

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 26, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:08 a.m. on Tuesday, March 26, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Barbara K. Cegavske, Senatorial District No. 8

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Jon D. Ponder, CEO, Hope for Prisoners
Steven Yeager, Clark County Public Defender's Office
Howard Watts III, Field Director, Progressive Leadership Alliance of Nevada
John T. Jones, Jr., Nevada District Attorneys Association
Jim Berchtold, Legal Aid Center of Southern Nevada

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Jon L. Sasser, Statewide Advocacy Coordinator, Washoe Legal Services;
Southern Nevada Senior Law Program; Legal Aid Center of Southern
Nevada

Michele Johnson, President and CEO, Financial Guidance Center
Joseph Connell

Jack Mallory, Southern Nevada Building and Construction Trades Council

Bill Uffelman, President and CEO, Nevada Bankers Association

Chris Ferrari, Clark County Collection Service, LLC

Mike Draper, Nevada Collectors Association

Dee Barbash, President, Collection Service of Nevada; Treasurer, Nevada
Collectors Association

Brent Begley, Collection Service of Nevada

David Belanger, Carpenter's Music World

Francisco Olivo

Ben Graham, Administrative Office of the Courts, Nevada Supreme Court

Chair Segerblom:

I will open the hearing of the Senate Committee on Judiciary with
Senate Bill (S.B.) 423, Senator Barbara Cegavske's bill.

SENATE BILL 423: Revises provisions relating to offenders. (BDR 16-1112)

Barbara K. Cegavske (Senatorial District No. 8):

This bill requires the Department of Corrections (DOC) to provide photo ID cards to people who are being released from prison if they request such a card. I have prepared testimony to submit ([Exhibit C](#)).

My involvement with this issue stems from my position on the board of Hope for Prisoners, one of the most heartfelt boards of which I have ever been a part. Headed by Jon Ponder, this group helps people who have served time and repaid their debt to society and are trying to move on into a productive life. One of the biggest obstacle for these people is securing identification.

The Director of DOC, James G. (Greg) Cox, has offered to help with this project, making sure to issue the correct information to each prisoner before being released. That information can then be taken to the Department of Motor Vehicles to get an identification card in a timelier manner than the months it now can take.

Senator Hutchison:

How do you verify the person's information if there is no access to original documents?

Senator Cegavske:

There are ways to do it. Mr. Ponder and Mr. Cox will answer that for you.

Senator Ford:

I support this wholeheartedly. Many people want to turn their lives around and do great things when they get out of prison.

Senator Brower:

I agree with Senator Ford. As much as we want violators to go away for a long time, the vast majority of people we incarcerate eventually get out. It does no good to further punish these people after they get out.

Chair Segerblom:

I agree. It is a Catch-22 because to get an ID, you have to have a birth certificate, and in order to get your birth certificate, you have to show your ID. Unless the State gets involved, people get stuck. It is a terrible situation to be just out of prison, unemployed and without any form of identification.

Senator Cegavske:

Some people do not know what state they were born in, or who one or both of their parents are. Through working with Hope for Prisoners, I have learned there are obstacles people have to go through of which most of us are not aware. This is about trying to help people help themselves.

Jon D. Ponder (CEO, Hope for Prisoners):

Hope for Prisoners is a nonprofit organization providing reentry services to men, women and young adults in Nevada. I have prepared testimony to submit ([Exhibit D](#)).

Senator Cegavske:

Some of the people in this program have never held a job. The job training and input from different State agencies are great examples of bringing people together for this effort.

Mr. Ponder:

Hope for Prisoners is a reentry program for men, women and young adults coming out of every arena of the judicial system. Some are coming home from state and federal prisons, city or county jails, or any of the drug rehabilitation centers across the Las Vegas Valley. We provide support services to get these individuals back into the workplace and back into their families. Our 18-month program begins with an intensive prevocational leadership workshop, where we teach life skills, from having a winning attitude to going above and beyond. At the end of the workshop, we have a graduation. The participants then go to the next level of our 18-month program.

