that I was born the wrong gender. From that point on I lived in fear that someone would find out who or what I really was, a transgender. I feared losing my family and friends. As I got older and entered the workforce, I hid what I was out of fear of losing my employment. What would my employer do or say if he found out? I became a husband and a father. I have two boys attending the University of Nevada, Las Vegas. My wife understood who and what I was, but we still worried about what would happen to the family if my secret was revealed. For 50 years I hid from society what I was. I went about my life as a male and worked in various male-oriented jobs to hide who I was. I was an auto mechanic, a fireman, and a director of photography in the movie industry in Hollywood. I eventually wound up in Nevada working in the construction industry. I was a construction

superintendent for a major construction company for 15 years. I built homes, schools, and restaurants.

Three years ago, it happened. I was found out by my employer to be transgender. I never once went to work dressed as a female. I always went to work dressed as a male and did what I was told to do for fear of losing my job. My employee performance for the last five years had been rated an 8.5 to 9 out of 10. I worked 70 hours a week on most projects. All of my projects were completed on time and under budget. I never had a complaint from any client, only praise. I have the letters to prove it. One day I was called into the office and told that my performance had dropped below company standards and I was terminated as of that moment. That was the only excuse they stated, other than that this is a right to hire and a right to fire state. I later found out that it was all a lie. Someone in the company told me that I was let go because they had gone into my computer and found a letter I had typed regarding a transgender issue. I was thought to be "one of them." It was bad enough if someone found out they had a gay person working for him, but what would happen if he found out he had a transgender person working for him?

I did not have a leg to stand on regarding my dismissal, because there are no protections currently in place to protect the rights of transgender employees. Being transgender is not a choice. It is a medical condition from birth. Knowing your whole life that you were born in the wrong body is bad enough, but to lose your job because you were found out to be transgender should be criminal. A person should not lose his job based on gender identity or the hate and bigotry of others.

Jane Heenan mentioned that approximately 25,000 people in Nevada are transgender. Of those 25,000 a very small percentage ever comes out of the closet, ever dare to walk past his front door for fear of being beaten, possibly killed, attacked, fired, or discriminated against. The small percentage is the people that are testifying today. We are here to stand before you to represent everyone else here in Nevada, all those 25,000 people, and say it is time for a change. I respectfully ask that you take these testimonies into consideration and give special thought about the importance of giving equal rights to everyone in this great state. I am not asking for special privileges for the transgender people in this state, but for equal rights that are currently granted to everyone else.

**Aleta J. Dupree, Private Citizen, Las Vegas, Nevada:**

I live in Las Vegas. In light of the stories that I have heard, I am urging you as a Committee to pass this bill. If we do not ensure that it is clear that everyone has these rights, then people will fall through the cracks. This is creating a

greater body of law that can be used to send a message to the country and the world that we are a society that believes in taking care of its own. This is very important because we have a lot of ordinary people, but our ordinariness makes us extraordinary. The talent of our people can be used to better our community and to build this state back up. This bill will bring more people here, get people back to work, and invest in this community. I ask, again, that you pass this bill. We are just ordinary people who want to live our lives in peace.

**Dane Claussen, Executive Director, American Civil Liberties Union of Nevada:**

We are here today in support of this piece of legislation. We have submitted written testimony ([Exhibit M](#)). I hope you will have a chance to look at it. I want to talk about two points. One is that the Committee does have a lot of tangible evidence for why this bill should be passed. You have statistical evidence from PLAN. You also have tangible evidence in the form of personal and very powerful life stories from transgendered individuals who have taken their time and energy to testify today. I would like to add that beyond the tangible aspect, this is also a symbolic bill, because nondiscrimination laws are not only about helping individuals or groups but are also symbolic because they are about who we are as Americans. The American Civil Liberties Union is here supporting this bill both because of its tangible benefits and because of its powerful symbolic significance.

**Chair Atkinson:**

Any questions? [There were none.] Is there anyone wishing to testify in opposition to A.B. 211? Anyone neutral? Seeing none, I will close this hearing.

[Presentation submitted by Lisa Mottet but not read ([Exhibit N](#)).]

