MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-Seventh Session
May 10, 2013

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 12:04 p.m. on Friday, May 10, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Senatorial District No. 20
Assemblywoman Lucy Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wynona Majied-Martinez, Committee Secretary

OTHERS PRESENT:

Karen R. Moessner, Executive Director, Domestic Violence Intervention, Inc.
Chuck Callaway, Las Vegas Metropolitan Police Department
Marlene Lockard, Nevada Women's Lobby; Committee to Aid Abused Women
Jon Sasser, Washoe Legal Services; Legal Aid Center of Southern Nevada
Carla Castedo

Stacey Shinn, Progressive Leadership Alliance of Nevada; Nevada Immigrant Coalition
Tina Prieto, Nevada Network Against Domestic Violence
Kris Bergstrom, Nevada Legal Services
Theresa Navarro
Vanessa Spinazola, American Civil Liberties Union of Nevada
Paula Berkley, Nevada Network Against Domestic Violence
Lizza Castro, President, Nevada State Apartment Association
Gregory Peek, ERGS Properties; Nevada State Apartment Association
Steven Elliott
Roberta Ross, Nevada State Apartment Association
Earl White, Trinity Security Services
Brenda L. Lovato, Institute of Real Estate Management; GSC Property Management
Martin Dean Dupalo, S.A.F.E. House Domestic Crisis Shelter
John Sande IV, PassTime USA; Wirtz Beverage Nevada
Corine Kirkendall, PassTime USA
Sophia A. Medina, Consumer Rights Project, Legal Aid Center of Southern Nevada
Dan L. Wulz, Legal Aid Center of Southern Nevada
Alfredo Alonso, Southern Wine & Spirits of America; First American Title Co.
E. Leif Reid, Southern Wine & Spirits of America

Chair Atkinson:
We will start with Assemblywoman Flores' bill, Assembly Bill (A.B.) 284.

ASSEMBLY BILL 284 (1st Reprint): Provides for the early termination of certain rental agreements by victims of domestic violence. (BDR 10-525)

Assemblywoman Lucy Flores (Assembly District No. 28):
This bill addresses lease agreements and the difficulties experienced by victims of domestic violence when they attempt to find new housing. Nevada has no legal resources to assist victims in relocating to other housing. Usually, the only option victims have when leaving their abusers is to break their lease and subsequently be responsible for consequences that can include owing early termination fees, outstanding rents and losing deposits. In the search for new housing, victims who break leases are usually asked if they have ever broken a lease, and they must answer affirmatively.

In my late teens and early 20s, I was involved in an abusive relationship, so I understand the reality of domestic violence. I got the courage to leave my abuser after he locked me in a bathroom following a beating. I knew it was time to leave when my little brother was in my home and had to escape from the house to call for help. He did not call the police; he called my dad. I left that residence with the clothes on my back, and I broke that lease. I was eventually sent to collections for the money I owed on that apartment lease.

I found another apartment and got a temporary protection order (TPO) against my abuser. In filling out the TPO application, I had to enter the location that was off limits to my abuser. One day as I was coming home from work, I was beaten to the point where my cries for help made my neighbors come out. I crawled to someone's apartment and begged people not to let my abuser leave because I wanted him to be arrested and held accountable. That did not happen.

After my hospital stay, the first thing I wanted to do was leave my apartment and seek shelter. I tried to work with the apartment managers after I left, but they would not allow me to terminate my lease. I was responsible for the early termination penalty and the rent money owed—this despite my hospitalization, the police involvement and the TPO. I broke that lease.

After a brief stay with family, I needed to find housing again. I now had a history of breaking leases and still owed money to the previous apartment. I finally had to pay an unusually large deposit before someone would rent to me.

In 2011, Nevada was No. 1 in domestic violence-related homicides, which includes children. In the last decade, nothing legally proactive has been done in this State for domestic violence victims. We do not foster an environment that is moving forward on this important issue.

Assembly Bill 284 allows victims of domestic violence to terminate their leases without penalty. The person can give written notice 30 days prior to leaving and will only be financially responsible until the end of that rental period. If a deposit was made, there must be a statement from the landlord stating how much will be returned to the renter and what specifically the withheld monies will be used for. Landlords can still do that under this proposal.

There are three ways to provide notice under this bill: a police report, a TPO, or an affidavit by someone on a qualified third-party list. We have some opposition

to this bill from the Nevada Association of Realtors and the Nevada State Apartment Association regarding the qualified third-party option. We have worked to find a compromise but are still at an impasse on the third-party qualified list.

Initially, just notice was to be required from the qualified third party. There are states that just require notice. However, in the bill we are strengthening the requirement to providing an affidavit, which is a sworn statement given under penalty of perjury. The goal was to provide as much accountability as possible to ensure people could not take advantage of their positions.

The list of qualified third-party individuals who can make that affidavit is located in section 1, subsection 10, paragraph (e), subparagraphs (1) through (8). The list includes the following state-licensed professionals: psychiatrists, psychologists, social workers, registered nurses with a master's degree in psychiatric nursing, and marriage and family therapists.

Also on that list are employees or board members of organizations that provide support to people in domestic violence situations. Board members or administrators of voluntary organizations are also on the list of people who can create an affidavit for the victim as a qualified third party.

To qualify in a domestic violence or nonprofit organization, a person must be either licensed or an executive director or board member. The executive director and board member are included on the list because there might not be a licensed person on staff or available. We wanted the person who could provide notice to be someone of authority and someone who had something to lose if he or she created a false affidavit.

We included this category because in the rural Nevada communities, nonprofits with paid staff can be rare. We decided a volunteer could serve as a qualified third party, but the volunteer had to serve as an executive director or board member in the organization. Even then, there was resistance to this concept because rural communities are small. The concern was that an executive director or volunteer board member might not be readily available. Again, we were looking for someone who had something to lose if he or she created a false affidavit.

The last category on the list of who can provide the affidavit is a member of the clergy. We included this because many times domestic violence victims will not get law enforcement officials involved. Sometimes they may not feel it is the safest thing for them to do, or maybe it is just not prudent. In my situation when I first broke my lease, my brother called my dad, not the police. I did not want to call the police. I just wanted to get out of there. It was not until much later that I got the police involved.

Every situation is different, and the State cannot put people in positions where they are forced to contact law enforcement. Many times, victims will go for help where they feel comfortable—it could be to a domestic violence support organization or a member of their church. We would only qualify the clergy, who is the leader, and I have faith that church leaders will not go into the business of filing false affidavits.

There you have the essential mechanics of the bill. One last thing is troubling me. I would like it on the record. An email was sent out in opposition to A.B. 284. The person who wrote the email tried to compare my bill with another bill that was passed in the Assembly, A.B. 307.

ASSEMBLY BILL 307 (1st Reprint): Revises provisions governing victims of crime. (BDR 16-743)

The email said:

> A.B. 284 best protects the perpetrators of domestic violence and these criminals should not be left in our communities to do further harm. A.B. 284 is not fairly drafted to protect the victim and the landlord alike, nor is drafted to identify and prosecute those persons who commit the crime of domestic violence. Similarly, a bill which passed unanimously, A.B. 307 with a 39-0 vote states a victim must file a report with the appropriate law enforcement agency or submit to a forensic medical examination pursuant to *Nevada Revised Statute* (NRS) 217.300 as a [prerequisite] for the victim or any other person eligible to qualify for treatment under the provisions of this section.

I bring that up because it is not a fair or accurate comparison. Assembly Bill 307 relates to rape victims and their ability to seek treatment from the State without cost. That bill allows victims to be treated at any hospital. It prohibits the hospital from charging the victim of sexual assault for the treatment and it mandates the appropriate forensic medical examination. Section 9, subsection 3 of A.B. 307 states, "The filing of a report with the appropriate law enforcement agency must not be a prerequisite to qualify for a forensic medical examination pursuant to this section."

That is the exact opposite of what the email states. The part about a requirement for a law enforcement interaction or report refers to a portion of that bill which addresses future counseling for the victim and family members. It also refers to the victim being eligible for $1,000 worth of treatment. When the State is paying for counseling after a rape, a law enforcement report is required.

This is not similar to my bill in any way. The opponents of A.B. 284 are saying if we do not make domestic violence victims get law enforcement involved, it will leave perpetrators to abuse again. Saying the bills are similar, that we require law enforcement before counseling treatment, is not accurate. As I said before, section 9, subsection 3 of A.B. 307 specifically says a law enforcement report is not required in order to treat rape victims. In that sense, that bill is similar to my bill, A.B. 284, because we are specifying that a law enforcement report is not required to assist domestic violence victims acquire safety and shelter for themselves and their families.

Senator Hutchison:
You already addressed whether we should require a police report and what can be done as a matter of public policy not to leave these criminals loose without having to pay a consequence. You said it would be ideal if a victim filed a police report or got a TPO, but that does not always happen. Can you address that point?

Also, I understand we do not require rape victims to file a police report before obtaining medical services. In fact, that would violate federal law. If a victim presents to a hospital, we cannot say, "Go file a police report first." Why, as a matter of public policy, do we not require the police report?

Assemblywoman Flores:
I know of no situation where public policy mandates someone to report a crime.

If you witnessed a robbery or are a victim of a crime, you are not mandated to get law enforcement involved. Mandating someone to get law enforcement involved before the State can do anything in this very sensitive situation is misguided and wrong. Government is supposed to support the safety of the individual and the community. Would it be ideal if the perpetrator of a crime was always arrested? Absolutely, but in this situation, it is just different given the context of domestic violence situations.

Senator Hutchison:
We all support the need for domestic violence victims to get out of dangerous situations and away from perpetrators. On the other side is a landlord who is an innocent bystander, in a way, holding a contract with the tenant. How do you weigh those competing interests? One way is to make sure the system is not abused. We do not want the legislation to be used as an excuse to get out of a contract.

One thing I found persuasive in A.B. 284 is something you did not mention. Section 1, subsection 5 states that the perpetrator, an adverse party, may be civilly responsible for any breach of contract. A landlord could bring different causes of action. One that comes to mind is interference with a contractual relationship. That is in statute. Can you speak to that?

