MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
May 5, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, May 5, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman David M. Gardner (excused)

GUEST LEGISLATORS PRESENT:

Senator Greg Brower, Senate District No. 15
Senator Michael Roberson, Senate District No. 20

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts
Brian Sanchez, Assistant Chief, Nevada Highway Patrol, Department of Public Safety
Doug Kassebaum, Trooper, Nevada Highway Patrol, Department of Public Safety
Jim Lopey, Terrorism Liaison Coordinator, Nevada Threat Analysis Center, Department of Public Safety
Braden Schrag, Sergeant, Las Vegas Metropolitan Police Department
Rocky Finseth, representing Nevada Land Title Association
Sylvia Smith, President, Nevada Land Title Association
Zach Ball, representing Nevada Land Title Association
Jenny Reese, representing Nevada Association of Realtors
Jon Sasser, representing Legal Aid Center of Southern Nevada
Pat Cashill, representing Nevada Justice Association
Catherine O'Mara, representing Probate and Trust Law Section, State Bar of Nevada
Julia Gold, Cochair, Probate and Trust Law Section, State Bar of Nevada
Alan Freer, Cochair, Probate and Trust Law Section, State Bar of Nevada
Kent Ervin, Private Citizen, Reno, Nevada
Janice Flanagan, Private Citizen, Reno, Nevada
Michael Patterson, representing Lutheran Episcopal Advocacy in Nevada

Chairman Hansen:
[Roll was called, and protocol was explained.] We have four bills that we are going to hear today. As requested by Senator Brower, we will start with his bill, Senate Bill 197 (1st Reprint), which prohibits the filing of false or fraudulent liens or encumbrances against certain persons. Good morning, Senator Brower.

Senate Bill 197 (1st Reprint): Prohibits the filing of false or fraudulent liens or encumbrances against certain persons. (BDR 15-653)

Senator Greg Brower, Senate District No. 15:
We will start with a short video to try to highlight the subject of the bill and then I will give a brief testimony. [Video was played (Exhibit C).] That gives you a little preview of the background. This is a nationwide problem that has been increasing over the past decade. This illegal tactic is used as a means of nonviolent but nevertheless very damaging retribution against public officials, including judges, prosecutors, legislators, jurors, et cetera, for political purposes. These fraudulent liens are intended to harm such persons by adversely affecting credit, undermining financial transactions such as selling or refinancing a home, and creating fear and intimidation in the personal and family lives of the targeted individuals.

Nevada Revised Statutes (NRS) 205.395 already makes it a category C felony to knowingly record a false lien against a person for any reason. This measure, Senate Bill 197 (1st Reprint), would increase the penalty for recording a false lien against public or quasi-public officials, including public officers, legislators, candidates for public office, other public employees, and participants in official proceedings when the fraudulent recording is based on the performance of their duties. In order to be guilty of this crime, the perpetrator must have known or have had reason to know that the recording (a) is forged or fraudulently altered; (b) contains a false statement of material fact; or (c) is recorded in bad faith or for the purpose of harassing or defrauding.

The penalties included in this bill are as follows: For a first offense, it is a category B felony with a potential prison term of 2 to 10 years and up to a $20,000 fine. For a second offense, it would be a category B felony with a potential prison term of 2 to 20 years and up to a $50,000 fine. For a pattern of such misconduct—meaning multiple transactions—the penalties would be increased. The bill provides for civil penalties, allowing the Attorney General to file a civil action to recover costs and impose penalties. That is essentially it. We have several witnesses who would like to testify in support of the bill.

Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I have two subjects who were supposed to be at the Grant Sawyer State Office Building in Las Vegas but were detained. I do have one other person here. Trooper Doug Kassebaum was a victim of this, and I would like to bring him forward.

Chairman Hansen:
We will have Mr. Graham testify, and then we will bring the trooper up.

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:
This is like a secret garden in legislation because over the years we have done matters to try to thwart these efforts. I can remember a long time ago we gave the clerks the opportunity to see a lien that was being filed and clearly fraudulent, and they could actually refuse to file it at the time. Now filings come in by the hundreds and thousands a day, so it is impossible for anyone to try to prescreen them. This measure is helpful and, even if you may think the penalties sound harsh, let me tell you, the disaster that befalls you and other public officials just trying to do your duties is extremely harsh. Initially, this legislation intended to include the judiciary, but statutorily the provision did not cover the judges and judicial candidates. The way the bill is amended now, the public officials include the judiciary and judges as well. We favor it, and we march on trying to catch up with what is going on out there.

Brian Sanchez, Assistant Chief, Nevada Highway Patrol, Department of Public Safety:
With me today is Trooper Doug Kassebaum, who was a victim of harassment after performing his duties as a Nevada state trooper.

Doug Kassebaum, Trooper, Nevada Highway Patrol, Department of Public Safety:
I have been with the Nevada Highway Patrol (NHP) for about 19 years, and I am currently stationed in the Yerington area. I made a routine traffic stop on U.S. Highway 95A in Lyon County for a traffic violation and ultimately cited the driver for the violation. Unbeknownst to me, four days later, the driver went to the Lyon County Recorder's Office and recorded a $6 million tort claim against me. I was falsely accused of armed assault, which was $2 million; extortion, $2 million; and identity theft, $2 million. At that time, I was in the process of building a new home and was made aware of the claim by the title company. I borrowed private money, and in the contract, it stated that if there were any liens filed against me, the lender could take immediate possession of the property. This caused undue stress to my family and personal life. I was also made aware that the recording was a permanent and public record.

It took nearly six months for the court claim to be voided with the help of the Attorney General's Office. Because of what my family and I needlessly experienced, I very much support S.B. 197 (R1) and hope my testimony today has helped give you insight on how it can affect someone who has experienced it firsthand.

Jim Lopey, Terrorism Liaison Coordinator, Nevada Threat Analysis Center, Department of Public Safety:
I have provided over 225 formal training classes and presentations on terrorism during the past 12 to 13 years. In my capacity as a terrorism liaison coordinator, I have had exposure to statewide antigovernment activity, including incidents regarding sovereign citizens. Within our center, we have recorded numerous instances where sovereigns have had adverse contacts with law enforcement. I am not going to go through all of those incidents, but as indicated by our NHP trooper who just testified, in my opinion, sovereign activity will continue within the state of Nevada, and there is support from northern Nevada law enforcement agencies for enhanced penalties including provisions to protect against incessant and harassing paper terrorism. We fully support the bill as written and the enhanced penalties.