We use a comprehensive mentoring program with more than 160 mentors from the southern Nevada community. We want to grow this number of mentors to more than 400 volunteers. We have partnered with the Las Vegas Metropolitan Police Department, federal parole and probation departments, and many other organizations and individuals.

We have graduated 354 individuals from this workshop. An unprecedented 72 percent of those individuals are gainfully employed. Some of these men and women in the program have never worked before, as Senator Cegavske said. Today, many are documented supervisors in the workplace, earning in excess of \$14 per hour.

Chair Segerblom:

What you are trying to do here is critical to our society. Unfortunately, we cannot take a vote today because of the fiscal note.

Senator Hutchison:

This is a remarkable program. How do you get these former inmates in your program?

Mr. Ponder:

We work closely with the DOC and the Clark County Detention Center to develop a relationship with the individuals prior to release. Clark County Social Services refer people to us. We work with Nevada JobConnect, trying to get ex-offenders to work.

Steven Yeager (Clark County Public Defender's Office):

On behalf of our offices and particularly our social workers, this will be a big

step in the right direction. One of the most difficult things for the offender is when he or she comes out with no ID. It limits the universe of what is possible. Imagine in your daily life how often you show your identification to establish who you are. Without that, these offenders have a very difficult time. That task often falls to our social workers to obtain birth certificates, which often involves dealing with agencies outside of the State. This bill makes sense because the DOC knows who these offenders are—there is fingerprint record verification on file, the Department can help them with the process. We support this bill.

Howard Watts III (Field Director, Progressive Leadership Alliance of Nevada):

Research has shown that people of color are less likely to have photo identification. Additionally, people of color are disproportionately affected by our criminal justice system. It is important to provide a basic form of identification once a person has completed his or her sentence to help facilitate reintegration into society. We support this bill and consider it a potential entry on our racial equity report card.

Chair Segerblom:

I will close the hearing on S.B. 423 and open the hearing on S.B. 264.

SENATE BILL 264: Revises provisions governing criminal procedure.
(BDR S-671)

Senator Barbara K. Cegavske (Senatorial District No. 8):

This bill directs the Advisory Commission on the Administration of Justice to look at the overcriminalization of certain sentencing requirements. I have submitted my prepared testimony ([Exhibit E](#)). This bill emerged from a national conference I attended that was looking at how a state can save money, decriminalize duplicative issues and review existing systems. I worked with Assemblyman Jason Frierson and Chair Segerblom on this.

Chair Segerblom:

My Uniform Collateral Consequences of Conviction Act bill, S.B. 395, is 20 pages long, and basically says the same thing. Maybe we will combine them.

SENATE BILL 395: Enacts the Uniform Collateral Consequences of Conviction Act. (BDR 14-22)

John T. Jones, Jr. (Nevada District Attorneys Association):

We only have a small language concern. In section 1, subsection 1 starts, "A review of all criminal sentences" We do not object to an interim study looking at criminal sentences and punishment in general. We like the direct approach of looking at sentences more than we appreciate things like credits on the back end. We like that this attacks a perceived problem directly. Further in section 1, subsection 1 says "... to determine whether potential or actual harm to an individual victim should be included as an element of the offense." We have problems with this language. We would like to see just a review of all criminal sentences. If the rest of that language is struck, we have no objections to this bill.

Chair Segerblom:

Why exclude that part?

Mr. Jones:

If we are looking at criminal sentences, we should look at everything, have an open and honest discussion about every sentence, and see if we can reclassify certain sentences.

Senator Brower:

I agree we ought to look at everything. Can you give examples of what you have in mind with this bill?

Senator Cegavske:

The recommendation from the conference was to each look in our own state, since we all have different laws on the books. The idea was to specifically look for redundancy.

Senator Brower:

Off the top of my head, I am thinking about a conspiracy offense, where the idea of prosecuting conspiracy crime is that the victim has not been hurt yet. If, for example, the conspiracy was to commit murder, you want to take it down before it happens. We want to think twice about ensuring that harm to an actual victim is an element of an offense. We will do this type of examination in the Advisory Commission on the Administration of Justice.