I will now open the hearing for Assembly Bill 353.

**Assembly Bill 353:** Prohibits a court reporter or court reporting firm from charging more than a certain amount per page for copies of a transcript under certain circumstances. (BDR 54-81)

**Assemblyman Tick Segerblom, Clark County Assembly District No. 9:**

During active litigation practice, an attorney may not go to court, but he takes a lot of depositions. Most of you probably have either had your deposition taken or have been present at a deposition. Basically the court reporter is put under oath, the questions are asked, and the court reporter takes down the transcript. The way the process works is one party notices the deposition, contacts and hires the court reporter, and asks the questions. When the deposition is over, he will pay for the original transcripts. That is a contractual process. He can pay whatever he wants to pay.

The problem is that if the other side wants a copy of the deposition, he has to pay that same court reporter. Historically, in Nevada, the court reporter would charge a relatively reasonable rate. The reality is the court reporter takes the original transcript to Kinko's, duplicates it for 5 cents a page, puts it in a binder, and sends it out. He charges \$1.50 per page. He is making a pretty good profit. Now out-of-state firms have started to work in Nevada, taking over the court reporting business and charging exorbitant fees for a copy of the transcript. I do not care what the court reporter charges the hiring attorney to come to the court. But if I need a copy of the deposition for my client, I should not have to pay \$4.50 or more per page. I have an invoice from a deposition for my client ([Exhibit O](#)). That deposition was 341 pages. At Kinko's, it would have cost approximately \$15. They ended up charging me \$1,611.85 for that deposition.

I put a \$2.50 page maximum in the bill. I think these out-of-state firms are getting out of control, and there should be some way to limit the expense without breaking the bank for the person who is not noticing the deposition but needs a copy.

**Assemblywoman Bustamante Adams:**

Why has there been such an outsourcing for this process? Is there an overload of work? Why did a number of companies come into this state?

**Assemblyman Segerblom:**

I cannot tell you. It has come as a shock to me, during the last year, to see what has happened. These firms are from all around the county.

**Assemblywoman Bustamante Adams:**

When the money is charged, where does it go? Do the court reporters get a percentage of that money if they partner with a third party, such as a national company?

**Assemblyman Segerblom:**

I do not know. I just know what I have to pay if I want a copy of transcripts. They have to use local court reporters by law, but I am not sure how they share the fee.

**Assemblyman Ellison:**

I cannot believe the emails I received on this bill. Some of my constituents are wondering if perhaps the attorney fees can be restricted also.

**Assemblyman Segerblom:**

The court reporter can charge whatever he wants to charge the hiring attorney to take the deposition; that is a contract between the attorney and the court reporter. I would like to put a limit on the fee to get a copy of that transcript. If you are the person being deposed, and you want a copy, you should have some way to get a transcript without breaking the bank. With respect to caps for attorney fees, someone else can propose that bill.

**Assemblyman Ohrenschall:**

When you say this fee is paid by an attorney, ultimately it is borne by the client, correct?

**Assemblyman Segerblom:**

Correct. In litigation, the attorney can pay for the costs initially, but ultimately the client must pay this cost.

**Assemblyman Ohrenschall:**

If these fees become too high, is it possible that the clients will not have access to the courts and have their day in court?

**Assemblyman Segerblom:**

If you cannot afford a copy, you do not have to get one. If you are the plaintiff, and would like a copy of the transcript, it becomes very expensive.

**Assemblywoman Carlton:**

Are these fees being charged to everyone equally, or is the opposition being charged more than the original attorney that did the deposition?

**Assemblyman Segerblom:**

I am not accusing them of that. I will say that the costs vary greatly between court reporters. The ones I use locally are \$1.50 to \$2 per page. Recently, with these out-of-state firms, they charge for the transcription, they charge for delivery, et cetera. I offered to come pick it up, but they were in Atlanta, so they charged me Federal Express shipping fees.

**Assemblywoman Carlton:**

You, as the attorney, have no say as to who is hired for the deposition?

**Assemblyman Segerblom:**

Correct.

