

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
February 20, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Friday, February 20, 2015, in Room 3138 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 Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Janet Jones, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Alan Rabkin, Senior Vice President and General Counsel, Heritage Bank
William Cashill, representing Nevada Justice Association
Donald L. Cavallo, Public Administrator, Washoe County Public
Administrator's Office
Jasen Cassady, Attorney, Cassady Law Offices
Betsy Aiello, Deputy Administrator, Division of Health Care Financing and
Policy, Department of Health and Human Services
Catherine O'Mara, Snell & Wilmer LLP, representing Probate and Trust
Law Section, State Bar of Nevada
Tonja Brown, Private Citizen, Carson City, Nevada
Jon Sasser, Washoe Legal Services, representing Legal Aid Center of
Southern Nevada
Nick Vassiliadis, R & R Partners, representing Nevada Collectors
Association
James Berchtold, representing Legal Aid Center of Southern Nevada
Tray Abney, Director of Government Relations, The Chamber,
Reno-Sparks-Northern Nevada
Lauren Hulse, Capitol Partners, LLC, Reno, Nevada
Alexis Miller, Director, Public Affairs, Amplify Relations, representing
National Federation of Independent Businesses
Brett Wachter, Fremont Emergency Services, Las Vegas, Nevada

Chairman Hansen:

[Roll was taken. Committee protocol and rules were explained.] We have two bills to discuss today. We will be doing a work session first. The first bill we will discuss is Assembly Bill 10.

Assembly Bill 10: Revises provisions governing the payment of costs associated with legal representation of indigent criminal defendants charged with capital crimes. (BDR 14-467)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 10 was heard in Committee on February 5, 2015. This bill requires the Office of the State Public Defender to bear the costs of providing

legal representation to an indigent person in a capital case. The bill prohibits the State Public Defender from charging counties the use of services to provide representation, and requiring the State Public Defender to reimburse the county for the cost of a court-appointed attorney. [Ms. Thornton continued to read from work session document ([Exhibit C](#)).]

Chairman Hansen:

Normally during work sessions we do not take public testimony; however, often there are questions that do arise. We will allow people from the audience to come up and speak if there are significant issues. Even though there can be a motion to do pass with a second, if there are significant issues that come up during the discussion portion, I can ask the individual who did the initial proposal to withdraw his motion, and we can bring it back to readdress issues.

I would entertain a motion for A.B. 10.

ASSEMBLYMAN ELLIOT T. ANDERSON MOVED TO DO PASS
ASSEMBLY BILL 10.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

Is there any further discussion on A.B.10? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

The floor statement will go to Assemblywoman Fiore.

**Assembly Bill 40: Revises provisions relating to the State Gaming Control Board.
(BDR 41-352)**

Diane Thornton, Committee Policy Analyst:

Assembly Bill 40 was heard in Committee on February 5, 2015. This bill exempts certain proceedings and actions of the State Gaming Control Board from the Open Meeting Law including: (1) a determination of violation; (2) a determination and content of a complaint filed with the Gaming Commission; and (3) complaint resolution discussion or negotiation. In addition, the bill changes the name of the State Gaming Control Board to the Nevada Gaming Control Board. This bill is effective upon passage and approval. [Ms. Thornton continued to read from work session document ([Exhibit D](#)).]

Chairman Hansen:

We also had a friendly consensual amendment that was proposed by some members of the Committee. That amendment proposes to place a sunset on

this passage, essentially giving it a four-year window to function and see whether there are issues regarding the Open Meeting Law. I spoke with the bill sponsor and they were willing to accept that amendment. At this time, I would like to include that consensual amendment as part of this motion.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 40.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

Is there any further discussion for this bill?

Assemblywoman Diaz:

I just wanted to clarify that we were adopting both amendments?

Chairman Hansen:

That is correct.

Assemblyman Elliot T. Anderson:

I want to thank the Gaming Control Board for being open to working with us regarding our concerns.

Assemblyman Ohrenschall:

I had a few concerns during the hearing, and I had a chance to speak with representatives of the Gaming Control Board regarding these concerns. I appreciate the work on the amendment, and I will be supporting this bill.

Assemblyman Thompson:

When you go to the floor to vote on this bill, will all of this be included in the full amendment?

Chairman Hansen:

That is correct.

Assemblyman Thompson:

I will vote in favor of this bill, but I reserve the right to change my vote on the floor of the Assembly.

Chairman Hansen:

The Committee members always have that option. It is always protocol to let the Chair know. How you vote in committee typically is how we expect you to vote on the floor. If something comes up in the meantime, it is good protocol to let the Chair know. Is there any further discussion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

The floor statement will go to Assemblyman Gardner.

**Assembly Bill 44: Revises provisions governing judgments by confession.
(BDR 6-491)**

Diane Thornton, Committee Policy Analyst:

Assembly Bill 44 was heard in Committee on February 9, 2015. This bill requires a written statement, signed by the defendant, to accompany judgments upon confession. The statement must include the facts on which the confession is based and the amount of debt due or contingent liability for which the judgment will be entered. This bill further provides that the written statement must be filed with the clerk of the court, and that the judgment may not be amended to include additional costs or attorney's fees incurred after the date of entry of the judgments. [Ms. Thornton continued to read from work session document ([Exhibit E](#)).]

Chairman Hansen:

I would entertain a motion including the amendments.

ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 44.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

Is there any further discussion at this time? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

The floor statement will go to Assemblywoman Seaman.

