

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

**Seventy-sixth Session
April 27, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 11:43 a.m. on Wednesday, April 27, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Assembly District No. 41

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Ron Peterson, Nevada Land Title Association
Rocky Finseth, Nevada Land Title Association
Erin Summers, Actuary I, Division of Insurance, Department of Business and Industry
Kathleen J. Kelly, Executive Director, Board of Dental Examiners of Nevada
Bryan Gresh, University of Southern Nevada

Jaleh Pourhamidi, D.M.D., M.D.Sc, Program Director, Orthodontics and Dentofacial Orthopedics Residency Program, University of Southern Nevada

Brenda Kindred-Kipling, Appraisal Officer, Real Estate Division, Department of Business and Industry

Elisa Cafferata, President and CEO Nevada Advocates for Planned Parenthood Affiliates

Robert Ostrovsky, Nevada Resort Association

Bob Fulkerson, State Director, Progressive Leadership Alliance of Nevada

Jane Heenan, M.S., M.F.T, Director, Equality Nevada Community Services of Southern Nevada

Roberta (Bobbie) Gang, Nevada Women's Lobby

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

CHAIR SCHNEIDER:

We will open the work session on Assembly Bill (A.B.) 33 with the work session documents ([Exhibit C](#)).

ASSEMBLY BILL 33: Revises provisions governing the Board of Psychological Examiners. (BDR 54-504)

SCOTT YOUNG (Policy Analyst):

Assembly Bill 33 requires the Board of Psychological Examiners (Board) to investigate any complaints alleging someone is practicing psychology without a license. It authorizes the Board to issue a cease and desist order to that person. It authorizes the Board to issue citations and establish a schedule of fines: first violation is \$500, second violation is \$1,000 and third and subsequent violations are \$1,500.

The Committee had asked if there are any other Title 54 *Nevada Revised Statutes* (NRS) boards and commissions that have this authority. I have provided a memorandum, [Exhibit C](#), with information on the six Title 54 of NRS bodies with similar provisions. The amounts of the fines are not necessarily the same. The boards are the State Board of Nursing, the State Barbers' Health and Sanitation Board, the State Board of Cosmetology, the Private Investigator's Licensing Board, the Board of Massage Therapists and the Nevada State Board of Veterinary Medical Examiners. Their various fines are included in the memo, [Exhibit C](#).

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CHAIR SCHNEIDER:

We will close the work session on A.B. 33.

SENATOR BREEDEN MOVED TO DO PASS A.B. 33.

SENATOR PARKS SECONDED THE MOTION.

SENATOR ROBERSON:

What is the genesis of this bill? What were the concerns that brought this bill forward?

MR. YOUNG:

I do not know the specific instances that might have prompted the Board to bring this forward. From previous discussions with other boards, the concern was that when a person is practicing without a license, a board must go to district court to obtain an injunction. This bill would provide a more expeditious way to take action and impose a penalty on someone who is practicing without a license. The person would get something more than just a cease and desist order. There would be a financial penalty for practicing without a license. This is probably the underlying rationale for this bill.

SENATOR ROBERSON:

Is this addressing a situation where fines can only be imposed for practicing without a license? A person practicing without a license should receive a cease and desist order. A fine is not a sufficient remedy. People should not be practicing without licenses.

CHAIR SCHNEIDER:

That is correct.

SENATOR ROBERSON:

Are these fines only for practicing without a license? Does this address the problem?

MATT NICHOLS (Counsel):

Yes, the only violation that's addressed by the bill is a violation of NRS 641.390, which prohibits a person from representing himself or herself as a psychologist, or engaging in the practice of

psychology without a license. That's the only penalty... only violation that's addressed here.

SENATOR ROBERSON:

Am I correct in stating that all this bill does is raise money in the form of fines from people who are practicing without a license? The real remedy should be to prevent them from practicing by getting injunctions. I do not know if this bill is necessary or even sufficient for its intended purpose, which is to stop people from practicing without a license. This is my concern.

SENATOR PARKS:

To stop someone from practicing, you would have to give that person due process by setting forth the reasons and then getting a cease and desist order. How else might someone be stopped from practicing without a license, if not through a process similar to what is in A.B. 33?

CHAIR SCHNEIDER:

That is a good question.

