

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

**Seventy-Seventh Session  
May 3, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:19 a.m. on Friday, May 3, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Jason Frierson, Chairman  
Assemblyman James Ohrenschall, Vice Chairman  
Assemblywoman Lesley E. Cohen  
Assemblywoman Olivia Diaz  
Assemblywoman Marilyn Dondero Loop  
Assemblyman Wesley Duncan  
Assemblywoman Michele Fiore  
Assemblyman Ira Hansen  
Assemblyman Andrew Martin  
Assemblywoman Ellen B. Spiegel  
Assemblyman Tyrone Thompson  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Richard Carrillo (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Tick Segerblom, Clark County Senatorial District No. 3

Minutes ID: 1018



**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Dianne Harvey, Committee Secretary  
Colter Thomas, Committee Assistant

**OTHERS PRESENT:**

Keith Munro, Assistant Attorney General, Office of the Attorney General  
Ben Graham, Governmental Relations Advisor, Administrative Office of  
the Courts  
Andres Moses, representing Eighth Judicial District Court of Clark County  
John T. Jones, Jr., representing Clark County Intergovernmental Relations  
Team; and Nevada District Attorneys' Association  
Stephanie Barker, Chief Deputy District Attorney, Civil Division, Clark  
County District Attorney  
Catherine Cortez Masto, Attorney General  
Joe Nascimento, Private Citizen, Las Vegas, Nevada  
Thomas Standish, Private Citizen, Las Vegas, Nevada  
Jon Sasser, representing the Legal Aid Center of Southern Nevada; and  
Washoe Legal Services  
Jim Berchtold, representing the Legal Aid Center of Southern Nevada  
Bill Uffelman, President and CEO, Nevada Bankers Association  
Danny Thompson, representing the Nevada State AFL-CIO  
Patrick Sanderson, representing Local 872, Laborers' International Union  
of North America  
Ron Reynolds, Private Citizen, Las Vegas, Nevada  
Joseph Connell, Private Citizen, Las Vegas, Nevada  
Jack Mallory, representing the Southern Nevada Building and  
Construction Trades Council  
Chris Ferrari, representing Clark County Collection Service, LLC  
Mike Draper, representing the Nevada Collectors' Association  
Dee Barbash, President, Collection Service of Nevada  
Patty Gunn, Private Citizen, Yerington, Nevada  
Ed Kaufer, Private Citizen, Reno, Nevada  
Wendell Carpenter, Private Citizen, Reno, Nevada  
Tray Abney, representing The Chamber  
Mendy Elliott, representing the Nevada State Apartment Association

Michael Jack, Private Citizen, Reno, Nevada  
Peter Dubowsky, Private Citizen, Las Vegas, Nevada  
Lynsey Williams, Guglielmo and Associates, Reno, Nevada  
Steve Yeager, Deputy Public Defender, Clark County Public Defender's  
Office

**Chairman Frierson:**

[Roll was taken. Protocol was reviewed.] We have four bills today. For those of you who were here yesterday, there were a couple of bills on the agenda that had to be rolled over because we ran out of time. We apologize to anyone who was inconvenienced, but we try to manage the meetings the best we can. Sometimes testimonies are longer than we expect. We will get those bills back on schedule.

We will open the hearing on Senate Bill 27 (1st Reprint).

**Senate Bill 27 (1st Reprint): Revises provisions relating to the legal representation of certain persons by the Attorney General or the chief legal officer of a political subdivision of this State in certain civil actions. (BDR 3-219)**

**Keith Munro, Assistant Attorney General, Office of the Attorney General:**

The Legislature has assigned our office to represent thousands of State employees. Recently an issue arose about the authority of the Nevada Attorney General's Office to represent members of the Supreme Court and district judges when they are sued in their official capacity.

As far back as anyone can remember, the Office of the Attorney General has always represented these judicial officers. We brought that bill to make that very clear in the *Nevada Revised Statutes*. The lines as to whom the Office of the Attorney General represents should be very clear. What the funding mechanism is for the staff that is hired to provide the representation should also be clear.

The Administrative Office of the Courts will join me in a minute. They placed an amendment on our legislation. I want to talk about that because that is really the majority of the bill. We agree with the concepts they indicated they are trying to accomplish with the amendment. There may be some words missing regarding their language that needs to be done, and we will leave that for them.

The bill has to do with our judges. Specifically, we ask our judges to make decisions. When judges make decisions, often one side disagrees with a judge's ruling. Sometimes when people are unhappy, they sue the judge who made the

decision. Judges know that comes with the territory, and our office represents them, and these cases overwhelmingly disappear very quickly. Recently some people have changed their strategy. They have begun suing people who have a relationship with the judge, or who are close to him. To us, it is a clear effort of intimidation. By Nevada law, the Office of the Attorney General has no authority at this time to represent these people. As a result, the people who are close to the judge, and are being sued, are forced to hire their own attorney. This allows the harasser to partially succeed because there was a money cost to someone close to the judge.

The amendment before you provided by the Administrative Office of the Courts would allow our office to help protect those individuals when they are sued. If you look at section 5, subsection 1, line 12, it is solely because of an alleged act or omission related to the public duties or employment of a judicial officer.

I want to speak about an amendment that was submitted by Clark County ([Exhibit C](#)). We value working closely with them.

**Chairman Frierson:**

Mr. Munro, I would like to stop you for a minute. In the second house when we start talking about amendments, it is a little confusing on our part because we did not see the original bill. When you refer to the amendment by the Administrative Office of the Courts, are you talking about the bill, or are there some other amendments?

**Keith Munro:**

No, it is within the bill.

**Chairman Frierson:**

Is the only amendment the one submitted by Clark County?

**Keith Munro:**

That is correct.

**Chairman Frierson:**

Are you going to go through the provisions of the bill before you address the amendment? Or, was your summary covering what the bill was trying to accomplish?

**Keith Munro:**

Our office has represented judges as a matter of happenstance. We have always done it. We can draw out a legal argument that we should be representing them. We want to make that very clear in the Nevada statutes in

case someone challenges that. Therefore, it is very clear for any judge that has to review that issue.

As to the majority of the bill, it reflects an amendment by the Administrative Office of the Courts. I would be willing to have them come up and go through what they have put forward. I would like to speak for a minute.

**Chairman Frierson:**

Before we go to the amendment, are there any questions from the Committee on the bill itself?

**Assemblyman Hansen:**

We have a situation with the Truckee Carson Irrigation District. The city was flooded and individuals were sued. Do people that sit on any kind of board have any protection from being sued individually? Where does the immunity clause come into play for everyone, not just in this case? Does this also cover those types of situations?

**Keith Munro:**

Our bill is only speaking to judges. Immunity in general is a very complicated area. For instance, you are a legislator. I believe there is legislative immunity. If you were sued for a vote you cast on, let us say, this bill, you would have immunity because you were carrying out an official act. In the federal *Constitution*, there is the Eleventh Amendment immunity where the state of Nevada is immune from being sued in federal court. There are various issues relating to immunity; it is a very complicated area of law.

**Assemblyman Hansen:**

It is probably out of the scope of this bill. I ought to talk to you about it sometime. It does concern me because essentially anyone on any board without even realizing it, probably thinking they have certain amount of immunity, can actually be sued personally. I do not want to get off topic.

**Chairman Frierson:**

Just so we are clear, we are talking about frivolous claims in theory. Someone is mad at the judge, so instead of suing the judge, they sue the judge's wife just to be a pain. The case is thrown out eventually, but until it is thrown out, it is a pain in the neck for the judge's wife who has to hire an attorney to get it dismissed.

**Keith Munro:**

That is exactly right.

**Chairman Frierson:**

Are there any other questions from the Committee? Please discuss the proposed amendment.

**Keith Munro:**

I want to discuss the proposed amendment because I think it is premature. If you consider the bill we just presented, our office is stepping forth and saying we need to protect people that deserve to be represented. The Clark County District Attorney's Office has put forth a bill that has statewide implications for all district courts throughout the state, that our office represents all district courts.

When you talk about tort claims, you are usually talking about employees. When you talk about employees, you are talking about issues involving hiring, training, and supervision. When you have tort claim cases, you know that most of them usually settle. Settlements cost money. The Board that controls that money for the state of Nevada is the State Board of Examiners. That board is the Governor, the Secretary of State, and the Attorney General. Many times when there are settlements involving actions, there is direction from that Board there needs to be a change in policy, such as when there is a change in policy that is placing the Governor, the Secretary of State, and the Attorney General in a position of mandating issues relating to hiring, training, and supervision of county employees. That is a fundamental change in how our government works. I am not here today speaking on behalf of the Governor or Secretary of State, but I want to be clear that the Attorney General does not have an interest in getting involved in issues concerning hiring, training, and supervision. I look at Assemblyman Wheeler of Douglas County; we do not want to get involved in those issues. Assemblyman Hansen may say the same thing.

There appears to be an issue regarding representation of district court employees in Clark County involving some of the local players. Our office has offered to help, but we have a state process that we have to abide by; it is not our process, it was developed by the Legislature. We hope we can work through any issues involving the need to comply with our state process. We do not think there is a need for this amendment; we think it is premature, and we hope we can work through those issues. With that, I will turn it over to Ben Graham from the Administrative Office of the Courts.

**Chairman Frierson:**

Are there any questions for Mr. Munro? I see none. Welcome back, Mr. Graham.

**Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:**

What we are here for today has a rather long and laborious history. For those of you who were here last session, down in the entryway there were signs posted saying, "Anyone serving process, please contact the Legislative Police." In the 25 years that I have been here, that was the first time I had ever seen that. That is what this bill addresses.

There was a family court action in Las Vegas at Pecos and Bonanza in 2008/2009. After that, an aggrieved party ended up suing pro per more than 54 people, including justices of the peace in Pahrump, baby children of a district attorney, the deceased wife of a supreme court judge, and grandchildren of some judges.

Those people did not know what to do; that was the confusion. In some places the county's insurance carrier assisted. In other places, the district attorney and the Attorney General got involved. I heard from throughout the state there was a little bit of confusion and frequently the district attorney defended the state judges. There was confusion about where to go with these complaints.

I provided a copy of a document that was filed by DeAnn Wiesner and a copy of an order declaring that she was a vexatious litigant ([Exhibit D](#)). She traveled up past Tonopah suing people to create stress and trouble in innocent, faultless lives.

The legislation is narrow; it is meant for a very small situation—a group of officials. It only requires tendering of defense if the action is based solely upon an official act. That is what they are going to allege that this act somehow affected the family court. It is not expansive, it is very narrow. I appreciate and am very fond of our friends and former colleagues in Clark County who seek to amend this. The Attorney General realized there was a problem and the confusion of where to go with complaints to get it answered so there would not be a default judgment. Mr. Munro, the Attorney General, and I worked for the last couple of years on this piece of legislation. As it exists, there is no fiscal impact. I hope you will see this as addressing the very narrow concerns.

**Chairman Frierson:**

What is the value of having someone declared a vexatious litigant? If I understand it correctly, it means that they cannot continue filing in that jurisdiction. This individual went to another jurisdiction.

**Ben Graham:**

Yes, that is true, and they went all the way up the road. Sometimes it takes a long time for that process to happen. It was June of 2011, so a lot of damage occurred and people were brought into this before it finally got to court. These things do not happen automatically, even though they may be frivolous. There are filing fees, hopefully you have a friend who is an attorney that will help, or a district attorney in many instances. If you look through the exhibit, you can see the people involved. There were dozens of people, and even some legislators. It prevents a person from continuing to file in this type of action.

**Chairman Frierson:**

Does the Committee have any questions?

**Assemblyman Duncan:**

A public official can be defended if it is based solely on their public duty. What if the vexatious litigant has not been deemed a vexatious litigant yet also couples the cause of action when something else looks frivolous on its face? How does the act anticipate that?

**Ben Graham:**

If someone sues, the cause of action is based upon a judge's action. It somehow drags in a justice of the peace and her husband from Pahrump. The judicial officer was named back here and that would be the basis where we could ask the district attorney, if it is a justice of the peace, or ask the Attorney General if it is a district court judge action.

**Keith Munro:**

That would be something we would look at in the lawsuit and determine whether we could represent in whole or in part. That would actually be something where we would exercise our discretion.

**Chairman Frierson:**

Are there any other questions from the Committee? I see none. Obviously, it is a straightforward bill, but I think the proposed amendment will warrant some discussion.