Assembly Bill 46: Revises provisions relating to the enforcement of certain civil judgments entered by a juvenile court for unpaid fines, administrative assessments, fees or restitution. (BDR 5-489)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 46 was heard in Committee on February 18, 2015. This bill removes the provision requiring the court to include in the sentence the unpaid civil judgment that remains if the person has also been convicted of a crime before satisfying the civil judgment. [Ms. Thornton continued to read from work session document ([Exhibit F](#)).]

Chairman Hansen:

I will entertain a motion at this time.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 46.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

Is there any further discussion at this time? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

The floor statement will go to Assemblyman O'Neill.

At this time, I am going to skip Assembly Bill 66 and bring it up for a future work session. The next bill will be Assembly Bill 67.

Assembly Bill 67: Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 67 was heard in Committee on February 6, 2015. This bill amends various provisions regarding driving under the influence to comply with the recent court rulings. Nevada's current implied consent laws as set forth in *Nevada Revised Statutes* (NRS) Chapters 484C and 488 do not comport with recent rulings of the Nevada Supreme Court. The bill amends these chapters to eliminate the constitutional defects and makes various conforming amendments. In addition, NRS 50.315, subsection 6 provides that defendants facing a misdemeanor charge may not cross-examine the witness to sign the affidavit or declaration at trial unless there is a "substantial and bona fide" dispute regarding the facts asserted. The Nevada Supreme Court found this to be a violation of the Sixth Amendment of the *United States Constitution*. The statute is amended to eliminate the constitutional defect by allowing the defendant no later than ten days before trial to object in writing to the admission of the affidavit or declaration into evidence and to request an opportunity to cross-examine the witness. The bill also makes the operation or actual physical control of a vessel by a person under the influence of intoxicating liquor or a controlled substance unlawful if the vessel is "under way." [Ms. Thornton continued to read from work session document ([Exhibit G](#)).]

Chairman Hansen:

My understanding is that these are considered friendly amendments by the Office of the Attorney General?

Diane Thornton, Committee Policy Analyst:

That is correct.

Chairman Hansen:

At this time I would entertain a motion on Assembly Bill 67.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 67.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

Are there any further discussions on the bill at this time? [There were none.]

THE MOTION PASSED UNANIMOUSLY.

The floor statement will go to Assemblyman Jones.

We will now move on to our first hearing. We will be going out of order and will address Assembly Bill 130, which will be presented by Assemblyman Nelson.

Assembly Bill 130: Revises provisions relating to the administration of estates of deceased persons. (BDR 12-862)

Assemblyman Erven T. Nelson, Assembly District No. 5:

With me today is Alan Rabkin, and I will turn the testimony over to him shortly to review the bill.

The general rule in Nevada to probate an estate is that you have to go through quite a complicated process, usually involving lawyers, and it takes a lot of time and money. We are going to talk today about three exceptions in the current statute. Those are: the small estate affidavit process, the small estate fast track probate process, and the summary administration process. What these allow people to do in the case of death is to get the estates handled quickly, expeditiously—sometimes without a lawyer—and save money. We are proposing today to change the financial limits of when you can use these processes. In addition, there is one friendly amendment which Mr. Cashill will discuss. With that, I will now turn it over to Mr. Alan Rabkin.

Alan Rabkin, Senior Vice President and General Counsel, Heritage Bank:

I will be very brief; I prepared my testimony, which you should have received. There is no need for me to read it as you can read it at your convenience ([Exhibit H](#)).

This change is being proposed on behalf of the banks. It might be a curiosity to you as to why the banks are involved. The banks are usually the first point of contact by people interested in claiming a decedent's account. There are also stock brokerage firms in this similar situation. Typically, we will have a surviving spouse or child approach the bank and ask for the account of a decedent. We certainly want to cooperate with the customer, and we certainly do that in most cases under \$20,000 per our current statute. The problem is that with time, inflation, and ascending asset values, it is becoming more frequent that we find the account balance exceeds \$20,000. In that situation, or if we are aware that the entire estate is valued at over \$20,000, we cannot provide the account to the decedent's spouse, children, or any other heir because we have exceeded the maximum amount for the small estate affidavit section. Therefore, we are proposing an increase from \$20,000 to \$100,000—to take into account the ascending value of assets and the appreciation of assets. We are not going to be the leader in this area—there are other states at \$100,000—but to be candid, there are other states at \$75,000 and \$50,000. While we are certainly willing to be flexible on that, we are not going to be way out in the lead with those proposed levels.

The second and third exemptions deal with probated estates under either the fast-track or summary process. They are not full blown probated estates; they are fast-track scenarios. We are proposing that these additional forms of exemptions be increased as well. We are also requesting that *Nevada Revised Statutes* (NRS) 146.070 be increased from \$100,000 to \$150,000, and NRS 145.040 be increased from \$200,000 to \$250,000. It would be an increase of \$50,000 on the two fast-track probates, and an \$80,000 increase on the small estate affidavit process.

The protections to assure that fraud does not occur, especially during the small affidavit process, are already contained in the statute. If heirs claiming money from an estate valued at less than \$20,000 are not entitled to those funds, under the various subparts of that section, they will have committed a felony in the state of Nevada. In addition, they do have to attest to their understanding of all the subparts that are contained in the small estate affidavit, and they have to have their signatures notarized. However, if they do that and present it to a financial institution or stockbrokerage firm, they are entitled, unless the bank is aware of other assets to claim, to the estate if it is less than \$20,000, and should this statute be passed, less than \$100,000.

At this point I will stop for any questions from the Committee. I am certainly familiar with this process since most of these requests come to my office as I run the legal department at Heritage Bank.

