MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 3, 2013

The Senate Committee on Judiciary was called to order by Vice Chair Ruben J. Kihuen at 9:08 a.m. on Friday, May 3, 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:

Assemblywoman Lesley E. Cohen, Assembly District No. 29
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Ilena Madraso, Committee Secretary

OTHERS PRESENT:

Kimberly M. Surratt, Nevada Justice Association
Ishi Kunin
Gabrielle Jones, Domestic Violence Project, Legal Aid Center of Southern Nevada

Louise Bush, Chief, Child Support Enforcement Program, Division of Welfare and Supportive Services, Department of Health and Human Services
Gary Milliken, Nevada Self Storage Association
Travis M. Morrow, Nevada Self Storage Association
Mark Wenzel, Nevada Justice Association
Gregory M. Schulman, Nevada Public Agency Insurance Pool; Liability Cooperative of Nevada
Margo Piscevich, Nevada Public Agency Insurance Pool; Liability Cooperative of Nevada
Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool
Dan Polsenberg
Tom McGrath
George Ross, Las Vegas Metro Chamber of Commerce
Joan Hall, President, Nevada Rural Hospital Partners; Liability Cooperative of Nevada
C. Joseph Guild III, State Farm Insurance
Jeanette K. Belz, Property Casualty Insurers Association of America
Josh Hicks, Retail Association of Nevada
Chelsea Capurro, AAA Insurance
Sarah Suter, Advocacy Committee Chair, Las Vegas Defense Lawyers
Loren Young, President and Vice Chair of the Board of Directors, Las Vegas Defense Lawyers

Senator Kihuen:
I will open the Senate Judiciary hearing with Assembly Bill 421.

ASSEMBLY BILL 421 (2nd Reprint): Revises provisions governing parentage. (BDR 11-806)

Kimberly M. Surratt (Nevada Justice Association):
I am asking for your vote on A.B. 421. This bill is a reproductive technology bill meant to bring Nevada up to speed with modern medical science, giving parents the legal relationship of parents who are obtaining the assistance of reproductive technology through physicians.

The bill is cutting-edge, bringing Nevada into the forefront of reproductive law. The bill has procedural assistance which Nevada lacks and needs desperately. In Nevada, we have a surrogacy statute and an artificial insemination statute. The artificial insemination statute only deals with sperm; it does not deal with eggs

or embryos and has a very limited scope. Additionally, the term "artificial insemination" is no longer utilized.

The surrogacy statute that we have was cutting edge when passed in 1993. In 1993, Nevada was ahead of the times and the first in the Nation to pass such regulation. Nevada has utilized this statute up to the present, but at this point we have not given ourselves any procedural guidance. The statute merely says that surrogacy can be done, but it does not specify how. This statute is narrow and does not state how to get an order from the court, when that order can be obtained, what happens if someone contests parentage, what happens if someone gets married or divorced—before or after the surrogacy arrangement and before or after the birth of the child.

Our purpose is to expand the statute to cover all these scenarios. The rate at which these babies are born has grown dramatically over time. For example, in 2001 there were 40,687 infants born using assisted reproductive technology; in 2010, 61,564 infants were born utilizing assisted reproduction. That is a growth rate of 2,087 babies per year.

The bill adds a definition for egg donors and embryo donors, and it will make certain that anyone who donates either will not become a parent as a result of the donation. Nevada statute is silent on these measures. When I advise clients regarding egg donors, their main question concerns the woman who donates the egg—will she have any parental rights? The best that I can do is put a contract in place and hope that the courts utilize the artificial insemination statute by analogy. I have to utilize some rather complex constitutional arguments and equal protection arguments in order to get to the desired and necessary conclusion. There is no guarantee for parents who utilize reproductive technology and accept egg or embryo donations.

The artificial insemination statute was passed in 1979. At that time, we did not have the medical technology to successfully freeze embryos and eggs. It was not until 2003 that there were high success rates with cryopreservation of eggs and embryos. It was not until 2003 that the safety level had increased and children would be born without medical defects caused by the technology. Our statutes are behind the times. Research and technology in this field are growing in leaps and bounds. Couples need a legal vehicle to determine that when this medical technology is utilized, they are made legal parents. We need to give donors the confidence that if they utilize this technology, they are not parents.

Nevada law has a surrogacy statute. We define traditional surrogacy as when a woman utilizes her own gametes. We define gestational carriers as women who carry on behalf of someone else but do not utilize their own gametes; because they are not using their own eggs, they are not biologically related to the child. Nevada statute is vague on whether traditional surrogacy is allowed. The trend in the Nation is that it is best to not allow a woman to utilize her own eggs when she carries a baby for someone else. The reasoning is that the probability of that woman having psychological issues when giving up the baby following the birth or following through with the surrogacy arrangement increases dramatically when she is biologically related to the child. This can also bring up many questions about whether adoption-like procedures are required when the mother and child are biologically related versus the shorter, faster surrogacy process. The statute has maintained that the definition of a gestational carrier is that the woman not utilize her own gametes, and we have maintained that throughout A.B. 421.

Under statute, reimbursement of necessary living expenses and medical expenses are allowed. That provision has been utilized by many surrogates. The ambiguity of what can be defined as necessary living expenses is apparent. A woman could be receiving lost wages because she is on bed rest due to the pregnancy, plus rent, plus reimbursement for her phone bill, food, etc. She is being compensated, but the ambiguity remains. The new language is straightforward and allows for reasonable compensation so that the statute is not abused.

This is the second revision of this bill. I used the first amendment to clean up some of the unnecessary language in the original draft. The second amendment's purpose regarded the age at which a gestational carrier was qualified to carry. The age requirement was 21 years old. Physicians were consulted, and they desired to stay within the standards of the medical industry, which was 21. The concern was that if there was a specific age limit and the medical industry changes that age, the statute in the future may again be outdated. A requirement that the surrogate undergo a mental health evaluation was also an area of concern for the medical industry because it has its own standards as to what constitutes a mental health evaluation. Some argued that it could be changed to a consultation instead of an evaluation. In creating this bill, we deferred to the medical industry and its professional standards of practice to determine what is required. It is standard practice for

both the intended parents and the gestational carrier to undergo a mental health evaluation.

Senator Jones:
Can you describe the differences between this proposed legislation and Articles 7 and 8 of the Uniform Parentage Act (UPA)?

Ms. Surratt:
When I drafted this bill, I drew from both the UPA and the American Bar Association (ABA) Model Act Governing Assisted Reproductive Technology.

The UPA contains many whole chapters not needed in Nevada. I needed only the reproductive part of the UPA. When I consulted the UPA and compared it with the ABA Model Act, I realized the ABA seemed more procedural and the UPA had more of the substance that Nevada was missing. This bill utilizes both acts.

The differences between A.B. 421 and the UPA are not significant—some language was more useful; therefore, my decisions were based on adding in language, not subtracting. Assembly Bill 421 is consistent with the UPA. Two significant differences regard the age requirement for the gestational carrier and the mental health evaluation; both are in the UPA and in the original draft of this bill; however, neither are in this bill any longer.

Senator Jones:
Have you spoken to the State Bar of Nevada Family Law Section to see if members agree with this bill?

Ms. Surratt:
I have submitted a letter to you from The Fertility Center of Las Vegas (Exhibit C) supporting the bill. The Nevada Center for Reproductive Medicine in Reno has supported the bill. I am on the executive committee for the State Bar Family Law Section; however, I cannot state a position for the section because there are requirements regarding whether members can lobby or take a position. The American Academy of Assisted Reproductive Technology Attorneys has submitted a letter in support of this bill (Exhibit D). I am a fellow with the Academy. It and several other national organizations, such as RESOLVE, The National Infertility Association, have reviewed and support this bill.

Senator Hutchison:
Is there anyone else in Nevada who practices in this area of law as much as you do?

Ms. Surratt:
Yes. Eric Stovall in Reno practices significantly in this area and did testify in favor of the bill in the Assembly hearing. Also, Ishi Kunin in Las Vegas will testify soon. The three of us are the fellows with the American Academy of Assisted Reproductive Technology Attorneys. There is another group of attorneys in Nevada, but they do not practice at the higher levels at which the three of us practice. There are so few due to restrictive laws in Nevada, and as a result this area of law has been limited. The assisted reproductive technologies industry has also been restricted because of the outdated laws, making it difficult for physicians to know what they can and cannot do or promote. This bill will clarify many of those issues.

Because of the restriction and because there must be an opposing counsel, we have been training a few other attorneys in this area of law. There has been a lack of representation for all parties in these cases. The lack of appropriate representation has been a trend as well as a concern in the United States—the gestational carriers need their own legal representation for every case. This industry has grown so quickly that there is no control over agencies—no regulation over what comprises an agency for reproductive technology. We have been pushing to have legal representation on both sides. Many California attorneys come to Nevada to represent the intended parents, the gestational carrier and the clinic all at the same time. That is why we have structured this bill carefully. We do not want anyone taking advantage of the other party.

Senator Hutchison:
On the Assembly side, were there any major changes or amendments from any other group?

Ms. Surratt:
The only changes were concerning the age and mental health evaluations, and I agreed to those changes. I do not remember who raised those concerns. There was no testimony in opposition on the Assembly side. The requests for the amendments were not those in opposition; rather, they were housekeeping—wanting to appease those who foresaw unintended consequences.

Senator Kihuen:
If this bill does not pass, there is no process for these parties other than to create an agreement or contract?