Braden Schrag, Sergeant, Las Vegas Metropolitan Police Department:
I am here today speaking in support of this bill. Over the last several years throughout the United States, we have been witness to a steady increase of individuals frustrated with the results of the legal process willfully and maliciously use patterns, practices, and techniques of false allegations to take revenge on public officials by filing fraudulent liens. This unscrupulous tactic is used as a means of nonviolent retribution against public servants who are acting in their official capacity. Individuals are filing multibillion dollar liens based on knowingly and intentionally fraudulent information against the personal and private property of public officials and/or their families. These liens are intended to harm the livelihood of the public official by affecting personal credit or stunting or delaying financial transactions such as purchasing, selling, or refinancing a home. They also intentionally create fear, intimidation, and an unsettled atmosphere in the officials' personal and professional lives. These fraudulent liens are time-consuming and financially burdensome, and it is a painstaking process for the public official to remove them. Due to the tactic and these individuals' malevolent, rancorous intent, numerous states have enacted laws to provide an avenue for the public official to counter these fraudulent liens and provide a legal basis for addressing the offender.

It is important to note that our support of this bill and a modification to the existing law is not intended to prevent a person's legitimate and lawful due process or interfere with the rights of the individual lawfully filing a legitimate lien. It is simply to strengthen the law and help to mitigate fraudulent filings. There have been a number of examples throughout the United States of fraudulent liens being placed against public officials, garnering significant public attention and, as you have heard already, some of these events have also happened here with a couple of the NHP troopers as well as some judicial

officials. In the south, we have discovered incidents where individuals are advising and, in some cases, teaching others how to file these fraudulent liens or directing them to others. This is being done with the express purpose of carrying out retribution against public officials or the system as they look at it.

There are a couple of examples I would like to cite that have happened throughout the United States. In 1992, a $224 million lien was placed against the President of the United States—then President Bush, a U.S. Senator, the assistant secretary of state in Washington State, and three judges, along with high-ranking officials from General Electric. In Oxford, Alabama, fraudulent liens were filed against businesses in an attempt to extort them. It is not just against public officials but also businesses. Two judges in Florida had $50 million liens placed against them. In Chicago, Illinois, a lien of $100 billion was placed against two federal judges. There are multiple other incidents, including in the Southeast when a governor's mansion and governor had liens placed against them as well.

Assemblyman Thompson:
The bill talks about a category B felony. Are most of the people who file these truly violent people? I look at prison as the institution where we put people who are truly violent. I see and understand some of the monetary amounts and fines, but why would it be a category B felony? That is very extreme.

Senator Brower:
You are right; these crimes are not violent in nature and because of that fact, the judge, upon a guilty plea to this offense, would have the discretion of ordering probation in lieu of prison. It is not a mandatory prison term, but we feel it is important that the potential penalties within the discretion of the judge be as harsh as are provided for in this bill.

Assemblyman Elliot T. Anderson:
I am looking at the language adding in candidates for public office. How does a candidate do something in the performance of their office? That is the operative language in the bill, and I am curious how that would work, how a candidate would be inside the scope of performance of their official duties.

Senator Brower:
The threshold criteria would include that the fraudulent lien is recorded because of the target status as a candidate. The candidate does not have official duties per se, but it is the status as a candidate that would trigger the additional penalties.

Assemblyman Elliot T. Anderson:
As a hypothetical, if they said, "I am pro X, Y, Z," and that causes someone to then file a lien, is that what you are anticipating?

Senator Brower:
I am not sure what we can anticipate, but if it can be proven by the state that the fraudulent lien was recorded against candidate X because of their status as a candidate, the additional penalties would be triggered.

Assemblyman Nelson:
I have a question on section 1, subsection 7, paragraph (c) about the definition of a lien. Within that defining term, we also have "a judicial lien obtained by legal or equitable process or proceedings." If I am reading that correctly, that would be a lien based on a judgment or an order of a court. Would that mean the lawsuit that was brought is fraudulent?

Senator Brower:
Can you point me to the exact section you are looking at?

Assemblyman Nelson:
On page 4, it is subsection 7, paragraph (c), on the definition of lien. The second sentence says, "The term includes, without limitation, a judicial lien." It seems to me that a judicial lien would have to be issued by the court, so that would not be fraudulent. I am wondering if what we are saying here is that the underlying lawsuit was fraudulent, which resulted in the lien, or are you referring to a lien where they forge the judge's signature?

Senator Brower:
I think it is the latter that is contemplated in that scenario. This language is not new language. It is from a model bill, so it is intended to contemplate or include all possible types of liens, including some types that perhaps are not common in our state, but could be filed. I think the Committee understands that the types of liens we are talking about and the examples you have heard this morning are absolutely absurd on their face. The recorder of the lien has no practical way of ever collecting the money. The simple recording of the lien and the resulting cloud on the title that it creates cause the damage.

Mr. Chairman, if someone fraudulently recorded a $5 billion lien against your personal home, you would not really be in jeopardy of losing your home or having the person somehow obtain that $5 billion from the judgment

against you. It is just the fact that you have that cloud on your title—that would be the damage, along with the other factors that have been discussed, the intimidation and the very unsettling nature of this sort of infringement upon your financial life.

Assemblyman O'Neill:
Could you give a short summation of some of the other acts that these individuals perform and some of the documents they can create to look realistic in their claims? Are they always nonviolent acts that are perpetrated against public officials?

Jim Lopey:
I have several examples here in the state of Nevada. Not all are related to liens, but we have had some adverse contacts with law enforcement officials. For example, a couple had to be forcibly removed from a motor vehicle in Nye County. One subject was going for a gun before he was pulled out of the vehicle, and he had sovereign plates and was allegedly an adherent of the sovereign citizen philosophy. Of course, we have had the West Memphis, Arkansas, shooting where two police officers were shot and killed by Jerry and Joe Kane not that long ago. Those subjects had frequented Nevada. There are numerous examples of violent activity exhibited by sovereigns exclusive of the liens. As I see it, the statute to protect our citizenry and public officials from the liens is more of a deterrent against paper terrorism, which is a common tactic used by those adhering to the sovereign citizen philosophy.

Chairman Hansen:
We will keep focused on the bill. Obviously, those acts were already criminal in nature, but we apparently have a loophole in the law that they can exploit.

Assemblyman Jones:
I notice that Mr. Kassebaum's lien was in 2003. How prevalent is this in Nevada now? Is this still going on? Why are we so late to bring this about? How often is this occurring?