**Assemblyman Grady:**

You do not have the right to bring your own court reporter to a deposition?

**Assemblyman Segerblom:**

Yes, I could have my own court reporter there also. The way the process works is that the attorney calling for the deposition hires the court reporter. I could bring my own, and I would then have to pay an original fee. That costs approximately \$100 for them to show up and \$5 per page.

**Assemblyman Grady:**

It would still be cheaper than the \$1,600 in your example.

**Assemblyman Segerblom:**

My example was approximately \$4.50 per page. That is for the second copy.

**Assemblyman Goedhart:**

Is there any upper limit, outside of a bill? You are saying you do not have a choice on who the originating party uses?

**Assemblyman Segerblom:**

Correct; currently there is no upper limit.

**Chair Atkinson:**

Anyone here wishing to testify in favor of A.B. 353? Anyone in opposition?

**Joseph Guild, representing Nevada Court Reporters Association:**

I am very familiar with the subject matter of this bill. With me are members of the Nevada Court Reporters Association. I have spoken to the prime sponsor of this bill. I respect the reasoning behind this bill and find his invoice to be outrageous. There is a problem that needs to be addressed. I have committed to try and help solve this problem. This is a free enterprise notion, and to put a price control on something like this goes against the way we should be doing things in this state. As a framework, I would like to figure out a way to help solve the problem. I believe *Nevada Administrative Code* (NAC) 656.390 is germane to the topic and relevant to this subject. It requires a court reporter to establish fees for the various services. It also states, "After establishing his fees . . . a court reporter shall charge the same fee and provide uniform service to each party to the litigation." If there is a discrepancy in fees being charged by court reporting organizations, they may be in violation of Nevada law and regulation. The people here today are either independent court reporters or belong to small Nevada firms, and are not participants in these larger organizations. The regulation also states that, upon request, a party shall be provided with an itemized statement of all of the rates and charges that the reporter will assess. I think there is a basis in our law and in our regulation to accomplish some of the things that Assemblyman Segerblom would like to accomplish.

**Cecilia Vohl, Certified Court Reporter, Reno, Nevada:**

I am here to urge you to vote in opposition to A.B. 353. I am not regulated by the freelance market, but I am regulated by *Nevada Revised Statutes* (NRS) 3.370. The rates for freelance reporters are set according to the market for such services. This also allows an attorney to shop around and ensure he is paying a reasonable rate. I am sure Assemblyman Segerblom had the opportunity to contact the attorney who is requesting this deposition and ask for the rate of these services. He also had an opportunity to bring his own court reporter for that proceeding. The court reporters in the State of Nevada are governed by the NAC and the NRS. There is also a licensing agency, the Certified Court Reporters' Board of Nevada. If there is a complaint regarding any court proceeding that a court reporter is involved with, they have a chance to report this to the board. This is a licensing agency that oversees, regulates, and disciplines our certified court reporters in this state. If there is any concern it can be addressed. Assemblyman Segerblom could have taken his concerns to the Board, citing specifically NAC 656.390. An even better approach would be for an attorney involved in any litigation to request an itemized rate sheet before the upcoming proceeding.

I believe this bill ignores the impact that price fixing may have on other aspects of transcript production, such as expedite fees. This would not allow a court reporter to charge an extra fee as an expedite fee. This fee is placed on the original and one copy, which is the attorney's obligation to pay; the original is filed with the court, and the copy goes to the attorney. The opposing attorney has to pay for a copy. The expedite fee would also be raised for that. This bill does not take this into consideration.

I believe this bill is overreaching and opens the door to other pricing regulations and opportunities not imposed just on court reporters. I would like to read an email to you from another court reporter who was unable to attend.

**Chair Atkinson:**

You can submit it; thank you. [Email was never submitted.]

**Assemblyman Ohrenschall:**

You mentioned that the way you read the bill a court reporter would not be able to charge an expedite fee. As I am reading section 2, it says, "A court reporter or court reporting firm may, in exigent circumstances, apply to the court exercising jurisdiction over the proceeding for relief from the provisions of subsection 1." If there were a scenario where there were extra fees that the court felt were proper, the court reporter could apply for those extra fees, correct?