Assemblywoman Flores:
I did not spend a lot of time on that issue, as my intent with this bill is primarily to protect the victim. To make it stronger, I put in some provisions that help protect landlords because I agree they are innocent bystanders. Most prudent landlords would want to help a victim leave even if just to avoid future domestic violence situations on-site.

We did include stipulation that the adverse party would be civilly liable for all economic losses. When the landlord conducts due process to hold any party of the contract accountable, that action can be bolstered by this statute, and the landlord can ask the court for money owed.

Senator Hutchison:
This strengthens the affidavit side of the justification for breaking the lease. If I were a landlord and this happened to me—with someone coming to me, giving me notice and handing me an affidavit—I would look for the name of the adverse party on that affidavit and immediately go after that person. I would

have a complaint drafted, and I would serve that party the next day. That would thwart any effort to get out of the contract. The abuser would know the landlord is going to sue him or her; in addition, a third party would think twice before signing a false affidavit because that would constitute perjury and trigger a lawsuit.

Assemblywoman Flores:
That is correct.

Senator Hutchison:
Is the intent of A.B. 284 to identify that adverse party in the TPO, police report or affidavit?

Assemblywoman Flores:
Yes.

Chair Atkinson:
What if the perpetrator is not on the lease? How would the landlord go after this person?

Assemblywoman Flores:
That is the strength of this provision. Whether that person is a party to the contract or not, if he or she is named as the adverse party, that still creates an obligation for that person to be liable for whatever losses the landlord may incur. That is part of how this provision helps the landlord.

Chair Atkinson:
It is hard to understand a situation where a landlord would not be helpful or compassionate toward tenants in this kind of trouble. I rented out a house to a couple that I had to take to court because they had not paid their rent. When we got to court and were ready to start the proceedings, I saw the injured face of the female and she was obviously in a bad situation. She came to me and disclosed what had happened, which was domestic violence. She said the rent had not been paid because her partner was in jail. At that point, I said "We're done. We are not going into the courtroom. Let me know when you want to come get your belongings." We hope most people are like that without being ordered to by statute.

Senator Jones:
Regarding the affidavit from the qualified third party, why not have the victim be the one who fills out the affidavit, since he or she is the one with personal knowledge of the events?

Assemblywoman Flores:
There are states with much looser provisions. Maryland requires written notice only. This bill is an attempt to compromise with the parties who had concerns. A lot of this is based on the federal Violence Against Women Act (VAWA). There are substantially more protections at the federal level than at the State level. We want to ensure we have minimized any ability to misuse the law without compromising benefits to abused individuals.

When we reached the impasse with Nevada State Apartment Association because they wanted to get rid of the qualified third-party list entirely, I told them that would defeat the purpose of the bill. The purpose of the bill is to help domestic violence victims leave a dangerous environment and seek safety without having to worry about how they will find money to pay expenses or even find a place to live. I can tell you that all those things were going through my head when I left. The financial consequences of leaving their abusers should not be the first concern of domestic violence victims.

Senator Jones:
To be clear, I am not suggesting taking out the list. I just do not understand why we would have a third party give hearsay testimony under penalty of perjury as opposed to the victim, who is the person who has personal knowledge about the abuse? Could that person be the one who provides the firsthand information?

Assemblywoman Flores:
The qualified third party provides an added protection to ensure that false affidavits are not filed. The licensed professional will likely hesitate before giving an affidavit under penalty of perjury.

Senator Jones:
In section 1, subsection 5, the landlord can pursue the adverse party for civil liability. If the victim did not go to the police—which I understand because my family has also been touched by domestic violence—what happens if the landlord files an action and the adverse party denies abusing the victim? I am

concerned because under section 1, subsection 6, it says, "A landlord shall not provide to an adverse party any information concerning the tenant." What concerns me is that in filing the action to recover the debt, the landlord will have to spell out some facts that give rise to divulging information. How will the mechanics of that work?

Assemblywoman Flores:
I had those same concerns. Sometimes when the police get involved, the abuser will deny being the aggressor or claim to be the one abused. Maybe both people will be arrested. If someone is named a perpetrator and subsequently denies it, that person can defend himself or herself through the legal process, just as with any other criminal accusation.

Regarding section 1, subsection 6, where it says information shall not be provided to the adverse party, it does not mean the information cannot be provided to the court.

Senator Jones:
Nevertheless, service of process necessarily requires the landlord to serve the adverse party with the complaint, which would have that information in it.

Assemblywoman Flores:
It would have the person's name, but not identifying information, such as where the person is now living.

Senator Jones:
If a landlord were to file the action against the adverse party, and that party denied having done anything, would the victim then be dragged into a civil action?

Assemblywoman Flores:
It is possible, but that would occur in any civil action.

Senator Jones:
If you drag in the qualified third party, it would be hearsay testimony; and it would be thrown out. That is why I am concerned about the mechanics.

Assemblywoman Flores:
I acknowledge there might be situations in which someone would have to go

through the legal process. How the courts use the information they have is up to courts. If there is a better way to protect the victim while also protecting the landlord against losses, I will work with anyone on that.

Senator Hardy:
As a physician, I know there are several people who can get help for a victim, but I am also concerned that help for a perpetrator may be needed. That help may even be offered behind bars, but we have an obligation to determine how to stop perpetrators so they do not re-offend, like what happened to you.

You also spoke about the difficulty of getting another lease agreement. If the adverse party goes through the legal process, perhaps we would then have an opportunity to expunge the record of the broken lease for the victim.

Regarding the qualified third-party individuals in section 1, subsection 10, paragraph (e), there is some question about the unlicensed qualifiers, which include subparagraphs (6) through (8). It sounds like this is where you ran into the impasse with the Nevada State Apartment Association. Perhaps the language could be changed to specify that if the licensed qualifiers are not available—those individuals listed in subparagraphs (1) through (5)—only then would you access the secondary tier, the unlicensed qualifiers. Perhaps those two categories of qualified third parties could be separated to make that clearer.

Regarding the definition of clergy, I became a member of the clergy once to perform a marriage ceremony, and I had to be licensed. There is apparently no definition of clergy in statute, nor do we have a qualification for licensed or certified clergy. Whereas, for so-called "real" clergy, there is a requirement that they must be registered with the county in which they practice. We should narrow that language and clarify it, because many people have claimed to be preachers or clergy. We need a narrowed definition.

Assemblywoman Flores:
If there is a way for clergy to be registered in the State or in their county, I would be happy to include it. This the first time I have heard there was any kind of registration or licensing process for clergy.

Regarding the idea of holding abusers accountable and preventing more crimes with new victims, that is important, but it did not make a difference in my

situation. It could be, as you said, a larger issue than just what we are addressing in this bill.

As I said at the beginning of my testimony, this bill is the first thing we have done in a long time to address domestic violence. Organizations that advocate for domestic violence victims have little funding and few resources. It is a false premise that police intervention or a judicial order might force a perpetrator to stay away from a victim. It is equally false that police intervention might hold a perpetrator accountable and prevent repeat abuse. Sometimes the arrival of police officers does not result in an arrest. One time when I called the police in my domestic abuse situation, as they arrived at the scene, I shooed them away. I suddenly feared further harm or even being killed by my abuser.

Our goal here is to remove obstacles and barriers for victims to get out of domestic abuse situations. Breaking the lease is only a small part of that. Saying a future rental locale cannot refuse to rent to a victim who broke a lease because of domestic violence is just a small part of the solution. Financial resources are a bigger problem.

Many times, when domestic violence victims finally find the courage to leave, they leave with absolutely nothing. In my case, when I returned to my apartment to get my possessions, my abuser had destroyed half of them. I found a box in the middle of my garage with almost all of my clothes. He had poured bleach over everything. I left with nothing.

That is the very real situation that domestic violence victims are dealing with. It is not just that they may not be able to find housing in the future; it is the real challenge of what to do with their lives to move forward. When a person does not even have clothes to wear to work because they were destroyed, that is a real financial challenge. Add to that having to deal with owing a big chunk of money because the landlord refused to lift the lease is inhumane and unjust.

Senator Hutchison:
I appreciate how you have tried to balance all the interests in this bill. In section 1, subsection 10, where you begin to define the parties, you want to make sure the victim gets out and that the perpetrator is held responsible every way possible, including civilly. What would you think of adding the phrase, “and must be,” in section 1, subsection 10, paragraph (a), to the definition of adverse party? It would read, “Adverse party means a person who is and must

be named in an order for protection against domestic violence." Would you be okay with that?

Assemblywoman Flores:
Absolutely. Just as notaries have sample documents everyone can use, we can draw up sample affidavits. Other states have them, and I can find some examples to present to the Committee that qualified third parties in Nevada could fill out.

Senator Hutchison:
To Senator Jones' point about not providing information regarding the whereabouts of the victim, section 1, subsection 6, says, "A landlord shall not provide to an adverse party any information concerning a tenant, cotenant or household member if the tenant or cotenant provided notice pursuant to subsection 1." That subsection says the landlord should not tell the abuser where the victim is, but we should clarify it to say the landlord cannot say anything at all about the tenant, cotenant or household members' whereabouts or location. That way, we would know the landlord could provide information obtained from the tenant about the abuser on that affidavit form.

Senator Michael Roberson (Senatorial District No. 20):
I strongly support this bill, A.B. 284. I hope and expect it will receive bipartisan support.

Karen R. Moessner (Executive Director, Domestic Violence Intervention, Inc.):
I am executive director of Domestic Violence, Inc., in Fallon and a former battered wife and current advocate for victims of domestic violence. I submitted my testimony in support of A.B. 284, which also includes the results of a survey I conducted of domestic violence victims in Churchill County (Exhibit C).

The last question on my survey, Exhibit C, asked the following: "Does your rental agreement contain the following or similar language, 'At any time Law Enforcement is called for a domestic dispute tenant could be given 24 hour notice to vacate?'" I have included two samples of rental agreements being used in our community in Fallon (Exhibit D and Exhibit E). I have highlighted in yellow the aforementioned language in those rental agreements. Essentially, that clause in a rental agreement can mean that if the police are called for a domestic dispute, the parties can be evicted.