Jim Lopey:
There has been much more attention in the past couple of years because there has been some violence associated with the sovereign citizen activity. Right now, we really do not know what the scope of the problem is because we do not know if there are a lot of liens out there that we are unaware of. Doug Kassebaum of the Nevada Highway Patrol found out about the lien much

later. I am not aware of any recent activity insofar as liens are concerned, but we do have several in the past and several as have been indicated by Braden Schrag and Senator Brower that have been prevalent, not only here but across the United States. It is a very common tactic.

Senator Brower:
You might want to check with your recorder's office. Speaking for myself, if I had a fraudulent lien filed against my home, I would not know it. I have not looked at those records in quite some time. You might think that the introduction of this bill would have prompted me to do so, but we are all a little busy. The reality is that anyone who might be listed in the categories in this bill for the enhanced penalties could have a lien on record and not know it unless they check those records frequently.

Assemblyman Ohrenschall:
I am looking back at the history on NRS 205.395. It looks like it came out of Assembly Bill No. 284 of the 76th Session, in 2011, which was sponsored by Assemblyman Marcus Conklin and included the category C felony. I wonder if there have been any prosecutions under the category C felony of these false recordation filings?

Senator Brower:
I do not know the numbers as we sit here.

Jim Lopey:
I am not aware of any recent prosecutions in our jurisdiction.

Braden Schrag:
We are not aware of any, but as the Senator alluded to, oftentimes it is several years down the road before the public official is aware of it. For example, when the public official is refinancing, purchasing a house, or making some other purchase, it will trigger that event, so the lien can sit dormant for a number of years before it is known.

Assemblywoman Diaz:
You mentioned that this is language we took from a model bill, so I am wondering what state we modeled this language after and if we are aware of how many other states have adopted similar statutes?

Senator Brower:
It is an amalgam of the bits of pieces of a variety of bills from around the country. Mr. O'Callaghan might be able to give more detail on that.

Brian O'Callaghan:
I believe it is out of Georgia and Colorado, but I do not have all the states.

Braden Schrag:
There are currently 34 states that have similar existing legislation in place. Georgia, New York, Michigan, and Arkansas are just four of them. The federal government has one as well.

Jim Lopey:
Another bill that we often talk about when we do training around the state is the Court Security Improvement Act of 2007, which, under Title 18 of the *United States Code*, created a new criminal offense for false liens against real or personal property of officers of the federal government. That is another model statute that is out there on the federal side.

Chairman Hansen:
Officer Kassebaum mentioned a tort claim against him. Is that different than a lien claim? Since he had a $6 million lien filed against him, how did he find out so fast if these can go for months and years and no one knows about it?

Senator Brower:
We would have to hear from the trooper. I suspect that it was a semantic issue that the recording may have, in his case, been labeled a "tort claim." It really would not have any legal meaning. It would take the form of a lien. I suspect that he found out because probably he tried to refinance his home, but I do not know that. It is typically the way these things come to light.

Chairman Hansen:
I wanted to make sure. The terminology was confusing to me, as a claim and a lien are not the same thing.

Senator Brower:
Typically what is absurd is the amount. There is no legal validity to the terminology. It is just something that people put on the paper when they record it.

Chairman Hansen:
Are there any further questions? [There were none.] Senator Brower, is there anyone else you would like to have called up at this time to testify in favor of S.B. 197 (R1)?

Senator Brower:
Not necessarily, Mr. Chairman.

Chairman Hansen:
Is there anyone in Carson City or Las Vegas who would like to testify in favor of S.B. 197 (R1) at this time? [There was no one.] Is there anyone in opposition to S.B. 197 (R1) who would like to testify? [There was no one.] Is there anyone in the neutral position in Carson City or Las Vegas? [There was no one.] Senator Brower, are there any last minute details you would like to clean up before we close the hearing on S.B. 197 (R1)?

Senator Brower:
Only to say thank you for your time this morning. This is an important issue. I think, as the Committee can tell, it is essentially more of a prophylactic measure than anything. It is something that we believe should be in place with respect to the enhanced penalties, should the range of public or quasi-public officials be targeted in this way. This bill was amended on the Senate side to adjust the penalty provision in accordance with some of the concerns that were raised. We think it is a good compromise bill and achieves an important public policy goal.

Chairman Hansen:
We will close the hearing on Senate Bill 197 (1st Reprint) and open the hearing on Senate Bill 239, which revises provisions relating to real property.

Senate Bill 239: Revises provisions relating to real property. (BDR 9-970)

[Assemblyman Nelson assumed the Chair.]

Rocky Finseth, representing Nevada Land Title Association:
Joining me at the table today is Ms. Sylvia Smith, President of the Nevada Land Title Association. In Las Vegas is Mr. Zach Ball of the Ball Law Group, and Mr. Russ Dalton, the Legislative Chairman of the Nevada Land Title Association. I will briefly walk you through the sections of the bill. Ms. Smith will provide you with some technical information regarding why we need Senate Bill 239. In the interest of time, I have asked Mr. Ball and Mr. Dalton to simply be available to answer any questions that may arise from the Committee.

Senate Bill 239 has four parts to the bill. Section 1 adds a new section to *Nevada Revised Statutes* (NRS) Chapter 106, which allows a title company to terminate a home equity line of credit upon receipt of a written request from the borrower. Section 2 of the bill allows a trustee under a deed of trust to remove themselves in an action involving that deed if the trustee has a reasonable belief that he or she has been named in an action solely as a result of the fact that they were wrapped into litigation as a result of their role in their capacity as a trustee. This concept is not new. From a regional perspective, we are one of

the last states in the region to adopt, if S.B. 239 is passed, such a concept. Arizona, Utah, and California all have very similar statutes on their books already, as do states such as North Carolina and Tennessee.

Section 3 of the bill allows a beneficiary of record under NRS to be substituted for another trustee. Section 4 has two components to it. First, it changes the timelines and time frames in which an action can commence after the gavel goes down on a foreclosure sale from 45 days to 15 days. The second part of the proposal, found on page 11, determines that once the time period has run its course, the new buyer will be considered the bona fide purchaser of the property, and the new property owner will not live in fear of their home being taken away. A similar concept has been incorporated into a bill that you heard last week, as Senate Bill 306 (1st Reprint) also incorporates in the concept of bona fide purchaser.

We have been working with the Nevada Bankers Association, and you will find an amendment (Exhibit D) on the Nevada Electronic Legislative Information System that concerns the notice to the borrower contained in section 1 of the bill. We believe that the revised notice better reflects the intent of what we are attempting to do.

Finally, we have been working with the Legal Aid Center of Southern Nevada on an amendment (Exhibit E) coming forward from Mr. Sasser. We consider that to be a friendly amendment, and I will let Mr. Sasser talk to you about that particular amendment.