Chairman Hansen:

I just learned from Legal that the last time these fees had been adjusted was 1997.

Assemblyman Elliot T. Anderson:

How many estates will be coming under the provisions of these new values? You mentioned the clawback provisions through the felony for the affidavit process, but what about the other processes?

Alan Rabkin:

In answer to the first question about the impact and scope of this process and what slice of the pie it will then encompass, I do not know that personally. I do see anecdotally that this would include many more situations where I would be able to clear the payout of a certificate of deposit or savings account in the \$40,000, \$50,000 or \$60,000 range to a surviving spouse or child. It would certainly increase my ability to work with my own customer base to avoid probate for them.

In answer to the second question dealing with the clawback provisions, currently the statute reads—we would not be changing this—that if one heir has problems with what another heir did to claim these funds that that heir would have to take some sort of action to dispute that. We would not be involved in that. In the situation where there is out-and-out fraud, let us say the final expenses had not been paid, which is one of the provisions of the affidavit, or the Medicaid situation has not been resolved, or 40 days have not elapsed, if there is some sort of fraud in that regard, that would potentially be actionable by a district attorney in that county. Those are the two safeguards to preclude fraud; one is an error upon error situation, the other is a very serious situation, which would be the district attorney taking actions against the heir.

Chairman Hansen:

Are there any other questions for Mr. Rabkin at this time? Seeing none, thank you very much, Mr. Rabkin. Assemblyman Nelson, do you have anyone else here to speak in favor of A.B.130?

Assemblyman Nelson:

Mr. Cashill will review one friendly amendment.

William Cashill, representing Nevada Justice Association:

We speak in favor of the bill as far as it expedites the administration of estates, which are probably before the probate court. We offer the amendment, however, in order to make sure the probate court is fully apprised of any claims for any tort, especially one including a personal injury, to apprise the court that the normally short administration period may be extended if a claim is submitted in a timely fashion and has to be adjudicated. Our purpose in offering the amendment to section 4, subsection 1, paragraph 2, and adding a new subparagraph (j) is to give the probate court a heads up ([Exhibit I](#)). This may be more complicated than it first appears. The affidavit requirement is not changed, it just requires that the person who signs the affidavit state what his or her knowledge is of whether there are any claims that have been, or are expected to be, made against the estate. This will enable the court to properly allocate its resources, if need be, to the extended period that may be required to see to the adjudication and administration of those claims.

I have spoken with my colleagues, Assemblyman Nelson and Mr. Rabkin, about this, and we are all in accord that the bill is sound and that our amendment is appropriate.

Chairman Hansen:

Are there any questions for Mr. Cashill at this time?

Assemblyman Gardner:

Could you explain how your proposed amendment is different from subparagraph (f), which talks about the individual debts that they have to prove have been handled?

William Cashill:

Subparagraph (f) refers to the debts which are as a general proposition quantified; a claim, however, may not be quantified. A claim opposed to a debt may have to be adjudicated in a process outside the probate proceeding. The process of adjudication may take a period of time before the claim is adjudicated and quantified in such a fashion that the probate judge handling the estate knows precisely what that claim is, what its merits are, and if it has been adjudicated in the amount that may affect the administration of the estate.

Chairman Hansen:

Are there any further questions for Mr. Cashill?

Assemblyman Elliot T. Anderson:

Just to clarify my understanding, if there already was a judgment that would be included under that section, a person would be a judgment debtor, correct?

William Cashill:

If by that you mean that the claim has been quantified as a judgment and thus known to the person signing the affidavit, then that could be listed. If the claim has not been adjudicated but is just out there, and we think a lawsuit may be brought, that would be different.

Chairman Hansen:

Is there anyone else who would like to speak in favor of A.B. 130 at this time? Seeing no one, is there any in opposition to A.B. 130 that would like to testify at this time?

[Assemblyman Nelson assumed the Chair.]

Donald L. Cavallo, Public Administrator, Washoe County Public Administrator's Office:

I am not in complete opposition to the bill; I find that leveling the probate to a higher level of raising the limits—\$250,000 for full administration, and \$150,000 for summary—to be appropriate. I have concerns in the area of dealing with the affidavit itself. Currently, the affidavit has a limit of under \$20,000, and this bill is requesting that it be raised to \$100,000. I feel a \$50,000 increase at this time would be more effective and easier to monitor. As the Washoe County Public Administrator, we handle only probate estates, and I have seen abuse of the affidavits by individuals. If the deceased had a \$10,000 bank account, certainly the \$20,000 affidavit suffices for that. However, I find individuals have investments in more than one institution. The heir may empty an account under \$20,000, and then walk across the street to another bank where there is another account for \$17,000. The heir will then use the same affidavit to close that account. There is no clearinghouse, or anywhere else, to lodge these affidavits so they can be monitored by any court. The public administrator's office, under NRS 253.0403, also has the ability to do an affidavit for estates under \$20,000. We have made arrangements, and have worked with our district court, where our affidavits are put into the form of a petition to the district court, and then we are given an order from the court authorizing us to use those affidavits. In that petition to the court, we spell out all the debts in that affidavit. I have real concerns in having the private sector being able to manage their own affidavits.

Assemblyman Gardner:

You mentioned that you saw a lot of abuse of the affidavit process. I was reading the requirements and saw that these abuses are a felony. How many people have been prosecuted for this type of fraud?

Donald L. Cavallo:

I have seen no prosecution whatsoever. It is very difficult to substantiate that it has taken place. I also have concerns in that area for potential creditors. Certainly, the individual who is signing the affidavit is swearing to the fact that all the debts have been satisfied. This is only being monitored by a notary, and the notary is only confirming the signature, not that the information in that document is correct.