I am opposed to the requirement that calls for mandatory law enforcement involvement for reasons included in my written testimony, Exhibit C. Victims in Churchill County feel it should be their personal choice whether to involve law enforcement. As Assemblywoman Flores stated, there are many reasons why these women choose this approach. The first reason concerns safety—victims do not want to make the abuser angrier or incur retaliation because of calling authorities.

For those objecting to the qualified third-party affidavit, there exists a Confidential Address Program that is administered through the Office of the Secretary of State. As domestic violence advocates, we complete those affidavits on behalf of Nevada victims who want to apply. You have already given us your trust through that program.

Chair Atkinson:
Did you conduct the interviews of the victims in your survey?

Ms. Moessner:
Yes. I interviewed 20 women who were shelter residents, clients, support group members and former clients.

Chair Atkinson:
How willing are landlords to remove abusers? Does it happen often?

Ms. Moessner:
No. That is why I posed it as one of my questions. Many times when victims try to stay in the residence, the abuser still has access to them. Law enforcement does not help if the abuser was on the lease. One property manager in Winnemucca who manages many properties has a standing policy—if a domestic violence victim has a TPO, this manager will file her own court order to remove the perpetrator from all of her properties. I included a more detailed description of this property manager's innovative solution at the bottom of page 2 and on page 3 of Exhibit C. I challenge the Nevada State Apartment Association to follow this lead.

Chair Atkinson:
Would the property manager have to file the court orders themselves?

Ms. Moessner:
Yes. It is possible to keep people off your property for various reasons.

Chair Atkinson:
So, it is not easy to get a person removed from a lease.

Ms. Moessner:
I do not know if it is easy or if a landlord just does not want to draw up another contract. It seems that all the landlord would have to do is make a new contract with just the victim instead of having both parties on the lease.

Senator Hutchison:
Regarding the policy of giving the tenant 24 hours to vacate if law enforcement is called, I notice that is not part of the standard residential lease form that realtors use and conforms with the guidelines of the Real Estate Division, Department of Business and Industry. That language is typed in separately from the standard agreement and does not appear to be part of the form. Based on your experience, how many landlords actually add that language to the lease agreement?

Ms. Moessner:
In the last couple of years, we have seen the addition of this provision more often. Initially, I thought the landlords were targeting us, our tenants and the people in our transitional housing program because they knew we were a domestic violence program. I agree with you. It looks like the provision was just typed in. In one case, it was handwritten.

Senator Denis:
One of the questions on your survey had to do with replacing the locks. Can you address that?

Ms. Moessner:
The question was, "Have you ever had a landlord refuse to change your locks and/or charge you a fee to change your locks after a domestic violence incident?" This could apply to a situation where a woman has the lease and has added her partner to the lease. As a result, they both have keys. If she then gets a TPO to keep him out, how does she do that when he has a key? The complaints from the people I surveyed were that landlords are willing to change locks, but the tenant has to pay to have it done. That usually costs between

$45 and $85. A tenant cannot buy a lock and install it. You have to use the landlord's installation service, which can be more costly. Often, the victim does not have money to pay for that.

Senator Denis:
Does this bill change that policy?

Ms. Moessner:
No. I just wanted to show that it does happen, and it is a good part of the bill.

Senator Denis:
It will still force the landlord to change the locks, will it not?

Ms. Moessner:
That is correct.

Chuck Callaway (Las Vegas Metropolitan Police Department):
We support A.B. 284. Domestic violence is a huge problem in our society. Our domestic violence detail at the Las Vegas Metropolitan Police Department (Metro) handled approximately 22,000 cases last year. Many cases go unreported for a variety of reasons. Victims of domestic violence find it difficult to get out of abusive relationships. This bill will help them to do that.

I have been contacted by people from apartment complexes and by their associations. We work closely with them in our area commands. I understand their concerns about the scope of the qualified third party. A victim should be able to get out of a lease without a police report, but I trust this Committee will make the right decision about whom that third party should be. That is outside the realm of law enforcement.

Senator Hutchison:
Since there is a real disincentive for domestic violence victims to go to police officials, file a police report or obtain a TPO, victims often do not want to go to authorities. What is your experience with this at Metro?

Mr. Callaway:
There are varieties of reasons victims choose not to go to the police. It may be because of fear the perpetrator could take the children. The perpetrator may be the breadwinner, and the victim may be afraid if that person goes to jail, there

will be no income and the victim will not be able to buy groceries. Sometimes it is just the fear of further abuse. The victim thinks it will be his or her word against the abuser's, and the police will not arrest the perpetrator. The victim may believe as soon as police officials leave the home, the victim will be subject to further abuse. In some cases, to be honest, there is just an outright distrust of authorities or law enforcement, for whatever reason. Some people have had bad experiences with law enforcement and do not trust that officials will do the right thing when called. There is a laundry list of why victims may not call police officials. I have seen studies suggesting that as many as two-thirds of domestic violence cases go unreported.

Senator Settelmeyer:
Does the qualified third-party affidavit address the capacity to protect the victim? When police officials become involved, there is potential that the victim will be protected and the perpetrator will be sought and brought to justice. What are your thoughts on the third-party affidavit concept?

Mr. Callaway:
A big part of protecting the victim is moving him or her to a location unknown to the perpetrator. If the victim is unable to leave the residence, cannot get out of the lease and is forced to stay because of having nowhere to go, the perpetrator knows where to find the victim. That is the big issue. Decisions about how to protect the victim are best left to this Committee and not law enforcement, but the victim should be able to get out of the lease without having filed a police report

Marlene Lockard (Nevada Women's Lobby; Committee to Aid Abused Women):
The Nevada Women's Lobby and the Committee to Aid Abused Women strongly support this legislation. It is vitally needed. Every day I see horror stories of what these women go through. Many victims in our group recount continuing threats to themselves, family members, other relatives and even pets after they have left their domestic abuse situations. The perpetrator knows where they live.

We hear horrendous stories of retribution against women who have filed police reports or obtained TPOs. Those threats have added to the reasons why victims fear making police reports. We also have heard stories in the national news where a TPO was in place and did not stop the abuser from killing the victim. Nevada has one of the highest domestic fatality rates in the Nation.

Jon Sasser (Washoe Legal Services; Legal Aid Center of Southern Nevada):
Both Washoe Legal Services and the Legal Aid Center of Southern Nevada have domestic violence units with attorneys who represent victims in family court matters. Both programs also have housing units that help people dealing with their landlords. I have submitted testimony from one of our staff attorneys at Washoe Legal Services, Caryn Sternlicht (Exhibit F), where she also discusses why a victim of domestic abuse might not want to call the police.

As Assemblywoman Flores referenced earlier, VAWA provides protections regarding leases and other issues for women who live in public housing or publicly subsidized housing. Because of VAWA, about 20 states have passed statutes pertaining to the issue we are addressing with A.B. 284. In Nevada, we have recognized that victims need to move from an abusive home if they are to stay safe, and those individuals should be able to break a lease to move. A number of years ago, we were involved in legislation allowing broken leases by people with disabilities or by seniors who go into assisted living or nursing homes if they cannot remain in their homes for health reasons. There is a process outlined in NRS 40.251.

Senator Hutchison:
Regarding VAWA, the federal act, are there no requirements for getting out of those leases in those situations you described, such as police report or court order?

Mr. Sasser:
That is correct. Testimony from Nevada Legal Services, a program in southern Nevada that regularly represents these clients, can give a great deal of detail about VAWA. A list in VAWA is similar to our third-party list. We can go to that list for verification.

Carla Castedo:
I support A.B. 284. It is my experience that many perpetrators are possessive of the victims. The victims have been prohibited from working, so not only do they have to go somewhere safe, but also they do not have any money because they are fully dependent on the perpetrator. The last thing that goes through someone's mind is calling the police, because there is definitely a distrust of police officials.

Stacey Shinn (Progressive Leadership Alliance of Nevada; Nevada Immigrant Coalition):
We are here in support of the A.B. 284. Being able to reach out for support from someone the victim trusts is a critical piece of this legislation. If a victim's life has been threatened, he or she is not going to want to walk into a court or call authorities. That is particularly true for individuals who are undocumented and may fear making themselves subject to deportation.

As a social worker, I once heard from a woman whose husband was a police officer, so she feared going to police. Regarding the qualified third-party affidavit, I can assure you that with all I have invested in my education, there is no way I would risk my professional license to provide a false affidavit just for someone to get out of a lease. I support the victims I work with, but like me, most professionals would not risk their time, energy, money and professional licenses to provide a false affidavit.

Tina Prieto (Nevada Network Against Domestic Violence):
As Mr. Sasser said, public housing authorities are already using the lease policy proposed in A.B. 284. I reached out to the Southern Nevada Regional Housing Authority, our local public housing authority in Las Vegas. They reported that out of the 5,000 abuse victims they helped during 1 year, only 10 asked to be let out early from their leases. That is 0.2 percent. The impact on the landlords amounts to a small percentage.

If we were to do a balancing test, we would ask whether the safety of the victim, the children, the family and the family dog is more important than the interests of that small percentage of landlords. Are the landlord's interests more important than preventing abuse or death?

Senator Hutchison:
Over what time period was the study conducted?

Ms. Prieto:
The study was conducted over a 1-year period.

Senator Hutchison:
That tells us there are situations where we want to help victims and where we also need to evaluate the impacts on others. This should not have much impact on landlords and those who provide housing.

Senator Hardy:
You made the statement that we are already doing this. Is there a model that you are using, or is the person just coming to the office and saying he or she has been a victim and, therefore, needs to get out of the lease? What are you actually doing?

Ms. Prieto:
The public housing authority is following VAWA and what it has mandated regarding that policy. I do not know long it has been in existence, but I could probably find out.

Kris Bergstrom (Nevada Legal Services):
We regularly work with tenants in subsidized housing who are being evicted or want to break their leases. They are in public housing or are in the voucher program under section 8 of the Housing Act of 1937, which provides subsidized housing for low-income people. Our clients are allowed to move under VAWA, because they live in federally subsidized housing. The rules of VAWA allow domestic violence victims wanting to move to self-certify that they are victims of domestic violence. They do not have to have a police report or a restraining order, although both can be accepted as proof of the domestic violence.

