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

Seventy-Eighth Session
March 16, 2015

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 12:01 p.m. on Monday, March 16, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Leslie Danihel, Committee Manager
Jennifer Russell, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

John Sande IV, representing Payment Assurance Technology Association
Corinne Kirkendall, representing Payment Assurance Technology Association; and Vice President of Compliance and Public Relations, PassTime, Littleton, Colorado
Rogelio Martinez, Manager, United Finance Company, Reno, Nevada
John Sande III, representing Nevada Franchised Auto Dealers Association
Don Hamrick, General Manager, Chapman Las Vegas Dodge
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Jon Sasser, representing Washoe Legal Services; and Southern Nevada Senior Law Program
Rita Torres, Private Citizen, Las Vegas, Nevada
Sophia A. Medina, Consumer Rights Project, Legal Aid Center of Southern Nevada
Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada
Keith Lee, representing Board of Medical Examiners
Edward O. Cousineau, Executive Director, Board of Medical Examiners
Chad Christensen, representing Nevada Physicians Coalition for Academic Excellence
Tracey D. Green, M.D., Chief Medical Officer, Division of Public and Behavioral Health, Department of Health and Human Services
Denise Selleck, Executive Director, Nevada Osteopathic Medical Association
Grayson Wilt, representing Nevada State Medical Association
James Elste, Chief Executive Officer and Founder, Inqiri.com
Ira Victor, Director, Data Clone Labs; and representing Infraguard Sierra Nevada
Janine Hansen, President, Nevada Families for Freedom
David W. Carter, representing Nevada Legislative Affairs Committee

Jen Chapman, Recorder, Storey County; and representing Recorders Association of Nevada
Lawrence R. Burtness, Recorder, Washoe County
Nancy Parent, Clerk, Washoe County
Barry Smith, Executive Director, Nevada Press Association
Laura Tucker, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General

Chairman Kirner:
[Roll was called, and housekeeping items were discussed.] Because of travel schedules, we will be hearing the bills out of order, starting with Assembly Bill 228.

Assembly Bill 228: Revises provisions governing trade regulations. (BDR 52-999)

John Sande IV, representing Payment Assurance Technology Association:
My role is to introduce my client, who will explain an insurance payment device, and I will go over the amendment. To let the Committee know, the bill that was introduced, although it was close, was not what we were hoping for, so we have an amendment (Exhibit C) that you will find on the Nevada Electronic Legislative Information System (NELIS). I will be going over that rather than the bill as introduced. I will turn it over to Corinne Kirkendall to explain the device.

Corinne Kirkendall, representing Payment Assurance Technology Association; and Vice President of Compliance and Public Relations, PassTime, Littleton, Colorado:
I am with the Payment Assurance Technology Association (PATA) as well as PassTime, which is a manufacturer of the devices. Thank you for providing us an opportunity to testify on Assembly Bill 228 and auto financing here in Nevada. The PATA is excited to create more credit opportunities for Nevada customers. I brought two sample devices for you to look at. The device is installed in the vehicle under the kick panel of the car and attached to the starter, not to the ignition. It reminds the drivers that they have a payment due. It does not say, "You need to make a payment." It has an audible tone. The devices vary based on the manufacturer, but this is a sample, and this is the emergency backup. [Ms. Kirkendall displayed two devices for the Committee.] In case there is an emergency and the devices shut off, they have a backup to turn the car back on for 24 hours at least one time during the payment contract.

The PATA serves both the global positioning system (GPS) asset and starter interrupt industries. Our organization's objective is to unify, standardize, and

influence activities of the industry and the markets that engage in manufacturing, selling, and using the technology to reduce the risk, monitor and recover assets, as well as to provide vehicle-financing benefits to the consumer. All of the major manufacturers and sellers of the starter interrupt and GPS devices, including devices sold directly to the consumers for theft vehicle recovery services, are members of the PATA.

The starter interrupt devices were developed to help creditors but not to harm consumers. In fact, the technology has proven to be a tool to improve customer payment performance, therefore reducing or eliminating repossession risks and creating a path for better opportunities—not just to get a car but for a home or another job. It provides greater credit opportunities.

Let me be clear, the starter interrupt devices are not designed to stop a vehicle while in motion. The starter interrupt devices will not stop a car in the middle of the highway. They are starter interrupts, not ignition interrupts. The payment reminder system reminds consumers when their payments are due so they can stay current on their payments. Studies have shown that the devices significantly reduce the likelihood of default and repossession for consumers, thus reducing those risks while helping the consumer.

Devices also incentivize consumers to work with their creditors on payment plans even if they find themselves in a difficult position making payments. Even when the payments are overdue, consumers are still allowed to use emergency codes, so they are never stuck in a sticky situation where they cannot get out. Best practices include providing an emergency code to allow the driver to restart the vehicle in the event of an emergency, and those vary based on what the manufacturer has. Furthermore, many of these devices have additional features which provide theft prevention and stolen vehicle recovery services. These services can help lower the consumers' insurance premiums.

Regarding the use of the technology, PATA firmly believes that it provides a significant amount of consumer benefits. In addition to allowing the consumer the opportunity for a lower interest rate for a vehicle equipped with the devices, the successful completion of a sale or lease contract will help restore the customer's credit history and may improve his or her credit scores, allowing for greater credit opportunities. In the event of a default, these devices help reduce the cost of repossession, which are ultimately passed on to the defaulting consumer. These devices were developed to help the consumers and the creditors. We believe they can be a useful tool to help get consumers back on their feet.

John Sande IV:
I am going to go over the amendment (Exhibit C) and explain the legal points of the bill. The starting point in our analysis is whether the proposed legislation is needed. We support our amendment because it provides needed regulation regarding the use of payment assurance devices in our state. These devices already exist and are being used on our roads today with no requirements in our laws that they be disclosed to consumers or that they maintain minimum safety standards. The amendment you have before you was in large part based on conversations with Mr. Wulz of the Legal Aid Center of Southern Nevada. We worked through many of the issues and one more that you will hear about. I will explain some of the things we came up with.

When used correctly, these devices provide tremendous value to the parties of a motor vehicle transaction. The PATA wants to ensure that, when used in our state, payment assurance devices are used properly. Our amendment will ensure that consumers are informed of the devices and ensure proper protections are provided to them.

Turning to the amendment, it requires a lender to provide a written disclosure to the consumer before the device can be installed on a motor vehicle. The cost of the device is incurred by either the dealer or lender and cannot be passed on to the consumer. The disclosure must contain, at a minimum, six provisions:

1. Notice that the vehicle is being equipped with a starter interrupt device.
2. Notice that the use of the device is restricted to past-due payments or other nonpayment defaults under the retail installment contract.
3. The name, address, and toll-free number of the lender for direct communications with the lender.
4. A statement that the consumer shall receive at least 48 hours' notice before the device can be activated.
5. A statement that in the event of an emergency, the consumer will have the ability to access the vehicle for a period of not less than 24 hours.

Once these disclosures are made, the dealer must obtain the written consent of the consumer before continuing with the transaction. The consumer has every right to refuse the purchase of the vehicle if he or she is uncomfortable with the device. In addition to requiring the dealer or lender to secure the consumer's permission to install the device, the remainder of the amended bill provides additional protections for the consumer to ensure the device is properly used.

First, no device will be permitted in the state if it disables a motor vehicle while the engine is running. These devices interrupt the starter from engaging and do not disable a running motor. We could not agree more that a device should never be able to disable a motor. If there is a manufacturer designing such a device, they are endangering public safety and should be subject to appropriate punishment.

Second, the starter interrupt technology is prohibited from providing an audible warning that lasts longer than 20 seconds. The intent of an audible warning is to provide a reminder to consumers and not to annoy or harass them. We agree that a reminder is easily provided within 20 seconds.

Third, the starter interrupt technology cannot be initiated unless over ten days or five, depending on the reason for default, have elapsed since the default or breach of the retail installment contract. A motor vehicle cannot be disabled until the consumer has failed to make a payment when it is due and over ten days have passed without the consumer attempting to come current on the loan.

I do not wish to speak for Mr. Sasser and Mr. Wulz, but I believe this is their main concern regarding the bill and gets to the heart of the use of the device. The device's best function is to promote a communication between the consumer and the lender. It is not just a repossession device. With the device, a lender is capable of taking action short of repossession after default of an auto loan. Many times, it is not until after the disablement that a customer contacts the lender. If the consumer contacts the lender, the two parties can work out a payment plan, and the vehicle can be activated with a click of a switch.

Perhaps some data is beneficial to support this claim. One of the members of the PATA conducted research in 2007 using data from members of the National Independent Automobile Dealers Association covering 50,000 motor vehicle purchases. The delinquency rate for loans when a payment assurance device was not used was 27.21 percent. This means that when vehicles are not equipped with a payment assurance device, only 72.79 percent, or approximately three-quarters of the loan portfolio, was current. In other words, repossession companies were doing really well. Astonishingly, the delinquency rate of the loan portfolio reduces to 5 percent when a payment assurance device is used. This means that 95 percent of the loans being serviced by companies using the device are current; or, stated another way, 95 percent of consumers have the freedom of mobility and are not in threat of losing that freedom. On the other hand, in the event a lender must wait 30 days after default to take any action on the loan, the lender will likely choose

repossession rather than wait and hope the consumer calls to make payment arrangements. This benefits no one, and the consumer can add repossession costs to the amounts owed to the lender. We sincerely believe, and the statistics show, that allowing lenders to use the device as designed reduces the number of repossessions. This benefits everyone.

Finally, this bill makes it an unfair trade practice to violate any of the provisions of the legislation. This provides teeth to the regulations and permits the state to take action for violators of the law.

Hopefully, you agree that this is needed legislation. New technologies such as this create opportunities for many people. Without this device, many individuals could not access the credit necessary to purchase a safe and reliable vehicle to get them to work or pick up their children. This device provides additional security to a lender to allow them to underwrite loans to individuals with poor credit. Nothing in the legislation will force anyone to agree to have the device installed. It is an option for some who are willing to take it, and when they do take it, this legislation will ensure they are protected.

That is our portion of the bill. The Nevada Franchised Auto Dealers Association has an amendment as well that relates to this (Exhibit C). The Chairman asked that I explain it. This portion involves the single document rule that is currently in *Nevada Revised Statutes* (NRS) 97.165. It says that, when extending a retail installment loan, the entire agreement must be contained in a single document. That applies to all retail installment loans, not just those for motor vehicles. In the motor vehicle context, that can be burdensome. Under federal law, odometer statements have to be provided and there are other car service or warranty contracts that need to be included. A number of disclosures need to be made. If you have purchased a vehicle recently, it is likely you have had to sign a number of documents.

We would like to clarify that the single document rule applies to the retail installment contract and the financing terms of the motor vehicle. The dealers do not wish to change the retail installment contract at all—it will still be regulated by the Division of Financial Institutions, Department of Business and Industry. They just want the law to recognize that, in association with a vehicle purchase, there are multiple documents. I do not mean to speak for them, but I did want to at least present that piece so that when they testify, you will have an idea of what they will be discussing.

At this point, I would like to turn it over to a lender who has successfully used the payment assurance devices. He will explain the benefits they have seen with their customers.

Rogelio Martinez, Manager, United Finance Company, Reno, Nevada:
We are a finance company that has been using Payment Guardian systems for at least nine years. Our main intent for the unit is for communication purposes. We believe in establishing and having good communication with our customers through the life of the loan. At the initial contact, it is fully disclosed that this contract is being financed with the condition that a GPS unit is being installed. It is an optional feature. A lot of times the consumer will have some opposition to it, but we believe that by sitting down with the consumer and explaining the benefits and the reason behind it, we can create a better awareness and understanding of why we are doing this. We disclose that the device is installed and, in the event of a default on the account and we are not notified, we will set up a warning to remind the customer to give us a call so we can make arrangements. We let them know that if we do disable the unit or set the warning, it is because we have exhausted all the other options of calling the person's cell phone, work phone, or other numbers that have been provided.