Ms. Surratt:
Yes. We would be relegated back to the two small statutes that cause the lawyers and judges to have to create the process as we go. The judges in the north cringe and accept that this will be decided on a case-by-case basis. For example, there was a heterosexual couple who utilized an embryo donation in northern Nevada. At birth, the hospital found out through medical records that it was an embryo donation, and the hospital refused to put either of the parent's names on the birth certificate. Presumptions in the law make the wife who gave birth a parent because of the birth, no matter where the embryo came from. This couple had never told their family that they were utilizing an embryo donation; they intended to keep that information private. They contacted me, and I had to do emergency motion work with a request to seal the file to maintain confidentiality. The judge was wonderful and helped us get through the process. Ultimately, the couple ended up paying $15,000 in attorney's fees for all of the emergency work and scrambling to get the vital statistics. The procedural element is missing under current statute; thus, I struggled with getting the vital statistics. Without this bill, the judges and lawyers will continue making up the process, leaving the lawyers and parents hoping that it goes our way each time.

Senator Kihuen:
I find it incomprehensible that we did not see a need for this and legislate on behalf of these people earlier.

Ms. Surratt:
The science grew so quickly that we are playing catch-up.

Senator Hammond:
This issue has arisen quickly. The issue at hand is a lack of clarity and a lack of direction statutorily. The issues are more complicated than in the past.

Ishi Kunin:
I am also a fellow of Academy of Adoption Attorneys. I support this bill. Unfortunately, without this bill, litigation is a part of life under Nevada statutes. We need this bill to help clarify and define what is lacking. For those who

cannot conceive using either egg or sperm and are not ready to go the route of adoption—wanting some biological connection with the child, they must be husband and wife and use their own eggs and sperm. If the husband's sperm is not viable and the couple utilizes donor sperm, a contract for a surrogacy agreement must be written with clauses that under the law are indefinite and, at best, hopefully no one will contest. The end results are questions: Does an adoption need to be done? Is this a stepparent situation, since in essence this is a John Doe birth father? Should the expense of an adoption follow the birth before the father's name can go on the birth certificate? There are issues that should not exist and should not be an expense to those who now need to be spending money on a child and his or her college fund.

California has wonderful statutes in this area. Upon donation of sperm or egg, in California, parental rights no longer exist for the donor. The recipient of either donation are now the rightful parents of this child.

Another benefit of drafting A.B. 421 is looking at litigation happening around the Nation, now and in the recent past, so as to learn from current issues and be proactive—making them nonissues in the language of this bill.

Assembly Bill 421 defines the rights of all parties. It gives and requires representation for gestational carriers, which statute does not. It protects the gestational carrier, the intended parents and the child. There is no risk of someone later claiming DNA interest in the child.

Senator Kihuen:
Seeing no opposition, I will close the hearing on A.B. 421 and open the hearing on A.B. 389.

ASSEMBLY BILL 389 (1st Reprint): Revises provisions governing parentage. (BDR 11-922)

Assemblywoman Lesley E. Cohen (Assembly District No. 29):
This bill addresses issues with *Nevada Revised Statute* (NRS) 126.101. Paternity cases arise when the father's paternity needs to be confirmed by the court. Once the paternity is established, there can be support and visitation issues.

As it stands, NRS 126.101 requires that in a paternity case, a general guardian or guardian ad litem be appointed to represent the child's interest and the child be named as a party to his or her parent's case. These requirements are rarely followed. Assembly Bill 389 changes the "must appoint a guardian ad litem" to "may appoint a guardian ad litem" at the judge's discretion and remove the requirement that the child be named as a party to his or her parents' suit. The reason is this statute came from a time when there were fewer children born out of wedlock. These children and their parents were treated differently by society and the courts. We do not do that now. In fact, NRS 126.031, subsection 1 states, "The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents." The guardian requirement declares that parents in a paternity case cannot look out for their children's best interest. Not only will the judge be telling the parents what will be happening with their children, but a third party representing the child's best interest will be telling the judge what he or she thinks is in the child's best interest. In the vast majority of cases involving visitation issues and custody of children, the parents are able to work these problems out on their own or with the assistance of a mediator; judges do not have to make all of these decisions. In that case, are we to insist that the guardian ad litem participate in the mediation and all of the hearings?

For about the last 20 years, these requirements have not been followed by the courts, practitioners or the judges. People bring paternity cases without naming the child as a party or having a guardian ad litem all of the time. This statute was generally ignored until recently when the Nevada Supreme Court remanded a couple of cases for not following the statute. However, the fact that the opinions were not reported by the Supreme Court leads me to believe the Court was not that concerned with it either; it may have just been a technical issue.

If, after 20 years, we insist on having guardians ad litem, who will pay for them? The State? The parties? We have many more paternity cases now than in the past. This is going to be a large issue if we insist on having an ad litem for every child in every paternity case.

Additionally in the past, the mechanisms for the State to collect child support and welfare reimbursement from a parent of an unsupported child were different. This statute used to help State agencies collect child support, but the child support and welfare enforcement do not need this statute anymore. In fact, it now conflicts with some federal laws.

Section 1 includes some cleanup language. Section 2 contains the bulk of the proposed change. In section 2, subsection 1, paragraphs (a) and (b), the language removed is language the Division of Welfare and Supportive Services (DWSS) said is no longer necessary and conflicts with federal regulation.

Senator Hutchison:
Regarding the proposed sections to be eliminated in section 2, is it your intent that a court would need the appointment of a guardian ad litem? Could the court still appoint the district attorney (DA) to do that? Or is your intent to say that the court cannot appoint the DA's office for that purpose?

Assemblywoman Cohen:
The court can always appoint a guardian ad litem if the judge believes it is necessary for the child. Child support court is of a different nature and procedurally done differently. Section 2, subsection 1, paragraphs (a) and (b) language pertained to federal language from the 1970s. The mechanism is different now, and it was DWSS that came to me and pointed out the unnecessary language.

I was in contact with the Eighth Judicial District Court and Washoe County courts. They did not oppose this. They testified as neutral. I was also in contact with child support enforcement in both Washoe and Clark Counties, and neither of them opposed this bill.

Senator Hutchison:
If the courts want to appoint a public lawyer, are we limiting the court's options?

Assemblywoman Cohen:
That was one of the ideas I was concerned with when drafting the bill. I was in constant contact with the courts and with child support enforcement. None of those entities were concerned.

Ms. Surratt:
To direct the DA's office to be a guardian ad litem is an unfunded mandate. No money or provisions are available to take on that representation. When this need arises in family court, we must be creative and the parents have to help pay for a guardian ad litem and not place the cost on the State or taxpayers. The need

arose from circumstances between two parents, and therefore they, and not the DAs office, should help pay to achieve judicial fairness.

Senator Hutchison:
Is that system working currently so that the child does not remain unrepresented?

Ms. Surratt:
Does it always work? No. We are often frustrated with the process. The judges do work for the child to be represented in some manner. Most of the time, there is not a need for an attorney for the child. When a need exists for the child to be represented, the judge will appoint a guardian ad litem on his or her behalf. Guardians ad litem come from many sources, including volunteers, attorneys working pro bono, etc.

Gabrielle Jones (Domestic Violence Project, Legal Aid Center of Southern Nevada):
I support A.B. 389 for several reasons. First, guardians ad litem are not always warranted. For example, I represented a victim of human trafficking who had a 9-year-old son through sexual assault; the dad had been deported to Mexico without any possibility of returning to the United States and the child had never met his father. This case was flagged by the courts for a guardian ad litem. This was not warranted. This child had no vested relationship with his father—no interest needing protection. The language in this bill, if it had been in statute, would have allowed the judge, had he seen a need, to later appoint a guardian ad litem as a preference, not a mandatory requirement.

I do not feel that this bill will have any adverse effect on judicial efficiency. As stated, attorneys are generally ignoring this requirement. In family court, many people represent themselves. Pro pers are using the self-help forms. There is not one self-help form situated with a blank to name the child or to appoint the guardian ad litem.

Regarding the lack of resources, each week we receive numerous applications for clients seeking our services. We depend greatly on our attorney community to help serve pro bono. If those attorneys now must serve as guardians ad litem, it will affect the pool of attorneys available to meet the other needs of custody, divorce and guardianship cases. Ultimately, the members of the community will suffer by having a lack of access to our services.

Assemblywoman Cohen:
In the case you mentioned, the only reason the judge did appoint a guardian ad litem was in reaction to the Nevada Supreme Court cases concerning this issue. Do you believe if this case happened a year earlier, the judge would have felt a need?

Ms. Jones:
No, I do not believe he would have felt the need.

Assemblywoman Cohen:
In the 15 years before those two Supreme Court cases were heard, I had not seen guardians ad litem utilized. There were many practitioners who did not even know it was a requirement.

Louise Bush (Chief, Child Support Enforcement Program, Division of Welfare and Supportive Services, Department of Health and Human Services):
I am here to support A.B. 389. The reason that we did ask for the amendments mentioned was because the child support program does not have the funding available for what is not covered under that program. The child support enforcement program receives a federal match, and we have allowable costs by which we can receive that federal match. We are not opposed to a child having a guardian ad litem—just not under that program. There are other mechanisms in place for that to fall.

The original bill draft was confusing and the judges were appointing guardians ad litem through the Division or through the Attorney General's (AG) Office toward our program when that was not the appropriate route to take.