That is a quick review of the bill. I would like to turn the remainder of my time over to Ms. Smith, and she will walk you through why we need some of these sections.

Sylvia Smith, President, Nevada Land Title Association:
Just to touch quickly on the home equity line of credit, the amended version of the affidavit that will be signed by the borrower basically allows timelines to freeze the line of credit while the property is in escrow and requires that the borrower not use any credit cards, debit cards, or checks that can be attached to an equity line that is secured by their property (Exhibit D). It also makes the borrower understand that they are liable personally if—when we pay it off—they use the credit card after that, it becomes personal debt that is their responsibility. It also requires the lender to release or reconvey the equity line of credit once they are paid to a zero balance.

The next section of the bill has to do with the trustee portion. This allows a trustee on a deed of trust to file a declaration of nonmonetary status. The bill also provides timelines for any parties who are involved in the lawsuit to object. It allows a timeline for the trustee to be brought back into a lawsuit if it is determined that they need to be. On this particular case, there are a couple of comments to make. A trustee can be named on a deed of trust without their consent, which is probably one of the biggest factors in this. There are many types of cases where a trustee is named in a lawsuit that we do not need to be a part of. Eminent domain would be one example. Another would be lot line adjustments if by a court action that are between the parties but the trustees are brought in simply because we are named as trustee.

One particular situation that actually cost my company, Western Title, a huge amount of money were the Mortgage Electronic Registration Systems (MERS) lawsuits. Western Title—because we serve most of northern Nevada—was named in 17 lawsuits that had to do with MERS simply because we were named as trustee on the deed of trust. We paid in excess of $95,000 in legal fees just to be represented. Additionally, we had to file an errors and omissions claim under our policy because we did not know where the suits would go, and our premiums have tripled because of that. There was a small company in one of our rural communities that was also named in one of the MERS suits. She had to file a claim, and her errors and omissions coverage was actually canceled. All of us have been released from those lawsuits, but it was very costly to get there.

The third change that we are requesting allows a beneficiary to sign a document called a substitution of trustee and deed of reconveyance. This document is used when a beneficiary has been paid in full but they do not have the original documents to turn over to the trustee to allow release of their interest in the property.

The fourth change, in NRS 107.080, has to do with the bona fide purchaser language. Mr. Finseth alluded to the necessity of it. I will save that for questions if you would like, but the main purpose of it is to protect a bona fide purchaser at a foreclosure sale. After it has gone through all the process, it protects them, and they will be able to maintain their interest in the property they are purchasing. The parties that are involved between the foreclosing lender and those borrowers still have every right to whatever court action they may deem necessary; they just cannot take the bona fide purchaser's property back. Again, keep in mind Nevada has passed the Homeowner's Bill of Rights

in addition to many federal changes that came in from the Consumer Financial Protection Bureau that went into effect January 10, 2014, and which require additional notice periods and time frames that lenders and the servicers have to allow for a borrower before it ever gets through the foreclosure proceeding.

Rocky Finseth:
With that, Mr. Ball and Mr. Dalton are in Las Vegas and available for questions.

Assemblywoman Diaz:
In section 2, subsection 1, I would like to know what is currently missing in the state law and what this language is seeking to remedy. It talks about the trustee "not as a result of any wrongful act or omission," and then it says that they can "file a declaration of nonmonetary status." What is the reasoning behind this language? Why is it needed? How does it affect the home and the homeowner?

Sylvia Smith:
This bill came forward mostly because of the MERS lawsuits. There were cases that were filed for predatory lending, and various actions were brought into those that named the title company as trustee. Because we were named on the deed of trust as trustee, we were brought into the lawsuit even though it was between the lender and the borrower, and we were not able to get removed. There was no mechanism to allow us to be removed from the suit. Even though we were not named as doing anything wrong, in the lawsuits, we had to go through the entire court action. That happens in other instances like eminent-domain and lawsuits that can happen that we are not a party to, had no wrongdoing, but were named, and we have to follow along with all the court action. That was the purpose of bringing this forward.

Vice Chairman Nelson:
I have seen a number of lawsuits that I have been involved in as a lawyer—not as a defendant, fortunately. For example, when there is a homeowners' association (HOA) lien foreclosed, the question comes up, who has priority? Is it the deed of trust holder or the person who bought it at the HOA sale? We have had a lot of bills about that lately. What the lawyers will typically do is name everyone on the deed, including the trustees. In many cases I have been involved with, the trustees have requested to be let out because of the reasons you set forth. They are basically innocent third parties and they do what they are told to do. If they are told by the lender to reconvey the deed of trust, they do that. If they are told by the lender to initiate foreclosure proceedings, they do that, but they do not really have any ability to do anything without instructions. That is the situation you are talking about, correct?

You have to retain counsel and spend a lot of money on attorney fees, and you are stuck in the lawsuit. I have seen it in the last five years, but with the MERS litigation it was probably much worse even than the HOA litigation. Is that correct?

Sylvia Smith:
Yes, that is absolutely correct.

Rocky Finseth:
Ms. Smith's firm had 17 individual lawsuits with a total cost of $95,000 to her small firm, which services northern Nevada, and she had to tap into her errors and omissions insurance as well. Rurally, it had a huge impact.

Vice Chairman Nelson:
The way I read the bill, if it becomes necessary to bring the trustee back, the court can bring them back in certain cases. For example, if the court ruled in favor of a certain party and issued either an injunction or mandatory order, you would follow that, and if you did not follow it, then it would be proper to bring you back into the case. Is that correct?

Rocky Finseth:
You are absolutely correct.

Assemblyman Elliot T. Anderson:
I am excited that we are having another mortgage day. I want to ask you about the *Nevada Rules of Civil Procedure*. The bill seems fine to me, but I am curious and want to hear what you will say. In the *Nevada Rules of Civil Procedure*, we have Rule 12 that gives litigants tools to dismiss a case if you cannot state a claim. Why is that not adequate if there is no wrongful act or admission on the part of the trustee? Why can the trustee not get out on Rule 12(b)(5)?

Rocky Finseth:
I unfortunately missed mortgage day in this esteemed body last week, so I get to tag onto it. I would like to ask Mr. Ball in Las Vegas to answer that question for you.

Zach Ball, representing Nevada Land Title Association:
The difference is you have the ability to file a dispositive motion under Rule 12 as was stated, or a really far more streamlined and near automatic ability to remove the trustee from the case. It takes it to a clear path, a document that is filed with the certain statements as outlined in the statute or proposed legislation. Then the opposition can be made, but with no opposition, it is an automatic withdrawal or dismissal without prejudice. Of course, it can be

brought in or, as was pointed out, they are also subject to any injunction or any other declaratory relief of the court. It is more streamlined, more economical, and really aimed to save those trustees who had no wrongdoing but are automatically named in a lawsuit. It is aimed to save them time and money and exit a lawsuit without prejudice.