Senator Cegavske:

The intent of this bill is not to let off someone who actually did a heinous crime.

Chair Segerblom:

Another point of the bill is to avert a felony on your record, which can change a person's life forever. If we can avoid that on the front end, it would be an important accomplishment. I will close the hearing on S.B. 264.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 264.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Senator Kihuen:

I will open the hearing on S.B. 373, Chair Segerblom's bill.

[SENATE BILL 373](#): Makes various changes relating to judgments. (BDR 2-932)

Senator Tick Segerblom (Senatorial District No. 3):

This is a simple bill that unites bankers and poverty lawyers. Today, under federal and state law, if you have a judgment against you and a creditor comes after you, it is legal to exempt 75 percent of your earnings from that garnishment. This bill raises that exemption to 90 percent.

Jim Berchtold (Legal Aid Center of Southern Nevada):

I am in support of this bill. This issue is important to me because the Civil Law Self-Help Center, where I work as an attorney, is operated under a contract with the courts. We provide free legal information, forms and legal resources to people representing themselves in civil cases in the Clark County court system.

In 2012, we helped 48,000 people with civil issues. Of those people, 7.3 percent had an issue relating to garnishment or consumer debt collection. That translates to approximately 3,500 people, and this is just the tip of the iceberg. Also in 2012, the Las Vegas Justice Court alone issued more than 31,000 writs of execution, which is the precursor to a writ of garnishment.

At the Civil Law Self-Help Center, I see people struggling to make ends meet. These people support themselves and their families. When they are garnished

and have 25 percent of their wages taken, this can lead to a domino effect—the garnishment potentially leads to an eviction case, which potentially leads to a bankruptcy case, etc.

This bill does several things to attempt to address these issues. It allows judges to set people up on payment plans to pay off their judgments based on their ability to pay. For example, someone will come into the Center with a summons and a complaint because he or she has been sued on a consumer debt, maybe a credit card debt. The person knows there are 20 days to file an answer with the court or take other action. But sometimes in talking to the person, there is no defense and he or she admits owing the money. What the person really wants is for the court to set up a payment plan to pay the creditor back. This bill gives judges the tool to help establish that system.

The second thing this bill does is to cut down the garnishment amount from 25 percent to 10 percent. For many people, this can be the difference between paying rent or not being able to pay rent.

The third thing this bill does is allow Nevada residents who are being garnished because of an out-of-state judgment to bring a civil suit against a judgment creditor who fails to properly domesticate that judgment in Nevada courts. This is a good bill for Nevada. I have submitted my written testimony ([Exhibit F](#)).

Senator Jones:

I support the idea of this bill as it relates to people with no money, but why apply the same standard to people who do make money? Could there be a cutoff so we do not provide an inadvertent benefit to people who make a lot of money and are possibly evading creditors?

Mr. Berchtold:

I had not thought of that, but you are correct; the real benefit of this bill is aimed at people of low income. There does not seem to be a great reason to apply it to people who can afford to pay their judgments.

Senator Segerblom:

That was one of my questions, too. The 75 percent now covers everything, but we could possibly put something in the bill to address that issue.

Jon L. Sasser (Statewide Advocacy Coordinator, Washoe Legal Services; Southern Nevada Senior Law Program; Legal Aid Center of Southern Nevada):

I am open to this. The model law on which we based this bill had 15 percent of people above \$70,000 and 10 percent of those below that annual income. We initially did it that way for the sake of simplicity.

Senator Jones:

This applies to someone with a job, but how would it affect someone who is, say, a partner in a large law firm?

Mr. Berchtold:

I am not sure. Typically, garnishment is a tool to get anything being held by a third party—a bank, an employer, etc.—which is owed to the judgment debtor. Certainly, you could garnish a person's earnings or holdings in a partnership. I do not know whether the 75 percent exemption for disposable earnings would apply.

Senator Jones:

I would like to make it easier to collect from someone who can afford it.

Senator Brower:

Does the federal law not address the amount of income issue?