I invite people here in support of S.B 27 (R1) to please come forward.

**Andres Moses, representing Eighth Judicial District Court of Clark County:**

Mr. Graham has alluded to what happened in our district with the 54 lawsuits filed. That is really the genesis of what this bill is, and what it is trying to address. The important distinction to make with these lawsuits is different from what we have seen in the past with the vexatious litigation in that they were

not naming the public official in the lawsuit, they were only going after the relative, the business associate, or whoever else. Without naming the public official in the lawsuit, it tied our hands and did not allow the defendants to receive the representation they deserve. While the courts have the ability to deem a person a vexatious litigant, that only prevents future abuse. The problem is in the initial filing.

There is another mechanism to address which is when a person files for an *in forma pauperis* to be able to file a lawsuit without paying the filing fees. If they pay the filing fees, then there is absolutely nothing we can do to prevent these initial filings. The judges of the Eighth Judicial District and the Attorney General recognize this inequity and that is what this proposed legislation is intended to do.

I want to address the amendment that Clark County has offered ([Exhibit C](#)). The court is aware that there is an outstanding issue regarding obtaining representation for people like district court employees or myself. It is our hope that the Attorney General, the district attorney, and Clark County can come to some sort of an agreement because this is a serious issue. I will note it is not what this bill is intended to do. We hope in this bill, or down the road, this issue will be resolved. I want to thank Mr. Munro for his help on this, and I will be happy to answer any questions.

**Chairman Frierson:**

Are there any questions from the Committee? I see none. Is there anyone else offering testimony in support of S.B. 27 (R1) either here or in Las Vegas? I see no one. Is there anyone wishing to offer testimony in opposition here or in Las Vegas?

**John T. Jones, Jr., representing the Clark County Intergovernmental Relations Team; and the Nevada District Attorneys' Association:**

We are here in opposition to S.B. 27 (R1) because we feel there is a hole in this bill ([Exhibit C](#)). We support the basic premise of this bill. I want to point out as has been testified; a newborn child of a former Clark County district attorney was involved in this vexatious litigation. Our district attorney's office and the county understand how traumatic these lawsuits can be for employees, especially spouses and others who are related to the county employee, but otherwise have no other connection to the lawsuit.

Our proposed amendment ([Exhibit C](#)) fills that hole. Mr. Munro, Mr. Graham, and Mr. Moses, who testified in support, are right that this bill gives people the representation they deserve. What about court employees? They deserve representation as well. From municipal employees to the Governor, it is clear in

this statute as to who would represent them if they were sued. The one exception is district court employees. District court employees are a hybrid. They are funded by the county, but generally serve almost completely at the discretion of state employees, that being the district court judge. In other words, the county would be put in the position of defending someone who is acting almost completely at the discretion of a state employee. Who is best situated in terms of defending that employee for a state action? It is our opinion that it is the Attorney General.

There is already a provision in statute that is *Nevada Revised Statutes* (NRS) 331.187, subsection 3, paragraph (b) which allows the Attorney General to reimburse the State of Nevada or ask for any reimbursement from the county for any liability and costs of defense that the State of Nevada incurs for the employees of the district court. To some extent, what we are proposing today is already embedded in statute although it is not as clear as we would like.

I have Stephanie Barker with me today who is the chief deputy district attorney in the Civil Division. She has some examples of why this amendment is so important.

**Stephanie Barker, Chief Deputy District Attorney, Civil Division, Clark County District Attorney:**

When I came to the district attorney's office almost 13 years ago, when a district court employee was sued, the lawsuit would be sent to the district attorney's office. We would then engage with the Attorney General to assess the nature of the lawsuit. We are talking about court employees—marshals, court clerks, law clerks, hearing masters—people who are hired by and directed by the state court judges. There would be some discussion between the district attorney and the Attorney General as to who was the appropriate entity to represent them based on the specific conduct and issue in the lawsuit. Sometimes the district attorney would keep those defense cases, and sometimes the Attorney General would pick them up. That process could be cumbersome, and interfere with response deadlines for the employees. In 2004, the county elected to avail itself of the provisions of NRS 331.187. That statute allows the Attorney General's Office or the state to assess the county a per employee assessment for the county-funded employees that work in the district court. The assessment required that the state provide defense for those employees and costs of defense and liability coverage. Once the county started paying into that fund, when the district court employees were served, a tender would be sent to the Attorney General's Office either from in-house court, legal staff, or from the district attorney's office depending on where the notice came from. Until last summer, that process has worked particularly well.

Those people got a quick response with efficient, competent representation from the Attorney General's Office and those cases were handled.

Over time, as staff would change within the Attorney General's Office, I would be called wanting to know why those cases were coming to the Attorney General, and why the district attorney was not handling them. We would have a conference call and a discussion. We have been able to solve that.

The issue has again raised its head whether these people are entitled to a defense through the Attorney General's Office based on NRS Chapter 331, and I think more importantly for the Attorney General, do they have statutory authority to provide that defense? As this bill comes across our desk, there is a gap left that is not a new gap, this has been a historical problem and one that we negotiated resolution to; the funding mechanism provided in NRS Chapter 331. We are back at a discussion as to whether there is clear legislative authority designating who the official attorney is for the staff that works for, and supports, the district court judges. The amendment is proposed so we can efficiently handle that, and we do not have employees concerned and wondering about where that representation should come from.

**Chairman Frierson:**

Are there any questions from the Committee? My question is, in the absence of this amendment, how would things operate? What is the problem if the amendment is not adopted?

**Stephanie Barker:**

Since August of last year, this has again reverted to a discussion between the Attorney General and the district attorney about where that representation should come from based on the conduct of the employee. It is requiring additional review in spite of the assessment being paid by the county for that representation, and that delays the response time. It has been a subject back and forth of legal interpretation between the Attorney General's Office and the district attorney's office for a significant number of years. The intent of placing it in statute would be to do exactly as Mr. Graham has stated, and make it clear where the legislative authority is for that defense.

**Catherine Cortez Masto, Attorney General:**

Let me clarify and answer your question for you. I am a little disappointed that the county is here trying to circumvent what I have put in place during the last couple of weeks. I have actually reached out to county management and District Attorney Steve Wolfson. We have a meeting next week to clarify the working relationship on this particular issue. The genesis of that meeting is to

put in place, outside of legislation, moving forward, a memorandum of understanding or some sort of concrete document that specifies the working relationship when it comes to these district court employees that Clark County pays into this particular fund, which is NRS Chapter 331. From our perspective, I will be very clear. I have already let the district attorney and county management know that we will provide the defense; however, over the course of the years, we have not been actually asking them to cover our attorneys' fees and costs. We will now be asking Clark County to cover the attorneys' fees and costs for that representation. We will be working through that issue.

I do not think this requires legislation now. From my perspective, the state is stepping up to the plate doing just what Ms. Barker has talked about, and the genesis of that meeting is taking place next week and we will solidify this working arrangement through a working document, a memorandum of understanding, for the future. I do not think it is necessary at this point in time to move forward with legislation addressing this amendment. [The Attorney General also submitted a letter of support ([Exhibit E](#)).]

**Chairman Frierson:**

Thank you, Madam Attorney General. I did not realize you were there, or I would have called on you to get your testimony on the record. I think you answered many questions about the background and what is going on.

Do I have any questions from the Committee? I see none.

**Joe Nascimento, Private Citizen, Las Vegas, Nevada:**

I am very glad we have the Attorney General here too. I sent you some information yesterday about 5 p.m. Apparently, it did not get there.

I will give you some background on myself. I was getting medical treatment and my identity was stolen. The person who stole my identity was my daughter. She was hoping I would die, but I lived. I went to the Las Vegas Metropolitan Police Department and filed a complaint. She signed a confession and agreed to repay me. On March 1, 2012, I was supposed to get a summary judgment against her. Instead, she took out a bunch of loans on my house. You have a criminal problem going on here. Money is being laundered to buy judges. I will tell you how it works. Wells Fargo Bank ended up representing her in the pro bono project. You have Barbara Buckley who is using a pro bono project to launder money.

**Chairman Frierson:**

We are so far away from the bill. Unless we are talking to the bill, we are going to have to stop and move on to the next person. I am sorry, I am not going to

entertain unnecessary trashing of people's characters that has nothing to do with the bill. That is not why we are here. We are here to vet the issues and the bill. If you could provide testimony about your position on the bill and why you oppose the bill without unnecessarily trashing people, we can accept that, or else we will have to move on.

**Joe Nascimento:**

I believe that if you are going to have the bill, you are going to have to put some amendments in it. The amendments would be the Attorney General must investigate all allegations of public corruption before they defend anyone. They cannot defend a public official who is involved in public corruption. Since the Attorney General is here, I want to file a criminal complaint.

**Chairman Frierson:**

Thank you sir, we will move on. Is there anyone else to offer testimony in opposition? I see no one.

We will return to Carson City and entertain testimony in a neutral position. Is there anyone in Las Vegas wanting to offer testimony in a neutral position? I see no one. Mr. Munro, do you have any closing remarks?

**Keith Munro:**

The last witness may give an indication about why this is good public policy.

**Chairman Frierson:**

Thank you very much. With that, I will close the hearing on S.B. 27 (R1) and open the hearing on Senate Bill 140 (1st Reprint).

**Senate Bill 140 (1st Reprint): Revises provisions relating to a lien for attorney's fees. (BDR 2-558)**

**Senator Tick Segerblom, Clark County Senatorial District No. 3:**

Senate Bill 140 (1st Reprint) clarifies the process by which attorneys can take attorney's liens when their client decides they want to go elsewhere. There has been an issue about this based on a Supreme Court decision. Mr. Standish has come forward with a proposed resolution, which in the Senate we felt was a perfect solution. I will have Mr. Standish explain how the lien would work in this bill.

**Thomas Standish, Private Citizen, Las Vegas, Nevada:**

The statute in question is *Nevada Revised Statutes* (NRS) 18.015. It provided a charging lien—the procedure being that an attorney could file a lien, and give notice of that lien of fees owed to the other party, the other attorney, and all of

the parties in the action, and to the court. After the filing and the notice of that lien, either the attorney or the client could ask the court, by motion, to adjudicate the lien. In other words, to interpret how much in fees would be owed fairly by the client, and then enter a judgment if the court saw fit to do this. This would all go back in front of the judge who heard the case in which the attorney represented the client.

The *Argentena* decision from the Supreme Court, *Argentena Consolidated Mining Company v. Jolley Urga Wirth Woodbury Standish* (125 Nev. 527, 216 P.3d 779 (2009)) focused on wording of the statute, and the net effect of that decision was to eviscerate the statute. The Supreme Court's interpretation has been accepted at the district court level across Clark County and in northern Nevada, as well as only being available under the statute to a plaintiff who is seeking a recovery of money damages. Personal injury attorneys, plaintiffs in commercial cases, or counterclaimants would be able to use the statute. Not all others who are litigants, or represented by attorneys as litigants in any district court lawsuit, including all family court cases, could avail themselves of this statute. It has eliminated the effect of the statute in family court in Clark County. What we were attempting to do was to clarify the Supreme Court decision, or to amend the statute, in a way that would make the lien statute available to attorneys and their clients in an expedited procedure to go back before the judge who is best qualified to determine whether the fees are fair, and to have that procedure be made available again to family court, and to all types of civil litigation cases where people are in district court and may have a dispute.

The Legislative Counsel Bureau took up a different type of lien called a retaining lien. It is an old common law provision that allows an attorney to retain the file that he has for his client until the client has paid his fee. They have defined that retention of the file, and have used that as the basis for filing a lien, being able to have the attorney file a motion to adjudicate it, or the client to file a motion. In that way, they did not disturb the *Argentena* decision. They have not changed what the Supreme Court has interpreted the charging lien portion of the statute to be, but they have made a clear path for the attorney to be able to file a lien, and then for the client or the attorney to seek the judge's adjudication of it.

**Senator Segerblom:**

From my perspective, the key is that in the absence of a law like this, the attorneys will have to charge a more substantial retainer because they do not know if they are going to be paid. Actually, I believe it makes the ability to hire an attorney much easier because the attorney knows that he or she can try to recover fees for the time they have spent as opposed to having to wait to

obtain a judgment later. It probably helps plaintiffs who do not have as much money.