SENATOR HALSETH:

Would counsel go over the current NRS dealing with this? Are we only allowing the Board to investigate and to impose fines? Is this already covered in statute?

MR. NICHOLS:

Under existing law, the Board of Psychological Examiners can refer any complaint that the Board receives to the Attorney General to prosecute the disciplinary actions. The Board can additionally take some disciplinary action on its own, but this gets specifically at someone who should be licensed under chapter [NRS] 641 who's conducting... who's engaging in behavior that's regulated by the chapter, but has not, in fact, obtained a license.

SENATOR HALSETH:

What is the penalty under current statute?

MR. NICHOLS:

My understanding, Mr. Chairman, is the Board if—I don't know if you want to pull up the statutes—but under chapter [NRS] 641 and 641.314 and 641.316, the Board can seek an injunction that

requires the Board going to court and getting a court order for the injunction. And Scott may be correct, I don't know what the genesis of the actual request was, but that's a more involved process where the Board would have to go to court to get a court order enjoining the person from engaging in this behavior, rather than the Board being able to take independent action on its own to issue an order to cease and desist.

CHAIR SCHNEIDER:
It is also a gross misdemeanor.

SENATOR ROBERSON:
There is a criminal penalty already.

CHAIR SCHNEIDER:
Yes, but the Board would have to go to court. With this bill, the Board would not have to go to court. It would be able to act faster.

SENATOR ROBERSON:
Does anyone have a record of how the Assembly voted on this bill?

SENATOR BREEDEN:
Yes, it was unanimous.

SENATOR ROBERSON:
It is good public policy to try to sanction people who are breaking the law. I will vote for this bill.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
We will open the hearing on A.B. 214.

[ASSEMBLY BILL 214 \(1st Reprint\)](#): Revises provisions governing certain disbursements of money from escrow accounts. (BDR 54-1016)

RON PETERSON (Nevada Land Title Association):

In the 75th Session, the Legislature enacted a measure which ensured that consumers in real-estate transactions were protected from fraudulent activities. The measure required funds being transferred to close a transaction be good. This means the funds cannot be drawn on a nonexisting bank or on a fraudulent account. The funds must be available at the bank to be drawn on. The law passed in the 75th Session resulted in fewer fraudulent closings. However, there were a few problems in the implementation of that legislation which led to A.B. 214.

There are two provisions in A.B. 214. Section 1, subsection 2, paragraph (b), would ensure the funds are drawn on U.S. currency, not foreign currency. Our experience over the last two years has shown that occasionally, with the increase of investors into the marketplace, as well as the enactment of A.B. No. 133 of the 75th Session, electronic transfers have become commonplace in real-estate transactions. With this change, we want to clarify that the funds must be U.S. currency.

Section 1, subsection 3, ensures that all federal laws must be complied with when an escrow officer or an escrow agent disburses funds. Specifically, the Nevada Land Title Association is concerned about ensuring that licensed agents comply with the Code of Federal Regulations (CFR) Title 12, part 229. This deals with the law concerning banks and when they must make funds available for withdrawal from the U.S. Federal Reserve System.

We have proposed an amendment which clarifies the disbursement of funds based on the CFR in reference to availability of funds.

ROCKY FINSETH (Nevada Land Title Association):

The first reprint of A.B. 214 includes that amendment, and all of our issues and concerns have been resolved. We are good with the bill as written.

ERIN SUMMERS (Actuary I, Division of Insurance, Department of Business and Industry):

We have submitted a proposed amendment to A.B. 214 ([Exhibit D](#)). The Division of Insurance (DOI), Department of Business and Industry (DBI) and the Division of Mortgage Lending (DML) regulate entities that perform escrow services. However, they regulate under different laws, Title 57 of NRS and

Title 54 of NRS. *Nevada Revised Statutes* 645A.171 was meant to apply to both entities: the escrow agents are under the DML and the escrow officers are under the DOI. The statute puts restrictions on both escrow agents and escrow officers, but there are three problems with this. It contradicts NRS 645A.015 which states that chapter 645A of NRS does not apply to any person licensed under chapter 692A of NRS. It does not apply to title insurers or title agents who can also disburse escrow funds. Any entity regulated under Title 57 of NRS would not think to look to Title 54 of NRS for laws applying to them.