Vice Chairman Nelson:
Have you read Mr. Cashill's letter in opposition (Exhibit F)? I can see your point, and I think it is good to let the trustees out when they have established that they really have a nonmonetary position. In NRS Chapter 107, in the mediation, in NRS Chapter 40, the parties have to prove something. The lender has to come in mediation and either have an affidavit of a loss or produce a promissory note. The way the bill is written, if they file that motion, the trustees are getting out without really even attaching anything. Do they have to establish something with the court? Mr. Cashill is saying that they need to have an affidavit. I am curious what your feelings are on his points.

Zach Ball:
Yes, I have read that correspondence. We believe that the basis of that filing is subject. It is on the court record. It is subject to perjury and other means. There is the balance of allowing a party out for various reasons, and we believe that strikes that well, because it puts up a public filing on the court with statements and representations made that are subject to the court if found not true. Of course, they can be brought in or objected to at the time by the other party. We believe there is a proper balance and a good checking by the opposition.

Assemblyman Jones:
I appreciate your getting people out of litigations. As a business owner, I know how frustrating it can be to be at the back end of a lawsuit and have to pay these exorbitant attorney fees. The other provision seems straightforward as it is correcting times and dates. I notice it was a split vote in the Senate. What was the main opposition for those who did not vote for it? What was their main concern?

Rocky Finseth:
I do not want to speak for the individual senators, but I do believe that philosophically it revolved around this exact issue that the Vice Chair is talking about.

Vice Chair Nelson:
Are there any questions? [There were none.] Do you have anyone else who wanted to testify?

Rocky Finseth:
I believe Ms. Reese wants to come up and speak on behalf of the Realtors.

Jenny Reese, representing Nevada Association of Realtors:
The Nevada Association of Realtors is here in support of S.B. 239.

Jon Sasser, representing Legal Aid Center of Southern Nevada:
I have come up with a limited purpose of offering the friendly amendment (Exhibit E) that Mr. Finseth mentioned. We have been talking about this since the Senate, and this seemed to be the appropriate time to bring it forward. It basically looks at section 4 and makes the change to page 10, line 39, where the time frame for bringing an action for wrongful foreclosure has been reduced in the bill to 15 days. The amendment would make it go back up to 30 days.

The reason for the amendment is to bring things in balance. On the one hand, there is the need to have finality of sale and a bona fide purchaser, which we certainly understand. On the other hand, if there has been a situation in which the procedures that were discussed and the notices given in this chapter and others were not followed, and the homeowner needs to bring a lawsuit to set aside that sale as void, which is authorized by the statute, he or she needs to do it within 15 days after the recordation. We felt it was an actual time for the homeowner to find out about it, obtain a lawyer, and file the proper papers in court. This 45 days is a reduction from 90 days, which was the law up until the last session, so this would go even further down to 15 days, and we felt that went too far and put things out of balance. I approached Mr. Finseth to see if he agreed, and so I offer this as a friendly amendment.

Vice Chair Nelson:
Are there any questions for Mr. Sasser? [There were none.] Is there anyone else in support in Carson City or Las Vegas? [There was no one.] Is there anyone who would like to testify in opposition?

Pat Cashill, representing Nevada Justice Association:
I have been a litigator in the state for 45 years, first as a federal prosecutor and then in private practice. I have handled cases involving real estate, although I am not a real estate lawyer. I do not issue opinions on real estate matters, but have litigated questions involving title, the duties of title officers, and questions involving sales of real property, which are the subject of one party or another seeking injunctive relief. I commend Mr. Finseth for his candor. The issue that was raised on the Senate side, particularly by Senator Ford, was whether or not

there were adequate protections in the existing *Nevada Rules of Civil Procedure* in statute to accomplish the very objectives that Ms. Smith and her team seek here. As I have suggested in my correspondence (Exhibit F), there are adequate protections.

As Mr. Anderson asked, *Nevada Rules of Civil Procedure* 12(b)(5) authorizes a party, without having to file an answer, to seek dismissal of an action for the failure to state a claim. That rule applies to all litigants in Nevada—not just title companies or anyone else, but all litigants. Rule 56 addresses motions for summary judgment, which are a different means by which to obtain dismissal of a lawsuit that is felt to be legally or factually insufficient. The vice that the Nevada Justice Association sees in this particular bill, and particularly in section 2, is that at the outset of the proceeding, a title officer or title company can seek dismissal of itself from the lawsuit at a point in time when there has been no discovery. There has been no mandatory exchange of documents under another provision of the *Nevada Rules of Civil Procedure,* Rule 16.1, so that only one side is armed with the ammunition to file the affidavit while the other side—the plaintiff in this case—would have no access to any information in the title company's hands. It would enable it to, in a legitimate way, object to the relief sought, and that is dismissal.

Under Rule 16.1, the parties to litigation have the power to seek a district judge's oversight over a case in the sense of case management. The parties can agree that certain parties not be required to answer. The parties can agree to expedite it, limit it, and have focused discovery. You, representing the plaintiff, can serve a subpoena duces tecum, or a request for production for that matter, on a title company and get his records. So without having to go through the hoops of filing an answer, you can produce documents that at least put the players in the litigation on a level playing field. This bill, in section 2, eliminates that level playing field and carves an exception to the title industry that is not available to any other litigant in the state of Nevada. That seems to run afoul of the fundamental fairness that our rules are meant to not just create but enforce. To that end, I am happy to answer any questions that anyone might have, but our focus is on section 2. The rest of the bill I leave to the professionals in those respective fields.

Assemblyman Jones:
I am going to be a protagonist. You are a plaintiff's lawyer and you say that *Nevada Rules of Civil Procedure* 12(b)(5) is adequate and Rule 56 is adequate. If you get to the point of summary judgment, you are thousands, if not tens of thousands, into the deal; just the motion itself costs $10,000 to $15,000 to file. The judges are very reluctant to grant *Nevada Rules of Civil Procedure*, Rule 12(b)(5) early on until all the facts are ascertained. Would you then say

regarding the lady with the escrow company who had to pay $95,000 for 17 lawsuits—which obviously were eventually dismissed—that it is justice to her because she is just in business, and therefore she should have to pay all those fees because the plaintiff's lawyer throws as many people up on the wall as they can, hoping that they can extort a settlement of some sort from all these parties? As you said in your other motion—I do not know the number because I do not practice those procedures—you can agree to let parties out. The plaintiff's lawyers do not let parties out because they want those people to kick in towards the settlement.