**Thomas Standish:**

I think the ripple effect has been to change the way in which attorneys are approaching their agreements with their clients, meaning they are charging a lot more money in a lump sum because they cannot fall back on the procedure. I certainly know that to be true in family court across the board, but of course it falls more heavily on the lower socioeconomic people that might want to hire an attorney. Those attorneys are rapidly becoming out of reach. The net effect on the system is very clear. The large number in family court, over 50 percent proper, meaning unrepresented litigants, has increased the number of cases where we have one person with an attorney and one person without an attorney. It has hurt the administration efficiency of family court. It is impacting district court, or will in the future, with extra civil lawsuits filed by attorneys against their clients.

One other thing that I believe to be a natural outgrowth is a lot more attorneys are hiring collection agencies to pursue their fees against clients. Nobody likes the way they generally approach their jobs, go after people, and harass them. Those are just some of the effects. If anyone has any sympathy for young attorneys, this has been hard on them during a recession to not be able to have a simple way to collect their fees or to have their dispute adjudicated.

The State Bar of Nevada's Fee Dispute Arbitration Program is composed of many dedicated lawyers volunteering their time to resolve those disputes, but that system has been slow and overwhelmed for quite a long time. That is not an option where these cases could go to efficiently. The result is that the enforcement parts are not well defined. The Clark County pro bono project, as well as similar projects in the north and in the rural areas, has been overwhelmed with family law cases in particular for a long time, and they are getting worse. This is definitely having an effect in that area, as more people need to seek a pro bono lawyer, free lawyer, legal services than ever. The net effect of raising retainers and making it more difficult for those without the money to retain counsel makes this more of an access to justice problem, to use the Supreme Court's expression, than any kind of an administrative problem for attorneys collecting their fees. I would put the lower income litigants ahead of the attorneys in terms of priorities. What I am bluntly trying to say, the efficiency and the burdens of the courts now have increased ahead of the attorneys. I think it is a fair bill for everyone.

I would like to emphasize that the lien attaches to any transfer of property or money. The process is available to the client to adjudicate a simple motion, or

it allows the other party who is now subject to this lien, and cannot pay money to the party who has the attorney who filed the lien. They cannot pay money to that party without dealing with the attorney's lien. It allows that party, or their attorney, to file to adjudicate. An open system efficiently gets the matter before the court and before the right judicial officer who is most knowledgeable about the case.

**Assemblyman Wheeler:**

In section 1, subsection 4, paragraph (b) where you are making the change, it looks like the attorney who is owed money would be able to keep all of the records. If a person changed attorneys and did not pay the first one, but needed those records to continue his case, would a judge be able to order those records over if this law was codified?

**Thomas Standish:**

Yes, the courts do have the power to do that. This particular amendment was actually modified in the Senate Committee on Judiciary to reference copies being made a part of the file in order to encourage attorneys not to retain original documents that somehow would hamper the client from going forward with the lawsuit. I have had courts order essential documents to be transferred to the client as long as the attorney was protected in some way with the court being involved to adjudicate, to make sure that the fee dispute is resolved. In the past when I have encouraged attorneys not to interfere with the client's case through their retaining lien, the attorney could do that under the common law rule. Normally, not having the original document would probably be in the overwhelmingly majority of cases.

**Senator Segerblom:**

The thought would be the attorney would make a copy of the file for his records and then give the original file to the client or vice versa. The client would not be without a file.

**Chairman Frierson:**

I was going to make that clarification as well. The attorney is not able to prevent a client from having copies. It is before the attorney would close out their file and hand over all of the documents that included confidential information, work product, and things of that nature. They can retain a file until they are paid. It is not as if the client would not have his or her own documents. The attorney would not have to give up their final copy until they are paid. Is that how it is intended to work?

**Tom Standish:**

The proper practice by any attorney would be to turn over their file to their client. The retaining lien technically allows them not to do that, to apply pressure and so forth. This process will encourage attorneys even more never to do that. Yes, the court can intervene if it is necessary to make sure that does not impede the client's case. The point is, yes, you should supply copies every time to your client; that would be good practice. This way the court can enforce it or, as I am arguing, this does encourage the attorney not to do this. They do not need to have this remedy to go to the court and have their fees adjudicated.

**Chairman Frierson:**

Are there any other questions from the Committee? I see none. I will now open it up to those who wish to testify in support of S.B. 140 (R1).

Is there anyone in Carson City or in Las Vegas to offer testimony in support? [There was no one.] Is there anyone wishing to offer testimony in opposition of S.B. 140 (R1)? [There was no one.] Is there anyone who wishes to testify in the neutral position either here or in Las Vegas? I see none.

I will close the hearing on S.B. 140 (R1) and open the hearing on Senate Bill 373 (2nd Reprint).

**Senate Bill 373 (2nd Reprint): Makes various changes relating to judgments. (BDR 2-932)**

**Senator Tick Segerblom, Clark County Senatorial District No. 3:**

Under current law, if someone who has a judgment wants to garnish wages, 75 percent of the wages are exempt from garnishment. That is the federal law we have adopted in Nevada. This bill seeks to increase that for the people who have limited means to 85 percent of the first \$50,000 that is earned. It is a simple change. We do not want to force people into bankruptcy who have limited means. This is the primary issue. There are other provisions that Mr. Sasser will address.

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

I was hoping that James Berchtold would come to the podium in the south to walk you through the bill and then come back to me.

**Chairman Frierson:**

Mr. Berchtold, please go through the provisions of the bill.

**Jim Berchtold, representing the Legal Aid Center of Southern Nevada:**

I am here testifying in support of Senate Bill 373 (2nd Reprint). This issue is important to me because I see it every day. The Self-Help Center where I work is a free service that provides legal information, legal forms, and legal resources to people who are representing themselves in the Clark County court system in civil cases. In 2012, the Civil Law Self-Help Center served over 48,000 people. Of those 48,000 people, about 7.3 percent of them had some issue relating to garnishment or debt collection suits. That equals about 3,500 people whom the Self-Help Center assisted. [Continued reading from prepared testimony ([Exhibit F](#)).]

Another thing S.B. 373 (R2) would do is allow Nevada residents who are being garnished because of an out-of-state judgment to bring a civil suit against a judgment creditor who fails to properly domesticate the out-of-state judgment in the Nevada courts. [Continued reading from prepared testimony ([Exhibit F](#)).]

**Chairman Frierson:**

Are there any questions from the Committee?

**Assemblyman Wheeler:**

Will child support garnishments be affected by this?

**Jon Sasser:**

No, they will not. The wage exemptions do not apply to child and family support, taxes, or bankruptcy.

**Assemblyman Wheeler:**

Is that actually in the bill or is it codified in a different law?

**Jon Sasser:**

I believe that is a current law in *Nevada Revised Statutes* (NRS) 21.090. The only amendment in this bill is to change the percentages that Senator Segerblom mentioned, but the rest of the law stays intact.

**Senator Segerblom:**

Originally, we had 90 percent of all wages exempted. As a compromise out of the Senate, we reduced it to 85 percent for just the first \$50,000. There has been a substantial accommodation of the creditors.

**Assemblyman Duncan:**

Does this apply retroactively? I know that a new garnishment order has to come through every 120 days or so. What is the average time from the time a

person becomes delinquent on a payment until garnishment actually occurs? If you know that time, how long will it extend someone from being fully paid?

**Jon Sasser:**

The way the garnishment system works is you file a garnishment. It is good for 120 days and you can renew it for another 120 days until the judgment is paid. The Legal Division may have to weigh in on this. If this bill passes and the effective date is October 1, and I am in the middle of a 120-day garnishment, I do not know if it will have to be readjusted at that moment, or you wait to the end of the 120-day period when it is renewed and the new figure would be established. In terms of the average, it depends on the creditor and how fast they want to move or how long they let people get behind before they file a suit. This only becomes effective once the suit is filed and there has been a judgment entered against the debtor. To collect that judgment, the creditor may move quickly or slowly on when they start the garnishment process. I do not know if there is an average for that unless Mr. Berchtold has some additional information.

**Assemblyman Martin:**

As a small business owner, I would have many concerns about the ability to collect on any debt. I am going to put on my certified public accountant's hat. The whole concept of disposable income has me very concerned because I would immediately advise a client to say, "Okay, part of the calculations is about taxes." Withhold more taxes and lower the disposable income. Some people are self-employed.

The calculation is not very clear and not very straightforward. Was there any consideration given to creating a table, because a lot of the Internal Revenue Service (IRS) documents and details always use tables? If you had this much adjusted gross income, you can afford this much, and so forth. Then you could scale it for the number of dependents and then come up with an actual affordable amount that someone could pay as a debt repayment. I think the calculations here are subject to interpretation, especially in the area of tax withholding and other expenses. It gets more nebulous. My method would leave less interpretation and more fact. Was there any consideration when developing this bill to come up with a table, say, if your adjusted gross income is \$45,000 and you have three dependents, you could afford this much?

**Jon Sasser:**

We did not tinker with the existing definition of disposable income. They are both in federal law and in the current statutes and we did not consider changing those. I have not heard any issue or complaint raised by anyone under the current law, so there was no consideration given for that. Since those

definitions are both in federal law and in the statute, we did not change them in any way.

**Assemblyman Thompson:**

I have received many letters from small business owners, some specifically from my Assembly district. They are very concerned about the bill because on the front end when a person comes in for services, they expect people to pay. Mr. Berchtold was talking about one of the advantages, which was to create a payment plan. Many letters I received pointed out that many of the small businesses have tried that and have not been successful. I question even if a judge orders a payment plan, if that would be successful. Many of the small businesses have expressed that they wish to leave things as they are. If it were to change, then that could mean it would be more difficult for people to get some of their services, and some of them could go out of business. We definitely do not want that to happen in our community. Where can we get a happy medium on this?

**Jon Sasser:**

I still have not delivered my testimony. I was going to cover that in some depth so I can either defer that or then come back, or I can answer that right now depending on the wishes of the Chairman.

**Chairman Frierson:**

I did not know that you had not yet provided your testimony.

**Jon Sasser:**

I represent both the Washoe Legal Services and Legal Aid Center of Southern Nevada. I welcome the opportunity to testify in support of S.B. 373 (R2). I did not provide written testimony to the Committee, but I am going to reference some written testimony that was submitted by Mr. Robert Hobbs ([Exhibit G](#)) who is with the National Consumer Law Center.

In developing this legislation, we did look at what was going on outside of Nevada and found a model act, which covered this subject and was developed by the National Consumer Law Center and Mr. Hobbs. We looked at what other states are doing and discovered that some 25 states just have the basic federal minimal protection of 25 percent, and the remaining 25 have protections that are more generous. In fact, five states do not allow garnishment of wages at all. The model act developed by the National Consumer Law Center had 15 percent for those above \$75,000, and 10 percent for those below. We introduced the bill at 10 percent and it was amended twice in the Senate, which wanted to go to \$70,000 as in the model act at 10 percent. The final floor amendment in the Senate is if you make below \$50,000, then it is

15 percent. Above that, it remains current law of 25 percent. We are well below the model act that was developed by the National Consumer Law Center.

The testimony of Mr. Hobbs on page 2 goes into some of the impacts of having more generous laws on behalf of consumers, or tighter restrictions. We are not asking people to get out of their debts; we are asking that they be allowed to pay these debts at a rate they can afford to pay. Chart 3 attached to Mr. Hobbs' testimony shows that in those states that have more stringent rules for making debtors pay more, the rate of bankruptcy seems to be higher. In those states that have a more generous provision for consumers, the rate of bankruptcy tends to be lower. Therefore, in partial response to Assemblyman Thompson's question, people may not be paid at all if you make it too hard for them and they go bankrupt. That would hurt the small businesses, which was your concern.

Secondly, many small businesses think they will not be able to extend credit if we have the new provision. Mr. Hobbs looked at other states and, on Chart 4, he looked at those states with more generous laws for consumers and those with tighter laws. He looked at the level of creditor debt that was created per capita in those states and found no correlation between the generousness, or lack thereof, of these garnishment laws on the ability of people to get credit.

He also goes into why they developed this model act. Based on the great recession that we have just experienced, we have seen credit card delinquencies triple since 2006 as people are in harder economic times. He walks through some of the abuses of the credit card companies back when times were good where they were handing out credit cards like candy and inviting people to get involved with consumer debt. Then the Great Recession hit and now people are trying to dig out from under that. We are not asking people to evade their debts, but for them to be able to dig out from under that at a rate they can afford to pay.

