

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Sixth Session
March 14, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:14 a.m. on Monday, March 14, 2011, in Room 3138 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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jean Bennett, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Venicia Considine, Legal Aid Center of Southern Nevada
James Berchtold, representing the Civil Law Self-Help Center, Clark County Courts
Elizabeth Nedeau, Private Citizen, Las Vegas, Nevada
Michael Stern, representing Nevada Chapter of the Paralyzed Veterans of America
Ernest Nielsen, Washoe County Senior Law Project, Washoe County Department of Senior Services
Jon Sasser, representing Washoe Legal Services and Legal Aid Center of Southern Nevada
Patrick T. Sanderson, representing Nevada Alliance for Retired Americans
Steve Kilgore, Deputy Director, Henderson Township Constable's Office
John Sande IV, representing Nevada Collectors Association
William Thomas, Collection Bureau of Nevada
Chris Ferrari, representing Clark County Collection Service, LLC
Tray Abney, representing the Reno Sparks Chamber of Commerce, the National Federation of Independent Business and the Retail Association of Nevada
Joan C. Wright, Private Citizen, Carson City, Nevada
George A. Ross, representing Bank of America

Chairman Horne:

The Assembly Judiciary Committee is called to order. [The roll was taken. The Chair reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.] We have one bill on the agenda today. We also have a Committee bill draft request (BDR) introduced as BDR 14-1127 that revises provisions relating to the use of a grand jury and prohibits the use of a grand jury in certain circumstances, and provides for other related matters. I will entertain a motion to introduce BDR 14-1127.

BDR 14-1127—Revises certain provisions relating to the use of a grand jury. (Later introduced as [Assembly Bill 269](#).)

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE
INTRODUCTION OF BDR 14-1127.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Horne:

Mr. Segerblom will open the hearing, presenting Assembly Bill 223.

Assembly Bill 223: Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-989)

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

I am here to introduce Assembly Bill 223, which revises the garnishment and attachment procedures to ensure that protected funds from sources such as Social Security are not inadvertently garnished.

Assembly Bill 223 passed both the Assembly and the Senate as Assembly Bill No. 491 of the 75th Session, and was vetoed by Governor Gibbons. The Assembly overrode the veto, but the Senate failed to vote on the measure and A.B. No. 491 of the 75th Session died. [Read from prepared testimony ([Exhibit C](#)).] Currently, the debtor's bank account will be attached, the bank will freeze the account and the account holder has already written outstanding checks. Those checks will bounce. Later, when the bank realizes the funds in the frozen account came from exempt Social Security money, and after the account holder's checks have bounced, this becomes a very serious problem for the account holder.

After the bill was introduced, some concerns were expressed by banks, bill collectors and constables. All of the parties have worked hard for weeks to resolve these issues. Even today, there are disgruntled lobbyists in the audience who do not like this bill. However, I think most people believe the intent is positive and that we can resolve these issues. We are willing to work with all parties to address their concerns.

With the Chairman's permission, I would like to introduce Venicia Considine, an attorney with the Legal Aid Center of Southern Nevada to explain the bill further.

Chairman Horne:

Thank you, Mr. Segerblom. Good morning, Ms. Considine.

Venicia Considine, representing Legal Aid Center of Southern Nevada:

Good morning, Chairman Horne and members of the Committee. I am appearing today as a concerned citizen and as an attorney who represents domestic low-income clients in a variety of consumer defense related issues. We chose to reintroduce A.B. No. 491 of the 74th Session, exactly as it was passed. The intent of the bill was to remedy common problems faced by judgment debtors. I have provided a flow chart showing the current attachment process pertaining to bank accounts ([Exhibit D](#)) and a flow chart showing the attachment process as proposed in A.B. 223 ([Exhibit E](#)).

Section 3, subsection 1 of Assembly Bill 223 covers the automatic Automated Clearinghouse (ACH) coded direct deposit, or federal benefits that are electronically deposited. Today, in many states, anything that is coded from the United States Treasury is a self-effectuating exemption and is automatically unattachable. The United States Treasury is currently working on regulations to make this is a nationwide procedure. The interim final rule will be going into effect May 1, although it was scheduled to begin earlier, and comments are being taken until May 24. So, we do not know what the final rule will look like. Further, it only covers four of the areas. See, *Federal Register*, Volume 76, No. 36, February 23, 2011 ([Exhibit F](#)). The Treasury regulation has room to include future ACH Treasury-coded deposits. Our bill goes further than the Treasury rule. In addition, the lookback period in this bill is 45 days for direct deposits. The lookback period for the proposed interim final rule from the United States Treasury is 60 days for these deposits. Therefore, our bill would be a floor for the period that is 60 days. However, if it does change, our lookback period would be a minimum of 45 days.

Section 3, subsection 2 of the bill covers the \$1,000 "wild-card" exemption. In 2007, the state passed a statute stating there is an automatic \$1,000 exemption to any judgment debtor. The intent behind this section was to assist those people who do not have direct deposit. In this economy, where our citizens are either underemployed or unemployed and have used up their unemployment benefits, or are living on whatever savings remain, this \$1,000 exemption gives them a safety cushion to pay the rent, leaving them a little bit of money for groceries and medicine. Anything above that \$1,000 is attachable. This follows the current claim of exemption process. Further, the \$1,000 bank attachment does not stop any collection activity like wage garnishment. The \$1,000 is the automatic bank account exemption. Any collection agency or business that needs to collect can still garnish wages. Currently, more than ten states have laws covering a minimum amount of automatically exempt, unattachable amounts in bank accounts.

Again, this is not a new exemption. Since 2007, the creditors' attorneys have been returning the \$1,000 to the bank account of any person claiming that exemption. The problem is that the sums are returned to the bank account, minus any bank fees and constable fees. We have shown this process through the flow charts provided as exhibits. The flow chart entitled "Current Attachment of Bank Accounts," ([Exhibit D](#)), shows that the judgment creditor obtains a writ of execution, the writ of execution is served on the bank, and the bank immediately freezes the account of the judgment debtor. In order to have access to the money in the frozen account, the judgment debtor must find a way, without immediate access to any of that money, to find a claim of exemption or affidavit form, fill out that form, and mail copies to the constable, the bank, and the creditor. After accomplishing all of that, the judgment debtor has to wait for the judgment creditor to file a motion to argue the exemption, and then a hearing will be held. This process can take up to 45 days. Imagine having no access to any money in your bank account for 45 days. The rent could not be paid, and the only groceries available would be whatever you may have in the pantry. The 30-day supply of medication a person normally has would be exhausted. As previously stated, by the time the money is returned to the bank account, which should not have been frozen in the first place, the judgment debtor will have accrued bounced check fees from his bank and from the creditor's bank. We have a witness who will speak about what this process has done to her personally. We have dealt with clients who have had all of their Social Security disability in an account; the account was swept, and after six weeks of this process only \$27 was returned to their account. Our society has decided that is not the best way to proceed. Our governments, both state and federal, have decided that there is a certain subsistence level of money to which people are entitled to have access. Again, these funds are already exempt. It is the intention of this bill to leave some money in the bank account, so the judgment debtor, who may not know that these exemptions are available, still has access to the money.

The other part of current regulations we wish to change is the period to which the notice of execution can be responded, which is set forth in section 6 of A.B. 223. What we propose is to lengthen the amount of time that the judgment debtor has to claim the exemption. Currently, it is 8 days. Once a person finds out that either his wages are being garnished or his account has been frozen, the judgment debtor needs to arrange transportation, investigate any legal rights he may have, and find exemptions that apply. In addition, if the judgment debtor is employed, he will have to miss work in order to seek legal counsel, such as through a self-help center or a legal aid office, to assist in preparation of the necessary documents, and to ensure the documents are sent to the proper place. We are asking that the period be extended to 20 days in

order to provide more time to accomplish the necessary steps to protect the judgment debtor.

