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

Seventy-Seventh Session
April 26, 2013

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 11:42 a.m. on Friday, April 26, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. 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 David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblyman Cresent Hardy (excused)
Assemblyman James W. Healey (excused)

GUEST LEGISLATORS PRESENT:

Senator Tick Segerblom, Clark County Senatorial District No. 3
Senator Aaron D. Ford, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Julie Kellen, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Renee Olson, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Kelly Karch, Deputy Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Robert Ostrovsky, representing Employers Insurance
Oscar Peralta, representing Nevada Hispanic Legislative Caucus
Andrew Rempfer, representing Nevada Justice Association
Christopher Preciado, representing Progressive Leadership Alliance of Nevada
Jack Mallory, representing Southern Nevada Building and Construction Trades Council
Ron Dreher, representing Peace Officers Research Association of Nevada; Washoe County Public Attorney's Association; Washoe School Principals Association; We Are Nevada
Priscilla Maloney, Labor Representative, AFSCME Local 4041
Tray Abney, representing The Chamber
Bruce Gescheider, Nursery and Landscape Specialist, Moana Nursery, Reno, Nevada
Craig Madole, Senior Associate, Associated General Contractors of America, Inc., Nevada Chapter
Joanna Jacob, representing Associated General Contractors, Las Vegas Chapter
Michael Baltz, Chief Compliance Investigator, Nevada Equal Rights Commission
Scott Greenberg, Assistant General Counsel, Clark County School District
Gene Temen, President, Quick Space, Sparks, Nevada
John Sande IV, representing City of North Las Vegas

Michael Cate, President, Construction Development Services, Inc., Reno, Nevada
Jennifer DiMarzio, representing Nevada Credit Union League
Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association
George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
John Wagner, State Chairman, Independent American Party

Chairman Bobzien:
[Roll was called. Committee policies and procedures were reviewed.] We are going to open the hearing on Senate Bill 35 (1st Reprint). I would like to welcome the Employment Security Division up to present this bill.

Senate Bill 35 (1st Reprint): Makes various changes concerning the Employment Security Division of the Department of Employment, Training and Rehabilitation. (BDR 53-372)

Renee Olson, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation:
Thank you for the opportunity to introduce and explain a request for S.B. 35 (R1). With me here today is Mr. Kelly Karch, Deputy Administrator, who is in charge of the unemployment insurance program for the Division. I will be deferring all of the really hard questions to him today.

This bill seeks to accomplish two objectives: one is housekeeping, and the other is policy. Sections 1 through 7 and 9 of the bill propose changes throughout *Nevada Revised Statutes* (NRS) Chapter 612 to eliminate the following obsolete references: unemployment compensation service and state employment service. These are no longer necessary and can be replaced with the term "the Division" in reference to the Employment Security Division.

In terms of policy, section 7 of the bill amends the fees charged and collected for filing a satisfaction of judgment and/or release of lien. You will see under section 7 that NRS 612.645 already states that no costs or filing fees shall be charged to the State, and any proceeding brought under the provisions of NRS 612.625 to NRS 612.640 gives the Division the authority to file judgments and liens for collection of overpayments, benefits to claimants, or collection of taxes due from employers. Under NRS 247.305, subsection 6, the county recorder's office may not charge the fees for the recording of a lien in favor of the State. This language has been interpreted to not cover the fees charged for recording the release of the lien or satisfaction of judgment. Due to the significant administrative complications and staff time required for

providing the payments to the county recorder, the Division has not been filing the releases and has instead has been submitting the paperwork required to record the releases to the claimants or to the employers for them to file.

Division legal counsel has advised that since the Division created the lien and recorded the judgment, it has the corresponding obligation to release the lien once the debt is satisfied. Therefore, the original intention of S.B. 35 (R1) was to eliminate the fees charged by the county recorder's offices for the release of the lien and satisfaction of judgment so the Division could overcome the administrative hoops in order to fulfill that obligation.

The Division believes that because the releases are being provided to the claimant or debtor for recording, in many cases they are not being recorded and property title remains clouded. We know this because they call us, and we have to reprepare the release paperwork and lien paperwork and send it out again. This is a duplication of effort and an impediment to the individual and his or her ability to move forward in a sale or transfer of that property.

When the bill was in the Senate Committee on Commerce, Labor and Energy work session, Senator Settelmeyer proposed an amendment that gives the Division authority to charge claimants and employers for the release recording fees rather than eliminating the fees. As amended, the bill adds subsection 3 to NRS 612.645, which states that,

> In any proceedings brought under any provision of NRS 612.625 to 612.640, inclusive, the Administrator shall charge to the employer against whom the proceeding is brought an additional fee to defray the cost for recording, copying or certifying documents, as applicable . . . in accordance with the fees set forth in NRS 247.305; and (b) Paid into the Unemployment Compensation Administration Fund.

We have proposed an additional amendment, which we believe would further clarify the intent of Senator Settelmeyer's amendment (Exhibit C). In section 7 of the amended bill, the language in subsection 3 could conflict or create confusion in relation to subsection 2 and does not represent the intention of the original amendment that the fees charged by the Division would be fees for the recording, copying, and certifying of the releases of the liens or satisfaction of judgment. Our amendment eliminates the phrase "as applicable" and inserts "necessary to enter any satisfaction of judgment as provided under NRS 17, or to discharge any notice of lien pursuant to NRS 108."

I will conclude my comments on the bill by saying that we appreciate the Senator's amendment, which allows us to recoup the costs, but we would reiterate here that the administrative obstacles remain. We would encourage and invite the county recorder's offices to make it easier for us to file and pay for those releases. If we have some sort of easy billing process, preferably digital or electronic, we would be able to make this process less labor-intensive and more efficient. We will gladly work with the recorder's offices on a process that is mutually satisfactory and will help us to take on the process of filing these releases. I would be happy to answer any questions or provide additional detail the Committee may require.

Chairman Bobzien:
Before we open it up to questions, on that point, were the county recorders receptive to that arrangement of working with you on a process?

Renee Olson:
Early on, they did attempt to contact us, and we have attempted to contact them back. We have not made contact at this point, but we will continue to reach out and work with them. I believe Clark County was the first one to try to contact us. We will continue that process. They would get more money from us if it were easier for us to pay them.

Chairman Bobzien:
Do we have questions from the Committee?

Assemblyman Daly:
When you have a delinquency or something where you have to go forward with judgments and go through a lien, what is your process on that? We have laws in the state that say you are required to pay, and they are supposed to pay in accordance with those provisions based on the person's salary and various other matters.

When they do not pay, what is your procedure and who do you notify? What is the process there? After a delinquency, do you go to a judgment with the lien on every claim? I have heard varying stories that sometimes you do not do anything. I want to know what it is that happens, and I want to know what the steps are, who you notify, et cetera.

Renee Olson:
I am going to let Mr. Karch answer the bulk of that question, but I will say that we work with the employers to bring them into compliance with their tax payments the best we can, and that can be a varied process of working with them to identify exactly the amount due and going forward in those terms.

Once we get to the point where we feel a judgment is necessary, that is where this process really kicks in. I will turn it over now to Mr. Karch to answer that question.

Kelly Karch, Deputy Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation:
Depending on which side of the house we are talking about, with the employers, we have to ascertain that there is a liability. In many cases if an employer does not file a report, we immediately levy their account and establish liability. That encourages employers to come forward and file itemized reports. We need the itemized reports from the employers so that we can establish a claim and pay the individuals in question. If the employer continues to not work with us, depending on the industry, basically, upon the levy, we can go out and seize assets immediately through a notice to withhold. That is even before we do the judgment. We have the authority under the statute to seize their bank accounts and make sure the trust fund is made whole in relation to the claimants who are outstanding in failure to cooperate.

At that point, if there are no assets, it depends on the type of business. We can establish the liens and judgments through the recorder's office so if any assets appear, we can seize those assets. For example, for those licensees at the Nevada State Contractors' Board, we see the general contractor almost immediately if we are not getting any response at all. In many cases, the general contractors hold assets until a job is done and approved.

On the other side of the house, relating to benefits and fraud, we do the judgments. We establish judgments through the recorder's office. We give those people an opportunity to work with us. Let me reiterate that. On both sides of the house, we want the employers and claimants working with us. It is much better than doing the paperwork if we can get them onboard and put them in compliance. However, the claimants are allowed to do a payment agreement, similar to what the employers are allowed to do. We work with them throughout the process. If a claimant fails to provide those funds on a signed payment agreement, we can seize their tax refund through the Treasury Offset Program. Our tools have grown dramatically, especially through the Great Recession.

We have other legislation that will come to this side of the house that allows us to do things we have not done before and simplifies the process. We want to make our trust fund full with whatever monies we can since it is in deficit. We are working to clean up and simplify our process and get people to come to the table with us so we can collect those assets.

Assemblyman Daly:
You have all these tools in your toolbox. You determine a contractor or employer is delinquent. You then go to them and say, do a payment plan with us or we are going to seize this. Do you tell anybody else that these people are delinquent and not current with their unemployment compensation? You said you go to general contractors if it was a contractor. Do you tell anyone else? In a situation where somebody is behind, when you do your investigation, if you discover they are trying to conceal or not report any employees or not pay them overtime and it becomes a fraud case, when do you go forward with those things? As I said, we had testimony earlier on a different bill where a contractor on a Department of Transportation (NDOT) job was delinquent in his payments, and it was on your website as being delinquent. We told NDOT, and NDOT said they were not doing anything. Apparently, you were not doing anything either. The contractor went on and completed his job, and we have no idea if he ever got paid. I get heartburn with some of these problems, and I want to know what your process is and who you report any of these delinquencies to so we can get some enforcement.

Kelly Karch:
We usually do not work with other agencies. We try to take care of our business up front. We do work with other agencies when it becomes an issue that we can all get involved in and all have an interest in. In many cases, we receive subpoenas from other agencies or requests for information that we can answer by law. I was an investigator many years ago, and I used to work with the Nevada State Contractors' Board, Gaming Control, and anybody who could help me bring my case to conclusion.

We have 57,000 employers at any one time. Some are delinquent, some are not, and some file the reports. We want wage reports when they do not pay us the taxes. It is a constant battle that I have about 20 investigators and auditors working on. At any one time, we can assign an auditor to look at that business. We can do targeted audits. If there is an interest with other agencies, we do contact them from time to time, and they do contact us from time to time.