Senator Kihuen:
Seeing no other supporters, none in opposition and none neutral, I will close the hearing on A.B. 389 and open the hearing on Assembly Bill 182.

ASSEMBLY BILL 182 (1st Reprint): Revises provisions governing liens of owners of storage facilities. (BDR 9-965)

Gary Milliken (Nevada Self Storage Association):
Last Session, we had a bill to clean up some of the statutes referring to self-storage associations. Many of those old laws dated back to the mid-1980s.

We attempted to update some of those laws. Assembly Bill 182 is a cleanup bill changing a few areas that we changed last Session.

Travis M. Morrow (Nevada Self Storage Association):
In 2011, the Legislature passed a bill that updated a 28-year-old lien law for self-storage. This bill seeks to further refine the law for the benefit of the public and self-storage operators. We seek to address four points in A.B. 182. The first is section 3, which provides for and imposes a limit on late fees when a tenant does not pay the rent on time. It also requires a late fee be stated in the rental agreement in order to be assessed. It defines the late fees as not more than $20 or 20 percent of the rental amount. There is now no limit on what an operator may charge for the fees or any other language pertaining to late fees. Second, in section 5, this bill would make it illegal to use a self-storage facility as a residence. Section 9 repeals the eviction process now in place to evict a tenant who is using the facility as a residence. These changes would allow the self-storage operator to follow existing trespassing procedures provided in NRS 207.200.

Third, section 7 allows an operator to deny access to a tenant if the tenant has charges that remain unpaid 10 days after coming due. Fourth, sections 7 and 8 allow lien notices to be sent either via certified mail or via electronic mail, if available, as already defined in statute. Currently, operators must send notices through both certified, and if available, electronic mail. The current definition of electronic mail requires a confirmation of receipt. Tenants are sometimes able to deny this confirmation, making it impossible by definition to perfect the lien which the owner has if confirmation of receipt is unprovable. This change makes the process more clear and easier to execute correctly.

Senator Hutchison:
Have there been problems with tenants living out of storage facilities that require the Legislature to clarify that living in a storage facility is illegal?

Mr. Morrow:
Yes, that is correct.

Senator Kihuen:
Seeing no one in support, opposed or neutral, I will close the hearing on A.B. 182 and open the bill on A.B. 240.

ASSEMBLY BILL 240 (1st Reprint): Revises provisions relating to civil actions. (BDR 3-1021)

Assemblyman James Ohrenschall (Assembly District No. 12):
This bill has to do with fairness to an innocent victim—making sure that an innocent victim, who has not done anything wrong, is made whole and not tied up in litigation for many years.

Let me set up a hypothetical situation to explain the principle of A.B. 240. These three toy cars represent three different drivers: Here is Kareful Kihuen who never breaks a traffic law, turns off his cell phone when he gets in the vehicle, always puts on his seatbelt and makes sure his brakes are well maintained, his tires are rotated and well inflated; he never breaks any traffic laws and is a careful driver always driving the speed limit. Next is Speedy Segerblom who really likes to get to his destination quickly, is always in a hurry and does not like to waste time. Finally, this is Hit-the-Hammer Hammond who also likes speed, needs to get places fast, and every now and then glances at his cellphone.

Each of these drivers is approaching an intersection. Hit-the-Hammer Hammond also happens to have his niece with him in the car. Kareful Kihuen carefully approaches the four-way intersection, stops, looks both ways, and, because everything looks safe, he proceeds through the intersection. Unbeknownst to Kareful Kihuen, Speedy Segerblom and Hit-the-Hammer Hammond both have to get somewhere fast and therefore they both hit Kareful Kihuen in the intersection, causing him injuries. In this example, Kareful Kihuen is fault-free—he has obeyed the traffic laws and done everything right. However, Speedy Segerblom and Hammer Hammond have been negligent by not obeying the traffic laws—perhaps they glanced at their phone texts and sped through the intersection. They have caused harm to Kareful Kihuen—he has broken ribs and his vehicle is now damaged in such a way that it is not operative.

The goal of Nevada statute is to help an innocent victim like Kareful Kihuen become whole and to minimize any obstacles in making the victim whole when two or more wrongdoers have caused him harm. In this hypothetical, if Kareful Kihuen sought recovery for the damages done to him against Speedy Segerblom and Hammer Hammond, he could recover under statute, jointly and severally. This means that Kareful Kihuen could recover 100 percent of his damages against either Speedy Segerblom or Hammer Hammond.

Let us add to the hypothetical: Hammer Hammond, except for speeding and occasionally looking at his text messages, is otherwise a careful driver with a great insurance policy, and he generally goes above what the law requires. Speedy Segerblom, on the other hand, has the bare minimum of insurance coverage and is not as cautious about laws and insurance. Now let us change Kareful Kihuen's injuries to be more drastic than originally postulated. These injuries result in a large medical bill. Under statute, Kareful Kihuen can recover 100 percent of his damages against Hit-the-Hammer Hammond. Speedy Segerblom and Hammer Hammond, the two wrongdoers, can sort out the proportion of who caused more damage and is therefore more liable. If Hammer Hammond was going 50 miles per hour through the intersection and Speedy Segerblom was going 55 miles per hour, a court, the trier of fact or a jury would look at those facts and determine who was more proportionally liable.

What is important in Nevada law is that the innocent injured victim, Kareful Kihuen, would not have to be tied up for years having to recover separately against Hammer Hammond and Speedy Segerblom—he can be made whole as quickly as possible, have the medical bills paid and other damages recovered. Perhaps Speedy Segerblom has all of his assets in the Cayman Islands and there is no way that Kareful Kihuen can be made whole. Because of an ambiguity in NRS 41.141, Assembly Bill 240 intends that the process continues with keeping the litigation to a minimum.

In the original hypothetical, Hit-the-Hammer Hammond had his niece in his vehicle. The niece tells Hammer Hammond, "I think Mr. Kihuen was texting at the time he was going through the intersection. I do not think he is so careful as he says he is." That information changes things under Nevada statute. If that were true, then Kareful Kihuen is no longer the fault-free plaintiff. Under statute if there is some fault attributed to Kareful Kihuen, but it is less than 50 percent of the fault of the others, then he can only recover severally. That becomes important in a scenario where the victim wants to be made whole as quickly as possible and not be forced to spend years in litigation chasing a recovery.

If the niece says that Kareful Kihuen is not as careful as previously believed because she thought she saw him texting, Hammer Hammond can assert that as a defense. But fairness dictates that simply making an assertion should not be enough to make Kareful Kihuen spend years chasing a recovery from each wrongdoer. Assertion is not enough; the facts should be proven. Of course,

assertions can be made, and under Rule 11 of the Nevada Rules of Civil Procedure, those assertions must be filed in good faith. Assembly Bill 240 clarifies that simply asserting wrongdoing on the part of the victim is not good enough—alleged wrongdoing on the part of the victim must be proven by the trier of fact.

Senator Ford:
Let me repeat what you believe is the current state of the law so that I understand the direction of this bill. In law school, we learned that in this situation, both Speedy Segerblom and Hammer Hammond could be sued. At the very end of the lawsuit, the victim could receive recovery from either one. If Speedy Segerblom had no money and Hammer Hammond had to pay all of the recovery, then Hammer Hammond could bring a lawsuit against Speedy Segerblom. Then the two defendants could fight between themselves to be made whole. But in the end, the innocent plaintiff would get a full recovery under joint and several liability, right?

Assemblyman Ohrenschall:
That is exactly correct. Nevada statute follows the restatement of torts that the innocent victim/plaintiff is not bogged down for years chasing a recovery in proportions as long as there is no wrongdoing on the plaintiff's part. If his or her wrongdoing is more than 50 percent, then the plaintiff is not allowed to recover. But if the plaintiff has 0 percent fault, as in the original hypothetical, then it is not up to the plaintiff to decide which defendant will make them whole—the two wrongdoers can sort that out.

Senator Ford:
Right now, Nevada statute declares that the mere assertion as an affirmative defense of contributory negligence or comparative negligence is sufficient to turn the recovery and burden to several liability. It removes the joint portion?

Assemblyman Ohrenschall:
The Nevada Supreme Court has opined recently that there is ambiguity in this statute. Since this was adopted in 1973, the mere assertion is not good enough. Look at the case of *Buck v. Greyhound Lines, Inc.,* 105 Nev. 756, 783 P.2d 437 (1989). Then-Chief Justice Thomas L. Steffen wrote that the assertion must be properly asserted as a bona fide issue in the case and that it is better to fully compensate an innocent victim with the combined negligence of multiple defendants than to assure that each defendant be held responsible

only for his or her proportionate share of the plaintiff's damages. That case involved a fault-free victim.

Senator Ford:
Regarding the ambiguity, are you stating that the courts are still applying the old common-law rule? I am trying to understand what the ambiguity has caused.

Assemblyman Ohrenschall:
Assembly Bill 240 is trying to prevent possible victims being tied up in court for years. Some ingenious attorneys utilize the current language to argue that simply asserting fault of the victim as a defense should be good enough—that it should not need to be proven.

If the victim is at fault, I am not disputing that he or she should not collect jointly and severally—only severally. This bill clarifies that the assertion needs to be proven.

I do believe that Nevada is following the common-law restatement of torts in terms of the fault-free victim.