Vice Chair Nelson:
We have to maintain some decorum here. I think you are becoming an advocate right now. A lot of plaintiffs' lawyers would not do that.

Assemblyman Jones:
I would disagree with you. He specifically brought these exact statutes up that I am referring to.

Vice Chair Nelson:
I understand, but I think you can talk down a little bit.

Assemblyman Jones:
In practical reality, would you then say, in regard to the lawyer who had to pay the $95,000, that it was fair to that defendant, or did they not use the *Nevada Rules of Civil Procedures* that you just referenced? Why would it be that they had to pay all that money just to be dismissed?

Pat Cashill:
First, if I were in Ms. Smith's shoes, I would have seen to the tender of every one of those lawsuits to my carrier. Second, were all 17 lawsuits brought up at the same time on exactly the same theory? I do not know. Those facts have to be fleshed out. Were the cases consolidated? If they were all on the same theory, then one judge ought to have all those cases. With one capable judge anywhere in the state of Nevada—at least those I have appeared before in all the years—judges are very practical and very sensitive to a lawyer's obligations under Rule 11 to file a lawsuit on pain of sanctions that is both legally and factually justifiable. Under NRS 7.085, the vexatious litigation statute, lawyers and clients, if a piece of legislation is passed by this body, will be subject to sanctions, not just for filing, but maintaining as is under Rule 11, maintaining a bogus lawsuit. There are a myriad of protections in place for everyone, not just for title companies, but for everyone in the state, such as any business owner or operator.

Judges in these times in my experience, Assemblyman Jones, are particularly sensitive to lawsuits from construction defect to real estate title issues on making sure that litigants are treated fairly. This bill, in our view, treats the title industry in a disparate, different way when there are adequate protections for everyone. I not only beg to differ with your pejorative assertions, but I take issue with those. On a level playing field basis, this bill runs afoul of what is fair for all Nevadans, not just some.

[Assemblyman Hansen reassumed the Chair.]

Assemblyman Nelson:
Following up on Assemblyman Jones' point, I do think we need to strike a balance. Obviously, we do not want defendants to stay in just to stay in and incur attorney fees. In some of these cases, I have seen that the plaintiff's lawyers will voluntarily let them out once they are convinced that the trustee is really only there in name and does not have a financial dog in the fight. I think your letter is saying that in order to strike the balance properly, you think they should file an affidavit or something like that. I think you would agree that it is almost impossible to prevail under Rule 11. It is really hard from what I have seen. I get Rule 11 letters sent to me all the time accusing me of bad motives. Rule 56 is tough to get, too. Most judges do not like to grant a summary judgment. I like your idea of an affidavit. Would you be happy if the trustees were required to at least file an affidavit, almost like an insurance company does in an insurance case, where they will provide enough of their files so that the plaintiff's lawyer can say, yes, I can see that they are in a very limited role here?

Pat Cashill:
We would support an amendment that allows the affidavit process to go forward so long as there is production by the title company of the documents that relate to the issue at hand. If the playing field is leveled in that sense, then the opponent of the affidavit would have before them whatever the documentary evidence is that the title company has in its possession upon which it bases its contention that we have no business being here. All of that said, part of the problem we have with this bill is that it exonerates, on its face, a title company even from equitable relief. That means injunctive relief. In that sense, this bill just goes too far.

Title companies may well be necessarily enjoined from transferring title. In this situation, it was that the title company has no liability in a legal sense. We have not done anything wrong. We are just the stakeholder. Or the title company may be required to hold the funds that have been placed on deposit simply as a stakeholder until the litigation is resolved to maintain the status quo,

to make sure no one is harmed, even a private litigant. In that sense, with the confluence of *Nevada Rules of Civil Procedure* Rule 65, which reaches not only the parties but any third party who is acting in active concert with a party to be enjoined, those parties even themselves are subject to injunctive relief. So we have to be careful not to use a meat-ax approach when a surgical approach, such as that which you suggest, Assemblyman Nelson, is a way to remedy the ills that we see with this bill.

Assemblyman Elliot T. Anderson:
How many trustees are actually accused of a wrongful act or omission and they need to be in the lawsuit and they are not just there as a necessary party? I understand the theoretical, and I suppose I am going against my own interests as a future person looking for legal work, but do we really want to be saddling people with fees if they really have not done anything in the lawsuit? How many times is the trustee just in there as a necessary party versus someone who has had wrongful action?

Pat Cashill:
I concede that the vast majority of trustees are stakeholders, but there are those occasions on which the trustee is perhaps a captive of one of the parties to the escrow, or has some connection. In the case which I cite in my letter of March 27, 2015 (Exhibit F), to Senator Brower and the members of the Senate Committee on Judiciary, *Mark Properties, Inc. v. National Title Co.* [117 Nev. 941, 34 P.3d 587, (2001)], the court said an escrow agent may not close its eyes in the face of known facts with the thought that no one has yet confessed fraud, although not required to investigate when the agent is aware of facts and circumstances that a reasonable escrow agent would perceive as evidence of fraud. There is a duty to disclose. In that situation, the escrow agent may not have been a culprit at the outset, but it came upon the facts that it was required to disclose under the common law of the state of Nevada. There may be culpability post the transaction. There are a myriad of situations that we cannot fathom with the vast experience and intelligence that this Committee has in its membership to think of all the possibilities. Therefore, the rules have to be broad-based and fair to all those litigants who may come before a court irrespective of what their situation is.

Assemblyman Elliot T. Anderson:
Would you concede that the bill allows the trustee to come back in if there is something that is discovered in the course of litigation since it is without prejudice being dismissed from the action?

Pat Cashill:
I concede there is a mechanism to move to amend. When those facts are discovered, it is a critical factor that a district judge has to take into account. When deciding whether or not to grant leave to amend, bring someone in, if discovery is withheld for any reason, is late in forthcoming, is given up on the eve of trial, and there may not be, as a practical matter, time to amend. If case management by the district court has not been as efficient as it could have been, for whatever reason—the parties were uncooperative, the court was too busy, et cetera—then there may not have been adequate disclosure at an early stage of the game that would enable a party to file a motion for leave to amend that has a chance of being granted. It is frankly an uphill fight at even the mid-stages of litigation to get a court to grant a motion for leave to amend to add a party. It is tough—not impossible—but it is expensive.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify against S.B. 239? [There was no one.] Is there anyone in the neutral position on S.B. 239? [There was no one.] Mr. Finseth, is there any else you would like to present to us?