As far as getting into the criminal area, we do criminal investigations in conjunction with the Department of Labor, Office of Inspector General. We have a couple of them going on now, not only on employers but on claimants who have defrauded the system. It takes a little ways to get there, but that means we have clearly found a conspiracy to defraud the State of Nevada of benefit payments or of taxes. I will give you one circumstance where they set up a false business and put false people on the payroll and collected benefits. We work that all the time, and we work with

other states. It is a constant battle. We have several pieces to our puzzle to bring people to the fore. We like to work with other agencies. In the last few years, many employers have had a hard time, and we try to keep them in business. We want people employed, so we try to work with them to get through these hard times so they can continue to thrive and keep people off of unemployment insurance.

Assemblyman Daly:
When you have gone through your investigation, after the first report, you send them a letter. They either prove they are in compliance or they are not. You find out there is a delinquency. Do you make that information public? How often do you make it public, because I understand you can get that information? I know you are trying to work with them, but if they have a delinquency, I think it should be public information. How often are these reports generated, whether you make them public or not? How much trouble would it be to notify another licensing agency?

Kelly Karch:
It is a lot of trouble and work. We would have to audit each and every one of those cases to figure out if we need to send it over. Do we make it public? No, it is not public information. It is confidential information, and NRS 612.265 gives us the guidelines as to who can use this information. The people who can use this information are other state agencies that are doing their jobs, and they can use this information to complete their investigations. That law is there, and we work with different agencies all the time. But we do not make it public, and it does not belong in the public venue by law.

Assemblywoman Carlton:
I think what my colleague is getting to, and the thing that bothers me, is that it is the law that you pay this tax. You are not supposed to operate your business if you are not in compliance with the law. Where is the statutory authority that you have to allow people to break this state law and stay in business while they are not paying the taxes they owe the State?

Renee Olson:
I do not think our comments were meant to say that we allow people to skirt the law. What we were trying to say is that we implement complicated federal and state laws. Within that process, there may be a point of dispute about whether somebody is complying or not. We need the opportunity to investigate those instances of dispute. Employers as well as people receiving benefits have a right to due process when a decision is made. My staff at the Division makes decisions in terms of, for example, if an audit is conducted and there is the determination that an employer should have reported for ten employees versus

eight employees, there can be a dispute there dependent on how those employees are classified. Within the complicated areas of that law, we work with those employers to work through those understandings and the contentions that they may have about how they are reporting and paying their taxes. The due process they are afforded can take time to work through. Although we strive every day to make the right decisions according to those laws and regulations, there is the opportunity to prove us wrong. What we are concerned with is that it is not an easy thing to tell somebody, this employer is delinquent, and have that acted on quickly and not take into consideration the amount of time required for due process in our own unemployment insurance laws.

Assemblywoman Carlton:
I guess we are getting a little off track, so I will not take it too much further. It is frustrating. We had problems with the Department of Taxation a number of years ago, and now here. When times were good, we probably did not notice it the same way. Now that times are bad, there is a greater impact. If the people who are receiving benefits are expected to obey the law and suffer the consequences, the employers should also.

Chairman Bobzien:
Mr. Daly, do you have an additional question? Are we ranging too far off the bill at this point?

Assemblyman Daly:
I do not think we are too far off the bill when they are talking about the liens and various things. Maybe you misunderstood my last question. Once you have gotten to the point where you have made a determination that you are going to go forward with a lien, the due process is done. They will still get their day in court, but you have decided. It is like getting a ticket, and you are cited. Those become public record when a police report has been filed or whatever. I do not know why you do not have public record. There may be federal rules. Once you have already made that determination, that process is there. A determination that a delinquency exists has been made by you. I think that is where some of the notice would come in.

Renee Olson:
If it is a lien, and we have recorded it, it does become public information once it has been recorded. You are correct.

Chairman Bobzien:
Do we have additional questions? [There were none.] We are going to go now to support.

Renee Olson:
I did want to mention that we were just provided with a request for an amendment (Exhibit D). I do not know if this is the right time to mention that.

Chairman Bobzien:
Please do. I know that the amender was seeking your feedback, so it would make sense to get some remarks on the record.

Renee Olson:
It looks like the person requesting the amendment is here, and maybe he can help us explain what we are doing with this.

Chairman Bobzien:
Mr. Ostrovsky, are you signed in?

Robert Ostrovsky, representing Employers Insurance:
Yes. I signed in in opposition.

Chairman Bobzien:
It is under the rules. Thank you. I want to make this kind of procedure clear. You are a model example of how this is done. If you are opposed to a bill, it is not always because you do not like it, but rather it is because there is an actual issue with the bill that you need to correct. You are hoping to correct that with this amendment. We are very strict now in the Assembly as to support, opposition, and neutral.

Robert Ostrovsky:
The amendment that is posted online talks about section 9, and it should be section 3.9. That was my mistake. Why did this not happen in the Senate? During the Senate work session, we did raise the issue. We did not think it needed to be a proposed amendment at that time. We were meeting with the Employment Security Division along with the Division of Industrial Relations (DIR) to try to resolve amongst ourselves some method for solving this issue. The issue is fraud control. It is the other side of the coin and Assemblyman Daly and Assemblywoman Carlton brought it up. This deals with fraud on the part of claimants. The law requires that the Division check its records against DIR to make sure claimants are not receiving both unemployment compensation and workers' compensation at the same time. There are various reasons. Someone may cross from one to the other as they become eligible to work. What happens is that once they determine there is a match, the Division sends a letter to the claimant saying, please explain. They do not automatically cut off benefits. They say there is an issue, would you call us and talk to us so we can figure out what is going on. Most of them

get resolved. There are cases where someone is trying to defraud both the systems.

Historically, this is a problem that came up in 1997. During that year's session, Assembly Bill No. 168 of the 69th Session and Assembly Bill No. 505 of the 69th Session both failed in the Legislature. Both of them had language that said "private insurer." The statute at that time said the manager of the State Industrial Insurance System was supposed to provide this information. We all know the State Industrial Insurance System went away. Somewhere along the line, the statute got changed to talk about "private carriers" providing this information to the Division and permitted some rules for them to do that.

Fourteen years later, the Division is now pressing forward trying to get a better handle on that issue. They sat down with the industry saying they wanted to try a pilot program. They asked the largest insurers in the state to provide the data directly. That raised a red flag for us. There are now over 200 private insurance carriers in this state that provide workers' compensation insurance. Some carry only a few policies and some carry a lot. We all feed a system at DIR.

My insurance carrier, Employers Insurance, does a daily update to the Department of Industrial Relations on claims. Most of the other companies are doing the same. The problem is DIR's computer is 17 years old and does not talk to the system that exists at the Department of Employment, Training and Rehabilitation (DETR), so if DETR needs information, it has to make a request. They do sort of a hand search to see if there is a match. It is a very ineffective and inappropriate way to do business.

The Division of Industrial Relations has come to us and said, we are going to come to the insurance companies and get the data directly. We objected and said that we are already providing it to the State, so just ping their system. Pinging their system is difficult looking for a social security match. I have talked to DIR, and their system, which is an Oracle-based system, needs to be replaced. This legislation would say rather than their coming to the private insurers, go to DIR and ping their system. Based on that, DIR would have to go out and buy a new system. That system is charged to the insurers. We pay for everything in there. There is no General Fund. We are suggesting that rather than 200 insurance companies changing their systems, let us force DIR to go out and buy a new system. We are willing to pay for it through assessments. They need to install a system where they can talk to each other and resolve this problem for good.

The second part of that is that private insurers, which are covered under this law, only make up 50 percent of the population. The other 50 percent are self-insurers. Under the current law, they cannot access self-insured information. It only talks about private carriers. This would solve that problem too because they also feed the same DIR system.

In fairness, I sent this over to the Division through some emails that got kicked around. It never made it to them. They did not get a chance to really review it. I would ask that they have enough time to review it, and I will work with them to see if they could overcome any issues. I do not believe DIR has a problem. I would ask you to give us a little time to make sure there are no issues between the two systems. Maybe there could be a phase-in period. I will work that out in the next few days with them. I also told them that if they want to reject the amendment, they are certainly entitled to do that too.

Chairman Bobzien:
To make it clear, would this be through regulator authority to assess the fee to cover this investment?

Robert Ostrovsky:
The Division of Industrial Relations would build it into their budget, which is approved by the finance committees or the Interim Finance Committee if it is during the interim. Then, there is an assessment procedure where all insurers pay a fair share based on their size and number of claims they manage. We would pay that. I do not know what the cost would be. We would have to get some cost estimates. We are willing to work with everybody to solve it. In the meantime, we can continue to do what we have been doing, but we would like to get a permanent fix.

Chairman Bobzien:
To the Employment Security Division, the response to this proposal would be?

Renee Olson:
From the description, it sounds like it would be a good fix to a problem we have right now. Some background on this, the legislative auditors came in and said we were not complying with the law as it currently stands, which said that the State Industrial Insurance System would have to report this information to us. They do not exist anymore, so we ended up with 200 different providers to try to get this information from. If we could bring it back to one source and trade sources with one other database, that would seem good to us. We will be happy to work through any details on this amendment.

Chairman Bobzien:
We will need a little time on this to work it out, but we will rely on the updates. Do we have any questions for Mr. Ostrovsky? [There were none.] Do we have any additional opposition testimony? [There was none.] Is there anyone in neutral? [There was no one.] We will close the hearing on S.B. 35 (R1). Now that we have some bill sponsors here, we will keep working through our agenda. We will move now to Senate Bill 180 and welcome back Senator Segerblom.

Senate Bill 180: Requires a court to award certain relief to an employee injured by certain unlawful employment practices under certain circumstances. (BDR 53-561)

Senator Tick Segerblom, Clark County Senatorial District No. 3:
Senate Bill 180 is a very simple bill. As you may or may not know, currently there are Nevada antidiscrimination statutes that apply to employees, and there are federal antidiscrimination statutes that apply to employees. They are pretty much identical as far as what they cover with a couple of differences. Under Nevada antidiscrimination statutes, there are virtually no remedies. You can be discriminated against and file a claim, but at the end of the day, it is very difficult to recover anything because there are no emotional distress damages, you are limited to two years of back pay, and there are no attorneys' fees. Under federal antidiscrimination statutes, they provide up to $300,000 for emotional distress damages, up to $300,000 for punitive damages, and they also provide for attorneys' fees in addition to back pay. The federal damages are preferable.

