

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-sixth Session  
June 6, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 10:24 a.m. on Monday, June 6, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Michael A. Schneider, Chair  
Senator Shirley A. Breeden, Vice Chair  
Senator Allison Copening  
Senator James A. Settelmeyer  
Senator Elizabeth Halseth

**COMMITTEE MEMBERS ABSENT:**

Senator David R. Parks (Excused)  
Senator Michael Roberson (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Marcus L. Conklin, Assembly District No. 37

**STAFF MEMBERS PRESENT:**

Scott Young, Policy Analyst  
Matt Nichols, Counsel  
Vicki Folster, Committee Secretary

**OTHERS PRESENT:**

James Jackson, Consumer Data Industry Association  
Lea Tauchen, Director of Government Affairs, Grocery and General  
Merchandise, Retail Association of Nevada

Senate Committee on Commerce, Labor and Energy  
June 6, 2011  
Page 2

Jeanette K. Belz, Property Casualty Insurers Association of America  
Bob Ostrovsky, Nevada Resort Association

CHAIR SCHNEIDER:

We will open the hearing with Assembly Bill (A.B.) 331.

[ASSEMBLY BILL 331 \(1st Reprint\)](#): Makes various changes concerning the use of consumer reports. (BDR 52-831)

ASSEMBLYMAN MARCUS L. CONKLIN (Assembly District No. 37)

The intent of this bill is simple. For the past two years, I have taken a good, hard look at the use of credit reports for employment. The reasons are obvious, as people's credit, particularly their credit scores, are being impacted by the economic downturn that probably all of us should have known was coming, but certainly none of us predicted. Credit scores can have a profound effect on people's ability to get employment.

This bill will not make it impossible for a business to use a credit report to decide whether or not someone should be hired or promoted, but it will set limitations for how those reports can be used. There are some legitimate reasons to use a credit report. I have worked in human resources for more than 15 years, and there are areas where a credit report is nice to have for deciding employment. It is useful particularly if the position involves handling a sizable amount of confidential personal information, trade secrets, or large sums of money or other assets. This bill does not limit those uses, but it does describe legitimate reasons as well as limitations for the use of a credit report.

That is the intent behind the bill. It moved out of the Assembly relatively easily. We have worked with James Jackson, the Retail Association of Nevada and others, including Jeanette Belz, who represents insurance clients. We tried to construct a bill that gives everyone the right level of protection and comfort.

We have done that with one small exception. The bill uses the term "consumer report," and it is not defined in our statutes, but only on a national level that includes not only credit, but a variety of other things that can be used in consumer reports. Background and Department of Motor Vehicle (DMV) checks, for example, may be useful for employment, but for our purposes they are not of immediate concern.

Mr. Jackson has a conceptual amendment ([Exhibit C](#)) which should clarify in statute that we are talking about a person's credit history—something that could be affected by the current economic crisis. For instance, if a person becomes very ill, spends six months in the hospital, passes away and leaves a spouse with a large debt, the surviving spouse's credit is damaged. The employer may terminate the surviving spouse. This bill will prevent that. As long as the use of the credit report is necessary for the purpose of the job, it is fine. If it is not, we are not going to allow people to collect that information anymore. That is the purpose behind the bill.

SENATOR SETTELMAYER:

Assemblyman Conklin, if an employer had to consider hiring one of two employees who were completely equal, what is wrong with the employer being able to look at credit reports to differentiate between the two to make that decision? Someone's credit can be a good indicator of reliability.

ASSEMBLYMAN CONKLIN:

Go back to the example of a person becoming very ill. If the surviving spouse gets a shoddy credit report because of being unable to get out from under the large amount of debt incurred while taking care of a family member, should that make them less of an employee than another person who is equal in every other way?

SENATOR SETTELMAYER:

To answer your question, I was asking you the question.

ASSEMBLYMAN CONKLIN:

I know that is an unfair question, but in my opinion, that would be an unfair assessment. If the job included significant managerial responsibilities and the candidate might have access to company secrets, assets, etc., I think requesting a credit report is perfectly acceptable. The bill clarifies that. There are legitimate reasons for obtaining credit information, and we want to make sure those who are obtaining these reports for employment have legitimate reasons to do so. Information should not be randomly obtained if it is not related to a job.

