

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

**Seventy-Sixth Session  
April 4, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:38 p.m. on Monday, April 4, 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 Crescent 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:**

None

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Jay Parmer, representing Generic Pharmaceutical Association  
Keith Lyons, representing Nevada Justice Association  
Jon L. Sasser, representing Legal Aid Center of Southern Nevada and  
Washoe Legal Services  
Jeanette K. Belz, representing Property Casualty Insurers Association  
of America  
Javier Trujillo, representing City of Henderson  
Constance Brooks, representing Clark County  
Dan Wulz, representing Legal Aid Center of Southern Nevada  
Ernie Nielsen, representing Washoe County Senior Law Project  
Graham Galloway, representing Nevada Justice Association  
Lea Tauchen, representing Retail Association of Nevada  
Tray Abney, representing Reno Sparks Chamber of Commerce  
Rebecca Gasca, representing the American Civil Liberties Union  
of Nevada  
Ted Olivas, representing City of Las Vegas

**Chair Atkinson:**

[Roll was called.] We have four bills on work session and four bills that we are going to hear today.

**Assembly Bill 23: Enacts the Interstate Insurance Product Regulation Compact.  
(BDR 57-473)**

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

There are four bills on work session today. The first one is Assembly Bill 23, sponsored by the Assembly Committee on Commerce and Labor Committee on behalf of the Division of Insurance. It was first heard on February 25, 2011. [Read from A.B. 23 work session document ([Exhibit C](#)).] There is one proposed

amendment submitted by the Commissioner of Insurance. [Continued to read from work session document.]

**Chair Atkinson:**

Are there any questions or discussion?

**Assemblyman Grady:**

I see on the bill that there is a fiscal note, but no fiscal note is listed. It is the Division of Insurance that apparently had the fiscal note. Do we have one or do we not?

**Chair Atkinson:**

In looking at the Executive agency fiscal note, although there is one, it is zero.

**Assemblyman Conklin:**

Just because the fiscal note is zero, it does not mean that the Assembly Committee on Ways and Means will not take the bill. It should not be a reason for the members to accept or deny. This is a policy committee. The fact that there is a fiscal note, even if it is zero, means it will get the attention of the Ways and Means Chair.

**Chair Atkinson:**

Are there any other questions or comments? [There were none.] We will entertain a motion.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 23.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

[Assembly Bill 221](#): Establishes provisions governing certain acts of pharmacists. (BDR 54-1015)

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

[Read from Assembly Bill 221 work session document ([Exhibit D](#)).] There are proposed amendments submitted by Jay Parmer, representing the Generic Pharmaceutical Association, with a statement of intent. [Continued to read from work session document.]

**Chair Atkinson:**

This bill is back for the third and last time. We do have some things to clarify after meeting with staff before our meeting today. I will ask Legal to do that.

**Sara Partida, Committee Counsel:**

The fourth amendment listed on the work session document includes deleting sections 3 through 10. I would like to clarify for the record that those are included for internal referencing purposes by the Legal Division. They are not substantive provisions of the bill.

I would also like to clarify, that language under subsection 3 will be incorporated into the entire concept of this bill and not necessarily written as it appears on this document.

**Chair Atkinson:**

Did Committee members have anything they want to clarify? Since this is the first time we are seeing this part of the amendment, and I have not had the opportunity to speak with Mr. Parmer in my office, we will do it here. Do you want to clarify this at all, or are you comfortable with what staff just said?

**Jay Parmer, representing Generic Pharmaceutical Association:**

I am not clear on what was just proposed; if we could please go through it again.

**Sara Partida:**

The final proposed amendment says to delete sections 3 through 10 of the original bill. I was clarifying that these provisions are not substantive in nature. They were included by the Legal Division only for purposes of internal referencing—which then gives us, in codification, a clue as to where this section will physically appear in the *Nevada Revised Statutes* (NRS). Again, they were not substantive in nature.

The other comment from the Legal Division was simply that these amendments are all considered conceptual in nature. This language will not appear exactly in the draft amendment. Subsection 7 specifically says, "This section shall only apply to drug products approved under the Federal Food, Drug, and Cosmetic Act." In part, that is already incorporated in the comments in paragraphs (b) and (c) being added. Therefore, Legal Division will incorporate that language and make it clear in the draft, but it may not appear as a new subsection altogether.

**Jay Parmer:**

Sections 3 through 10 of the bill were deleted by our proposed amendment from some work that Mr. McMullen did on the bill because it relates to health plans. That is not specifically part of the concerns that my client had about the bill overall, so I do not have a position on that.

Subsection 7 says, "This section shall only apply to drug products approved under the Federal Food, Drug, and Cosmetic Act." We put that language in that way because it does close off the debate between what is allowed and what is not allowed under generic substitution. For purposes of the discussion today and what has been said, I will be happy to agree to that as long as it is clear in either paragraphs (b) or (c) of the proposed amendment.

**Chair Atkinson:**

Did that clarify subsection 7? In the amendment subsection 7 says, "This section shall only apply to drug products approved under the Federal Food, Drug, and Cosmetic Act." The question is, do pharmacies deal with drugs that are not approved?

**Jay Parmer:**

Brand drugs and generic drugs are approved under the U.S. Food and Drug Administration (FDA). Biologic medicines and biological equivalent drugs are approved under the Public Health Service Act. They are two different sections of the law. What we are dealing with here is the generic biologic medicines and biologic medicines that will be coming to the marketplace soon under the federal health care law.

The intent of subsection 7 was to limit the approval of this bill to drugs that fall under the Federal Food, Drug, and Cosmetic Act and the FDA. If we were to do this correctly, we would probably, at some point, have to come before the Legislature and ask for a separate statute related to biologic medicines and follow-on biologic medicines. That is certainly not going to happen today or during this session. We wanted to be very clear that had a limiting statement on how far this bill goes in terms of which drugs it addresses and how it addresses them.

**Chair Atkinson:**

This amendment has been agreed to by the Culinary Health Fund, Health Services Coalition, Medco Health, National Association of Chain Drug Stores, Nevada AFL-CIO, and the Retail Association of Nevada.

**Jay Parmer:**

Yes, but of course, I have not had a chance to discuss this with them. I have been the person who has tried to keep this group together on presenting this amendment. I hope I will do an adequate job of representing their concerns here at the table.

**Chair Atkinson:**

You lost me. You said they have not seen what amendment? This is your amendment.

**Jay Parmer:**

They have seen this amendment; they have not seen the change that is being proposed by Legal. I feel that I can represent them to the extent that the amendment, in front of you, is supported by all of these people.

**Chair Atkinson:**

Okay. Are there any other questions?

**Assemblyman Goedhart:**

However I vote here, I would like to have the right to change my vote on the floor. I still have a little uncertainty regarding the bill.

**Assemblyman Hickey:**

I also would like to reserve the right, if necessary, to change my vote.

**Chair Atkinson:**

Mr. Hardy, same thing? [Assemblyman Hardy indicated yes.] Does anyone else want that same disclosure? [No answer.]

If all of the questions and disclosures have been stated, I will entertain a motion.