Mr. Sasser:

It does not. There is no limit on income amount in federal law. A person can protect 75 percent of disposable earnings.

Senator Brower:

In my experience with garnishments, this issue does not come up very often with high-income people. We all get that. But it makes no sense if someone is making \$100,000 a month that the vast majority of that money would be untouchable.

Senator Hutchison:

Section 5, the out-of-state garnishment issue of this bill, is long overdue. I have seen this with the State of California, where Nevada residents are being told they owe taxes. Without an order, a garnishment claim can be issued to a financial institution in California and money will be taken out.

I am sympathetic to someone with no money, but in these cases, a business has not gotten paid for goods or services given. What do we do for people providing services and not getting paid? Is there a way to link a reduction in the garnishment amount to someone's willingness to go on a payment plan?

Mr. Berchtold:

Do you mean an adjusted garnishment level that the judge would set based on the person's ability to pay?

Senator Hutchison:

Exactly.

Mr. Berchtold:

That would be difficult for an employer because the employer is responsible for withholding the wages, according to whatever formula is provided in State law. The provision that allows the judge to set someone up on a payment plan is, in effect, doing a pseudogarnishment.

Senator Hutchison:

Would it be capped at 10 percent of the garnishment because under this bill you could not garnish any more than that?

Mr. Berchtold:

If the judgment debtor wants the judge to set up a payment plan and pay more than 10 percent, I do not think anything in the bill would prevent more from being paid.

Senator Hutchison:

Usually, we do not let debtors decide how much to pay, but what if the judge wants the debtor to pay more than 10 percent in a given pay period. If we are giving the judges some discretion, why not give full discretion?

Mr. Berchtold:

I am not sure how that would play out. I suppose if judgment debtors were unhappy with what the judge was proposing, they could say garnishment is their preference and the money would come out of their paychecks at 10 percent.

Senator Hutchison:

But you do not see any way to tie a garnishment amount to a person's willingness to enter into a payment plan?

Mr. Berchtold:

Having a law where the garnishment amount could vary from judgment debtor to judgment debtor would be extremely difficult for employers. If there was some way the judge could set up a payment plan and require that amount to be taken out of the debtor's check, it would function essentially the same as a garnishment.

Mr. Sasser:

I have submitted testimony from Robert J. Hobbs from the National Consumer Law Center in Boston, Massachusetts ([Exhibit G](#)). The idea and some of the information behind the birth of this bill came last summer when we were looking at how to attack this problem and we discovered a model act had been developed by the Center in Boston.

Page 2 of [Exhibit G](#) discusses why this problem needs addressing by updating the various states' exemption laws. In today's economy, people are trying to get out from under a mountain of debt. There have been abuses by bankers, lenders and other members of the financial services industry.

Page 3 discusses the Model Financial Protection Act, which is one reason Mr. Hobbs' organization supports this bill. Critics argue it will dry up credit and increase the price of credit. Tray Abney represents The Chamber of Commerce for Reno, Sparks and Northern Nevada. His written testimony further explains those organizations' objections to the bill ([Exhibit H](#)).

Mr. Hobbs points out on page 4 of [Exhibit G](#) that empirical evidence does not support this argument against the garnishment allowances as proposed in [S.B. 373](#). Massachusetts recently decreased its exemption without any industry opposition, and the response there has been positive.

On page 5 through page 12 of the report from Mr. Hobbs, [Exhibit G](#), data charts examine other states' policies. About half the states stick with the federal minimum and get a C grade for property protected in financial emergencies. Half the states have done something more generous. Nevada gets a C-plus because about 10 years ago, for the people at the lowest end of the scale, we went

above the federal minimum and deemed that 50 times the minimum wage was exempt as opposed to the federal minimum of 30 times the minimum. Nevada also gets a C-plus in wages, page 5 of [Exhibit G](#).