**Cecilia Vohl:**

That is true, but that is quite an impediment to doing business.

**Joe Guild:**

From a practicing attorney's point of view, an expedited transcript is something that I would want the very next day, or with electronic transcribing it can be received in an hour. That is the kind of transcribing we are talking about. To have to go to court and get put on a case, showing that the court reporter needed extra fees in that exigent circumstance, really flies in the face of me, as the attorney, needing the transcript in a much more timely fashion than is normal.

**Assemblyman Ohrenschall:**

If this bill passes, could the court reporting firm expeditiously deliver the transcript to the attorney and then apply to the court for the extra fees?

**Joe Guild:**

Yes, but then I would raise the question, what is an exigent circumstance? I could order an expedited transcript; then, under the law if passed, I would pay \$2.50 per page. Later, the court reporter could charge me the extra fees, but why would I pay it until the judge ordered me to pay? I see this as layering something that does not need to be layered and I think adding that process would be overly burdensome.

**Assemblyman Goedhart:**

If an attorney just wants a copy of a deposition, there is no upward limit on what court reporters can charge for that; is that correct?

**Joe Guild:**

That is correct.

**Assemblywoman Carlton:**

I understand your statement that it should be equal across the board, but it could be equal at the \$1,600 range, also. I know the Nevada Certified Court Reporters' Board has some jurisdiction over these companies, but I am not sure it has enough. We have an original contract between the original attorney who is doing the deposition. The second attorney has the opportunity to ask for a copy of the transcript, or a disk of that so he can transcribe it. When you get those requests, is there a variance in price between the copy and a disc, or is it basically so much a page, and still associated with the disc price?

**Cecilia Vohl:**

We charge a set price for a copy of the transcript. The disc would be approximately \$15 extra. These little added features are for a small fee. If you want a condensed transcript and a word index along with the deposition, that would be \$20 per day.

**Assemblywoman Carlton:**

Is it appropriate to assume you charge about \$1 per page?

**Cecilia Vohl:**

The freelance reporters would be better able to answer that. I work in court, and my page rates are set by statute at \$3.55 per page for the original and one copy, and the copy for the other side is 55 cents per page.

**Assemblywoman Carlton:**

So 55 cents per page is what we are statutorily setting the value of this product at?

**Cecilia Vohl:**

Yes, and the rates do change for expedited transcripts.

**Assemblywoman Carlton:**

For the freelance reporters, what is your fee schedule?

**Barbara Johnson, Certified Court Reporter, Reno, Nevada:**

I have spent 25 years as a certified court reporter in the rural areas of Nevada. Now I work as a part-time reporter. I have a week a month set aside to go to Elko to work. If this bill were to pass, I could not go. It would prohibit me cost wise to go. Because I am generally in Elko for a week, I set up a deposition for one person for an entire day, and another one for a few hours. The expenses for me to go there keep rising. I spread the expenses out, based on the amount I charge per page. I charge the same amount per copy for everyone. I also handle the exhibits. If that price were limited to \$2.50 per page, I could essentially be in a negative situation after my expenses. I have been known to have to run to Wal-Mart in the middle of the night to buy a printer. It is more than just pushing a button and getting an extra copy. It is part of our process. The copying of the transcript, binding it, and labeling it is an all-day process.

**Assemblywoman Kirkpatrick:**

I understand the free market and needing enough to cover overhead expenses, but this pertains to copies. You just said you charge everybody the same

regardless. In my opinion, it sounds like you are banking on the copies, because that is where you are making your profits.

**Barbara Johnson:**

That is not true at all.

**Assemblywoman Kirkpatrick:**

Then I must have misunderstood, because I was going to suggest that if it is just on the copies that you cannot charge more than 50 percent of the original cost, it seems you already have the information, and there is no other way for someone to get that information unless he hires a court reporter. You hold all the cards. At the end of the day, it is a pass-through all the way down to the constituent, who has to pay hundreds of dollars to have that information. For example, during a legislative session, we had to get court-reported documents to determine what happened during some meetings. That cost the state well over \$1,000 to get that information

**Barbara Johnson:**

What I meant to say is that I charge the same price for everybody who orders a copy. I do not charge one person more than another person. If it is 300 pages, it will be \$600 because I charge \$2 per page when I go to Elko, because that includes all my expenses.

