

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

**Seventy-Sixth Session
April 6, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 12:40 p.m. on Wednesday, April 6, 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman 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
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Alfredo Alonso, representing SuperPawn
M. Neil Duxbury, Owner, MetroPawn, Reno, Nevada
Fernando Peña, Director of Government Affairs, Cash America, and
representing SuperPawn, Fort Worth, Texas
Craig McCall, representing EZCORP, Inc., Las Vegas, Nevada
Chris Ferrari, representing Dollar Loan Centers
Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern
Nevada

Chair Atkinson:

[The roll was taken, and a quorum was present.]

Assembly Bill 421: Revises provisions governing dispensing of certain drugs
and medications. (BDR 54-768)

[Assembly Bill 421 was not heard.]

We will open the hearing on Assembly Bill 538.

Assembly Bill 538: Revises provisions governing the regulation of pawnbrokers.
(BDR 54-1130)

Alfredo Alonso, representing SuperPawn:

This is a simple bill that adds 5 percent to the existing cap for what a pawnbroker can charge. Probably 20 years ago, this body established a cap, which was good policy at the time and probably benefitted the industry significantly. We ended up getting some very good players in the industry, including some publicly traded companies who do things correctly and take care of consumers. The problem with the cap is that this is the only industry in the

state that is capped, and eventually costs catch up. It has been 16 years since this cap was reviewed, and we have had significant increases in costs. It has been the policy of this body over the past three sessions to try to shorten the time frames for these loans, which include payday loans, pawn loans, and other loans which are described under Chapter 604A of the *Nevada Revised Statutes* (NRS). This provides a system in which the consumer can see the end date more quickly, pay his debt off more quickly, and retrieve his property. We are trying to be consistent with that. It is a responsible thing for these companies to do.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Carlton:

After I met with the parties to this bill, I did some math to be sure I really understood the bill. If you have a \$100 pawn, with an initial charge of \$5 plus 15 percent per month, it would be \$50 to pay for a \$100 pawn for 90 days.

M. Neil Duxbury, Owner, MetroPawn, Reno, Nevada:

Your math is correct. The typical loan period is roughly one month for the average customer.

Assemblyman Hardy:

What is a loan documentation fee currently to go through a bank for an unsecured loan?

Alfredo Alonso:

You could not get that type of loan today, and that is why these types of establishments are important now. You cannot get small loans from a bank today. You are very limited, so pawnshops have done a good job of addressing that need.

Assemblyman Segerblom:

Who are your competitors for the customers who come to you?

Fernando Peña, Director of Government Affairs, Cash America, and representing SuperPawn, Fort Worth, Texas:

Customers look at various products. Payday loans may be a little too expensive for them. Borrowing from family may not be an option. They may not want to use a credit card, so they may have some collateral and may determine that using the collateral is their best option.

Assemblyman Segerblom:

Are you familiar with the rates at a payday loan company? How would the fees in the \$100 loan from a pawnshop compare to what a payday lender would charge?

Fernando Peña:

When the customer looks at the market, they look at a payday loan as an option. It usually costs between \$15 and \$20 per \$100 borrowed. He has to pay it off within two weeks. Our customers use collateral and pay off the loan in a longer period. Currently, Nevada's statute has established the period to be 120 days.

Chair Atkinson:

These are two different services with two different types of customers.

Fernando Peña:

There is a big difference between the customers. A pawnshop customer is usually an underbanked or unbanked customer, but he does have collateral to use like others use credit cards. A payday customer is a bank customer and has a checking account without collateral. They are totally different industries and customers. We are here today to talk about the pawn industry and the reasons we believe this bill is in the best interest of providing for a stronger, more vibrant pawn community.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Ohrenschall:

Do most pawnshops charge the maximum fees or is there variation?

Fernando Peña:

Currently, state statute requires us to charge 10 percent and there is no option.

Alfredo Alonso:

In some cases they will offer different deals depending on what they have going on in the store. The pawnshops are very different these days, and the owners have put significant capital into their buildings, not including the cost of employees. Most of the pawnshops have to charge the 10 percent because they will not be able to succeed in business otherwise.

Assemblyman Ohrenschall:

Can they charge less if they chose to?

Neil Duxbury:

The language in the statute is "may charge."

Assemblyman Ohrenschall:

Do most charge the maximum?

Neil Duxbury:

Yes. We are for the most part on the same page.

Assemblyman Ohrenschall:

With the existing 10 percent, have many pawnshops downsized or have gone out of business because it is no longer profitable at this level?

Neil Duxbury:

Yes. There has been some attrition in northern Nevada for that reason.

Craig McCall, representing EZCORP, Inc., Las Vegas, Nevada:

In the last eight or ten years we had at least three pawnshops in southern Nevada go bankrupt.

Assemblyman Goedhart:

You said the normal term of the loan is one month, but is there a limit to how long a person can borrow the money? Does he have to enter into a new contract or keep extending it down the road?