The other benefit that the customer is aware of right from the beginning is that, in the event that the vehicle is stolen, or somebody has the vehicle without consent, the customer has the option of giving us a call so we can locate the vehicle. We also let them know that we require strict approval from the customer—no one else can call and inquire as to location of the vehicle. The customer has to give consent to track the car. If the police department were to call without the customer's consent, we would not release it. We keep the customer aware throughout the use of these units. When a customer does call us because the vehicle was turned off, we immediately establish or update any phone numbers, establish an arrangement, and turn on the car. We do not use it to keep customers in a hostile situation. Even when we do turn off the vehicle, we make sure that the vehicle is at the customer's residence or place of employment that is associated with the agreement. We do not want to turn off a vehicle and expose the customer to any additional fees where the vehicle may be impounded or picked up, making the situation worse.

Chairman Kirner:
Because of time constraints today, we will be using the three-minute timer for testimony.

Assemblyman Hansen:
When I set up payment plans in which payments can be automatically withdrawn from my account, I typically get a substantially better interest rate on my loans. Is that also true with the use of these devices? Because this is voluntary, do you offer better rates because of the extra security? Have you

seen an overall better credit rating with other states who use this? You go from 27 percent default to 5 percent default when these devices are used. I assume that could be reflected in the interest rate.

Corinne Kirkendall:
Yes, the consumer typically does get a better interest rate because they are using the device. That is one of the benefits of the device. We have seen that in other states. They have taken a look at what interest rates they can get and, if there is a maximum interest rate, they get a significant decrease for consumers using these devices. Typically, if a customer says they do not want the device and they go down the street to another dealer, they are going to pay a much higher interest rate because the devices are lowering the default rate. They are giving that piece back to the consumer.

Assemblywoman Neal:
I had a question on section 1, on page 2, line 26, regarding the nature of defaults or breaches. Please give me an example of breaches that would occur that are not defaults, that would allow you to use the technology. What triggers the ten-day period?

John Sande IV:
Typically, the breach would be nonpayment, but you could also see other types of breaches. For example, if insurance was not maintained on the vehicle, that would shift to a nonpayment breach and would allow for the use of the device within five days pursuant to our proposed amendment.

Assemblywoman Neal:
It says in section 7, on page 3, line 42, that a financer means any "successor in interest to such a secured party or lessor." If somebody is not paying on their car, what rights does a successor in interest have if it is a breach in insurance coverage? There are limited circumstances in which a person has rights. They are diffused once they get down the line. What triggers their ability to access or repossess the vehicle? It says a "financer" can be a successor in interest. Who would also have that repossession right?

John Sande IV:
In a lot of financing arrangements, a dealer will make the initial loan. They have a separate finance company that will finance the loan and then, from time to time, those loans will be sold to another financer who is going to service that loan. That would be the successor in interest. To put names to it, let us assume ABC Finance Company makes the initial loan on the vehicle. It enters into the retail installment contract with the purchaser, and a year later that

financer sells that loan to Toyota Financial Services or another company. That successor in interest would maintain all the rights that the original lender had.

Assemblyman Ohrenschall:
In the original bill, section 1, subsection 1, paragraph (a), subparagraph (3), sub-subparagraph (I) says, "Electronic tracking technology may be used by the financer only to ensure that the electronic technology is operating properly." I have to imagine that the data collected would be pretty valuable to the person's insurance company, such as whether he or she drives in neighborhoods where there are a lot of car thefts or accidents. Are you saying that where the person drives or hangs out is not anything that could be sold in terms of data mining? I want to make sure the protections for the consumer are there.

Corinne Kirkendall:
We do not sell the data to third parties. The manufacturer has it because we house the software that the dealers and lenders are using. The dealers and lenders are not selling that off to other people. That is being held inside, and they have controls and written policies on maintaining and controlling that data.

Assemblyman Ohrenschall:
It is not something that you hope to do with this bill?

Corinne Kirkendall:
That is correct.

Assemblywoman Bustamante Adams:
My question is for Mr. Martinez. Tell me about your customer base. Who is the typical customer/user? Could you share some demographics—men, women, minorities, percentages? You said that you exhaust all of the options before you get to this point. Is that a written policy? Is that a universal policy with all of the lenders? Is that something that you create and it varies from entity to entity?

Rogelio Martinez:
We do our own in-house collecting. From what I understand, anyone who does their own in-house collecting does not always abide by collecting practices, but United Finance Company abides by those rules. Every time we have a new collector in place, we have it set up that if the account goes five days past due, we send out a five-day reminder notice. The GPS, or conversations about turning off a warning, setting up a warning, or disabling it, does not even come into play at least until the account is 60 days past due. Then we start having these conversations. Even so, we look at the notes, find out what activity has been done, what notices have been sent, what numbers have been called,

whether we have called the reference sheet or anybody they have listed for immediate contact, for emergencies, and so on. We review these notes before we turn off the units.

As I mentioned, before we disable these vehicles, it is important for us to know where the unit is. If it is at the home or workplace, then we disable it. If it is not in a place that we are aware of, according to our notes or our history with the customer, we do not disable it. We would rather just have the unit active, set the warning, and keep in touch with the customer. Eventually we will turn it off and pick up our unit if we have not had any notification from the customer. We can turn off the vehicle, or attempt to call the customer mid-month, but by the end of the month, if there has not been an attempt by the customer to communicate with us, we pick up the vehicle.

Assemblywoman Bustamante Adams:
Who holds you accountable? You cannot go from step one to step ten, right? If you do, who holds you accountable if you are an in-house collecting entity?

Rogelio Martinez:
The company has internal auditors and controllers. In our branch manual, we have the same laws that we follow according to the debt collecting practices. We do not sell any of our accounts, but we at United Finance do believe in following these rules as if we were.

Assemblywoman Bustamante Adams:
What are your customer demographics? Who is a typical customer?

Rogelio Martinez:
It is anyone who has any repossessions in the past; who has lost his or her home or autos for any unforeseen or financial hardships. Our customers are people who are coming out of a bankruptcy or who are looking to establish credit again. When they come to us, they come to us with a need to establish credit again. Essentially, when we sit down with customers, we explain the importance of honesty. We figure out their income and fully disclose what they qualify for, because if their intent is to establish good credit, we need to help them figure out a game plan from the beginning. That is where we also discuss the units.

Assemblywoman Bustamante Adams:
Do you have the demographics of your customers in general?

Rogelio Martinez:
I do not have that in writing or with me. We lend to the general public. We are not score-driven. We do business with all types of people looking to get into the credit world.

Assemblyman Paul Anderson:
Mr. Martinez, I know you outlined your business practices, but I do not see any of that in this bill. Obviously you want to keep your clients happy and extend beyond what this bill is asking. I have a couple of questions on the technology side. About reactivation for an emergency, is there any connection to the provider that has to happen, or is that a direct connection to the car itself?

Corinne Kirkendall:
They do not need to reach out to their provider. They can reach out directly to the finance company or a dealership to use their emergency code. Some of them have emergency codes inside the vehicle that they can use, and they do not need to reach out to anybody.

Assemblyman Paul Anderson:
Is this something I punch in? Or is it a clicker that I can use?

Corinne Kirkendall:
For example, PassTime has a remote that goes in the glove box. They can pull it out and push "9" six times, and that will restart the vehicle for 24 hours.

Assemblyman Paul Anderson:
The device itself has a cellular connection to the provider, but I do not need to have that connection to restart my car. Is that correct?

Corinne Kirkendall:
That is correct.

Assemblyman Paul Anderson:
Do I have to call the provider to get the code, or is that given to me at the time of the purchase?

Corinne Kirkendall:
This device is given at the time of purchase. There are other devices. At PATA, there are different devices and different policies for device manufactures. Not everybody has a remote. Some people have a 24-hour call center that you can call, and they will send a code to the vehicle.

Assemblyman Paul Anderson:
That does not help me if I do not have a cellular signal.

Corinne Kirkendall:
That is correct, but the device will also not shut down unless you are in an area with a good cell signal. If you are in a good cellular area and you get shut down, you will also be able to restore it.

Assemblyman Paul Anderson:
I know these devices are out there already; they are already being used. Is there anything in this bill that changes the way they are being used today?

John Sande IV:
I do not know how the industry is using the devices today. The issue that we addressed was regarding when the device can be activated. The retail installment contract, to my knowledge, reads that a breach or default of the retail installment agreement is failure to pay for over 30 days or if the lender believes the collateral to be substantially impaired. That is a fuzzy area, so I am not sure how that is being interpreted or how it is being used. I will say that the retail installment contract which is promulgated by the Commissioner of Financial Institutions says that a monetary default occurs 30 days after the money is owed.

Assemblyman Ellison:
Is that device that you said was in the glove box bolted down, or can someone take it out and throw it away?

Corinne Kirkendall:
The device is installed and is tied into the vehicle, so it is not shaking around and rattling. It is hard-wired in. You can unplug it. You could easily unplug it, but you will lose your ground connection, and the car will no longer work, similar to being shut down. Anybody can uninstall it who can install it. It is a fairly simple installation, but it is built into the contract that removing the device is a violation of the contract.

Assemblyman Ellison:
You were talking about repossession. You give people a warning after five days, and then after ten days you might shut it off. Does your policy change on how you repossess the car? You have GPS tracking on it. If they have not paid in 30 days and it looks like they will not pay, you use GPS to locate the car and go pick it up. Can you respond to that?

John Sande IV:
That is correct. This bill will not change the method for physical repossession of the vehicle.

Assemblyman Ellison:
For the record, is this all voluntary?

John Sande IV:
Yes, it is.

Assemblywoman Carlton:
These are subprime loans. These are people who cannot get loans from other places. You are probably their provider of last resort. What kind of credit range are we talking about? What are the interest rates and terms of the loan? It seems that we are giving a loan to someone who may be set up to fail and then take the car back. I want to understand those components. If you are going to hold someone's bankruptcy and their home against them in a foreclosure, that just opens up a huge market for you in this state.

John Sande IV:
From my understanding, these loans are made to people who have a 680 or lower FICO credit score. They are subprime and likely are the lender of last resort. The people are probably not going to be able to go to another lender that would offer them terms because it is too much of a risk, especially with the high cost of repossession.

Rogelio Martinez:
We use a debt-to-income ratio formula for every application that we receive. It is not to exceed 50 percent of total debt to income, including the proposed payment. Even so, the rate is not to exceed 20 percent.

Assemblywoman Carlton:
I need to stop you right there, because you just said 50 percent of their income for their car payment.

Rogelio Martinez:
No. It is not to exceed 50 percent of total debt to income. Their car payment is not to exceed 20 percent of their net income. If a person only has $1,000 of net income, the car payment cannot exceed $200 a month, and it has to be under the 50 percent debt-to-income ratio. If it exceeds those amounts, we do not grant the loan. Any consumer can come in and ask for $10,000 or $15,000, but in reality, his or her income is only an average of $1,300

a month. We have to guide ourselves based on what their capacity is to repay the debt. We have to consider total rent and other installment loans too.

Assemblywoman Carlton:
Does that include the interest rate?

Rogelio Martinez:
The standard rate that we offer is 30 percent annual percentage rate (APR).

Assemblywoman Carlton:
We are giving cars away for 2 percent now, and you are charging 30 percent.