ASSEMBLYMAN OCEGUERA MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 221.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Assembly Bill 296:** Revises provisions relating to long-term care administrators.  
(BDR 54-1087)

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

This bill was sponsored by Assemblyman Daly and heard on March 28, 2011 ([Exhibit E](#)). There are no proposed amendments.

**Chair Atkinson:**

Is there any discussion?

**Assemblyman Segerblom:**

I think this is a great bill.

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS  
ASSEMBLY BILL 296.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Assembly Bill 300:** Revises provisions governing foreclosures on property.  
(BDR 9-668)

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

This bill was sponsored by Assemblyman Frierson, et al, and heard on March 23, 2011 ([Exhibit F](#)). There are six proposed conceptual amendments from Assemblyman Frierson.

**Chair Atkinson:**

Is there any discussion? I will remind the Committee members that all of these amendments were discussed in Committee, and I applaud Mr. Frierson for working all of these out to the Committee's satisfaction and to the satisfaction of the other groups he was working with.

I will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 300 WITH ALL OF THE AMENDMENTS.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Now we will move into the bill portion of the meeting. We will take Assembly Bill 323.

**Assembly Bill 323**: Requires the establishment and maintenance of an Internet website to provide information concerning consumer fraud in this State.  
(BDR 52-313)

**Assemblyman Marcus L. Conklin, Clark County Assembly District No. 37:**

By way of introduction, Assembly Bill 323 will provide real and direct assistance to consumers in Nevada, giving them the information they need to make good decisions on things that affect their daily lives. It will provide information on builders and contractors, credit, insurance, investment, medical care, mortgages, motor vehicles, telephone, and many other services that we deal with on an everyday basis. We will also help consumers know the businesses and the nonprofits they work with are good corporate citizens, paying their taxes, participating in workers' compensation programs, and giving our taxpayers a return on their investment.

Unfortunately, deception, fraud, and misrepresentation are a constant undercurrent in our society today. The index of *Nevada Revised Statutes* (NRS) lists hundreds of entries under the headings of "Fraud" and "False Pretenses and Representations." The NRS contains numerous provisions on deceptive, unfair, and unlawful trade practices.

Consumers are obviously vulnerable to fraud involving goods and services and a host of other subjects such as those previously mentioned. There are other types of fraud that harm consumers indirectly by increasing the costs of goods and services, increasing the overall tax burden, and reducing the state's ability to provide services to others. They include insurance fraud, tax evasion, unemployment benefits fraud, welfare fraud, and workers' compensation fraud.

It is not easy to root out fraud. The perpetrators obviously try to avoid detection. Budgets for enforcement and regulation are tight. The consumers may simply not be aware. Looking at it from an institutional perspective, our regulatory system is spread across numerous agencies and offices, and we have a decentralized and professional licensing system.

To give you an idea of how we rank nationally, Nevada has been in the top ten for fraud in the Federal Trade Commission's *Consumer Sentinel Network Data Book* since it first came out in 2002—that is top ten in the country for the last decade. In 2008 we were third highest in the country. In 2009 we were the highest in the country, and last year we were third again.



According to the Federal Trade Commission (FTC), the average amount paid by fraud victims in Nevada was \$3,400 per consumer per case. In 2008, in that category, Nevada was the fourth highest in the nation, in 2009 the ninth highest in the nation, and last year we ranked number one in the country. The total amount paid, as reported by victims of fraud in Nevada, in 2008 was more than \$21 million, in 2009 it was \$16 million, in 2010 it was over \$21 million again. According to the Internet Crime Complaint Center (IC3), Nevada's rate of internet crime complaints per capita was fourth highest in both 2008 and 2009 and fifth in 2010. Our rankings in terms of internet crime perpetrators per capita is also high—second in 2008, second in 2009, and third in 2010. This list is, unfortunately, a long one.

According to the risk management company InnerThink, Nevada was first in overall mortgage fraud risk in the fourth quarter of 2010. The Office of the Attorney General has active criminal cases against 16 loan modification companies. The Southern Nevada Mortgage Fraud Task Force has charged 123 defendants in "straw buyer" schemes leading to losses of almost \$250 million. The Division of Health Care Financing and Policy has opened 511 new investigations in the current fiscal year and has already recovered more than \$700,000 and has referred 32 cases to the Attorney General's Medicaid Fraud Control Unit. In the last 15 months, the Department of Employment, Training and Rehabilitation (DETR) has conducted over 9,000 investigations of unemployment fraud.

Assembly Bill 323 sets up a comprehensive, shared, interagency website to assist with enforcement and compliance efforts by encouraging reports of fraud and allowing consumers to check quickly on someone they are thinking about doing business with. It also assists consumer protection by providing cautions and warnings; reports on specific, confirmed instances of fraud; and specific public information on violations and violators.

In the bill, subsection 1 requires the Department of Business and Industry to set up the website. Subsection 2 lists all of the agencies and entities that will submit information for the purposes of that website. Subsection 3 requires those agencies and entities to submit the information, and specifies the types of information that are required. Subsection 4 requires the Department of Business and Industry to report to the Governor and the Legislature on the success of the website before next session and every other year thereafter.

Most, if not all, of the agencies and entities listed in A.B. 323 have websites already. That, in a way, is part of the problem. There is no single place consumers can go to find out specifically what they need to protect their health, their homes, their investments, and their families. From an Internet perspective

our current website, the Fight Fraud Taskforce, is a "push" mechanism. It takes information, posts it, and pushes it out. What we really need is a "push/pull" mechanism, a place where consumers can go and "grab" information, where they can search for specific information instead of being pushed information that they may not need or know what to do with. In that way, we would significantly enhance our Fight Fraud efforts.

As I mentioned earlier, one of the things that we can do is make consumers aware. That is the purpose of this bill.

**Chair Atkinson:**

Are there any questions from the Committee members for Mr. Conklin?

**Assemblywoman Carlton:**

I am curious about the reason for choosing the boards mentioned in your presentation and not including every board. It does not list the State Board of Oriental Medicine, or the Board of Athletic Trainers. It does not have the Nevada State Funeral Board, which we have had numerous problems with, and that could have a significant impact on a family when they are planning for their loved one's last service.

**Assemblyman Conklin:**

The boards I mentioned are ones where we commonly would expect to find fraud. That does not mean that fraud cannot occur everywhere. While I would like to say we would include every possible thing we could think of, again, unfortunately, we are not in the best of budget times, and I was trying keep the bill confined to those places where I thought we had the best chance of mobilizing our internet resources with minimal or no cost to the budget. Hopefully, in better budget times we could add to the list.

**Assemblywoman Carlton:**

I understand what the Majority Leader is talking about, but, not having the Funeral Board included concerns me. Fraud is fraud, and I do think we missed a few that should have been included, especially when you look at the disciplinary reports they are supposed to submit to the Legislature and they continually do not. It makes me wonder what a board is really up to when I have to send a letter stating that I want to know what it is doing. I would be more comfortable if a lot more boards were included. This burden will lay on them, but they are already doing reports; it is just a matter of forwarding it to the state. I am not sure if the fiscal part of it would be that big of an inconvenience for them. When it comes to that, what is the inconvenience compared to the consumer having the information that the business they may be dealing with is acting fraudulently? These are just my own personal concerns.