Assemblyman Elliot T. Anderson:

Do you not have to certify that what you put in an affidavit is true and accurate under penalty of perjury?

Donald L. Cavallo:

The individual signing the affidavit absolutely has to certify its accuracy. You are relying on the individual who is completing that document to be honest and forthright. Just recently we had a family member in an estate process, and when we were preparing our affidavit, they went to the financial institution and closed the account. By the time we went to the financial institution with our affidavit, those funds were already gone. It was an \$8,000 account, and that money would have reimbursed Washoe County Social Services for handling the funeral and reimbursed my office for the expenses for cleaning out the residence, filing the tax returns, and everything else necessary. Because that individual lives in California, it was very difficult to try to prosecute across state lines.

Vice Chairman Nelson:

You are not opposed to the bill; you just think it should be increased to \$75,000 instead of \$100,000?

Donald L. Cavallo:

I would ask for a threshold of \$50,000. I think that also lends some consistency to the statute where the affidavit is \$50,000, the summary administration is at \$150,000, and a full administration is at \$250,000.

Vice Chairman Nelson:

If it is raised to \$50,000, you are still going to have the potential abuses you were talking about.

Donald L. Cavallo:

Absolutely.

Vice Chairman Nelson:

Would you really like to have this statute taken off the books?

Donald L. Cavallo:

No, I believe there certainly is some benefit for those family members who adhere to the law.

Assemblyman Ohrenschall:

Chairman Hansen stated that the last revisions to these dollar amounts were made in 1997. I do not have the Consumer Price Index, but I am not sure we are even keeping pace with the economy by changing this to \$100,000. How does that justify wanting it at \$50,000?

Donald L. Cavallo:

I certainly understand the question; however, I think a \$100,000 leap at this time is a dramatic change. *Nevada Revised Statutes* (NRS) 253.0403, for the public administrator's office, mirrors the statute that we are looking at today; therefore, I would ask that it would also be considered to be increased. Under that statute, the public administrator's office is set at the \$20,000 limit, and we would like to have it increased to \$50,000, if that is agreeable today. I would be uncomfortable doing estates up to \$100,000 under an affidavit, even though I am filing that affidavit with the district court, and getting a court order authorizing us to handle it.

Assemblyman Gardner:

It was stated in previous testimony that we are much lower than other states. The minimum in many states is \$75,000 and the maximum goes to \$200,000 for the same process. Do you know if those states have large fraud issues?

Donald L. Cavallo:

I do not, sir.

Vice Chairman Nelson:

In your experience where you have seen fraud or abuse of the statute, is Medicaid a big issue?

Donald L. Cavallo:

I believe Medicaid is a very large issue in these instances. In the probate process, Medicaid has to be noticed of all probate proceedings as a potential creditor. There is no requirement to notify probate by these affidavits. Again, it is relying on the individual signing that document.

Jasen Cassady, Attorney, Cassady Law Offices:

Our firm practices solely in the wills, trusts, and estates area. Last year our caseload for estates under \$100,000 was approximately 80 cases. We have seen many cases that would be affected by the bill. By way of disclosure,

I also sit on the Legislative Committee for the State Bar's Probate and Trust Section. I am not appearing this morning on behalf of that Probate and Trust Section; we have our own bill with the Senate that addresses NRS Chapter 146. In our bill, we did not recommend increasing any of the limits that are recommended by A.B. 130. Our section also has not expressed any opinion on A.B. 130. We were asked to yesterday, but there was not enough lead time to run it through our committee, then the section, and the State Bar.

Initially I would like to read into the record a letter I received from Clark County Probate Commissioner, Wesley F. Yamashita, that I attached in the materials I provided ([Exhibit J](#)).

To the Judiciary Committee of the Nevada State Assembly: I am writing this comment to the proposed bill A.B. 130 pending before your Committee. [Mr. Cassady continued to read from page 12 of ([Exhibit J](#)).]

Mr. Yamashita's calendar is routinely in excess of 100 cases a week. His knowledge, experience, and input on this matter should not be understated or underestimated. I have provided in my materials a recent court case involving fraud in this area.

The Medicaid claims would be greatly affected by such a monetary increase in the statute. The main issue we want you to understand and remember is what the purpose of Title 12 of the United States Code is, which is to make sure the proper people receive the money. Allowing someone to simply sign a form with no verification that the contents of that form are correct, and to present it to a bank—who is immune from liability—to issue the money, does not serve the purpose under Title 12. The Medicaid estate recovery has to be noticed in any of the other procedures; however, notice is not required under the affidavit procedure. Medicaid, by definition, is for people with small estates. By passing any type of state recovery from an estate valued at \$100,000, it is going to devastate Medicaid. In a time when the Legislature and Governor are trying to find revenue for the state, this bill just lets it walk right out the door. I believe it would be a mistake to raise the limits by 500 percent on these small estate affidavits.

Additionally, in terms of who is the rightful heir to these assets, I have included another case which gives an example of the effect on Medicaid. The will of the decedent gave everything to a family friend instead of the decedent's son, who she wanted disinherited. Under A.B. 130, because the estate was under \$100,000, the son could have gone to the bank, signed the affidavit, and collected the money, and no one would have been able to recoup the funds.

In this case, we filed the set-aside, and properly noticed Medicaid. Medicaid did have a claim for this decedent of over \$120,000; Medicaid was able to recover \$61,000. Under A.B. 130, either the friend, under the will, or the son could have presented a false affidavit that Medicaid had been provided for, taken off with the money, and Medicaid would have lost the \$61,000.