Neil Duxbury:

The statute currently stipulates a four-month term, after which the customer would have to enter into a new contract.

Assemblywoman Bustamante Adams:

Within the industry, what is the average number of employees in a pawnshop and do the employees receive benefits?

Fernando Peña:

SuperPawn in Nevada currently employs over 300 Nevadans, and we offer all our employees full medical and dental benefits as well as a 401(k) plan. Over the last several years, our costs for wages, benefits, rent, and utilities have skyrocketed in double-digit increments. For wages in the past five years, we have seen our costs go up 17 percent. Property taxes and licenses have increased. Our benefits have increased 33 percent in the last five years alone.

Craig McCall:

EZCORP employs approximately 100 people and provides similar benefits to all the employees. That is important to all of us as employers.

Assemblyman Ellison:

You must have an inventory of items that you cannot sell, so it greatly reduces the 10 percent you earned. Is that correct?

Neil Duxbury:

That is very accurate when you factor in the cost of money from the banks where we borrow. There is a small percentage of loans that do fall out, so the product sits on the shelf, and it does get very expensive. Electronics are like fruit and have a very short shelf life.

Assemblyman Ellison:

I think this is a good bill.

Assemblyman Segerblom:

Remember, it is 15 percent per month, not per year.

Alfredo Alonso:

Short-term loans always look higher because they have a compacted period. The consumer ultimately has no risk other than losing the collateral. Other industries can result in ultimately being sued or getting in long-term debt for a default. Pawn is almost the perfect situation because 80 percent of the people redeem their products, but for those who chose not to, there is no recourse. It is a very fair way of doing business, but there is a high cost to lend the money.

Assemblywoman Carlton:

There is a distinct retail side of this business also. When you keep the product, you do retail it and there is a price point that will work and one that will not. Would the auto title loan program be separate from this?

Craig McCall:

This has nothing to do with auto title loans or payday loans.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Hardy:

When I was on the Mesquite City Council, a couple of pawnshops wanted to open in the City of Mesquite, and there was big discussion about the major

costs of having to deal with regulations concerning law enforcement. Can you tell me what that adds?

Alfredo Alonso:

It is very difficult to relocate a pawnshop. You have very specific rules within each community about where one can be placed. That makes it difficult to move. Communities tend to want them in certain places and away from others. Every time we have had a pawnshop issue, it is difficult to find a new location in consideration of the local governmental rules.

Craig McCall:

In addition, you do not have the flexibility to negotiate your lease rates because your landlord knows you cannot move the store. Law enforcement has added costs to the pawnbroking operation. We are in favor of these costs because most stores in the State of Nevada electronically transfer daily activities to the local police department. There is a cost to maintain that technology, but it is good for the integrity of the industry. There are other costs in the industry that people do not realize. We have to rent more space because we warehouse our items, and there is labor intensity as well as the expense of security. Pawnshop owners take the protection of the customers' items seriously and invest in state-of-the-art security systems in the stores.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of A.B. 538? Is there any opposition? Is there any neutral testimony? Are there any additional comments from the Committee?

Assemblyman Conklin:

I think this is a bill that should go forward, but I would like an opportunity to talk with the industry to make sure that the amount is fair.

Chair Atkinson:

I agree that I am not certain the rate and time period are the correct numbers, but I was flexible. Are there any other questions or comments? [There were none.] I will close the hearing on A.B. 538. I will open the hearing on Assembly Bill 541.

Assembly Bill 541: Revises provisions governing certain loans. (BDR 52-902)

Chris Ferrari, representing Dollar Loan Centers:

Assembly Bill 541 is truly intended to be a clarifying legislation. In 2005 and 2007 there were significant reforms to the short-term lending industry. The goal of this bill is to make sure the fundamental constitutional rights, in

terms of access to courts, are afforded to all businesses regardless of where they occur in statute. I am not here to speak about the industry itself but am looking for the fundamental fairness in terms of access to the courts. Businesses which are licensed under *Nevada Revised Statutes* (NRS) 604A.480 are the only businesses in the state that are barred by statute from accessing the courts for civil remedy which may be required in an instance of breach of contract or default on a loan. We met with the Legislative Counsel Bureau's (LCB) Legal Division late last year, and our counsel interpreted that, based on the way the statute is written, we are not able to access civil remedies as any other business would. That is why we are here today to request a clarification of language.