We are proposing to amend A.B. 214, [Exhibit D](#), to remove the references to escrow officer and NRS 692A, and to add a similar provision to chapter 692A of NRS that would apply to title insurers, title agents and escrow officers.

CHAIR SCHNEIDER:

The DOI has indicated that we need this proposed amendment, [Exhibit D](#), because there was a mistake made in the 75th Session. Some persons were deleted from the law when they should not have been.

MR. NICHOLS:

The section that is in the bill now, [NRS] 645A.171, purports to regulate the behavior of an escrow officer. Escrow officers are specifically exempted from the requirements of chapter 645A. They are, instead, regulated under chapter 692A along with title companies. And so my understanding of the proposed amendment would be to essentially duplicate, in substance, what is section 1 of this bill, but for chapter 692A, and it would apply to title companies and escrow officers who are employed by title companies. It would be the same requirements, but it would be in a different chapter. So, section 2 of the bill would, in substance, mirror section 1, but would be in a different chapter of NRS.

SENATOR SETTELMAYER:

I assume this is a friendly amendment. Why was this not handled in the Assembly?

MS. SUMMERS:

I just found out about this recently. I do not know why this escaped our attention, but we apologize.

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MR. FINSETH:

We have reviewed the DOI proposed amendment, [Exhibit D](#), and are comfortable with it.

CHAIR SCHNEIDER:

We will close the hearing on [A.B. 214](#).

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
[A.B. 214](#).

SENATOR HALSETH SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Schneider:

We will open the hearing on [A.B. 55](#).

[ASSEMBLY BILL 55 \(1st Reprint\)](#): Makes various changes relating to dentistry.
(BDR 54-498)

KATHLEEN J. KELLY (Executive Director, Board of Dental Examiners of Nevada):
[Assembly Bill 55](#) amends the provisions of the limited license statute. This bill would authorize the Board of Dental Examiners of Nevada (BDEN) to issue limited licenses to qualified applicants of American Dental Association accredited dental programs at schools other than the Nevada System of Higher Education.

In addition, the bill would grant authority to the BDEN to issue permits to those licensees in certain circumstances. It would also address the BDEN's recognition of the American Board of Dental Examiners (ADEX) Dental Hygiene Examination and reestablish the fee limits for clinical examinations administered by the BDEN. This would be consistent with our contract terms with ADEX and other testing agencies for those two clinical examinations.

BRYAN GRESH (University of Southern Nevada):

We support [A.B. 55](#) and would like to draw the Committee's attention to section 1, subsection 2 of this bill.

JALEH POURHAMIDI D.M.D., M.D.Sc (Program Director, Orthodontics and Dentofacial Orthopedics Residency Program, University of Southern Nevada):

I support A.B. 55 because residents in our residency program have to go through an extended and expensive process to obtain a full license to practice in Nevada. Even though we are an accredited institution, and the residents work under faculty, they have to go through the process. It typically costs the residents thousands of dollars, whereas a limited license is much more economical. With the economy the way it is, I would like the residents not to have that burden. Many of them go back to the states from which they came and do not practice in Nevada.

CHAIR SCHNEIDER:

Does the University of Southern Nevada have a campus in Salt Lake City, Utah?

DR. POURHAMIDI:

We have a campus in South Jordan, Utah.

CHAIR SCHNEIDER:

Robert H. Talley, D.D.S. CAE, Executive Director, Nevada Dental Association has submitted a letter in support of A.B. 55 ([Exhibit E](#)).

We will close the hearing on A.B. 55.

SENATOR COPENING MOVED TO DO PASS A.B. 55.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

We will open the hearing on A.B. 524.

[ASSEMBLY BILL 524](#): Increases certain fees for residential and general appraisers to cover an increase in federal registry fees. (BDR 54-1199)

BRENDA KINDRED-KIPLING (Appraisal Officer, Real Estate Division, Department of Business and Industry):

Assembly Bill 524 addresses increases in the registry fees of the Federal Financial Institutions Examination Council's National Registry (FFIEC) of state certified and licensed appraisers. As part of their licensing fee, all state licensed and certified appraisers pay to be recognized on the National Registry, which is maintained by the Appraisal Subcommittee (ASC), FFIEC. The ASC is the federal entity that oversees appraisers in state regulatory programs.