We have been working with several groups regarding section 11. The constable's lobbyist stated the interrogatories set forth in section 11 that the employer must fill out, are vague and complicated. After that discussion, section 11 was rewritten and the interrogatories are easier for the employer to understand. The constable reviewed the amended interrogatories and he found them improved.

We are asking that the creditor be required to provide the judgment debtor with an accounting. Currently, judgment creditors are required to provide an accounting to the court every 120 days. Each time a writ of execution expires, the judgment creditor fills out an application for a new writ of execution and a new accounting. We are asking that the accounting also be provided to the judgment debtor, so the debtor is aware of the amount of the debt that has been paid and how much debt remains. We see many people who believe that their bank account has been garnished for the full amount of the debt, only to be served again with an additional writ of execution for attorney fees, interest, or late fees. We have attempted to address the concerns of various groups. It is my understanding an amendment has been proposed that removes the \$1,000 exemption. I want to express to this Committee that the \$1,000 is already exempt. All we are asking is that people who really need to have that \$1,000 in their account in order to live for a month or so, not lose the ability to retain that amount.

We welcome the opportunity of working with people to craft language that makes clear what we intended in these statutes.

Chairman Horne:

Are there any questions of Ms. Considine?

Assemblyman Sherwood:

Thank you, Ms. Considine, for your testimony. My obvious question would be that because the federal government will have a remedy in May of this year that was not there in 2009, is this bill redundant?

Chairman Horne:

Mr. Sherwood, would you share with the Committee what that remedy is?

Assemblyman Sherwood:

Ms. Considine's testimony was that the federal government's interim final rule regarding garnishment of bank accounts containing federal benefit payments will be effective in May. Why would we try to trump that?

Venicia Considine:

Yes. The federal government right now does have that interim final rule. They have been working on this for quite a while. It is still not effective. Comments are being taken up until May 24, even though the interim rule was supposed to be effective May 1. We do not know what the final rule will look like. Further, the federal rule will cover Social Security benefits, Supplemental Security Income, railroad benefits, and United States Department of Veterans Affairs benefits, but there are no other exemptions. Assembly Bill 223 has more exemptions, but not as quite as many as California and Connecticut have. Assembly Bill 223 exempts military retirement payments, payments made by different arms of the military, payments made by public health services, disaster payments made by the Federal Emergency Management Agency (FEMA), and funds that are already exempt and not covered under the proposed federal regulations. Although the regulations do provide for further exemptions to be added, to ensure that electronically-coded direct deposits are unattachable, there are no more exemptions at this time. With the current economic climate in Nevada, and also with our Legislature not meeting again until 2013, we want to be certain there is something on the books to protect Nevadans who have those different sources of income. Of course, any additional regulations promulgated by the United States Treasury would preempt state laws or become a new floor.

Chairman Horne:

Ms. Considine, what about persons who choose not to receive their funds via direct deposit, and instead opt to receive a check in the mail? How are those funds accounted for?

Venicia Considine:

Those funds would fall under the current exemption process, which states that if those funds were deposited from a paper check into a bank account, that account would be frozen. The debtor would also need knowledge that there were exemptions provided by law and would have to go to either a legal aid office or a self-help center, or to somebody who could assist in filling out an affidavit. The debtor would then send that affidavit to the proper persons and wait to find out if there would be a hearing. If there were no hearing, the judgment debtor would wait for the constable to release those funds. If there is a hearing, the judgment debtor would wait for the judge to make a determination. The third flow chart I have provided ([Exhibit G](#)) shows the

Claim of Exemption Process. The process after A.B. 223 would still be the same, only the time frame would be different. Anyone who deposited a paper check would not fall under the self-effectuating, unattachable funds. Those funds must be electronically-coded direct deposits.

Assemblyman Hansen:

I have one quick question, Ms. Considine. You mentioned in your testimony that under current law there is already a \$1,000 exemption. Can you elaborate on that?

Venicia Considine:

Yes. In 2007, a \$1,000 personal property exemption was added to the statutes.

Chairman Horne:

That is at page 21 of A.B. 223.

Assemblyman Hansen:

If that is existing law, why are we adding an additional exemption in another section?

Venicia Considine:

The exemption already exists in law. We are asking that the exemption become self-effectuating in the bank account, in order for the first \$1,000 to be automatically unattachable. Under current law, the bank account is attached and the judgment debtor physically has to claim that \$1,000 exemption. If the debtor is unaware of the exemption, the debtor does not receive the exemption. If the debtor is aware of the exemption, the money sits frozen and untouchable in the debtor's account until the court releases the \$1,000. By the time the \$1,000 is released, additional funds and fees have been debited to the bank account.

Chairman Horne:

Are there any further questions of Ms. Considine? [There were none.] The next witnesses are James Berchtold and Elizabeth Nadeau.

James Berchtold, representing the Civil Law Self-Help Center, Clark County Courts:

I am the supervising attorney at the Clark County Civil Law Self-Help Center. The Self-Help Center is located in the Regional Justice Center in Las Vegas. Our purpose is to provide guidance and assistance to people who are representing themselves in the Clark County courts. We provide forms, legal information and try to guide people through court procedure and practice.

In 2010, the Center assisted over 31,000 people who were representing themselves in the Clark County courts. Based on the information we gathered, approximately four percent of these people had some type of garnishment or attachment issue. That translates to roughly 1,256 people with some type of garnishment or attachment issue. Obviously, at the Self-Help Center we see only a fraction of the people who are in this situation. I believe it is fair to say that this process of releasing funds that are exempt is probably being experienced by most people who find themselves with frozen bank accounts.

Based on what we are seeing, the current statutory procedure for freezing a bank account and requiring the judgment debtor to claim the exemption through the court is causing a burden on the people the procedure is intended to benefit. The elderly, disabled, low-income, the working poor, people on fixed incomes and anyone else receiving any type of government assistance are all being burdened. These people often have one account. Their checks are deposited into that one account. They do not have the luxury of credit cards or access to other funds, or other accounts. Therefore, when that one account is frozen, the person has no money to live on. He cannot buy medications, he cannot pay his rent, he cannot buy food and, depending on the timing, even his next check may be slated for deposit into that already frozen account. There will then be two checks to which he has no access. Two checks for someone on Social Security, or 45 days for most people, means the difference between paying rent and not paying rent, of having a roof over his head and being on the street. That is what we are seeing at the Self-Help Center.

Frequently, by the time a person realizes his bank account has been frozen, it is not because he receives some kind of notice from the constable. It is because the person went to the grocery store to buy food and his debit card was declined. By the time the person realizes what is happening, the very short eight-day time period to claim the exemption has passed. If the person is within the time period, he has to find some way to get to the court. Many of these people have no transportation, and the bank account is frozen. I have seen situations where the people literally do not have bus fare, because all of their money is tied up. If the judgment debtor makes it to the court, the judgment debtor does not have the \$33 filing fee to file the Affidavit of Exemption required to claim an exemption to which the judgment debtor was already entitled. We believe that expanding the time frame for 20 days and allowing the judgment debtor to retain those already exempt funds in his account would alleviate the situation.

Further, the whole process is intimidating and confusing to most people, especially the elderly who find their Social Security funds have been frozen. Not only do they have to find a way to the court in order to file the

Affidavit of Exemption, but also if the creditor challenges the exemption, which is frequently the case, the judgment debtor has to go through the burden again, find transportation to the court, and appear at a hearing. These hearings often terrify senior citizens. The whole burdensome process is a fight over funds which are already exempt under state and federal law.

The other issue we frequently see is regarding garnishment. As Ms. Considine said, there is a portion of the bill that requires the judgment creditor to provide an accounting to the judgment debtor. People come into the Self-Help Center, often when a bank account is levied upon with multiple 120-day writs. It is impossible to reconcile their account in order to determine what fees were charged to the bank account. The judgment debtor has no idea what fees were deducted from the bank account, how much of the principal on the debt was paid from the account, and what amount remains in the account. Often, these debtors want to make arrangements with the judgment creditor to pay the debt off, but there is no way to know how much is owed. As a result of the uncertainty, the individual has to wait until all garnishment is complete and then try to determine whether the amount garnished was even appropriate. If it was not, the burden is on the judgment debtor to go to court, schedule a hearing and ask the judge to refund that money. Most debtors are so intimidated by the process they give up and allow the creditor to keep the money.