Rogelio Martinez:
Yes. The interest we offer is 30 percent. The APRs vary depending on whether it is purchase or nonpurchase. If someone were to come in and try to consolidate some bills or use money against the car title that they own already, we would consider those nonpurchase interest rates or loans, which are not to exceed 34.99 percent APR. If someone is going to go to a dealership to obtain a vehicle, we will consider those purchase monies, and the APRs go up to 39.99 percent. The average APR on a contract retail installment is 29.95 percent.

Assemblywoman Carlton:
That is if you put this in your car; otherwise it would be more.

Rogelio Martinez:
That is correct.

Assemblywoman Carlton:
We need a usury law in this state.

Assemblywoman Kirkpatrick:
What I did not see in the bill was the notice. You talked earlier about when people transfer loans and the terms stay in place. I do not see anything where it says how that notice is provided. You brought up the point about signing a lot of papers; that would be my concern. People might think they could sign something and that they will be notified by email or phone. There are a lot of ways to be notified.

Also, it does not seem that the purpose of this is to repossess the car. Is this a bully tactic? If you were just going to repossess cars, there would be a simpler way to do it because it is expensive. What is the intent of having this? Is it to remind them on a regular basis that if you do not pay, here is what

we expect? Is there a safety precaution so it does not stop on the roads? It has to be on the side of the road when it stops. Is that correct?

John Sande IV:
Regarding the notice, we worked with the Legal Aid Center of Southern Nevada last session. If there are ways to make the notice provisions stronger, we are willing to discuss those. It is included with the transaction. The purchase of a motor vehicle is a main event in people's lives, and there is a lot of paperwork to go through. We do not want to unnecessarily add to that, but we do feel that it is important that if somebody is going to have this on their vehicle that they be notified of what it is and how it operates. Regarding the remote, the interrupter device uses cellular power, so if you are out of cellular service, it will not work. If you were to go to the mall or someplace where you could be towed, they do allow for a 24-hour reactivation period, so you get that no questions asked. If you need to take the car someplace else and make it safe, you can do that.

As for the intent of the device, it is a reminder. It prompts someone to call the creditor. As you have heard today, there is nothing that can be done if the debtor ignores the calls. There is a lot that can be done, short of being current, that a lender can agree to in order to allow somebody to stay in their car. That is reflected in the statistics. When these devices are being used properly, the deficiencies and delinquencies go down substantially. If we use these devices correctly, they are a value to a number of people who would not have the opportunity to purchase a vehicle. To Assemblyman Ellison's point, they are voluntary. You can choose to walk away from the transaction. That is why the notice is important at the front end of the discussion.

Assemblywoman Diaz:
Does the amendment being proposed strike all of the previous language of the bill, or is it a companion to the original bill?

John Sande IV:
It is intended to strike out the entire bill, and we need to work with the Legislative Counsel Bureau (LCB) to tailor it to Nevada law. It is in a format now that gives you the intent of where we are trying to get to. We will work with LCB to make sure that we put it into a format that makes sense. We will do that in conjunction with Legal Aid.

Assemblywoman Diaz:
What if I park my car somewhere, you disable my vehicle, I am late on my payment, and my car gets towed because I cannot turn my vehicle back on. In order to get my vehicle back from the tow truck company, it would include

the cost of the tow plus the late payment. Does that make sense? Is that what is best for the consumer?

John Sande IV:
That is the importance of the 24-hour ability to use the vehicle. That was something we worked on with Legal Aid last session, because that provision was not included in the original bill. It was brought to our attention, and it makes sense. If you are in a place where you need to have immediate access, that car can be moved to a safer location.

Assemblyman O'Neill:
How many other states are utilizing this procedure? Have they had any negative incidents?

Corinne Kirkendall:
All of the other states in the United States are using the devices and are following the best practices voluntarily. We are working with many states to get that built into their laws, as well, and I think there are seven states that we are working with to include Mr. Sande's proposal. We want everyone to use the devices responsibly and for consumers to understand the agreements, and that there are no incidents of hurting the consumer.

Assemblyman Nelson:
Looking at the original bill, it says one of the provisions is that the debtor or lessee may cancel the agreement authorizing the use of electronic tracking technology at any time during the term of the financing contract without affecting the sale or lease of the motor vehicle. Then in the amendment it says that the consumer is permitted to cancel the optional service at any point without affecting the retail installment contract, loan, or lease. Does that mean that during the middle of the contract the borrower or driver could say he or she wants out of this? If so, what would be the result? Would you repossess the car?

John Sande IV:
What we were trying to get at, and where we had some confusion with LCB in drafting the original bill, was that portion. Believe it or not, there are some people who, when offered the service, even if not required to have it as a term of the financing, elect to have the device installed for theft deterrence or other reasons. We wanted to work in those situations where somebody voluntarily requests it, and it is not a term of the financing. The original language that we had says that the person can take the device off and it is not going to affect the retail installment contract because it was never a condition of the financing. For individuals who need the device as a condition of the loan, terminating the

use of the device would not be an option. That is only in a situation where someone voluntarily elects to have it installed. I appreciate the opportunity to clarify that.

Assemblywoman Seaman:
Most of the other states already have this in law. In the other states, is it also voluntary?

Corinne Kirkendall:
This is not in law right now. We are working in other states to get best practices built into their legislation. California is the only state that has mandated usage of the devices; everyone else follows best practices. That is why we are doing this. We want to get some best practices into place and to put some constraints around the best way to use the devices, to ensure that the devices are being used properly for the safety of the manufacturers, the dealers, the lenders, and the creditors who are using them, as well as for the consumers.

Assemblywoman Carlton:
Are these devices being used in Nevada right now, and who is using them?

John Sande IV:
They are currently unregulated and being used in 50 states. That is the purpose for us here today—to put some parameters and framework around their use. They are being used and they are on the roads in Nevada. It makes sense to put some best practices into the law.

Assemblywoman Carlton:
I am confused because we did have this bill last time. How long have they been used in Nevada?

John Sande IV:
I cannot answer that question. Mr. Martinez indicated that they have been in use since he has been with his company—six years at least.

Chairman Kirner:
If I understand the question and the response, what we are saying is that we are already using these in Nevada, and you would like to put into law some restrictions as to how they can be used. Is that correct?

John Sande IV:
There is currently nothing in the law prohibiting their use. Because they are being used, it protects the manufacturer, especially the good actors. If there

are people who are using these devices improperly, it provides protection when the use of these is regulated. That is why we are here.

Chairman Kirner:
With that, we will move forward to those who are in support of the bill. As a reminder, testimony will be on the three-minute timer.

John Sande III, representing Nevada Franchised Auto Dealers Association:
We are in support of the bill. As part of the amendment (Exhibit C), you will see that we reference *Nevada Revised Statutes* 97.299, which is the law that addresses contracts for sale for vehicles. We put that in there a long time ago so there would be only one contract of sale for a motor vehicle, so you would not have every lender coming up with their own form. This is a form that is done by the Commissioner of Financial Institutions. It is very short. The lender is required under the law to utilize that form in deciding whether or not to make a loan.

One of the problems is that this contract does not address a lot of issues regarding a motor vehicle. As you know, there are a lot of things out there that are not in this contract of sale. Therefore, what we want to do is say that a motor vehicle contract of sale does not have to be in a single document.

Don Hamrick, General Manager, Chapman Las Vegas Dodge:
Chapman Automotive Group operates two dealerships in southern Nevada. We have a total of 19 dealerships in Arizona and Nevada. I have been asked by the Nevada Franchised Auto Dealers Association to register our support for this amendment.

Regarding the single document rule, it is unrealistic to expect that all aspects of a vehicle purchase transaction can be reflected in one document. Every lender requires that a customer sign a document acknowledging they understand they have a requirement to maintain full coverage insurance on their vehicle at all times that the loan is in place. This document must travel with the contract in order for the loan to be funded. Even though the contract can reflect that a customer has elected to purchase a service contract or gap policy to protect in the event of a total loss situation, it cannot delineate the terms of those contracts. This creates confusion on the part of the consumer and a lack of clarity; changing that would benefit all parties. It is important that that be permitted. Without a separate agreement, there cannot be an arbitration agreement which benefits customers as well as dealers. Any claims could be subject to class action. There is exposure for dealers and no protections.

Many documents are required by federal mandate: odometer statements, buyer's guides for used vehicles. To comply with the single document rule would be to violate the federal rules. For those reasons, we support the single document amendment that we have here.

Chairman Kirner:
Are there others in support of this bill? [There were none.] We will move to those who are neutral.

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:
We are neutral as to the civil liberties' implications of the bill. I was not aware who was sponsoring this bill until about a half hour ago. I will talk to them about my concerns. The GPS location data is very sensitive information. It shares what meetings you attend, what familial relationships you have, or any other types of associations. We know companies like Google have provided information to the federal government agencies upon their request, such as the National Security Agency in the United States. What we would like to see in this bill is a specific provision that indicates that government agencies must provide a judicially signed warrant in order to obtain the GPS tracking information that is maintained by the manufacturers.

Chairman Kirner:
Seeing no others in neutral, all those who are opposed are welcome to testify at this time.

Jon Sasser, representing Washoe Legal Services; and Southern Nevada Senior Law Program:
With your permission, could we hear the testimony from Las Vegas first? Those are the people who actually work in the field and deal with this problem on a day-to-day basis.

Chairman Kirner:
Certainly, we will go to Las Vegas.

Rita Torres, Private Citizen, Las Vegas, Nevada:
I am appearing today as a concerned citizen, not only for the public in general, but because this affects me directly. [Ms. Torres read from prepared testimony (Exhibit D).] I was required to have an electronic disablement device on my vehicle, and I know the harms this device can inflict. I have not missed payment or been late, but my car has been shut off repeatedly. I will share with you a couple of examples.

I bought my van at the Chapman dealership in Las Vegas in August 2013. After I put $1,500 down and signed the contract to buy my van, the salesman came back and told me I had to sign another contract. It was not until this time that I learned there was going to be a security system put on my van, and the sale for the van would be void if I did not sign to have this put on my loan. He did not introduce it to me as "this is going to shut your vehicle down if you are late on payments." He did not explain anything like that to me. He said he knew my neighborhood. He had gone with me to get some paperwork, and said it will be a benefit because, living in your neighborhood, if your vehicle is stolen, they will be able to trace it and get it back to you quickly. After I told him I did not know if I wanted it, he said they would not be able to sell me the van unless I signed it. I signed it. I had been there for eight hours, and I was really tired.

After making all of my payments, never being late, having insurance for over a year, on August 31, 2014, I was driving home from work. [Continued reading from prepared testimony (Exhibit D).] It was about 10:45 p.m. on U.S. Route 95 and Decatur Boulevard. I felt my van shut off. My steering wheel locked up, I leaned on the steering wheel, trying to get over, and thank goodness there was not a lot of traffic. At first I thought I had run out of gas, but I still had a quarter of a tank, so I pulled over to the side of the road. I was texting and people were stopping asking if they could help me. I did not know who these people were. It kind of scared me a little bit. I was by myself. I called one of my daughters and said I did not know what was wrong with my van. She brought some gas to see if it would start after that. My daughter came, her friends came, and we all tried to figure out what was wrong with the vehicle, but we could not figure it out. We had to tow my van home. We were stranded for three hours by the side of the highway.

We finally got the van home at about 3 a.m. I was freaking out because that was my only way to get to work. It was parked in my garage for three days. One of my daughters posted on Facebook, "Can somebody help us? We cannot figure out what is wrong with my mom's van." One of the kids asked what was going on, and I explained everything that happened. He said it sounds like the security system to him. Then it clicked in my head that I had the device on the van. I called Michelle at the Chapman Auto Group (CAG) acceptance office where I make my payments and asked if my car had been disabled because there was nothing else wrong with the van. I had never had problems with it.