The Southern Nevada Regional Housing Authority, which is the local agency we work with on this issue, allows tenants to submit TPOs, police reports, or statements from their victims' services provider, an attorney, a medical professional, a social worker or any other knowledgeable professional. Under federal guidelines, the category for who can be accepted as qualified third parties for domestic violence is broad. Technically, such certification is not needed, because under VAWA, a person can self-certify.

Most of the tenants we assist have restraining orders or police reports. It is only a minority who do not have them, and that is because those tenants are scared. They are scared that if they get a TPO, the abuser will ignore it and come after them. They may also be afraid because their partner already lives on the fringes of the law; perhaps the partner is a gang member with associates who have outstanding warrants and who might come after them. The victims are worried that if the partner or associates have already evaded police, they could still evade the police and come after them if they provoked it with a complaint to the police. These victims are afraid, and they just want to get somewhere safe.

In southern Nevada, we have a control group for third-party certifiers, and it works well. Doctors, social workers and attorneys are not faking domestic violence to help people move out of leases. The sky is not falling. Some frightened but incredibly brave women are making the first steps toward taking control of their lives, escaping the cycles of abuse, and they just want to get to safe places.

On the other side of our office where they do private landlord-tenant law, it is not the same situation. We have women come in and, like our clients, have been abused, beaten, choked and raped, but we have to tell them if they break their lease, they need to be aware the landlord might come after them for the remaining money. These women do not have the same protections as those living in federally subsidized housing. The system works for those who have the protections. It would be good to extend it to everyone in the State.

Approximately 18 states allow tenants to terminate their leases due to domestic violence. Of those states, eight jurisdictions allow for some sort of qualified third-party certification. Victims still can use the TPO or police report, but other arrangements are accepted in North Carolina, Maryland, Illinois, Connecticut, Washington, D.C., Delaware, Oregon and Washington state. Unlike Nevada, none of those states is in the top 10 per capita for domestic abuse homicide for 2010.

Senator Hardy:
We have heard about changing locks and not letting the perpetrator come back in to get his things. How is that managed in public housing?

Ms. Bergstrom:
It depends on the program. The Southern Nevada Regional Housing Authority can act on its own. Officials there can move people to another housing project, or they can change locks. Many times, private landlords are happy to have the client move or try to evict the client. We broker a deal, explaining that the landlord cannot just evict a victim. According to VAWA, we can issue a 30-day notice and get the person out. Most landlords are cooperative, but VAWA can require they change the locks or put other protections in place if that is what the tenant needs.

Senator Hardy:
Can anyone access that program?

Ms. Bergstrom:
It is available to low-income individuals. If an individual qualifies for either the public housing or section 8 program because of low-income status or being disabled and he or she has the need, the individual is entitled to the protections. Other federally subsidized programs include these protections, but the two biggest that are administered by the Southern Nevada Regional Housing Authority are for the public housing projects and the section 8 recipients.

Senator Hardy:
What is the qualifying federal poverty level?

Ms. Bergstrom:
I do not know off the top of my head.

Senator Hutchison:
How many states have this third-party affidavit process for terminating leases for domestic violence victims?

Ms. Bergstrom:
Approximately eight jurisdictions require a third-party affidavit. Six have language similar to our statute. Illinois is a little different because an affirmative defense must be raised in court afterwards, but a victim can use any method that can be used in court to prove the domestic violence. In North Carolina, a victim can get a protected address by a third-party affidavit.

Senator Settelmeyer:
The Oregon law that just went into effect refers to needing a 14-day notice. If someone is in danger of being hurt, he or she should be able to get out sooner than that. The Oregon law also states that the qualified third party could be a police officer, medical professional, lawyer or victim advocate. I like all that, but it also says those third parties must state, "You have reported an act of domestic violence, sexual assault, or stalking."

It seems a little different in each state. I would appreciate if you would send us a list of states that require the third-party affidavits for victims to break the lease.

Ms. Bergstrom:
I am happy to do that. I did send that information to Assemblywoman Flores; so we can forward it to the Committee.

Theresa Navarro:
I am an activist and advocate for women affected by domestic violence. I have worked in shelters with these women. I am excited to see A.B. 284. It would help so many women. I had a client referred to the Committee to Aid Abused Women by police officials. Her abuser was very violent and was arrested and subsequently released because he had to go back to court. The victim had a TPO against this man. She tried to get out of her lease, but that option was not available to her. She just had to be vigilant about locking her doors and windows. Sometimes a family member would stay with her.

One night when she came home with her young children, her abuser was hiding under her bed. He raped her in front of the children and cut her with a machete, deforming her. She survived and completed her lease. The perpetrator went to prison for 20 years. This bill would help so many women like her. I know VAWA does a lot to aid women in public housing, but there are many victims out there who are not in public housing, and having this in statute would help.

Vanessa Spinazola (American Civil Liberties Union of Nevada):
I represent the American Civil Liberties Union of Nevada (ACLU) and am here to support A.B. 284. This issue falls under our national ACLU's Women's Rights Project, which has worked in various places around the Country. Because the majority of domestic violence survivors are women, domestic violence is an issue of gender discrimination. While the landlords may not intend to discriminate, any policy or practice that disproportionately impacts women is something in which we are interested.

One thing that has not been mentioned yet is that abusers may isolate their victims so they have no place to go. They may be isolated from their friends and family and may have only the choice between where they are staying now, keeping that money and being able to move into new housing.

Also, taking this qualified third-party affidavit portion out of the bill would leave victims between a rock and a hard place, particularly in Clark County, where there is a chronic nuisance ordinance that says if police are called to any location three times, the landlord has the right to evict the tenant. In effect, we

are telling the victim she can call two times, but not three times because then we have the power to evict. As you know, being evicted is a much worse than if you choose to move.

On the affidavit issue, I wonder if people on the qualified third-party list would be able to qualify as expert witnesses in court. They could be evaluated not in terms of hearsay evidence, but in terms that say in their personal opinion in the specific field for which they have been trained, this is what they saw, and this is how it compares to other examples. The judges may be able to look at their testimony in that way. I do not know how it is viewed in other states, but that could be a possibility.

Ultimately, victims and survivors are in the best position to know what is safe for them. I worked in domestic violence for 7 years and started a nonprofit organization for undocumented survivors of domestic violence because they are afraid of calling the police and of going to court. This is a large group of women who are thousands of miles from their homes with few options. Limiting these particular victims to the court and the police does nothing for them. They should have the power and control to decide what is best for them and their plan for safety, and that may not always include the police.

Paula Berkley (Nevada Network Against Domestic Violence):
I support this bill. Sometimes, the assumption is that calling police and getting a protection order increases safety, but that is a simplistic way of addressing the safety issue.

Statistics from the Department of Public Safety indicate 15,425 domestic violence calls were logged in Nevada in 2011. Of those, 7,936 resulted in no arrest. So half the time when police came in 2011, no arrest was made. Calling the police does not necessarily make a person safer. Quite often, that is because the perpetrator left the premises after the violence that prompted the call.

In 2001, there were 3,501 arrests of women in domestic violence situations. Sometimes, in order to ensure the violence ends, police officers will arrest both parties because they are trying to ensure peace, not determine responsibility. Just calling authorities or getting a TPO does not create safety.

I remember when former Assemblywoman Bonnie Parnell passed a stalking bill through this body a few sessions ago, A.B. No. 309 of the 75th Session. The case that inspired that legislation had to do with a stalker who was picked up by the police after being reported by his victim. He stayed 12 hours in the 12-hour hold and then came home and shot the woman to death. The victim is usually the best person to know what to do to protect herself, and it is not always to call the police.

Chair Atkinson:
I will take testimony in opposition to A.B. 284 now.

Lizza Castro (President, Nevada State Apartment Association):
We oppose this bill because it proposes to protect victims of domestic violence in spirit but not in substance. Domestic violence is a significant issue facing Nevadans. We rank No. 1 in the Country for acts of domestic violence. This bill does not truly protect or help victims of domestic violence. Those victims are battered physically, emotionally and financially. They often do not have the support, resources or means to leave their homes.

More than half of our residents break their leases for a variety of reasons. The person in fear for his or her life is not going to weigh the financial repercussions. That person is going to leave that apartment. The proposition that this bill will empower victims to seek help is flawed. A victim of domestic violence will leave the abuser seven times before leaving for good.

Landlords and owners throughout Nevada implement and participate in programs so we can keep our communities safe. We screen for residents' criminal history and work with law enforcement agencies. We seek certifications to have crime-free housing, and we also enforce drug-free addendums. We do this because we are in the business of people. We provide homes that families, children, elderly, sick and healthy people come to every day. We do that in the interest of providing safe places to live.

As written, this bill does not give us the protections to seek perpetrators. We oppose this bill and would like the opportunity to help draft legislation that will truly protect victims of domestic violence.

Gregory Peek (ERGS Properties; Nevada State Apartment Association):
I am with the Nevada State Apartment Association and I am also an apartment

builder and owner in Reno. We do have an amendment and some documentation to submit (Exhibit G). Speaking for the Association, we have some issues with the bill, specifically the qualified third-party affidavits, the ability of landlords to identify perpetrators and bring them into court, and holding the perpetrators responsible.

Chair Atkinson:
Have you spoken with the bill's sponsor?

Mr. Peek:
We have tried to work with the sponsor, Assemblywoman Flores. We met with her last week and were told that she was finished amending the bill.

Steven Elliot:
I have seen this issue from many different legal perspectives. For 3 years, I worked as a municipal prosecutor, handling a number of domestic violence cases. For 17 years, I was the City of Sparks attorney, and for the past 16 years, I was a District Judge in the District Court Department 10 bench in the Second Judicial District in Washoe County. I retired from that position in March.

I am, for the most part, in favor of A.B. 284 insofar as the appropriate government agencies would be notified so there is accountability. I am referring to the TPO office or the police authorities. However, when I look at this issue of the qualified third-party affidavit, there is no accountability on the part of the person filing the affidavit, the victim or the perpetrator. If the government is going to get involved to break a private contract such as a lease, there should at least be some accountability as in contacting the government, for example.