For people who are wealthier, Nevada is considered something of a debtor penalty state. We get an A for protecting equity in our homes, up to \$550,000. On page 12 of the report, there is a chart with a statistical correlation between states with more generous wage garnishment laws and bankruptcies. Those states with less generous protections for consumers tend to have much higher bankruptcy rates. Unfortunately, in the last few years Nevada has had the highest bankruptcy rates in the Country—topping all other states in 2011 and 2012. If by making our exemptions more generous we lower our bankruptcy rates, that helps the consumers and the local economy.

I also submitted a few documents on other state laws ([Exhibit I](#)). The payment plan we put in the bill was based on a Michigan law. I support this bill.

Michele Johnson (President and CEO, Financial Guidance Center):

I am the head of an agency that deals with residents affected by wage garnishment. We support this bill and I have submitted my written testimony ([Exhibit J](#)).

Joseph Connell:

I support S.B. 373 and have submitted my written testimony, telling my story as a Nevada resident since 2002 ([Exhibit K](#)). My main concern is that the tactics of debt collectors are somewhat disingenuous at times and sneaky at the least. I have become a victim of these tactics. While it did not cause me to become homeless, I can see how this type of thing could put someone on the street.

Jack Mallory (Southern Nevada Building and Construction Trades Council):

The economy has not been friendly to the construction industry for the last several years. We support this bill because it allows people to live. I was subject to garnishment for child support because my former wife was on state assistance in Washington State after I moved to Nevada. When Washington did its financial review, I had spent 6 months working on a prevailing wage job making \$22 an hour. My normal wage was \$9 an hour. The state based the garnishment on a blend of those two wages and determined my garnishment based on that figure.

Once my prevailing wage job ended, I was saddled with the burden of paying the bill. At the time, I did not understand I could petition for reduction. I was very close to being homeless. I was living in a 19-foot travel trailer on a lot on Boulder Highway. It was all I could do to pay for gas to get to and from work. There were times I was not able to eat. Many people are in this type of situation and for me, it was partly because of the percentage limitation in statute.

This is not about child support. It is about collection of a judgment debt. Given the problems with steady employment in the construction industry, this reasonable provision will help people pay their debts and not make them homeless.

Bill Uffelman (President and CEO, Nevada Bankers Association):

I have an amendment for this bill ([Exhibit L](#)) having to do with execution of judgments against annuitants. For 40 years, Nevada law in NRS 687B.290 provided that there could be an execution against an annuity income by a calculation. In the 2011 Legislative Session, that provision was removed to exempt all annuity income. People could make themselves judgment-proof by purchasing an annuity.

We had a situation in a commercial transaction where an existing annuity was provided as the main asset for a loan. When the business began to fail, the borrower pumped more money into the annuity. On October 1, 2011, the borrower notified the bank that he was judgment-proof because all the money was in the annuity. Our amendment would stipulate that if the annuity is listed as an asset in support of a loan, the loaner could execute against that annuity.

Existing law provides that if there is fraud, you have to notify the insurer prior to making the first payment. This way, a person can make himself or herself judgment-proof by pumping all his or her money into an annuity and saying he or she will make the first payment tomorrow. A week later, when the person notifies the bank he or she is judgment-proof, the bank is frozen out. I arbitrarily decided that if the bank notifies the insurer within 1 year, it reopens the case so it can be determined if fraud occurred.

Senator Ford:

I want to understand this. A lender gives money to someone who lists an annuity as an asset. Did the law at that time say annuities could not be touched?

Mr. Uffelman:

The law at the time provided that any annuity opened before or after 1972 could be pursued for an executed judgment against a portion of that annuity. The borrower in the commercial lending case I referenced had significant personal assets, including the substantial annuity. The loan was made and the business started failing after a couple years. When foreclosure proceedings began against the business and execution of the guarantor, it just so happened the timing was immediately after October 1, 2011, which was the cutoff set forth by S.B. No. 348 of the 76th Session that made the annuity asset untouchable. The debtor was then judgment-proof.

Senator Ford:

How does your amendment fix that?

Mr. Uffelman:

If your asset statement for a loan includes an annuity, I could collect against that annuity income if you default on the loan. The second part of the amendment, where the borrower tries to become judgment-proof by dumping all assets into an annuity account and taking an annuity payment the next day, would give the lender 1 year to reopen the case and show the borrower was attempting to avoid having to pay the debt, thus committing fraud.