Chairman Kirner:
Ms. Torres, your three minutes are up. Can you please make your closing comments?

Rita Torres:
It shuts my van off when I am driving. It is a safety issue.

Chairman Kirner:
In the previous testimony, one of the things that they said was that these devices are being used in Nevada now, but they are not regulated. Your experience would be prohibited had we been able to regulate it. Would that have been of value to you?

Rita Torres:
Yes, it would have.

Sophia A. Medina, Consumer Rights Project, Legal Aid Center of Southern Nevada:
I have represented low-income consumers in cases involving fraud and deceptive trade practices in the sale of automobiles, to which NRS Chapter 97 and the proposed legislation apply. [Ms. Medina read from prepared testimony (Exhibit E); the exhibit included suggested amendments and three articles on auto loans and starter interrupt devices.] To put it simply, this bill shortens the time frame before dealers can take someone's vehicle via electronic repossession. Right now under Nevada statute, consumers have 10 days before they have to pay a late fee, and 30 days before their vehicle is repossessed. These terms have been in place since 1995 and were agreed upon by the Nevada Franchised Auto Dealers Association, the lenders, and the Division of Financial Institutions. Furthermore, the single document rule, NRS 97.165, protects consumers from frauds, and not just the issue with the disablement devices, but numerous consumer frauds that take place when dealers are allowed to put any piece of paper in front of a consumer to have them sign. That statute has been in place since 1965. For 50 years, that has remained unchanged and had benefitted the consumers of this state.

This bill is attempting to change both of these consumer protections. There is still a concern with safety, not only the safety of those whose vehicles this device is installed on, but also anyone who shares the road with them. We have already had two clients, on two separate occasions with two separate PassTime devices, whose vehicles have been shut down while they were driving, both at freeway speeds. This not only endangers the life of those driving the vehicles but everybody else on the road with them. Contrary to the theories presented, the reality of how these vehicles are presented to the consumers is drastically different. These devices are not negotiated for and are only disclosed after the purchase contract is signed and the down payment has been made. It is often misrepresented to the client that they must have this

device to "obtain financing" or that this device will help them if their vehicle is stolen, never disclosing that the device actually disables the vehicle.

Also, while this is being sold as a way to help those who are subject to subprime auto loans, there is nothing stopping these devices from being installed on every vehicle in Nevada, nor does it reduce the consumer's interest rate or provide any benefits to the consumer. The reason why it does not reduce the consumer's interest rate is because the retail installment contract is entered into with the dealer. It is not until after that contract is signed and the down payment has been paid that the dealer then sells the contract to a lender. The assignees then tell the dealer they do not want the contract unless the device is installed. This means that the contract has already been signed. Sometimes you do not get told that you have to have this device until days later.

Chairman Kirner:
You have used your three minutes. Please conclude your testimony. There are some questions from the Committee.

Sophia Medina:
While we have not had a chance to review the amendment, these issues that I discussed are our main concerns with this bill.

Assemblywoman Bustamante Adams:
Ms. Torres, you said in your statement that if you did not agree to have this device installed on your vehicle, your contract would be void. You also made a statement that the salesperson said he knew the neighborhood that you lived in. Are you saying that if you did not sign, you were not going to get the vehicle?

Rita Torres:
He did know my neighborhood because he drove with me when I went to get my checkbook to make my down payment.

Assemblywoman Bustamante Adams:
Do you feel it was because of your credit or because of the neighborhood you lived in that you had to get this device?

Rita Torres:
He told me it was because of the neighborhood. He did not mention anything about my credit.

Assemblywoman Fiore:
I did not hear this bill last session. I did not know it was around last session, but hearing it this session, I am glad to hear it because looking at it, I personally would amend this whole bill to ban these devices out of Nevada. This is not okay.

Assemblyman Nelson:
When your vehicle was stopped, were you under default under your contract? I thought you had said you made all of your car payments and all of your insurance payments. Is that correct?

Rita Torres:
Yes, I was on time with all of my payments. I just had to call—and I have had to do this numerous times when making my payment—to ask them to make sure that the pass code is not rejected so I do not get stuck anywhere. For two months, in January and February, they have had to call the 800 number and have the pass code updated so that I was able to drive my vehicle without it being shut down. I was not in default on any of my payments.

Assemblywoman Diaz:
How long did you have to go without your vehicle? You were not late, you were not in default, and you had your insurance in order. How many days did you have to go without your vehicle? What was the inconvenience to you?

Rita Torres:
After the original night that it happened, when I did not know what was wrong with my vehicle, I was down for three days. I had to find a way to work until I called them. Michelle at CAG gave me an 800 number to call. I called the number, and the woman said that something was wrong with my vehicle. I was not going to argue with her. I called Michelle back, and she said the other woman was not looking at the correct place in the computer and called her. Michelle called back and said to go start the vehicle. I started my vehicle, and have not had a problem since—except for every time I make my payment I have to ask them to make sure the pass code is not rejected so I do not get stuck somewhere.

Assemblyman Ohrenschall:
For either of the attorneys from Legal Aid in Las Vegas, is it your experience that when a consumer is offered this device, and the consumer turns it down, are they generally able to go forward without it?

Sophia Medina:
These are not optional devices. They are told that either they sign the contract for this device, which is an addendum to the original retail installment sales contract, or they do not get their vehicle. As I mentioned, this is sometimes several days after they have already taken their vehicle home and they have made their down payment. It has been my experience that the consumer receives no benefit from this. They are all looking at 30 percent interest rates or higher. This is not negotiated for, and it is not disclosed up front. This is something that when the dealer who sold them the car has a problem selling their contract to somebody else, they are suddenly required to have this in order to get their vehicle.

Assemblyman Ohrenschall:
That is your experience from clients here in Nevada. That is not from other jurisdictions.

Sophia Medina:
I have had at least seven clients with this issue, and they all have the same story.

Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada:
First, the bill as written, which will allow a car to be shut down after ten days, creates a second-class citizen. By the car sales contract in Nevada, you are not in default for nonpayment unless you are 30 days late. If you have one of these devices, though, they can shut down your car after ten days, so everyone will not be treated equally.

Second, the proponents said that these devices are bargained for and somebody can get a lower interest rate if they agree to the installation of the device. That has not been true in our experience. I would suggest if the bill is passed, the proponents ought not object to a disclosure form which would say these are the terms we are offering you without a device and here are the terms with the device. This should be a one-page disclosure form.

Third, we have heard that these devices are not designed to shut down a car while the motor is running. They are described as a starter interrupt device. Last session, I thought I heard one of the proponents say that these will not shut down a car while the engine is running when properly installed. If that is the case, then I would suggest that anyone who installs such a device ought to be trained, licensed, bonded, and insured. If these devices are being improperly installed in a way that allows a car to be shut down while it is moving, obviously that is a huge safety issue.

Fourth, as to whether the devices are optional, the bill as introduced says that the disclosure will be made after the consumer enters into a car sales contract. That is too late. The consumer will feel obligated to proceed with the purchase after they have signed a car sales contract. After that, it is too late to spring these new important terms on them.

Lastly, section 2 of the amendment which Mr. John Sande III testified about would fundamentally change consumer protections that have been in place for 50 years in car sales law. The one document rule in car sales has been there since 1965. I have used the one document rule so many times to protect consumers. Just a few weeks ago, we had a car dealer have someone sign another document, a separate document from the contract, that said if they defaulted and there was a deficiency, then the debt could not be discharged in bankruptcy.

Chairman Kirner:
If you could finalize your comments, sir.

Dan Wulz:
We have also seen car dealers provide a separate document which contradicts the terms of the contract required by law. For example, they will say you are not late after ten days; you are late after five days, and we can impose a $25 late charge when the contract required by law says the opposite. The one document rule is fundamental to consumer protections.

Jon Sasser:
Time goes on, and we have new technology. We have to deal with it when it comes into our state. In this instance, we do not have to take it. I would agree with Assemblywoman Fiore; that would be my first choice. Why do we want this in our state? Is it really worth it? Do the benefits outweigh the negatives? But if there is no appetite for that, I agree with Chairman Kirner. If you are going to have it in the state, it is here, and it is in violation of current laws. No, it is not against the law to have these, but we have a law saying that all of the terms of the contract must be in one document. Now we have a separate document. This is here in our state, but it is a violation of current law. Last session, Assembly Bill No. 187 of the 77th Session would have just wiped away the one document rule. It did not mention these devices. Then in further discussions, we started talking about how we could regulate them in our state.

It seems the price of admission for us to get the so-called benefit of this is that we have to give up the rules we already have in terms of when the loan defaults. For this group, just because they have different technology, they want to be able to declare a default a lot earlier. For this group, just because

they have a different technology, they want to abolish the one document rule that has a lot of consumer protections, as Mr. Wulz said, even with no documentation whatsoever that using the device actually loosens credit, gives people better credit terms, and without a number of disclosures. We would certainly be glad to work with Mr. Sande, as we did last session, to see if we can come forward with a bill that, if we are going to have these devices in our state, makes them safer for consumers and gives people more protection. I will be glad to do that if that is the will of the Committee.

Assemblyman Hansen:
I have been somewhat sensitive to this issue after learning some of the facts on it. Regarding the 30 percent interest rate that was mentioned, when you study all of the loan businesses and their clientele, it is quite interesting. The first group I can think of includes the people that, frankly, have behaved incredibly fiscally irresponsibly and have no options other than to go to a place like that. But the bigger group are typically single women with kids who are living paycheck to paycheck. It is a double-edged sword to me. On one hand, in my opinion, they are getting gouged, but they have nowhere else to turn and, in the absence of any usury laws, what do you do?

My question is, if we, in fact, were to apply a usury law, would these people be able to get any loans at all? And the usury law provisions in the Bible apply, in my opinion, to these kind of cases. I am very uncomfortable having these unlimited usury possibilities because I think some people are so incredibly desperate that they do not have anywhere else to turn. So in the absence of these types of people and these types of businesses, would these people really get any money, or any loans?

Jon Sasser:
People were getting loans before there were vehicle interruption devices, so I do not think they are the key that unlocks the door with regard to this bill. Would usury laws prevent them from getting cars? I do not know. When I first started practicing law, about every state had a 10 percent usury law. People got loans then for whatever reason. I do not know the answer to your broader question. Are there always going to be people who are subject to being preyed upon because of their economic situation? Yes. That is why we need to put some protections to help the best we can.

Assemblyman Hansen:
My question was very broad. But it is true. That is my concern when you have these kinds of open-ended deals. I do not have much sympathy for fiscally irresponsible people, but I can see someone who is in desperate circumstances being forced to go to these sorts of businesses. I will also say that, in my

freshman year, I brought up the idea of a usury law because I had been approached by a justice of the peace who said this was out of hand. You need to see what you can do. I was informed by a lobbyist for the loan industry that if we made that kind of a law, they would leave Nevada. It is not a simple solution.

Chairman Kirner:
It is a double-edged sword. Somebody needs a car to go to work and make a paycheck, but cannot get the car without the paycheck.

Assemblywoman Carlton:
If I had a dollar for every time I heard somebody was going to leave the state, we would balance the budget and would not need a revenue package. Mr. Sasser, what has been bothering me is they are breaking the single document rule right now, so by using these devices they are breaking the law. This bill would say, no, you are not breaking the law anymore; we are letting you get away with it. The way I look at it, this is one of those beg-for-forgiveness rather than ask-for-permission types of legislation. Would you agree?