**Assemblyman Kite:**

Regarding confirmation of a report, the Better Business Bureau will do those now. If someone just makes a complaint because he wants to, what kind of confirmation is required before a name is added to the list and charges applied?

**Assemblyman Conklin:**

Every board has its own set of rules as to when they publicly post complaints and charges. As a general rule, I believe, they do not actually get posted until such time as a person has been found in violation. Once a person has been found in violation, the public has a right to know. As an example, let us assume you are hiring a subcontractor to put up drywall in your house. What we would like to have is a place for you to see if that drywall subcontractor has potential violations against him with the State Contractors' Board. Maybe it would be a nanny that you are expecting to hire, or a day care center for a senior citizen. Every board tackles that problem differently, depending on the industry that it represents. I think they try to have good due process and not release that information until such time as they have a clear ruling that a person has been in violation.

**Assemblyman Kite:**

I understand that, and no one supports licensing any more than I do. I just wanted to make sure that someone is not going to show up on the website falsely accused, and I wanted my concern for that on the record.

**Assemblyman Ellison:**

I had the exact same concern that there be checks and balances, that it does not get misused.

You do have a fiscal note in here. In section 1, subsection 1, it says, "The Director of the Department of Business and Industry shall establish and maintain an Internet website to provide information concerning consumer fraud in this State." In other words, they are going to actually create the website and keep it up, so is the impact going to be the financial ability for the agency to do this, or are you saying they will have to hire more staff to do it?

**Assemblyman Conklin:**

That is a question for the Assembly Committee on Ways and Means. At this point it is a policy decision—whether you think this is good for consumers and the State of Nevada. I am sure if it makes it out of the Committee, Mrs. Smith will be eager to have the bill and to have the agency in front of her to find out what those costs would be and if it is worth this policy.

**Assemblyman Ellison:**

Regarding the information posted, I perceived that the Nevada State Contractors' Board, for instance, would have a website, with the top ten offenders, and then a list of complaints that they could put a link to.

**Assemblyman Conklin:**

The idea behind the website, quite frankly, is that links get cumbersome and people do not always know what they are looking for. If you had a place to go, instead of looking for the Contractors' Board—because you may not know it exists—you could simply type in a name and pull up any relevant data. That is what we are looking for; that is the "pulling" mechanism, as opposed to the "pushing" mechanism. We want the consumer to be able to pull out the information he wants access to. That is really the purpose of this bill. When a person has questions regarding social services in Nevada, he can dial 2-1-1. He gets the statewide health and human services help line. All we are doing is putting a 4-1-1 on the internet where a person can go and say give me anything related to a certain subject, except we are narrowing the focus to areas where people could be subject to fraud.

**Chair Atkinson:**

Are there additional questions? Is there anyone else in the audience, either here or in Las Vegas, wishing to testify in favor of A.B. 323?

**Assemblywoman Carlton:**

My question would be, is there anything that would prohibit us from incorporating the fees for this within the licensing scheme for those particular professionals who would be listed? Here is the logic. If you have a whole bunch of contractors out there and you are competing with the bad guys, the good guys would want to make sure that everybody knows who the bad guys are. It would benefit everyone who is licensed in the state to have that top ten list out there, being pushed in front of the consumer.

**Sara Partida, Committee Counsel:**

There is nothing to prohibit that, and we can certainly come up with some way to incorporate that if it is the desire of the Committee.

**Chair Atkinson:**

Is there any opposition to A.B. 323? Is there anyone neutral?

**Marilyn Kirkpatrick:**

I would like to talk to the bill's sponsor about lines 18 through 20 on page 2, regarding unemployment benefits and DETR. A lot of times we have

overpayments that are no fault of the consumer, and I did not want that to be misrepresented under the broader piece. I can talk with the sponsor later.

**Chair Atkinson:**

We will close the hearing on A.B. 323 and allow Mrs. Kirkpatrick and Mr. Conklin to work out their issues regarding lines 18 through 20 on page 2 of this bill before we bring it back. We will open the hearing on Assembly Bill 331.

**Assembly Bill 331:** Makes various changes concerning the use of consumer reports. (BDR 52-831)

**Assemblyman Marcus L. Conklin, Clark County Assembly District No. 37:**

This bill is about fair employment practices. Especially in this economy we want our employers to give each applicant for a job, and each candidate for promotion, a fair shake. We need to make sure employers in our state use consumer credit reports for employment purposes only when they are relevant to job duties.

Currently, *Nevada Revised Statutes* (NRS) Chapter 598C addresses the use of consumer credit reports. If someone uses a credit report to deny employment or make other employment decisions that adversely affect a current or prospective employee, he must notify that person, provide the name and address of the credit reporting agency, and inform the person of his right to obtain a copy of the report. Also, a credit reporting agency must, if you request it, disclose the name of anyone who has received information from it about you for employment purposes within the last two years.

The NRS parallels some of the provisions of the Fair Credit Reporting Act. The federal law goes somewhat further in that it requires an applicant's or employee's authorization before an employer procures a credit report.

What does A.B. 331 do? It adds a new section to Chapter 598C that prohibits an employer from procuring a credit report to evaluate someone for employment, promotion, reassignment, or retention with three exceptions. These exceptions are:

- A state or federal law requires or authorizes its use for that purpose.
- The employer reasonably believes the employee or job applicant has engaged in a specific illegal activity that is likely to show up in the credit report.
- The information in the credit report is substantially related to job duties.

The credit report is deemed to be substantially related to job duties if they involve things such as handling money or other assets, access to confidential information, significant managerial responsibility, or the direct exercise of law enforcement authority.

Also, if you are prohibited from procuring a credit report under the bill, you cannot ask the applicant or employee to furnish the report or authorize a reporting agency to give the credit report to you.

As of the end of last year, 18 states and the District of Columbia have been considering bills on this subject. Generally speaking, these bills require the use of a credit report to be related to a bona fide job requirement, prohibit discrimination in employment based on credit reports, or both.

In light of our state's current financial crisis, the unfortunate position many of our constituents find themselves in of being without a job which can lead to being without a home as a result of foreclosure or a short sale. That is likely to have a negative effect on a person's credit report. We are probably at the precipice of having an extreme decline in the average credit rating of a large number of people in our state. That does not make all of those people unable to make sound decisions as employees, but I do have a concern that through no fault of their own, simply because we have not done enough to protect them, that many of these folks will find it much harder to find employment in the future when, in fact, they are the exact people we need to help get back to work.

I am not sure the bill is in its perfect final form, but I do believe it is a topic worthy of discussion for the sake of recognizing the types of positions people are going to find themselves in this year, and probably for many years to come since most of those actions stay on their credit report for up to seven years.

I have been contacted by Ms. Belz, who brought up an important point, that many insurance companies require all of their employees, on a national basis, to have credit checks for the purposes of bonding. I do recognize there are certain jobs that are going to require that standard. The need will not come from the state; it will come from a franchise owner for instance, who is told this will be a requirement or you will not be able to own a franchise. It may come from a national standard that is insurance-regulated or from the U.S. Securities and Exchange Commission for stock brokers. I am willing to work on that, but there is a subtle change that takes place in this bill. Our current statute places the entire burden on the employee; this kind of levels the playing field in the sense that we are telling an employer that if he is going to have a credit check, there needs to be a justification. It cannot just be for purposes of deciding who will

get a job or not. You need a credit check for jobs that you need credit checks for, where there is some synergy between a credit check and the actual job to be performed.