Senator Ford:

Do the current fraudulent transfer statutes apply in these circumstances?

Mr. Uffelman:

I have not pursued the fraudulent transfer statutes because the language about intent to defraud is built in to NRS 687B.290. I am just allowing the additional opportunity where existing law says I have to notify the insurer prior to the first payment being made from the annuity. I am giving you the extended opportunity to notify the insurer.

Mr. Watts:

We support this bill. To us, this is a fundamental issue of economic justice. We are amenable to the amendments discussed today. None of the provisions in the bill let people out of debt. The aim of this legislation is to help struggling Nevada families pay their bills and get back on their feet.

Senator Ford:

Just to be clear, do you have a problem with the amendment that would tier the applicability of this for higher income people?

Mr. Watts:

We have no problem with that. We see this as an economic justice issue. Mr. Sasser testified about other states having a tier of about \$70,000—that sounds reasonable. We want these protections to apply to average working class families and lower income families struggling to pay their bills.

Senator Hutchison:

Mr. Uffelman, are you in support of the bill in its entirety, or just the amendment you offered?

Mr. Uffelman:

I am neutral on the body of the bill since it does not impose additional duty to the banks. However, I support S.B. 373 with my amendment.

Senator Hutchison:

With your amendment, does one still have to prove intent to defraud a creditor?

Mr. Uffelman:

The intent to defraud portion applies to the reopening of the annuity. Today, if you have already received a payment on that annuity, I cannot do anything about that money.

Senator Hutchison:

Okay, I get it. We just had this in 2011, everything was exempted, and now we are back so soon. I assume this was all vetted 2 years ago.

Mr. Uffelman:

It was not vetted.

Chris Ferrari (Clark County Collection Service, LLC):

We are in opposition to a few sections of the bill—sections 2, 3, 4, 6, 7, 8 and 9. We specifically object to the increase in exempt wage from 75 percent to 90 percent. In the vast majority of cases, people are intentionally eluding creditors for a service or good knowingly requested and provided. This change reduces collection services from collecting 25 percent of wage to 10 percent.

Senator Ford:

When you refer to people intentionally avoiding their debt, what do you mean?

Mr. Ferrari:

For example, a plumber comes to your house in an emergency. That plumber is extending credit to you by providing you the service and not requiring payment on the spot. Later, you get a bill for \$300 in the mail and if you do not pay, it becomes a challenge for the plumber. We are sympathetic to people who are not gaming the system, but there are those who are.

I have an account timeline handout ([Exhibit M](#)) that further illustrates my point. This is an actual account timeline from a debtor who my client is pursuing. The services were rendered on January 5, 2011, and a bill was sent for \$1,020.60. After 4 months with no payment, after phone calls were made and bills were sent, the bill was turned over to the collection agency. Six months prior to that first payment, on June 5, 2012, the consumer asked for a payment arrangement, which was implemented, but no payment was made. As you can see from the timeline, it took more than 2 years to get the first garnishment payment of \$54.91 on January 30.

At the payment rate of \$54.91 three times a month, which is what statute allows, the debt would be paid off in 7 months. The changes in this bill would reduce that monthly payment total, extending the payout point to 17 months. This creditor will have waited 3 years and 7 months to get paid.

I have another handout with some information on wage garnishment ([Exhibit N](#)). It helps explain weekly disposable earnings and what federal law requires, which is 30 times the federal hourly minimum wage. Nevada is at 50 times that federal hourly minimum wage, so Nevada is already generous. Several states, including California, Arizona, Utah and Idaho, only require 30 times the federal minimum wage requirement.

On page 3 of [Exhibit N](#), you can see items exempt from execution under *Nevada Revised Statutes*. Significant exemptions are already in statute. I am not unsympathetic to these issues, but I want to ensure that our State does not become a debtor's haven. I urge you to oppose that section of the bill, and I will be happy to work with the Committee on finding accommodating language.