Does this hurt or help small businesses? I think it cuts both ways. On the one hand, if you are having 25 percent of your paycheck garnished, and although we put a small business face on this problem, this is a very small percentage of those people collecting debt. For the larger credit card companies where you pay your 25 percent, the money is not staying in Nevada, it is going to Chase or Wells Fargo or one of the big out-of-state credit centers and is not available to be spent on small businesses here in Nevada. It is not available, as Mr. Berchtold said, to pay your rent, to be able to go to the grocery store here in Nevada, or go to your neighborhood market because you have less money to spend. That money went to an old debt and most likely went out of state. It helps small businesses in the sense that there is more money to be spent on

them in our state. It does hurt them somewhat in that they may be repaid at a slower rate than they would otherwise if the person were to make those payments and not go bankrupt. We feel this is good for Nevada businesses.

You may hear there is already the ability to have court payment plans. There is not a statutory authority for judges to order them. Sometimes in small claims court, because it is less formal there, the judge will work out an agreement with the parties where they say I will approve this judgment if we make it in installments. Sometimes deals are made, but there is no statutory authority to do it. In the vast majority of these consumer cases, especially with credit card debt, there are default judgments entered. They are not negotiating in front of the judge. They are struggling with that debt because, as Mr. Berchtold said, they acknowledge they owe the money, but they cannot afford to repay it at the rate the creditor wishes.

Finally, we have a number of people in support of the bill that could not be here today. Michelle Johnson, director of the Consumer Credit Counseling Center in Las Vegas testified in favor of this bill in front of the Senate, but she has an audit today. Mr. Howard Watts with the Progressive Leadership Alliance of Nevada (PLAN) and leader of the Responsible Lending Coalition has jury duty today. Otherwise, they would be here. I will be glad to answer any questions.

**Assemblyman Hansen:**

Section 5 talks extensively about foreign judgments. Then in section 5, subsection 2, it says, "A judgment debtor who prevails in an action brought under this section may recover from the judgment creditor damages equal to two times any amount paid to the judgment creditor under the writ of garnishment. If the judgment debtor prevails in an action brought under this section, the court must award reasonable attorney's fees and costs to the plaintiff." What is the foreign judgment concept, and why is this necessary? Why is there another mandatory legal fee payment provision?

**Jon Sasser:**

The problem addressed here, at least in the Senate, was not controversial in any way. It is to give a cause of action when creditors try to evade Nevada's law. We have a law that says that if there is a judgment against me as a Nevada resident from another state, they need to domesticate that judgment. We have a statute that requires that they come to Nevada, they file a copy of that judgment with a court clerk, and then they follow Nevada law in collecting that debt. They apply our exemptions and they use our garnishment or attachment processes. The abuse we are trying to address is, when instead of following our law, they evade enforcing the judgment here. They want to say to the payroll department, if I worked at Wal-Mart in the state where that exists, to

attach my wages there. This gives Nevada citizens an ability to do something about that when our laws have been evaded.

**Assemblyman Hansen:**

If a woman is trying to still collect child support from her former spouse, if she got that judgment in another state, and tried to collect that money here, because that is a foreign judgment and does not comply with our understanding of garnishments as far as divorce situations, could a deadbeat dad walk away from his payments?

**Jon Sasser:**

I think so. There is a whole other set of laws of interstate enforcement of child support and spousal support that is not affected by this. The 15 percent specifically in our Nevada statute says that it does not apply to that. Wage attachment for child support is a separate process. It is certainly not the intent, and I do not think it would apply, but we can get you more specifics if you would like.

**Assemblyman Hansen:**

I think I was looking at NRS Chapter 31. I am concerned whenever you have "the court must award attorney's fees" clauses.

**Assemblyman Duncan:**

There is something on the Nevada Electronic Legislative Information System (NELIS) that says Nevada has a higher exemption than California, than other states, and even the federal exemption. Could you detail why we need an even higher exemption than our surrounding neighbors do?

**Jon Sasser:**

The statement that you read is not quite accurate—let me clarify. Nevada, in terms of percentage that can be garnished at 25 percent, is using the federal minimum. We have not gone beyond that. There is also a floor. The federal law says 25 percent or 30 times the minimum wage whichever is higher. We did amend our statute to raise the floor to 50 times the minimum wage, so as you see in Mr. Hobbs' testimony, we get a C+ instead of a C when they are grading states on how generous they are. In terms of the other states, Arizona and California are referenced in the document you are looking at as having only the federal minimum of 25 percent. That is not accurate. In Arizona, it is a separate process, but you can apply to have the 15 percent that we were talking about if you can articulate a simple hardship. In California, you can have up to zero garnished if you apply to the court and demonstrate why that would be difficult for you. You have a whole other court hearing or trial to do that,

but both of those states are not just the federal minimum, but they are large exceptions to those.

**Chairman Frierson:**

Are there any other questions from the Committee? From earlier testimony, I remember Texas being one of the states that does not allow any garnishment. Is that a recent change, or is that the way Texas has been for some time? If we were going to speak about it not being the end of the world in Texas, but it has always been that way, then that would necessarily reflect what would happen in the event of a change.

**Jon Sasser:**

It is my understanding it has been that way in Texas for some time. In all of the states that do not have wage garnishment, I have heard no testimony or evidence from the opponents of the bill that it has hurt either the ability to get credit or the cost of credit in any of those states. Massachusetts is the most recent state to make a change, which I believe was about three years ago. They went from protecting 75 percent to 85 percent. I am aware of no evidence that it has hurt the cost of credit or the ability to get credit in that state.

**Chairman Frierson:**

What is the amount that they use for the benchmark in Massachusetts?

**Jon Sasser:**

Most states do not have this tiered system. Massachusetts is 15 percent for everyone regardless of income level. The tiered is a rare thing, but it did come out of the model act.

**Chairman Frierson:**

I appreciate your having met with me about this. I think there are some concerns about the \$50,000. To a 24-year-old college graduate with no responsibilities, \$50,000 is one thing. To a single parent of six children, \$50,000 is another. To set it at just \$50,000 seems to open the door for it to include people who are not necessarily as passionate about making sure they can pay their bills as opposed to those that are struggling.

**Jon Sasser:**

Again, that is a policy question and there is a variety of different approaches to that. The model act was \$70,000 and we lowered it to \$50,000. Depending on where you look in Nevada for the median household income, I think it is \$55,000 in some sources and in Housing and Urban Development (HUD) it is \$60,000 to \$70,000, so we are at least talking about the bottom half.

We made the bill not just to protect the lowest clients that legal services represents, but also to help those middle-income workers that the unions represent. We wanted to make it a broader reach. Some states go through a process where you have to go into court and go through the whole thing on the head of the household. This would probably affect the court system a great deal. We kept it simple because this garnishment is served on an employer. The employer does not know the family size and anything else except what his or her own worker makes. We tried to make it as administratively simple as possible for employers to help those small businesses.

**Chairman Frierson:**

Are there any other questions? I see none. I now invite those here to offer testimony in support of S.B. 373 (R2) to please come forward.

**Jon Sasser:**

This bill also applies to annuities, and I am sure Mr. Uffelman will explain that.

**Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:**

You have heard a lot of testimony about the first nine sections of the bill. With all of the changes they have made in it, we arrived at a position that we could support that. Section 10 is why I am here.

At the end of the 2011 Session, the law on annuities in the state of Nevada was changed. It used to be that on a portion of an annuity based on a mathematic formula, a person could obtain a judgment and execute against that annuity. At the end of the 2011 Session, that number went to zero. Ironically, the Washoe County Bar Association had a continuing legal education class on how debtor friendly Nevada had become and how if you had clients that put their money into an annuity, they were judgment-proof.

We had a bank which had made a commercial loan, and as part of that loan the borrower had pledged an annuity. In 2011, when they foreclosed on that loan on October 1, the annuitant said that he could not be touched. The amendment says that if you use the annuity to obtain a loan listed as an asset, and pledge payments, that I can execute against that annuity. The one year clawback is even if you have received a payment from the insurance company under the annuity, I can still go and claw that back. It is simple and balances our protections at both ends of the income spectrum.

**Chairman Frierson:**

Are there any questions for Mr. Uffelman?

**Assemblywoman Spiegel:**

I hope you can answer a question that is unrelated to your testimony. A consumer goes to a local merchant, buys something, and uses their credit card to pay for it. The merchant is paid by the credit card company. If the consumer subsequently defaults on their payment to the credit card company, does the credit card company ever charge back to the initial merchant and say that they were stiffed, therefore, you are being stiffed?

**Bill Uffelman:**

The credit card company is not going to be able to go after the merchant. If a merchant, on a regular basis has 90 percent of his credit cards fail, that credit card company may want to talk to that merchant about whether the merchant agreement is going to be voided.

**Assemblywoman Spiegel:**

People should not be concerned about consumers who default on credit card payments for services that they purchased locally in that it would pull money out of the local economy, because the payments to the credit card company are going out of state. Those are not necessarily well-founded concerns based on what you are saying.

**Bill Uffelman:**

I am unaware of any situation like that.

**Assemblyman Wheeler:**

Looking at the unintended consequences of this, if credit companies or small businesses are going to extend credit to someone knowing that their ways of getting that money back are being reduced, or extended, as this bill would do, would your credit score not have to be much higher to get that credit? Would the lower income people be hurt by credit being held back from them because of this bill?

**Bill Uffelman:**

I cannot put a number on it. Going to a credit card company and going to a merchant is different. Small businesses will make their own determinations because they maintain their own accounts. There is a line of credit on your credit card. Is it a prepaid credit card? Those are judgments where the issuer of an open credit line would look and decide if this was an individual to whom they are going to extend credit. If it is credit that a merchant is offering directly as opposed to taking credit cards and paying the merchant discount fee and all the other fees related to taking credit cards, they are going to extend credit on their own, that is the reason bankers go out to sell credit card services to small businesses. If you do not take credit cards and maintain your own accounts,

you stand the risk of loss. There is a direct correlation. Will people at the lower income spectrum get credit? I am sure they will. The credit limit might be lower on the card.

**Chairman Frierson:**

You mentioned the states that do not have any limitations. I do not know if we have had any testimony about the rates in those states being higher or the credit requirements in those states being more stringent which would be an indication that if something in this area is done, all of a sudden banks are not going to lend people money or extend credit, or require perfect credit. There is no indication that Texas' credit requirements are any more stringent than ours are, even though they do not have any limits.

**Bill Uffelman:**

I have no evidence to that, but with section 10, my mother is a classic example. She is 92 and a half years old. She is in a nursing home now. No one is going to extend her credit. The reality is that the bulk of her income is either social security, which is exempt, and an annuity from Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF). If this was Nevada today, she is judgment-proof. The reality is, the way we have changed the law in 2011, someone whose bulk of income was an annuity, they were not worthy of credit. If they listed that annuity, and if I denied them credit, I could get into a federal issue over their income. That is the purpose of section 10.

**Assemblywoman Fiore:**

Are the bankers in favor of this bill?

**Bill Uffelman:**

No banker has called me and said that they oppose this bill. I had a discussion with a banker on behalf of their bank before the bill was amended to the \$50,000 limit. I explained that to him and he did not come back and say no. I have bankers who specifically support section 10.

**Chairman Frierson:**

Do I have other questions from the Committee? I see none.

**Danny Thompson, representing the Nevada State AFL-CIO:**

Nevada is in a unique position. We have gone through the longest period of having the highest unemployment rate in the nation. For an extended period of years, we have had the highest foreclosure rate in the nation. As a result of assessed valuations, local governments have had to lay people off because their tax collections have fallen to all-time record lows. I am in the job business. Last session, I could look forward and not see a place where we were able to

ever get out of this. The solution to this is to put people back to work, get them back to what they were doing, and everything will get better. Last session I could not see a job of any significance on the horizon. Today we are starting to turn the corner.

People, specifically construction people or local government people, who were foreclosed on and laid off, have debt. They go back and find another job only to find themselves facing a garnishment. That forces them to file bankruptcy, or to become homeless and move away. Both of those answers are not good for us because when the person moves away, they do not pay the bill and when they file bankruptcy, they do not pay the bill. They may become homeless and lose their job because of not being able to attend work regularly.

We see this bill as a positive fix to help us get out of this mess, get them back to work, and keep them working. We are very much in support of this bill.