Another case was regarding a woman who acquired over \$40,000 from Wells Fargo. Wells Fargo provided the affidavit, the person signed it, collected the \$40,000 and, in a sense, took off with the money. There was no will in that case, so she and her two brothers were actually the rightful heirs. However, the two brothers saw none of the money. The only reason they even knew about it was because she first came to the Cassady Law Office to handle the estate properly through a set-aside. Our office filed the set-aside with the court and properly noticed her brothers. After that was filed and noticed, she called our office and stated she no longer needed our services and that she had already collected the money. The brothers hired their own attorney and discovered that their sister had filed a false affidavit. The brothers then filed the appropriate paperwork with Commissioner Yamashita's office to cite the sister. Commissioner Yamashita asked her where the money was; she stated that she spent it. She is judgment proof, has no money, and is on disability. That money is gone; the two brothers will not collect their share. The Commissioner had no choice but to assess her for triple damages, so she now has a \$120,000 judgment against her in favor of the two brothers. However, they will never collect on it. If this statute is raised from \$20,000 to \$100,000, this kind of fraud will happen day in and day out to the detriment of Medicaid, other rightful creditors such as banks, and other rightful heirs to the estate.

Vice Chairman Nelson:

First, I will say that I highly respect Commissioner Yamashita. I have known him for 40 years and I exchanged emails with him yesterday on this topic. I only wish I had heard from him and you earlier. I would like to meet with you, Mr. Rabkin, and everyone in opposition. Maybe we can get all the stakeholders together and work out something that everyone will be happy with. It seems from your testimony you would be happy to have NRS 146.080 abolished. Is that correct?

Jasen Cassady:

I think for the very small estates it is an appropriate mechanism. What we find, in practice though, is that you have two different extremes. You have the banks that provide their own form, which is problematic because the heirs can go bank hopping and collect more than what is allowed on the affidavit. On the other extreme, you have banks—Bank of America in particular—which refuse to accept an affidavit. We have had Bank of America demand a court order only.

The other option would be to abolish NRS 146.080 and waive a filing fee for a set-aside that has less than \$20,000. Between \$20,000 and \$100,000, I think it is vital that protections are in place of having to file before the court would provide notice to all interested parties.

With respect for not contacting you earlier, I apologize. I have been in contact with Commissioner Yamashita over the last week or so and left it to him to contact you as he indicated that you and he go way back.

Vice Chairman Nelson:

That is fine; I was not being critical. That was the reason I think we need to do some work on this bill. I am curious, though, since you practice solely in this area, and my area of practice is different, whether you have heard about abuses in other states? Wyoming allows \$200,000, California is \$150,000, and Utah is \$100,000 plus vehicles for affidavits.

Jasen Cassady:

I am not familiar with how other states practice this issue. What is different with us from these other states, particularly in Clark County, is a large retirement population. We have no state income tax, and we really encourage those people to move here. Often these retirees' families live elsewhere, which then makes them subject to being preyed upon, whether it is by a sole caregiver child, or by paid caregivers. We need to be sure we have protections in place for them. It is important to keep those protections in place even for the smaller estates. You do not get a lot of fraud in larger estates because people are watching. With the smaller estates, it is either not worth it financially to pursue it, or they did not know there was a bank account worth \$25,000.

With respect to the question earlier about prosecution of these false affidavits being filed, someone can call the Las Vegas Metropolitan Police Department in Clark County to complain about a false affidavit being filed, and they will be told it is a civil issue and to hire an attorney. They are not going to pursue it or turn it over to the district attorney.

Assemblyman Jones:

I would like to acknowledge that Mr. Cassady resides in my assembly district, and I want to thank him tremendously for reaching out and for coming up from Las Vegas for this hearing. What percentage do you realistically think is more in line of abuse, 5 percent, 10 percent, or 70 percent? Could you give us a ballpark figure of what you think the potential abuse really would be?

Jasen Cassady:

It would be hard for me to do that because a lot of people might not come forward, particularly with the very small amounts. All I can say is the higher you raise the limit the more fraud you are going to have, and the more Medicaid and other creditors will be financially impacted.

Assemblyman Jones:

You do not think you can give us some kind of educated estimate?

Jasen Cassady:

Off the top of my head, possibly 25 to 30 percent.

Assemblyman Elliot T. Anderson:

I do not want to take away from the seriousness of fraud, but I am concerned about the effect this has on people who are a little bit poorer and cannot afford a lawyer. As a disclosure, I am a law student and I want a lot of legal business in the future, but these are people who do not have real property. If they have an estate of \$30,000 to \$40,000 but have no real property, do we really want to be requiring them to jump through a lot more hoops? I understand that you might have some fraud that is created, but I am still concerned about the effect on them. If I were in that situation, I would not want my family to jump through many probate hoops.

Jasen Cassady:

The attorney fees under Title 12 are regulated in the percentage of the estate that can be charged. The first \$100,000 is set at 4 percent. This Legislature has already determined that 4 percent of the first \$100,000 is a reasonable amount for attorneys to be compensated for their services. In our firm we charge a flat fee of \$2,000 to do a set-aside for an estate of \$100,000. That includes the filing fee with the courts, which runs about \$300. Typically what happens is we file the petition to do the set-aside for the estate and we ask that the fees be paid out of the funds that are collected. That way there is no upfront costs for the heirs. I see in a statement by Mr. Rabkin that the fees can be up to \$20,000, and that is just not true.

[Chairman Hansen reassumed the Chair.]