We think the proposed changes in A.B. 223 will make the process easier for the debtor. It will implement what I believe to be the purpose of the Nevada statutory laws for claiming exemptions. The bill will benefit the creditors because they will have more certainty about what money they can and cannot claim, and will avoid costly lawsuits over money that is exempt. This bill will also ease the burden on our courts. We see people every day who are coming in to file for an exemption. Many of these filings result in a hearing. This bill will reduce the number of filings and thereby reduce the number of hearings our judges have to conduct. Therefore, I ask and encourage you to support A.B. 223.

Chairman Horne:

Thank you, Mr. Berchtold. Mr. Ohrenschall, you had a question.

Assemblyman Ohrenschall:

If a senior citizen on a fixed income has his bank account frozen, and goes to your Self-Help Center, what will it cost him, and how long will it take to get the account unfrozen, so the individual will be able to access his funds?

James Berchtold:

The initial filing fee is \$33 to file an Affidavit of Exemption. If the creditor challenges the claim of exemption, it could take up to 45 days to actually get those funds back.

Assemblyman Ohrenschall:

So, during those 45 days the senior citizen will also not be able to access the next monthly check, if the funds are from a Social Security check, for instance?

James Berchtold:

Often that is the case. The checks are already slated to be deposited into that frozen account. The senior citizen will contact the Social Security Administration to try to change the direct deposit. Often it is too late. So that money goes into an account to which the senior will have no access.

Assemblyman Sherwood:

Thank you for your testimony. Having a father who is on a fixed income and who relies on Social Security, I totally appreciate the work that you do. My concern, however, is that the scope of the problem really has not been accurately defined. We are being asked to make a judgment on this when it is stated there are just a few people affected, but you believe that it is probably everybody, and it takes up to 45 days. In practice, does it really take 45 days? The issue I am struggling with is that we really do not know how many people are affected. Of course, there is always the anecdotal story of one person who has a hard time. But, what are the numbers? How big is the problem? That would really be helpful.

James Berchtold:

I cannot tell you the exact numbers of people who have protected money, such as Social Security benefits, in bank accounts. However, everyone who comes down to our center has protected money because of the \$1,000 exemption that is already built into Nevada law. Nonetheless, the bank account is frozen. There is no access to any funds until a court appearance is made, the exemption is claimed and proof is made to entitlement of those funds. If there is no hearing scheduled, the time frame is shorter. However, if the creditor challenges that in any way, it could take 45 days or more for the money to be returned to the debtor.

Assemblyman Sherwood:

How many hearings are actually taking place? How many people come down? How many clients do you have? How big is the problem?

James Berchtold:

As I said, we served 31,000 last year and 1,256 of those people had some kind of attachment exemption issue. How many of those people have hearings? I do not know. We do not keep those statistics.

Assemblyman Frierson:

Out of the 1,256 who had garnishment issues, what percentage are seniors and what percentage are needy or indigent?

James Berchtold:

Thank you for that question. I wish I had those numbers. We track people who come into the Self-Help Center on a totally voluntary basis, by asking each person to complete a questionnaire. The completed questionnaire will indicate whether there is some type of attachment or garnishment issue, or other legal problem. Therefore, beyond those numbers, which would be the 1,256 people, I do not have anything more specific than that.

Assemblyman Frierson:

For clarification, generally speaking, in your experience what percentage of the folks you deal with who come in with this issue are senior citizens?

James Berchtold:

I would say a good 50 percent are seniors. In addition, the majority of people who come to the Self-Help Center come because they cannot afford an attorney. Most of them are low income. The majority of the 1,256 people that we saw last year are low income and derive their income from Social Security, or they are unemployed, or receiving some other government benefit.

Assemblyman Hansen:

As I understand it, there are already exemptions for Social Security. In addition, these garnishments are after a court appearance. As I recall from being in small claims court, the judge will typically use a formula to come up with a fair way of payback, so that the bank account is not, in fact, drained. It is my understanding, as I read existing law, that Social Security benefits are already exempt to a certain extent. Second, there has already been a day in court in front of a judge, with an opportunity to verbalize a lot of what we are discussing here. Third, the judge already has a formula used to help ensure that somebody literally is not frozen out of their ability to make any payments, and starve to death, and so forth, do they not?

James Berchtold:

First, yes, there are already exemptions for Social Security, unemployment, veteran's disability benefits, and other types of benefits. However, those

exemptions are not self-effectuating. While the bank account is frozen the person has no access to those funds until the person goes to court. Number one, they have to know to come to the court. They come to the court within the eight-day period and file an Affidavit of Exemption. If the creditor challenges the exemption, the debtor and creditor have to attend a hearing. All of this could take up to 45 days. During that time they have no access to that money. I believe A.B. 223 is trying to make those exemptions self-effectuating.

With respect to your second question, yes, often the debtor has had a day in court. Frequently, however, the debtor has no idea there is a judgment outstanding against him. Often the debtor has a default judgment taken against him, has no idea there is a case pending, and has never been served with any process. Suddenly, the debtor's bank account is frozen. That is often the situation. In small claims, specifically, there is a voluntary method to set up a payment plan. That is true. If you fail on the payment plan, the account is subject to a writ of execution.

Chairman Horne:

Are there any other questions for Mr. Berchtold. [There were none.] Thank you, Mr. Berchtold. We now have Elizabeth Nedeau down south.

Elizabeth Nedeau, Private Citizen, Las Vegas, Nevada:

I want to address what the gentleman just spoke about. When my salary was garnished, I was never brought to court. The creditor just started garnishing 25 percent of my salary. I never saw a judge. I never had a determination. I would like to read you a synopsis of what happened to me in the last couple of years.

In September 2009, Allied Collections froze my bank account, which held both my salary and my husband's Social Security, which was direct-deposited. In October 2009, my bank informed me that since Social Security was involved, the bank account should not be frozen. I went to legal aid for help, an associate handed me some forms and said, "Fill out these forms, make four copies, and deliver them to district court, the North Las Vegas Constable, Allied Collections Agency and the bank." He also told me that I could represent myself because the bank account should not have been frozen since it contained Social Security funds, and no more than 25 percent of my salary could be garnished. In November 2009, I finally went to court, and the attorney for Allied Collections said that the Social Security was comingled with my own funds, so it should be allowed. The judge said she was unsure of this law and believed it could be true. She then asked me. I am not an attorney and I am not aware of any laws about this situation; so the bank account continued to be

frozen. During this time, I was unable to pay any of my bills, including my mortgage. I went back to legal aid and reported what happened. The person at legal aid said the judge was wrong and my case would be turned over to an attorney to handle for me. The money was released around Thanksgiving, or approximately 60 days after they froze my account.

In June 2010, I received a notice to appear at the attorney's office for Allied Collection. During the interim period, I lost my job and was collecting unemployment. I called Mr. Griffin and he suggested I should go to that attorney's office and there should not be a problem because I only had exempt income. I kept the appointment and showed the people at Allied Collection copies of both my unemployment checks and my husband's Social Security checks. I had discontinued direct deposit so the bank would not freeze my account again. The attorney said everything was okay and suggested that I should claim bankruptcy because it was a medical bill and the court should see that I would never be able to pay this bill.

In July 2010, one month later, to my surprise, I received a notice that my account at Wells Fargo was being frozen again, and now it included a \$100 fee from the bank. At the time the account was frozen, I only had \$285 in the account. Once again, all of this happened after I had met with the attorney for Allied Collection and had shown them that all of my income was exempt. I went back to the Self-Help Center at the district court. I had to fill out forms to claim the exemption, make four copies and distribute them as I had done previously.