Rocky Finseth:
No, but I would point out that this is not a new concept regionally. California, Arizona, and Utah have this statute in place—section 2—and Mr. Cashill conceded that a vast majority of trustee cases should be let out. There certainly is a procedure in lines 14 through 19 on page 4, which is section 2, subsection 2, that could bring trustees back in.

Chairman Hansen:
We will now close the hearing on Senate Bill 239 and open the hearing on Senate Bill 484 (1st Reprint), which revises provisions concerning personal financial administration.

Senate Bill 484 (1st Reprint): Revises provisions concerning personal financial administration. (BDR 3-1087)

Catherine O'Mara, representing Probate and Trust Law Section, State Bar of Nevada:
With me is Julia Gold, one of the cochairs for the Probate and Trust Law Section, and she is available for any questions as we go through the bill. Alan Freer, cochair, is also available in Las Vegas. I want to give the Committee a little bit of background on Senate Bill 484 (1st Reprint). This is truly a consensus bill. This Section has been working for over two years on finding the reforms that would help streamline and make more efficient the

probate and trust process in the state of Nevada. After all of the members of this Section signed off on their proposed changes, they vetted this bill thoroughly through all the sections of the State Bar of Nevada and they earned the stamp of approval from the Board of Governors. So when we say it is a consensus bill, we really mean it. It has been vetted carefully and has been an intense labor over the past couple of years, but we believe we have a noncontroversial bill for you and encourage you to support it. It passed through the Senate with no opposition and with bipartisan support. We do not anticipate any opposition today. We have worked very hard to keep it clean. I will turn it over to Ms. Gold, who can answer any questions about the intent and purpose of the bill.

Chairman Hansen:
Ms. Gold, do you intend to testify or are you there for answering any possible questions from the Committee?

Julia Gold, Cochair, Probate and Trust Law Section, State Bar of Nevada:
I am here to answer any questions that the Committee has.

Chairman Hansen:
Are there any questions at this time on S.B. 484 (R1)?

Assemblyman Nelson:
Would you tell me your thinking behind section 60? In my experience, binding arbitration can be just as expensive as litigation.

Julia Gold:
The purpose of section 60 is not mandatory. It is a permissive provision, which allows a settlor or testator of a will to include a provision for binding arbitration if they so desire. I have had circumstances where arbitration has moved more quickly than going through the courts. This is just to allow for more flexibility and for the enforceability of a binding arbitration provision within the document.

Assemblyman Elliot T. Anderson:
Has there been clamor for this? Why is it in the bill? Why is it needed? Is the court process not efficient enough? What exactly is happening that we need to do this? I understand that some people want to do it, but I have tried to look carefully when it comes to arbitration because I want to make sure that people get their day in court if they want it. Would you comment on why the State Bar decided to put this in?

Julia Gold:
This provision has been in other states' bills. It is to provide an alternative method of solving disputes. The courts can be very slow, and I think Mr. Freer could probably speak more to what happens in Clark County. We often have delayed decisions, where with arbitration, we can actually get a quicker decision. One of the provisions within Titles 12 and 13 of *Nevada Revised Statutes* is to have quick administrations and quick resolutions so we can get the assets out to the beneficiaries and have the wills administered as the testator or the settlor desired. Again, it is not a mandatory provision, but it allows for more flexibility. One of the things that Nevada has been able to do consistently is to create statutes that make administering trusts and estates in Nevada a more streamlined process and with different options that allow it and allow for certainties. It gives the testator and the settlor another avenue as far as resolving disputes. [Julia Gold submitted a summary of the bill (Exhibit G).]

Alan Freer, Cochair, Probate and Trust Law Section, State Bar of Nevada:
The binding arbitration is part of a suite of alternate dispute resolution issues that were presented in the bill. It allows a person creating a trust to include within the trust document a provision that states if a beneficiary wants to take under this trust and that beneficiary has a problem or a concern with the trustee, it can be resolved through arbitration proceedings. One of the reasons for that—in addition to the speed and efficiency—is that in some of these trusts you are dealing with intensely private family issues such as family finances, and family dynamics such as people getting along with one another. So the arbitration, in addition to allowing for a streamlined process, allows for privacy, which a lot of these families who create these trusts crave.

Chairman Hansen:
Are there any other questions for Mr. Freer, Ms. Gold, or Ms. O'Mara at this time? [There were none.] Is there anyone else who would like to testify in favor of S.B. 484 (R1)? [There was no one.] Is there anyone who would like to testify against S.B. 484 (R1)? [There was no one.] Is there anyone who is neutral? [There was no one.] We will close the hearing on S.B. 484 (R1) and will open the hearing on Senate Bill 167 (1st Reprint).

Senate Bill 167 (1st Reprint): Revises provisions relating to employment. (BDR 18-265)

Senator Michael Roberson, Senate District No. 20:
Senate Bill 167 (1st Reprint) is an important bill strengthening protections against employment discrimination and was passed unanimously by the Senate as amended in committee and on the floor.

As many of you are aware, the Nevada Equal Rights Commission accepts employment discrimination complaints alleging unlawful discriminatory practices on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, or national original. Currently, if the Commission determines that an unlawful practice has occurred, it may order the person engaging in the practice to cease and desist. For a case involving an unlawful employment practice, the Commission may order restoration of benefits and rights to which the person is entitled.

Senate Bill 167 (R1) will strengthen our state's existing employment discrimination laws. The bill provides an employee who believes he or she has been unlawfully discriminated against in the workplace more time to bring forward a claim. The bill also provides greater protection of free speech rights by prohibiting, in most circumstances, an employer from discriminating against an employee for discussing wages.

Section 1 of the bill revises provisions governing the filing of complaints alleging compensation discrimination. This provision requires that the complaint be filed within 300 days after any date on which: (1) a decision or practice resulting in discriminatory compensation is adopted; (2) a person becomes subject to such a decision or practice; or (3) a person is affected by an application of such a decision or practice resulting in discriminatory compensation, including each time compensation is paid, resulting from such a decision or practice. This is important, because this implements the Lilly Ledbetter issue under state law. If any of you recall, the issue of Lilly Ledbetter was that she was discriminated against for decades. It was found that because the discrimination had started so long ago, the statute of limitations had tolled, and she could not get any remedies for that discrimination. This would take care of that issue in that each time a person receives a check based on a discriminatory practice, it would restart the tolling time period for bringing an action.