Senator Brower:
I believe there is still much confusion about both what this bill would do and the state of the law. You said that the current state of the law in an ordinary multidefendant situation, like the hypothetical, is joint and several liability as between the defendants.

Assemblyman Ohrenschall:
That is in the case where the defendant is fault-free—the trier of fact does not find any fault on the part of the defendant.

Senator Brower:
As I understand it from legislative history, joint and several was abrogated by the Legislature in 1987 and confirmed in 1989. Can you point to a statute or a case since 1989 in Nevada that says we have joint and several as seen in your hypothetical?

Assemblyman Ohrenschall:
In the case of *Buck v. Greyhound Lines*, Justice Steffen wrote the majority opinion in November 1989. His opinion stated that the fault-free plaintiff, in this

case two children who were sleeping in the car by the side of the road, could recover jointly and severally in the multidefendant issue.

Senator Ford:
In the case of *Buck v. Greyhound Lines*, the court does discuss that the Nevada Legislature modified the common-law rule in situations where the injured party was partly responsible for his or her own injuries. I am not completely clear on this case. It did involve innocent children who were ultimately able to recover joint and severally; notwithstanding, the statute looks to say that an assertion of contributory negligence means the case becomes several only.

A line in *Buck v. Greyhound Lines* is confusing: "The statute must be read as applying to situations where a plaintiff's contributory negligence may be properly asserted as a bona fide issue in this case." Right before that line, Rule 11 is discussed—not having frivolous affirmative defenses, etc. Should it be sufficient, as a matter of policy in this State, for an attorney to merely assert contributory negligence without having to prove it to convert the case to a several recovery as opposed to a joint and several recovery? Is that the policy question we are discussing?

Assemblyman Ohrenschall:
Yes. I do not believe that is good policy. Requiring that the contributory negligence be proven is the correct policy. Otherwise, the simple assertion can tie up the victim in court for years trying to chase recoveries among multiple defendants.

Going back to the hypothetical: if Speedy Segerblom asserts the fault of Kareful Kihuen—he was texting or had bad brakes—and Kareful Kihuen goes to trial and is vindicated—the brakes were great and the phone was not on, I can see the result of the victim only recovering severally—proportionally. I do not think that has happened yet in Nevada, but the goal of this bill is to make sure that judicial resources are saved and pointless litigation does not ensue based on the ambiguity of the language. That ambiguity is not just my opinion; it is also the opinion of the Nevada Supreme Court—*Café Moda, LLC, v. Palma*, 128 Nev. ____, 272 P.3d 137 (2012).

Senator Brower:
Before we can entertain a clarification of the law, we need to understand the law as it exists at this time. The legislative history is unclear on this issue.

Senator Hutchison:
I want to clarify this issue. I was glad to hear that in the most recent decision from the Nevada Supreme Court—*Café Moda, LLC, v. Palma* from March 2012—the court conceded that ambiguity exists in NRS 41.141. The Supreme Court decided that when a law is ambiguous, the legislative intent must be referenced. In the *Café Moda, LLC, v. Palma* case, the Supreme Court believed the Legislature was removing joint and several liability. Whether the Legislature continues on that path is a different policy question than what we are addressing today.

The Supreme Court decided that the legislative intent from 1987 was, in negligent cases, to remove joint and several liability. In other cases—there were five exceptions: intentional torts, strict products liability, toxic torts with environmental issues, etc.—the legislative intent is not to remove joint and several liability. The Supreme Court said that the Legislature intended to remove joint and several liability in negligence. The Legislature in 1987 wanted to eliminate the deep pocket doctrine. In the hypothetical, Speedy Segerblom went through the intersection 1 mile an hour over the speed limit, but Hammer Hammond went 99 miles an hour over the speed limit; the jury says Speedy Segerblom is not 1 percent liable, but Hammer Hammond is 99 percent liable. The Supreme Court wanted to limit the deep pocket doctrine and apportion liability more fairly—Speedy Segerblom is responsible for 1 percent of the liability and Hammer Hammond is 99 percent responsible. That is how the Supreme Court viewed the *Café Moda, LLC, v. Palma* case. The current state of the law is ambiguous, but the legislative intent is that joint and several liability is removed in only negligence cases—the deep pocket doctrine is then eliminated and the fairness model is utilized so that you pay for that for which you are at fault.

Should we add a sixth exception when there is a fault-free plaintiff? That is the policy question.

Assemblyman Ohrenschall:
I disagree. The *Café Moda, LLC, v. Palma* case involved negligence tort on one side and an intentional tort on the other side. That is why I do not believe that *Café Moda, LLC, v. Palma* is applicable to the situation where the wrongdoers are each negligent.

As to the legislative history and the argument that we are creating a sixth exemption under NRS 41.141, there I disagree. The history and language of the statute, joint and several liability was meant to be removed where the plaintiff was at fault, but not against the fault-free victim.

Senator Hutchison:
The holding in *Café Moda, LLC, v. Palma* underscores the analysis that I just reiterated because the court then determined that the negligent party was severally liable—20 percent. The intentional party who engaged in intentional tort was 100 percent liable, which is consistent with joint and several liability.

I would be interested in what others have to say. There is some ambiguity in the language.

Mark Wenzel (Nevada Justice Association):
I support A.B. 240. *Nevada Revised Statute* 41.141 as written and applied does not endeavor to apply to a situation involving a negligent-free plaintiff and two or more negligent parties acting against that plaintiff. The clarifications contained in A.B. 240 would clarify that an assertion of negligence must be proven. Affirmative defenses of comparative negligence must be answered. There should not be cutting and pasting of affirmative defenses, and those affirmative defenses of comparative negligence should not be enough to take the plaintiff down the path of several liability versus the path of joint and several liability. For example, the insurance carrier of the wrongdoer said that my client, a passenger in the vehicle, was comparatively at fault because my client knew that the driver had several speeding tickets in the past; therefore, my client had assumed the risk that there would be a negligent driving incident by the driver.

This bill removes the absurdity seen in practice on a daily basis. The bill is also clarifying an issue that does not need clarifying because it is already clear and in practice. The absurdity arises in the adjustment of insurance claims, the efforts to resolve claims without the necessity of litigation. The bill would cut down on costs and protracted litigation, save judicial resources and resolve disputes that can be resolved quickly and efficiently. An innocent person should not be tied up in protracted litigation simply because of the absurd allegation of comparative negligence where none truly exists.

Senator Brower:
In the hypothetical with the fault-free plaintiff and two negligent defendants, does joint and several liability apply?

Mr. Wenzel:
In that situation, yes.

Senator Brower:
In 1987, joint liability was abrogated by the Legislature in favor of several liability only in this kind of hypothetical, with some exceptions enumerated in NRS 41.141. Assuming that is true, what has happened since 1987, in terms of caselaw or statutory change, that brought the common law, joint and several, back?

Mr. Wenzel:
I disagree with that premise. Justice Steffen made it very clear that the Nevada Legislature modified the common-law rule about joint and several liability in situations where the injured plaintiff was partly responsible for his or her own injuries. In a situation where the person is not partially responsible for his or her own injuries, that has never changed—that has always been joint and several liability. When there is a completely innocent injury victim and two or more people who caused the injury, those negligent people are jointly and severally responsible for the entirety of that victim's injuries and damages.

Senator Brower:
I am looking at the history from this committee in 1987; Pat Cashill, in his testimony to change NRS 41.141, said, "The concept is that joint liability will be eliminated subject to the various exceptions." [Later submitted as Exhibit I.]

Mr. Wenzel:
I would agree to that in the context where Kareful Kihuen was comparatively at fault. In certain circumstances, several liability is applicable. If there was a situation where three cars entered an unmarked intersection and they all get in an accident, and there is an allegation—not just a bare allegation, which the court in the *Buck v. Greyhound Lines* alluded to, but rather an allegation with some substance—several liability would be applicable. I do not think there has ever been a complete abrogation in the situation with a nonnegligent plaintiff—abrogating joint and several liability.

Senator Brower:
I understand that situation.

Senator Hutchison:
There seems to be a disagreement between *Buck v. Greyhound Lines* and *Café Moda, LLC, v. Palma*. I have read the opinions written by both Justices. I know you would say that the factual distinction in *Café Moda, LLC, v. Palma* is that there is an intentional tortfeasor and also a negligent tortfeasor. Are you able to help us understand the legislative history? It seems that there was an attempt and intent to eliminate joint and several liability in negligent cases excluding the five exceptions listed in section 1, subsection 5, paragraphs (a) through (e). You seem to imply that you agree that there was an intent not to include the elimination of joint and several liability when there was a fault-free plaintiff. It would be helpful to have an analysis or review of the legislative history. I do not know if you have done that already, or if you could do that for us.

Mr. Wenzel:
I have not gone back into the archives of 1973 through 1989 and the different machinations of joint and several liability. I would be glad to look into that for you.

The public policy which Justice Steffen articulated in *Buck v. Greyhound Lines* has never changed and never should change regarding a completely innocent injury victim to make a full recovery. That has been held up to the highest threshold, even over the potential for there being an inequitable result by dividing the liability between the two negligent tortfeasors. Throughout the years of practice, a negligent-free plaintiff has been allowed to collect jointly and severally against the wrongdoing parties; whereas if that plaintiff contributes to his or her own demise, several liability would be applicable in that situation.