The Dodd-Frank Wall Street Reform and Consumer Protection Act allowed the ASC to increase the National Registry fees, thus creating a need for the Real Estate Division (RED), DBI, to increase its licensing fees to cover the increase. Our current fee is \$25 per year per appraiser. We have a two-year licensing cycle. We need to increase the fee to \$40 annually—an increase of \$15 per year, per licensing cycle—so appraisers will appear on the National Registry. Appraisers not appearing on the National Registry are not allowed to complete appraisals for any federally-related transactions.

The RED, DBI submits data monthly to the ASC which is used by most lenders—the U.S. Department of Housing and Urban Development and its Federal Housing Authority—to ensure appraisers are licensed and in good standing in this State.

I have also submitted written testimony explaining the origins of A.B. 523 ([Exhibit F](#)).

SENATOR SETTELMAYER:

How much was the increase in the National Registry fees?

MS. KINDRED-KIPLING:

The ASC is increasing the fee by \$15 per year, and because we are on a two-year cycle, we are raising our fees by \$30 per renewal or per initial licensing cycle to cover the fee increase.

SENATOR SETTELMAYER:

Is it correct that the fees have been raised \$15 per year?

MS. KINDRED-KIPLING:

Yes, that is correct.

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CHAIR SCHNEIDER:

We will close the hearing on A.B. 524 and open the hearing on A.B. 211.

ASSEMBLY BILL 211: Prohibits discriminatory employment practices based upon gender identity or expression. (BDR 53-272)

ASSEMBLYMAN PAUL AIZLEY (Assembly District No. 41):

Assembly Bill 211 was passed in the Assembly Committee on Commerce and Labor with a 14 to 2 vote. There was no testimony in opposition to the bill. The Assembly Floor vote was 29 to 13 in favor of the bill.

There are some nasty e-mails going around about transgender people. I would like to counter those with another point of view by reading a letter:

Dear Sir, I just learned of your bills in Nevada for transgender rights. As a transgendered businessperson and real estate investor, I wanted to personally thank you for your efforts on behalf of those of us who are not treated equal under the law. I actually live in Newport Beach, California, but my partner and I have been planning to expand our holdings into Las Vegas and the Reno-Tahoe-Carson area.

One thing which has bothered me about investing in Nevada is the lack of civil rights for transgendered people compared to California. Though in all honesty, other than a run-in with a couple of horribly homophobic and disrespectful Vegas cops some years ago, I have never encountered any discrimination or even interest from anyone in Nevada. It may be because we tend to stay in suites at better properties when we travel and people tend to be nice to you when you are paying them a lot of money.

But knowing the civil protections we take for granted in California are not available in Nevada has been a concern in the background of our lives. I sincerely hope this will change. If I can be of assistance in helping to promote equality or providing a transgender businessperson's point of view, please feel free to contact me.

Thank you again. Signed, J.B. Star.

I received it, unsolicited, sometime last week.

In 1999, A.B. No. 311 of the 70th Session was passed and was approved by the Governor. Assembly Bill No. 311 of the 70th Session prevented discrimination in the workplace because of sexual orientation. As a result, an employer or supervisor cannot fire a worker because the worker is or is perceived to be homosexual or bisexual. The passage of that bill has not created any problems in Nevada.

But, transgender people are not covered by A.B. No. 311 of the 70th Session. About 1 percent of the population is estimated to be transgender people with approximately 27,000 in Nevada. Some of you ask where the data are showing the number of transgender people who have been fired or denied benefits. The data do not exist because there is no law to apply. Transgender people have no standing in a court of law because the law does not exist. This is precisely why the law is needed.

Some of you question what is meant by "expression." In most cases, you and I can actually decide if the person we are looking at or talking to is male or female by the way the person dresses or acts. This is the way a person expresses himself or herself. It certainly is not a difficult concept.

The decision to change one's gender expression and to express oneself opposite to the gender assigned at birth takes time and serious introspection. It is not done alone, but in consultation with appropriate other people: family, friends, doctors and psychologists. When a transgender person commits to the change, no other person should be able to use that decision against him or her for any reason, and certainly not for a personnel reason associated with employment.

It is not legal to fire a person because he or she happens to be Catholic or Mormon or any other religion. There are laws against that. Apparently, it is okay to fire someone because they have red hair or brown eyes, but those things do not happen, so no laws are necessary there. Unfortunately, transgender people are being fired and denied promotions because they are transgender. Because there is no law protecting them, they are unable to seek justice. This law is needed to deliver liberty and justice to all, including the transgender population.