Section 2 of the bill revises the powers of the Commission to order remedies for unlawful employment practices. Specifically, the Commission is authorized to award back pay for a period beginning three years before the date of filing of the complaint and ending on the date the Commission issues an order.

Section 3 also addresses the Lilly Ledbetter issue in that it is very difficult for someone to know if they are being discriminated against with regard to their pay if they do not have the freedom to talk to their colleagues about what they make. The language of section 3 is the same as Senator Dean Heller has in his End Pay Discrimination Through Information Act. He brought that forward in 2012 in the United States Senate. Section 3 of the bill prohibits an employer from discriminating against an employee for inquiring about, discussing, or

disclosing information about wages, unless the person has access to information about the wages of others as part of his or her essential job functions and discloses the information to someone who does not have access to that information. For instance, someone who works in human resources would not be able to have those discussions.

Section 12 of the bill requires the Commission, if it does not conclude that an unfair employment practice has occurred, to issue a letter to the person who filed the complaint notifying the person of his or her right to apply to the district court for an order relating to the alleged unfair employment practice.

Finally, section 13 of the bill provides that, in addition to the existing authority to apply to a district court for relief up to 180 days after the alleged act, a person may apply to a district court for relief up to 90 days after the issuance of the Commission's letter.

Assemblywoman Fiore:
Are we not a right-to-work state?

Senator Roberson:
We are.

Assemblywoman Fiore:
Can I fire you just because, without giving you a reason?

Senator Roberson:
You cannot fire someone based on the categories of discrimination outlined in current law. You could do so, but you will be liable to get sued or having a complaint brought against you. No, you cannot fire someone based on discrimination or any of the classes of discrimination under law, which includes race, color, religion, sex, sexual orientation, et cetera.

Assemblywoman Fiore:
I understand that, but I can fire you for no reason, correct?

Senator Roberson:
Generally, yes, that is true, but you cannot discriminate against someone in a workplace.

Chairman Hansen:
Are there any further questions for Senator Roberson? [There were none.] Senator Roberson, is there anyone else you would like me to call up at this time to testify in favor of the bill?

Senator Roberson:
No, not specifically.

Kent Ervin, Private Citizen, Reno, Nevada:
Nevada has good public policy statements in this antidiscrimination statute but little teeth. This bill takes a very modest step in allowing employees who have been discriminated against to find out about it in the first place and to be awarded back pay for a reasonable three-year time period. There is a pay gap between men and women that has been well documented. I would refer you to the testimony in documents that were presented for Assembly Bill 304. Whether it is 80 percent, or if you account for time out of career for child caring, maybe it is 90 percent or 95 percent if you only include unmarried, childless people, there is still a pay gap between men and women and this is the history behind why these antidiscriminatory statutes are so important. Businesses that do not discriminate will not be affected at all by this bill, so it is not antibusiness anyway. The only thing businesses will have to do if they have been held as discriminating is to give some back pay which they would have owed anyway.

I also support the greater transparency in salaries and being able to find out about them. I happen to work for an employer where everyone knows everyone else's salaries. I think that greater transparency actually protects the employer when they are behaving well. They can show there is no discrimination in that case.

Janice Flanagan, Private Citizen, Reno, Nevada:
I oppose all forms of discrimination, and I am sure all of you do, too, and the majority of Nevadans do. Wage inequality is wage discrimination. Nevadans deserve equal pay for equal work and economic benefits for all of our families. If women are not paid the same wages as their coworkers, this puts them at a disadvantage, not only during their working lives but also for years afterwards in their Social Security benefits. If businesses do not discriminate, there will be no adverse consequences for these businesses. As you vote on this bill, please consider the most vulnerable Nevadans and vote to give them a fair shot at economic benefits for their entire lives.

Michael Patterson, representing Lutheran Episcopal Advocacy in Nevada:
I would like to read a short passage from the social statement on race, ethnicity, and culture from the Evangelical Lutheran Church in America (ELCA). This statement expresses the ELCA's calling to seriously regard culture and

ethnicity, confront racism, to engage in public leadership, witness, and deliberation, and to advocate for justice and fairness for all people. I believe this bill does that. I want to thank the Senator for putting it forward. We support anything that ends any type of discrimination in our state.

Assemblyman Jones:
As an employer, in your mind's eye, how is it that you establish discrimination? Generally, with jobs, they are not identical. People have different work experience, the jobs are a little different—even with receptionists. One receptionist might have filing to do while the other one also does internal communications. Out on a production line, one person has a little bit more supervision authority than another. How is it in the practical world that you establish the discrimination? Would you give me from your perspective how you actually identify the establishment of the discrimination?

Kent Ervin:
I am not an expert on that. I believe that Nevada Equal Rights Commission has a process to adjudicate those kinds of issues as well as the court process. I can give you some personal experiences from my own situation. I have to emphasize that I am testifying for myself, but I work at the University of Nevada, Reno, and I am a faculty member. I have served on our compensation committee in the past where a very careful job was done to make sure there is no discrimination based on protected categories. The salary model that is used takes into account different disciplines, different valuations, and time on the job. It is a process to go through all of those factors in an individual case. This bill only kicks in when discrimination is being charged and there is a process to find out.

Chairman Hansen:
I assume the Commission has some sort of a process. Anyone can throw around accusations, but there has to be a certain level of proof established before an employer can actually be held accountable. There is due process fairness to both sides of these types of issues. Is there anyone else who would like to testify in favor of S.B. 167 (R1) at this time? [There was no one.] Is there anyone in opposition to S.B. 167 (R1)? [There was no one.] Is there anyone in the neutral position? [There was no one.] Senator Roberson, are there any last-minute comments you would like to make?

Senator Roberson:
To clarify, this bill does not change the standards applied to the term and whether there is employment discrimination. It simply provides more relief for victims of discrimination and allows more time to bring a claim for

discrimination. It also protects free speech rights of employees and gives employees the ability to talk to each other about what they make.

Chairman Hansen:
We will close the hearing on S.B. 167 (R1) and open it up for public comment. Is there anyone in Carson City or Las Vegas who would like to address the Committee? [There was no one.] Is there any Committee business that we need to bring up? [There was none.] This meeting is adjourned [at 9:43 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: May 5, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 197 (R1)	C	Senator Greg Brower	Video Exhibit
S.B. 239	D	Rocky Finseth, Nevada Land Title Association	Proposed Amendment
S.B. 239	E	Jon Sasser, Legal Aid Center of Southern Nevada	Proposed Amendment
S.B. 239	F	Pat Cashill, Nevada Justice Association	Letter in Opposition
S.B. 484 (R1)	G	Julia Gold, State Bar of Nevada	Summary of Bill's Provisions