The problem is that in Nevada law, we have a couple of criteria that are not covered under federal law. Those are the laws that we have passed here the last two sessions. One is sexual orientation. It is not illegal under federal law to discriminate based on sexual orientation, but it is in Nevada. Another one is gender identity. In Nevada, it is illegal to discriminate based on gender identity, and under federal law it is not illegal. The third category is state employees. Because of the Eleventh Amendment, the Supreme Court has ruled that the states are not liable for federal age discrimination laws. A state employee has to use state law, which does not provide any remedies.

This bill simply says that damages that are available under federal law would now be available under state law. [Referred to PowerPoint (Exhibit E).] Plaintiffs who are discriminated against could sue in state court, which they currently can do, but if you sue in state court under federal law, the defendant can pull you into federal court and get caught up in the federal process.

There are several reasons why you would want to stay in state court. In addition to the fact that currently some of those people need to be there, a state court also has a better procedural process with verdicts being rendered by six out of eight jurors rather than unanimous jurors. State judges are elected by the voters, so they are more in-tune to average citizens. Some people just like to go to state court. This would give you the alternative to go to state court if you wanted or to federal court. In my opinion, it will not destroy the system, as you may hear from some of the opponents. It does give a remedy to certain groups, including sexual orientation and gender identity, and it would also give different ways to go about it. With that, I will answer any questions you have, and we also have several witnesses.

Assemblyman Frierson:
My reading of the bill pretty much says that under current law, the court could find injury based on discrimination, but there is nothing that requires the court do anything about it in state court. This proposes to acknowledge that if there is an injury and discrimination there is an appropriate award to be made. That was my observation. My question is that you mentioned a cap in federal court of $300,000. Is there currently a cap, or would there be a cap, for damages under civil law in this bill?

Senator Segerblom:
We adopt all the limitations under federal law to Title VII of the Civil Rights Act of 1964 into state law. By way of application, only employers with 15 or more employees are covered by this. Small mom-and-pop places are not covered. If there are 50 employees or fewer, the threshold is $50,000, and it progresses up from there. A big hotel would have liability up to $300,000.

Assemblyman Frierson:
It does to the extent that it is consistent with the federal law.

Senator Segerblom:
It would not be anything other than for sexual orientation or gender identity that is not currently covered. The difference would be the forum you would go to.

Chairman Bobzien:
That was a good question to get on the record. Are there additional questions?

Assemblyman Hansen:
I have a problem with the "shall award" part and "shall" versus "may." We have had significant problems with that in construction defect issues. Is it normal in these sorts of things that the courts do not have any flexibility? It says the courts "shall award" the employee.

Senator Segerblom:
This was the Legislative Counsel Bureau (LCB) language. I honestly cannot answer that question. They are jury trials. If the jury finds in favor, it decides the appropriate damage. They are not mandated to award a particular amount.

Assemblyman Hansen:
Do you object if we try to get it amended to "may"?

Chairman Bobzien:
Mr. Hansen, we might want to get a little bit of perspective from our legal counsel on the use of that word.

Matt Mundy, Committee Counsel:
It does say "shall" and in line 7, it says, "as may be appropriate." Even though we use the term "shall," it gives the court discretion to consider, within the parameters of what the remedies are in federal law, how to implement those things.

Chairman Bobzien:
Mr. Hansen, do you want to continue on that?

Assemblyman Hansen:
I would still like to see that switched from "shall" to "may" so it is consistent in that. They should either both be "shall" or both be "may."

Senator Segerblom:
I personally have no objection. I would like to talk to LCB Legal Division to make sure we are not giving up something. The intent was not that it is mandatory, but if there is a finding, then the jury could determine what the damages were and award them as long as they are consistent under federal law.

Assemblyman Ellison:
I did not check the email until a few minutes ago against this bill. I have not found one yet that is in favor, but I am sure if I look hard enough, I might find one. Considering the impact on our courts this bill might create, it seems that this could hit a fiscal note. Is that not correct?

Senator Segerblom:
There is no fiscal note. It would be minimal relative to the total number of cases.

Assemblyman Ellison:
To me, this is like *Nevada Revised Statutes* (NRS) Chapter 40 written in another way. We are opening the gates the wrong way. It is not a good business bill.

Senator Segerblom:
This is already currently available under federal law. Being from Elko, you would have to be in federal court in Reno, rather than having it heard by your own judge that you elected in Elko, which might be more favorable to you as a businessperson.

Chairman Bobzien:
Mrs. Carlton, did you want to weigh in on that?

Assemblywoman Carlton:
Mr. Ellison, my understanding of this is that these people will be in court anyway. We are not changing the number of cases that are going to appear before the court, so there would be no impact in that way. This is merely the damages at the back end of the process. This would not change the impact on the court system in my understanding.

Assemblyman Frierson:
I want to clarify. Some of the questions confused me about the intent of the bill. In reading the bill, it seems to me that there is a requirement that there be (1) discrimination, and (2) an injury. It does not open the door for somebody to say, I have been discriminated against so pay me $300,000. It says, I have been discriminated against, and the court has found that I have been injured and am entitled to an award. If you were discriminated against, but there was no injury, you would not be entitled to any award. It is only if the court determines both discrimination and injury.

Senator Segerblom:
Correct. It only deals with employment. This is not where you walk down the street, and somebody says, I do not like you because of who you are. There is a whole body of law in this area. Currently, you have to go to federal court because, realistically, the only damages you can get are in federal court. Just to clarify, the problem right now is if you are discriminated against based on sexual orientation or gender identity, you cannot go to federal court. The only place you can go is state court, and there are no remedies for that kind of discrimination under state law without this bill.

Chairman Bobzien:
Do we have additional questions for the bill sponsor?

Assemblywoman Bustamante Adams:
I wanted to go back to our legal counsel. When Mr. Mundy was talking about the "shall" and the other statement, was that in the bill? Could you reference it again?

Matt Mundy:
I was just reading from page 2, line 7, where it says, "equitable relief as may be appropriate." I know we use "shall," but I think the general concept is to give persons involved in these lawsuits access to the remedies that are available under federal law. If there is a range of punitive damages under federal law, the court would have discretion to award those damages within that range.

Assemblyman Hansen:
From what Mr. Frierson brought up, what is the difference between being discriminated against and being injured, especially when bringing up things like gender identity? What are we talking about? Are we talking about a physical injury?

Senator Segerblom:
It deals with employment, so it has to be that you are an employee, and in your job, you were terminated, demoted, or suspended, so there is a financial injury. Or, it could be something based on harassment where a hostile work environment was created for you, and you suffered emotional distress because of that hostile work environment. It is an intentional action and not negligence. They had to intentionally pick on you because of your gender, age, race, religion, sexual orientation, or gender identity. It has to be one of the protected categories.

Assemblyman Hansen:
It also has to be an unlawful employment practice.

Senator Segerblom:
It has to part of your job. They have to do something to you intentionally based upon your protected status.

Assemblyman Hansen:
The employer and not just somebody in the work environment, correct?

Senator Segerblom:
If it is the supervisor, then the employer could be liable. If it is a coworker, then the employer has to know about it and not take steps to correct the action.

Assemblyman Livermore:
I am interested in how an employer, who has 20 people working for him or whatever the number is, is protected. When we create this, is there any way an employer could sue to recover costs if a permanent employee makes a cause where the employer has to expend his defense and defend himself and his business?

Senator Segerblom:
They get their costs, and if it was a frivolous lawsuit, they would get their legal fees too. These actions are currently going, but they are in federal court and not in state court. Your constituents in Carson City would have to defend this in Reno. They could not defend it here in Carson City at the district court.

Assemblyman Livermore:
I understand that. So an employee was terminated for whatever the reason is, and the employee finds an attorney to punish the employer for a wrongful act the employee thought happened, and it goes to court. Eventually, the court finds the employer innocent. When does an employer come back to the employee who made this frivolous claim to recover his costs? We need to make sure we are not filing lawsuits just to file lawsuits.

Senator Segerblom:
The actual costs, as opposed to legal fees, are recoverable automatically. The judge will award those costs against the employee. The attorneys' fees the employer has expended are subject to discretion by the judge. The judge will not award those unless he or she determines that the lawsuit was frivolous. If it was a 50/50 case, the employer would not get legal fees, but he or she would get costs, including depositions, transcripts, and all of those costs.

Chairman Bobzien:
Any final questions for the bill sponsor? [There were none.] Thank you, Senator Segerblom. We have one individual at the table. Good afternoon, sir.

Oscar Peralta, representing Nevada Hispanic Legislative Caucus:
I am representing the Nevada Hispanic Legislative Caucus (HLC) in support of S.B. 180. Part of the mission of the HLC is to guarantee fairness, parity, and equity in our state, not just for Hispanics, but for all Nevadans. And for this, it is absolutely necessary to end all forms of discrimination. The Legislature has demonstrated a commitment to the idea that, in our society, every person should receive equal treatment regardless of his or her background. It did this by enhancing protections against employment discrimination last session. However, these laws are practically unenforceable, and in many cases, provide no recourse currently in the absence of adequate

remedies. Senate Bill 180 brings the remedies available under state law to people who suffer employment discrimination in line with federal antidiscrimination law.

Under state law, remedies are limited to reinstatement and two years of lost wages, as has been discussed. I want to bring this into context. There is no provision of psychological injury and attorneys' fees. For example, the median personal income for Hispanic women in the United States is about $16,800 per year, according to the United States Census Bureau. In a case of a victim of employment discrimination who earns that amount, the maximum recovery of damages under state law is about $33,600. To that, you must subtract attorneys' fees and any amount the person made by working somewhere else in those two years, or the court deems should have been made in those two years. Even if she suffered severe depression as a result of that discrimination, the award is going to be several thousand dollars. Thus, most of these claims, while meritorious, are not pursued under state law simply because they are not economically viable. If they are pursued, the remedies are highly inadequate.

On the other hand, federal law provides for recovery of attorneys' fees and for money damages for psychological injury, as well as recovery for professional standing and reputation. In cases where the behavior is especially egregious, federal law allows punitive damages. However, as has been stated, federal law imposes caps on damages like emotional distress and punitive damages based upon the size of the employer. This bill would adopt those as well. For employers who employ at least 15, and up to 100—which are Nevada's small businesses—the maximum amount allowed for emotional distress and punitive damages would be $50,000.

Therefore, the HLC asks this Committee to support this bill. I would be happy to entertain any questions.

Chairman Bobzien:
Do we have any questions for Mr. Peralta? [There were none.] We will go to Las Vegas and call up Mr. Rempfer and Mr. Preciado. Mr. Rempfer, good afternoon. While we do this, let us go ahead and bring up the proponents in Carson City. You will be next.