The Southern Nevada Domestic Violence Task Force, which was founded in 1990, adopted a no-drop policy for domestic violence and viewed early intervention as homicide prevention. Much of what I have heard today contradicts thoughts in law enforcement about how to deal with domestic violence—that intervention prevents further violence and is better than no contact with appropriate governmental agencies.

The Washoe County Domestic Violence Task Force was adopted in 1993 to mirror the Southern Nevada task force. I was a founding member. Getting to the issue of accountability and the problem of using government authority to break

a private contract, our Task Force aimed to ensure there is no fraud and that someone is investigating. When there is no government involvement, there is no accountability on the part of the victim because there is no police report, so he or she cannot be prosecuted for filing a false report. But also, the perpetrator has no record that he or she did anything wrong.

In a recent case, *Bigpond v. State of Nevada*, 270 P.3d 1244 (2012), Donald Lee Bigpond was charged with battery constituting domestic violence for striking his wife in the jaw with a closed fist, causing her to fall and lose consciousness. It was his third offense in 7 years. At the District Court, a hearing was held outside the presence of the jury where the court determined that the victim's prior allegations of domestic violence against Mr. Bigpond were relevant to explain the relationship between the victim and Mr. Bigpond and to provide a possible explanation for her recantation. During direct examination, the victim had recanted her previous statements regarding the abuse.

If there is some kind of record of domestic violence, it can be used for future prosecution and assist the prosecutor in getting a conviction. That is the gold standard for how to control domestic violence. But if we just use the affidavit, the qualified third party who is giving the affidavit is not doing any investigation. All the qualified third party is basically saying is, "The victim related a circumstance to me which would fall within the law of domestic violence, and I have no reason to dispute that."

Likewise, the victim has no responsibility or accountability, and the perpetrator has no record. If all that is being done is creating an affidavit signed by someone who knows nothing about the event and does no investigation; if you are trying to use that as the prior bad act, such as in *Bigpond*; it is going to be attacked in court as a situation that was never reported to the appropriate authorities and may be used as an excuse to break a lease.

As a judge, it would be harder to prove this prior bad act or criminal conduct by clear and convincing evidence, which is the legal standard. For that reason, my opinion is that it is not good policy to have the government step in and cancel a private contract when there has been no involvement by the government leading up to the cancellation.

Senator Hutchison:
All these interests exist at the federal level, yet we do not have the federal

government requiring the filing of a police report or filing of a TPO. The federal government requires a lesser standard under VAWA.

Looking at the impact on the industry, we heard the statistics out of the Southern Nevada Regional Housing Authority that out of 5,000 leases, only 10 applicants sought to terminate their leases. Do you have information suggesting a different experience than what we have heard about the likelihood of filing false affidavits? This does not seem to have been a big problem.

Mr. Peek:
From my perspective as a landlord, there are some great things in this bill. For instance, the lock provisions are good. When it comes to helping a victim, the landlord's hands are tied in many respects. In a dispute between roommates who are both on the lease, we do not have the legal authority to lock out one of them. This bill will help us do that. Also, VAWA allows the segregation of leases, so a landlord could take one person off the lease and he or she would lose legal rights to reenter the property. We suggested that policy for this bill, but it was not included. We are in absolute alignment with some of the testimony heard today and the stated policy of the Nevada Network Against Domestic Violence, which says to hold batterers accountable.

In all the testimony we heard, I was disappointed there was no discussion about what it would do to an apartment community to leave a batterer in residence. What does that do to the rest of the community? What does that do to the neighbors in the next apartment? We all know the numbers and the facts. Once an abuser starts down that road of abuse, the cycle of violence often escalates. The level of violence escalates and the frequency escalates. As the judge said and as everyone agrees, the earlier intervention can occur, the more likely it is that the cycle of violence can be broken.

The Office of the Attorney General (AG) recently implemented a task force, the Domestic Violence Fatality Review Statewide Team, to examine domestic violence in the State. The team's first report, the *First Annual Domestic Violence Fatality Review Report,* came out in April. It states the Nevada criminal justice information system is only as good as the agencies and individuals submitting information. District attorneys, city attorneys, courts and law enforcement should all have processes in place to ensure that full, accurate and complete information is entered into the system, including arrests, convictions and TPOs. The AG's report also recommend following up with perpetrators.

Senator Hutchison:
I am guessing you have not had a chance to look at the statistics about the small percentage of renters wanting to get out of a lease—the 10 out of 5,000 that was reported in earlier testimony.

Mr. Peek:
That language in the AG's report is fairly new and much stronger than what is included in the bill. The language requires identifying the perpetrator. It contains a reduced list of qualified third-party reporters and requires a certain amount of due diligence by the qualified third party. That is not in A.B. 284.

Senator Hutchison:
That is one of the reasons I followed up with Assemblywoman Flores. I thought an important protection comes with the opportunity to sue the perpetrator with a civil complaint. You may say the perpetrator is not identified, which is why earlier I asked if we could amend the "to identify the adverse party" definition to include actually naming the adverse party so the perpetrator is identified. At that point you would have the opportunity to go after the named perpetrator civilly, which references Judge Elliott's point about accountability. If someone were going to file a false affidavit and it is common knowledge that the person accused of abuse is going to be sued civilly, that would be a good disincentive.

Mr. Peek:
I appreciate that, and I agree with the intent; although, if you put it in the definition of "adverse party," it will have no implication to the qualified third party. The requirement to name the adverse party must be in the language of the affidavit.

Senator Hutchison:
Are you referring to section 1, subsection 2, paragraph (c) of the bill?

Mr. Peek:
Yes. It just says, I am a licensed professional or clergy and a domestic violence event has been reported to me. You do not have to talk about the nature of the violence, which is important in an apartment community, and you do not have to name the perpetrator, which is equally important in an apartment community, because the perpetrator will probably abuse again.

Senator Hutchison:
I hope we heard the sponsor's intent. Assemblywoman Flores wants to get the victims to safety; then she wants to hold the abusers accountable by identifying them and going after them civilly. I think the sponsor wants to make sure those messages are clear, which is the reason I suggested the amendment.

Mr. Peek:
Regarding the statistics, we are concerned about what will happen once this law is in place. We are trying to implement as many preventative measures as possible to stop the abuse.

Chair Atkinson:
Can you clarify what you said about leaving someone at the complex to promote a safe community?

Mr. Peek:
If we do not know who the batterer is or if there is not a police report, we do not have a legal mechanism to get a batterer out of our apartment community.

Chair Atkinson:
But if the abused person files a complaint and asks to break the lease, is everyone gone from the apartment?

Mr. Peek:
What if the batterer is the next-door neighbor?

Chair Atkinson:
That is not what I asked you. My question is, are they both gone?

Mr. Peek:
No. Absolutely not, because that is a roommate situation.

Chair Atkinson:
But that is what we are talking about.

Mr. Peek:
It could be a boyfriend and girlfriend situation.

Chair Atkinson:
Could it be a boyfriend and girlfriend situation at the apartment complex and they do not live together?

Mr. Peek:
Yes.

Chair Atkinson:
I think that is far-fetched. We are trying to get at when the couple is cohabitating. In every situation I have heard, we are talking about when the couple is cohabitating.

Mr. Peek:
The definition of domestic violence is in statute.

Chair Atkinson:
That is what we are getting at. If we need to clarify that, then we will clarify it, but I am almost certain that Assemblywoman Flores is talking about a couple cohabiting. We can talk about other situations where they are not cohabiting, but that is not this situation. Maybe we can clarify it.

Roberta Ross (Nevada State Apartment Association):
I own 162 apartment units in Reno. We have not addressed some issues. Assemblywoman Flores said when she left her apartment, the man came after her again. With all due respect, that man was not living with her the second time he came after her.

That is one of the issues we are looking at. When someone with domestic violence issues moves into our units trying to get away from another situation, the man will often follow. Even though the perpetrator is coming after the victim, there are unintended consequences for everyone who lives nearby. The perpetrator may go to the apartment next door because he may think his victim is hiding there. This has happened in my complex.

In the apartment industry, the majority of people who manage apartments are women. They have to address this issue regularly and it is scary. If we know who the perpetrator is by sight, it still does not help if we do not have a name. When the perpetrator comes into the unit, it affects the other units. The physical violence does not usually happen the first time. It generally starts with

screaming and yelling so tenants within earshot are affected, and this includes children. Domestic violence affects everyone in those close quarters.

Senator Hutchison asked about the 10 in 5,000 renters who ask to break their lease. I have an example of how tenants can try to bend the rules or laws, which is what many apartment owners fear could happen with this bill in statute. An example would be the companion animal issue. Regarding companion animals, which are essential to some people, we follow the U.S. Department of Housing and Urban Development (HUD) guidelines implicitly. Often, people come in and ask if we allow pets. When we say we do not, they ask about the law. In my apartment complex, 95 percent of the people who have been told we do not allow pets come back with a note saying they require a companion animal.

I am not discounting the victims who are hurt in domestic violence situations, but there are people who will abuse the law and look for any way to get around it. This could apply to getting out of a lease if this law is not tight enough. We are concerned that those percentage numbers could grow if people can work the system with a law that is too broad.

Senator Hutchison:
I know one of your concerns is that we do not want to allow a boyfriend and girlfriend relationship to come in and—like with the companion dog situation where they come back with a note—they come back with an affidavit and they are out of a lease.

I can understand that view if it were not for section 1, subsection 5, which makes the adverse party civilly liable for losses due to the early termination of the lease. If my tenant clients came to me in my own law practice in Las Vegas, I would draft a complaint and tell the apartment manager to have a copy sitting on his or her desk. As soon as the affidavit came in for the early termination of the lease, I would tell the manager to identify the perpetrator, which should be in the affidavit, and then go file that complaint and serve the perpetrator.

In a situation where a couple might come in with a false affidavit to get out of a lease, this could be a deterrent because they would be risking a civil lawsuit by the apartment owners. Those owners would have an incentive to go after these perpetrators, even if just to send a message to other people that by turning in a dishonest or false affidavit, there will be consequences.

What I believe would happen is that when the legitimate victims of domestic violence come in and ask for these lease exceptions, they would be unlikely to do it with a false affidavit because their perpetrator will then get sued by the apartment company. Is this what you are talking about?