Senator Hutchison:
The state of the law in Nevada is that the statute is ambiguous. Would you agree with that? The case submitted by Sarah Suter, *Café Moda, LLC, v. Palma* (Exhibit E), says, "Because both parties have presented a plausible plain-language application of the statute, we conclude that NRS 41.141 is ambiguous with respect to the question presented by this case," which was whether damages are apportioned among the defendants. You would agree with

me that, in the latest court pronouncement at least, the court said the law is ambiguous?

Mr. Wenzel:
I will say that NRS 41.141 is not the most artfully drafted statute. The provision that the court referred to is section 1, subsection 4, but the area we are attempting to help correct is section 1, subsection 1, which is also not artfully drafted. That is why we are clarifying it.

Senator Hutchison:
And you would agree that we need to make a policy decision: Should joint and several liability apply only when there is a negligent plaintiff? Regardless of legislative history, in this bill, if we disagree with your analysis of the legislative history—that joint and several should be eliminated except in the five exceptions enumerated in the bill—we can still add a sixth exception, if we argued an alternative?

Mr. Wenzel:
I agree.

Senator Ford:
It goes a step beyond what Senator Hutchison pointed out because, assuming we revise State policy to allow for joint and several liability in cases of an innocent plaintiff, the real contention is that comparative negligence must be more than an allegation as an affirmative defense in order to convert the ruling to a several contention. You want to be able to prove at trial that there was a contributory or comparative negligence on the part of the plaintiff, right?

Mr. Wenzel:
That is correct. The bare assertion of comparative negligence should not be the triggering event to ascertain whether a plaintiff makes a full recovery through joint and several liability, which has been the common law for a while. This, as opposed to strictly several liability, is where the negligent-free plaintiff would not be making a meaningful, full recovery against the two defendants.

Senator Ford:
I agree with Senator Brower that we need help understanding this. My opinion is informed by the actual practice of law, right?

Mr. Wenzel:
Yes, sir.

Senator Ford:
Much is at play here. If a defendant does not assert an affirmative defense, it is waived, right? Then every affirmative defense possible is thrown at the case with the hope that one is not violating Rule 11. That is a practical application of the rules and what is required of us as attorneys. We have to protect our client's interest. Clearly, a lawyer can go back after discovery and amend an affirmative defense if he or she finds out that Kareful Kihuen was actually Krack-Head Kihuen. In practice, lawyers assert the affirmative defenses so that they can be certain that the defenses have not been waived. As I read the *Buck v. Greyhound Lines*, Justice Steffen made perfect sense the way he wrote the opinion. The case involved 3-year-old twins in the back of a car who had been hurt in an accident. The joint and several distinction was asserted against 3-year-old twins who clearly had no comparative negligence in being hurt. The court utilized Rule 11 stating that an affirmative defense must be filed in good faith. One cannot file in good faith against 3-year-old twins. It makes sense to apply joint and several to their recovery. It is important to note the last sentence, which says:

> It is apparent, however, that the rule favored the proposition [the old rule about joint and several] that it is better to fully compensate an innocent victim of the combined negligence of multiple defendants than to assure that each defendant is held responsible only for his proportionate share of the plaintiff's damages.

The court was talking about the issue we are talking about here, right?

Mr. Wenzel:
Yes, sir.

Senator Ford:
Should there be an apportioning among the defendants, or should the plaintiff be made whole and then the defendants can fight among themselves? Regardless of the state of the law, it seems that this boils down to determining if we want to have Nevada allow for an innocent, comparative nonnegligent plaintiff to have full recovery under the joint and several theory of recovery and

make the defendants prove the comparative negligence, rather than just alleging it, and thus eliminate the several component. Is that right?

Mr. Wenzel:
That is absolutely right. I do not think it was the age of the children, but rather the absurdity of making that allegation.

Senator Ford:
The *Buck v. Greyhound Lines* case seems to detail the appropriateness of considering joint and several liability for noncomparatively negligent plaintiffs.

Mr. Wenzel:
I would agree with that wholeheartedly.

Gregory M. Schulman (Nevada Public Agency Insurance Pool; Liability Cooperative of Nevada):
To better understand NRS 41.141, we need to look at what the law was before this statute was enacted. Under the common law, if the plaintiff was found 1 percent at fault, there was no comparative negligence, only contributory negligence, and the plaintiff was barred from recovering anything. The counter to that was no matter the circumstance, if the plaintiff was 0 percent at fault, the plaintiff had joint and several liability against all the defendants; that is where the law stood. *Nevada Revised Statute* 41.141 was enacted to mitigate against a harsh result in both circumstances. On the one hand, it did not bar the plaintiff from recovering if the defendants were at all at fault; on the other hand, in certain circumstances, it eliminated the joint and several liability that previously existed all the time in every circumstance.

Assembly Bill 240 strives to give the plaintiffs the best of both worlds under the common law and the statute. It is seeking to reinstate the common law that if someone is a fault-free plaintiff, then joint and several liability is present, no questions asked. But if someone is at fault, he or she still gets the benefits of the statutory interpretation where the recovery is reduced by the percentage of his or her own fault and also loses the joint and several liability of the defendants. That is truly a policy change of the law. The *Buck v. Greyhound Lines* case was decided in 1989; the statute was amended in 1987 and not applied retroactively. The accident to which the *Buck v. Greyhound Lines* case refers happened in 1978. The court was not applying the statute as it exists today. The policy considerations listed by the court, in terms of favoring

recovery for the plaintiff at the expense of the defendants, do not apply. Legislative history from the 1987 Session, as you can see in my testimony (Exhibit F), shows the policy was to eliminate joint and several liability with the exception of the five exceptions listed in section 1, subsection 5. In 1989, the statute was reaffirmed and one of those exceptions was clarified.

Assembly Bill 240 is a change in policy, and the question remains, is that good policy? The system works, and that is what it comes down to. There is no need to change the policy. We have not had any problems. The statute has been in existence for 20 years. There is no need to change it.

In addition to changing public policy, the problem is that it adds uncertainty in the litigation process. Until the trier of fact returns with the ruling, the parties do not know the ruling on apportionment of fault whether there will be joint and several liability. That will impact settlement negotiations on both sides of the case. It affects the plaintiff in evaluating the potential of recovery from a particular party at trial. Those are the major problems with this bill.

One other item, not mentioned in the hypothetical but raised in the *Café Moda, LLC, v. Palma* case, is what happens if an intentional tortfeasor acts with a negligent tortfeasor? Under those circumstances, if A.B. 240 applied to that case, there would be a 20 percent negligent defendant potentially liable for 100 percent of a plaintiff's injuries and compensating the plaintiff by having the defendant cover another party's intentional acts. That is inconsistent, as cited in footnote 3 of the *Café Moda, LLC, v. Palma* case, Exhibit E, with other jurisdictions as specifically cited by the Supreme Court—in New York, California and New Mexico, which reached the same conclusion as the *Café Moda, LLC, v. Palma* court did by finding it is a ridiculous result. Yet, under A.B. 240 that would be the result for this case. Therefore, as a policy consideration and a practical matter in practicing law, A.B. 240 is not good law and should not proceed any further. It is a substantive change, not a clarification of the current law. Legislative history from 1987 and 1989 makes it clear that the intent was to have several liability; it has worked, and there is no need to change it.

Senator Kihuen:
This bill passed unanimously out of the Assembly with little opposition; why are you waiting until now to oppose this bill?

Mr. Schulman:
I have been asked by my clients to oppose this bill. I cannot speak as to why the issue was not raised earlier.

Senator Jones:
You mentioned a concern in the *Café Moda, LLC, v. Palma* case that under A.B. 240 it would reward a negligent defendant over an intentional tortfeasor. My reading of subsection 5 of NRS 41.141 is that it "does not affect the joint and several liability, if any, of the defendants in an action" were intentional tortfeasors. Am I reading this wrong?

Mr. Schulman:
That issue was addressed by the court in *Café Moda, LLC, v. Palma*: whether the intentional tort exception in subsection 5 could be applied to a party that was only negligent, in this case the café. The Supreme Court said that would be inconsistent with other jurisdictions and against the legislative history intent as amended in 1987. The Court therefore found that the negligent party is not bound by that intentional tort exception because the negligent party did not engage in an intentional tort.

Senator Jones:
How would A.B. 240 change that?

Mr. Schulman:
Consider the situation in *Café Moda, LLC, v. Palma.* The plaintiff was found 0 percent comparatively at fault. Under A.B. 240, because the plaintiff was 0 percent comparatively at fault, the statute codifies the common law; because the plaintiff was 0 percent at fault, the defendants would be jointly and severally liable. Essentially the statute would not apply.

Senator Brower:
In the hypothetical—with the nonnegligent plaintiff and two allegedly negligent defendants—if you are insurance defense counsel for Speedy Segerblom, do you advise your client that joint and several applies in that case, or is it several only?

Mr. Schulman:
I would advise my client that joint and several should not apply in that case. Even with a nonnegligent plaintiff, under the statute, several liability should apply.

Senator Brower:
Your opinion is that under Nevada law, there is no joint and several in a tort case with a nonnegligent plaintiff where none of the exceptions in NRS 41.141 apply?

Mr. Schulman:
I believe that is correct, based upon the statutory history and the *Café Moda, LLC, v. Palma* decision.

Senator Brower:
I assume you regularly advise clients in these matters. Is that your understanding in terms of your day-to-day practice in your advice to clients?

Mr. Schulman:
That is how I practice.