Andrew Rempfer, representing Nevada Justice Association:
I am speaking in support of S.B. 180. We have already heard from Senator Segerblom, and I believe he has hit upon the main ideas for which we should support this bill. Currently, as the law is written, it does not provide for Title VII-type remedies under NRS 613.330 through NRS 613.345.

As Mr. Segerblom testified, regarding the remedies that already exist in Title VII, the federal equivalent would simply be applied to state law to give plaintiffs who reside in Nevada the opportunity to pursue their Nevada claims in front of Nevada judges, who are best situated to interpret Nevada law and provide the remedies this Legislature enacted years ago to protect Nevadans from discrimination in the workplace. It does nothing further or more expansive than that. In other words, it has no fiscal impact on the judiciary and no fiscal impact on businesses throughout the state. It simply provides the types of remedies that are already available in federal court to those plaintiffs.

As we have already heard, there are caps available to employees and employers for the types of damages they may suffer. Any perceived impact on businesses is, in fact, nonexistent because those caps already exist in federal law. Mr. Segerblom also testified that these laws only apply to employers larger than 15 employees. In most cases, and in my case, approximately 85 to 90 percent are in federal court representing primarily plaintiffs. However, the cases that I have filed always end up in federal court because of these exact caps. In other words, the business owners take advantage of the caps that already exist. That is not a reason to deny the passage of the bill. If anything, it is a reason to support it if you are a business owner. It gives you the certainty knowing that if there is discrimination of any type, or any type of illegal activity, you will at least have that assurance if there are caps in place.

I do want to go back to a certain issue that was discussed earlier, specifically as to assurances that these types of suits are not frivolously brought by plaintiffs who simply want to bite at the heels of employers and extract an early settlement. There is in fact a Nevada Equal Rights Commission (NERC), which is the equivalent of the Equal Employment Opportunity Commission (EEOC). The Nevada Equal Rights Commission is charged specifically with investigating these types of allegations, and as a plaintiff, you go through that process. It is a mandatory process, and it is the point at which employers have the opportunity to settle these cases if they are moderately legitimate at a cost that is low. It is cost-effective and a wise business decision. Employers are also able to procure employment practices liability insurance for these types of activities. Any perceived business impact by the passage of this bill is negligible.

The last thing I want to focus on is the idea that the statute itself, NRS 613.330 through NRS 613.345, was passed without remedy. It seems that by simply passing this bill, the Legislature is doing what it intended all along, which is to provide the remedy that is already available in federal law to those plaintiffs in state court. For these reasons, I would respectfully request that the bill be supported and passed.

Chairman Bobzien:
Do we have any questions from the Committee?

Assemblyman Ohrenschall:
One question I have that might help elucidate things for the Committee is that right now, if someone does file a frivolous action on behalf of a plaintiff, the court can sanction that attorney. Am I correct in this matter? There is not a get-out-of-jail-free card. There are penalties. I wonder if you could go into that a little bit for the Committee.

Andrew Rempfer:
As to the attorney himself or herself, there are penalties for bringing up frivolous lawsuits under our rules of ethics and the Nevada Rules of Civil Procedure. This statute adds for the plaintiffs who bring those actions, as Mr. Segerblom testified, a disincentive. For example, in federal courts, we have a system called a mandatory settlement conference. This is where judges meet with you early on to avoid both sides needlessly spending fees and costs on a lawsuit that at some later point in time could be determined to be frivolous. The mere threat of those types of sanctions encourages the active thought process of both the plaintiff and the defendant to consider settling these cases early. If they are later deemed frivolous, the person who brought them is potentially liable to the employer for the costs and fees.

Assemblyman Ellison:
If you went to federal court, it would cost you about triple the amount of money it would in state court. With state court, these high fees are not associated. Who makes the money, the trial lawyers or victims?

Andrew Rempfer:
I am confused by the question. The difference is between the costs and fees. Costs in federal court are more expensive than they are in state court. The fees are the same irrespective of the venue.

Chairman Bobzien:
Are there additional questions? [There were none.] Welcome, Mr. Preciado.

Christopher Preciado, representing Progressive Leadership Alliance of Nevada:
The Progressive Leadership Alliance of Nevada (PLAN) supports S.B. 180 because victims of discrimination based on sexual orientation and gender identity do not have legal remedies under current law. Senate Bill 180 would provide that and allow them to go through state court. National and state studies have revealed that the effects of discrimination are additive in lesbian, gay, bisexual, transgender, and queer communities of color, which are more

likely to face discrimination in employment practices than their white counterparts. For this reason, this bill qualifies as part of PLAN's Racial Equity Report Card, which will be issued by the end of this year.

Chairman Bobzien:
Are there any questions? [There were none.] We are going to come back to Carson City. I believe we are starting to enter into the "me too" phase of the testimony. If you have anything new, please get it on the record.

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:
Overall, my testimony is "me too." We are primarily focused and place the most emphasis on the issue of when an employer has been found guilty of this type of discrimination. While we are not antibusiness, we are proworker. Those things are not mutually exclusive. We believe that if an employer is acting badly, there should be an appropriate penalty. The penalty available under state law is not sufficient.

Chairman Bobzien:
Please all stay at the table, and we will see if we have any questions for you when you are done. Mr. Dreher, good afternoon.

Ron Dreher, representing Peace Officers Research Association of Nevada; Washoe County Public Attorney's Association; Washoe School Principals Association; We Are Nevada:
We are asking that you support S.B. 180, as you have heard from the bill sponsor and the proponents of the bill.

Priscilla Maloney, Labor Representative, AFSCME Local 4041:
We have nothing new to add, though we are open for any questions the Committee might have. With a resounding "me too," we urge your support of S.B. 180.

Chairman Bobzien:
Do we have any questions for our panel? [There were none.] Do we have any additional testimony in favor of the bill? [There was no one.] We will move to opposition. Let us try to fill these seats. We have Mr. Abney signed in, along with Ms. Jacob, Mr. Gescheider, and Mr. Madole. Good afternoon.

Tray Abney, representing The Chamber:
We oppose S.B. 180. We are worried about any type of bill or proposal that opens up our employers and members to further litigation. If we need to talk about different remedies, you can work on the NERC process. To open it up,

without limitation, to attorneys' fees and to allow trial lawyers to get into this process and come after our members when there is already a defined process in state law, we are concerned about that. Every dollar spent in losses like this is one less dollar the employer has to hire people. If you are concerned about creating jobs and making our economy healthy, allowing trial attorneys this type of power to go after employers is not the answer.

Chairman Bobzien:
What I would like to do is similar to what we did with the support. If we could continue with testimony across the row, and you can all hold if we have questions at the end.

Bruce Gescheider, Nursery and Landscape Specialist, Moana Nursery, Reno, Nevada:
Thank you for letting me testify in opposition of S.B. 180. I am a business owner with Moana Nursery, and I also happen to be on the board of The Chamber and Associated General Contractors. I probably should allow these gentlemen to make the case, but I will make it from a representation of Moana Nursery and our 160 employees, which is down from 450 after the last six tough years of business. Sales are down 60 percent over that time with only operating expenses in the following categories growing as a percent of sales: taxes, fees, insurance, and legal costs. During this precipitous decline, those were the only increased operating expenses I had in my business. Surviving has not been made easier by unintended consequences of poorly constructed laws. No one I know of is okay with unlawful employment practices. There are certainly plenty of federal and state mandates aimed at employee protection. In fact, there is already a thriving business of trial lawyers seeking out and ready to protect against these unlawful practices. There are billboards all over town.

What is worrisome about S.B. 180 is the added inclusion of costs and attorneys' fees. This opens up an avenue to enrich trial lawyers with the promise of employee rewards with no financial consequences. This should sound familiar as it does vividly to those of us at Moana Nursery. We are a landscaper trapped, caught in the web of construction defect cases where nearly every time we did nothing wrong or relevant.

Chairman Bobzien:
I am sorry, but I want to keep on the subject of this bill. I do understand and appreciate the perspective as a business.

Bruce Gescheider:
Do you understand the connection of the two?

Chairman Bobzien:
No. I appreciate the overall picture of the costs associated. You and I have had long discussions about the challenges you face, but for this testimony for this bill, please stick to this bill.

Bruce Gescheider:
I am trying to get to a point to show that there is a similarity between the construction defect bill and the way it has unintended consequences compared to the unintended consequences we will find here.

Just like the construction defect bill, there are remedies for unlawful labor practices already in place. They do not provide this fertile income production for trial lawyers that we have seen in the past. Thus, the impact of the passage of the bill will be another immediate increase in insurance premiums and another operating expense negatively affecting jobs, job creation, and business survival. Nuisance lawsuits hurt businesses and should be looked at critically versus true and proper employee practices that need legitimate protection. Please do not use a broad lawyer's brush for fixing a manageable problem. With businesses facing mounting regulations, fees, taxes, and the negative impacts of affordable health care implementation, adding costs and attorneys' fees will have an unintended consequence on our business community, business-friendly reputation, job creation, and economic development.

Craig Madole, Senior Associate, Associated General Contractors of America, Inc., Nevada Chapter:
I would briefly state that I am also here to help keep the small businesses off the endangered species list. I listened to the earlier testimony, and it was pointed out that we have an Equal Employment Opportunity Commission, which allows a less formal way to settle. Then we are told there are remedies available in federal court. Then we are told there is some compelling reason that we have to put this in state court.

Let us take a look at some of the things that will wind up in state court that perhaps might offer a financial incentive, particularly to former employees, as Mr. Livermore pointed out. Privileges of employment are in the law, in NRS Chapter 613. So is adversely affecting your status as an employee. Also unlawful is interfering with the use of an aid or an appliance by a disabled person. Does this mean that if somebody bumps into your cane, you can file a lawsuit? Another is discrimination for engaging in lawful use of any product not affecting your work. I do not exactly know if the marijuana laws are passed, but perhaps that is what it is about.

I am trying to point out that there are some very gray and obtuse things on this that will wind up in court. There is always that hypothetical case of some attorney coming to a former employee and saying, could you use $5,000 or $10,000? I think S.B. 180 will make things even tougher on business, and I think Mr. Gescheider made a strong case about the fact that businesses have had a tough time the last few years. Let us not make it any tougher. Please oppose S.B. 180.

Joanna Jacob, representing Associated General Contractors, Las Vegas Chapter:
I am here to say a resounding "me too" to the comments from my colleague to the north.