In August 2010, both attorneys agreed that this should never have happened and that the paralegals must have prepared these papers and the papers were signed in error. Both attorneys signed an agreement to release the funds and send it to Wells Fargo. I checked every day to see when the money would be credited to my account. For weeks nothing happened. Mr. Griffin called and said that he found out that Wells Fargo had already sent the money to Allied Collection and that this was not right, because the bank should have held the funds for 120 days. However, within one week the money had been sent to Allied Collection. I am here today because this should never happen to anyone. It is very frustrating.

Chairman Horne:

Thank you very much for your testimony, Ms. Nedeau. Are there any questions for Ms. Nedeau? [There were none.] We will hear from Michael Stern.

Michael Stern, representing Nevada Chapter of the Paralyzed Veterans of America:

I am the President of the Nevada Chapter of the Paralyzed Veterans of America. I was contacted by Ms. Considine last Thursday, and I went out to check with members of various veterans' organizations to which I belong. I learned that some veterans live in Section 8 housing, and some veterans do not meet the threshold. After the veterans' bank accounts were attached, the money was lost. The veterans did not know what to do. These were United States Treasury funds paid for veterans' benefits, and should never have been attached. In three cases, the funds were for 100 percent disability payments. Once again, these funds should never have been attached. The veterans often discontinued the direct deposit of their checks and had a paper check sent instead. After that, two of these veterans had perhaps \$1,000 or \$1,200 in cash, and after a third person learned that, these two people were robbed. One veteran's house was burglarized which created total chaos in his life. We support A.B. 223 because a disabled person is at a disadvantage if a predator comes after them. We want to stop this. I am a retired attorney and I understand the law. However, after what these veterans have experienced and not knowing the law, they should not have to go through this. These veterans' benefits and disability benefits for veterans are totally exempt. The veterans should not have to discontinue direct deposit of these funds simply to avoid having the funds attached.

Chairman Horne:

Are there any questions for Mr. Stern? [There were none.] I want to move back to Carson City and recognize Mr. Sasser, Mr. Nielsen, and Pat Sanderson to speak.

Ernest Nielsen, Washoe County Senior Law Project, Washoe County Department of Senior Services:

We offer free legal services to seniors at the Senior Law Project on this issue. I will not repeat what has already been said. However, I want to say that the situation in Washoe County is much the same as what is happening in the southern part of Nevada. One thing that should be emphasized is that seniors do not want to go to court on their own, and most times they ask for somebody, such as our office, to intervene on their behalf. If no one is there to help them, seniors will just let these judgments go by the wayside and lose their money.

I would like to address one of the first questions Mr. Sherwood asked about the need for this bill. Many of the changes in A.B. 223 are to clean up processes. For example, one of the process issues is the interrogatories to employers. We find many times that the employer will take the wrong amount of money out of

the person's paycheck. The reason that is done is that often employers do not understand Nevada procedure and exemptions. Therefore, we often have to go in and challenge an employment garnishment. Section 11, that was earlier referred to, is designed to clear up that situation.

Assemblyman Ohrenschall:

In Washoe County, do you have enough resources to take care of all the seniors who have an account that is frozen? I know you cannot speak for Clark County.

Ernest Nielsen:

No. Our resources are very thin right now.

Assemblyman Frierson:

Mr. Nielsen, can you give an idea of the amount of money that some of these persons, in particular the seniors, are losing as a result of the hold being placed on protected money? I am speaking of late fees, or bounced check fees, or bank fees.

Ernest Nielsen:

Certainly, there is either a \$75 or a \$100 bank fee that comes off the top, regardless of whether the money is returned. Bounced checks happen routinely in these matters, incurring additional fees. The late charges will depend on the number of checks written on that account. I would estimate that the average amount lost, in addition to the bank charge, is \$100. Even if the money is returned, there is that loss of approximately \$200. That is an estimate.

Assemblyman Frierson:

That would be \$100 to \$200 that this individual incurs as a result of an account being frozen that was exempt in the first place, is that correct?

Ernest Nielsen:

That is correct. The creditor gets nothing as a result of that process.

Chairman Horne:

Mr. Nielsen, what is the typical purpose of an attachment? How was the debt accumulated?

Ernest Nielsen:

My experience with our clients is that it is primarily credit cards. Credit card debt comes from many sources. Certainly, seniors have an extraordinary amount of medical costs that they sometimes pay with the credit cards. Obviously, when a senior retires and loses major employment income, the

income is reduced. It is our experience that seniors begin to use their credit cards more often after they retire. Very often, seniors never go to court to challenge the credit card claim against them in small claims, or in district court, so these judgments remain and the senior never has the chance to challenge the exemption process.

Chairman Horne:

Our next speaker will be Mr. Sasser.

Jon Sasser, representing Washoe Legal Services and Legal Aid Center of Southern Nevada:

I was involved with Assembly Bill No. 491 of the 75th Session. To give you just a little bit more of the background on that bill, the intent of that bill, and this bill, is not to add a single dollar in new exemptions. It is simply to take the exemptions that already exist under present law and make them easier to access for those who are already entitled to the exemptions. We went through this process last session. We had numerous negotiations. There were a couple of major amendments to A.B. No. 491 of the 75th Session, and the bill finally went to the Senate Judiciary Committee. Everyone came to the table: the banks, the constables, and the collection agencies. We thought we had the job done. The collection agencies had one concern about the \$1,000 "wild-card" exemption. The concern was to make certain the exemption was not used twice, or not spread over multiple bank accounts. In an attempt to address that concern, we amended the bill once more in the Senate to take care of the multiple bank account issue. We thought that all parties were happy and on the same page. Then, at the "eleventh hour," after the first "eleventh hour," a new concern was raised by the banking and collection parties that, "we just do not like the \$1,000 exemption being self-executing at all. . . ." After the bill passed 42 to 0 on this side of the hall, and 16 to 5 on the other side of the hall, some people went to Governor Gibbons, after which he vetoed the bill. His veto message emphasized the automatic use of the \$1,000 exemption. Therefore, I think that exemption is still at the heart of the controversy. We have had some conversations around that, and we are exploring ideas, but we are not there yet in terms of an agreement. That is the status today. We are trying to make the process one in which people who have exempt funds have access to them without going through this elaborate process, only to have their money returned later, minus all of the extra charges heard about today.

Chairman Horne:

If I understand you correctly, you are saying that the bill we are looking at now is basically the amended version from last session?

Jon Sasser:

That is correct. I would just like to say one other thing. When I said we are not trying to add any new exemptions, former Senator Adler came to me this morning and said he believes by mistake that the Legislative Counsel Bureau may have "tweaked" an existing exemption and made it bigger. That is not our intent at all. We do not have a problem stepping back from anything that would increase existing exemptions.

Assemblyman McArthur:

Point of clarification, Mr. Nielsen. It looks like we are talking about this \$1,000 automatic exemption, but if there is more than one bank account, it actually goes to an aggregate of at least \$2,000. It is not really \$1,000.

Jon Sasser:

The bill deals with multiple bank accounts to make certain that cannot be done. The \$2,000 that you see in the beginning is for people who have the federally-exempt, automatically-deposited funds, so we make that easy for the bank. If there are any exempt funds in the account, \$2,000 is exempt so the bank does not have to go through a big accounting. If they do not have those exempt funds, then \$1,000 would be exempt. Section 4, subsection 1 tries to address the multiple bank account issues.

Assemblyman McArthur:

Section 3, subsection 3, states: "If a judgment debtor has more than one personal bank account with the bank to which a writ is issued, that amount that is not subject to execution must not in the aggregate exceed the amount specified in subsections 1 or 2, as applicable." It looks like the aggregate can go to at least the other \$1,000, pursuant to the first part of section 3, subsection 3.

Ernest Nielsen:

A reading of section 3, subsection 3, is that the aggregate amount may not exceed \$1,000. I think that is the intent of that section. If it is not clear, we should make it clear.