Ms. Ross:
Yes. If you make legally clear what the affidavit is and if the victim writes a narrative describing what happened and then she and the qualified third party sign it and include the perpetrator's name. If they do not want to give the perpetrator's name to police, at least he could be named on the affidavit. I believe that would stand up in court.

Senator Hutchison:
All you need is to get past Rule 11 from the Federal Rules of Civil Procedure to file a complaint, which is to ask yourself if you have a good-faith basis in the law and facts to file a complaint. If I have a member of the clergy or social worker who says the tenant said she has been beaten and that is why she needs to get out of the lease; and here is the man or woman who is the perpetrator, that is all I need to get past Rule 11. I would then have a good-faith belief under the law and the facts to go after the perpetrator with a complaint. To go after the perpetrator civilly would be an important protection for the landlord. It would curb instances of abuse.

Mr. Peek:
If the perpetrator is named, that is a possibility, but we still have the issue of hearsay on the affidavit.

Senator Hutchison:
Reliance on the affidavit is not necessary to prove the case. The affidavit gets you past Rule 11. You have the complaint and are going to sue the abuser. Then, you will conduct discovery and bring the abuser in for a deposition; then you conduct interrogatories and bring in witnesses. It takes all that to prove the case. You do not have to rely on the affidavit. You have a lawsuit, and you have all the mechanisms to prove the suit.

You may say, why go through the expense of a lawsuit? But that is what we should do. We should go after these people for interfering with our contract, which is what they are doing. There are abused women who need to have the benefit of the doubt sometimes. We need to do the best we can to make sure

there is no abuse, and to get them out of the abuse situation and to protect the landlords by not allowing this to be used as an excuse to get out of a lease. You have to strike a balance somewhere. It seems we are getting close to a reasonable balance.

Chair Atkinson:
I had that same concern about the burden of proof issue. If we found out a victim was not telling the truth about the domestic abuse and was just trying to get out of a lease, there would still be recourse.

Mr. Peek:
We are trying to avoid having the victim testify in a civil trial or be around the perpetrator. She or he does not want to be in that position, and we do not want the victim to be there.

Chair Atkinson:
I do not know whether we can protect a victim from that. If she or he wants the alleged batterer prosecuted, the victim will need to be in the courtroom and do what must be done to ensure prosecution. We know that half the time the victim drops out of these cases. Our effort here is to make sure these victims are able to get to safety.

Senator Settelmeyer:
Judge Elliott, is the affidavit concept valid?

Mr. Elliott:
I do not see that as of any real use. It is not anything of which the qualified third party has any personal knowledge. The third party is saying only what the alleged victim of domestic violence told him or her and there is no reason for disbelief. That is hearsay. That is not going to hold up in court. The victim will have to testify for there to be any real first-person knowledge of what went on.

Senator Hutchison:
Judge, would you agree that the landlord could rely on the affidavit in terms of their Rule 11 obligations to file a lawsuit against the adverse party? Then, the lawsuit must get started. Does it give them the basis for a lawsuit?

Mr. Elliott:
Yes. I would agree that the lawyer under Rule 11 would have the basis for the

lawsuit. It would be enough to have that good-faith belief. But to win the case, you will have to bring in the victim. If the victim does not want to talk to authorities, he or she may not be cooperative with the apartment owner.

Senator Hardy:
I look at the list of qualified third parties and see psychiatrists and psychologists, but very often the person who is abused in a domestic violence situation goes to the family doctor. The doctor can document what happened. To put the victim with a psychiatrist or psychologist is duplicative at best and presumes a mental health issue with the victim. I do not know that is where we want to go. Any family physician can do this if you want a qualified person.

Earl White (Trinity Security Services):
You have referred to the clergy as possible qualified third-party witnesses. Our church, New Creation Outreach Ministries, had a young woman who was abused. We were able to help her move with our resources, but with regard to other aspects of the situation, we were out of our realm. We discovered that real help comes from organizations with expertise. We called on a group called Safe Nest. That organization put on a 3-day conference to educate our church about domestic abuse issues and solutions. At the end of the conference, we concluded that if a man is striking a woman, the police need to be called. We have heard testimony that people are leery of police officers and do not want them involved. But an abuser, we learned at the conference, is not usually a first-timer. When police officials are not called, there is no accountability. The abuser can leave that relationship, go to another relationship and pick up where he or she left off with the next victim.

I am concerned about the clergy being involved in the affidavit. If Safe Nest is reaching out to churches and training ministries, the best thing the church can do is use their resources to help move these victims away from abusive households and refer the case to the organizations with expertise. For an abuser not to suffer any consequences is not a good thing. Sometimes a person needs a jail ministry to get his or her life together. My recommendation is that this qualified third party be eliminated. Refer to the domestic violence organizations. They are the people who know best.

Brenda L. Lovato (Institute of Real Estate Management; GSC Property Management):
My organizations realize that domestic violence is serious. It is wrong to say

that domestic violence does not happen when two people live in two different apartments. People come together under one roof. My professional associations already allow abused women to relocate and get out of their lease agreements, but they are usually afraid to give us names. We have to know who the perpetrator is so we can get that individual off the property before another person is victimized. We can watch out for the abuser, but we need documentation to prove it is the right person.

My concern is that even if you pass A.B. 284 and we use the affidavit, we still do not have a police report or a TPO. We can evict on a TPO and also on a police report, but I do not think we can evict on an affidavit. I do not think it will stand up in court unless we rewrite the eviction law.

Chair Atkinson:
If the abuser and the victim live in separate apartments in the same complex and abuse occurs, are you going to let the abuser stay?

Ms. Lovato:
In order to get a legal eviction, there must be a police report or a TPO. That is why we are more in support of a police report or a TPO. We need to have the name and location of the perpetrator.

Chair Atkinson:
Even if the victim and perpetrator lived in different apartments at the same complex, if the victim filed a report, and you knew who the perpetrator was, would that person be evicted as well?

Ms. Lovato:
Yes. We would evict that person. My concern is with the affidavit.

Senator Hardy:
Can we make a law that says you can evict someone on an affidavit just as well as on a TPO or police report?

Ms. Lovato:
We would love that.

Chair Atkinson:
Before we proceed, I want to let people waiting to testify on other bills that we are moving A.B. 486 to Monday. This bill, A.B. 284, has taken longer than anticipated, and we still have more people to testify.

ASSEMBLY BILL 486 (1st Reprint): Revises provisions relating to telecommunication providers. (BDR 58-970)

Martin Dean Dupalo (S.A.F.E. House Domestic Crisis Shelter):
I have been with S.A.F.E. (Stop Abuse in the Family Environment) House Domestic Crisis Shelter for 8 years and am currently President of the Board of Directors. I would like to reference Earl White, who spoke earlier on section 1, subsection 10, paragraph (e), subparagraph (8) regarding members of the clergy as qualified third parties for signing an affidavit. My board at S.A.F.E. House has concerns also about section 1, subsection 10, paragraph (e), subparagraph (7), which reads:

> A person who serves as a volunteer on the board of directors, or as a volunteer executive director, of an agency or service which is staffed, directed and managed entirely by volunteers and which has no paid employees and who advises persons regarding domestic violence or refers them to persons or agencies where their request and needs can be met.

Most people hearing this testimony can attest that various boards and nonprofit organizations are made up of members who specialize in particular areas. Some of our board members are professionals when it comes to this matter. We have a judge on our board who is a specialist in matters of domestic violence. She also has concerns about this part of the proposed bill. I can tell you that half of our board members at S.A.F.E. House Domestic Crisis Shelter would not feel comfortable being a qualified third party signing an affidavit. We feel this category is too open.

Senator Hutchison:
Is your concern based on civil liability and the prospect of being pulled into a civil action, or is it a matter of competence, a fear of potentially faulty judgment in issuing the affidavit?

Mr. Dupalo:
It is more the second thing. Not everyone on our board feels competent in this area. We have one member who is a specialist in fundraising and special events. That individual would not feel competent and, if asked, should not sign any affidavit in this case. That individual is not qualified to make that determination.

While we support A.B. 284, this one section concerns us. We would like to see it either eliminated or qualified. We agree with the adjustments made in other categories regarding doctors, social workers, registered nurses, marriage and family therapists, and so on. We see this one particular category as problematic because it is too broad.

Senator Hutchison:
Do you read this bill as requiring your organization to provide an affidavit? I do not see a compulsion here. If asked, can you just say you do not feel qualified? Can you say that the person seeking the affidavit would need to get it from another qualified third party?

Mr. Dupalo:
Yes. Those individuals on our board who did not feel qualified to sign an affidavit would refer the victims elsewhere. As Mr. White referenced, we have certain criteria for allowing people to come into our shelter. Determinations and judgment calls for acceptance are outlined. We rely heavily on the professionals who deal with domestic violence, but they are not necessarily board members. You are correct that there is no compulsion to produce the affidavit, but we believe that process should be left in the hands of the professionals, not just volunteers.

Assemblywoman Flores:
I did say I was not amending this bill because it is stronger and functions better as is. However, I am happy to make technical adjustments, including getting an actual affidavit as it exists in other states.

There is a lot of opinion about whether law enforcement involvement should be mandated in a domestic violence situation. The facts are that with thousands of calls to police for domestic violence, less than half of those contacts result in an arrest. We have data that show under the federal standard and in federal housing, less than 1 percent of people who can self-certify get out.

Eight other states use language similar to this bill, and there are no landlord crises in those states. We need to deal with facts, not opinion. I hope that with some technical adjustments, we can make the language stronger and begin to do something for victims of domestic violence in Nevada.

Senator Settelmeyer:
I agree we should let the facts speak. I am concerned about section 1, subsection 10, paragraph (e), subparagraphs (6) and (7) because there are other people we need to include in this list. I also agree with Senator Hardy that we should change the language from nurse to health care professional. Clearly, if a doctor sees bruises on an individual, he or she will have relevant information. This ability to create and sign the affidavit should be left to professionals only. I fear that having a category as broad as volunteer or advocate group employee could create a large enough field where someone might abuse this process.

As a landlord, I would want to protect the victim, but I would also want the bad situation off my premises. I would want to defuse the situation and get those parties as far away from each other as possible. A professional can help do that. Some other states have included lawyers on their lists because some victims contact a lawyer when a battery has occurred. Also, some states have included a police official among those who could sign the affidavit.