Chairman Bobzien:
Are there questions for our panel?

Assemblyman Frierson:
Mr. Abney, you mentioned NERC as being the current option in the state. Can you describe the process that would involve NERC and how that would be a substitute?

Tray Abney:
I cannot describe the process. There may be somebody in the room who can. As far as the award, they give back pay, sick pay, vacation pay, and/or being rehired. As far as remedies for the employee, they have those. I do not know the process of how an employee would go through that.

Assemblyman Frierson:
Did somebody tell you that NERC was the better option?

Tray Abney:
If this is a widespread problem in the state, maybe we should start with the processes and procedures we have in place now instead of opening up members to attorneys' fees.

Assemblyman Frierson:
I get that. That is your response, but you do not know what the process is. How do you know the process is an adequate way to deal with it? It is only because you brought it up as an option that I am asking. I do not know if you think that is an option and have a basis on which you think that is an option.

Tray Abney:
That is fair. I have not heard why it is not a good option. I have heard a lot about why we need attorneys' fees, but I have not heard if the current process is broken. Let us look at the current process we have, and if it is broken, let us have a discussion, hearing, or bill about that. That is not what this bill does.

Assemblyman Frierson:
I surmise that the expression of there being a problem is called S.B. 180. I think that is the point of the bill. It is an expression of the problem. My next question is, what is the alternative for a person who has been discriminated against and is found to have suffered an injury? There were concerns or questions about what would constitute an injury. You were talking about not bumping into someone's cane, but that is not an employment practice. We are talking about an employment practice. Say someone is discriminated against, and as a result of that, he or she may have gotten a significant demotion at work, and has had some family issues because he or she cannot pay the bills. He or she has a documented history of needing counseling because of depression and anxiety. There is something documented, and a court has found that was the result of the discriminatory practice. What is that person's remedy to handle those damages if it is not included in state law?

Tray Abney:
From what I understand, they already have remedy in federal court.

Assemblyman Frierson:
In state court, what is the remedy? Or are you saying federal court should be the only remedy?

Tray Abney:
It seems in this case federal court is a remedy. Nobody has come up here and presented this as a widespread problem that needs to be fixed or addressed.

Chairman Bobzien:
Are there additional questions?

Assemblyman Hansen:
My question is to the two representative of the Associated General Contractors (AGC). What percentage of the AGC are union contractors? I am assuming you are representing the union side of that as well today, correct?

Craig Madole:
Less than half are union contractors. We represent both.

Assemblyman Hansen:
The unions are supportive of what you are doing, or at least the members that are in your chapter. Is that correct?

Craig Madole:
Yes. There are many occasions where I disagree with the unions, and this is certainly one of them.

Chairman Bobzien:
Mr. Hansen, to clarify, there are certainly union shops in the AGC as members, but even those shops themselves would not portray themselves as being able to speak on behalf of the unions.

Assemblyman Hansen:
That is what I was getting at. If I am a member of AGC, and I have you speaking for me, you represent my organization. Do you not?

Craig Madole:
Mr. Hansen, like any group, I could not assure you that of several hundred members, every single member would agree with every statement I made. I would say that we have an overwhelming support of everything I said here today as far as the membership of AGC goes.

Assemblyman Hansen:
Thank you. I wanted to get that on record.

Assemblywoman Carlton:
Along the lines of Assemblyman Hansen's questioning, AGC is a representation of contractors; not of employees but employers, to make that perfectly clear. Is that correct?

Craig Madole:
I do not dispute that statement.

Assemblywoman Carlton:
To further elaborate on Mr. Hansen's inquiry, AGC is representing the employers in this issue, but the employees would have their own voice at the table if they were here sharing their attitudes. These are merely the representations of the employers on this issue.

Craig Madole:
Certainly nothing I said was meant to represent anyone other than the employers who are members of the AGC.

Assemblywoman Carlton:
I just wanted to make sure everyone was clear on that. I wanted to cut to the chase.

Assemblyman Ellison:
I do not know if AGC or The Chamber wants to address this. I am in business also. Why, all of a sudden, do they want to switch us over to district court versus federal court? I think it all comes down to dollars and cents. Trial lawyers want to take it to district court because they can take it in there and have more profit. If it goes to federal court, there is a cap on it, and it takes longer to get it into court. After it is in court, they are limited as to what they can receive. If it goes to district court, the lawyers could have a larger payday. Is that not true? I am looking it in a business sense. Do we want to put a cap on this? You wanted to see support out there, so let us put a cap on it and say it can be no more than $50,000. If we are going to do something, let us do it right. Let us not throw it out there and hope it sticks. Maybe you can address that.

Tray Abney:
Any cap we can put on attorneys' fees would be just fine with me.

Assemblyman Horne:
This does not expand it any further than what is already in federal law. This is not an expansion where they would get a windfall if they go to state court versus federal court, from what I understand. From what I am hearing from the opponents of the bill, it sounds as if your concerns are frivolous suits coming and having to pay all these attorneys' fees. If there was language in there that said if it was found to be a frivolous suit and the defense attorneys would be paid by the complainant, would you be okay with that bill?

Bruce Gescheider:
I think the issue of whether we would be okay or not is all tied up in costs and attorneys' fees. What we have seen happen in construction defect is that the costs have gone crazy with swarms of people attacking homeowners. This is the unintended consequence of having costs and attorneys' fees put into a bill that is in state court.

Assemblyman Horne:
My question was specific on this bill. If there is language that said if it is found to be a frivolous suit, your attorneys' costs and fees would be paid, would you support it?

Bruce Gescheider:
I would not support it, but it would certainly improve it.

Assemblyman Horne:
All of your arguments here today fall flat, do they not? You are arguing that the costs are going to be exorbitant to defend these suits because they are frivolous. If a court finds that someone was discriminated against, and he or she was damaged, then he or she can be made whole. If that finding is not there and the suit is found to be frivolous, and the bill said if it was found to be frivolous you get your attorneys' costs and fees, why would you object to that? Either you have discriminated against and hurt somebody and should pay, or it is a frivolous suit and you should be made whole yourself for what you had to defend. Why would you not support that?

Bruce Gescheider:
Anything that increases our insurance costs and requires us to protect ourselves adds to the cost of business. Right now, we obviously cannot afford to have those kinds of increases. I do agree with you that if the frivolous lawsuit had teeth both ways, that would improve this bill dramatically. You asked me if I would support it. The answer is no. I think that we have enough in place and remedies for the things we have been talking about today. Having been an employer for 12 years in the state of Nevada, I have had one age discrimination suit that was thrown out and one harassment suit. These were handled fairly. We do not like to see anything like that happen, but the process worked, and it worked to the benefit of both the employee and the employer. What was frivolous became frivolous, and what was real got corrected.

Assemblyman Hansen:
I have a question for Legal. One thing that was brought up earlier was that there is a lack of remedy in Nevada law, and that is one of the reasons we need this bill. As I look through NRS 613.310 to NRS 613.435, I find that the heading in NRS 613.325 says, "Authority of Nevada Equal Rights Commission to adopt regulations relating to federal statutes." It lists what can be done there. When I skip to NRS 613.333, it lists a whole series of things that are violations that you have to make right if, in fact, the employer is found guilty. What is missing in Nevada law that will be filled by this bill? It seems to

me there are remedies under Nevada law through NERC or through specific statute that address it. I have a hard time believing that if somebody is discriminating under Nevada law there is no remedy to make things right.

Matt Mundy:
In general under NRS Chapter 233, it provides for administrative review of discriminatory acts for NERC, so they have some limited authority to issue injunctions and try to mediate between the employer and employee. With that said, after that process takes its course, they take it to the courts. The main statute under Nevada law is NRS 613.330, which, on a general basis, provides for discrimination from termination or demoting an employee. The other statutes you referenced, NRS 613.333, 613.335, and 613.340, are fairly specific. What we are talking about in NRS 613.330 is the law that mirrors Title VII in the federal law. It does not specify any specific damages.

The problem we have in Nevada is that the lower courts are not courts of record. We do not have a lot of case law in point from the Nevada Supreme Court that specifies what exactly the damages are. Without speculating too much on what the courts would determine they would be, the courts would probably look to the federal law because the Nevada Legislature enacted NRS 613.330 almost verbatim to the federal law. Again, we do not specify what the remedies are. The issue is in the main statute for discrimination, which is NRS 613.330. The statute does not specify the extent of the damages, and we do not really know how the courts have interpreted that and what all they include. I think that is the issue with the bill as far as specifying that those are parallel with federal law.

Assemblyman Hansen:
While there is absence of case law, that does not mean that there is not, in law, remedies for discrimination where an employer has been found guilty. That is what I am getting at. There may not be a series of case law in Nevada law, but there obviously is in federal law. There are remedies to NERC. The argument that there is a gap in Nevada law, where you can be discriminated against and have no way to get compensated for that, falls flat by our own statutes, even in the absence of specific case law.

Matt Mundy:
From my own perspective, we are not saying that the remedies a court would put into place are not what they would otherwise be under federal law right now because of the enactment of statute, the manner in which it was done, and the consistency in which it was done in federal law. We are not saying that all of those remedies are not necessarily available to a court right now, but this is to codify that.

Chairman Bobzien:
Are there additional questions?

Assemblywoman Diaz:
Where the argument is not holding is that currently we have these federal guidelines, and they can go to federal court. We are trying to bring it to part of the state court system. From what I am hearing, state court could potentially be less expensive than having to take it to federal court. Is there a concern with our state courts? Are they not fair? It might be more cost-effective than some of you are actually arguing.

Chairman Bobzien:
To restate it, are there no benefits for transferring this court jurisdiction from the federal level to the state level? The proponent argued cost savings in terms of geography, convenience, et cetera. I wanted to hear your response to that. To Mrs. Diaz's point, is there a general concern that state court would be more adverse to your defense than federal court?

Craig Madole:
We are willing to take a chance with the existing system. It seems to be working, and we do not need any more help.

Chairman Bobzien:
So, fear of the unknown.

Bruce Gescheider:
Unintended consequences. We have seen it happen.

Chairman Bobzien:
That is fair.

Assemblyman Livermore:
As I sit here listening to the discussion and with all of the bills we have seen throughout this session so far, a bill comes forth that fixes something. I am not hearing that today. I am not hearing that there is a line at federal court and cases cannot be heard. What I am seeing is an opportunity—a job opportunity. There will be billboards. Going down the freeway, billboards will say, we are attorneys Frick and Frack. If you think you have been unlawfully terminated from your job, call us at this number.