SENATOR SETTELMAYER:

Most people have bad credit because of being late in paying bills and things of that nature. Late payments show a person is not exactly punctual. As an employer, I believe punctuality is a major plus factor for employment.

CHAIR SCHNEIDER:

Mr. Jackson, is the amendment clarifying terms, [Exhibit C](#), your conceptual amendment?

JAMES JACKSON (Consumer Data Industry Association):

The Consumer Data Industry Association (CDIA) is a national association of companies, credit reporting bureaus and other entities concerned with credit, credit reporting and credit management. The conceptual amendment, [Exhibit C](#), which I provided to the Committee was done hastily and, for the record so we are clear, there have been a series of meetings between myself, Assemblyman Conklin and Assemblywoman Irene Bustamante Adams with respect to this bill. I am currently working from a mock-up and proposed amendment 7475, which has moved this much farther along. I do not have a copy of this mock-up for the Committee today, but it is consistent with legislation already passed in other states with one exception—the term “consumer reports.”

Assemblyman Conklin mentioned “consumer reports” is a very broad term under federal law, which includes many factors other than just credit history. The concern of the CDIA and other stakeholders involved is that if we leave it as “consumer reports” we will exclude employers from considering things like DMV records, criminal histories and other public records, depending on whom they may be working with to do the background check, employment histories and other records. That is not the intent of this bill.

The conceptual amendment I have provided to the Committee, [Exhibit C](#), takes out the term “consumer report” and replaces it with “credit report” under section 1, subsection 5 of the mock-up. I am sorry not to have a copy of this mock-up for the Committee today, but I will describe the changes. On page 4, section 2, subsection 7, the language specifies limiting this language to credit reports and credit histories. The conceptual amendment also provides a definition of “credit report” and/or “credit history,” which is consistent with four other states that recently passed similar legislation. This will make Nevada consistent with those states and make it clear we are limiting this legislation to

credit histories and allowing employers access to other documents for information important to the hiring process. Neither "credit history" or "credit report" is currently defined in the *Nevada Revised Statutes* (NRS), which is one reason for the suggestion in the conceptual amendment. It is referenced in approximately five other places in Nevada statutes in different chapters, but it is not defined. We wanted to make clear what is being limited and ensure that employers are not confused about what they can do and what they cannot do.

SENATOR BREEDEN:

If someone has applied for multiple jobs and each employer does a credit check, will this affect that person's credit rating points? Do points come off those credit scores?

MR. JACKSON:

Do you mean by simply pulling the credit report?

SENATOR BREEDEN:

Yes.

MR. JACKSON:

It should not adversely affect their score. It will show there has been an inquiry, but it does not affect the credit score.

ASSEMBLYMAN CONKLIN:

I believe that is correct. Just pulling the report does not, although it will indicate for what it was pulled and by whom. If someone is extending you credit, and your report is pulled without your knowledge, that is different than if someone is checking your credit report for employment or hiring purposes. Should one be denied employment as a result of a credit history being pulled, this person would still fall under the statute where the person who was denied the job could then call and get a free credit report. Does that make sense?

SENATOR BREEDEN:

Yes. The reason I asked this question is from my own experience with a home purchase, I was told that points would come off that would lower my score.

ASSEMBLYMAN CONKLIN:

Points would come off for them pulling your credit to check for the purchase of the house. That is because they are checking it to make a large loan.

The assumption is that the next person to check your credit is going to know that a large loan is about to be made to you. They will weigh your score lower in anticipation of you being extended credit that does not currently appear on your report.

MR. JACKSON:

I do not disagree with that description. That actually raises an important point. When we originally drafted this legislation, it was going to go under NRS 598C, which is the credit reporting statute. We wanted to make it clear this is not a credit reporting issue, but a labor and employment practices issue. It is an employer's decision issue that we managed to get agreement to move to NRS 613, placing it under the labor commissioner. If there is an abuse of this, the labor commissioner could look into it and provide a remedy to an employee who has been denied if the credit report was improperly pulled.