There needs to be some modification, because anytime it says, "any person," it gets me a little worried.

Assemblywoman Flores:
If I may, the language says "any person employed who holds a professional license." It is not just "any person." The volunteer option was put in to address the concerns of rural Nevada because we do not have as many professional organizations there with paid staff. Lawyers were on the initial list, and in trying to come to a consensus, I was asked to strike that. There is nothing in the bill that mandates any of these people to do an affidavit. It proves my point that it is unlikely someone will take advantage of the policy because people are so hesitant to get involved.

Senator Settelmeyer:
Expanding and contracting the list at the same time will help to ensure those individuals with the best knowledge of the situation, its legal ramifications, and how to help individuals without relying on hearsay, will yield the best result.

A lawyer or doctor will understand what is going on. I worry that a category that includes anyone who serves as a volunteer on a board is too broad. They will not be forced, but there could be a preponderance of individuals who will want to err on the side of caution to help victims. They may not have sufficient information to sign the affidavit to help an individual, and that worries me.

Chair Atkinson:
We will now close the hearing on A.B. 284 and open the hearing on A.B. 187.

ASSEMBLY BILL 187 (1st Reprint): Revises provisions governing trade regulations. (BDR 52-977)

John Sande IV (PassTime USA; Wirtz Beverage Nevada):
This bill is about the regulation of a new technology that allows consumers with impaired credit to obtain financing for a motor vehicle they would not otherwise be qualified to purchase.

We have worked with Legal Aid Center of Southern Nevada throughout this process, and I am happy to note that with one exception, we have been able to agree on the conceptual framework in which these devices must be used and disclosed to consumers. This bill is not about the single document rule.

Corine Kirkendall (PassTime USA):
This device is a starter-interrupt and GPS device, similar to the starter-interrupt breathalyzer installed in vehicles to prevent driving while intoxicated. I have submitted a handout with information on the consumer benefits of this device (Exhibit H). It is to be used in a vehicle being purchased by a consumer, lowering the risk to lenders so they can originate more loans and create more opportunities for consumers in Nevada. The devices can help lower the incidence of delinquency, decreasing default and repossession to less than 10 percent. The included GPS also can help to recover the vehicle if stolen. It also offers lenders the flexibility to work with consumers who struggle with payments instead of immediately repossessing the vehicle.

Mr. Sande:
This bill is about regulation of a device my client sells. The majority of the concepts were developed during the Assembly Committee on Commerce and Labor meetings. We do have amendments (Exhibit I). We combined various state laws to make it the legislation more suitable for Nevada.

Senator Hutchison:
Ms. Kirkendall, where else is this device available and in use?

Ms. Kirkendall:
It is used internationally and nationwide. The only state we do not sell in is Wisconsin.

Senator Hutchison:
Do you currently sell in Nevada? Is this for theft protection?

Mr. Sande:
Three states have adopted regulations regarding this device—Connecticut, Colorado and California. They have all developed a regulatory scheme similar to what we are proposing.

Here is how the device is used. When financing is awarded to a purchasing customer with the condition the device be installed on the vehicle, the dealer must provide the consumer a disclosure statement, informing the consumer of his or her rights. Among those rights is disclosing that the device will be placed on the vehicle, and the secured party, meaning the lender, will be able to access the device electronically. The disclosure must provide the name, address and toll-free telephone number of the secured party or where the consumer can go to discuss the security interest and extension of credit. The disclosure must also provide a method by which the debtor may regain the ability to restart the vehicle for a period of not less than 24 hours in the event of an emergency.

The disclosure must say the warning will be provided to the debtor at least 5 days before the starter-interrupt device may be used and that any audible warning may not be longer than 20 seconds in duration. It must also provide that the starter interruption cannot and will not disable a moving vehicle. The disclosure must provide that the debtor cannot waive protections contained in the bill and provide a penalty if the secured party uses the device when it has reason to know that use of the electronic collection technology will result in a substantial injury or harm to the public health, safety or grave harm to the public interest substantially affecting third parties not involved in the dispute.

In the event the secured party fails to give the disclosure or uses the device in a manner contrary to these restrictions, it will be treated as a deceptive trade practice under NRS 598 and subject to the remedies contained in NRS 41.600.

In addition, we will provide a civil penalty of not less than $1,000. My clients feel these regulations are reasonable and the sharp penalties are adequate to protect consumers and punish individuals who misuse the technology. You may hear testimony today regarding situations where the technology was used in a way that would violate this law. That testimony will highlight the need for this legislation.

You will also see that my proposed amendment, Exhibit I, outlines the method in which the commissioner of the Division of Financial Institutions, Department of Business and Industry, is to approve disclosure agreements. We believe the current procedure to approve forms of insurance is more appropriate since it allows flexibility for revisions as the technology develops, rather than hard-and-fast regulations the commissioner is going to dictate. We have experienced that they can take a long time to change. The language we used to develop that was from the contracts of insurance chapter, NRS 687B and it was modeled after that.

The retail installment contract prescribed by the commissioner contains a provision that precludes a secured party from physically repossessing the vehicle until 30 days after a payment has been missed. We do not seek to change this time for physical repossession. However, if a secured party must wait 30 days until it can utilize the starter-interruption technology, the secured party will be confronted with the question of whether they used the device or just physically repossessed the vehicle.

Our concern is that most times the secured party will minimize its own risk and just repossess. This does not benefit anyone. Our solution is to allow a secured party to initiate the starter interruption at 15 days. The physical repossession would still not be allowed until 30 days. This will provide incentive for the consumer to call the lender and work out a method by which he or she can become current with payments. If this happens, the device can be turned off in minutes, and the consumer has access to the vehicle. This communication can mean the difference between the consumer keeping his or her car and repossession.

Unfortunately, the Legal Aid Center of Southern Nevada does not share our views regarding the benefits of the device. That is not to say we do not understand the organization's position. In an effort to compromise, we have proposed that an acceptable middle ground is to allow the consumer a one-time

30-day cure period after breach of the retail installment contract. If the consumer uses this one-time cure and another breach occurs, the secured party may utilize the device after 15 days. This solution properly balances competing interests, is fair, and will not impair the benefits this device can have when used properly.

Sophia A. Medina (Consumer Rights Project, Legal Aid Center of Southern Nevada):
I am here on behalf of my client, T. Candice Smith, who testified in the Assembly about her frightening driving experiences with two PassTime devices. Both times, her vehicle was shut off while she was driving. The first time, she was in the express lane heading south on Interstate 15 in Las Vegas when the car was shut off rendering her barely able to control the car and pull over to the shoulder of the highway. After the second installation of a replacement device, her car shut off while she was driving to work. Because of Ms. Smith's experiences and the potential damage these devices pose, we feel they should be banned.

These devices are extremely dangerous to the driver and those who share the road. While the car payments had been made in Ms. Smith's case, the point is that even if car payments were not made, it is not fair to jeopardize the lives of others. Strong consumer protections are necessary.

I have submitted my written testimony that includes more detail about Ms. Smith's experience with these devices (Exhibit J).

Senator Hutchison:
Is there any other history of the device turning off while the car is traveling? We heard testimony that the device is not supposed to do that. Were these events with Ms. Smith some sort of malfunction, or if it is a widespread problem, would it cause accidents and generate product liability cases?

Ms. Medina:
This has happened to clients of two consumer attorneys in Las Vegas. I am not aware of personal injury suits. It is also important to note that the device was installed at the dealership. Initially, the device shut off her vehicle while she was driving, and it shut off again while she was getting the oil changed at the dealership. A mechanic at the dealership removed it, which caused the finance company to take her to court claiming removal of the device constituted default

of the contract. The judge ruled she could keep her car, but a new device was to be installed. She had that new device installed, and it failed on her way to work. At issue are two devices and two different installations. Both times the vehicle shut off while Ms. Smith was driving.

Senator Hutchison:
Do you have any information on how many of these products are in the marketplace and the number that have malfunctioned?

Ms. Medina:
No.

Dan Wulz (Legal Aid Center of Southern Nevada):
As Mr. Sande said earlier, this bill has had an unusual history. It started out in the Assembly as a one-sentence bill dealing with the one-document rule. Two consumer attorneys from Las Vegas testified in opposition as well as Mr. Sasser, Ms. Medina and her client; all concerned about changing the one document rule. We knew the proponents were makers of this starter-interruption device, so we suggested if the devices were going to be allowed in cars in Nevada, they should be heavily regulated. I worked with Mr. Sande on language in a work session. At that time, our main disagreement was the 30-day cutoff.

Nevada law requires the commissioner of the Division of Financial Institutions to prescribe the forms to be used in the sale of vehicles on credit. *Nevada Revised Statute* 97.301 requires the seller to use those forms. Since 1995, concerned parties have participated in the regulatory process before the commissioner, and the contract has required that before someone is considered in default for nonpayment, they must be 30 days or more past due. All retail installment sales contracts in Nevada on credit have that provision. You are not in default for nonpayment until more than 30 days past due.

For that reason, we could not see eye-to-eye with Mr. Sande and his client with respect to the ability to turn off the vehicle. Typically, they would turn off the vehicle when the purchaser is 1 day past due, but they wanted the legislation to say when 15 days past due. After the Assembly work session, the Legislative Counsel Bureau (LCB) put my language into what you now see as Amendment No. 556 (Exhibit K).

Mr. Sande and I both had concerns with some of the language selected by LCB, so we sat down again. I thought we agreed in concept on everything except the 30 days. However, yesterday morning I received nine pages of proposed amendments from Mr. Sande. I have concerns with those but have not had a chance to sit down with the two consumer lawyers who have been assisting me in writing the language on this bill. I would request the Committee's indulgence in allowing me to collaborate with them and Mr. Sande before the work session to see how much we can agree on.

Senator Jones:
Ms. Medina testified this is a dangerous product that should not be on the market. You are testifying that you are working with Mr. Sande. Is Legal Aid adamantly opposed to this or working on it?

Mr. Wulz:
Ms. Medina was summarizing our client's testimony delivered at the Assembly Committee hearing. We have come a long way since then. Mr. Sande has agreed the bill should prohibit a device that turns off the car while the engine is running. That is how we have addressed that concern.