I am trying to understand both sides of the equation here. I believe Mr. Gescheider, who deals with employment day-to-day, gets it. I think he knows he needs a reliable, educated, willing-to-work labor force. Beyond

that point is what his concern is. All of the other necessities that are out there that people try to put in your way is what you fear. If I was an employer, I would probably be sitting in that seat fearing the same thing.

Assemblyman Hansen:
Actually Mr. Livermore brought up an interesting point. I would love to hear an example of a case of someone who felt he or she was discriminated against and for some reason there was an inadequacy in law for them to be made whole. Obviously, you are not the ones to answer that. When you come back up, I want to hear if there are specific cases where someone was treated unfairly under existing law, and for whatever reason, there was no remedy in law to make them whole. I think that is what has been lacking in this hearing.

Chairman Bobzien:
Specifically to the bill sponsor, that gap in the jurisdiction, given that portions of our discrimination laws are not in federal law, is what we are going after. Mr. Frierson, do you have any final thoughts on this one?

Assemblyman Frierson:
I am trying to find the remedy since nobody knows it. It is the reason why we should not pass this. The only thing I can find is in *Nevada Administrative Code* (NAC) dealing with NERC, which empowers the Commission to make a determination on whether or not there was discrimination. From what I can see it is utterly silent on what the remedy is. From my reading of NAC, there is a process to determine whether or not there is discrimination with NERC, but to the extent that there are damages and a way to award them, it is silent. There is reference to a mediation process that often happens before there is a hearing where damages can be agreed upon. In the absence of that type of agreement, I am finding nothing other than a finding of discrimination that they can then take to federal court if they so choose. Unless somebody can correct me, I do not see a remedy.

Chairman Bobzien:
That is a good question. Do we have anyone from NERC here? Are you from NERC, sir?

Michael Baltz, Chief Compliance Investigator, Nevada Equal Rights Commission:
I am here from the Nevada Equal Rights Commission.

Chairman Bobzien:
Good afternoon. Mr. Hansen, do you want to ask a question, or Mr. Frierson, perhaps?

Assemblyman Hansen:
I have the same question Mr. Frierson brought up. Right now, if somebody files a discrimination claim against an employer, what are the remedies he or she has under existing Nevada law to be made whole?

Michael Baltz:
In 2011, October 1 to be specific, there were some protected categories that were not covered by federal jurisdiction, specifically sexual orientation and gender identity or expression. Recently, the EEOC has provided guidance that those protected categories are now covered under Title VII as gender stereotyping. In essence, those protected categories are now offered federal protections.

To get back to your question about remedies available under state law, unfortunately, I did not print out NAC Chapter 233, but I do believe there were specific remedies mentioned in NAC Chapter 233 regarding employment actions and employment discrimination. Beyond that, the remedies available are the remedies available through the federal court process. Our process with NERC is an administrative process. An aggrieved individual must file either through NERC or EEOC and exhaust their administrative process before they can take a lawsuit into court.

Chairman Bobzien:
Are there additional questions for NERC? To clarify that, the EEOC has said that these classes would roll up under . . . what term did you use?

Michael Baltz:
Title VII, and it is gender stereotyping.

Chairman Bobzien:
In federal law. If there are no further questions for the panel here, let us go to an opposition panel in Las Vegas. Is there anyone opposed in Las Vegas wishing to provide testimony? I believe we might have some local government testimony to hear on this one. We are certainly getting close to the "me too" phase of the day. If you can provide us with new information, please do that. We will invite more people to the table here in Carson City.

Scott Greenberg, Assistant General Counsel, Clark County School District:
The school district has two things to mention. We are the largest employer in the state with approximately 38,000 employees. We are here as an employer but also as a local government entity and have concerns on that side also. I will not rehash it, but we do have issues with the language in the statute that has

already been pointed out about the "shall" versus "may." Those types of language problems tend to end up in large court fights about whether it is required or if there is discretion. We suggest that be cleared up.

As far as the fiscal impact, the statute says there is no fiscal impact. First of all, while it does cover Title VII categories, there are certainly areas in Nevada law that do not fall under Title VII. There are no damages for age discrimination. Age discrimination law allows for back wages and an equal amount of back wages, which is usually termed "liquidated damages." This statute would certainly raise the possible damages under the age discrimination category. It would also add damages for any other categories Nevada has or would pass in the future. There was some discussion about sexual orientation and gender identity. The gentleman from NERC mentioned the EEOC making a statement that those things may be covered by Title VII. That is certainly on the cutting edge of law and subject to much litigation whether those things get covered or not. People have tried to put those into there, but it is not a clear-cut answer, and many of those are found not to be. We believe these would have significant damages in a number of areas that are not covered under Title VII. I believe there is a bill presently about adding caregivers and other types of categories, so as other categories get added, those would add additional damages that currently do not exist under Title VII.

People have talked about unintended consequences and the whole issue about federal court versus state court. I think there was a comment about how it should not matter because they are already in the court system so it does not change the cost or expenses of that. It does affect that as far as the State. You are taking these cases that get litigated in federal court and shifting them to state court. We already have a state court system that is burdened by an incredibly overloaded case system. Federal court has been dealing with these cases for close to 30 years. They have special procedures in place to deal with these programs. I think Mr. Rempfer mentioned the early programs to get people in and try to mediate them. They have a good success rate at getting some of these things resolved. Nothing like that exists in state court. It took the federal court system many years to get to a system where they were handling a large number of employment cases, which would not exist if you end up in state court. You have the added state court expenses.

Also, there may be added expenses and costs for NERC. In the whole federal system now, there are many guidelines and regulations from the EEOC under all of those laws dealing with the Americans With Disabilities Act, sex discrimination, and religious discrimination, and a lot of these laws depend on those regulations. The Nevada Equal Rights Commission would be the state

entity to promulgate any of those regulations, and it does not have anything like that. It would be an issue as to whether they would start trying to come up with regulations if we are to have a whole independent state court system and state law system to base these laws on for courts and other interpretations.

One of the other issues is the state court cap. The district is a public entity. Obviously, public entities are covered by the state court cap, which has been recently increased to $100,000. That covers all courts, including horrendous cases such as wrongful death and those types of cases. This is essentially making employment cases into court cases. State law has always recognized the protection through that cap for political entities. The district believes that this is basically changing this into court actions and should be subject to the state court cap, which is in NRS Chapter 41.

There have been comments about how in the federal system you do not get people from your community deciding these cases. I would certainly disagree with that. The juries in the federal system come from the communities where those courts are. The federal judges are usually lawyers who have been living and working a long time in the areas where they are appointed. Nobody has ever suggested that the federal appellate court is some conservative court that hates employment cases. In fact, they have a reputation as being rather liberal. These cases tend to have lots of appeals and go on for a long time.

We already have an overburdened Nevada Supreme Court and are possibly looking to trying to get an appellate court because they have such a high caseload. In any time with a bad economy, these kinds of claims start rising with both NERC and the EEOC. In NERC's case, they could possibly get an increase because you would now have an avenue for these to only be state law claims as opposed to federal claims from the EEOC. There was a comment about NERC's power or responsibilities. The Nevada Equal Rights Commission does have the power to bring cases to public hearing where they would then be able to impose some remedies they have. It appears the remedies are back wages, benefits, reinstatement, and things of that nature. It is our understanding that there has not been any kind of hearing like that in 25 to 30 years.

It is difficult to see what problem this statute is meant to correct other than shifting a great number of cases out of the federal system into an already overburdened state court system and also adding this possible $300,000 in damages and attorneys' fees to several categories where those damages do not already exist. That has a fiscal impact to all employers, and in particular public entities.

Chairman Bobzien:
Do we have any questions for the Clark County School District?

Assemblywoman Carlton:
I am a little confused. If there is no remedy for this, there would not be a hearing, so there would not be a record of a hearing. I am not a lawyer, but I have a lawyer shaking his head. I do not understand what that statement is based on. We are trying to look at the problem, and you are saying there has not been a hearing, but that cannot be. It is a chicken and the egg sort of thing.

Scott Greenberg:
I did not say there was not a way for hearing. I said there is a statute that allows NERC to hold hearings if they find unlawful discrimination has occurred. That would include any of the employment categories that currently exist in the law, including the ones that are outside Title VII: for example, age discrimination, gender identity, and sexual orientation. The Nevada Equal Rights Commission has the power to take those cases, if they deem there was discrimination, to a hearing where they do have the remedies of back wages, benefits, and those types of things. My comment was that they have not done that in at least 25 to 30 years. That is some evidence about whether there is really a problem out there that needs to be corrected; and, if there really is a problem, one would consider further review before you start adding a very large damages possibility onto these laws that have been here for a very long time. There is already a remedy section, at least under Title VII, for many of these categories that exist. The Nevada Equal Rights Commission public hearing is in NAC Chapter 233.

Chairman Bobzien:
We are getting some clarification on that from our legal counsel. Do we have additional questions?

Assemblywoman Carlton:
Would the school district be indemnified with this? Do they carry the same sovereign immunity we have? That was always my impression.

Chairman Bobzien:
Yes, that is correct.

Assemblywoman Carlton:
That would be $50,000?

Chairman Bobzien:
$100,000.

Scott Greenberg:
If you are talking about the state court cap, under Title VII, the state caps do not apply to federal law. If this becomes part of state law, as it is drafted, it is very unclear whether those state caps would apply to this law. That is one of our issues with the language. I do not believe the proponents of it would say that those state caps apply to this. It is our position that putting these damages on at state court makes this a court case, and it should be clarified that they would be subject, under state law, to the state court caps, which are currently $100,000.

Chairman Bobzien:
We are trying to get some intent on the record.

Matt Mundy:
I understand the intent of this is to apply the federal court caps to the extent that they are greater than the $100,000 cap. I may need some clarification on that, but that is my understanding of the intent. The federal caps would apply.

Chairman Bobzien:
We will have the bill sponsor add that to his list for when he comes back and talks about how he sees that going forward. We will do some research.

Do we have additional questions for the Clark County School District? [There were none.] We will come back to Carson City. We are very much in the "me too" portion of the afternoon. We appreciate your coming down and sharing your perspectives from your own personal businesses. Mr. Temen, would you like to lead us off?