**Assemblyman Ocegüera:**

Do you think your categories are broad enough? For instance, I argued last time that, in the public safety arena, we use credit checks to ensure that people are worthy of being in someone's home, around their valuables or confidential information. I noticed that it did say law enforcement and made reference to what I just said, but do you think it is broad enough that there might be folks in the public safety realm that could still use credit checks?

I understand what you are saying about the fact that a large number of people now are going to have credit problems based on the state of the economy. We probably will not use the reports as much, but we would still like the ability to use them if needed.

**Assemblyman Conklin:**

I am not trying to stop the use of credit reports. There are legitimate reasons to use one. Certainly, I do believe law enforcement, as well as health, safety, and first responders, are classic examples of where it would be necessary. As to the specific language, I do not know. I think it needs a bit of work yet. I would like to hear any concerns and see if we can craft it in a way that tightens it up. The reality is this, though; we have to recognize the simple fact that people are going to have more on their credit reports than they ever have. The simple fact that someone has a lower credit score does not make him a criminal. It does not necessarily imply that he will be one, either. We have to find some balance.

**Assemblyman Goedhart:**

In section 1, subsection 1, lines 17 and 18, it says, "or responsibility for money or other assets." Even as a farmer, I caught someone selling raw milk in five-gallon jugs at night. There could be people selling hay, or stealing cattle. People in those positions, who have responsibility for assets that could be converted into cash, would their prospective employers be given an opportunity to use a credit check as part of their preemployment due diligence?

**Assemblyman Conklin:**

I believe it does, and I believe, in your particular case, as people move up in ranks and gain more responsibility, the managerial clause would give that opportunity. An individual on their own may not have access to the amount of assets you are concerned about, but as they move up in the chain of command, they might. Not only would it give you the opportunity to do so at the outset,

you could rationalize that was the case, but as people were promoted into larger jobs, it would open it to you again.

**Assemblyman Hardy:**

Does this restrict the employer from asking whether the applicant has ever had financial problems?

**Assemblyman Conklin:**

I cannot answer that. I would have to get back to you on that.

**Chair Atkinson:**

I do not see where it does in my review.

**Assemblyman Conklin:**

From a human resources perspective, if it were me, I would not ask the question unless I had justification to pull the report in the first place. That would just be me if I were advising you personally.

**Chair Atkinson:**

The person would have to give their consent.

**Assemblyman Conklin:**

The person would have to give their consent, but the reality is that if you ask someone and you have their consent, and they tell you no after you pull it up, that is the kind of person you would not hire in the first place.

**Assemblyman Hardy:**

I go through the interview process with my employees, and there are a number of things you try to find out about them, but you also try to let them know about yourself. In that process, sometimes it involves asking if they live up to their financial obligations or have had any problems with finances. Sometimes it tells you a lot about an individual—where he is in life. If he gives you a straight answer, it is no problem to move forward. Does this restrict that kind of question?

**Assemblyman Conklin:**

I do not believe it does, using just the question alone. I stand by my advice, though. I would not ask that question unless you had the right to check from a legal standpoint.



**Assemblywoman Kirkpatrick:**

I am not sure if this is exactly what we did last session, but I thought there was a process where an employee could waive that and agree to have a credit report. We heard from gaming last time that they did not want someone handling a lot of money without being checked, but the employee knew going in that he might have to sign a waiver agreeing to a credit check.

**Assemblyman Conklin:**

This bill is not the same as yours. It is different in many respects, but it does get to the same issue. The problem with having the option to sign a waiver is that sometimes employers might be predisposed to determine that anyone who would not sign a waiver could be presumed guilty. It can be a subtle way for a savvy employer to make the best decision they can. If someone is willing to give them a lot of information that someone else is not, then you are probably inclined to go with the person willing to give you the information.

**Assemblyman Ellison:**

A lot of the casinos and cities require that the employees go through a work card verification program. That work card notes any criminal activity they may have had. Is the casino industry going to be protected with this bill?

**Assemblyman Conklin:**

The criminal reports are not affected by this. This is a credit report only.

**Assemblyman Ellison:**

I am just trying to get this on the record.

**Assemblyman Conklin:**

No. This does not affect criminal reports in any way.

**Assemblyman Ellison:**

The other thing is workers' compensation. A lot of times you have a hard time getting information when you are hiring an employee and you hit a list of workers' compensation claims. You cannot get that information.

I have multiple businesses—one works with cash, one works with contracts. If I am hiring someone, I do not care if he is poor or not. I just want to make sure there is nothing in his past that could affect his employment with me, especially if it is a cash-basis job and he is working by himself. I have a laundromat where they have to deal in change. You cannot track that.

**Assemblyman Conklin:**

So, when you say dealing on a cash basis, you are not paying them on a cash basis? They are working with cash?

**Assemblyman Ellison:**

They are working with cash.

**Assemblyman Conklin:**

If they are working with cash, they would be exempt from this. You, as the employer, would have every right to check, as I interpret the bill. That is one of the things that is specifically exempted—working with cash.

**Assemblyman Ellison:**

I read it that way as well. I just wanted it stated for the record.

**Chair Atkinson:**

Questions? Is anyone else in Carson City in favor? Las Vegas?

**Keith Lyons, representing Nevada Justice Association:**

We believe this is a good bill that helps protect the consumers in dealing with the unfortunate economic realities of our state. I do not know the number of Nevadans who have had a bad credit report because of the economic travails we have gone through. I would imagine it is well over 50 percent of the state, whether it is trouble paying medical bills because they have been laid off or lost their house. Employment is hard enough to find where employers are now using things such as Facebook. When people are not hired because of what they say on Facebook or Myspace, or when they have a bad credit report that is unrelated to the job, it unfairly penalizes the citizens of the state.

Based on those issues, we believe this bill is good for the citizens of the state and for consumers. By the same token, it protects employers that have an actual need to access to the information; they are still allowed to get it. The bill is a good balance that is needed in this state.

**Assemblyman Daly:**

Do you think an employer could possibly get around this after an offer of employment rather than before an offer, or would you still think there has to be a nexus or relationship to the job? I know you can ask more questions after an offer of employment than before.

**Keith Lyons:**

You can, but the way this statute is written, it still has to be related to the job. They cannot say, "We have hired you; now we want to check your credit." It

would be hard for the employer to legally check, which does not mean they will not check, but it will be harder to do legally if it is unrelated to the job being performed.

**Jon L. Sasser, representing Legal Aid Center of Southern Nevada; and Washoe Legal Services:**

I am happy today to support A.B. 331. Leader Conklin discussed this with us last summer at the Legal Aid Center and we told him, at that time, we thought it was a terrific idea. Our clients are certainly among those who are having a very hard time with their credit ratings, in light of the current economy and employment situation. We can all agree that if something is not reasonably related to someone's job duties, it is unfair to ask about it, especially when so many, regardless of their hard work and best efforts, have their credit damaged.

**Assemblyman Ohrenschall:**

Mr. Sasser, in the work you do with your clients, have you run into clients who have not been offered employment because of their damaged credit, because of what has happened with the economy, when they otherwise would have been offered a job?