SENATOR ROBERSON:

The problem I have with this bill, and all of the other bills that have come forward, is definitional. Assemblyman Aizley, you gave an example of what you would consider gender expression, which is the way someone dresses. This

makes sense to me. But, the language in this bill, and in the other bills, leaves that definition wide open for interpretation. This is an additional burden on small business, because we are all trying to decipher what is meant by gender expression. No one here wants to discriminate against transgender people or anyone else, but from my perspective it is a definitional deficiency. It is a problem with the definition that can create problems, lawsuits and burdens on small business in the future. This could be addressed with a better definition.

ASSEMBLYMAN AIZLEY:

I do not agree with that, Senator Roberson. The definition is very clear. The way you look at a person is the way you decide whether the person is male or female. You may or may not be right, but in general, the expression, the way people dress and handle themselves, is one of the first clues. I do not hear any other definition being offered in place of that. It is a fairly simple issue, and in most cases you do not even apply the definition. You go from day to day meeting people, and gender is either assumed or not an issue. I would suspect you have met transgender people and you do not know it.

SENATOR SETTELMAYER:

Nevada is a right-to-work state, and as employers, we are trying to encourage jobs. Is there something in this bill allowing employers to hire only a particular sex?

ASSEMBLYMAN AIZLEY:

Some exceptions were provided in the bill in certain cases.

SENATOR SETTELMAYER:

What would those exceptions be? What establishments would have the ability to hire only a certain sex?

ELISA CAFFERATA (President and CEO, Nevada Advocates for Planned Parenthood Affiliates):

It is federal law that you cannot discriminate on the basis of gender unless it is a bona fide occupational requirement. Businesses in Nevada cannot choose to hire only men or hire only women unless it is a bona fide occupational requirement.

SENATOR SETTELMAYER:

Which businesses have bona fide occupational requirements?

MS. CAFFERATA:

Existing law states an employer cannot discriminate because of race, color, creed or sex. A bona fide occupational condition would be a sperm donor or a wet nurse. These are conditions in which a person would have to be a specific sex to have the job.

SENATOR SETTELMAYER:

Where in the bill does it list the exemptions?

MR. NICHOLS:

It is actually in section 9. It's on page 7 of the bill, NRS 613.350. That provides it's not unlawful to discriminate if the discrimination is based on a bona fide occupational qualification. And, I don't know if I could provide much help on the ... where gender would be a bona fide occupational qualification, but you might consider a model for men's clothing, you would probably want a male model, or women's swimsuits you'd want a female model, something like that.

SENATOR SETTELMAYER:

Does this bill prohibit certain establishments from hiring all female cocktail waitresses or all male cocktail waiters?

MR. NICHOLS:

"I don't know that I could answer that question. I think that would probably end up being a question for a court."

BOB OSTROVSKY (Nevada Resort Association):

In answer to Senator Settelmeyer regarding bona fide occupational qualifications, there are certain jobs where being a male or a female might be considered a requirement. For example, an attendant in a lady's spa would most likely be a female; or a restroom attendant should be the same sex of the people for whom the restroom is provided. There are male and female cocktail persons because serving cocktails does not require a particular gender.

To find a bona fide occupational qualification is not an easy thing to do for an employer. But it is the law of the land. It has been the law of the land in Nevada for a long time. The sections to which we referred are existing law. Employers have to measure employees on their performances. Certain kinds of employment

require males or females to make customers comfortable, such as females in the female's restrooms or males in a male's restroom.

Individuals would have to identify themselves as females when we hire them. We would have to treat them as such. The bill has a section providing for reasonable rules and appropriate dress requirements. We would have to judge that at the time of hire. If we hired individuals as females, they would be eligible for assignments in female roles. I know this is not easy for some people.

Before I was a lobbyist, I spent 25 years as a human resource executive. I was the corporate vice-president of human resources for Bally's Inc., and I had that responsibility for two hotels and a manufacturing plant. I was in charge of personnel for a long time at the original MGM Hotel.