Senator Brower:
We hear what you say about what this bill would do, but clearly this bill does not include language like, "it shall be the intent of the Legislature to return to the common law and apply joint and several liability, etc." Where in the bill do you find language, if this bill is passed, that would return us to the common law and joint and several?

Mr. Schulman:
In section 1, subsection 1, the language change—"In any action to recover damages for death or injury to persons or for injury to property in which the trier of fact finds comparative negligence on the part of the plaintiff or the plaintiff's decedent"—essentially applies if the court finds comparative negligence. It is also in subsection 4: "Where recovery is allowed against more than one defendant ... in which the trier of fact finds comparative negligence on the part of the plaintiff ... each defendant is severally liable." And with change by a negative, under subsection 4, where the trier of fact does not find the plaintiff comparatively negligent, the court is applying joint and several liability. That was the common law prior to the enactment of NRS 41.141.

Senator Brower:
I see the point you are making.

Senator Hutchison:
I was interested in Exhibit F where you said A.B. 240 "proposes a radical change to current Nevada law." You still stand by that characterization, do you not?

Mr. Schulman:
Yes, I do.

Senator Hutchison:
If Hammer Hammond intentionally entered that intersection to injure Kareful Kihuen going 99 miles an hour, and Speedy Segerblom is only going 1 mile an hour over the speed limit and they both collide with Kareful Kihuen, then you say that A.B. 240 would allow the plaintiff to recover 100 percent against Speedy Segerblom.

Mr. Schulman:
That is correct. Under those circumstances, 0 percent of the fault is being attributed to the plaintiff. Under A.B. 240, if 0 percent of the fault is attributed to the plaintiff, then joint and several liability applies. When joint and several applies, even though one party is 99 percent at fault, the party that is held 1 percent at fault can be the source of recovery for the plaintiff. While the 1 percent at fault does have the potential to recover against his codefendant on a cross-claim or future claim for contribution or indemnity, the point of the matter is that if the plaintiff cannot recover from that party, neither does the defendant.

Senator Hutchison:
Regarding fairness and certainty, if you are representing Speedy Segerblom, who went through the intersection at 1 mile an hour over the speed limit and is ultimately 1 percent negligent, what does that do to the risk assessment for your client who is potentially 1 percent liable—even against a 99 percent liable intentional tortfeasor?

Mr. Schulman:
Under those circumstances where my client is jointly and severally liable, the risk assessment goes way up. I would have to reevaluate and ensure that in any potential settlement or an adverse verdict at trial, the client would need to know that even a 1 percent liability would result in a tremendously large verdict. It

inflates the value of the case on the defense side in terms of settlement value and potential risk.

Senator Hutchison:
That is one of the policy considerations we must evaluate. There is the potential of a defendant who has a very small amount of liability having to pay the whole settlement for someone who caused the accident, even in an intentional environment.

Mr. Schulman:
That is correct, and that is not the policy of Nevada.

Senator Hutchison:
I would assume that may have an impact on insurance premiums and that sort of thing.

Mr. Schulman:
That would definitely have an impact on insurance premiums.

Senator Ford:
That sounds rather scary, but no part of this bill says that one cannot go after the other codefendant, right?

Mr. Schulman:
That is correct.

Senator Ford:
And that is exactly what you would do as a lawyer—go after the other defendant if your client had to pay the whole settlement?

Mr. Schulman:
That would not be my advice. If the plaintiff is unable to recover anything from that codefendant, then I would not advise my client to spend attorney's fees for my representation to litigate against someone who has no assets.

Senator Ford:
You, as well as other testifiers, practice in this area of law. However, it is not a matter of who deserves more deference, but rather a policy decision regarding whether a plaintiff should be fully compensated for injuries for which he or she

is not at fault or whether we want to put the burden on a negligent or intentional tortfeasor to determine how the apportionment of damages plays out. You have indicated that you would advise your client that several liability would apply; what is your best-case citation that supports the proposition that the state of the law is that joint and several liability does not apply in cases with nonnegligent cases?

Mr. Schulman:
Café Moda, LLC, v. Palma is relevant to the issue since the 1987 and 1989 amendments to the statute.

Senator Ford:
Between 1989 and 2012, when *Café Moda, LLC, v. Palma* was decided, neither the supporters or opposition to this bill have identified a case that exactly confirms what they say the current state of the law is. That is the impression I have received outside *Café Moda, LLC, v. Palma*. You have indicated that if we pass A.B. 240, you think that changes the analysis for plaintiffs who are not negligent and that would mess up various areas, including making someone pay for intentional tortfeasors. But the *Café Moda, LLC, v. Palma* decision deals with that. That is the state of the law when it comes down to comparing a negligent tortfeasor and an intentional tortfeasor. This bill does not address section 1, subsection 5, paragraph (b), which says "this section does not affect the joint and several liability, if any, of the defendants in an action based upon ... an intentional tort." As I read this statute in conjunction with the most recent pronouncement from the Nevada Supreme Court, *Café Moda, LLC, v. Palma* would still be the state of the law—the state of the law is that a negligent defendant would still be only proportionally liable, whereas an intentional defendant would be 100 percent liable. Is my analysis wrong in this regard?

Mr. Schulman:
With all due respect, that is wrong. Under A.B. 240 the negligent tortfeasor would be 100 percent jointly and severally liable because in *Café Moda, LLC, v. Palma*, the plaintiff was 0 percent liable. Under A.B. 240, when the plaintiff is 0 percent liable, all defendants are jointly and severally liable.

Senator Ford:
Back to the statutory interpretation that you do not render things superfluous—how would that flow with section 1, subsection 5, which says that it is not addressing or affecting joint and several liability as between

intentional tortfeasors? I read that as when an intentional tortfeasor is involved, then *Café Moda, LLC, v. Palma* will apply—the court will apportion according to a high *Café Moda, LLC, v. Palma* ideal.

Mr. Schulman:
With regard to section 1, subsection 5 and the intentional tortfeasor, the *Café Moda, LLC, v. Palma* court found that subsection did not apply to the negligent tortfeasor. There is a situation, under *Café Moda, LLC, v. Palma*, with a 0 percent plaintiff at fault, a negligent tortfeasor and an intentional tortfeasor. The court applied the subsection 5 exception to the intentional tortfeasor and found the intentional tortfeasor jointly and severally liable. The court then found the negligent tortfeasor only severally liable even though the plaintiff was 0 percent at fault. Under A.B. 240, because the plaintiff was 0 percent at fault, there does not need to be an exception listed in subsection 5; just look at subsection 4 that says because the plaintiff was not at fault, joint and several liability applies.

Senator Ford:
I understand. We could forestall this kind of confusion by putting in language that says we do not want to mess with the *Café Moda, LLC, v. Palma* pronouncement relative to an apportionment between defendants who are negligent and intentional. It could be fixed that way, right?

Mr. Shulman:
That is another option if you want to carve out that type of exception.

Margo Piscevich (Nevada Public Agency Insurance Pool; Liability Cooperative of Nevada):
This bill is not needed. There is nothing to fix. When an affirmative defense is asserted, that is what is done. From a fender bender to a medical malpractice or any other negligence kind of case, an affirmative defense is asserted—it could be comparative negligence, duty to mitigate, third party is responsible, superseding/intervening cause, etc. Once that affirmative defense is asserted, the burden of proof goes to the defendant to prove that affirmative defense. If I assert comparative negligence and I cannot prove it, that is made known during the discovery process. This bill is trying to overthrow the *Café Moda, LLC, v. Palma* case. I was involved in the 1987 legislation; my contribution was subsection 6.

California has a pure comparative negligence statute—if you are 1 percent at fault, you pay for 1 percent of the judgment. Nevada statute is a comparative negligence, so if the plaintiff is less negligent than the combined negligence of the defendants, then the plaintiff can recover. That takes care of an unfair balance.

Today, the question is what will the public policy be? Once an affirmative defense is asserted and you go through the burden of proof, then at the time of settling the jury instructions—or if there is no jury, the judge will make a determination whether the facts support the comparative negligence defense. If there is no evidence for that, there are no jury instructions. *Café Moda, LLC, v. Palma* said that the statute was ambiguous and the judge declared that negligence equates to fault. That is what we are talking about—if you are at fault for something, then you should be responsible for that portion of fault. That includes whether the defendant was negligent or an intentional tortfeasor. The public policy question involves examples such as: If you own a casino and someone shoots someone else in the casino, is the casino responsible? If you own a bar and a patron enters and knifes another patron, are you responsible? If you are a homeowner and someone starts a fight at your house without your knowledge, are you responsible? Those issues are talked about in the Supreme Court. *Nevada Revised Statute* 41.141 does change and reverts to the common law when subsection 4 of the bill is paired with subsection 1. That is not the intent of anyone. If I am the homeowner and a guest brings a friend whom I do not know, and he or she causes harm and I get sued, I should not be held responsible for that person's conduct.

We are trying to come to some kind of understanding. The law is written perfectly: Assert an affirmative defense; if that cannot be proven, the trier of fact makes that determination, judge or jury, moves to jury instruction and then moves forward. The hypothetical is a perfect example because it is strictly a negligence case. It does not involve any intentional conduct. If you include the language about the intentional conduct, that is where A.B. 240 tries to get around *Café Moda, LLC, v. Palma*. We do not need a sixth exemption.