**Assemblywoman Kirkpatrick:**

This bill specifically talks about copies. It does not talk about the original piece. If you bank on copies, how do you figure that into your overall expense? Do you count on copies to make up the margin or not?

**Lynn Stubbs, Vice President-North, Nevada Court Reporters Association:**

We do not bank on copies. The original and one-copy price is what we bank on when we go to a job. It varies from firm to firm, on average \$4 per page for the original and one copy. We are hired by a firm, the firm gets a percentage of that, we get a percentage of that, and we might pay a proofreader. There is more involved than just pushing a button. We like it when we get more copies because it does make the job worth our effort. Sometimes we are up all night. You may not have ordered an expedited transcript, but someone else may have. Not only does that expedite that job, it expedites the next four jobs, because we have to make up the time and get the jobs in on time. There is a lot at play. The bottom line is, no, we do not bank on copies. They are our dessert. The bread and butter is the original and one copy. We do not have any say who will charge for what; that is why the Board is there, so it can address those complaints. Possibly the Board can come up with a bill to help address this issue, because I see this as a problem also.

**Assemblyman Goedhart:**

When you went to Elko, you had to figure in the higher costs to make it worth your trip. If I went to Elko to do a court reporting and do the deposition, my bill would include travel time, lodging, and fuel as part of the deposition rate. Court reporters are now increasing the deposition rate, and then picking up the margin when they bill for copies. As written, this bill does not preclude you from charging what you need to charge to drive to Elko and do your deposition. This bill's intent is to prevent someone from paying a huge sum of money just so he can get access to the information needed to possibly prepare his own defense.

**Assemblyman Ellison:**

You are licensed professionals, correct?

**Lynn Stubbs:**

Yes. We are certified by the Nevada Certified Court Reporters' Board. We go to school and learn the skills, legal terminology, and medical terminology. We must pass a test in each state to work.

**Assemblyman Ellison:**

Is there a pool of individuals that an attorney can go to?

**Lynn Stubbs:**

Yes, an attorney chooses which firms he uses. He can use an independent court reporter who is not associated with a firm at all.

**Assemblyman Ellison:**

It is not like one individual is next in line. People have the right to use whomever they want, correct?

**Lynn Stubbs:**

That is correct.

**Michel Loomis, Certified Court Reporter, Reno, Nevada:**

I have been in the freelance world and am a new firm owner. I think the issue that is not getting across is that you are allowed to hire whatever court reporting firm you want. You do not have to go out of state and hire someone. You can also ask for the rates up front. You do not get surprised at the end of the deposition when the court reporter charges whatever he wants. You can ask that up front. I would not charge one party more than another. The attorney ordering the copy does not have to use that firm either. He can agree to use a different firm if he thinks that pricing is too high. I do not think court reporters should be limited, especially in this state, as we already suffer in this economy.

**Assemblyman Ellison:**

If a court reporter is from California, does she have to be licensed in the State of Nevada?

**Michel Loomis:**

Yes, she does.

**Assemblyman Horne:**

The problem is that the party that is requesting the deposition does the hiring of the court reporter. The other party is bound by that. The initial cost for the original may not be exorbitant; the issue is the additional copies that may be requested. Also possibly muddying the waters is the fact that we heard from an official court reporter. I do not understand the point of her testimony if the official reporters are not affected by this bill.

**Cecilia Vohl:**

The reason I am speaking here is that I sometimes do work in the freelance field. When my colleagues are challenged by such a bill, I think it is time to speak. I think everyone in this profession should be speaking on this bill. I can work outside of court because I am not an employee of the court. I am an independent contractor. I have not done a lot of hearings and depositions. I do mostly what is called Community Access Realtime Translation, which is acting as an interpreter for the hearing impaired in schools and meetings.

**Assemblyman Horne:**

It has been stated we can always choose and ask for rates, but that applies only to one party. The one who is asking for the deposition is the one who controls the hiring.