Assemblyman Elliot T. Anderson:

There are existing protections to ensure that an estate does not pay more in legal fees; however, even at 4 percent on an estate of \$25,000, that percentage is a lot. I do not understand why we cannot keep up the pace with other states. This is just a comment, Mr. Cassady; I do not want to badger you.

Jasen Cassady:

Actually, this may be something Mr. Rabkin can speak to; banks can encourage their customers to establish a beneficiary designation on these accounts. In those kinds of cases, a person designated as a beneficiary provides the bank with a death certificate and the bank dispenses the money to them. There are things already in place that can be done to eliminate any Title 12 involvement. If those options were utilized and promoted more often, we would not even be talking about any of this. They would also not have to wait the 40 days that you do now under Title 12.

Assemblyman Gardner:

I have just reviewed the affidavit requirements in Utah, Wyoming and California. In every single case, our affidavit requirements are much stricter. I am a little concerned with the statement that there will be a lot of fraud. If there is so much fraud, why are all these states having much lower requirements?

Jasen Cassady:

It could be the culture; Wyoming is a more rural state. Are there more honest folks there? I do not know. Clark County is a different culture than Wyoming. I also wanted to comment that it was mentioned that the last change to these statutes was in 1997. I began practicing in 2002; the set-aside was only \$50,000, then it was raised to \$75,000, and then to \$100,000. In regard to the summary administration, I am comfortable with the increase. You could raise it to \$500,000 because what it does on our end is elevate our need to publish the notice of the initial hearing. That saves us about four weeks in which to get letters issued and get the probate started. It also cuts the notice to creditors period from 90 days to 60 days.

Assemblywoman Diaz:

When you spoke of culture I think that is an accurate statement; we are a diverse community in southern Nevada. Could a document preparer fill out this affidavit on behalf of someone and then take the money? I know that with the Hispanic community they have been very trusting with document preparers, so my concern is, can someone else fill out these documents unbeknownst to the family and be swindled out of their inheritance?

Jasen Cassady:

What could happen is someone could go to a document preparer that would have them sign a power of attorney allowing them to collect the funds on their behalf. Then the document preparer could take the funds.

Chairman Hansen:

I do not see any further questions for Mr. Cassady.

Betsy Aiello, Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services:

We concur with Mr. Cassady's testimony. Medicaid Estate Recovery is a federally mandated program that locates and recovers assets of deceased Medicaid recipients over the age of 55. The Division of Health Care Financing & Policy included Medicaid estate recoveries in our budget as an offset to Medicaid expenditures. If the bill is passed as written, we may have to increase the Medicaid budget by the amount of lost recoveries.

Assembly Bill 130 proposes to raise the monetary thresholds for affidavits of entitlement from \$20,000 to \$100,000. This means that anyone who claims that they are entitled to assets in an estate worth up to \$100,000 may acquire those assets simply by signing an affidavit of entitlement. Creditors, like Medicaid, are no longer afforded those protections offered under the set-aside statutes, and the potential for fraud increases substantially. If Medicaid does discover a fraudulent affidavit, then Medicaid is tasked with pursuing the recovery directly from the heir, or foregoing the recovery at all due to cost constraints. Section 4 of A.B. 130 would have a negative financial impact on Nevada's Medicaid Estate Recovery program.

We would also like to be included in any working group.

Assemblyman Ohrenschall:

Are you finding that the affidavits are being filled out incorrectly, stating that everything has been reimbursed to your department; is fraud involved?

Betsy Aiello:

We are generally aware of those above \$20,000. It is very difficult to receive notification for estates under \$20,000. Then again, the cost of pursuing recovery through legal action may cost more than the \$8,000 to \$10,000 we would recover.

Assemblyman Ohrenschall:

In the above \$20,000 category, are you finding that many of the filers are incorrectly stating that all the Medicaid costs have been reimbursed and you have to seek recovery?

Betsy Aiello:

We are notified by the law if the estate is \$20,000 or above, and the heirs would not get the money until the Medicaid debt was paid.

Jasen Cassady:

Estates over \$20,000 cannot use the affidavit process, and that is why with the over \$20,000 limit Medicaid has to be notified by the court. With estates under the \$20,000 limit, Medicaid is not aware of those funds. The heirs are taking the funds without reimbursing Medicaid and that is the problem.

Assemblyman Ohrenschall:

With estates \$20,000 or less, are you not trying to police these at this time?

Betsy Aiello:

No, we do not, because we have no way of knowing about the monies.

Assemblyman Nelson:

Thank you, Ms. Aiello. I would request you send me an email so that we can get a working group going as Commissioner Yamashita specifically highlighted Medicaid in his letter, so I know that is a big concern. I obviously have to read the Medicaid statutes. I thought Medicaid was an entitlement, but you are saying it is not, it is a creditor. Under the statutes does Medicaid get fully reimbursed for every amount of money it has ever paid to the decedent?

Jasen Cassady:

Medicaid is an entitlement for those who qualify for it; however, the state recovery is a federally mandated program where the state of Nevada is required to pursue assets on behalf of decedents to the extent that Medicaid has provided benefits.

Betsy Aiello:

That applies to people over 55 years of age.

Assemblyman Nelson:

That is a federal law?

Betsy Aiello:

Yes, sir.

Assemblyman Gardner:

I apologize for repeating these questions, but I have now reviewed five states and they are all much less intensive than ours are. None of them require Medicaid reimbursement. I am wondering if you know the extent of the fraud that is happening in these other states, because all of them have affidavit limits from \$75,000 to \$200,000. This is much higher than ours and none of them has any of the requirements that we have in our statutes.