Chairman Horne:

Mr. Anthony, do you know if that is referring to the \$1,000?

Venicia Considine:

Chairman Horne, may I step in from Las Vegas?

Chairman Horne:

Ms. Considine?

Venicia Considine:

Yes. Section 3, subsection 3, refers to multiple accounts in one financial institution, and the aggregate can exceed no more than \$1,000. Section 4, subsection 1, is when there are multiple accounts in multiple institutions. Then, the accounts are frozen and the debtor must go through the regular exemption process.

Chairman Horne:

Does that clarify it for you, Mr. McArthur?

Assemblyman McArthur:

I am still having a problem with that aggregate exceeding the amount specified in section 3, subsections 1 or 2. It looks like the exemption in subsection 1 can be \$2,000, so I am not sure.

Jon Sasser:

If there is any vagueness in the language and the language needs to be tightened, we are more than happy to do that, because that is our intent.

Chairman Horne:

I will have Mr. Anthony look at that provision so that we understand the intent. Are there any other questions? [There were none.]

Patrick T. Sanderson, representing Nevada Alliance for Retired Americans:

I am speaking in favor of A.B. 223, to give our seniors and veterans a little honor and dignity when it comes time to pay their bills. The \$1,000 for anyone who pays rent, buys groceries, and is on medicine is a very small amount to live on. This bill is very well written. It has protections for the banks, for the creditors, and for the seniors. Checking accounts cannot be immediately garnished. If the garnishment is lifted by the court, and some of these banks and lawyers do not appreciate that ruling, I think that is tough! People have to live. A person deserves to live with a little bit of dignity and honor. That means paying your own bills, buying your own groceries, and obtaining the medicine you need. Therefore, I hope that the Committee reads this thoroughly. There will be questions. Everything should be vetted. However, when it comes down to it, take care of the people who need to be taken care of, and do not allow them to be taken advantage of.

Chairman Horne:

Are there any questions for Mr. Sanderson. [There were none.] Anyone else in Carson City signed in to testify in favor of Assembly Bill 223?

Jon Sasser:

I believe for the record there is a letter to the Committee ([Exhibit H](#)) from Barry Gold, representing AARP Nevada, in support of A.B. 223. I just wanted to call your attention to that.

Chairman Horne:

That letter is on Nevada Electronic Legislative Information System (NELIS) and will be made part of the record. We are going to move to the opposition of Assembly Bill 223.

Steve Kilgore, Deputy Director, Henderson Township Constable's Office:

I am the Deputy Director of the Henderson Constable's Office, under Constable Earl Mitchell. I am also the lobbyist for the Clark County constables. We have met at length over this issue and have spent time with the parties involved, and our position is that we think A.B. 223 is a well-intentioned effort to solve a very real problem. The constables see their role in this as a responsibility to safeguard the due process of the system. We really do not have a "dog in the fight," that would tip the scale one way or the other. Our role is to protect the due process. We feel our role is to make sure the landlord and the tenant, the collector and the debtor are all protected. This legislation, while well-intended, raises the suspicion that it pulls the blanket too far over to protect the debtor and leaves the legitimate creditors out in the cold. There is a group not represented here today on whose behalf I wanted to speak. Probably, a full third of the writs, garnishments, and bank levies are generated by the mom-and-pop operations. The creditors are the persons who have sued the automotive repair shop and have a judgment, or senior citizens who are landlords and their tenants have "skipped out" and stolen the refrigerator. This group of people has trudged through the difficult process called small claims court, or through the civil court process in an effort to get something that feels like justice.

This bill is a hard sell for me. A week does not go by that I am not encouraging someone to use the civil process system and to use the civil courts instead of taking matters into their own hands. It is frustrating and intimidating to people who are not attorneys, or people who are not professional collectors. I have to figuratively take some of the landlords by the hand, explain how the process works, and encourage them to issue the correct paperwork, obtain the summons, the subpoenas, and go through the civil justice system. Then, when they have finished and everybody has had their day in court, to take the judgment received, if the creditor wins, and come back to the constable's office and fill out a writ for garnishment, bank levy, or attachment. Essentially, what happens is that when the judge finds in favor of the plaintiff, the judge signs what can be categorized as an "uncashed" check, and hands it to the creditor,

and tells the creditor it is his responsibility to cash the check in whatever legal way possible. This is when the creditor comes to our office and asks us to go out and levy on bank accounts, or serve garnishments, et cetera. Probably about a third of the cases that we deal with fall into that category.

My fear and belief about A.B. 223 is that the process takes patience, time, and a little savvy to get through. If there is only a 50-50 chance at the end of the process that the creditor will be able to cash that check, the creditors just will not use the system and will look for other means. The creditors will do whatever needs to be done. In addition, those judgments do not go away. It is our job to take these judgments to the bank, serve the garnishments and keep the process moving. These "uncashed checks" will have to go somewhere. I am anticipating that the creditors will come back to our office and tell us the process was not successful, and ask what is next. In turn, we will send them back to court. The creditors return to court and the process begins again. Anything that is \$1,000, or less, in a bank account is something that cannot be touched. If we are unsuccessful again, the same creditors return again.

Therefore, we see problems in that mechanism, specifically, in the automatic exemption. We see that as the primary sticking point. We have been in contact and communication with the parties involved in putting together this bill. While it is well meaning, my fear is that we are going to begin to undermine the process that has been used successfully for years to obtain something that feels like justice. The debtor incurred the debt; that is not in dispute. I have personally seen and have knowledge that these creditors go to extremes in order to set up some kind of payment plan, something to work within the budgets of the debtor. Unfortunately, by the time a writ is issued and received by the constable, the payment agreement has been ignored, the debtor is putting his head in the sand, or wishing the debt just go away. There has been ample opportunity up to this point to handle this debt in some manner that works within the debtor's budget. Some debt collectors we work with tell me, that if the debtor would pay just \$25 a month, at least there would be something coming in.

We have suggested that there may be other ways of fixing this issue. There may be ways to clean up the timelines. No one wants to see a senior citizen go without food for 30 days. We certainly do not want to see that. Our motto in the constable's office is "Serving with professionalism, integrity and compassion." We are right there where the rubber meets the road. We have to see these debtors. We have to hand the debtors some of these orders. No one wants to see a person in that kind of distress. We have discussed returning the money back to the debtors faster, if the money is exempt. One of the things we kicked around that did not come up today was the having an automatic

exemption for debtors over the age of 65, to protect seniors. Seniors are at greatest risk. One of the issues we considered from the banking side of the issue was to look at the automatic fees, and the other charges that are paid from the exempt accounts. Where is the room to tighten up those charges being paid from exempt accounts and ascertain that seniors are not being harmed?

My experience is that the problem that we are trying to solve is relatively small. The measures we are using to solve them are very large and comprehensive. We are going to change an industry with some of this language to fix isolated issues. I am not trying to diminish that there are people who are harmed. But, what we see on a daily basis is that sometimes in an effort to solve a small problem, we create a larger one. That is my sense of what we are looking at today.

Chairman Horne:

I find your position curious, Mr. Kilgore, in that it seems to me that the constable's office should be an impartial executor. That does not seem to be your position today. Parsing through your testimony, it seems you would allow for exemptions for debtors over 65 years of age, and possibly eliminate bank fees for inadvertent garnishment of funds that were supposed to be exempt in the first place.

Steve Kilgore:

Yes. Mr. Chairman, you are correct. Our position is impartial in this. To qualify that, last session we worked on several bills to help with foreclosure. I worked closely with Jon Sasser and Venicia Considine, who are doing what they can to help. As I said at the onset, we try to protect the process. Technically speaking, we do not have a dog in this fight. In fact, if the legislation were passed, my suspicion is that initially it would begin to generate additional revenue for the constable's office. Creditors would be coming back to have us serve another writ. The creditors have to pay us each time we execute an attachment. The issue is not about more revenue. It is about fundamental fairness.