Gene Temen, President, Quick Space, Sparks, Nevada:
I am a 40-year employer of Nevadans. I have been through everything you can think of going through in all kinds of different companies. We have always had a remedy through our current system, and we have always come up with an outcome that was fair, whether to the employer or employee. I have had a long experience, and this smells a lot like NRS Chapter 40, which has been mentioned. Our experience has been that there are plenty of remedies if someone is actually harmed or mistreated. I would like to echo the unintended consequences statement. I do believe that could be the situation. We have plenty of guidelines that will help both sides.

John Sande IV, representing City of North Las Vegas:
I want to echo the comments of other local governments and offer my "me too."

Michael Cate, President, Construction Development Services, Inc., Reno, Nevada:
I am a business owner going on 30 years. To me, the employees are my reputation regarding what I do for a living, how I get my job done, and how I make my living. They are very important to me. I do not have very many disgruntled employees. It is a situation where I have employees who have been with me for 28 years. I do have a little take on this law. We are all trying to build economic development, have businesses grow, and hire more people. The way this sits, it seems if I am doing okay at 14 or 15 employees, I am going to stay there. I am not going to grow to 25 or more. Why would you put yourself in jeopardy of a law like this? Or I will put people on for less than 20 weeks and lay them off and try to schedule my workload accordingly because it does not make sense to be in this position and be a part of this type of lawsuit.

If I have a disgruntled employee, and he comes after me, I do not want to be in the position where I owe him $1,000 and pay him $1,000 and owe the attorney $75,000. That is where this door opens up on this issue. What really bothers me is how open-ended it is for the attorney's side. That is my concern on this. If you have a 400-employee manufacturer who wants to come to this state, and he sees a law like this, is he going to look at other places to do his business? Why would he put himself in that type of environment if this blows up the way something else has. I think we need to be careful on this type of policy in a state where we are trying to grow businesses and the economy. We all want to do the right thing and want to have this state get back on its feet. I think policies like this hurt it.

Chairman Bobzien:
Do we have any questions for the panel? [There were none.] Anyone else wishing to get some opposition remarks on the record? [There was no one.] Is there anyone wishing to testify neutral? [There was no one.] I will invite the bill sponsor back up.

Senator Segerblom:
Just to reiterate, this does not provide anything that is not currently available. It says you can go into state court as opposed to federal court. The remedies available under this bill are already available. It is not adding any damages. With respect to the current damages under Nevada law, I cannot cite it, but it is in NRS Chapter 613. It says two years' back pay and reinstatement.

It does not say attorneys' fees, emotional distress damages, or anything more than two years. The reality is because there are no attorneys' fees or emotional distress damages, lawyers do not bring these cases in state court.

Finally, as you heard, there are categories of employees who are currently protected by Nevada law, which without this bill have no remedy because they cannot go to federal court because federal law does not cover them. That was the genesis of the bill.

Chairman Bobzien:
I do not usually accept questions for a cleanup, but this has been a pretty involved hearing.

Assemblyman Daly:
One final comment. It does employ what is commonly known as the "American rule." Under 42 U.S.C. § 2000e-5, you only get attorneys' fees if you are the prevailing party. That is in the federal code that you are trying to recognize in the cap. If it is anything like NRS Chapter 40, you only get attorneys' fees if you win, and if you were discriminated against by a person, and you made him go all the way to court to get it, he should be entitled to get it.

Senator Segerblom:
It is currently available in federal court.

Chairman Bobzien:
Senator, thank you for spending your afternoon in the People's House. We will close the hearing on S.B. 180. We will open the hearing on Senate Bill 310.

Senate Bill 310: Revises provisions governing financial institutions. (BDR 55-702)

Senator Aaron D. Ford, Clark County Senatorial District No. 11:
Senate Bill 310 is a real example of a very easy, simple bill. There are two parts to it. Something happened to me the other day that demonstrated the appropriateness of the first part of the bill. I got a little hungry after our meeting of the Senate Committee on Judiciary. I went downstairs to buy some hard-boiled eggs, but I did not have any cash. I went by the elevator and used the ATM machine. As I was sticking my card in, I saw a placard that said you will be charged $3 if you use this ATM machine. I bit the bullet and took some cash out. Before I took my money out, the screen also told me that I was going to be charged $3 to take money out of this ATM machine. It dawned on me how relevant what I had just experienced was to the bill we are bringing.

In December of last year, President Obama and Congress agreed to pass a bill that now does not require the placard that I told you about. It no longer requires the placard to be placed above an ATM machine. It is because, as I mentioned, there is an electronic notification that you will be charged a fee. The reason they did this was for a number of reasons. It cut out on a lot of frivolous litigation. Some people would remove that placard. There is a $2,000 fine if a bank does not detail that you can be charged the fee. Some unscrupulous litigation attorneys would go out and remove those placards and say, "Ah ha, you did not give notice." That is $2,000 a pop.

The first part of this bill deals with our state banks because the federal law applied to national banks. It brings our state banks into compliance with federal law and puts us on the same equal playing field with national banks. I have supporters here for that particular provision, and I will be happy to answer questions about that.

The second part of the bill is a lot more difficult to explain, and it will probably bore you, so I have to read this one. The second major provision of S.B. 310 addresses an issue that is a bit more complicated but just as important: derivative transactions. What are derivative transactions? They are an array of financial instruments with one feature in common. The value is linked to changes in some underlying variable such as the price of a physical commodity, a stock index, or an interest rate.

Derivative transactions, such as futures contracts, options, and swaps gain or lose value as the underlying rates or price changes, even though the holder may not actually own the underlying asset. The financial instrument, whether it be a futures contract, an option, or a swap, derives its value from something else. Thousands of firms use derivatives to manage risk. For example, a firm can protect itself against increases in the price of a commodity that is used in production by entering into a derivative contract that will gain value if the price of that commodity rises. A notable example of this type of hedging strategy involves Southwest Airlines. You may have read about this in the headlines. They were able to purchase jet fuel at a low fixed price in 2008, even though energy prices had reached record highs. It was able to do this by the prudent use of a derivative contract in years prior to 2008. While everybody else was paying astronomical amounts of money for gas fuel, Southwest Airlines was able to rely upon an index it took advantage of via a derivative transaction.

When used to hedge risks, derivatives can protect businesses and sometimes the customers as well from unfavorable price shocks. Of course, they must use them prudently and be subject to a certain amount of regulatory oversight.

That is where this bill comes in. You have all probably heard of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was passed in 2010. The aim of that legislation was to promote the financial stability of the United States by improving accountability and transparency in the financial system to end "too big to fail," to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other important purposes.

The basic theme in Dodd-Frank is that systemically important financial institutions should maintain capital cushions above and beyond what specific regulations require in order to compensate for the risk that the failure would pose in financial systems in the economy. Section 611 of the Dodd-Frank Act amends the Federal Deposit Insurance Act to allow a state bank to engage in a derivative transaction only if the law, with respect to lending limits of the state in which it is chartered, takes into consideration credit exposures to derivative transactions.

Section 4 of S.B. 310 authorizes a bank chartered by the state to engage in a derivative transaction with the consent and written approval by the Commissioner of the Division of Financial Institutions (FID). Section 5 of this bill provides that the total outstanding loans of such bank, for the purposes of calculating the lending limit of the bank, must include the credit exposure of the bank from certain transactions, including derivative transactions.

What we have in S.B. 310 are provisions that will conform state law to federal law so our banks are not at a competitive disadvantage, while at the same time keeping pace in a regulatory oversight system through FID that ensures our banks and our customers are not put at undue risk. Senate Bill 310 is a commonsense bill that would bring Nevada law up to date with recently passed federal law. I ask that you join me in supporting the legislation. It passed out of the Senate Committee on Commerce, Labor and Energy unanimously. It passed out of the Senate Chamber unanimously. I know that my colleague from Assembly District No. 6, Mr. Munford, told me that anytime something comes out of our chamber unanimously, it means we did not read it. We actually read this. I have a couple of people here who would be happy to testify and answer any questions. I, likewise, am at your disposal for questions.

Chairman Bobzien:
Let us continue down the line.

Jennifer DiMarzio, representing Nevada Credit Union League:
We want to thank Senator Ford for his work in bringing this bill forward. This will bring Nevada state law into conformity with federal law regarding the ATM placards. This will protect Nevada's credit unions from fraudulent fee disclosure lawsuits, which can cost us up to $2,000 per ATM.

Chairman Bobzien:
My credit union is not going to get into derivatives and swaps. Is that what I am hearing?

Jennifer DiMarzio:
The credit union has no opinion on that, and I frankly do not understand that part of the bill.

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association:
I, too, want to thank Senator Ford for picking this bill up as a freshman legislator. This is necessary and essential. Nevada is actually out of compliance with federal law at this point in time. When Dodd-Frank became effective, we had not had a legislative session to sort things out. This provision on derivatives actually went into effect in January in federal law. A bank doing that under our old system would be subject to regulatory action or to FDIC action. Mr. Burns is chomping at the bit, I see, to impose that. I would appreciate your support of this bill.

Chairman Bobzien:
Do you have any opinion or position on the derivatives piece of this legislation?

Bill Uffelman:
Absolutely. We support the entire bill.

Senator Ford:
If I could, Mr. Burns, the Commissioner of FID, is in Las Vegas.

George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I am here to speak in support of the provisions of S.B. 310, which will preserve parity of Nevada's state-chartered banks with national banks, commensurate with the state banks' capability to do so in a safe and sound manner. As of this morning, the Conference of State Bank Supervisors reports that 46 of 50 states have adopted similar parity provisions for their state-chartered banks. The other four are in legislative sessions, as we are at this time.

Currently, only two of our largest state-chartered banks do derivatives, and they are doing the least complex type, and that is interest rate swaps. I can assure the Committee that banks that do derivative transactions will only be granted by my Division in conjunction with the FDIC, based upon the institution's knowledge, experience, and infrastructure policies and procedures that are substantially similar to those requirements that national banks must meet. That is exactly what the language in this bill does. That is so they will have sufficient management of the risk of these transactions they expose them to. We make them part of their overall lending limit, so that there is a cap on how far they can go with this and not get themselves in the kind of trouble that many of the Wall Street institutions did during the financial crisis. I am open to any questions you may have.

Chairman Bobzien:
Do we have any questions for our panelists?

Assemblywoman Carlton:
Mr. Burns, when I was serving in the Senate on this particular committee, you and I had a number of meetings about some issues that some of the banks in this state were going through at the time. There were some problems. Can you give me a comfort level with this? When I hear the words "derivatives" and "swaps," my radar goes off. I need to know that you have all the authority, tools, and personnel to make sure that we do not have to live through those times again.