When the 1987 act was being discussed, it was about the fact that a person who was 10 percent at fault was paying 100 percent of the damages—the unfairness of the deep pocket doctrine. If you are trying to collect from someone without insurance, it will not happen in the real world. If you go back to joint and several, the deep pocket will be paying the damages because in the

real world, if you do not have assets, you have nothing left to lose. This statute does not need to be fixed. The bill should not go any further. If we rely on *Café Moda, LLC, v. Palma*, then we do not have to worry about the intentional tortfeasor, etc. We know that if you are at fault, regardless of the theory, you pay what you are responsible for. This is an attempt to get around one particular Supreme Court case.

Senator Kihuen:
There was little opposition in the Assembly; why did you not testify in the Assembly?

Ms. Piscevich:
This bill was not on the radar until it passed in the Assembly. I did not know about it. My client sent it to me after it passed. I have a feeling that it was under the radar and looked innocuous.

Senator Kihuen:
It is standard procedure to notify the Committee chair or the sponsor of the bill that you will be in opposition. This situation is frustrating. To have a bill pass in one House without any opposition and then get to the second House and have sudden opposition is frustrating. For all subsequent testifiers, please let us know why you were not in the Assembly.

Wayne Carlson (Executive Director, Nevada Public Agency Insurance Pool):
We did sign in as opposition in the Assembly; unfortunately, the attorney who intended to testify in opposition was called away and unable to testify. We were not completely clear on the severity of impact on this bill until we had attorneys look further in the analysis and the legislative history. Once we understood the impact of the bill, we asked Greg M. Schulman and Margo Piscevich to testify on behalf of Liability Cooperative of Nevada.

We see this bill as having a significant fiscal impact. The insurance pool covers local governments in rural Nevada. Over 100 entities will be affected by this change in the law. I have been running the pool since 1987; legislation was passed to allow this in 1985. I remember reading about the California joint and several liability problems where government entities were named in a lawsuit only to grasp at their deep pockets. There were incidents concerning the tangential existence of where a sign was placed or a warning sign about a curve was placed when an at-fault drunk driver crossed the center line and hit an

innocent party. If the plaintiff tagged the government with 1 percent liability, it ended up being the 100 percent payer because the drunk driver had no assets. That was a risk we were concerned about. The Legislature wisely limited that risk. This bill would put that risk back on the insurance pool, and that would have a substantial fiscal impact. It would bring more claims based simply on allegations that it is tangential to create that 1 percent liability.

Dan Polsenberg:
I am an appellate lawyer and have the unique distinction of having argued *Café Moda, LLC, v. Palma* in 2011 and *Buck v. Greyhound* in 1987. I did not find out about this bill until the night before last, the reason being that the bill and its presentation are based on a false premise. The proponents say all they are trying to do is keep the current practice even though there is an ambiguity in the bill. That is why this has not fetched much opposition in the Assembly—the people who were following it there took that representation at face value, but that representation is completely wrong.

I agree that this is a radical change in Nevada statute. Statute, as it exists now and as it was passed in 1987, declares that joint and several liability have been purged from statute, except for the five exceptions in section 1, subsection 5.

I have a case in front of the Supreme Court right now called *Donahue Schriber Realty Grp, L.P. v. Salinas*, Docket No. 59071 (Nev. Sup. Ct. appeal docketed Aug. 25, 2011). This case raises the issue: What do the 1987 and 1989 versions of the statute mean? Was it a complete abrogation of joint and several liability? I argue that it is. You have 21 pages of my brief (Exhibit G). Exhibit G sets out the argument; I filed it last night as well as the legislative histories from 1973, 1979, 1987 and 1989. The Nevada Justice Association filed an amicus brief in that case. The Association knows about this case and that the issue is in front of the court. And yet, its representative is telling you that in the current practice, there must be comparative fault of a plaintiff for several liability to apply. That is not the case.

Look at what happened in 1987. The big movement was to change certain aspects of tort law. The Coalition for Available/Affordable Liability Insurance met with the Nevada Trial Lawyers Association and drafted this bill. There were many proposals. Jim Cashman spoke for the Coalition declaring this got rid of joint and several liability. Many other statements concerning the purging of joint and several liability are found in Exhibit G.

Buck v. Greyhound does not declare the necessity of joint liability because it is the better public policy. *Buck v. Greyhound* points out the ambiguity in the 1973 statute. We do not have the legislative history for 1973; therefore, we must defer to the common law. That is why in this one narrow situation, there is joint and several liability. Justice Steffen admitted in the opinion that there are inequities when there is joint liability on defendants.

I once defended a case concerning a doctor who performed an emergency birth of a baby with a mother who had received no prenatal care. The jury found the doctor 5 percent at fault and under joint and several liability, he was responsible for the entirety of the damages. These were the sort of cases that the Legislature looked at in 1987 when it decided to get rid of joint and several liability—excepting the five exceptions.

What do we do with *Café Moda, LLC, v. Palma*? This case says the statute is ambiguous. Therefore, we look to the legislative history in 1987—getting rid of joint and several liability. Assembly Bill 240 is being sold as a no-worry bill, a mere clarification. It is not a procedural change; it is changing what was done in 1987.

Senator Greg Brower and Senator Aaron Ford asked if they have the ability to establish public policy for the State. Of course, but that is not how this bill is presented. It is presented not as a public policy debate, but rather a little tweak in the statute. That is why there was no opposition in the Assembly.

There seems to be a lot of confusion. *Café Moda, LLC, v. Palma* was a case where the plaintiff was 0 percent at fault, and the Supreme Court imposed several liability in that situation. If you pass this bill, the point being made by some is that even in that situation, everyone will be jointly and severally liable.

Senator Hutchison:
In your view, given the state of the law and in particular the *Café Moda, LLC, v. Palma* case, what would have happened using the *Café Moda, LLC, v. Palma* facts if A.B. 240 passes?

Mr. Polsenberg:
If this bill would have passed then, having a 0 percent at-fault plaintiff, the Justices would have made the café owner, who was only 20 percent at fault, liable for the entirety of the damages.

Senator Hutchison:
We are speaking about a negligent and an intentional defendant, right? If A.B. 240 passed, do you agree that the negligent picks up the entirety of the damages because of joint and several liability?

Mr. Polsenberg:
Yes. Whether the bill passes or not, the intentional tortfeasor is 100 percent liable.

Senator Hutchison:
You heard the hypothetical that I amended, where Hammer Hammond intentionally wanted to hurt Kareful Kihuen and was going 99 miles an hour over the speed limit and Speedy Segerblom entered the intersection going 1 mile an hour over the speed limit and was therefore 1 percent liable. In that situation, if A.B. 240 passes, you would agree that Speedy Segerblom could bear the entirety of the damages of Kareful Kihuen even though there is a 99 percent intentional defendant involved in the accident as well?

Mr. Polsenberg:
Yes. Under A.B. 240, that is definitely the case. I mentioned that Justice Steffens pointed out that it was inequitable to impose joint liability on all defendants. Justice Ron D. Parraguirre pointed that out in his opinion on *Café Moda, LLC, v. Palma*. A Kansas court pointed out that there is nothing inherently fair about a defendant who is 10 percent at fault paying 100 percent of the loss.

At this point, if the Legislature wants to reevaluate the public policy of Nevada, then that is how it needs to be presented. But that is not how it is being presented. I suggest we wait until the Supreme Court decides *Donahue Schriber Realty Grp, L.P. v. Salinas*. If I am wrong, then tweak the statute. If I am right and you want to change the public policy that you have established, then you can address that with a full and fair debate.

Tom McGrath:
I also was not aware of the bill until the last week. My comments regard the supporters of the bill who have stated the unfairness and arbitrariness of simply asserting contributory negligence as an affirmative defense. The *Café Moda, LLC, v. Palma* case arose from a fight between the plaintiff and the intentional tortfeasor. The restaurant, which was found 20 percent negligent, contended

that the plaintiff started the fight. I do not know why they were unable to convince a jury that whatever facts they had to support their affirmative defense were not sufficient to find the plaintiff contributorily negligent. I point this out because when an affirmative defense is asserted in an answer, if there are no facts to support that defense, it will not appear before the jury. The defense will either be abandoned in pretrial conferences between counsel or if a defendant refused to abandon it, the plaintiff could get summary judgment.

In the hypothetical, we have Hammer Hammond, who may be an intentional tortfeasor or is just speeding 99 miles an hour over the speed limit, and Speedy Segerblom, who is only going 1 mile an hour over the speed limit and has a good-faith basis to allege that Kareful Kihuen was on his cell phone—and has two 3-year-old kids in the back seat. Speedy Segerblom alleges an affirmative defense of contributory negligence. If Speedy Segerblom alleges that against Kareful Kihuen based on the evidence he will present at trial, the judge will probably let that information go to a jury. Whereas if Speedy Segerblom tries to assert an affirmative defense that the children in the back seat are contributorily negligent, there would not be enough facts to assert that in good faith and would therefore not go to the jury. This is why the law does not need to be amended. What A.B. 240 does is impose joint liability on negligent tortfeasors in all situations, unless the tortfeasor can prove to a jury that the plaintiff was contributorily negligent.

Senator Brower:
It sounds as though you are equating "assert" to pursue at trial, as opposed to simply including it as an affirmative defense in an answer.

Mr. McGrath:
Of course. Because you are subject to the Rule 11 sanctions, you do not typically keep the affirmative defense in the answer once you try the case. You only assert the affirmative defenses that you have evidence to support at trial.