Imagine you are a small contractor providing a service to a client, and the client decides not to pay you. Instead of being able to take them to small claims court, you are prohibited from doing so. This amendment is intended to clarify that any business is able to do so. We believe that this is an exception in this chapter and anywhere else in the statute. It treats two businesses differently. The *U.S. Constitution* and the *Nevada Constitution* require when a law is passed it treats everyone equally and is uniform in its application. The way it is being interpreted currently is that similar businesses are being treated differently. You will hear some opposition to the bill, and I was not representing this industry in the 2005 or 2007 Sessions. I was fortunate to speak with someone very knowledgeable who informed me that when this section was created, it was for someone who was charging a lesser interest rate, and the rights to civil remedies were waived. I have gone through the minutes for every bill pertaining to short-term lending for the 2005 and 2007 Sessions, and nowhere does it indicate any intent to limit anybody's access to civil remedy. It is my understanding that we are the only business in the State of Nevada that does not have that right.

We have a proposed amendment ([Exhibit C](#)), which was in response to a concern from one of our competitors and which clarifies the definition of an outstanding loan. We clarified that to make sure it was understood that is a loan that is in default at the time of a new loan agreement. Consumer protections previously passed are not being altered in any way. We are simply trying to clarify our access to courts. The 14th Amendment to the *U.S. Constitution* forbids a legislative enactment that denies any person equal protection of the laws. As the law is currently written, my client does not have those accesses to civil remedies and that is why we are here today seeking this clarification.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Horne:

Do you have a specific instance when your client was denied a civil remedy? Have there been times it has actually gone to court and filed small claims actions, which have been dismissed for failure to state a claim?

Chris Ferrari:

We have taken a very conservative approach. This is obviously an industry that is much scrutinized, and my client prides itself on being top-shelf and above the bar. Therefore, we have not exercised that right. Our counsel has interpreted the statute as written to say that it would violate the statute to take that action. We came before you to try to provide the clarification so it levels the playing field for everyone regulated under this chapter.

Assemblyman Horne:

Do we need to have clarification when we have not had an issue at court? Since this statute was imposed, if the short-term lenders were going to small claims court and getting civil remedies and nothing prevented them from doing so, why do we need the clarification? I have not heard that there was any dispute on whether or not the clarification is needed. Have any of your competitors been denied access to civil court?

Chris Ferrari:

It is our policy to abide exactly as statute is written and to be fully aboveboard. For that reason we did not try to go through that court system but brought it to the Legislature for clarification. There has been a difference in interpretation between different entities about this chapter and we are looking for your clarification.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Carlton:

If the LCB said that your client could do this, I would think that having a document from them should give your client a comfort level to be able to proceed and make its case. After that opinion, why did it not move forward?

Chris Ferrari:

We did speak to LCB and they indicated that, but they also understood the point of our attorney and said they could see how that could be confusing. They indicated that we had the ability to request clarification from the Legislature.

Assemblywoman Carlton:

I would like our staff to look into that. I am curious if there was any documentation that we could review.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of A.B. 541? [There was none.] Is there any opposition?

Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada:

I have submitted written testimony ([Exhibit D](#)). I think it is crucial here to look at what the Legislature did in enacting Chapter 604A of the NRS in 2005. The biggest problem at the time was trying to stop the debt treadmill. People were entering into high-interest loans, often for a two-week period, but then they would not have the funds to pay off the loan entirely. They would pay the interest and the loan would roll over. This was the main purpose of enacting NRS Chapter 604A. Under existing law, a lender making a deferred deposit loan, or a high-interest loan, can renew a loan only up to 90 days from the date of origination or 60 days from the due date of the original loan, whichever occurs first.

These provisions were designed to prohibit the practice of charging a daily interest rate and upon default automatically renewing the loan over and over, for a prolonged period, and then seeking a judgment for not only the principal amount of the loan but also the accrued interest. That amount was often four or five times more than the original amount of the loan. That type of business model was designed to generate from the back end of the loan through the collection process. In NRS 604A.481, the Legislature saw fit to state that lenders cannot establish or extend a period beyond 60 days after the original date of the loan. An exception was put in subsection 2, which is the subject of the bill. I was involved in the negotiations on this. The installment loan lenders such as Household Finance and Beneficial Finance came to us and said they could not live with NRS 604A.480, but they had a different business model. Their model consisted of the nine criteria that are in subsection 2 of NRS 604A.480, the last of which is the subject of this bill. It is important to keep in mind that this exception allows for a loan period of 150 days, which is totally different from the two-week payday loan model. The Legislature, in determining to allow a loan period as an exception of 150 days, included the criteria that such a lender would not sue to collect on that loan if it went into default. While that situation may seem unfair, one needs to look at the big picture and see that the Legislature determined that it would not allow a lender to collect interest for 150 days and to sue the borrower if there was a default.

I think the Legislature had a rational basis for including that provision, and therefore I oppose any effort to dilute any of the nine criteria.

Chair Atkinson:

Are there any questions from the Committee? I see none. Are there any others in opposition? Is there anyone to testify from a neutral position? I will close the hearing on A.B. 541.

The meeting is adjourned [at 1:25 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 6, 2011

Time of Meeting: 12:40 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 541	C	Chris Ferrari	Proposed Amendment
A.B. 541	D	Dan Wulz	Written Testimony