Mr. Sasser:
We are neutral on this bill. The consideration for the Legal Aid Center of Southern Nevada and Washoe Legal Aid Services is that these devices are already on the road in Nevada. We do not know exactly how many there are or how many competitors exist. The choices were either to go with no law, to try to prohibit the devices completely, or to create rules and penalties. If we could implement some rules, we would be supportive.

We have this new technology, along with traditional repossession people and drone repossession devices that can be utilized long-distance. If I am using the new technology, should I have a 15-day advantage over people who use the old technology? They are going to claim it is unfair and want 15 days also. I do not know the difference between repossessing a vehicle and rendering it inoperable. We had a lawsuit against landlords a number of years ago, where the testifiers said they were not locking out people, they were just changing the locks so people would come to the office and talk about it. This seems to be the same approach. We will get your attention, because your car will stop working and then you will come talk to us about it.

I caution you about completely overturning 20 years of contract law and upsetting the rights of everyone else, just because we have a new piece of technology that makes repossessions easier and more effective.

Chair Atkinson:
This device and policies regulating it affect the people I represent. We are talking about people who must take on certain kinds of credit and interest rate obligations. Maybe banks and financial institutions will create a different tier of people they will finance because it is easier to get the vehicle back from them for nonpayment. Some of my constituents say they would welcome this opportunity to buy a car if they have existing credit concerns. Interest rates would still be higher, but at least this opens the door to consumers who cannot get traditional financing and gives them the opportunity to get into the market. Companies may be willing to extend financing based on easier repossession procedures. It is a smart business strategy that allows sale of cars to a different customer base.

Mr. Sasser and Mr. Wulz, you serve the underserved, those people who are in difficult situations. What do you think about this perspective? Would this help more than hurt them?

Mr. Sasser:
The claim is that because this device may make it easier to keep track of the car, lenders can extend credit to people who otherwise might not get it. It is an interesting concept. However, I have not heard anything either here in the Senate or in the Assembly to say that some people would qualify for credit who might not otherwise have done so, or if they now would have access to more favorable terms. I have a difficult time with the idea that the device makes it any easier to repossess and that it might justify easier credit. Why would you need a special definition for when a contract is in default using this device versus using any other method? I do not see the connection between the device and easier credit. We want a definition of "default."

Mr. Wulz:
I echo Mr. Sasser's testimony that we have not heard any statistics about credit being more freely available to people because they agree to have a device such as this on their cars. I am sure the proponents will make that argument. As I read Mr. Sande's handout from CAG Acceptance, LLC (Exhibit L) which is an assignee of car sales contracts, that company's Nevada delinquent rate is

6.53 percent on their loans generally. On their loans where cars have the starter-interrupt device, the Nevada delinquent rate is 6.21 percent. That is less than 0.05 percent difference. I do not see much difference between cars with or without these devices. I am not certain how they can predict who is going to default and who is going to respond to the car being shut off.

Chair Atkinson:
Perhaps there is little difference and perhaps there are not a lot of statistics, but I am quite sure the device is not going to be on someone's car who has a 750 credit score and is trying to buy a Mercedes. We are not going to be servicing that person. We are talking about people who will be in a different category, a much higher risk category.

Senator Hutchison:
Whenever lenders can reduce risk, they will take more chances. If lenders take a chance on someone who may be questionable in terms of credit, but they can reduce their risk so the car will not turn on in a situation of nonpayment, they might lend more. All we have to do is ask the people making the loans. The more difficult it is for people to collect, the less likely it will be for those same people to lend in the future.

The question is, "I have a risky person, do I lend to them?" The answer is, "Yes, I can put this device on and if they do not pay, I can shut it off." It is not much of a leap to suggest that would increase loan opportunities.

Mr. Sasser:
But that is not what we were discussing, Senator Hutchison. We were not discussing whether we have the device. We were discussing whether the default should be at 30 days or 15 days.

Senator Hutchison:
The definition of default affects the risk. If I can shut it down in 15 days as opposed to 30 days, the risk is cut in half. Therefore, I am going to be more likely to issue the credit, unless we are just issuing credit in a vacuum, which business people and bankers do not do.

Mr. Sasser:
But this is all based on the device. I could come to you and say, "I think I could be more generous with my credit regarding people with poor credit scores,

device aside, if I define default differently." Are we going to have different definitions of default for people with different credit ratings?

Senator Hutchison:
Possibly, de facto. It would be a change in the default definition or give people the opportunity to exercise some self-help remedies. That is a policy question.

Senator Jones:
I heard you equate repossession with exercise of this device. I suspect the means of curing repossession is substantially more expensive and embarrassing than simply having a button pushed that deactivates your car. Once you make a payment online, your car is operable again. Can you see a difference there? There is a difference in temporarily deactivating someone's car, physically entering that person's garage, hooking the car to a tow truck, and taking it to a tow yard. To get it back, he or she would have to go to the tow yard and pay cash.

Mr. Sasser:
Obviously, in actual, physical repossession, there are more costs associated with getting the car back and repossession would be more dramatic. There is some greater escalation in the traditional repossession since it has been recognized in law that it is how a person exercises the return of his or her security interest in the vehicle. Before anything can be done, however, there must be a default. How do you define default? We would have to rewrite years of contract law because of this particular device. I am not sure that is wise.

Senator Jones:
We have the freedom to contract, and if we contract to allow for an intermediate device, I do not see how we are interrupting 20 years of contract law. We all have the right to contract. We will close the hearing on A.B. 187.

Chair Atkinson:
I hope everyone can continue to work together on A.B. 187. We are going to open the hearing for A.B. 432.

ASSEMBLY BILL 432: Revises provisions governing intoxicating liquor. (BDR 32-980)

Alfredo Alonso (Southern Wine & Spirits of America):
This bill is an effort to address the issue of people trying to take advantage of our liquor laws and skirt statutes with respect to suppliers' sales agreements with wholesalers.

E. Leif Reid (Southern Wine & Spirits of America):
Nevada liquor law has two pillars. One is the primary source law, where the maker designates how the product is imported into the State. To protect the consumer, the law ensures authentic product is treated in a manner that is safe and prevents distribution by secondary sources, the gray market, or counterfeit sources, the black market. This bill aims to clarify that provision.

The second pillar of Nevada liquor law is the three-tier system. That is a legal and regulatory structure enacted in most states following repeal of Prohibition with the passage of the Twenty-first Amendment to the *U.S. Constitution* in 1933. The new guidelines were intended to protect the consumer against monopolies and control that suppliers and manufacturers can have over distribution. These are well established provisions in Nevada law that are being changed in minor, technical ways to strengthen the laws.

Senator Hutchison:
What difference will this make in terms of how the law functions and is applied?

Mr. Reid:
These laws have been in force for several decades. In 2003, there was a change because of a claimed loophole related to California liquor law. California does not have a primary source law, meaning a supplier does not need to be part of an authorized distribution chain. They do not recognize when a supplier designates who their recognized importer is going to be.

What happened in California was that high-demand product was being obtained on the gray market from outside the Country. At that time, demand was high for Cristal Champagne, and supplies were limited. Cristal was being bought up on the secondary market, imported into California, brought to Nevada and illegally sold into retail sources. This is the loophole.

People claimed that because the product was imported, a party could be deemed the supplier or maker of the product if in possession of the product when that product was first imported into the United States. The law was

modified in 2003 to eliminate that loophole. This is a technical change to make it easier for the supplier and Nevada wholesalers to have a direct authorization from the makers of the product.

Mr. Sande:
I concur.

Chair Atkinson:
We will close the hearing on A.B. 432 and open the hearing on A.B. 437.

ASSEMBLY BILL 437 (1st Reprint): Revises provisions governing title insurers. (BDR 57-1173)

Alfredo Alonso (First American Title Co.):
I am representing First American Title Company on this bill that is a statute update to allow for closing protection letters. This has not been used before, especially recently with the economy and the issues that have happened with respect to lenders across the Country who have asked for this measure. They want to ensure the property they loan on is free of liens. The original Nevada law allowed title insurance for the buyer. This bill adds another entity, specifically a lender. This is regulated by the Division of Insurance, Department of Business and Industry. A $25 fee is levied, which is standard across the Country. Utah is the latest state to approve this. To my understanding, 10 states are working on this idea now.

Senator Hutchison:
This seems to be a product that insurance companies want to offer and lenders want to purchase. What is the possible downside of that kind of relationship?

Mr. Alonso:
I do not see a downside. This provides comfort to lenders in an environment where properties have many encumbrances.

Senator Hardy:
In section 1, subsection 3, where it says, "A title insurer shall charge a fee of not less than $25 to each person," does it mean they can charge more?

Mr. Alonso:
Not necessarily. These costs are filed with the Division, so it is regulated. The

only way to increase those costs is to go through the Division commissioner. Saying "at least" allows us to stay at the $25 mark unless we get approval.

Senator Hardy:
Is this an industry-requested fee?

Mr. Alonso:
Yes.

Chair Atkinson:
Seeing no more discussion on this bill or public comment, we will close the hearing on A.B. 437. We are adjourned at 3:46 p.m.

RESPECTFULLY SUBMITTED:

_____
Wynona Majied-Martinez,
Committee Secretary

APPROVED BY:

_____
Senator Kelvin Atkinson, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	8		Attendance Roster
A.B. 284	C	3	Karen Moessner	Written Testimony
A.B. 284	D	7	Karen Moessner	Duties Owed by a Nevada Real Estate Licensee
A.B. 284	E	4	Karen Moessner	Residential Lease-Rental Agreement and Deposit Receipt
A.B. 284	F	2	Caryn Sternlicht	Written Testimony
A.B. 284	G	36	Gregory Peek	Supporting Documentation
A.B. 187	H	1	Corine Kirkendall	PassTime Consumer Benefits
A.B. 187	I	9	John Sande IV	Proposed Amendment
A.B. 187	J	2	Sophia A. Medina	Written Testimony
A.B. 187	K	6	Dan L. Wulz	Amendment No. 556
A.B. 187	L	2	John Sande IV	GAC Acceptance, LLC. Information Sheet