Jon Sasser:
Yes. They are breaking the law by having these out as a separate document and adding to it.

Assemblywoman Seaman:
I have a statement. When we really went in and started with Senate Bill 321 with the lenders in the mortgage market, we did see lenders actually leave the state. I am a little apprehensive about saying we should ban these, because we could see the lenders stop lending. It is a double-edged sword. I wanted to put that statement on the record.

Chairman Kirner:
With that, I will ask the bill sponsors to come back up and get a last word prior to closing the hearing on this bill.

John Sande IV:
I think the testimony you heard today actually supports the fact that we do need to have regulations. Our state would be better off if we found a way to provide consumers protection. On the issues you heard today regarding notice, I am happy to have those conversations to find a way that we can disclose these to consumers so that they can make an educated choice when purchasing a vehicle. I think it is probably a violation of other law, perhaps related to

a yo-yo sale, if you are having somebody come back and fill these out after they have completed the transaction.

In regard to the single document rule, I do not think the applicability is actually there. My belief is my belief. The single document rule in my estimation is regarding the financing terms of the transaction. It is contained in a single document. The Commissioner of Financial Institutions has propagated that document, and it has been in use for decades now, as you have heard. However, that does not mean there could not be other disclosures, like an odometer statement. That is federally mandated. It has to be provided when you purchase a vehicle. Any dealer that does not provide that odometer statement violates the law by not providing it. You have inconsistencies there. I do not believe that the single document rule is to be read to say that when you purchase a vehicle, you walk out with a single piece of paper. There are a number of documents that correspond with that. The problem is that the U.S. Supreme Court has not decided that yet, so my opinion is my opinion. What this bill does recognize is that the disclosure that we want to provide to the consumer does not violate that law.

We look forward to working with the Legal Aid Center to find where we can strengthen the law and strengthen our amendment and, hopefully, we will have something good for the Committee to review.

Chairman Kirner:
We will close the hearing on A.B. 228. Because of the floor session, which is scheduled to begin momentarily, we will go into recess and reconvene upon conclusion of floor session. [Recess began at 1:22 p.m.]

[Meeting was reconvened at 3:02 p.m.].

We will begin the hearing on Assembly Bill 227.

Assembly Bill 227: Revises provisions governing the practice of medicine. (BDR 54-412)

Keith Lee, representing Board of Medical Examiners:
I am here to present Assembly Bill 227 which represents the biennial Board of Medical Examiner's cleanup language. We think this is mainly administerial in nature and not substantive, although I know there are some questions that you may have. We are here with Mr. Edward Cousineau who is the recently appointed Executive Director of the Board of Medical Examiners. Previously we distributed our talking points (Exhibit F) to the Committee. Those were posted on the Nevada Legislative Electronic Information System (NELIS) as was a

friendly amendment that we are proposing to our bill (Exhibit G) and which we can talk about at the appropriate time. It essentially cleans up a couple of bill drafting areas that we did not get done in the original bill.

There are two other amendments that we consider friendly. One will be proposed by Mr. Christensen (Exhibit H) that has to do with another licensure category. The hope is that as we develop the new medical school in Las Vegas, this provision that Mr. Christensen is bringing forward can be used as a tool to recruit physicians to come to teach at the university as well as practice in the clinic at the University itself. The other friendly amendment will be from Dr. Tracey Green of the Division of Public and Behavioral Health, Department of Health and Human Services. It makes the definition of "sentinel event" uniform throughout the statutes, including *Nevada Revised Statutes* (NRS) Chapter 630.

We will take your direction as to whether you wish Mr. Cousineau to talk through each section or, assuming you have had an opportunity to review the talking points we distributed, we are prepared to answer any questions that you may have.

Assemblywoman Neal:
I had a question on section 17 and section 26. I am trying to understand the language because it deals with the whistle-blower statute. I looked at the history of when a person can make a statement to a governmental agency and not be subject to discipline. It seems we are reversing it. In 2009 that language was added as a protection for nurses who, in a situation, could inform on another nurse. In section 17, on page 19, lines 19-24, it says, "A physician who discloses information to or cooperates with a governmental entity," but on line 10 it is an exception, so you flipped it. That is my understanding. Now if a physician discloses information or cooperates with a governmental entity, they are subject to discipline.

Edward O. Cousineau, Executive Director, Board of Medical Examiners:
For clarity there, our intent is to not allow a licensee who goes to another government entity and discloses their potential misconduct of the Medical Practice Act, [NRS Chapter 630] to escape prosecution. Basically, your self-reporting of your own wrongdoing does not insulate you from being prosecuted.

Assemblywoman Neal:
This exact language was presented in 2009, and it did the reverse of what this bill is doing. That is why I am confused. Why are we now opening the door when before we were trying to protect the person in situations? In 2009, according to the minutes, the background to the bill was related to a hepatitis C

outbreak, and the nurses wanted to be able to inform on another nurse or another person, or report it to another agency and not be hurt by doing so. Line 10 of page 19 says, "Except as otherwise provided in subsection 4, the Board shall not commence an investigation, impose any disciplinary action or take any other adverse action against a physician for," and I am assuming subsection 4 is the exclusion. I know what you just said; I just do not understand why. To me that is a reversal. You are going to hurt physicians if they report a violation of law, rule, or regulation.

Edward Cousineau:
Using your example of the hepatitis C outbreak, if one of the licensees had contacted either the Board or law enforcement subsequent to the adoption of this language, and had indicated to the Board that indeed he or she had engaged in unsafe practices, just because the individual came to us or law enforcement, that would not insulate the Board from prosecuting that licensee for his or her own inappropriate conduct, not others that might be reported. It would not discourage a licensee from reporting or the protections would exist for reporting an impropriety by another licensee that he or she may work with, but the actual licensee who engaged in the improper conduct cannot use this as a shield to claim that the Board has no prosecutorial authority. We have had that challenged in the last several years by a few attorneys claiming the intent was not necessarily as we believe it is. This is just language to confirm that the licensee's own misconduct cannot be defended because they reported in advance of the Board either learning of it or investigating it.

Chairman Kirner:
So, this only applies to physicians disclosing their own bad acts.

Edward Cousineau:
Yes, sir.

Chairman Kirner:
It does not apply to a physician reporting the bad acts of another.

Edward Cousineau:
No, sir. I know the language is a bit confusing. I apologize, but I did work with Mr. Mundy, and he thought this was the best language in order to accomplish what we desire.

Keith Lee:
Before you is an amendment (Exhibit G) that was posted on NELIS, and copies were provided at the door. It purports to amend our own bill and, as I indicated, it is to adjust what did not make it into the original bill.

The first three suggested amendments are adding "or successor organizations" after the word "Canada" in four different sections. The underlying provision in the bill is to identify correctly and appropriately those Canadian entities that would fit into that particular category. We thought that every time they change a name or an organization drops in, or adds in, we do not have to come back; we just add "or successor organizations."

With respect to the second change, we want to make it clear throughout Chapter 630 of *Nevada Revised Statutes* on the date of the expiration of the license. We are under a biennial renewal, and we want to change the expiration of the license to fit with the fiscal year of June 30, so it would expire June 30, and the new license would commence July 1 for a two-year period expiring on June 30 of the second year following the licensure or the renewal of the licensure. It is just some cleanup language.

Chairman Kirner:
Are you prepared to touch on Mr. Christensen's amendment?

Keith Lee:
I can comment on the amendment (Exhibit H). I do not have it in front of me. It is a friendly amendment. It changes a statute that we had that we put in place in 2007 that allowed us to issue a special purpose license to a graduate of a foreign medical school who wishes to come to Nevada and teach and/or participate in clinics related to a teaching institution. As indicated, we were approached by Mr. Christensen on behalf of his clients and by Dean Barbara Atkinson from the proposed school of medicine at the University of Nevada, Las Vegas (UNLV) to ask if we would agree to change that language to open it up a little more broadly and expand it to beyond graduates of foreign medical schools or graduates of any school that are certified schools that may apply for a special purpose license in order to teach. It would apply to the University of Nevada School of Medicine, the new UNLV medical school, or any clinic, institution, or teaching hospital related to those. That is the amendment, which we consider a friendly amendment. We hope it adds one more arrow to the quiver of recruiting physicians to the state.

Assemblywoman Diaz:
I was wondering about the institutions that are listed for Canada. Why is it that we list three specific colleges? We name them specifically in the bill. I want to understand the logic behind naming those three.

Edward Cousineau;
Those are the three recognized accrediting bodies for Canada's postgraduate medical training. The language as written is not correct. We also wanted to add language of "or other successor organizations" (Exhibit G) because that is subject to change, but as of today those are the three bodies.

Assemblywoman Diaz:
Are they recognized by the United States, by Nevada, by Canada itself? Who is recognizing these institutions as accredited?

Edward Cousineau:
For individuals who receive Canadian postgraduate medical training, there are three different entities that recognize it and which we, as a state, recognize because they meet our standards. There would be similarities to the requirements for individuals who went to schools in the United States and received postgraduate training in the United States.

Assemblywoman Carlton:
The bill from 2007 was my bill. Mr. Lee, were you discussing the bill from 2007, the demonstration bill?

Keith Lee:
Assemblywoman Carlton, we were talking about the whistle-blower provisions that we put into law that allowed one practicing licensee to disclose misconduct by another licensee to a licensing board.

Assemblywoman Carlton:
I apologize; I did not make my question clear. The one you just mentioned was a friendly amendment where you wanted to allow medical teachers from inside the state to be able to use the demonstration provisions that we put in.

Keith Lee:
No, it is not our amendment. It was an amendment that was suggested by Chad Christensen on behalf of UNLV's new school of medicine. It does not deal with the demonstration issue at all. It deals with the ability of another avenue of licensure for a physician to come and be on the faculty of the medical school and to participate and practice medicine in an institution or clinic related to that school of medicine or a teaching hospital. It just adds to provisions that we put in regarding foreign students being able to come here and teach. It has nothing to do with the demonstration aspect of it. Mr. Christensen can speak far better to it than I.

Chad Christensen, representing Nevada Physicians Coalition for Academic Excellence:
Currently in Nevada, NRS 630.2645 allows for licensed certified physicians from outside the United States to come to Nevada to practice, research, and teach in our university system and does not allow the same for individuals from Georgia, New York, or Florida, for example. Our amendment simply opens it up to allow for American physicians certified to come here to Nevada to do the same thing that the foreign physicians would do.

Assemblywoman Carlton:
The public purpose behind that would be that if they are from here, they should have already qualified and have all the current educational values. Why would we open it up to them to not have to qualify like everyone else? The reason we did it for foreign medical graduates is because they may not have the exact same qualifications, but they have a certain expertise that they can share with the doctors in this country and educate them on special techniques. Why would we give American doctors an exemption?

Keith Lee:
I do not think we are giving them an exemption. We are just trying to add another arrow in the quiver of attracting physicians. This in no way lowers the standard for physicians who have graduated from an accredited university in the United States. It is just another arrow in the quiver. Quite frankly, they would probably look to be licensed under NRS 630.1605 or NRS 630.160 before being licensed under NRS 630.2645, but this might fit a particular category of physician that would otherwise meet the requirements that could come forward and be a member of the faculty of the medical school.

Assemblywoman Carlton:
Would they be allowed to practice in a clinical setting?

Keith Lee:
If it were connected to the institution in which he or she was teaching, then yes.

Assemblywoman Carlton:
Thank you. I will take another look because I would not want someone without the same qualifications practicing in a clinical setting here in the state. That is why we gave a very small exception to outside medical students.