**Chairman Frierson:**

Are there any questions for Mr. Thompson? I have a general question for those in support. I know the amount was reduced from \$70,000 to \$50,000. How wedded are those in support to that? There have been questions from the Committee that suggests that \$50,000 might be somewhat generous. I want to make sure when people come up they indicate if they would still be in support if there was an appetite to adjust that amount.

**Danny Thompson:**

For us, \$50,000 is about \$24 an hour and change on the check. That does not give you a lot these days, given the cost of everything. The price of water, gas, and electricity increases every year. We think that is about right.

**Chairman Frierson:**

Are there any other questions of the Committee? I see none.

**Patrick Sanderson, representing Local 872, Laborers' International Union of North America:**

This is not a bill for deadbeats. It is a bill for the working people and women in the state of Nevada, the ones who try to pay their bills, but because of this recession and bad luck, sometimes are not able to. The one thing in the real world this does is it gives you a chance to pay your bills. I take great pride in what I do, and what I have always done, and that is pay for what I have coming and pay for everything in my way. In the last few years, the working men and women, especially in the construction industry, do not know if they have a job tomorrow even though they have one today. You do the best that you can. I want to pay off everyone, but in order to do that I have to be able to live.

That is why these minimums were set up. You have to buy gas in order to go to your job, if you are lucky enough to have one. You have to put food on the table for you and your family and take care of your kids. At the same time, you have to pay the bills that you owe. I want everyone to pay his or her bills. I think this is a good compromise. I am not as happy the way it was changed by the Senate as I was when it started. This gives the working men and women of the state of Nevada a chance to pay their bills because in real life, if it becomes overwhelming, either you file bankruptcy or you run, or you go and rob some place in order to pay the bills to keep your family living. This puts you in jail and it is the state of Nevada who is taking care of you. I hope you take a look at this bill, think about it, and help the people of Nevada take some pride in themselves, and pay their bills at a rate they can afford and still be able to take care of themselves and their family. I appreciate you listening to this bill and me.

**Chairman Frierson:**

Are there any questions from the Committee?

**Assemblyman Hansen:**

Actually, the question is for Legal. The federal minimum wage is \$7.25. Fifty times that would be \$36,250. We are really talking about the window. If you are making the minimum wage, the entire amount may be exempt. The difference between \$50,000 and \$36,250 is \$13,750. That is the window we are really talking about with 85 percent.

**Jon Sasser:**

I had not really thought about that, but it sounds accurate to me.

**Assemblyman Hansen:**

If you make \$36,250 or less, you are already exempt. The 85 percent would apply if you were in that window between \$36,250 and \$50,000 with the existing law, the 75 percent would still apply if you were making \$50,000 or more. Is my understanding correct on that?

**Jon Sasser:**

It was in Mr. Berchtold's testimony—50 times the federal minimum wage is \$362.50 per week. If you multiply that by 52, I do not think you get \$36,000. I do not want to argue over math.

**Assemblyman Hansen:**

I may be a little off on my math, but we are talking about a window because already the poor people who make less than 50 times the federal minimum weekly take-home pay would be, or are already, exempt from the law as I read

it. It says "may be exempt," so I guess a judge does have a level of discretion, but clearly the law implies for the desperately poor people there already is an exemption on the wage garnishment side of it.

**Jon Sasser:**

Yes, there is a floor as I mentioned. The floor is \$50,000, Mr. Berchtold is up at the table and I think he said \$27,000 based on his math, is that correct?

**Jim Berchtold:**

Yes. If your disposable earnings are more than \$23,199, then you can be garnished at the old 25 percent rate.

**Chairman Frierson:**

Are there any other questions? I see none. Is there anyone else in Carson City wishing to offer testimony in support? [There was no one.] I will now go to Las Vegas for those wishing to testify in support.

**Ron Reynolds, Private Citizen, Las Vegas, Nevada:**

I have eight sons here practicing and they extend credit. I oppose Senate Bill 373 (2nd Reprint).

**Chairman Frierson:**

We are in the support section. I am inviting those offering testimony in support right now so my staff can keep the testimony clear.

Is there anyone else in Las Vegas wishing to offer testimony in support of the bill? Now would be the time to offer that testimony and then we will get to opposition afterwards.

**Joseph Connell, Private Citizen, Las Vegas, Nevada:**

I have been living in Nevada since 2002 ([Exhibit H](#)). I am here in support of S.B. 373 (R2), not only for citizens who find themselves in debt under the fire of collection agencies, but also because this has affected me directly as recently as February of this year. I found that I had a restraining notice issued at my Wells Fargo Bank account from New York where I lived before 2002. This restraining notice successfully removed \$3,100 out of my account. It was served out of state to an office in Pennsylvania. This default judgment against me in New York was in 2005, three years after I left New York. I was never served and had no prior knowledge of this whatsoever, only to find 65 percent of my bank account had been removed without domesticating the judgment in the state of Nevada and without any notice. This bill will not only help counterbalance some of the disingenuous tactics that these collection agencies use at times, to give them second thought, and to follow the laws of Nevada,

but will give you your chance to have your day in court and be heard. In my situation, I had no knowledge of this supposed credit card debt, which was almost ten years old at the time. There was no account information on the judgment and no way to determine what happened. I had to back engineer it by hiring the Legal Aid Center of Southern Nevada to find the underlying cause of this situation. I think the bill will definitely give support and allow people to come to a fair agreement between both parties without creating an emergency situation on someone who might happen to have a debt that has been bought pennies on the dollar by a collection agency.

**Chairman Frierson:**

Are there any questions?

**Assemblyman Hansen:**

My question is for Legal about section 5 of the bill. Would what he just described be considered a foreign judgment? If that is the case, would this gentlemen have the right to turn around and sue, in that case the bank, for two times any amount paid to the judgment creditor, and then would he have the ability to have the court award him the reasonable attorney's fees?

**Brad Wilkinson, Committee Counsel:**

Based on the testimony, I am not sure I could say. It sounds like it would apply under those circumstances. It would be a foreign judgment that would be required to be domesticated under the bill. If it were not done so, then this section would apply.

**Assemblyman Hansen:**

So that would have a chilling effect on any business nationally to collect on anyone who comes to Nevada who has not paid his or her bills? I have some issues with that.

**Chairman Frierson:**

Mr. Sasser, if you could wait, I will invite you to come up and close out after we have heard all of the testimony.

Is there anyone else in Las Vegas wishing to offer testimony in support of this bill?

**Jack Mallory, representing the Southern Nevada Building and Construction Trades Council:**

I will not reiterate some of the statements that have already been made by Mr. Sasser and Mr. Thompson and others.

I would like to focus on the issue of math. I am glad Mr. Hansen brought up this question. If you take \$50,000 a year and assume \$20,000 withheld in taxes, that leaves approximately \$76.90, which is the difference between 25 percent and 15 percent calculated at the highest end of the threshold on this. What that means to a construction worker is a tank of gas so that person can go to work for a week and be able to pay the 15 percent that would also be withheld. I think that you have to be able to consider the burden that is being placed on low-income people at a level that interferes with them earning a living and paying the debt. It could be the difference between forcing an individual into bankruptcy, or forcing an individual on the street.

**Chairman Frierson:**

Are there any questions for Mr. Mallory? I see none. Is there anyone else in Las Vegas wishing to offer testimony in support? [There was no one.] We will return to Carson City for those people wishing to offer testimony in opposition.

**Chris Ferrari, representing Clark County Collection Service, LLC:**

I want to first thank Senator Segerblom who always is looking out for the little guy and has a heart bigger than many. I appreciate his bringing this topic up for discussion.

There were several references earlier about concessions, amendments, and accommodations. I wish to inform this Committee that none of those was based on dialogue between the opponents of this bill that I represent in this issue.

The important thing to understand is this bill hurts business, and it is not any business, it is the mom and pops, the small businesses, contrary to what people indicated previously. There are no credit card companies that are going to follow me in testimony pertaining to this bill; they have not weighed in at all. The people that have weighed in are small businesses, your constituents, and business owners here in Nevada. They are plumbers, dry cleaners, florists, coffee shop owners, painters, small contractors, medical professionals, and anyone who provides goods or services and sends you a bill at the end of the month trusting that you, the consumer, are going to do the right thing and pay your bill.

I also want to make it clear there were mentions of different sections of this bill, one of which requires domestication of a foreign judgment. There is no issue with that. I believe all of the people you will hear from today already do that anyway. That is an unscrupulous practice in many cases.

I also want to say that the provision pertaining to judicial purview is not an issue. Obviously, the judge in his or her discretion would have a better opportunity to instill some type of payment plan.

There are three submissions that I put onto NELIS. The first I would like to reference is a pie chart ([Exhibit I](#)). I want to talk about what is already under existing statute under NRS Chapter 31.045. Already exempt from any type of garnishment are life insurance policies and any proceeds therefrom, all federal benefits—veterans, social security, unemployment, child welfare—or cash in a pension trust or stock bonus for profit sharing plan at \$500,000, vehicles with equity of \$15,000 or less—meaning you can put \$5,000 on a new Range Rover and still drive freely at your leisure—\$10,000 in libraries, equipment, supplies, and tools, and \$550,000 in homestead exemption.

The federal requirement for protection of wages is 30 times that of the federal minimum weekly wage, which Assemblyman Hansen and the proponents mentioned earlier ([Exhibit J](#)). Surrounding states of California, Arizona, Utah, and Idaho all abide by that. Nevada increases that to 50 times protection for the debtor, 66 percent higher than any of those surrounding states.

The next thing I would like to walk you through is an account timeline ([Exhibit K](#)). This is an actual account timeline in Clark County, Nevada, from my client. Many of you are referencing payment programs, different options, and the evil debt collector. This will show you that on January 5, 2011, a consumer received a service and did not pay for it. After four months, that service provider turned it over to my client, the collection agency, to try to collect. My client tried to do so until almost four months later when a default judgment was received from the court. We are already a year and four months out from when that judgment was received. Someone asked a question earlier about how long it takes to get a garnishment. The average time for my client is about 12 to 18 months before that would happen. You will notice in May 2012, a year and a half later, they are preparing for garnishment, and in July the consumer says, "Wait a minute, I messed up. I apologize; I am going to enter into the voluntary program." My client, the debt collector, says, "Okay, let us do that, not a problem." They enter into the first voluntary payment agreement, and they do not make the first payment. They are served again by the constable for garnishment. They say that they did not understand the first time and that they promise to do it this time. This is November 27, 2012; the original service rendered was January 5, 2011. So there was another voluntary payment, another nonpayment, the first garnishment is made two years later for \$54 on a \$1,000 service. It will take that business almost three years to collect that \$1,000. I do not know many

small businesses that can wait almost three years to be paid for a service that someone knowingly took.

Earlier someone brought up a plumbing incident; that is the example I would like to use. If someone has a plumbing emergency which is about \$1,000 just like the timeline I referenced, the plumber comes in, sees what is happening, the problem is fixed. They get the water on and the clients have a shower, running water, the children are off to school, and everyone is happy. They are billed at the end of the month. The plumbing company is not paid for three years. What do you think happens to the next family that has an emergency and calls that same plumber and who is expecting to be billed after 30 days so they can get the money together? Cash up front? They are going to say we anticipate this is going to cost about \$1,000, we are going to have you pay us up front, and then we will reimburse anything that we do not bill if it comes in at a lesser amount.

People fall on hard times, and I understand where the proponents are coming from, and where Mr. Thompson or Mr. Mallory are referencing. There is sympathy for that. Your constituents feel it, my clients and their thousands of employees feel it. Is it my client's goal in this case after offering, almost a year and a half later, two voluntary payment plans, to try to gouge people who are down on their luck knowing they are not going to get paid, and get the money for those small businesses? Alternatively, is it my client's goal to help those small businesses stay solvent so they can continue to do honest business with honest Nevadans?

Working on this issue, the following groups have told me to let all of you know their opposition to this bill: the Nevada Association of Realtors, the Nevada State Medical Association, the Nevada Dental Association, Reno and Henderson Chambers of Commerce, the Nevada Federation of Independent Businesses, the Nevada Apartment Association, the Nevada Collectors Association, and many other small businesses and individuals who do not have the time or the money to hire a man like me to come up and make this presentation to you. They rely on you, their representatives, to pass fair and equitable laws that balance the best interest of all Nevadans. This bill simply does not do that, and I respectfully ask for your opposition.