LEA TAUCHEN (Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada):

We were opposed to the original language because we had a concern with the term "consumer report," and we worried that employers would be fearful of running the other reports captured under that term. Having seen the conceptual amendment, [Exhibit C](#), offered by Mr. Jackson, that would specify a definition for credit report and/or credit history, we would be comfortable moving in that direction.

JEANETTE K. BELZ (Property Casualty Insurers Association of America):  
We are in support of the amendment submitted by Mr. Jackson.

BOB OSTROVSKY (Nevada Resort Association):

On behalf of the Nevada Resort Association, we support the conceptual amendment. The other mock-up amendment clarified the issues about what we could pull. This bill would still give us the flexibility we need. We support the amendments.

CHAIR SCHNEIDER:

Mr. Nichols, did you check the conceptual amendment?

MATT NICHOLS (Counsel):

In looking at the amendment, I am just not sure that substantively what Mr. Jackson proposed, and I am not trying to sandbag him,

we talked about this before. But I am not sure that substantively it's any different from the existing definition of consumer report in NRS 598C.060, and I understand that what's considered a consumer report under federal law may be something different, but for the purposes of these sections, the definition in the *Nevada Revised Statutes* would control. I made copies if the Committee wants to look at them, and I could give one to Mr. Jackson as well.

CHAIR SCHNEIDER:

Mr. Jackson, can you see the amendment?

MR. JACKSON:

I am familiar with the mock-up amendment, and I am also familiar with NRS 598C.060, which is what we are looking at. The concern that CDIA has is they have made it clear that it goes to credit history only which has not been done in any other state. The consumer report terminology, even within our own definition, is broad and, most importantly, in subsection 1, paragraph (c), it references the Fair Credit Reporting Act, a federal law. Under federal law, credit history is not defined, but consumer report is. Consumer report, again, is that all-inclusive definition we spoke about. That remains our concern. Respectfully, I understand where the Legislative Counsel Bureau has come from with drafting, but respectfully we believe it needs to be specific so that it does not lend to any confusion or litigation over what consumer report may mean in the context of this law.

MR. NICHOLS:

"So long as that is on the record, I am perfectly happy. I just want to make sure it is clear what we are doing with this amendment."

MR. OSTROVSKY:

If I understand, what you are saying is that as long as it is on the record we can use the language that is proposed by Mr. Jackson, and it would not create any inconsistency. If that is the situation, we are okay with it.

CHAIR SCHNEIDER:

Would we use Mr. Jackson's amendment on this bill, Mr. Nichols?

Senate Committee on Commerce, Labor and Energy  
June 6, 2011  
Page 8

MR. NICHOLS:

"Yes. My understanding is we would use Mr. Jackson's definition of credit history and make a change in the terminology in section 1 and section 2.5. For the purposes of those two sections only, we would be using credit history."

CHAIR SCHNEIDER:

We will close the hearing on A.B. 331.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 331.

SENATOR SETTELMAYER:

I think you might consider taking a vote behind the bar. For the record, I am considering that during these economic times we should not add any burdens onto an employer. I understand the concept, but again, if all things are equal to an employer and that employee has to look at the consumer report to make a final decision, I have no problem with that. I understand the concept mentioned about the illness situation, but that is not the majority of people's problems with consumer reports. I have problems philosophically with the bill. I think we need to get it to the Senate Floor. It may be best to do this behind the bar.

CHAIR SCHNEIDER

I think that is what we will do.

SENATOR COPENING:

I rescind my motion to amend and do pass A.B. 331.



Senate Committee on Commerce, Labor and Energy  
June 6, 2011  
Page 9

CHAIR SCHNEIDER:

We will close the hearing on A.B. 331, and with no further business for the Senate Committee on Commerce, Labor and Energy, the meeting is adjourned at 10:45 a.m.

RESPECTFULLY SUBMITTED:

---

Vicki Folster,  
Committee Secretary

APPROVED BY:

---

Senator Michael A. Schneider, Chair

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

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 331	C	James Jackson	Proposed Conceptual Amendment