Chairman Kirner:
My understanding is that this amendment is aimed at helping us as we move forward with the medical school in southern Nevada and, of course, it would

help the recruiting efforts of the medical school that already exists in northern Nevada.

Assemblywoman Bustamante Adams:
In section 4, on page 7, it says the licensee who does not engage in the practice of medicine for more than 24 months may be required to take an examination. You are changing it from 12 to 24 months, and I did see your notes. Could you please expand on that? Why is there a need to change that provision? How will the Board use discretion, because it says it "may" require the licensee to have to take the examination again.

Edward Cousineau:
It is to bring our 12-month clinical practice requirement up to the more reasonable standard of 24 months. Individuals who have not practiced clinical medicine for greater than a 24-month time frame potentially will have to agree to some kind of evaluation by the Board. This will take away the 12 months. It might have the unintended effect of encouraging some folks to come into the state who have been out of their practice. Oftentimes we see this in cases where, for example, a doctor gets pregnant and wants to take a year or two off to get the family off to a good start, and decides to get back into practice. It does not mean that her clinical skills have eroded, but we find if a physician has been out of practice for more than 12 months, we ask what they have been doing. If they have been active doing continuing medical education (CME) or some kind of work that would not require a test to determine their clinical competency, then we do not put them through that exercise now. This is making it a little bit less burdensome and recognizing how medical careers advance as they do and people take breaks, hopefully no more than 24 months in length, that will not require us then to consider some kind of separate evaluation or peer review.

Assemblywoman Neal:
I had a question on section 12, on page 15, lines 6 through 9. You have similar provisions in section 22. Regarding this testimony, you struck out "the examining physicians" and have "a person who conducts an examination of a physician on behalf of the Board or an investigative committee," and now whatever they get are no longer privileged communications. My question is, what was privileged before? What was not able to be seen? What are we now including or capturing to be seen in sections 12 and 22? They are two different things, and you are including a physicians assistant who acts on behalf of the Board.

Edward Cousineau:
To clarify, section 22 refers to the State Board of Osteopathic Medicine, and I cannot speak to their language. It is probably substantially the same, but I cannot speak on their behalf. In section 12, what we are doing here is, the language that currently exists only allowed for a physician to perform that examination as directed by the committee or the Board. We are expanding it now to allow beyond just physicians; for example, a psychologist or someone who has a Ph.D. may be able to perform a neuropsychological evaluation or other evaluation just as effectively as an actual medical doctor. What we are allowing is for people beyond physicians to perform these evaluations. The language that follows indicates that any of these evaluations performed by physicians or others are not privileged communications. That language existed before, as to the physicians who did the evaluations, that those evaluations were not privileged communications; now we are just encompassing the spectrum.

Assemblywoman Neal:
Is the investigative committee of the Board a new creation?

Edward Cousineau:
No, it is not.

Assemblywoman Neal:
What kinds of things do they review? I do not have legislative history, but I have the ability to go back and read everything from 2001, and I try to match every single piece of language in the bill so I can understand the conversation around it before I ask you the question. This was unclear. What kind of conversations or communications come into play with this investigative committee?

Edward Cousineau:
We have two investigative committees that work for the Board—one in the north, one in the south. Those committees are composed of two medical doctor members and one public member. Every complaint that comes to the Board goes through an investigative committee, whether it is ultimately closed, whether there is issued an internal letter of admonition, or whether there is ultimately a filing of a formal complaint. The types of matters where the investigative committee would order some kind of evaluation would be issues involving impairment, concerns about demeanor, or interface with other practitioners. These evaluations are an additional tool to assist the investigative committee in determining the appropriate process, as to whether to close the matter, call the individual in for an appearance, or proceed with a formal

administrative complaint against a licensee. It is just another tool that is used, but we want to expand the tool box to allow for non-M.D.s to perform these evaluations.

Assemblywoman Neal:
We were talking offline about "knowingly or willfully" and how you added the words in as cleanup, as in sections 9 and 10, but then you look at the total application of when a person is knowingly or willfully doing X, Y and Z. When do investigatory powers kick in? If I were a doctor walking through this process, how would I know which standard I am under in different situations? Also, if this bill passes, how do you pass the information on to the physicians?

Edward Cousineau:
As I explained, we want to marry up the language throughout to be consistent. They are held to both standards, not one standard, so it would be knowingly or willfully, assuming the language were to pass.

As far as how we get that information out to our licensees, we do a quarterly newsletter. After the legislative session has adjourned, we put out the information as to the changes approved in session that would impact our licensees. Ultimately, the physician is responsible to know what he or she is held to and the grounds for discipline. I know it has been found in various areas of NRS, and sometimes it may seem incongruent. However, speaking with the Committee Counsel, Matt Mundy, he thought these were appropriate changes and suggested we do it all at once, rather than in just a couple of areas where I would recommend. For the Committee's benefit, one of the motivations and impetus for the language change is that we had a couple of licensees who were ordered to provide medical records to the Board, and they refused to provide those records. We ultimately filed an administrative complaint against those doctors and, when we went to administrative hearing, the attorney for the doctors testified and indicated that he had advised his clients not to provide those medical records. Therefore, his clients had not violated statute; the language says willfully, and they had only knowingly violated them. We wanted to take out that exception in the law, and Mr. Mundy recommended that we put that throughout the Medical Practice Act.

Chairman Kirner:
Are there others wishing to testify in support? It appears we do not have a large number, so I am not going to put you on the clock.

Tracey D. Green, M.D., Chief Medical Officer, Division of Public and Behavioral Health, Department of Health and Human Services:
I am here today with a friendly amendment for A.B. 227. It is not a substantive amendment; it is cleanup language. In the 2011 Session, we clarified the definition of a "sentinel event" in NRS Chapter 439. It was not subsequently updated in NRS Chapter 630. In section 11, subsection 9, paragraph (d) of the bill, the term "sentinel event" is listed. We are requesting that that definition be aligned with the definition in NRS Chapter 439.

Chairman Kirner:
Are there any questions from the Committee? [There were none.] We will make sure that gets passed on to Mr. Mundy. Are there any who are opposed to A.B. 227?

Denise Selleck, Executive Director, Nevada Osteopathic Medical Association;
The section that I am concerned with is under NRS Chapter 633, the Osteopathic Practice Act. These changes are mirrored in NRS Chapter 630 as well. In section 23, subsection 2, the investigative committee of the Board is given 60 days—increased from 45 days to 60 days—after summary suspension to hold a hearing. Immediately following that, in section 23, subsection 3, it requires that if a physician has to have an examination of mental or physical or medical competency, it is shortened to 30 days. Our issue with that provision is that those examinations are held by third parties. They are professional organizations that measure medical competency, and our understanding is there are a very limited number of organizations that do this. I know that one of them is in Denver and one is in Wisconsin. This requires the physician to go to their facility to be examined, and then requires that the organization get the report back to the Board within 30 days. It says that the results must be obtained not later than 30 days. That really shortens a time period that the physician may have no control over.

Finally, we had the same questions that Assemblywoman Neal had on the wording on the cooperation section that is in section 26, subsection 3. It is not clearly written as to when the physician has immunity and when he or she does not. If they are whistle-blowing on a partner or another physician, although they may have some peripheral involvement, and they are not individually involved, they are not given any type of immunity.

Also, regarding the privileged communication section, which is in section 22, on page 26, line 15, these are medical or physical examinations. That means that this information is not privileged. We think there is better wording for that

section. In regard to these examinations, although the results might be reported to the Board, medical conditions in particular should not be public record. Those were our only questions, and we are available to help with any changes.

Assemblywoman Bustamante Adams:
In section 23, where you said the shortened time to 30 days may be problematic, what would be your recommendation?

Denise Selleck:
We think the 60 days is probably adequate. The Board can certainly hold a hearing in a shorter period of time if the results were made available. They would not have to take it to 60 days, but we think that should be an availability again because this is not a scheduling situation that the physician is necessarily in charge of.

Chairman Kirner:
So, that 60 days is the original or current language.

Denise Selleck:
Yes, it is.

Chairman Kirner:
Is the current language fine there?

Denise Selleck:
Yes.

Assemblywoman Neal:
On page 28, what is your opinion of line 3, where it changes "must" to "may" in terms of the Secretary of the Board recording in the minutes? What is the effect of that change? It is permissive.

Denise Selleck:
That brings up another question. Section 25, subsection 2 allows for email notification to the physician if he or she has consented to that. Our question is, if that consent is in a license package and 15 years later the physician is being given a suspension through email, is that email reliable? Email is not necessarily as reliable as certified mail. We think that it should be recorded that they were subpoenaed or that they were served and that information is made available to them. That is a due process issue.

Chairman Kirner:
With that, I will open up the hearing to those who are neutral.

Grayson Wilt, representing Nevada State Medical Association:
Our physicians are still reviewing this bill and the amendments and plan to provide testimony later.

Chairman Kirner:
I will invite Mr. Lee to come back up. You have heard the testimony today. Do you have anything to add as closing remarks?

Keith Lee:
Those provisions of the bill that Ms. Selleck spoke to are with respect to the osteopathic physicians in NRS Chapter 633. We did not have anything to do with those. They mirror the provisions in NRS Chapter 630, and those of you who have served on this Committee before know that there is an effort forward to have NRS Chapter 630 and NRS Chapter 633 mirror each other as much as possible, and that is why this language showed up in those various code sections with respect to NRS Chapter 633. Our only comment is that, if Ms. Selleck's objections have any weight, they should go to NRS Chapter 633.

Chairman Kirner:
What you are saying is that these adjustments that you have made in this bill actually mirror NRS Chapter 633?

Keith Lee:
I think for the most part they do. I did not review NRS Chapter 633. I was just concerned with our chapters. In recent history of this body, there have been attempts to make NRS Chapters 630 and 633 mirror each other as much as possible, given the different practice situations between the two types of physicians.

Chairman Kirner:
In view of the testimony heard today, we want to make sure Mr. Mundy actually does that.

Edward Cousineau:
I want to make something clear for the record. Ms. Selleck talked about the fact that these evaluations and the reports that come from them are not privileged communications. You need to understand that when we say not privileged, they can be shared with the Board and the investigative committee, but they are not public record because they are still part of an active and ongoing investigation. Investigations, pursuant to statute, are confidential until there is the initiation of formal disciplinary action. These evaluations would never be a matter of public record.

Chairman Kirner:
We will close the hearing on Assembly Bill 227 and open the hearing on Assembly Bill 179.

Assembly Bill 179: Revises provisions governing personal information. (BDR 52-756)

Assemblyman Edgar Flores, Assembly District No. 28:
I represent the northeast portion of Las Vegas. I have some of the hardest working constituents in Nevada. It is an honor to represent them. I am here to present Assembly Bill 179. I am going to give you some background information on *Nevada Revised Statutes* (NRS) Chapter 603A, which talks about data breach notification laws. Afterward, I will go into the purpose of that statute and some of the issues with it. I will then propose my amendment and conclude by talking about the good public policy of the bill and what it does not do.

I have provided a PowerPoint presentation (Exhibit I) on the topic in the Nevada Electronic Legislative Information System (NELIS). You have the bill in front of you, but I have an amendment (Exhibit J) that I am going to be working with. I do not want to confuse you because my presentation refers to the amendment rather than to the bill as it stands now. At the conclusion of my testimony, I will ask two experts who were instrumental in drafting NRS Chapter 603A in 2007 to come up. They were instrumental in drafting this language as well.