**Assemblyman Duncan:**

We have been referencing small businesses. When a small business hires your client, does your client charge the business a monthly fee to try to recover what is owed, or are they buying the debt from them at a lower rate? Would you explain that?

**Chris Ferrari:**

The typical arrangement, and I want to add there are more people from the collection business that can answer that better than I can, is a percentage base of the debt collected. It is also important to note that during this process of garnishment, when it does reach that time, in this example that I provided you, there are several court fees and constable fees that occur along the way for nonpayment by the debtor. All of those fees ultimately end up back on the debtor. When you are collecting at that lower rate as proposed in this bill, oftentimes the debtor who you are trying to help with the purported legislation is more negatively impacted because they are receiving more of those court fees and other items along the way.

**Chairman Frierson:**

Are there any other questions for Mr. Ferrari? I see none.

**Mike Draper, representing the Nevada Collectors' Association:**

We are opposed to S.B. 373 (R2) as this bill will have a dramatic and even devastating effect on businesses in Nevada, especially small businesses. Rather than rehash the points that Mr. Ferrari so eloquently outlined regarding the restrictions in place that minimize the creditors' ability to collect unpaid debt, I would rather give you a quick overview of the role debt collection plays in our economy. Plain and simply put, our economy is built on the premise that those businesses which provide credit, goods, and services have the expectation of being repaid. A majority of these businesses are small businesses whose very viability rests on their ability to collect unpaid debt. In these cases, recovering consumer debt not only helps these organizations survive, but prevents layoffs and keeps credit goods and services to other consumers. Every creditor in Nevada, which includes anyone who accepts a check or allows anyone to pay using credit, must have a means of being paid for the services and goods they provide, or of enforcing a mutually agreed upon contract.

In 2011, the American Collectors Association worked with highly recognized research firm Ernst & Young on a study that highlights the impact of third-party debt collection on our economy. I want to share a couple of highlights from that study. In 2010, agencies recovered almost \$55 billion in total debt nationwide. The five states with the highest total debt collected were Texas, New York, California, Florida, and Illinois. Early out debt, which consists of receivables that are age 90 days or less, represents 30 percent of all debt collected. Bad debt, however, which consists of receivables aged 90 days or more accounts for the remaining 70 percent.

There are nearly 150,000 employees in the third-party debt collection industry. Debt collection agencies support indirect employment of more than 150,000

additional employees. The total employment impact in the United States is nearly 302,000 jobs, with a total payroll impact of more than \$10 billion. Unpaid debt affects all of us in the form of higher prices, business failure, and job loss. Additionally, uncollected taxes and fines put significant strain on government budgets.

The benefit of debt collection can be seen on a daily basis across the board. For consumers, the benefit is seen in lower prices, health care premiums, and greater purchasing power. For businesses, debt recovery helps keep costs down and reduces the risk of financial insolvency and bankruptcy. Furthermore, the collection of unpaid taxes and fines reduces the need for future tax and fee increases or spending cuts.

By continuing to restrict the ability of businesses to collect unpaid debt, we are not only jeopardizing their ability to continue to extend credit, but we are challenging their very solvency. This bill would simply make most debt unrecoverable. While Nevada currently sets its garnishment level at 25 percent, as do most states, we have, as Mr. Ferrari pointed out, imposed additional restrictions far greater than many states. It is critical that we stop this ongoing process of reducing the ability for businesses to collect on their unpaid debt.

**Chairman Frierson:**

Are there any questions from the Committee? I see none. The bulk of the testimony seems to be regarding the one area of raising the percentage from 75 percent to 85 percent. Could you address your position on the rest of the bill so we have everything in context?

**Mike Draper:**

You are right; our biggest concern is section 5, which would impact raising debt collection from 75 percent to 85 percent. We do have some concerns with some of the other sections in the bill; however, we also think there are some good policy ideas and concepts put forth. The ability for the court to work out a payment arrangement with a judgment debtor is a very good idea and we support it. However, we would suggest that if that judgment debtor defaults on that court-ordered arrangement, that we would be able to impose our garnishment immediately. Furthermore, when the judge works out that arrangement with the judgment debtor, he considers certain things. It is not an arbitrary decision, but it is something more defined as to what the judge is taking into account.

There are some other pieces in this bill that we would suggest need to be changed, mainly some language changes and that kind of thing. We support the judgment arrangement, but are adamantly opposed to increasing the

minimum from 75 percent to 85 percent. In our estimation, \$50,000 is far too high. I will submit some proposed language changes regarding the other areas of the bill, but those are the two main areas for us.

**Chairman Frierson:**

It would be more appropriate to present any language ideas to the sponsor of the bill for their consideration as well.

**Assemblywoman Spiegel:**

Do you know roughly of the clients that debt collectors represent what percentage of their business goes to debt collection, and of that, what percentage results in the garnishment of wages?

**Mike Draper:**

I do not know that off the top of my head. There are certainly some representatives of some of the debt collection agencies as well as small businesses in attendance. They might know it, and if not, I will see if I can track that down and get the information to you.

**Chairman Frierson:**

Are there any other questions? I see none.

**Dee Barbash, President, Collection Service of Nevada:**

I am the president of Collection Service of Nevada, a small Reno company since 1953. I have been the licensed manager at Collection Service of Nevada since 1978. With due respect to Mr. Standish, who testified on a previous bill, I would like to say that our agency is often recommended by the state of Nevada to creditors who call the state for a collection agency referral. These creditors tell me that the state regulators compliment us on our level of business ethics.

Last year our small business alone returned over \$5 million in collected bad debt to the northern Nevada economy. That being said, I made an estimate of what S.B. 373 (R2) in its current form would cost my company. I estimate a reduction of 20 percent of our gross income and the loss of 10 of our 24 employees. This bill is meant to be an industry killer, and it is. It is also a job killer, a credit granting obstacle, and anti-business.

I just testified that my company alone, a family-owned small business for the last 60 years in Reno, returned over \$5 million to the northern Nevada economy in 2012. If S.B. 373 (R2) had been in law last year, we would have returned \$1 million less. According to Ernst & Young, collection agencies in Nevada employ 2,462 people. If my company's estimates can be applied statewide,

this law will cost our state 820 jobs and \$21.3 million in payroll. If my company's estimates can be applied statewide, then the gross amount recovered for business creditors in this state will drop by \$128.6 million yearly because of S.B. 373 (R2).

Collection agencies are a critical component of the economic system. Creditors find the collection effort distasteful. Consumers find it embarrassing to deal with their creditors. Collection agencies are the essential third party that changes an emotional situation into a business transaction.

**Chairman Frierson:**

Are there any questions from the Committee? I take issue with characterizing people's intents in bills that come before our Committee. We need to vet issues and have discussions on it, but I take issue with saying the purpose of the bill is to kill an industry. I think that the bill is clearly trying to provide some protection for people. I do not know if that fairly characterizes it in the nature and kind of discussion we are trying to have.

**Dee Barbash:**

I apologize for that. I think it may be an unintended consequence; a very negative one.

**Assemblywoman Spiegel:**

Back to my earlier question, roughly what percentage of the total number of debts that you are contracted with wind up going to the point where wages are garnished?

**Dee Barbash:**

It is a very small amount, probably 10 percent. To be honest, it has been more during the recession. It really is a misconception that collection agencies will not allow people to make payments. A true example is last week someone came into our office very proudly to make the last \$81-a-month payment that she had on her debt for which we had sued her four years ago. We have no reason to want to force someone into bankruptcy or to not be paid because we work on a commission basis.

In answer to Assemblyman Duncan's question, we do not buy debt. We are assigned the debt and if we do not collect it, there is no charge to the creditor. If we do collect it, we keep a portion of that. We have every reason to make sure that creditor is paid because that is the only way we are paid. We want to accommodate someone at the level they can afford.

**Assemblywoman Spiegel:**

When you go through your debt collection processes and procedures, do you have any way of knowing what the household income is of the people with whom you are working?

**Dee Barbash:**

We ask them for that information. We ask them to provide things like pay stubs and that kind of thing. We do not always know. If we know the person is employed with a certain employer, we know the pay range of that employer. There are certain resources we can find where people's salaries are listed. Even if we know someone's salary, Assemblywoman Spiegel, we do not necessarily know his or her obligations.

**Assemblywoman Spiegel:**

Do you have a general sense overall of the percentage of people who you work with, the people you are collecting debts from, whose household income is between the \$37,000 that Assemblyman Hansen was speaking of earlier and \$50,000?

**Dee Barbash:**

I can tell you why we do not. Using this law as an example, if we were to put out a garnishment to a certain place of employment and that person's income was within that salary level, we have no way of knowing how much that person's spouse might make, or what other circumstances might affect it. The household income, no, but we can tell from the employer's response how much that individual's income is.

**Assemblywoman Spiegel:**

Am I correct that the analysis you gave us earlier in testimony was not focused on just the window that this bill is covering?

**Dee Barbash:**

It is based on an estimate of what I think we would get based on our current figures, extrapolated to this bill. I estimated about a 20 percent loss in recoveries.

**Assemblyman Thompson:**

Based on the businesses that you are collecting for, would you say they are mainly small businesses, mom-and-pop businesses, or are they larger businesses?

**Dee Barbash:**

They are all small ones. They are small, local, northern Nevada businesses. They are medical offices, dental offices, plumbers, veterinarians, pizza restaurants, apartments, all local businesses. We do not take national clients.

**Chairman Frierson:**

Are there any other questions from the Committee? I see none.

**Patty Gunn, Private Citizen, Yerington, Nevada:**

I am the director of asset recovery for Financial Horizons Credit Union in Yerington. My president and chief executive officer could not be here today, so I would like to read a letter she provided to each of you ([Exhibit L](#)).

**Chairman Frierson:**

I have established a practice of not having people who testify read to the Committee. If you could summarize the letter, I would appreciate it.

**Patty Gunn:**

Credit unions are people who help people. We reach out to our members, but realize the situations people are in due to the economy. We do try our best to help members. When we have exhausted all avenues to collect a debt, we pass it on to a third-party collection agency.

**Chairman Frierson:**

You said the letter was provided to my staff?

**Patty Gunn:**

Yes, it was.

**Chairman Frierson:**

Are there any questions from the Committee? I see none. I am looking at the list of people who wish to testify. We are getting to the point where it is okay to simply agree with what has been presented before, if someone from the industries has touched on the subjects in the name of not repeating it. If you have something to offer that is additional, I would welcome that. I just want to be mindful of the time.

**Ed Kaufer, Private Citizen, Reno, Nevada:**

I have been in the collection business in the state of Nevada since 1988. The collection business in Nevada employs thousands of people. We are also highly regulated by the State of Nevada from a standpoint of the Financial Institutions Division. For us to be licensed, we must pay significant license fees and annual audit fees.

I understand that the purpose of S.B. 373 (R2) is to help those who are judgment debtors from being garnished. I do not want to address the other two aspects of this bill; I would like to focus merely on judgment debtors. I would like to share some of the unintended consequences that are apparent from my standpoint, and may not be apparent from yours ([Exhibit M](#)).

From a personal level, I am convinced that S.B. 373 (R2) is going to drive me out of business. It will probably drive out other collection companies as well. To answer your question, we derive 60 percent or more of our income from garnishments and executions. We are not a typical collection agency that calls you and harasses you and sends you letters. We send you a letter saying that we would like to resolve the matter if we can. If you cannot resolve the matter, we move it to litigation if it is appropriate. Once we have obtained a judgment, we aggressively attempt to collect it from wage garnishments and executions after giving the debtor the opportunity to sign up for a voluntary payment plan. The last thing we want to do is to incur more costs and more delays by filing garnishments and executions. We would much prefer to work out a payment plan that suits the defendant and suits the client. We are a third party whose primary role is resolution. The last thing that we want to do is to go to enforcement. There are cases that we have no other alternative than to seek enforcement. In those cases where we do have to seek enforcement, we do not have any alternative except to move forward with a wage garnishment.

It would be very unfortunate for me and all of the people in my industry if we were forced out of business, but there is an even greater impact and that impact concerns the state of Nevada and all of its residents. The extension of credit is no different than selling any other product or service. If you, as a merchant, sell your product and you cannot get paid for that product, you do not have any alternative other than to raise the price of your product to reimburse yourself for the losses you are suffering.