Senator Hutchison:

Are you in favor of section 5?

Mr. Ferrari:

My client is neutral on that provision.

Senator Hutchison:

We have an obligation as lawmakers to balance small business needs against those struggling to make ends meet. We are sympathetic to both ends of the spectrum. We all campaigned about how important small businesses are in Nevada and how essential it is to support them. Do you know what percentage of small businesses use this writ process in the collection procedure?

Mr. Ferrari:

I do not, but some speakers here probably would.

Senator Hutchison:

Once a client turns over a collection matter to a collection agency, the agency takes a certain percentage. In the case of your timeline example, the \$1,020.60 owed would be less. As the collection agency goes through a court process, that adds more costs to the process and less money for the businessperson owed the money. Is that right?

Mr. Ferrari:

Yes, all those court or constable fees are added to the debtor's liability. That can add up. Each session we address this issue. Typically, concessions come each session, including last Session where we wanted to make sure federal benefits such as social security and veteran's benefits are exempted.

Senator Ford:

The Committee clearly understands we must reach a balance. Is there a number between 75 and 90 you like?

Mr. Ferrari:

We would like to speak further with Chair Segerblom and Mr. Sasser to strike that balance.

Mike Draper (Nevada Collectors Association):

I would like to give you a quick overview of the role debt collection plays in our

economy. Simply put, our economy is based on the premise that businesses providing credit, goods and services have the expectation of being paid. Sometimes we forget that these businesses are small, not large multimillion-dollar corporations. Anyone extending credit or accepting a check is a creditor.

Recovering consumer debt helps these organizations survive, prevents layoffs and keeps our economy healthy. In 2011, the American Collectors Association worked with the research firm Ernst & Young on a study highlighting the impact of third-party debt collection on our economy. The findings showed that in 2010, collection agencies recovered approximately \$54.9 billion of total debt nationwide. The five states with the highest total debt collected were Texas, New York, California, Florida and Illinois. Early out debt, which consists of receivables aged 90 days or less, represents 30 percent of all debt collected. Bad debt, which accounts for the remaining 70 percent, consists of receivables aged 90 days or more.

I have submitted my written testimony that will further clarify our position on this bill ([Exhibit O](#)). There are ways of striking a balance, possibly without decreasing the wage garnishment level from 25 percent to 10 percent. We could still accomplish the goals discussed today, perhaps in a different way. We are willing to be involved in that conversation.

Senator Hutchison:

If there is a payment plan imposed by the court, the garnishment would not be triggered. Would that be acceptable as a compromise between those who do not want to be garnished and those who are willing to pay on a payment plan?

Mr. Draper:

From our perspective, that seems only fair. If a debtor is willing to pay a debt, has a court-ordered arrangement set and is adhering to that arrangement, it makes sense that there would be no need for garnishment.

Dee Barbash (President, Collection Service of Nevada; Treasurer, Nevada Collectors Association):

We oppose parts of S.B. 373. We are unopposed to section 5. Our association is comprised of small collection agencies, all of which have had to meet high ethical standards. We all deal with Nevada businesses that are small creditors, like your dentist, doctor or the plumber referred to earlier. This would hurt them.

I want to clarify some statements made by the opposition. One statement was made that a person sued for a debt has no opportunity to make payment arrangements while in court. That is not true if the person is sued in small-claims court. The judge can make a payment arrangement in that setting. In justice court, there is also an opportunity for the debtor to file a stipulated judgment, which allows the debtor to say he or she will pay the bill at a certain rate. This already exists in Nevada. For that reason, our association is neutral on this part of the bill. However, if that defendant does not pay as agreed after the judge sets those arrangements, we would like for a writ of garnishment to be issued. That is the balance we are looking for that is fair to the creditor.

Senator Ford:

Do you need it in statute? Can the judge issue that in an order?