First of all, I would like to define what a data breach notification law is. NRS Chapter 603A only triggers if there is a data breach of either a business or a data collector. If there is a breach, the question is whether personal information was taken. Personal information has a very narrow, specific definition [slide 3, (Exhibit I)]. It includes your name in combination with your social security number; driver's license number; or account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to the person's financial account. What that means is, if someone, through a cybercrime, were able to breach the Legislative Counsel Bureau (LCB) and take anything that I just mentioned, LCB would have an obligation to notify everyone who was a victim of that crime as soon as possible. That is what this law does.

Here are the issues with it. If somebody were to steal a password along with your email, currently under state law they would not have to notify you of that; you would not have to be put on notice [slide 5, (Exhibit I)]. That is problematic. Another issue is, if someone were to steal your medical identification number, under state law they would not have to notify you of

that. The same is true with your driver authorization number. The intent of this bill is to expand that definition to include the three things I just mentioned. It goes to the public policy side of things. If there is a data breach, there is an obligation to put the public on notice. Data collectors in business, by the way, already primarily notify you when this happened. We just want to make it consistent throughout the state. That is the objective.

A data collector would be any government agency. There are a few more things that fall under that category, but a government agency and a business would have to do this. A data breach notification law serves a fundamental purpose when it comes to playing defense. The faster you are notified that you have been breached, the quicker you can change your passwords, cancel credit cards, et cetera. That is why this is important.

Nevada is recognized nationally through our data breach laws regarding how strongly we are pro-business. Other states have complex data breach laws and statutes that break down various sections regarding what will happen if you do not do something. We do not do that here. We just put a mandated obligation that you notify victims of a data breach, and if you do not do that, the remedy is, in essence, that you prove damages.

Previously, I mentioned the medical identification number was one of three things we want to add to the definition of personal information. Most health care providers are already compliant with the Health Insurance Portability and Accountability Act of 1996. That language that we are implementing into law is only bringing us into harmony with the federal law. If there are concerns of it being burdensome, most medical facilities are already doing this. We are just bringing state law to align with federal law.

If you look at slide 7 (Exhibit I), you can see the three things that we are adding highlighted in blue. Again, they are the driver authorization card number; a medical identification number or health insurance identification number; and a user name, unique identifier, or email address, in combination with a password, access code, or security question and answer that would permit access to an online account.

The implementation of this will not be overly burdensome. Most data collectors have safeguards in place to protect what is already in statute. They have firewalls and software programs to protect this information. By adding these elements, they will only have to do a settings change. They do not need to buy a new set of tools and equipment and programs to implement this; it is more a commitment of time [slide 8, (Exhibit I)]. Someone can sit in their information

technology department and make these changes so the other elements are protected.

It is also important that we understand what this bill does not do. It does not alter the requirement for a reasonable measures standard to protect personal information [slide 10, (Exhibit I)]. We are not touching the standards in place right now. This bill does not change the current remedies. There is not a concern that we will open the floodgates for lawsuits. This bill does not create new sanctions or penalties for cybercriminals. It is already against the law to breach a data system. The issue is that most of the cybercriminals operate outside of our country's borders. The reason that is important is that the way we fix data breaching and approach it in a defensive manner and attack it aggressively is not by having severe punishments, because we cannot go after these criminals. Therefore, we are left with having to implement reasonable safeguards to protect the data. Ultimately, that is all we can do because it is so difficult.

As a final note, I would like to add that these criminal enterprises that attack cybersecurity work in pockets. It is a division of labor. By having this type of law, we are putting people on notice before that information can be used against them. If my information is taken, with a data breach law, I will be put on notice. Typically, the theft of someone's identity might take weeks. But with this law, I will be put on notice prior to someone being able to take advantage of that breach. That is ultimately what we are trying to do here.

[Copies of the *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)* were distributed to Committee members and submitted to NELIS (Exhibit K).]

James Elste, Chief Executive Officer and Founder, Inqiri.com:
I am here to support A.B. 179 as a subject matter expert in information security and privacy. I want to begin my testimony (Exhibit L) by highlighting the work of Nevada's Technological Crime Advisory Board (TCAB) Technical Privacy Subcommittee. The Privacy Subcommittee was established in 2013 and is, to the best of my knowledge, the only body at a state level that is composed of members of academia, state government, and industry that has the mandate to examine privacy issues affecting the citizens of Nevada and to make recommendations on ways to address these issues.

The minutes of the TCAB Technical Privacy Subcommittee are public record and are available on the Office of the Attorney General's website. In our meetings we discuss privacy-related issues such as drone surveillance, license plate readers, automobile black box technology, smart phone kill switches, personally

identifiable information (PII), and identity theft. All of these issues will undoubtedly find their way into the legislative process in future sessions. Both Mr. Victor and I were appointed by the Attorney General and have served on this panel since its inception. While we are not representing the Privacy Subcommittee today, I have been authorized to convey to you that the issues related to definition of personal information and A.B. 179 have been discussed by the Privacy Subcommittee.

Privacy and identity are critical to our information society. We need to be able to protect an individual's privacy and, more importantly, the information used to establish an individual's identity. We need to protect these "identities" from identify theft and other forms of misuse. Protecting personal information—the credentials and identification we use to transact business, access financial accounts, or access other resources online—is fundamental to preventing identity theft. This is the objective of the modifications to NRS Chapter 603A proposed in A.B. 179.

We hear about breaches in the news with too much frequency. Within the last year, we have all heard about major security breaches at Home Depot, Target, Sony, and Anthem. I would like to highlight the cost of these breaches to give you a better perspective on the impact.

First, let us talk about the bad guys—the hackers that commit these crimes. There is a robust black market for buying and selling identities, and in many cases it is the prospect of a financial gain that is the primary motivation for these attacks. What is your identity worth? On the black market, a criminal can purchase PII from another criminal for between $12 and $16. That is your credit card information, banking information, identification—all of that.

What does it cost the companies that are the targets of these attacks? The often-cited Ponemon Institute study suggests average breach-related costs of $201 per record, but that number is grossly overinflated. The now infamous Sony breach at the end of 2014 drew initial loss estimates of more than $100 million. In the end, the breach did not cost Sony very much at all. In its third-quarter 2014 financial statements, the company wrote that the breach resulted in just $15 million in "investigation and remediation costs" and that it did not expect to suffer any long-term consequences. To give some scale to these losses, they represent from 0.9 percent to 2 percent of Sony's total projected sales for 2014 and a fraction of the initial estimates.

Target was also subjected to a particularly nasty data breach in late 2013 involving 40 million credit and debit card records and 70 million other records, including addresses and phone numbers. In its latest financial statements,

Target said the gross expenses from the data breach were $252 million. When we subtract insurance reimbursement, the losses fall to $162 million. If we subtract tax deductions—yes, breach-related expenses are deductible—the net losses tally $105 million. This is the equivalent of 0.1 percent of Target's 2014 sales, or about $1.50 per record.

The reality is that the cost of a data breach is so inconsequential that it does not provide sufficient incentive for companies to invest in improving their security and preventing these breaches. Since they are unwilling or unable to protect people's personal information, we need to ensure that, at the very least, they notify people that their information has been compromised.

What about the cost to the individuals affected by these breaches? The Bureau of Justice Statistics' 2012 Identity Theft Supplement to the National Crime Victimization Survey found that 16.6 million U.S. residents ages 16 and older were victims of at least one incident of identity theft. On average, victims whose personal information was misused suffered direct losses of $9,650. Victims whose personal information is used to create fake accounts face months or years of cleanup with creditors and the credit reporting agencies. During this time, the victim's credit file and credit score might reflect delinquent accounts or other negative items, and could derail legitimate financial plans, like the purchase of a home. For those victims, the cost in terms of anguish is impossible to quantify.

Assembly Bill 179 accomplishes a very important refinement to the definition of personal information. The bill provides a more appropriate definition of personal information and covers the types of information that attackers are targeting and which are commonly used to commit identity theft. Assembly Bill 179 will significantly improve the protections for individual citizens by ensuring that they are notified when a data collector has a breach that affects their personal information.

Identity theft is an insidious crime, and the citizens of Nevada deserve better protection of their PII and adequate notice when their personal information has been compromised. Assembly Bill 179 will improve the existing language to ensure that our citizens' personal information is better protected. I urge your support of A.B. 179.

Ira Victor, Director, Data Clone Labs; and representing Infraguard Sierra Nevada:
I am an information security analyst, and I am on the executive committee for Infraguard Sierra Nevada, which is the largest cybersecurity organization in Nevada. It is a program of the Federal Bureau of Investigation to help protect critical infrastructure.

I want to give you two real-life examples of the positive impact that the law that we are changing has had so far. I travel to information security technology conferences around the United States, and quite frequently in large conferences I see a map of Nevada, and the speaker calls out Nevada as a great place to do business because we have a very forward-thinking data breach and encryption law. It is called out and highlighted quite frequently. It helps bring in these technology companies because we do not have overly burdensome regulation. We have good guardrails, and that is what A.B. 179 continues.

I also want to tell you that I sit down with businesses in Nevada in my role as an information security analyst, and I go over their data sets and look at the kind of data they have. When I hit data that is covered by A.B. 179, I remind them of the breach notification rules here and the related encryption rules, and they ask what they can do about that. I ask if they really need to keep the data, and quite often they say no. They want to delete their data. Quite often the data that can hurt the citizens of Nevada is just sitting in databases, waiting to be breached, and they do not even need it. When companies do need the data, they want to put in the protections that are needed. The systems are in place to protect the data. They have an inventory of what the data is, and now they just need to add the elements of protection. This is a simple and smart addition to A.B. 179. Nevada is at the top of a good list, and this will help make Nevada a place where technology companies want to do business.

There is one other element. I have talked to members of our executive committee at Infraguard about the specific issue of cost. Many of our board members are from quasi governmental agencies, and the feedback I heard was exactly what I thought—we are protecting this data now, and adding a couple of elements to our existing protection is not going to increase our costs. It is good for our citizenry, or we will just delete the data.

Chairman Kirner:
I would like to open it up to others in the audience who wish to support this bill.

Janine Hansen, President, Nevada Families for Freedom:
Since 1999 I have served as the National Privacy Chairman for Eagle Forum, which is our national affiliate for Nevada Families. We have been very concerned about these issues for many years. I worked several sessions with former Senator Valerie Weiner, who crafted our original identity theft laws in Nevada. Obviously, that work has helped make Nevada one of the best states for business concerning identity theft.

One of the things that was not mentioned was that in the Target breach, there were email addresses taken, affecting about 70 million people. Last year I had two of my debit cards compromised through a local business in Elko; one of them was being used in Alabama and the other in California. The fraud departments of the banks did catch these right away and, while it was inconvenient, there was no financial loss. One in four who have been victims of data breach become victims of identity theft. There is a huge probability that if your data is breached, you may become a victim of identity theft. We have heard how costly that can be. Thirteen million people in the United States have become victims of identity theft. This is a straightforward bill which will help prevent identity theft, and we fully support it.

David W. Carter, representing Nevada Legislative Affairs Committee:
[Mr. Carter read from prepared testimony (Exhibit M)]. In addition to reviewing NRS Chapter 603, and NRS Chapter 603A, I also reviewed NRS Chapter 205, Crimes Against Property. In reviewing these codes, although I am not a lawyer, it appears that A.B. 179 adds definitions and clarifications that do not currently exist. Thirty years ago we would not have had to worry about this type of legislation. Now we hear of data breaches at major stores, and there are even reports of federal agencies and agencies of other states having their data breached. As such, I feel it is important to continually review and update computer and data definition legislation. It was not that long ago that we went from rotary dial phones to push button phones. We now have cell phones and other devices that can not only make phone calls but take pictures, send text messages, act as a secretary, help us map our trip routes, and many other uses. They can fit in my shirt pocket. It was not that long ago when we began paying bills online and transferring cash between accounts. Now we can use a cell phone to pay bills, transfer cash between our own accounts, and even send money to a friend's bank account. Who knows what we will be able to do in five or even ten years.