Senator Brower:
Right. There was confusion with respect to the statute over that term. In practice, what is in the answer does not mean much; it is what is actually litigated at trial. In your experience, is that true?

Mr. McGrath:
Correct.

George Ross (Las Vegas Metro Chamber of Commerce):
I testified against A.B. 240 in the Assembly. One does not always realize all the implications surrounding the bill. This is an extraordinarily subtle, nuanced, complex bill with many ramifications. The implications can only be fully understood when you realize how it fits within the structure of the *Nevada Revised Statutes*, Supreme Court decisions and caselaw. We do not comprehend all of that. From the Chamber of Commerce point of view, we see a weakening of joint and several, a weakening of our protections, a weakening of the comparative part of the law, which the business community takes very seriously. We do not understand all the implications. When the sponsor gave his excellent presentation, it became clear that I am out of my league. I am not an attorney. I am presenting my opposition based on the implications to the business community and business environment of the State.

The business community would always support the idea of comparative negligence. The idea that any one business or entity might be 1 percent at fault and end up paying 100 percent of the damages is extraordinarily unfair and unjust. What is fair? The victim should be compensated. The other side of fairness is being held responsible for what is contributed. That is fundamental fairness. In essence, the Legislators are determining what is fair. Fairness includes not having someone who is tangentially involved bear the entire weight of the settlement. The Chamber of Commerce urges your vote against this bill.

Joan Hall (President, Nevada Rural Hospital Partners; Liability Cooperative of Nevada):
I was present during the Assembly hearing, but did not testify. I later realized that this bill has the potential to increase insurance costs for our self-insured pool. We then called Thorndal Armstrong Delk Balkenbush & Eisinger, our general counsel, and Margo Piscevich, our legal panel, and they are here today to support me in opposing this bill.

C. Joseph Guild III (State Farm Insurance):
I am here to urge your opposition to this bill. In the Assembly when this bill was being heard, I talked to members of the trial bar to figure out where they were coming from with this bill. I sent the information gained to State Farm Insurance lawyers, asking them to analyze the bill. It does make some significant changes. The length of time that we have spent this morning with advocates on both sides of this issue debating a simple two-page bill partially answers the question of why there was no opposition in the Assembly. I was still struggling to

understand this bill several days ago. I am a 31-year practitioner of the law, having a license in both California and Nevada. I have not done work in this area in almost 20 years. People who actually practice in this area were the ones to flesh out the real issues, and it took them time to give perspective to a bill that seems simple upon the initial reading.

When I found out that this bill gave concern to State Farm Insurance, over the last few days I have talked to the sponsor of the bill and the Chair of the Committee, and I made attempts to speak with several members of the Committee. The opposition to the bill was not intended to disrespect the sponsor and his position.

Jeanette K. Belz (Property Casualty Insurers Association of America):
Property Casualty Insurers Association is comprised of 1,000 companies nationally, 364 of which are in Nevada. We are opposed to this bill. Property Casualty Insurers Association is a membership organization, meaning that a lot of people come together to write positions on insurance. We have had one member tenaciously telling us that joint and several liability is a problem, and eventually everyone else listened. I was at the Assembly hearing but did not speak.

Josh Hicks (Retail Association of Nevada):
As general counsel for the Retail Association of Nevada, I oppose this bill. Like Ms. Belz, I represent an association of many members. It can take time to get all of the members together, and therefore the Retail Association of Nevada was not on the record on the Assembly side. When we looked at the bill initially, we saw it as a clarification of the existing legal landscape. We were not quite sure about the ramifications. In the last week, and even the last 48 hours, there has been a flurry of information which I have reviewed. Considering this information, we stand concerned that there may be some fundamental changes to the way comparative negligence works in Nevada. Out of concern over the lack of clarity about the no-fault plaintiff, as well as a case pending in the Nevada Supreme Court, we are opposed to any changes that could have unintended consequences to the way comparative negligence works in Nevada.

Chelsea Capurro (AAA Insurance):
I echo all the concerns raised and oppose this bill.

Sarah Suter (Advocacy Committee Chair, Las Vegas Defense Lawyers):
I have submitted our written opposition (Exhibit H), the *Café Moda, LLC, v. Palma* case that Senator Mark Hutchison quoted, Exhibit E, as well as the detailed listing, proposed bills and excerpts from the minutes from the 1987 (Exhibit I) and the 1989 (Exhibit J) Nevada Legislature's Judiciary Committees, both Senate and Assembly. *Nevada Revised Statute* 41.141 as it stands and amended in 1987 strikes a delicate balance between fairness and not equating the fault of a party with ability to pay and the victim's needs to obtain just compensation for injuries. This statute does not need to be changed; the balance is present.

Loren Young (President and Vice Chair of the Board of Directors, Las Vegas Defense Lawyers):
We echo the concerns, comments and objections of Mr. Polsenberg and Mr. McGrath. As the current law stands as found in section 1, subsection 4 of A.B. 240, several liability would apply in the situations and examples that have been given today.

Senator Jones:
I am struggling with the caliber of attorneys and lobbyists in this room who did not catch the problems in this bill before it came here. It smacks of sandbagging. A simple reading of the Legislative Counsel's Digest could have put anyone on notice. I think this is inappropriate, and I feel for Assemblyman Ohrenschall.

Mr. Wenzel:
This bill is not extraordinarily difficult to comprehend. This bill has endeavored to clarify an issue that we perceive as a problem. It is not meant to make a cataclysmic change to Nevada's comparative negligence law. It is meant to address the hypothetical that Assemblyman Ohrenschall brought up today with a nonnegligent plaintiff and competing negligent defendants. This bill, contrary to what has been inferred, is not meant to change medical malpractice laws—any intimation to members of the Committee to that effect is a complete and total fallacy. This bill endeavors to preserve the integrity of the situation in the hypothetical. If you are hurt and have no fault in the matter, the people who hurt you should jointly and severally be responsible for it.

It is not a mistake that those who came out of the woodwork came at the eleventh hour; it is also not a mistake that they forgot to mention to you the

rest of Justice Steffen's statement in *Buck v. Greyhound Lines*. They mention the inequities of making someone disproportionally at fault and the standard bearer of compensating an injury victim. What they forgot to tell you was Justice Steffen's eloquently stated public policy, "It is better to fully compensate an innocent victim of the combined negligence of multiple defendants than to assure that each defendant is held responsible only for his proportionate share of the plaintiff's damages." The fact that this statement was not read to you when the inherent inequity part was is not a mistake. We perceive this bill to preserve the integrity of that public policy and to preserve Nevada practical law and the status quo as it has been since the time of *Buck v. Greyhound Lines*.

Assemblyman Ohrenschall:
Points were made by the opposition about how this may affect business. Most businesses, when there is a vendor, have indemnification agreements that would make sure that this type of situation would not arise. With ten different attorneys, there can be ten different opinions about a question. I do not agree with the opponents' perception of *Café Moda, LLC, v. Palma* and how it would affect the intentional wrongdoer. I looked up the minutes from the May 13, 1987, Senate Judiciary hearing, and Pat Cashill spoke of a modification to joint liability. If you take quotes out of context, perception can change. Pat Cashill speaks of the comparative negligence of the plaintiff, whereas here we are talking about a plaintiff who has no comparative negligence, having no fault.

I take offense that I or anyone else misrepresented this bill. I stand by my assertion that A.B. 240 is a clarification of existing law. Justice Parraguirre in *Café Moda, LLC, v. Palma* mentioned that the statute is ambiguous—there is no debate about that. If the Legislature lets that ambiguity stand, then we will have much more litigation. Who does that benefit? Attorneys. Who does that hurt? The innocent fault-free victim who spends more time not being made whole, not having injuries mended, not getting his or her life put back together. That is why I urge you to consider this clarification to NRS 41.141.

Senator Kihuen:
Seeing no further questions and no public comment, I will close the hearing on A.B. 240. I have two letters in opposition to submit to the record: one from Mark Sektnan on behalf of the Property Casualty Insurers Association of America (Exhibit K) and the other from Christian J. Rataj for the National Association of Mutual Insurance Companies (Exhibit L). With that, I will close the Senate Judiciary Committee hearing at 11:58 a.m.

RESPECTFULLY SUBMITTED:

_____
Ilena Madraso,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE:_____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
A.B. 421	C	1	The Fertility Center of Las Vegas	Testimony in support
A.B. 421	D	2	American Academy of Adoption Attorneys and American Academy of Assisted Reproductive Technology Attorneys	Testimony in support
A.B. 240	E	10	Sarah Suter	West Law- *Café Moda, LLC, v. Palma,272 P.3d 137, 128 Nev. Adv. Op. 7 (2012)*
A.B. 240	F	3	Gregory M. Schulman	Testimony in opposition
A.B. 240	G	21	Dan Polsenberg	Legal Research Regarding the Legislative History and Meaning of the Current Version of NRS 41.141
A.B. 240	H	2	Sarah Suter	AB 240 Is an Unfair Game Changer for Civil Litigation in Nevada
A.B. 240	I	38	Sarah Suter	Detailed Listing from First to Last Step, 1987
A.B. 240	J	28	Sarah Suter	Detailed Listing from First to Last Step, 1989
A.B. 240	K	1	Property Casualty Insurers Association of America	Testimony in opposition from Mark Sektnan
A.B. 240	L	5	National Association of Mutual Insurance Companies	Testimony in opposition from Christian J. Rataj