George Burns:
Of the almost 50 percent of our state-chartered institutions that we have had to close through this financial crisis, none of them were due to derivative transactions. In working with Senator Ford as well as with the Nevada Bankers Association on the language that is being placed into this law, I will have all authority. I assure you of the fact that if the banks do not have the knowledge and experience to control the risk involved in this, I, as well as the FDIC, will not allow them to participate in these types of transactions.

Assemblywoman Carlton:
I hope you are at FID for a very long time, but I also want to make sure that this is codified in some way so that the person who comes up behind you understands our current concerns 10 to 15 years from now to make sure things do not slip again.

Senator Ford:
You should know that I asked the exact same questions before I agreed to take this bill on. We had a sit-down in the Legislative Counsel Bureau (LCB) where

we discussed these same issues. I wanted to assure myself that we were not opening up a can of worms. My radar goes up with derivatives and swaps as well. For what it is worth, I would not have sponsored this bill if I had concerns about it. I believe the language is tight enough to protect us from repeats of past bad situations.

Chairman Bobzien:
Are there additional questions for the panel? [There were none.] Is there anyone else wishing to get on the record in favor of the bill? [There was no one.] Is there any opposition testimony? [There was none.] Is there anyone completely ambivalent about this bill? [There was no one.] We will close the hearing in S.B. 310. We will open up Senate Bill 506.

Senate Bill 506: Repeals provisions governing certain employment practices concerning members of the Communist Party and related organizations. (BDR 53-574)

Kelly Richard, Committee Policy Analyst:
I am appearing today as your nonpartisan staff to provide you with information on Senate Bill 506 and Senate Bill 507.

Under *Nevada Revised Statutes* (NRS) 220.085, the Legislative Counsel and the Research Director of the Legislative Counsel Bureau (LCB) work together during each interim to identify obsolete or antiquated statutes and make recommendations concerning those statutes to the Legislative Commission. Based on those recommendations, the Commission, as it deems appropriate, can request a bill draft to repeal those statutes that are deemed to be obsolete, outdated, or antiquated. Senate Bill 506 is the first of two bills before you today to repeal obsolete provisions.

Senate Bill 506 recommends the repeal of NRS 613.360. A little bit of background: following World War II, the rise of the Cold War with Communist regimes led to concern about threats to the United States posed by such governments. A number of state and federal laws were enacted at that time to address those concerns. Eventually, many such enactments were viewed as infringements on constitutional rights or as no longer necessary, especially with the dissolution of the Soviet Union. One of those Cold War-era statutes continues in the form of NRS 613.360. The text of this statute is on the back of your bill.

The McCarran Internal Security Act, officially the Subversive Activities Control Act of 1950, was a federal law that required the registration of Communist organizations with the United States Attorney General, among other provisions.

The act is named after Patrick Anthony McCarran, a United States Senator from this state who served from 1933 until 1954. The act established the Subversive Activities Control Board to investigate persons suspected of engaging in subversive activities or otherwise promoting the establishment of a totalitarian dictatorship, Fascist or Communist.

Over the years, the United States Supreme Court declared various portions of this act unconstitutional, but it was not fully repealed until 1993. Because the statute creating the Subversive Activities Control Board has been repealed, NRS 613.360 has no further force.

Chairman Bobzien:
Are there any questions on the bill?

Assemblyman Hansen:
I do want to point something out. There is a tendency to make fun of anything that has to do with Communism. If we had the same provision in law and it specified Nazism, there would not be so much humor involved. We look at Nazism recognizing that National Socialism caused the death of millions of human beings. I remember very distinctly when Pol Pot took over in Cambodia and killed between one and two million people under a Communist regime. During the Cultural Revolution in the 1960s led by Mao Zedong in China, somewhere around 20 to 30 million people were killed. Going back to the 1930s with Stalin, I do not know how many tens of millions of people he starved to death in Ukraine under a Communist regime. We tend to make light of it.

In the 1950s, when this came into play, we sent hundreds of thousands of young Americans to Korea, of whom 33,000 died fighting the Chinese Communists. Again, when you go into the Vietnam era, around 55,000 young American men and women were killed. We just had a memorial for the veterans of the Iraq and Afghanistan Wars and saw two dozen pictures of Nevada boys who died in those wars. Picture tens of thousands of people like that dying fighting Communism.

I want to read into the record two comments by Governor Charles H. Russell of Nevada. In his State of the State speech in 1951, he said:

> Today—as this Legislature begins its work—the shadow of war falls across this earth. Again, Americans everywhere are being called upon to make necessary sacrifices to combat a world menace—a Communistic menace whose goal is the complete destruction of the democratic way of life.

> There can be no compromise between the basic philosophies of Americanism and the Godless ideology of Communism. One champions individual rights and liberties. The other subjugates personal freedoms under the yoke of fear and suppression.

Again, Governor Russell said in 1953:

> We still are in an unsettled economic condition, brought about largely by the existing National Emergency of fighting, first, an undeclared war, and secondly, the spread of Communism and other forms of totalitarianism which would strike at undermining our form of government. To me there can be no compromise, on the National or State level, with Communism or other ideologies contrary to the American freedom we have learned to love and cherish.
>
> Today we in Nevada stand united, as we have in the past, behind a constitutional form of government, promulgated and carried out by the American people.

I wanted to give a little bit of a historical context. While it is absolutely true this is archaic because there is no longer a Subversive Activities Control Board, when we place in the same type of government system, like the Nazis, National Socialists, we understand why Nazism is to this day hated, and correctly so. For Communism, we give those guys a pass. However, they are guilty of killing more human beings than the Nazis, and no one would make fun of somebody that put down the evils of Nazism.

I agree this bill should pass. This is an archaic law. I think we should keep in mind the historical context. Patrick Anthony McCarran is one of my heroes. He was a tremendous Democratic four-term United States Senator from Nevada. He died in September of 1954 in Hawthorne while campaigning for candidates during his fourth term in office. I just wanted to get that on the record. Thank you for indulging me.

Chairman Bobzien:
I respect your comments. As someone with family members who fought in many of those actions you listed, including Korea, I understand your perspective. As someone who has visited East Berlin in East Germany before the fall of the wall, I appreciate the historical context and comments you made.

Assemblyman Hansen:
Right now, we could be going to war with North Korea, and that is a Communist state.

Chairman Bobzien:
Yes. This was a simple bill. Any further questions or anything else that needs to be put on the record? [There was nothing.] Do we have any support for the measure? [There was none.] Do we have any opposition on the measure?

John Wagner, State Chairman, Independent American Party:
Assemblyman Hansen detailed almost everything I wanted to say. I want to put it on a more personal basis. I was in high school during this time.

Chairman Bobzien:
I appreciate the service you will provide this testimony on and appreciate your perspectives on this. Given that Mr. Hansen has put a lot of that on the record, if there is specific opposition to this bill and what it does in addressing an archaic statute, could you provide us with that testimony?

John Wagner:
In memory of those who were killed, everything I believe as it relates to the Communist Party, they are still active today. They have a Facebook page. They have not gone away. They may not be as vocal as they used to be. I do not give them anything. I am not just a non-Communist, I am an ardent anti-Communist.

Chairman Bobzien:
Do we have additional opposition? [There was none.] Is there anyone neutral? [There was no one.] We will close the hearing on S.B. 506. We will open the hearing on Senate Bill 507.

Senate Bill 507: Repeals provisions relating to development corporations and corporations for economic revitalization and diversification. (BDR 55-575)

Kelly Richard, Committee Policy Analyst:
Senate Bill 507, likewise, repeals an outdated or antiquated statute related to *Nevada Revised Statutes* (NRS) Chapter 670, which addresses development corporations. It was originally enacted in 1975. A development corporation is one that is established for several purposes: to advance business prosperity, economic welfare, relocate businesses, stimulate economic development, et cetera. While the purposes for which the corporations were authorized are important for public policy, the structure of these entities is not.

Staff contacts with representatives of the Department of Business and Industry's Division of Financial Institutions (FID) indicated that at this time there are still no licensees under either NRS Chapter 670 or 670A. No license has been issued in more than seven years. The last active license was closed in 2005. Four licenses were issued: three in Reno and one in Las Vegas. Chapter 670 of NRS relates to development corporations if financing was previously denied. Chapters 670 and 670A of NRS represent business models that do not work in the current environment. Over the past seven years, FID has never received an application. They can make loans, but they cannot take deposits. The loans these corporations make by statute must have been first refused by a bank or another institution; therefore, the loans sound somewhat like subprime loans or hard money loans.

The majority of development corporations today are subsidiaries of larger banks under the federal Community Reinvestment Act of 1977. Other states utilize nonprofit corporations such as community development corporations and subsidiaries of large banks. Since there are no longer any active corporations formed under NRS Chapter 670 and research indicates these entities are an outdated model, it is recommended that the chapter be repealed.

Similarly, Chapter 670A of NRS addresses corporations for economic revitalization and diversification. It was originally enacted in 1983. It was established to assist, promote, encourage, develop, and advance the economic welfare and diversification of this state.

The comments on NRS Chapter 670 apply to NRS Chapter 670A as well. For the same reason as noted in regard to NRS Chapter 670, it was recommended that NRS Chapter 670A also be repealed.

Chairman Bobzien:
Committee, do we have any questions? [There were none.] We will see if we have any testimony in support of the bill. I see Mr. Burns at the table.

George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
As reported by your representative from the Legislative Counsel Bureau, we did meet extensively with them and did background research on both of these statutes. We currently have no licensees in this area, nor any in the past. We have had very few inquiries with regard to how these particular entities might be utilized. When looked into by the people exploring this, they realized there were other more modern and efficient ways in which they could accomplish the same goals. For that reason, FID is neutral on this and does not oppose the elimination of these two statutes.

Chairman Bobzien:
Is there any testimony in opposition? [There was none.] Is there anyone neutral? [There was no one.] We will close the hearing on S.B. 507.

Do we have any final public comment? [There was none.] Are there any matters to come before the Committee? [There were none.]

The meeting is adjourned [at 2:07 p.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 26, 2013 **Time of Meeting: 11:42 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 35 (R1)	C	Renee Olson, Admin., Employment Sec. Div., Dept. of Employment, Training and Rehabilitation	Proposed Amendment
S.B. 35 (R1)	D	Robert Ostrovsky, rep. Employers Insurance	Proposed Amendment
S.B. 180	E	Senator Tick Segerblom, Dist. No. 3	PowerPoint