In the situation of extension of credit, Nevada is one of the very few states that does not have any usury laws. A creditor can charge whatever rate they think is appropriate for the extension of credit. The cost of raising the price of credit will impact all citizens of Nevada, not just the ones that have a marginal credit rating. These are the people that this bill purports to help. I understand the desire to give the working man a leg up, but Nevada already has some of the highest exemption thresholds in the nation, 50 times the federal minimum wage. What happens is that window is very small in terms of the amount of money you can garnish. If creditors cannot get their money back, they will be forced to tighten the credit standard. That credit standard is going to first affect the marginal borrowers, the people who need credit in an emergency to

buy a new refrigerator or to fix their car so they can get to work. These people will be negatively impacted the most.

**Chairman Frierson:**

Are you aware of any statistics or any data of other states that have no limits and that their standards are higher?

**Ed Kaufer:**

I do not, but I will be happy to have one of my people research that and report to the Committee.

Several other things are going to impact the state. If the creditor is forced to go to a garnishment situation, before they get to that situation, they have had to pay a tremendous increase in the filing costs to file and serve summons and complaints in the state of Nevada. Recently those costs have risen dramatically in an effort to cover the costs of litigation and the judicial system within the state of Nevada. The courts need that revenue. If a creditor is forced to take the position that they have to file suit, they have to file an execution, and they cannot recover those costs, they are going to stop filing them. This will have a major impact on the judicial system.

The other part of garnishments in the state of Nevada is they must be served by sheriffs and constables. The sheriff and constable are dependent on that service revenue to provide the necessary community services.

**Chairman Frierson:**

I am going to have to interrupt again. Unless you represent them, we probably should not go there.

**Ed Kaufer:**

It is just the way the system works and I am not sure that all the members of the Committee understand the sources of revenue that come back to the state from the standpoint of garnishments.

**Chairman Frierson:**

I understand, but they have representatives in this building that can come and testify.

**Ed Kaufer:**

I will be quiet then. The other thing that I would like to briefly point out is the remedies that are available for judgment debtors. Current statutes make adequate provisions for that and there have been some comments this morning about the ability of the judge to intervene and assist the judgment debtors.

As a matter of daily occurrence, if a defendant is having a difficult time paying his bills, he has the right to apply for a hearing. When they go to that hearing, the judge is more than receptive to reduce the garnishment for the wage execution to assist the judgment debtor.

The overall impact is that if we arbitrarily raise this exemption, there will be a tremendous number of people who will suffer the unintended consequences of that raise. We are all here to help the working man of Nevada. We are dependent on the working man of Nevada. This bill, in my opinion, creates some consequences that I need you, as a Committee, to consider before you vote.

**Chairman Frierson:**

Are there any questions from the Committee? I see none. Again, we have about five people from the same industry. We not only need to finish up, but we need to get to our last bill on the agenda.

**Wendell Carpenter, Private Citizen, Reno, Nevada:**

I base my business on trust. I trust people until they prove otherwise. I am more than happy to accommodate my customers. The things that I have found in business that are the most troublesome are individuals that either do not communicate or have no intention to pay. In other words, they are dishonest. I have struggled to make payroll at times in my business. The only person that has not been paid in my business in 45 years is myself. It is a struggle to do that. Customers intentionally, or through mismanagement or poor decision-making, get themselves into a position where they cannot pay for the services they have. I welcome them to come into my store and talk with me about it. I try to make my merchandise and pianos available to everyone. I think every house should have a piano. If they cannot afford a piano, I will give them one, or I will make arrangements so they can make small payments. I have pianos for that express purpose. It really bothers me when individuals are dishonest. They come in and spend beyond their means, or try to provide something for their family that they should not. I have had individuals who have bought things from me and have not paid me, and rather than coming in and making arrangements with me, they go down the street and pay cash at another music store for something that they need. If they would come in and talk with me and square with me and say, "I am in a bind right now. I can pay you, but I need to stretch it out a little bit. I need more merchandise so I need to pay for that, and then a little on the previous balance," I would welcome that.

The crux of this whole thing is sometimes I have individuals who do not pay. It is not in my best interest and not in my time frame to go after those

individuals and try to do it, so I turn the account over to a collection agency. As far as I am concerned, they serve a very valuable service in the community. I have recovered some of my debt. I always tell people if they will come in and talk with me, it will never go to collections. If they absolutely cannot pay and there are mitigating circumstances why they cannot, I will forgive the debt. I will make arrangements. I will do whatever I can to do that. When I find they have all of the conveniences and some of the things I do not have and cannot afford, and they are neglecting paying the small debt owed me, or something I need to pay my employees and other individuals, it troubles me greatly.

I feel like this bill restricts some of those provisions. It would be bad for business, and I respectfully request that this bill be defeated by the Committee.

**Tray Abney, representing The Chamber:**

To be clear, we are not concerned with the other parts of the bill, except the parts that everyone is concerned with here. No one here in opposition is asking to reduce anything in current law; we just want the same exemptions that exist now. There has been a lot of talk about jobs in this building, in this bill, and in this hearing today. The people we are talking about that this bill purports to want to protect need jobs. When a small business is not paid, they have less money for salaries and wages to provide jobs for those people. We hear a lot about people needing to be able to pay their bills. Small business owners need to pay their bills, too, and that affects the local economy if small business owners do not have dollars to pay their bills.

Finally, we hear a lot about working men and women. We have heard that comment today and I would submit to you that small business owners are some of the hardest working men and women that you will ever meet. They need to pay their bills; they need feed their families as well. I urge you to oppose this bill.

**Mendy Elliott, representing the Nevada State Apartment Association:**

The Nevada State Apartment Association placed a letter on NELIS in opposition to S.B. 373 (R2) ([Exhibit N](#)). We want to compliment the bill's sponsor and for the admirable effort he has placed. We want to thank him for trying to amend the bill, but it is still important to the Apartment Association that we have the ability to collect our debts. We are in strident opposition to the bill as it is currently amended.

**Chairman Frierson:**

Is that opposition based on the same section where everyone else is concerned?

**Mendy Elliott:**

Yes, it is a me too.

**Michael Jack, Private Citizen, Reno, Nevada:**

I am here in opposition to S.B. 373 (R2), in particular the same section that everyone is talking about dealing with the change of exemptions. I was born and raised in Nevada. I am a fourth generation Nevadan, went to Reno High School, graduated from University of Nevada, Reno, I have degrees in accounting, worked as a deputy sheriff, was in the United States Navy, and most importantly, I was an agent with the Federal Bureau of Investigation (FBI) for 21 years. When I got out, I worked as a financial advisor, a comptroller for a small company, a government contractor, and as a professor of accounting and finance at a college in southern Nevada.

A year and a half ago, we came up here and started a business with some other friends. We do process serving. One of the unintended consequences that I want to bring forward is with the reduction in force by the collection agencies that will come if this bill goes through. The reduction in production will also go down. That will affect my business. Now I am looking at having to say, "Okay, are we going to have to cut back our hours to part-time? Am I going to have to let someone go in order to stay viable?" We have other areas that we can go to, but the majority of our serves are for collection services.

When I got into this business, I decided I needed to know what I was getting into. I spent a considerable amount of time learning about the collection business, nationally and locally. I have learned that in this state, it is very heavily regulated. I am used to working in a huge bureaucracy, the FBI, and with many regulations, but I was surprised to see how regulated it is in this state. I looked back and, over the last ten years, it seems like in every single legislative session there has been some sort of bill that is presented to pin the collection agencies in more and more. This bill, if it had gone through as originally put forward, would have killed the industry. Many people would have been out of work. As an accountant, looking at the way it is now, how many small businesses would be able to take a 20 percent to 30 percent cut in their gross revenues and still survive, or survive without having to lay off a significant number of people?

My point is there are many unintended consequences. They may trickle down through several industries. We may be helping people who already have a paycheck and they are having trouble living within that paycheck, and do not want to lose part of that paycheck to pay a bill, but are we really going to go out there and sacrifice over 1,000 jobs in this state to help maybe 3,000 or 4,000 who already have, and still have, a paycheck? We are going to take

away a paycheck from other people? That does not make any sense to me, none at all. There are other ways to do this. Putting people out of business is not one of them. I ask that you take all of that into consideration and vote no on this bill. Keep the law where it is right now. I think it is satisfactory.

**Chairman Frierson:**

We are going down to Las Vegas briefly for testimony in opposition.

**Ron Reynolds:**

I will not go over any of the other items that were mentioned. I would mention I am opposed in part to the main portion we have been addressing. As to the issue of judges being able to set up a payment plan, I think everyone would like this. I think if they are interested in helping the poor, then maybe the payment plan should be at the time that the complaint is filed as opposed to waiting until after judgment. I think most people would like to set up a payment plan within someone's budget, otherwise they run or go bankrupt. Why go through the costs of filing answers and going forward and getting a judgment, and then setting up that opportunity? It would help people to bring that earlier.

An item that has not been addressed about the key portion about garnishment is the idea of looking at the overall scope of what this means with other states. For 25 years, I was the Credit Union League's attorney for the state of Nevada. I represented every credit union north and south in the state of Nevada. Part of that has to do with upholding their contracts, making sure that when someone gets a car loan or a loan on their house that they pay it back. If they run into problems, they have bankruptcy, they have people that can help them.

I have been in this practice for 36 years, a part of which was collections because that is upholding the contracts of my clients, some of them being national clients. In seeing what has happened over the last ten years, our filing has gone down 75 percent. Maybe that is good, maybe that is bad. It is not good for the local businesses that see they cannot collect anymore.

In the early days of our government, they set up the *United States Constitution*. The contract clause of the *United States Constitution* says that no state, and legislators were specified, not the courts, shall impair the obligations of contracts. In looking out for the poor, which is necessary, you balance many things. Each state has done that. The states that say no garnishment have other ways to collect. If a person has a nice house, maybe the exemptions are lower. In California, look at their homestead exemption. It is not a \$550,000 equity exemption. When you give so many exemptions across the board, then it absolutely impairs the ability to uphold a contract. When you issue a law,

contract is a type of law, a commitment that our society wants to uphold. If you cannot enforce it, it is no good.

When I wrote my letter, I said it is like having a speed limit without any way to enforce it. When there is no speed limit, everyone is going to go past the 25 miles an hour if there is no enforcement, no penalty, no fine, and no obligations. The first litmus test on this whole thing would be, is this going to impair the obligations of contract? With the homestead exemption making all houses exempt, who has \$550,000 equity in their house? They have an exemption for their car; you can have \$1,000 in your bank account. You could have millions of dollars in annuities coming in and an annuity is exempt. For the older people, they have social security and retirement.

**Chairman Frierson:**

I apologize. If we could get to the opposition, I would appreciate it. I do know that you have been waiting a long time and that is why I am letting you go. Otherwise, I was only going to give a few minutes. I am certainly going to ask everyone else to be concise because we only have so many hours in the day. If you could get to the heart of your presentation so we can get everyone's name on the record, I would appreciate it.

**Ron Reynolds:**

The heart of it is that I think it is unconstitutional because it precludes a person from enforcing a contract. The percentage you want to look at is you reduce it from 25 percent, that is the only window left because all of the other exemptions have taken out everything else, and you reduce that to 15 percent, that is a 40 percent reduction. That 40 percent will have a major impact across the board on everyone. When credit goes away, when lending is no longer possible, and that is what will happen, then a vacuum will be created and it sucks in the hard moneylenders.

**Chairman Frierson:**

I think we are getting the point, we have to move on. We have another bill we need to hear today.

**Ron Reynolds:**

All I want to say is in the past ten years, look at what has happened when things have tightened up. I think you will see what has happened, not just in the filings, but what has happened with Nevada in its ability to recover and see what is going to happen in the future.

**Chairman Frierson:**

Thank you, sir. If the remaining couple of people can be brief, I would appreciate it.

**Peter Dubowsky, Private Citizen, Las Vegas, Nevada:**

I have been a judgment enforcement attorney in Nevada for the past 20 years, enforcing judgments that I obtain for my clients, individuals, and small businesses. I am also a small claims referee, which is like a judge. I issue decisions that have to be enforced. I am also on the adjunct faculty at the College of Southern Nevada.

I think that this proposed legislation is not going to help those you think it is going to help. It is going to hurt those that we have not yet discussed. It will also be more of a burden on the judicial system and those who are prosecuting these civil cases to get the money.