I will refer to the Americans with Disabilities Act (ADA). When the ADA was first proposed and passed by Congress, I thought the "sky was going to fall." I was wrong. Employers found ways to accommodate the citizens of this State and to provide them with jobs appropriate to the requirements of the law. Relative to the ADA, we do not know if someone has a disability. If someone comes in and is missing an arm or a leg, it is obvious. But, there are many other disabilities that are not so obvious, and we have to accommodate those people. The Nevada Resort Association supports this bill and is prepared to accommodate people at the time of hire. We measure them on their potential when we hire them, and then we measure them on their performance once they are on the job.

Does it raise some uncomfortable issues for certain individuals? Yes, probably, but the world turns and things change; and we have this one little sliver of people out there in the community who are not covered by the law. People who identify themselves as gay or bisexual are protected under the law. It is hard to justify why we would not protect transgender people.

The Nevada Resort Association does not consider this a problem. I have discussed this with all of our member hotels which provide a majority of the jobs on the "Las Vegas Strip" and many jobs in northern Nevada. They all state they are comfortable with this. They will accommodate it and make it work.

SENATOR ROBERSON:

The difference for me with this definition and every other classification we have in law is the word "expression." To me this means actions and/or behavior, not simply identity or appearance. Employees who are not following rules, who are not working well with their colleagues, or who are in any way disruptive to the workplace, create additional burdens on the business and the employer. Hypothetically, giving people the opportunity to say their actions are what they are because they are transgender, whether they are or not, can be used to make life more difficult for a small business owner. I have a problem with that. It is the word "expression." What does expression mean to you? All I can see is the word on the page in the bill. I can think of all kinds of things that expression means.

MR. OSTROVSKY:

I am going to rely on the bill's language on page 8, section 9, subsection 6, which says, "It is not an unlawful employment practice for an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards" I would also further note that, although it does not state this, you can have reasonable rules in the workplace. I would expect a person of any sex to live by those established, reasonable rules.

A small business person may do things a little differently. But, with a sophisticated human resources department it may be easier, and I understand your concern about small businesses. I have to go back to the original law. Some small businesses are exempt from the authority of the Equal Rights Commission. This does not make it right or wrong. It is the position of my clients, and me personally, that this is America in 2011, and we have to find a way to make this work even when it may be difficult.

CHAIR SCHNEIDER:

You are speaking for your client, the Nevada Resort Association. They have independent restaurants and shops in their hotels which means they are really speaking for those small businesses also. The small businesses fall under the purview of the hotel from which they lease space.

MR. OSTROVSKY:

I cannot speak for every lease arrangement between the property owners and individuals who operate small businesses within the property. Usually, the small businesses are required to follow the same laws the property owners have to

follow. The businesses have to comply with the suitability standards of the State Gaming Control Board which are applied to all individuals who lease space from a hotel-casino for any purpose.

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

I support A.B. 211. I brought A.B. No. 311 of the 70th Session before the Legislature. This was the original employment nondiscrimination bill. Prior to submitting the bill, gender identity and expression were included in my bill draft request (BDR). In the process of getting the bill passed, there were a lot of questions that remained unanswered, and gender identity and expression was removed from the BDR. I support Assemblyman Aizley's request to restore gender identity and expression in A.B. 211.

I experienced employment discrimination in 1984 when I was the budget director for the City of Las Vegas. I was terminated because I was gay. It was also presumed that I had human immunodeficiency virus and was dying of acquired immune deficiency syndrome. I went through the experience of trying to determine what my legal recourse was, and I found there was no legal recourse. I understand the significance of this situation. My employment at the City of Las Vegas was exemplary. I had nothing but superlatives on all of my reviews, yet at the whim of a chief administrator I was terminated. No one deserves to be fired, to be refused work or to suffer harassment or violence because of who they are. Transgender persons and those who do not fit gender stereotypes face this type of discrimination or violence without any kind of recourse, and we need to change that.

The current NRS follows the federal guidelines. If you have 15 employees or fewer, you are exempted. If you have multiple facilities with more than 15 employees, then obviously you would not be exempt.

There was a study done in Florida between 2004 and 2010 which showed that the addition of transgender identity and expression resulted in no increase in cost either to employers or to the state. When people know what the law is, they generally comply. The whole issue with the ADA is a very good example of how things were changed to accommodate individuals.