My background is 26 years in law enforcement. I am a retired police commander. I have been in the constable's office for a little over five years. There is something that hits you someplace inside regarding fundamental fairness. That is how I see this issue. I have to talk to people on both sides of this equation. The folks who come to me and say, "How do I get my rent back? How do I get my money back? I won the lawsuit, why is it that I cannot get my money back?" We could probably sit down and anecdotally share some stories where people were equally injured, or at least injured on the creditor's

side, cases where a landlord has had his property trashed, the cops show up and will not take a crime report because it is a civil matter. The landlord takes the debtors to court. Sometimes these creditors are senior citizens with investment properties that produce the income they live on. The landlord cannot get the money out of the "skipped" renter. The landlord cannot rehabilitate the property because there is not enough revenue. If the properties are not repaired they cannot be rented. In some extreme situations, the properties spin off into foreclosure. There are no easy answers in this scenario. For what it is worth, you have my respect and my empathy for trying to tackle this large problem. If there is something our offices can do as constables, for instance, information we can provide, we stand ready to do whatever we can to help.

Assemblyman Frierson:

I think there are points to be made on either side. I am equally perplexed at the constable having a position in this particular bill. With foreclosures it is an issue of locking people out, having people leave the property where the constable is much more actively involved. It seems to me that the constable's role is supposed to be a service of process role and a notice role. You spoke of fundamental fairness. If we, as a community, are expecting our constables to protect all of us, it appears to be fundamentally unfair that somebody's protected money be accessed and frozen for a period of days or weeks. Do you not believe those people are just as entitled to fundamental fairness and protection by the process?

Steve Kilgore:

I agree. The debtors do need to have protections. There are certain protections in place. Are those protections adequate? Does a single set of protections solve all problems? I have yet to see that in my career. We have to take this into perspective. How big is the problem? How big is the solution? Are we changing the big picture to fix a limited problem? I see a considerable amount of wiggle room in the area of time lines. Part of the discussion we have had off-line on this very matter is that the constable's office would be willing to step to the plate, and if you tell us "snap to" and make sure these monies get back within "x" amount of days, we will do our job and make sure it gets back. No one wants to see these matters protracted for, as we heard earlier, 45 days. That is unconscionable, in my mind. Let us do what we need to do to actually fix the problem.

Assemblyman Brooks:

I am perturbed, as well as my colleagues, that the constable would be taking a position on something of this matter. My issue is that you talk about fundamental rights and fundamental truths, while the individual whose account

is being garnished is being levied a bank fee of \$100 or \$200. The creditor trying to get the money receives nothing. The senior citizen, or veteran, may have only \$400 or \$500 in his account, and the bank fees are deducted from that amount. My concern is that you do not seem to see a problem with that, even though the other side does not receive a dime from that transaction. That is what is concerning to me. I believe there is a fundamental unfairness in that. Can you explain that, please?

Steve Kilgore:

I agree completely. Something is not working there. If there is no remedy to recover the \$100 or \$200 bank fee charged to an account that should never have been seized or frozen, that tells me the process is not working. I do not have a dispute with that. Just for the record, I am not on the side of the collectors in this matter. For every person on this side that feels he was unjustly collected from, there are one or two persons on the other side that are coming to me and asking, "How do we fairly get our money? The judge already said this guy was wrong. The judge already said we can have our money." I do not have the answers. I wish I did. However, I did feel like it was important to come up here and speak on behalf of those mom-and-pop operations and other people who do not have the money to pay a lobbyist to represent them. I did not know if you were aware of this group of people, or even understand that there is such a group out there. Some of the people I am speaking about cannot make their rent payments, and cannot eat, which is perhaps a little overly dramatic, because they need the money from the person who has wronged them.

Assemblywoman Diaz:

I just wanted to speak to the recommendation Mr. Kilgore made about limiting the scope to persons over the age of 65. I think there are many situations where disabled people who are not 65 years of age receive exempt income, including veterans who have put their lives on the line to protect our country. It would be very unjust for these individuals to be left out if such a provision were to proceed. In addition, there are children who receive Social Security benefits and their money is going straight to their parents' account. I do not think it is fair for that money to be garnished or to be used to pay a debt that the adult has accumulated. While it may have sounded like a great idea to say seniors only, I do not think there should be an exclusion to the exemption just because you did not meet an age requirement. I just want to put that on the record.

Assemblyman Hansen:

Actually, I would like to compliment you. I thought your testimony was excellent. As a small businessman myself, who spent a fair amount of time in

small claims courts over the years, you have nailed it on the head as to what the actual situation is for the group of one-third that you mentioned is not represented today. Also, the idea that when you go to small claims court there are all these veterans and seniors who are not being listened to is absolutely ridiculous. Having been in court on numerous occasions, the judges go out of their way to try to ensure that there is absolute fairness, and that no one is left out on the street.

Chairman Horne:

Mr. Hansen is there a question? We are not in work session.

Assemblyman Hansen:

The question is, are you aware of any cases where there has been an unjust proceeding that you felt uncomfortable enforcing as a constable?

Steve Kilgore:

My job is an uncomfortable job from the moment I arrive at work. My standard joke is that at least when I was a cop people were occasionally glad to see me. When you are the constable, you are not bringing any good news to anybody. In this specific instance, I am looking at the \$1,000 exemption. Not all of the funds are necessarily exempt. If a debtor has a legitimate debt and someone is trying to collect that debt, and if the debtor maintains less than \$1,000 in their checking account, the debtor is safe. So the small businessman cannot collect, regardless of how legitimate the debt is. That is how I am looking at this issue. Everyone has a \$1,000 get-out-of-jail-free card that automatically invokes. It seems to tip the scales more in favor of the debtor and someone has to be left out in the cold.

Chairman Horne:

I do not dispute anything you are saying, and I believe that there are people who are here in this building, and even on this Committee, who will speak on behalf of consumers and small business owners, et cetera. I think you do a disservice to the constable's service by taking a position on this. You no longer seem to be unbiased. You seem to have a position. Whenever you are involved in these uncomfortable situations in the future, you will be tainted. You are no longer going through a procedure, or a process that is set in law. Now, you seem to be an advocate for one side and that is what makes me uncomfortable, and I think makes the other members of the Committee uncomfortable. It is not that what you are saying is not true. It is just that you are not the appropriate messenger for it. That is what is giving some of the Committee members discomfort.

We have spent a lot of time. It is now 10:35 a.m. We are going to proceed with Mr. Sande.

John Sande IV, representing Nevada Collectors Association:

You are seeing some opposition today, not because we do not care about the proponents' intent to protect senior citizens, disabled people, and people receiving federal benefits. The opposition stems from the fact that *Nevada Revised Statutes* (NRS) Chapter 21 is the backbone of our commerce system and our debtor-creditor laws. The statute affects not only senior citizens, it affects the business owners and commerce in this state. The Nevada Supreme Court states that the purpose for exempting certain properties is to provide the debtor with the necessary means of gaining livelihood, while doing as little injury as possible to the creditor. The problem we face today is that these interests are oppositely aligned. If you benefit one, you take away from the other. We believe that Nevada debtor laws are already favorable and offer greater protections than the federal laws.

I would like to address our proposed amendment ([Exhibit I](#)), that you will find on NELIS. I believe the amendment strikes a good balance between what the proponents are trying to accomplish and something that will not impede commerce. Section 3, subsection 2 of A.B. 223 gives a self-effectuating exemption of \$1,000 for monies deposited through the federal government or money that can be traced from those wire transfers. The banks have confirmed that they can make that determination. Therefore, the banks will know whether those funds are exempt. What we want to do is strike the \$1,000 automatic exemption. *Nevada Revised Statutes* (NRS) 21.090, 1, (z), passed in 2007, states: "Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$1,000 in total value, to be selected by the judgment debtor." The important part of that subsection is "to be selected by the judgment debtor." This is \$1,000 for anything. As an example, if I am a small business owner and somebody has obtained a judgment against me for a debt and wants to enforce the judgment. If I own a piece of property upon which I rely to operate my business, in addition to a bank account in which there is \$1,000, and if the creditor files a levy on my bank account, I can go to the bank and claim an exemption on the \$1,000 in my bank account, or I can claim the exemption on the piece of property. As the debtor, it is my choice. If that exemption is made self-effectuating, there is a possibility that a lot of small businesses would rather have an attachment on the cash than on the property they rely on to conduct their business. That is where I see the problem.