First, the 25 percent to 15 percent exemption change is a 40 percent decrease in what is being recovered. You think that may be good.

**Chairman Frierson:**

Mr. Jackson mentioned that too. Again, if we could be extremely brief. By brief, I mean just a few minutes each.

**Peter Dubowsky:**

Let me explain why that is bad for someone. That means when a person is being garnished, more of the money coming out of that paycheck is being applied to interest, sheriff's fees, and court costs that you need to get that garnishment. That is very important because a person thinks that less is being taken out. They will see that the principal is being reduced at a lower rate. This is not helping anyone. It is not helping those people when they see the principal of the judgment is not being reduced because what would take five years to enforce would take more than seven years to enforce with the lower amount that is coming out of the garnishment.

**Chairman Frierson:**

Mr. Dubowsky, you said you would be a minute, we have to move on. Please get to the heart of your opposition.

**Peter Dubowsky:**

The exemptions have changed every session since 2003.

**Chairman Frierson:**

Is this the heart of it? Could you please wrap it up in a sentence.

**Peter Dubowsky:**

I do not think we need to make it stronger than it is. We have done it for the past six sessions and I believe it will be a burden on the judicial system to have to go post-judgment and after all the judgments become final, now go in front of the judge again and get a second bite of the apple to try to tell the judge to reduce the amount below the exemption to take on payments. I do not think the judge is going to be happy with that. It is not going to be good for the parties involved.

**Chairman Frierson:**

Thank you very much, Sir. Ma'am, could you go ahead and get your testimony on the record?

**Lynsey Williams, Guglielmo and Associates, Reno, Nevada:**

We have offices in Arizona, New Mexico, and Utah. We are very familiar with how the different states handle garnishments. Nevada already provides a liberal protection to its citizens from garnishment. Nevada's wage exemption is one and two-thirds times higher than the federal amount exempt from wage garnishment.

The way Arizona handles wage garnishments would be a way to compromise, not by the proposed amendment. In Arizona, your wage garnishment is reduced from 25 percent to 15 percent if you can show the judge that you do, indeed, have a financial hardship. In Arizona, they are quite willing if the debtor can present documents that prove a financial hardship. Collectors in our Arizona office are willing to allow that reduction without even going to court. If we can strike a compromise that actually involves judicial discretion, we are going to have a better result with this bill.

I have some questions with regard to the bill and how you should think about whether to pass this. If a citizen earns less than \$50,000, and is not subject to a garnishment, how will this bill affect their ability to be extended credit? What is to be said to the citizens of Nevada when business no longer favors our state? What happens to a judgment debtor if they default on the court imposed payment arrangement? What is the creditor's remedy? What is the debtor's remedy? How much more will the judgment debtor pay with interest and the cost of renewing garnishments when they have a slower payback rate? How will unreported income be factored into the annual earnings to determine if they actually earned \$50,000 or less? I hope that you will agree with what I say today and not vote in favor of this bill as drafted.

**Chairman Frierson:**

I ask that you provide the idea of how Arizona is doing this to the sponsor for consideration as an amendment if that is something you think would be productive.

**Lynsey Williams:**

I feel this bill should not be passed as drafted.

**Chairman Frierson:**

You mentioned that the way Arizona does it is better, so if that is something in lieu of this passing as it is, if it is something we should consider, I urge you to provide that idea to the sponsor so they can consider making that change.

**Lynsey Williams:**

I think that judicial discretion is key.

**Chairman Frierson:**

Is there anyone neutral on this bill? [There was no one.] Mr. Segerblom, please come back up and close. I believe the last bill is yours as well.

**Senator Segerblom:**

Half of the states have lower rates than we currently have. This bill started out at 10 percent; we have moved it up to 15 percent of the first \$50,000. That means that \$5,000 of the first \$50,000 they currently garnish cannot be garnished any more. Most of us are living paycheck to paycheck so we know if you took out a chunk of money how hard that is. We spend most of our time going after the small people. As you heard, currently in Nevada law, the richest man in the world could have an annuity that is untouchable, \$500,000 of your home is untouchable, \$500,000 of your liquid assets are untouchable, but we always spend our time going after the payday lenders, all the little guys. This is just one small thing we can try to do for the people in the lower economic level. I urge your support.

**Chairman Frierson:**

I will now close the hearing on S.B. 373 (R2). [Exhibits submitted but not mentioned include: ([Exhibit O](#)), ([Exhibit P](#)), ([Exhibit Q](#)), ([Exhibit R](#)), ([Exhibit S](#)), ([Exhibit T](#)), ([Exhibit U](#)), ([Exhibit V](#)), ([Exhibit W](#)), and ([Exhibit X](#)).]

I will open the hearing on Senate Bill 420 (1st Reprint).

**Senate Bill 420 (1st Reprint):** Revises provisions relating to the issuance of subpoenas. (BDR 14-1108)

**Senator Tick Segerblom, Clark County Senatorial District No. 3:**

This bill allows the defense attorney to subpoena witnesses for a preliminary hearing. Currently that is not authorized, although I believe some judges will allow it. This was a compromise reached between the district attorney and the public defender, so hopefully there will not be any opposition. I think it is a great idea, and particularly as we talked about with some of these other laws where they are going to take testimony that was used at the preliminary hearing and use it later; you certainly want to have the defense attorney have the ability to subpoena witnesses. I will turn it over to Mr. Yeager from the public defender's office.

**Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:**

I will walk you through the bill very briefly. As Senator Segerblom mentioned, there is not too much being done, but it is a significant change.

The bill has two parts. The first part would allow defense attorneys to subpoena witnesses or documents to a preliminary hearing. If you were to go around town and ask defense attorneys how many of them believe they already have the ability to do that, I think probably 95 percent of them would tell you they think they already have that ability. The practice is that it has been happening in the past. I did provide two written opinions out of the Clark County Justice Court [([Exhibit Y](#)) and ([Exhibit Z](#))], where a couple of judges recently have said under their reading of the current statute, defense attorneys do not have the ability to lawfully issue subpoenas for a preliminary hearing. We wanted to bring this bill forth to address that disconnect.

Originally, the bill as drafted would have given the defense attorneys the right to do that on their own accord. There was some opposition, so the language you have here is a compromise that was worked out between the Clark County Public Defender, Phil Kohn, and the Clark County District Attorney, Steven Wolfson. It allows the defense attorney to issue a subpoena, but it needs to be calendared so the district attorney can have the opportunity to weigh in, and then the judge would decide whether that subpoena is lawful or not. The concern raised back then was perhaps defense attorneys would take advantage of this and it would draw preliminary hearings out and would clog the system. I do not believe that is going to happen, but as a compromise we put that in here and perhaps we can address that down the road if this needs some tweaking.

In section 3, there was a gap in the law where it said that if you had a court or a district attorney issuing subpoenas, and someone ignored your subpoena, they would be subject to contempt. Defense attorneys' subpoenas were not included in that portion of the law. We had some situations where there were

certain entities that were resisting defense attorneys' subpoenas. They would say, "We acknowledge this is a proper subpoena, but you cannot do anything if we do not show up." I looked at the history of the legislation and I could not find any particular reason why defense attorneys' subpoenas were not included there.

Lastly, section 2, subsection 4, was an accommodation for police officers to allow them to accept services subpoenaed through written email. That is a convenience so both the prosecutor and defense do not have to track down individual officers to serve them with subpoenas.

I think we have a good compromise. It addresses all of the concerns on all sides of the issue and, as Senator Segerblom said, I do not anticipate any opposition to this. I will be happy to answer any questions the Committee may have.

[Exhibits submitted but not mentioned include: ([Exhibit AA](#)) and ([Exhibit BB](#)).]

**Chairman Frierson:**

Are there any questions from the Committee?

**Assemblywoman Cohen:**

Can you please address section 2, subsection 6, concerning the motion? That entire paragraph is confusing.

**Steve Yeager:**

There are a couple of ways for subpoenas to work. If we did not have that provision, the defense attorney or prosecutor could issue a subpoena, they would serve it on the party, and the party would then have to show up at the time given. This provision provides, in the preliminary context only, if the defense attorney wants to subpoena a witness or a particular document, they have to put it on calendar prior to serving the subpoena to allow the district attorney who is prosecuting the case to have the opportunity to lodge any objections with the judge as to why the subpoena should not be allowed. This is adding another layer of protection. If the judge thinks it is appropriate, the judge could quash a subpoena and say, "No, I am not going to allow you to do that. I do not think that is appropriate." Otherwise, the judge would get a chance to look at it, hear the district attorney, and then the subpoena could be served. The purpose is to give the district attorney a chance to weigh in whether that subpoena is appropriate in a preliminary hearing context only.

**Chairman Frierson:**

Are there any other questions from the Committee? Seeing none, I invite anyone to testify in support of S.B. 420 (R1), please come forward now.

**John T. Jones, Jr., representing Clark County Intergovernmental Relations Team; and Nevada District Attorneys' Association:**

We are here today in support of S.B. 420 (R1). We appreciate Chairman Segerblom of the Senate Judiciary Committee and the public defenders for working with us. We do have an agreement that all sides have signed onto and we urge your support.

**Chairman Frierson:**

Are there any questions for Mr. Jones? Seeing none, is there anyone else offering testimony in support? [There was no one.] In Las Vegas, is there anyone offering testimony in support? [There was no one.] Is there anyone wishing to offer testimony in opposition either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in a neutral position either here or in Las Vegas? I see no one.

I close the hearing on S.B. 420 (R1) and I will open it up for public comment.

**John Jones:**

Kristin Erickson has had some family emergencies so she will not be here for an indefinite period. I want to introduce Peg Samples from the Washoe District Attorney's Office. She will be taking Kristin's place. Please give her a warm welcome.

**Chairman Frierson:**

Welcome, Ms. Samples. She has come to us from Washoe County, but she is originally from Clark County.

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There being nothing else before the Committee today, the Assembly Judiciary Committee is now adjourned [at 11:16 a.m.].

RESPECTFULLY SUBMITTED:

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Dianne Harvey  
Committee Secretary

APPROVED BY:

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Assemblyman Jason Frierson, Chairman

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

## EXHIBITS

**Committee Name:** Committee on Judiciary

**Date:** May 3, 2013

**Time of Meeting:** 8:19 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 27 (R1)	C	John Jones	Proposed Amendment
S.B. 27 (R1)	D	Ben Graham	Exhibit for Ben Graham
S.B. 27 (R1)	E	Catherine Cortez Masto Office of the Attorney General	Letter of Support
S.B. 373 (R2)	F	Jim Berchtold	Written Testimony
S.B. 373 (R2)	G	Jon Sasser	Testimony on Nevada Wage Protection Act from Robert Hobbs
S.B. 373 (R2)	H	Joseph Connell	Testimony
S.B. 373 (R2)	I	Chris Ferrari	Protected Assets
S.B. 373 (R2)	J	Chris Ferrari	Wage Protections in Surrounding States
S.B. 373 (R2)	K	Chris Ferrari	Account Timeline
S.B. 373 (R2)	L	Patty Gunn representing Financial Horizons Credit Union	Letter of opposition

S.B. 373 (R2)	M	Ed Kaufer	Testimony
S.B. 373 (R2)	N	Mendy Elliott	Letter from Michael Fazio
S.B. 373 (R2)	O	Fremont Emergency Services	Letter of Opposition
S.B. 373 (R2)	P	Jon Sasser	District Report of Robert Hobbs
S.B. 373 (R2)	Q	Nevada Orthopedic and Spine	Letter of Opposition
S.B. 373 (R2)	R	Fair, Anderson, and Langerman	Letter of Opposition
S.B. 373 (R2)	S	MDL Group	Letter of Opposition
S.B. 373 (R2)	T	Kelly Tate	Letter of Opposition
S.B. 373 (R2)	U	Ted Wiens	Letter of Opposition
S.B. 373 (R2)	V	Dr. DiGrazia	Letter of Opposition
S.B. 373 (R2)	W	Sumnu	Letter of Opposition
S.B. 373 (R2)	X	Howard Watts	Testimony
S.B. 420 (R1)	Y	Steve Yeager	Jansen Order Case
S.B. 420 (R1)	Z	Steve Yeager	Lippis Order Case

S.B. 420 (R1)	AA	Steve Yeager	Relevant Statutes
S.B. 420 (R1)	BB	Steve Yeager	Highlights of S.B. 420