**Michel Loomis:**

I disagree with that. There are some attorneys in this area who will not use certain firms because they feel the cost is too high, even if they are on the copy side. The attorney will tell the party ordering the deposition that he does not want to use that firm. There is an opportunity to do that. He does not have to just agree from the copy side. I went to a deposition yesterday in Reno. I did the morning deposition, and a different firm did the afternoon deposition. Same parties, but they have their choice of court reporters.

**Chair Atkinson:**

Any other questions? [There were none.]

**Kevin Daniel, Court Reporter, Las Vegas, Nevada:**

I have been a court reporter for 40 years, the last 10 years freelancing in Nevada. I am opposed to A.B. 353. There is a parallel situation in discovery depositions that is instructive as to how this problem should be handled. Attorneys frequently hire experts to testify in litigation. Opposing counsel has no choice in the selection of those experts. If opposing counsel thinks the experts' fees for deposition testimony are excessive, they can ask the Discovery Commissioner to reduce those fees. If the same procedure were exercised for deposition copy rates and the excess fees assigned to noticing counsel, that problem would go away overnight. Finally, to illustrate the problem, I was in a deposition a few months ago where an attorney was complaining about the charges on a copy from a deposition she recently attended. I confirmed that the rates were what I considered excessive. Upon further investigation, I discovered that her law firm exclusively used the same reporting firm she was complaining about. She wants it both ways. She wants the benefit of the reduced rate on the originals, but she complains about the copy rates from her own chosen reporting firm when she winds up on the copy side.

Everyone in this profession is aware of this practice, and most of us want to see it end, but further government intervention and regulation is not the way to stop it. A great many hard-working self-employed people will be harmed if this legislation passes. Attorneys already have statutes in place that put the burden on the attorneys to perform due diligence and to have the ability to be aware of rates before the deposition ever commences.

**Chair Atkinson:**

Any questions? [There were none.] Anyone else wishing to testify in opposition?

**Assemblyman Segerblom:**

The testifiers here today are very legitimate court reporters. I am not trying to harm them. I think they recognize there is an issue. I am not sure my bill is the best way to deal with it, but it is an issue. I would like to work with them to see if there is a better way to address it.

**Chair Atkinson:**

I will now close the hearing on A.B. 353. We have two Committee bill draft requests to introduce.

**BDR 58-1106**—Revises provisions governing the universal energy charge.  
(Later introduced as **Assembly Bill 457**.)

ASSEMBLYWOMAN KIRKPATRICK MOVED FOR COMMITTEE INTRODUCTION OF BDR 58-1106.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

**BDR 57-562**—Revises provisions governing homeowners' insurance. (Later introduced as [Assembly Bill 458](#).)

ASSEMBLYMAN CONKLIN MOVED FOR COMMITTEE INTRODUCTION OF BDR 57-562.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

Committee is adjourned [at 3:19 p.m.].

RESPECTFULLY SUBMITTED:

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Jordan Grow  
Recording Secretary

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Nancy Davis  
Transcribing Secretary

APPROVED BY:

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Assemblyman Kelvin Atkinson, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** March 25, 2011

**Time of Meeting:** 12:09 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 309	C	Marji Paslov Thomas	Work Session Document
A.B. 156	D	Marji Paslov Thomas	Work Session Document
A.B. 382	E	Assemblyman Hammond	Written Presentation
A.B. 382	F	Assemblyman Hammond	Proposed Amendment
A.B. 382	G	James T. Overland	Written Testimony
A.B. 211	H	Assemblyman Aizley	Written Testimony
A.B. 211	I	Pam Roberts	Written Testimony
A.B. 211	J	Jane Heenan	Written Testimony
A.B. 211	K	Kathleen Delaney	National Gay and Lesbian Task Force Statistics
A.B. 211	L	Elisa Cafferata	Written Testimony
A.B. 211	M	Dane Claussen	Written Testimony
A.B. 211	N	Lisa Mottet	Written Presentation
A.B. 353	O	Assemblyman Segerblom	Invoice