Ms. Barbash:

I would think so. Because of this, we have some problems with the language. If you look at section 1, subsection 2 says if the court rules, "a judge of any court may issue an order permitting a judgment creditor to pay in installments." It should instead say "... a judgment debtor to pay in installments," not creditor. The same problem is later in the sentence, where it should say the judgment debtor, not creditor, is able to pay. The same problem is in subsection 3. We object to the beginning of the sentence, "At any time after the entry of a judgment" That becomes very difficult to manage; a time frame should be established.

We would like to suggest that within 10 days after the entry of a judgment of the court or a filing of a judgment, the defendant has a right to request a hearing. We would like to put a time frame of 7 judicial days for the hearing to take place after it is requested. Otherwise, the interests of the creditors are minimized because the creditor has already waited for payment.

We do have ability in this State to do voluntary wage assignments. There are many opportunities for these defendants to arrange with their creditors, the collection agencies, before or after lawsuits, to implement voluntary wage assignments. With that option, the employer will remit payment at a certain rate and thus avoid wage garnishments. Given all these opportunities, we object to raising the exemption to 90 percent because it is unfair to small creditors.

Brent Begley (Collection Service of Nevada):

I am a lawyer who lives and works in Reno and is counsel to Collection Service of Nevada. I agree with the concept that low-income people need protection. There are two groups of judgment debtors—one can pay and the other cannot. Those who cannot pay need to be protected, and 90 percent is not enough protection. They need to be protected 100 percent. The statutory scheme in our State does that for people who make about \$23,000 per year or less. They are 100 percent exempt.

This bill does not serve either group. It may not go far enough to serve the people at the bottom end of income who need 100 percent protection. There are people who make a good living and who, for whatever reason, choose not to pay their debts. Those people do not need protection. I urge you to find more protection for the people who need it and not give more protection to those who do not need protection.

David Belanger (Carpenter's Music World):

I am a part-time employee and pretty close to homeless. I am in the music business and a large part of our music store is instrument rentals. We rent out around 400 musical instruments to students. We get a lot of late notices, maybe 50 out of the 400, and these customers are up to 6 months late on their rental payments. If it goes up to around 60 late notices, the owner turns these accounts over to a collection agency. We depend on the clients to make their payments. I work 25 hours a week and if the payments are not met, my hours get cut—down to 20 hours, then 15 hours, then 10—and if the hours go any lower, I would be homeless. The store economy is that fragile. We would appreciate anything you can do to help. I oppose this bill.

Francisco Olivo:

I work for a dentist. We give credit to patients and sometimes have to turn a debt over to a collection agency. We are a small business trying to survive. We oppose this bill.

Senator Segerblom:

We do not oppose the banker's bill, and if that meant they would support our bill, that would be great. Maybe a tiered system would be more desirable. Anything to protect the people at the bottom of the economy would be good.

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Senator Ford:

I will close the hearing on S.B. 373 and open up for public comment.

Ben Graham (Administrative Office of the Courts, Nevada Supreme Court):

I could not be here earlier but want to add my support for S.B. 264. This will keep a dialogue going that needs to be carried on from what we did in 1995.

Chair Segerblom:

I will close the hearing of the Senate Committee on Judiciary at 10:56 a.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	5		Attendance Roster
S.B. 423	C	2	Senator Barbara K. Cegavske	Written testimony
S.B. 423	D	2	Jon D. Ponder	Written testimony
S.B. 264	E	3	Senator Barbara K. Cegavske	Written testimony
S.B. 373	F	5	Jim Berchtold	Written testimony
S.B. 373	G	12	Jon L. Sasser	Testimony of Robert J. Hobbs
S.B. 373	H	1	Jon L. Sasser	Written Testimony of Tray Abney
S.B. 373	I	9	Jon L. Sasser	Information Packet
S.B. 373	J	1	Michele Johnson	Written Testimony
S.B. 373	K	1	Joseph Connell	Written Testimony
S.B. 373	L	1	Bill Uffelman	Nevada Bankers Association Proposed Amendment
S.B. 373	M	2	Chris Ferrari	Clark County Collection Service Account Timeline
S.B. 373	N	5	Chris Ferrari	Information on Wage Garnishment
S.B. 373	O	2	Mike Draper	Written Testimony