Betsy Aiello:

No, sir, I do not know whether or not there is fraud in those states or how the Medicaid is recovered.

Donald L. Cavallo:

The problem with the affidavit is there are no checks and balances. I think it would be impossible to know how much fraud has occurred.

Assemblyman Gardner:

The only reason I bring that up is that it has been discussed that fraud could happen; however, in all these other states they have the same affidavit process. Many of the states I have reviewed have a larger population than ours and yet they require a lot less regulation.

Donald L. Cavallo:

I completely concur that other states have the higher amounts, and I am not saying fraud is rampant. An honest person is going to do the right thing; it is the other people we have to concern ourselves with. There were a couple other comments brought up earlier that I would like to comment on. In Washoe County the Department of Motor Vehicles has an affidavit form for a vehicle of \$20,000 or less that can be picked up from their office.

In my office, we field a number of phone calls regarding these small estates. We are then able to help individuals through the process. Washoe County has lawyer in the library at the courthouse that gives an individual 15 minutes with an attorney at no cost. There is the availability for these small estates to get legal advice at no cost.

Assemblyman O'Neill:

Are we talking about the dollar amount the bill is looking to be raised to, or is it the safeguards that should be instituted no matter what the amount is so the heirs, Medicaid, and other creditors get their proper reimbursements?

Jasen Cassady:

The safeguards that are currently in place for estates over \$20,000 are sufficient. The affidavit is intended to streamline the collection process. We would like to keep something like that in place for the small estates. The question is: What is the dollar amount for when you need those safeguards in place?

Assemblyman O'Neill:

Can we not raise the amount and just add safeguards to simplify this whole methodology so people do not have to go to an attorney? I keep hearing more

about the safeguards, not the amount and protection and, with all due respect, that the attorneys are still brought in and can seek their fees.

Jasen Cassidy:

On the Clark County probate website, there are forms available for the public. They can also go to the Probate Commissioner's office and get the forms. They do not necessarily need an attorney.

In regard to other safeguards, putting the burden on Medicaid to provide a document to prove someone is stating the monies had been recovered will put more workload on Medicaid.

Chairman Hansen:

We are beginning to get redundant in our testimony. I will have you meet with the bill sponsor and work out some of the details.

Alan Rabkin:

I have had time to look at the other states and have provided a chart prepared by the American Bar Association to Assemblyman Nelson. In that chart, for the benefit of the Committee, some states such as New Jersey, Connecticut, and a number of others, have instituted an extra safeguard by first requiring the court to screen and monitor the affidavit before it is used. That might be something the working group could look at as well. Not every state requires that; the western states typically do not.

Chairman Hansen:

Does anyone in Las Vegas wish to testify? Seeing no one, is there anyone else who would like to testify in opposition to A.B. 130? Seeing no one, is there anyone who wishes to testify in the neutral position?

Catherine O'Mara, Snell & Wilmer LLP, representing Probate and Trust Law Section, State Bar of Nevada:

I just wanted to clarify one thing for the record. The Section is neutral on this bill and looks forward to meeting with Assemblyman Nelson to work out any issues regarding this bill.

Tonja Brown, Private Citizen, Carson City, Nevada:

I just came in so I really do not know what is going on, but something came up I wanted to speak about. My mother passed away and she had a reverse mortgage, she was on Medicaid or Medicare, and she was nearly 80 years old. I received a letter from the Attorney General's Office on behalf of Medicaid saying they were going to seize her assets. I knew she owed the money and it was no problem. My situation here and why I am concerned is that none of us

know what the property was sold for, who was paid, and if any money was left over.

Chairman Hansen:

Thank you for your testimony. You may want to talk to Assemblyman Nelson and see if this is something being addressed in the bill. Would anyone else like to testify in the neutral position? Seeing none, I am closing the hearing on A.B. 130 and will now go back to Assembly Bill 129.

Assembly Bill 129: Makes various changes relating to judgments. (BDR 2-541)

Jon Sasser, Washoe Legal Services, representing Legal Aid Center of Southern Nevada:

I am here to testify in support of Assembly Bill 129. Those of you who were on the Committee two years ago may recognize parts of this bill. This is a new version of that bill, and I hope everyone will like the changes. We met with the primary opposition to the bill, the Nevada Collectors Association, and worked out a compromise. That compromise is reflected in this bill. Senate Bill No. 373 of the 77th Session increased the percentage of a person's wages that can be protected if they are being garnished due to a court judgment. It affects a narrow range of people. By state law, individuals whose incomes are approximately \$18,800 a year cannot have any of their wages garnished. This bill protects those between that level and \$40,000 a year. During the hearing on the last bill, we wanted 85 percent and the Nevada Collectors Association wanted 80 percent. The compromise that we have now come up with is 82 percent to be protected. In exchange for that increase of 2 percent that we received, several other changes were made in the bill. There was a section in Senate Bill No. 373 of the 77th Session that allowed the debtor to petition the court to set up a payment plan. That was pulled from the bill because the collectors objected to having to go back to court and having additional court costs. The purpose of this bill is for a person not to avoid paying a bill but the pace in which they pay it.

In the testimony that I submitted ([Exhibit K](#)) there is a chart showing the effect of A.B. 129. It shows if your income is \$40,000 gross and your net income is \$32,000 a year and you are paying off a \$2,000 judgment, under current law you would pay \$154 a week out of your paycheck, and you would pay off that judgment in 13 weeks. Under this bill, your payment would be \$110 a week and it would take 18 weeks to pay the judgment off. It allows the wage earner to keep enough of their paycheck to pay their rent, to make their car payment, and put food on the table for their family.