ASSEMBLYMAN AIZLEY:

I do not see the problem others are seeing in this situation. There is no reason to question persons who present themselves as males or females, either in their

lives or in their employment. If they have documented proof of their gender at the time of hire, then everything else is speculation. I do not see there are real problems with this in most cases.

BOB FULKERSON (State Director, Progressive Leadership Alliance of Nevada):
Each and every day, transgender Nevadans suffer prejudice and discrimination when doing routine tasks such as buying food, traveling, accessing health care and applying for jobs. Unlike discrimination faced by others, transgender Nevadans currently have no means of recourse. Our transgender brothers and sisters have nothing left to sacrifice since they have been excluded from full participation in our State.

The here and now is always the right time to end an injustice, but sometimes public opinion is not on our side. In this case, however, Nevadans support transgender equity. The Progressive Leadership Alliance of Nevada (PLAN) surveyed thousands of voters in every legislative district and across all demographics and party lines. The results were consistent, with more than three-quarters of people in support of adding gender identity and gender expression to the State's Employment Non-Discrimination Act (ENDA). This can be viewed in a report prepared by PLAN titled "Equity for All: Key Findings of the Nevada Transgender Community Needs Assessment Survey" ([Exhibit G](#)).

Over a three-month period, we conducted a comprehensive study of discrimination experienced by transgender people in Nevada's eight most populous counties. The findings of this study, [Exhibit G](#), revealed that discrimination and bias was experienced nearly universally among our transgender citizens, with discrimination in employment and public accommodation posing the greatest barriers and challenges for the respondents.

At a time when this State's unemployment rate averaged 14 percent, unemployment for transgender Nevadans was more than double this rate. Even more profound, unemployment rates for black and Latino transgender people were more than four times that of the rest of the population. The rates for underemployment were also equally disturbing, with additional effects upon disparities experienced by transgender people and those experienced by communities of color.

Among Nevada's transgender communities, these extraordinary disparities also fuel severe economic insecurity, food insecurity, homelessness, personal safety

risks, and inadequate access to health care. This is a clear issue of not only transgender equity but also an issue of racial equity. For this reason, A.B. 211 will be included in our "Racial Equity Report Card" of the 76th Session.

The debate on this bill is not about whether to extend protections against employment discrimination. They already exist for all but transgender Nevadans. The debate on this bill is whether we can speak with one voice and tell all Nevadans they are to be treated as equals under law and treated with dignity by their government.

We implore you to pass A.B. 211 as quickly as possible to allow all of us the opportunity to work safely and in peace.

JANE HEENAN (M.S., M.F.T, Director, Equality Nevada Community Services of Southern Nevada):

Since the mid 1990s, as part of my professional work, I have had the privilege of getting to know hundreds of transgender persons. My personal experience in working with these people for many years cannot begin to describe the experiences "trans-people" have gone through trying to live with dignity and to get through their days. These are things I have witnessed first-hand over and over again. It is not possible to dismiss these experiences.

The words "gender identity or expression," that this bill would add, are common in a variety of jurisdictions in the United States. About 40 percent of the persons in the United States live in areas where these words apply to their employment. If you look at outcomes, there are no problems emerging as a result. This is a significant "red herring" that does not have application in the real world. We work through things in the workplace on a regular, ongoing basis.

Senator Roberson stated that a transgender individual might say that problems in the workplace were due to the individual's gender expression. Transgender people do not do that. They change their outward expressions to match more closely with their internal gender identity. That is the relationship between those words. Identity is what is on the inside, and expression is what is put out to the world. No one I have ever met makes this change haphazardly. It takes many years and input and support of many others, including medical and psychological professionals, people in their lives, families, children and parents.

As individuals move through this process, they become stably gendered. Individuals do not go back and forth claiming one day this or one day that.

In my experience, I have been fired twice from jobs in Nevada as a result of anti-transgender bias. Several times, I was told explicitly that even though I was qualified for a position—I had earned a master's degree from the University of Nevada, Las Vegas—I would not be hired because I am transgender. Many years ago, I was fired from a Las Vegas casino where I had worked for almost two years without incident until I began to transition. Suddenly, my job performance was suspect and I was released, and I was not able to claim unemployment benefits at that time.

We all pay for discrimination. When people are excluded from working, we all pay for that exclusion. There is no way to dismiss that. No one needs to be made to live in fear. We need to be able to work and to do our work well, and when we are not doing it well, we should be fired or excluded, but based on performance alone.