From my work with the Senior Law Project, I understand it is difficult. However, we are asking that the debtor read the notice he receives. The notice will tell the debtor he can claim the exemption, and that the debtor can claim it within one day or up to eight days. If the collector does not then file a notice disputing the exemption, the bank is required to give that money back within five days. So, we are talking about a six-day period at the least and a thirteen-day period at the most that the debtor's account would be frozen, if it were truly exempt. With that I will take questions.

Chairman Horne:

To clarify, we have heard up to 45 days, and you are saying it is only 5 to 6 days that you are without the money.

John Sande IV:

I do not know how it is done in practice. I cannot address that. However, the way the procedure is supposed to work is that once the bank account is attached, the debtor has eight days to claim an exemption. If the creditor does not object to that exemption, the bank must release that property within five days. So, on the long side, if the debtor does not get to the bank for 8 days to claim an exemption, and the bank then takes 5 days to object, that would be 13 days during which the debtor would be unable to access the funds in his account. It would be six days if the debtor files the claim for exemption immediately. Now, the objection by the creditor must be done within 10 days. The court hearing must be conducted within another 10 days, making a total of 20 days. So, the way I read the statute, if the debtor claims an exemption within 1 day, the longest period the debtor would not have access to the \$1,000 in his bank account is 21 days. If the debtor waits 8 days, it will be 28 days without access to those funds. People have stated that the time period could be 45 days, but that is not how I read the statute.

Chairman Horne:

Under your scenario, if there is an objection to a claim of exemption, you are looking at approximately one month that the person could be without access to their funds.

John Sande IV:

That is correct. However, in our proposed amendment, the exemption will not apply to Social Security funds, or disability funds, or any federally deposited funds. We understand there are people on fixed incomes that will need access to their funds. However, we cannot support the \$1,000 self-effectuating exemption. If the debtor believes he is entitled to the exemption, our position is that he will have to go to court and claim that exemption.

Assemblyman Hansen:

Are there any cases of garnishments or attachments that do not go through a court proceeding in which the potential debtor has their day in court?

John Sande IV:

I do not practice in this field so I do not understand how a court or constable could execute without authority from the court.

Steve Kilgore:

We act upon documents and orders we receive from the court. There is not a sideline noncivil process that I am aware of, outside of some contract law negotiation engaged in by the other parties. With a court judgment, the creditor applies for a writ of garnishment or writ of attachment, and as constables, we accept the document and serve it.

Assemblyman Hansen:

Therefore, everybody gets their day in court. I appreciate that response. Thank you.

Chairman Horne:

There is a class that just walked in. [Chairman Horne speaks to the visiting class of students.] We are hearing Assembly Bill 223 which has to do with garnishments. Proponents of the bill would like there to be \$1,000 in your account that is exempt from attachment. Proponents are making the argument that there are senior citizens or people with disabilities who receive Social Security checks, and other exempt funds that are deposited directly into bank accounts. If money is owed to a creditor and the creditor goes to court and says, "This debtor owes me money and has not given it to me," there are certain funds that the creditor cannot attach. Those funds are exempt because the people who receive Social Security income and other exempt funds need the money for medicine, food, et cetera. The parties who are testifying now are opposed to the bill because there is a flat across-the-board \$1,000 that is proposed to be exempt. The opponents would like the exemption to be narrower, and allow only a certain amount of money to be exempt from the money to which the creditors' claim they are entitled.

The next person to testify is William Thomas.

William Thomas, Collection Bureau of Nevada:

I am the owner of Collection Bureau of Nevada. We are a commercial and retail collection agency that operates primarily in northern Nevada. I would like to give you a breakdown of the process as it comes through a professional collection agency.

Most of these debtors are contacted with four or five letters and numerous phone calls. I can only speak to my company. Before we file an action in small claims court against somebody, we have done our due diligence. We have verified that the debtor does have the ability to pay the debt. The ability to pay that we look for is liquid assets. We are not looking for fixed assets, due to Nevada's laws on exemptions of property. To state a few exemptions, there is \$15,000 exemption on jewelry, and the \$500,000 in 401(k) plans. These laws are put in place so people who are ultra-rich are going to have to pay, but for the rest of us, there are exemptions in place and chances of ever paying the debt are slim, unless creditors can levy on bank accounts. Bank accounts are the first asset creditors go after. It is one that that can be recovered fast. It is considered by the creditor to be a softer hit for the debtor. There are two types of debtors we deal with, the consumer debtor and the commercial debtor. On the consumer side, if we levy on a paycheck, it is more of a burden on the debtor to have money taken out every week, or every two weeks than it is to have one sweep of the debtor's bank account. I would like to clarify one thing with regard to the sweep of a bank account. Banks do not freeze accounts for 45 days. Banks do not freeze accounts for five days. When that writ of execution shows up to the bank, we are entitled only to whatever is in the bank account at that time. Nothing else. The bank will not hold an attachment and wait for the next deposit. I know this. We go through this 100 times a year. Whatever is in the account at the time the writ of execution is served is all that the creditor is entitled to, under the writ that was served.

Chairman Horne:

I would like to clarify something. I know this because many criminals know this. There are certain days when checks arrive. Everybody knows when those checks come, and people are flush with money. I have a feeling that persons who execute judgments, also know those days. It is not as if it is random. When a \$1,500 check comes in, that is when the levy is made on the bank account.

William Thomas:

Mr. Chairman, I really do not want to correct you, but it is random. When we send the sheriff our writ, we are not able to tell the sheriff or the constable when to levy on the account. We do not even know what is in the account, because the banks will not give us that information. To answer an earlier question, a judge or a clerk of the court does sign off on these writs. There is no phantom that comes in to sign the writ. We can only use a sheriff or a constable to serve these processes. The sheriff or constable has up to 30 days to serve the writ. The writ could be served in four days, or the same day the writ is received. The writ could be served on day 29 or day 30. It is absolutely

a roll of the dice when the writ actually gets to the bank. There might have been \$10,000 in the bank account the day before the writ is received by the bank, and the day the writ is received there is only \$25 in the account, and vice versa.

Chairman Horne:

I stand corrected.

William Thomas:

Another point I want to touch on is the \$1,000 wild-card exemption. I have seen things I cannot believe are legal, but they are. I am talking about people who "game" the system, who know how to work the system. I deal with these people quite a bit. With this wild-card exemption in place, the only amount these people will keep in their account is \$1,000. If a \$1,200 debt is owed and we levy on the bank account, the \$1,000 exemption is in place, we only get \$200 out of that bank account. Once that is done, the account is immediately closed, and we are off again on the same treadmill, trying to locate the new account. Also, the bank fees and other fees the debtor is paying will continue to add up, if we execute five or six times. There is already a law on the books giving this \$1,000 exemption. However, it is up to the debtor to show up in court to claim the exemption. A notice is issued telling the debtor exactly what to do. In my experience, in northern Nevada, all the debtor has to do is make a phone call to the court, and the court will fax them the affidavit. The court will accept the affidavit by fax to stop the attachment from proceeding. Then notification is received from the court that there has been a claim of exemption. If it is challenged, the party knows how many days he had.

To return to the exemptions, I do not know how much of a problem it is. Out of hundreds of executions we have completed in the past six years, I have had one claim of exemption. I do know that having that \$1,000 automatic exemption will affect not only the seniors and the veterans and others who need credit. It will cause business owners to consider carefully to whom credit will be extended and how much credit will be extended. I would like to use the phrase, the \$1,000 get-out-of-jail-free card will be in effect, because that is exactly what it is. Businesses will not be too keen to extend credit for these small amounts.