**Jon Sasser:**

I have not personally experienced this. We are not doing affirmative employment law litigation. I can certainly tell you that there are a lot of people out of work with damaged credit at the present time.

**Chair Atkinson:**

Is there any opposition to A.B. 331?

**Jeanette K. Belz, representing Property Casualty Insurers Association of America:**

Oppose is probably a really strong word. We had requested an exemption for insurance-related employees. I had the opportunity to speak to the bill's sponsor today, and he thought it might be incorporated in section 1, subsection 1(c)(2), where it talks about access to confidential information, but was open to discussing whether a more specific exemption would be necessary. He did agree that there were certain circumstances, such as insurance, where the opportunity to use a credit report would apply.

**Chair Atkinson:**

You sound like you may be more neutral.

**Jeanette Belz:**

Unfortunately, I had a letter that said I was opposed ([Exhibit G](#)).

**Chair Atkinson:**

Are there any other questions from the Committee members? [There were none.] Anyone else in opposition? [There was no one.] Anyone neutral?

**Javier Trujillo, representing City of Henderson:**

We definitely appreciate the spirit of the bill. We want to go on record saying that we are neutral. Initially, we had a concern that this would preclude civilian employees in our police department, but after hearing the conversation between the Majority Floor Leader and members of the Committee, I believe our concerns have been allayed. Many of our civilian employees do have access to confidential information. Currently the police department in Henderson does exercise this right to request credit reports for all employees.

**Constance Brooks, representing Clark County:**

We are neutral with regard to this bill. I did have the opportunity to speak with the sponsor and did relay our concerns relative to using credit report information in hiring for positions that handle cash, as well as in our social service department for those who hand out medical and rental assistance checks.

We are sensitive to the foreclosure crisis and we will certainly adhere to the language in this bill, but we wanted to put forth our concerns as they relate to our applicant process and in how this bill would be implemented.

**Chair Atkinson:**

Is there anyone else who is neutral? [There was no one.] Is there anyone in Las Vegas wishing to go on record in opposition? [There was no one.]

Majority Leader, it sounds as if you have some work to do with Mrs. Kirkpatrick and the Speaker at this time. We will close the hearing on A.B. 331 and open the hearing on Assembly Bill 352.

**Assembly Bill 352:** Revises provisions relating to certain trade practices.  
(BDR 52-976)

**Assemblywoman Carlton:**

This is my bill, and there are valiant people here to present it. I am merely the conduit, but I wholeheartedly support this bill. I supported it last session, and I continue to do so.

**Jon L. Sasser, representing Legal Aid Center of Southern Nevada; and Washoe Legal Services:**

I want to present an overview of this bill ([Exhibit H](#)). For those of you who were here last session, you may recognize some of the language, because

A.B. 352 contains part of what was Assembly Bill No. 22 of the 75th Session. That bill was introduced by this Committee and was related to deceptive trade practices. Having gone through many channels, it was passed with bipartisan votes out of both the Assembly and the Senate and went to the Governor, where it became one of the many bills he vetoed last session. It then came back here to the Assembly, which voted 42 to 0 to override, and on to the Senate, where the veto was sustained.

So, we are back before you with a portion of A.B. No. 22 of the 75th Session. What is different about A.B. 352 is, in the Senate, there was a second bill dealing with trademark legislation that was added to last session's bill as a friendly amendment. This bill deals with deceptive trade practices only.

Assembly Bill 352 does three things. First, in section 1, it provides statutory damages when a deceptive trade practice is committed. In *Nevada Revised Statutes* (NRS) Chapter 598, there are 50 specific acts that are defined as deceptive trade practices, including such practices as phone solicitations after 8 p.m., hiding water damage to goods, doing business without a license, and intentionally misrepresenting the nature or quality of goods.

The Office of the Attorney General has the power, both civilly and criminally to pursue people who engage in deceptive trade practices. However, due to its staffing limitations, it can only scratch the surface and generally has to focus on larger matters involving larger companies or schemes, as opposed to those smaller matters where people who are damaged must come to our legal services offices each day.

Recognizing these limitations, the Legislature already has created a private right of action, which exists in statute, to sue for violations of NRS Chapter 598. Current law also provides a prevailing consumer the ability to recover actual damages and to recover attorney's fees. Under appropriate circumstances, punitive damages may be awarded.

Frequently, however, consumers may have just a few hundred dollars in actual damages despite the fact that there may be a scheme that is greatly unfair or is intentionally ripping them off. This bill would give the consumer, in those private rights of actions that already exist, two additional tools. One would be the ability to seek statutory damages in the amount of \$5,000 per violation. The Attorney General can already seek a civil penalty in the amount of \$5,000 today, but again, that Office is overwhelmed and not able to bring many of these small individual actions. This would give both legal services programs and private attorneys the incentive to get involved in being "private attorneys general," if you will, to enforce the laws.

To make sure the right to statutory damages is not abused, there are a number of qualifiers in section 1 that state that the violation has to be either intentional or "from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." It defines bona fide error in the statute.

An additional tool is the ability to seek equitable relief. This usually refers to the court's order that the perpetrator cease and desist from committing that unfair and deceptive practice.

On page 4, in section 3, subsection 12, the bill adds one additional unfair and deceptive trade practice, which is taking advantage of somebody's inability to understand a contract. Mr. Nielsen will talk about how that situation arises in his law practice. I want to call to your attention some language that is out of order in that section. On page 4, line 4, "reasonably to" should be "to reasonably." Finally, on line 8, the last three words, "another similar condition," are out of place; they should be on line 6, reading "a mental or physical infirmity or another similar condition." Those would need to be technically changed if you decide to process this bill.

We worked hard in the last session to accommodate the concerns of those who opposed the bill. Despite that fact, there was an effort to get it vetoed, primarily because of the statutory damages section. There seems to be a fear that this would be used by unscrupulous lawyers to bring massive class actions in terms of multiple times \$5,000. We offered to discuss, last time, reasonable limits on class action, but the opponents had no appetite for that discussion.

**Assemblyman Hickey:**

In section 3, regarding language barriers, would that require an enterprise to simplify or produce documents, such as contracts, in the various languages of consumers? What does that mean in this application?

**Jon Sasser:**

Again, it is knowingly taking advantage of another person's inability to reasonably protect his or her rights due to that inability to understand language. No, it does not create any specific requirements on contract language. In the area of seniors, you can talk about instances where people come out of the contract negotiations not having a clue about what they signed and having been taken advantage of by someone who clearly knew they were not following the conversation.

**Dan Wulz, representing Legal Aid Center of Southern Nevada:**

In the course of representing consumers, I come across cases involving deceptive trade practices, which is the subject of A.B. 352.

[Read from prepared statement ([Exhibit I](#)).]

**Ernie Nielsen, representing Washoe County Senior Law Project:**

We provide free legal services for seniors in Washoe County. We used to do a lot of consumer cases, but our funding has been substantially reduced, so we do a lot less these days.

I would like to talk about the additional cause of action that is on page 4, in subsection 12, and which Mr. Sasser referenced. This is attempting to get at the situation where there might not be an explicit intent to defraud somebody, but the merchant is aware that the person in front of him is not aware of the fine specifics of the contract. This could be due to mental infirmity or a language issue, and because the merchant knows that, this bill would prohibit him from taking advantage of that person.