This bill is an important and needed advance. I believe that there are definitions and safeguards that will need to be addressed in the future as we become even more technologically advanced.

Think about it. The laptop you are using has more computing ability than the Electronic Numerical Integrator and Computer or ENIAC, one of the first if not the first, real computer, in 1946. I read that ENIAC cost about $6 million in today's money. Your computer costs pennies compared to that and can do things engineers did not even dream about then.

You have probably heard that there are those of us who have concerns regarding Common Core and the student and family data that may be collected

as part of that program. Assembly Bill 26 was introduced to address some of those concerns, and since I wrote this, Assembly Bill 303 has also been put forth to address some of those concerns.

I feel that this measure will provide protections and address other concerns I have about that data collection. I urge your acceptance of A.B. 179.

Assemblyman Ellison:
Ms. Hansen, I think that our cards got hit at the same time—once at Home Depot and the other time at Walmart. My problem was at gas stations. I got hit three times in two years, and they were major hits. The criminals got $10,000 each time until I could get the money back. I did not know I was buying flowers in Los Angeles. I think this is a good bill and maybe we can address some of these concerns.

Chairman Kirner:
If you are in support, please come forward.

Jen Chapman, Recorder, Storey County; and representing Recorders Association of Nevada:
I thank the bill sponsors for taking the steps that protect individuals in Nevada from the loss of personal information. As a citizen, and as a keeper and a provider of public information, this is an important subject for me. I believe in the good intent. In a digital age plagued by identity theft and crimes executed electronically, it is apparent that we all need to be more diligent in our efforts to protect information.

We represent county recorders and public information—public agencies that are specifically directed to collect, provide, maintain, and protect information. I am always leery when you say that you are changing the definition of public information. What has been proposed is beneficial to all of us. There is no easy solution to balancing public access to information in an age where everything is so technologically oriented and viable across many platforms.

We support the bill as it has been amended and finding a good solution that allows governmental entities the ability to provide information while still protecting it and not making our abilities or responsibilities as keepers of public records ambiguous. I would like to offer a friendly amendment to support this. At the end of Assemblyman Flores' proposed amendment (Exhibit J), where it says, "The term does not include the last four digits of a social security number, the last four digits of a driver's license number or the last four digits of an identification card number or publicly available information that is lawfully made available to the general public," perhaps you could add something that helps

remove public agencies that collect the information, so it is not ambiguous. If you added, "or publicly available information that is lawfully made available to the general public from federal, state, or local government records," that would be helpful.

We all have our statutes that we work with and the information we have; names, signatures, mailing addresses, et cetera. We want to make sure that we are able to continue to do our job and provide this information to the people that request it such as banks, title companies, and investigations. We want to be able to continue to do our jobs and not open that up to interpretation on what information we collect. We support the bill, but we want to make sure that we do not inadvertently hurt ourselves in the process. In the last seven years, we have been religiously redacting personal information if it is required to be there by law and making sure that our records are protected and kept.

Chairman Kirner:
Thank you for keeping us in line there. As a friendly amendment, please talk to our bill sponsor. I am sure he will work with you.

Assemblywoman Kirkpatrick:
I remember when the original bill was put in. I thought I heard you say that you want to add this friendly amendment so you do not have to keep redacting it?

Jen Chapman:
No, not at all. We will continue to redact information and abide by the laws that govern us. It is important to us. We do not want our records misused. We are all very diligent and work hard to ensure public safety. We want to maintain that balance between maintaining public records and not giving out too much information. It is a fine line.

Lawrence R. Burtness, Recorder, Washoe County:
I am here in support of Assembly Bill 179 as amended. One of my duties as county recorder is as the custodian of millions of public records dating back to the early 1860s. Considering the importance of property ownership to the economy of the United States, it is vital that these records remain open and available to the public. You may be asking why a county recorder is testifying on a bill where the focus is on data breaches. The statute referred to in A.B. 179, NRS Chapter 603A, does have a connection to recorders in regard to the personal information that we redact from our records.

Openness and transparency also come with a responsibility to protect personal information from identity theft. The challenge for government is to balance the public's right to access information with the individual's right to privacy. At any

given time, in a gathering of this size, there is typically one person who has been a victim of identity theft. I submit to you that the offices of county recorders are not easy and open targets for identity theft and large data breaches. As amended, A.B. 179 provides some additional protection of personal information that is collected in bulk by organizations. Again, I am in support.

Nancy Parent, Clerk, Washoe County:
I am here to support the bill as amended by Assemblyman Flores. I appreciate his working with us to understand our concerns. The county clerks' main job is to keep public records, such as marriage licenses or who is doing business. As the bill was initially drafted, it would have impacted my office substantially because of the cross-references in NRS Chapter 239, Public Records, where they refer us back to NRS Chapter 603A for the definition of personal information. As amended, this bill is completely acceptable, and I support it wholeheartedly.

Assemblyman O'Neill:
Washoe County is the only agency that has submitted a fiscal note that does not anticipate zero cost for this. Does that still stand?

Nancy Parent:
I did not prepare the fiscal note, and it was not prepared on behalf of my offices. I think it was based on the original bill, which had a long list of information that would have had to have been redacted.

Chairman Kirner:
That is a serious fiscal note. Are there any others in support of this bill? [There were none.] Is there anyone who opposes this bill?

Barry Smith, Executive Director, Nevada Press Association:
I want to clarify because I was opposed to the original language of the bill. The amendment that has been proposed takes care of my concerns, and I wanted to be on the record with that.

Chairman Kirner:
Seeing no more opposed, are there any people testifying in neutral?

Laura Tucker, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General:
I represent the Office of the Attorney General on the National Association of Attorneys General multistate privacy working group. Assemblyman Flores asked me here today to provide some informational testimony on how

cybercriminals access consumers' personal information and what they do with it once it is acquired.

Cybercriminals access data in multiple ways [read from prepared testimony (Exhibit N)]. The first is technical vulnerability. Hackers take advantage of a company's failure to update software, missing security patches, and outdated applications. Second, a cybercriminal may take advantage of insecure ports, such as access points that simply are not secure enough for a sophisticated hacker. Another way hackers gain access to a system is through the use of malware: that is, computer viruses, worms, Trojan horses, and backdoors.

Employees may also inadvertently give up the information through phishing or spear-phishing attempts, which occur when an unscrupulous individual sends an email to a person in an attempt to gain a password. Spear-phishing attempts are more direct attacks that are harder to spot because they often contain personal information about the recipient. The information could also be acquired through an employee within the company who uses his or her high-security access to steal data. Another way that criminals obtain personal information is through a physical device, such as a skimmer placed on a gas pump, which collects the information when a card is swiped.

Cybercriminals steal any type of data that is available. This includes consumers' last names and first names or first initial, along with account numbers, social security numbers, email addresses, unique identifying numbers, user names, passwords, and personal identification numbers. If the information is unique to an individual, it may be stolen.

Once hackers obtain the information, they often turn around and sell it on the Internet black market for pennies on the dollar to the highest bidder. Once purchased, the floodgates are open.

Most of the time, criminals tamper with existing accounts, using the account numbers to make fraudulent purchases on behalf of the victim. Criminals also use the information to open accounts in the person's name, which often results in a hit to the real consumer's credit score. This year, the Internal Revenue Service reported it has seen an increase in tax identification theft. Criminals use a person's social security number to file false tax returns in a person's name. Medical ID theft is also an issue, in which criminals receive treatment or visit a doctor using someone else's medical insurance. According to the Ponemon Institute, the average cost of a fraudulent medical bill is $13,453 per person. Children are also not immune from identity theft. Because children have no credit history, they are particularly vulnerable targets, and the activity is likely to go undetected for a while, as parents do not run a child's credit report.

Additionally, criminals may also use social security numbers to gain employment. These are just a few of the ways that cybercriminals use the personal identifying information they obtain, which can involve much more than simply account and social security numbers.

Chairman Kirner:
We invite the bill sponsor back to the table. For the record, you and I have had this conversation outside of this hearing. Your bill in no way compromises public interest requests for information, is that correct?

Assemblyman Flores:
I know that in our prior conversation, we talked about case law and when the Clark County School District was sued in regard to releasing emails. Nothing in this bill will be in conflict with any of that.

Chairman Kirner:
Are there closing comments you would like to make?

Assemblyman Flores:
I want to indicate that there were individuals in Las Vegas who were prepared to testify in support, but because of the time constraints we experienced today, they had to leave. They submitted testimony which was received too late for Committee deadlines. [Cristina Stephens expressed her support as an employee of Miranda Travel because they feel it is their obligation to protect their clients' personal information from cybercrime. Maria Alvarez, a private citizen, also expressed her support for this bill.]

Assemblyman Ellison:
There is a large fiscal note that was attached. Are you going to be able to adjust that? It looks like a misprint.

Assemblyman Flores:
The original bill was amended. We were going to use Chapter 205 of NRS, and we had a specific definition of personal identifying information that we were going to use. We had submitted that to all the interested parties, including Washoe County. When we did that, we received the large fiscal note. That was the consequence of two things. First, it was based on a completely different bill and, secondly, there was a misunderstanding. They were under the impression that they were going to have to purchase new technology, software, et cetera, but after speaking with our experts, they realized they were mistaken.

Chairman Kirner:
Is that another way of saying that Washoe County is removing the fiscal note?

Assemblyman Flores:
I cannot say if they are removing the entire fiscal note, but I can assure you that fiscal note was incorrect. It is my understanding that that is why they did not appear in opposition today after realizing it was a mistake.

Chairman Kirner:
That is a piece of information we need to know. I will close the hearing on A.B. 179 and open the meeting up to public comment.

Assemblywoman Kirkpatrick:
I want to thank our staff, both Legal Division and the staff in this Committee, because on Friday when we were leaving late, they were leaving an hour and a half behind us. Sometimes we forget that they are here long after we are, and we need to remember that.

Chairman Kirner:
I am sure they appreciate that. Is there any other public comment? [There was none.] With that, I will adjourn the meeting [at 4:28 p.m.].

RESPECTFULLY SUBMITTED:

_____
Jennifer A. Russell
Committee Secretary

APPROVED BY:

_____
Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 16, 2015 **Time of Meeting: 12:01 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 228	C	John Sande IV, Payment Assurance Technology Association; and John Sande III, Nevada Franchised Automobile Dealers	Requested amendments
A.B. 228	D	Rita Torres, Private Citizen, Las Vegas, Nevada	Testimony in opposition, suggested amendments, 3 articles on auto loans and starter interrupt devices
A.B. 228	E	Sophia Medina, Legal Aid Center of Southern Nevada	Testimony in opposition
A.B. 227	F	Keith Lee, Board of Medical Examiners	Overview of bill
A.B. 227	G	Keith Lee, Board of Medical Examiners	Proposed amendment
A.B. 227	H	Chad Christensen, Nevada Physicians Coalition for Academic Excellence	Proposed amendment
A.B. 179	I	Assemblyman Edgar Flores, Assembly District 28	Overview of amended bill
A.B. 179	J	Assemblyman Edgar Flores, Assembly District 28	Proposed amendment
A.B. 179	K	Assemblyman Edgar Flores, Assembly District 28	*Guide to Protecting the Confidentiality of Personally Identifiable Information*
A.B. 179	L	James Elste, Inqiri.com	Testimony in support
A.B. 179	M	David Carter, Nevada Legislative Affairs Committee	Testimony in support
A.B. 179	N	Laura Tucker, Deputy Attorney General, Office of the Attorney General	Informational testimony