Assemblyman Brooks:

Currently, are you able to sweep the account completely? Do you have to leave anything in there once you hit it?

William Thomas:

Yes. As it currently stands, nothing has to stay in that account. Whatever is in there gets swept at that time. However, as I stated before, when the bank receives the writ and, whatever amount is in the account at that time will be frozen. So, if there is \$10,000 in the account, and the debt is \$1,000, \$1,000 will be frozen and the remaining the \$9,000 is left untouched. That is how it is supposed to work. I do not know how it works on the bank side.

Assemblyman Brooks:

You stated earlier that if the cap is \$1,000, it is going to hurt the debtor because you can hit the bank several times. They could get eight hits. Can you do that currently?

William Thomas:

If we are not successful in collecting the debt on the first execution, then we execute again. The debtor will once again incur the court fees, the sheriff fees, and the bank fees, because it is still considered a separate execution. Therefore, if we only levy on the bank account one time, and we do not get the full amount, we are going to do it over and over again until the debt is satisfied. The debtor will be hit with those fees every time.

Assemblyman Sherwood:

To follow up on Assemblyman Brooks' question, if \$10,000 is in the account of which \$2,500 is Social Security funds, and the debtor owes \$7,500, is that account coded so that you cannot go after the \$2,500 Social Security funds?

William Thomas:

That is correct. We are not entitled to those funds. I support the provision that whatever is coded coming in is already exempt and if that needs to be clarified in this bill, that is fine. The only issue I have with this entire bill comes down to the \$1,000 exemption.

Chairman Horne:

Did you have a clarifying point, Mr. Sande?

John Sande IV:

I want to make sure that Mr. Sherwood's question was clear. The debtor is entitled to the Social Security, but as the law is currently written, the debtor would have to file a claim of exemption for those funds. Our proposed amendment would do what I believe you had asked. That is to give the self-effectuating exemption for those traced funds that were from government payments. It would not allow the bank to freeze those funds up to \$2,000. The \$2,000 would remain intact, and anything over and above that \$2,000

would be available for the creditor. Currently, the bank would freeze the account, and no one would touch it until the time has run for the debtor to file an exemption for the government funds.

Assemblyman Sherwood:

So, no one is arguing that the self-trace should be taken care of?

John Sande IV:

That is correct.

Chairman Horne:

Are there any further questions. [There were none.] The last to testify will be Mr. Ferrari and Mr. Abney.

Chris Ferrari, representing Clark County Collection Service, LLC:

I am here in opposition to the bill, but I support the amendment as written, which has been submitted by Mr. Sande and the Nevada Collectors Association. We are working with all parties involved. However, I would like to delineate these issues. We understand most of the things the Committee is concerned with, and what Mr. Nielsen and Mr. Sande are discussing. As a policy, in our company, we do not pursue judgments against seniors, disabled and veterans. That is a separate issue. We are addressing the small business side of this debate. It was mentioned earlier that we can go after the bank account. The amounts that we can garnish are determined by the sheriff or the constable. It is not an arbitrary or capricious proceeding.

We want to make certain creditors are receiving their child support money, or whatever debt that is being sought, and we are going after the people mentioned earlier who are gaming the system. The current exemptions include Social Security, Social Security disability, retirement and survivors benefits, public assistance payments, Public Employee Retirement System, public assistance through welfare and support systems, proceeds from life insurance policies, unemployment benefits, disability or illness benefits, veterans benefits, child support, alimony, personal injury money received which is less than \$16,150, tax refunds, vehicles with less than \$15,000 equity, \$500,000 in a 401(k) pension plan, and stock bonuses. The picture I am trying to paint is about the folks who are gaming the system and have the means to pay their debt. They are playing a shell game, which somebody earlier alluded to, and while this bill attempts to address that, the burden of proof still falls on the collector to determine where those funds fall. We will continue to work with Mr. Sasser, Mr. Nielsen, and Ms. Considine to make certain we address the core of the issue. We do not have issues with seniors. The small business owner has extended credit. A service has been performed, and the payment has not

been made. When the creditor calls a collector, it has usually been at least six months that the debt has been owed to the small business.

Chairman Horne:

Next to testify will be Mr. Abney.

Tray Abney, representing the Reno Sparks Chamber of Commerce, the National Federation of Independent Business and the Retail Association of Nevada:

We have heard a lot about the small businesses and the mom-and-pop businesses. We are opposed to A.B. 223, but we do support the amendments proposed by Mr. Ferrari and Mr. Sande. We feel that the bill will have a negative impact on small businesses and, as Mr. Kilgore stated, probably tips the scale too far in favor of the debtor who chooses not to pay for goods and services that were purchased. We believe any additional roadblock to Nevada's small business owners to collect a valid debt in the most challenging economy that perhaps all of us have ever seen, presents a problem. My members tell me that on average only about 25 percent of bad debt is ever collected. Therefore, when a business cannot collect what is legally owed, it cannot pay bills, make payroll, and struggles just to keep Nevadans employed. When a small business gets to the point of garnishing wages, it has been many months since they provided the service that created the debt. A garnishment is not something that is done when the payment does not come in on day two. We are talking about bills that are 60 to 90 days overdue. They go to a collection agency, and another 30 to 60 days is added while collection efforts are made and before a levy is made on a bank account. So garnishment is the last thing a small businessman wants to do. It is a time-intensive process, as we have heard today. We just want the garnishment procedure to remain intact.

Chairman Horne:

Next to testify will be Ms. Wright.

Joan C. Wright, Private Citizen, Carson City, Nevada:

I am appearing on my own behalf today because there are technical details in this bill that I would like to see worked out. Some of them were mentioned earlier, but there seem to be issues with the \$2,000 and \$1,000 exemptions with respect to issuing double writs when levying on contents of safe-deposit boxes. I think you should address the corporate exemption in NRS 78.426 again. There are some issues with respect to the exemption of \$500,000 in 401(k) plans that should also be addressed given today's economy. I spoke with former Senator Adler earlier and he mentioned that if you are going to set up a subcommittee, he will be willing to serve.

Chairman Horne:

Next to testify will be Mr. Ross.

George A. Ross, representing Bank of America:

I signed in as opposed to A.B. 223, I think that is an overstatement. In reality we will work with and live with A.B. 223. I wanted to make two points. Our issues are with the process. For the banks, this is a manual situation. The more complex the process, the more likely mistakes will occur. Secondly, not every veteran and senior has an IQ drop of 30 points or has problems. Many are very clever. It is just that many of these people get themselves into financial problems. We are somewhat concerned with the way the bill is currently structured. People will be able to game the system and as soon as they know they will be garnished, they will empty their bank accounts or write back-dated checks. If it is possible, when the negotiation goes on, I would like to be involved from a process point of view. I do want to express our gratitude to Mr. Sasser and the people from the Legal Aid Center of Southern Nevada, who worked with us last year very productively, and there are a number of pieces of this bill with which we agreed last time.

Chairman Horne:

Is there anyone else here to testify as neutral to A.B. 223. The hearing is now closed on A.B. 223, and we will bring it back to committee. Is there any other business to come before the Committee today? [There were none.] We are adjourned [at 11:05 a.m.].

RESPECTFULLY SUBMITTED:

Jean Bennett
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 14, 2011

Time of Meeting: 9:14 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 223	C	Assemblyman Segerblom	Written Testimony, 2 pages
A.B. 223	D	Venicia Considine	Current Attachment of Bank Accounts
A.B. 223	E	Venicia Considine	Proposed Attachment of Bank Accounts
A.B. 223	F	Venicia Considine	Federal Rules and Regulations, Federal Register, Vol. 76, No. 36, 23 pages
A.B. 223	G	Venicia Considine	Proposed Claim of Exemption Process
A.B. 223	H	Barry Gold, Director of Government Relations, AARP Nevada	AARP Nevada Comments
A.B. 223	I	Nevada Collectors Association	Amendment