I have two cases I would like to briefly explain. One is a case from three years ago in which a woman wanted to buy a particular vehicle from a dealership. She had been looking for that car for a couple of months and decided to buy something similar. Two days later, the dealership called her up and told her that the car she had wanted was now available. Do you want it? Of course she said yes. They brought it out to her, and she signed the contracts. Then, as they were leaving, she tried to give them the keys to the first car she bought. They told her they were sorry, but she had just bought her second car.

She was under the mistaken impression that the offer they were giving her was to substitute the new car—the one she had originally wanted—for the one she had already purchased. She was elderly and hard of hearing. The dealer knew that she was assuming something that was not true. This bill would capture that instance.

Another case is one where the advertising said you would get a \$6,000 rebate if you bought a certain car. The person was in his eighties and did not clearly understand all of intricacies of the sales contract, in which a lot of numbers were outlined. He did not get any rebate monies. The dealer actually took \$3,000 off the purchase price, and we still have not figured out where the other \$3,000 went. Maybe there was no intent to defraud, but the consumer was clearly not aware of what was being proposed. He was expecting \$6,000 and did not get it. This bill would address that issue as well.

With respect to the frequency of these cases that come into our office, we used to see a lot of them related to things like televisions, home security systems, and health clubs. Perhaps there was no license, or a violation of a federal law, but generally these cases did not have enough damages to merit doing something on behalf of that client. Now, when we are dealing almost exclusively with nonconsumer cases, there is no one to look over the shoulder of the wrongdoers. This bill would substantially assist in creating that private attorney general, as Mr. Sasser said, to make sure the laws of the state are followed.

**Assemblyman Ellison:**

I am looking through this bill and trying to understand where the real consumer protection is going to come in for the consumer and the business. Basically, you could come in right now and say that you do not understand any contract and file a lawsuit for \$5,000. Is that correct?

**Ernie Nielsen:**

No. The way this language reads, it is based on illiteracy or a mental or physical infirmity that manifests itself as an incapability to understand the language. One would have to prove that the dealer or merchant clearly had enough information to recognize that this person either had some sort of mental deficiency or was not able to handle the details of the language that was being spoken to know what he was signing. Again, no, it has to have those criteria, and they would have to be proven as a specific element of a lawsuit.

**Assemblyman Ellison:**

If I did not understand English and bought a car from you, and you tried to explain it as well as you could, and I checked off all of the boxes and signed my name, six weeks later I could come back and say I did not understand because of a language barrier?

**Ernie Nielsen:**

There are probably a number of ways to resolve a language issue. One might be to have contracts printed in that language. Obviously, it would be important to make sure that person had some access to someone speaking that language. This bill does not really structure what those particular remedies would be. I am not sure how to answer that question.

I would say that my primary concerns are with those seniors who have some diminished capacity and clearly are not understanding.



**Graham Galloway, representing Nevada Justice Association:**

We support this bill and believe it is good consumer legislation. A private cause of action, that is, a private right to bring suit, under this act is an invaluable tool to the public enforcing the act itself. It helps define what the cause of action may be, and in some respects it limits what the cause of action may be.

If I may, I would like to address the previous question by Assemblyman Ellison. I think the subsection the Assemblyman was referring to is a good concept, because if you change your perspective, the language in this bill would put the merchant or person on the other side of the contract on notice that they need to be very careful in dealing with individuals who do not speak the language. If there is a problem, perhaps they should not enter into that contract. I sympathize with the thought process by the Assemblyman, but in my practice we deal with a lot of clients who do not speak English. I am very careful in how I deal with those individuals.

**Assemblyman Daly:**

I do not disagree that people should not be playing games, but it seems to me that with the standard the bill has, it would be almost impossible to prove what my state of mind or knowledge was about what someone else told me. Is a person going to have to provide a translator? How does a contractor defend himself when someone says they did not understand? I am not against the concept, but are you going to argue some "knew, or should have known" standard on the part of the person selling something? I do not know how you do that.

**Graham Galloway:**

That is a difficult question to answer, particularly when you are dealing with individuals who do not speak the language. It goes back to my previous comment that you have to be extremely careful, whether you have an independent witness present or a translator. It would be more cumbersome to transact business, but there are a number of ways to handle the problem. If you are a business that is going to transact business with a distinct group with a language barrier, you are best served to have individuals who speak that language.

Anyone can file a lawsuit; winning is another matter. This statute provides protection for both sides. Both sides have to be sure what they are contracting for, and if they are not, then perhaps the contract should not be entered into.

**Chair Atkinson:**

Questions? [There were none.] Does anyone else wish to be on record in favor of A.B. 352? [There was no one.] Is there any opposition to A.B. 352?

**Lea Tauchen, representing Retail Association of Nevada:**

We are opposed to A.B. 352. We do have some concerns with language about which we would seek clarification.

On page 1, line 4, which is section 1, subsection 1, in regard to the word "damage," we are curious if this is limited to pecuniary damage, or would it also include emotional distress, inconvenience, and other similar causes?

On page 2, line 3, which is section 1, subsection 1, regarding the recovery of statutory damages of up to \$5,000 per act or violation, this figure does not seem to be related to actual damage as defined and may be discretionary. On a per violation instance in a commercial situation, this could amount to a phenomenal number of civil counts. We would request more specific guidance in this section, as it may incentivize corrective lawsuits.

On page 2, line 15, which is section 1, subsection 3, in regard to an "error of legal judgment," from a risk management perspective this may indicate to lawyers that any request for opinions related to deceptive trade practices should be refused, since vendors could not rely on the advice from counsel to proceed along a particular course of business conduct.

On page 4, line 3, which is section 3, subsection 12, in regard to "knowingly," we were wondering why the "willfully" requirement was omitted for these purposes, while just above it, in subsection 11, it is "knowingly and willfully."

Again, we would just request more specificity in the objectives here, and more limits on the civil penalty.

**Tray Abney, representing Reno Sparks Chamber of Commerce:**

The Chamber is concerned about any bill that opens employers to private rights of action when there are already penalties set in place in state law to deal with these things. We worry that this would incentivize lawsuits. The more money employers spend on lawsuits, the less money they have to hire people.

You heard one of the proponents of this bill talk about anyone being able to file a lawsuit, and that is exactly what we are worried about having to deal with. We are concerned for that reason, as well as for the potential class action aspect of this bill.

**Assemblyman Ellison:**

Most of these small businesses sit down with people and enter into a contract of some kind such as a bid. The small business will perform the work, and at

any point in time, based on this bill, the customer could say he did not understand. The next thing you know, you are in litigation. Is that not correct?

**Tray Abney:**

We are certainly concerned about the new language adding a new definition to what is a deceptive trade practice. It seems a little broad, but whether you add more deceptive trade practices or not, opening up all of these things to a private right of action is our main concern. It goes to Mr. Daly's point: can I prove what I thought the other person thought?

**Chair Atkinson:**

Are there any other questions from the Committee? [There were none.] Is there anyone else who wishes to go on the record in opposition? [There was no one.] Is there anyone with neutral comments on A.B. 352? [There was no one.] Mr. Sasser, do you have any closing remarks?