We are not asking anything of you in the end. Transgender people are not asking for anything that you would not want for your children, siblings or parents. We are your children, your siblings and your parents. We are children of God just like you. Just like we all are. I implore you to do what is right, what is honest, and what is just. There is suffering, and you can make a difference.

I have also submitted written testimony in support of A.B. 211 ([Exhibit H](#)).

MS. CAFFERATA:

Planned Parenthood has embarked on a national effort to reach out to the transgender community and find ways to work together to address specific and basic health-care needs of transgender people.

We are interested and urge you to support this bill because so much of health insurance is tied to employment. This bill would help Nevadans access the health care they need.

As a fourth-generation Nevadan, one of the things I am most proud of about Nevada, and always brag about whenever I travel, is that in this State we judge people on their individual merits. We do not lump them into groups and judge them based on their membership in a group. We look at them based on their

work performance and what they actually can do in a job. That is why Nevada is and remains a right-to-work state. Nothing about this bill would change that.

I have also submitted a written statement in support of A.B. 211 ([Exhibit I](#)).

ROBERTA (BOBBIE) GANG (Nevada Women's Lobby):

We believe that the lives of all people are inherently valuable and worthy of respect and dignity. We ask for your support of A.B. 211. We supported ENDA in 1999, and we support the addition of gender identity or expression.

Dr. Martin Luther King stated, " ... justice denied anywhere diminishes justice everywhere" Pam Roberts, a past chair of Nevada Women's Lobby (NWL), testified before the Assembly Committee on Commerce and Labor on A.B. No. 311 of the 70th Session. She testified again in that committee last month on A.B. 211. She shared her personal story of losing her teaching job years earlier simply because she was a lesbian. When Governor Guinn signed ENDA and it became the law in Nevada, Pam received justice in the form of employment protections. However, until all Nevadans obtain equal justice in this form, the justice she obtained in 1999 is diminished today, 12 years later.

Dr. King also told us, " ... in the end we will remember not the words of our enemies, but the silence of our friends" Nevadans who have experienced employment discrimination in the last 12 years remember our silence as we carved out gender identity or expression in the 70th session to pass ENDA. We can remain silent no longer. The NWL urges the members of this Committee to pass A.B. 211 to ensure that all Nevadans receive justice and are protected against discrimination in the workplace.

DANE CLAUSSEN (Executive Director, American Civil Liberties Union of Nevada):

We support A.B. 211. We testified in support of this bill in the Assembly Committee on Commerce and Labor hearing. I was at the Nevada Equal Rights Commission (NERC) meeting last week. It was the first time NERC had met in more than a year. The fact that there were bills being considered in this Session expanding protections for people based on gender, sexual orientation and gender identity and expression was brought up during the meeting. As an observer in that meeting, there was support for these bills. There was no concern among NERC members that the passage of these bills would result in any significant increase in complaints filed with NERC.

There is concern that individuals might take advantage of some supposed vagueness in the language of this bill. We know from past experience with nondiscrimination legislation that this is not the case. We do not think the language is vague. People have not claimed to have been discriminated against because they were Jewish when they were not Jewish. Individuals making claims of being in a protected class when they are not does not happen. We know about people faking injuries on the job, but not about claiming to be African American when they are not. The same would hold true with transgender people.

This is not only about protecting transgender people in our community. It is also about who we are as Americans. These bills have symbolic importance as well as real importance. Transgender people are the last group needing protection under Nevada employment law.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 211.

SENATOR BREEDEN MOVED TO DO PASS A.B. 211.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HALSETH, ROBERSON AND SETTELMAYER VOTED NO.)

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CHAIR SCHNEIDER:

Having no further business the Senate Committee on Commerce, Labor and Energy is adjourned at 12:58 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
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. 33	C	Scott Young	Work Session Documents
A.B. 214	D	Erin Summers	Proposed Amendment
A.B. 55	E	Chair Schneider	Letter from Robert Talley, D.D.S.
A.B. 524	F	Brenda Kindred-Kipling	Written Testimony
A.B. 211	G	Bob Fulkerson	Report from PLAN
A.B. 211	H	Jane Heenan	Written Testimony
A.B. 211	I	Eliza Cafferata	Written Statement