**Jon Sasser:**

I just want to clarify that this bill does not create a private right of action that does not exist. The private right of action has already been created by the Legislature for suits for consumer fraud. Consumer fraud, as defined in the statutes under NRS 41.600(2)(e), includes deceptive trade practices. There is already an ability to have a private right of action to recover actual damages and attorney's fees. What this does is provide two additional remedies to people who already have that private right of action: the ability to seek equitable relief, and statutory damages of up to \$5,000.

We would be glad to work to tighten the language on a new deceptive trade practice, but I spent many hours with representatives of the Chamber in the last session and I thought that language was what we all had agreed to. I am surprised to hear that as a concern today.

**Chair Atkinson:**

We will close the hearing on Assembly Bill 352 and open the hearing on Assembly Bill 433.

**Assembly Bill 433:** Expands prohibition on employers taking certain actions to prohibit, punish or prevent employees from engaging in politics or becoming candidates for public office with certain exceptions.  
(BDR 53-63)

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

Assembly Bill 433 is designed to address a specific issue that exists in southern Nevada. Right now, it is illegal for an employer to prevent someone from

running for office, particularly for the State Legislature. One of the government entities in southern Nevada requires that anyone running for the State Legislature take an unpaid leave of absence from the day he announces they are going to run for office until his election. One of our current members, in fact, had to take a leave of absence for seven months last year because of this employer's requirement. This does not mean that the person is allowed to campaign during working time; obviously he has to do his job. But if he wants to go after work is finished and walk precincts, we do not believe he should have to be put on administrative leave without pay to do that.

One of the great things about having a citizen legislature is the fact that citizens in all walks of life, including citizens who work for government entities, should be allowed to campaign for office without suffering a huge financial penalty.

This bill prohibits a government entity from terminating or punishing an employee for filing for office and to make it clear that they cannot require him to take a leave of absence. I have an amendment that also deals with an unpaid leave of absence ([Exhibit J](#)). Again, we are not trying to treat legislators or legislative candidates any better than other people, but we should not be treated worse. That situation currently exists in one of the local government entities in Las Vegas, and that is what this bill is designed to correct.

**Assemblyman Oceguera:**

I understand the prohibition after being elected and having some restrictions, but no matter who your employer is, there should be some kind of constitutional prohibition to them telling you that the minute you sign on to run for office, you have to take a leave of absence.

**Assemblyman Segerblom:**

I agree, and it probably is a violation of the First Amendment. Rather than file a lawsuit against the city and require them to spend legal fees, it seems it would more simple to address it in law. It is a unique situation, but in this particular city, members of the city council, who are paid way more than we are, do not have to take leave of absence when they run for reelection. There is no basis for us, as legislators, to take an unpaid leave of absence.

Again, we are not saying you are allowed to campaign on work time; you are not. But if you want to file for office and campaign after work or on weekends, I cannot imagine any legitimate government purpose is served by that prohibition. It is part of their city charter.

**Assemblyman Ocegueda:**

I do not care whether the organization is private or otherwise; it has a chilling effect for people running for office if the moment you sign up to run for office, you have to leave your job. After you get elected, maybe some things go into effect. I do not know if this is the answer, but it seems as if this should already be covered.

**Assemblyman Segerblom:**

I agree. I think it is covered for private employers; it just does not say public employers. This amendment adds that public caveat.

**Chair Atkinson:**

Is their prohibition just for people who file for the Legislature, or is it for anyone who files for office?

**Assemblyman Segerblom:**

Probably, if you worked for the city, and filed for city council, you would have to take a leave of absence.

**Chair Atkinson:**

Like clerk, or recorder? You specifically mentioned the Legislature, and I do not want people to think that is the reason.

**Assemblyman Segerblom:**

I agree. I apologize. What galls me is the fact that the city council members, who are obviously being paid by the city, do not have to take a leave of absence when they run for reelection. They have carved out a unique little area for themselves where they are treated differently than anyone else.

**Assemblyman Hickey:**

Given the Speaker's concerns about this bill, are there any other legislative options that have come forward this session, namely an earlier primary, which is where this issue first arose?

**Assemblyman Segerblom:**

For the general election, you have to take a leave of absence from the day you announce until you are either defeated or elected. With the primary in August, you would not have had to take a leave of absence until March or April. It is just a two-month difference.

**Assemblywoman Carlton:**

I do support the bill. I work for a private employer, so I had these protections. We cannot honestly expect people who have to pay the bills and take care of

their families to give up their livelihoods to serve. It is called public service, but it is not public servitude. There is a difference, and as an employee who had this protection, I think anyone who wants to put their name on a ballot should have the same protections that I have.

**Chair Atkinson:**

Are there any other questions for Mr. Segerblom? [There were none.] Is there anyone else wishing to testify in favor of A.B. 433? We will take the gentleman in Las Vegas.

**Keith Lyons, representing Nevada Justice Association:**

We support this bill for the very reasons brought forth in your comment. If we are going to have a citizen legislature, we are going to want our citizens who are involved in our city, local governments, and elected positions to have this necessary protection. The unfortunate part about it is that we have a city that, in my opinion, is violating the *United States Constitution* with this, as well as, probably, the *Nevada Constitution*.

Anyone running for a position could spend up to \$100,000 litigating against something like this. To have someone run for a position that does not pay anywhere near that much money, and then have to spend that much in legal fees is ludicrous. This bill serves the public well, and we would request that you pass this bill as written.

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

We are in full support of the bill. We, too, were confounded by the situation, as noted by the Speaker, that this is actually on the books. Unfortunately, one of your own members had to suffer the consequences this last legislative session. Kudos to him for being dedicated enough.

There is one issue on the federal level—the Hatch Amendment, which currently prohibits government employees who are funded by federal funds from running in situations like this. I am not sure if the courts have resolved that, but as we understand it, this bill certainly could not override the Hatch Amendment. But we think, in as far as it does apply to jurisdictions within the state, it is certainly appropriate and its change would be in alignment with the First Amendment.

**Chair Atkinson:**

I do have one additional question before we move to the opposition. This does not have anything to do with serving; it is more about campaigning, correct? I just want to make that clarification so that people do not get into a fray on the wrong topics. I always echo my colleague Assemblywoman Peggy Pierce, who said that during campaign season, she has three jobs. She has her real job, she

has the campaign, and she is still a legislator. That is true for all of us and we all do a very good job of not mixing the three, which goes to why, as Mrs. Carlton said, we walk a lot of evenings.

**Assemblyman Segerblom:**

Legitimately, after you are elected, they can put you on administrative leave, but they could not fire you because you were elected.

**Chair Atkinson:**

Is there any opposition here or in Las Vegas? [There was no one.] We will move to neutral.

**Ted Olivas, representing City of Las Vegas:**

We looked in the bill in its original form and we were neutral. We were just going to monitor it. We did see the amendment, and in the sponsor's testimony, he spoke of a certain entity in southern Nevada, and I happen to represent that entity.

We do have a policy; that does not say that we are not supportive of the introduction to this bill where it talks about the eligibility of a person to participate in those four items. Our policy came about as a result of a very difficult situation that occurred a number of years ago. It created some problems for us, and in fact, Mr. Segerblom probably knows more about that than I. That is why we put this policy into place. What he testified on is correct. The policy reads that if a person is going to enter into a political race, he needs to let his director know, which is typically me, at the City of Las Vegas. The problem we have had is there are some positions that are a little more difficult to manage. If a person is a management analyst working 8 a.m. to 5 p.m. in the office, versus other positions that we have where those employees act largely independently, I do not know where that employee is from 8 a.m. to 5 p.m. The concern we have is that we may have someone out in the community doing things not on behalf of the city but on behalf of the campaign. How do you distinguish that when the *Las Vegas Review Journal* calls us to ask what that employee was doing at a particular time and place? It is hard to distinguish between the service they are providing for the local government and that which they are doing potentially for a campaign.

I wanted to get that on the record. We are not trying to be punitive; we absolutely want people involved in the legislative process, but that is the concern.

**Assemblyman Ocegueda:**

Again, whether it is the city, or a private business, or anyone—I am not saying one way or the other—simply put, you work your 40 hours. Whether you work them at night, Saturday, or Sunday, that is how you keep track of that. People take leave just like in a private business. You are gone for an hour, you take the hour off. If you are going to an event, you make it up on a weekend or in the evening.

**Assemblywoman Carlton:**

Mr. Olivas, I understand the situation you are in, and I think I remember the situation that brought this about. But, to me, it is all about management of the employee. You said, how do you distinguish what they are doing? Well, how do you distinguish they are not at home, on the Internet playing a game with someone in Sweden? How do you distinguish that they are actually performing their responsibilities? It is all in management's hands to manage that employee properly. If the employee is not fulfilling his responsibilities, I am sure there is a progressive discipline policy that could be implemented.

We all have an opportunity to put our names on a ballot and campaign. Your concerns lie more on the city's ability to monitor. It is almost as though the candidates are assumed to be guilty before they can prove themselves innocent and are actually complying with their jobs. I hope the city will see this in the light of us giving you the authority to do the management job we had hoped you would do from the beginning.

**Ted Olivas:**

Assemblywoman Carlton, if my testimony somehow indicated that we felt that the employee was guilty, then I apologize for that. We have to investigate those things, and sometimes it is impossible to know whether it was work related or not. That is all I meant to communicate.

**Assemblywoman Carlton:**

I understand that. There was no offense taken. To me the problems you are citing are more on the management side than the employee's side. You hire this person, and there has to be a certain level of trust with him. If he betrays that trust, then I am sure there are options that you, as management, have in dealing with that employee.

**Chair Atkinson:**

I am not sure what the policy is. When employees are campaigning, they are on complete leave, but what happens when they are elected?



**Ted Olivas:**

When they are elected, they continue for the City of Las Vegas and continue to be on leave without pay. If they were elected to the Legislature, after the end of the session they would come back to work and be on regular pay. During the session, they would be on leave without pay.

**Chair Atkinson:**

To follow up on your statement about not knowing what they are doing, what if they are elected and they are back?

**Ted Olivas:**

The concern is while they are campaigning for office. From the time I am notified, until the election, if someone accused them of campaigning on city time, we would be concerned that it would be a case of he said versus she said. That is why we created the policy we did, so we would not get into that situation.

**Chair Atkinson:**

Do the cities or counties or other entities have prohibitions against campaigning for anyone while you are at work?

**Ted Olivas:**

I believe so, but you notice that the audience is not full of local government.

**Assemblywoman Kirkpatrick:**

What if three of your city council people are all running for mayor? How do you determine if they are doing the people's work? I do not know the specific hours they are required to be there, but when I am trying to do all three of my jobs, my first priority is to my first job, because that is the one that feeds my family. Everything else has to be additional.

Also, there is a process when you need to take a vacation day or time off, to go to a legislative interim function. Could that same process be used during the campaign period? Local officials turn up at way more events when it is campaign season. When I see someone miss the meeting but show up at the luncheon, how is that any different?

**Ted Olivas:**

We actually do have a provision where those elected to the Legislature after the session until a new campaign, are allowed to use their time for official duties as legislators. We are in line with that section. It is just the campaign period?

**Assemblywoman Kirkpatrick:**

Would that same procedure work beforehand? If it works after they are elected, would it work during the campaign season as well? That is a huge risk to take when you do not know if you will even be elected. Do the city council people give up their paychecks?

**Ted Olivas:**

They do not give up their paychecks. That seems to make some sense.

**Constance Brooks, representing Clark County:**

We are appreciative of the spirit of the bill. We actually have a current policy relative to candidates who are employed with the county that is in alignment with this amendment. We do not allow for individuals who decide to become a candidate to take leave without pay while campaigning.

We just have a concern in subsection 1(b), about the wording in "adverse employment action;" we felt that was broad. Those are our only concerns. We do have a pretty stringent policy in place that does not seem to cause problems for anyone.

**Chair Atkinson:**

I believe you are talking about subsection 1, paragraph (b), starting on line 25: "To take any adverse employment action against an employee who becomes a candidate . . . ." I am not sure why you have a concern. You said that when an employee becomes a candidate, you already prohibit him from taking leave without pay. It does not really affect you. This is strictly dealing with someone who officially becomes a candidate, not someone who is serving.

**Constance Brooks:**

We were trying to figure out what effect this would have with an employee who goes against our established policy; would it tie our hands to any disciplinary action? That was our concern. If it is not relevant here, then we are fine with it and support the bill.

**Chair Atkinson:**

I think the Assemblyman was pretty clear in saying this was from the time the person signs to run and becomes a candidate. That is what he is getting at.

**Assemblyman Horne:**

The idea of "any adverse employment action" being brought was kind of confusing. It sounds like, if we say you cannot take adverse employment action, you would say we want to take some but not all of it.

**Constance Brooks:**

Our intent is that our existing policy be honored. When an employee decides to become a candidate, he follows those policies and procedures. If the candidate does not, we want to make certain that we can still do our due diligence as an employer and impose any disciplinary actions that are necessary.

**Chair Atkinson:**

Is there anyone else neutral to A.B. 433? Mr. Segerblom, do you have any closing remarks? [He had none.]

The meeting is adjourned [at 3:51 p.m.].

RESPECTFULLY SUBMITTED:

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Sharon McCallen  
Committee Secretary

APPROVED BY:

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Assemblyman Kelvin Atkinson, Chair

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

**EXHIBITS**

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

**Date:** April 4, 2011

**Time of Meeting:** 1:38 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 23	C	Marji Paslov Thomas	Work Session Document on A.B. 23 with Proposed Amendment from Division of Insurance
A.B. 221	D	Marji Paslov Thomas	Work Session Document on A.B. 221 with Proposed Amendment from Generic Pharmaceutical Association
A.B. 296	E	Marji Paslov Thomas	Work Session Document on A.B. 296
A.B. 300	F	Marji Paslov Thomas	Work Session Document on A.B. 300 with Proposed Amendments from Assemblyman Frierson
A.B. 331	G	Jeanette K. Belz	Letter from Property Casualty Insurers Association of America
A.B. 352	H	Jon L. Sasser	Prepared Testimony
A.B. 352	I	Dan L. Wulz	Prepared Testimony
A.B. 433	J	Assemblyman Segerblom	Proposed Amendment to A.B. 433