A new provision was added that I think helps everyone involved. Right now you have to renew a garnishment once every 120 days. This creates extra paperwork and duties on those collecting the debt, and that cost is passed on to the person paying the debt. We thought it would be better for everyone to change it from 120 days to 180 days.

Finally, we left in a portion of the bill that proved not to be very controversial last session. That provision states when an out-of-state creditor is trying to collect an out-of-state judgment against a Nevadan, they must domesticate that judgment before they can garnish wages. That has been abused from time to time, so we created a cause of action for those who do not follow Nevada law, and allow the Nevada exemptions to apply in the collection of that judgment. If you pass this bill, we will be one of 27 states that goes beyond the federal minimum. I also included in my testimony a chart ([Exhibit K](#)) showing the law in all 50 states, and showing the 27 states that are somewhat more generous than the 75 percent federal minimum. That ranges from Texas, South Carolina, and Pennsylvania, where all wages are exempt, to Utah, which recently passed a change in student loans limiting it to 15 percent. We have a bill that I think the wage earners and the collectors support.

Nick Vassiliadis, R & R Partners, representing Nevada Collectors Association:

I will briefly walk through the bill and give you an idea of what we are trying to accomplish. One of the first things the bill does is increase the percentage of the debtor's disposable earnings that are exempt from 75 percent to 82 percent for any work week if the gross weekly salary or wage is \$770 or less on the date the most recent writ of garnishment was issued. That is roughly \$40,000 a year. The point of that is to help people maintain a little extra of their paycheck for paying rent and putting food on the table; really living. You will hear that that provision will make it more difficult to collect; however, we disagree. To those individuals \$50 a week is a big deal and could possibly prevent them from ever reaching bankruptcy. In bankruptcy no one wins—not the state, debtor, or collector.

Secondly, this bill provides for how the gross weekly salary or wage of the debtor must be determined.

Thirdly, it authorizes the judgment debtor, who is a resident of this state, to bring civil action against a judgment creditor who, without domesticating a foreign judgment, garnishes the debtor's bank account or any other personal property at a branch of the financial institution located in this state. The existing law requires a judgment creditor who seeks to enforce a foreign judgment in this state to domesticate the foreign judgment by filing a copy of the foreign judgment with the clerk of any district court of this state.

This provision is about enforcing that policy. This protects Nevadans from being unfairly burdened by out-of-state laws and ensures that all Nevada residents are playing by the same set of rules.

Fourth, it extends the time period that a garnishment of wages may be renewed from 120 days to 180 days. We think this is fair and works in favor of both the creditor and the debtor. It saves time and resources for those filing the writ of garnishment, and it saves the debtor the court fees associated with those filings, which could be anywhere from \$50 to \$75 per filing.

Lastly, any subsequent application for writ of garnishment submitted by the creditor concerning the same debt must not be approved unless the required documentation is submitted with the application. Again, it is already existing law that certain documentation must be submitted with an application for garnishing concerning the same debt. If an application does not comply with existing law, it should not be approved. This provision does that and actually holds the creditors accountable.

James Berchtold, representing Legal Aid Center of Southern Nevada:

I am here today to testify in support of A.B. 129. As Mr. Sasser mentioned, I am the directing attorney at the Civil Law Self Help Center, which is located at the Regional Justice Center in downtown Las Vegas. The Self Help Center is a free service that provides legal forms, legal information, and legal referrals to people who are unrepresented in the Clark County court system. In 2014, we assisted approximately 54,000 Clark County residents who had a civil case in the Clark County court system. We serve plaintiffs and defendants, so I have an opportunity to talk to plaintiffs in a case where they have sued and won a judgment and are trying to collect. It also means that I have an opportunity to talk to defendants in a case—people who have been sued—and are having their wages garnished to pay for that judgment. I think A.B. 129 helps both of these groups.

The provisions of the bill have already been explained, so what I would like to talk to you about is the experiences I have at the Self Help Center and the people whom it will actually affect. First is the extension of the garnishment period. Many of the people I help are small-business owners—individuals who have sued someone in small claims court and won a judgment. Now they are trying to collect that judgment by garnishing wages. Currently, a writ of garnishment can only be in effect for 120 days. That means that every four months the small-business owner or individual has to take time off from work, they have to come to the Self Help Center and fill out a lot of paperwork, take it to the court, and then to the constable, in order to continue that garnishment. That is a lot of manpower, a lot of time away from work,

and a lot of time away from your business. What A.B.129 does is it extends the garnishment period from four months to six months. In my mind that benefits everyone. That benefits the judgment creditor because they only have to go to court every six months. It benefits the judgment debtor as well because every time that writ of garnishment is renewed there are costs involved, filing fees with the court, and fees to the constable. If the writ of garnishment is extended after six months, that should, over the life of that judgment, reduce the amount the debtor is paying.

Now to discuss the reduction in the amount that can be garnished. Of the 54,000 people we assisted, about 66 percent of those had some kind of garnishment issue. Obviously, the people we see at the Center are just the tip of the iceberg. In 2014, the Las Vegas Justice Court issued 25,000 writs of execution. This is a big issue and a big impact on the Nevada economy. Note that is only one justice court in Nevada. The people I see at the Center who have had their wages garnished are not trying to avoid their debts. They are the working poor who have been sued because they were unable to pay a medical bill, or they were unable to pay a credit card debt. They are living paycheck to paycheck and right now, as long as they are making above \$43 per week, 25 percent of their wages can be taken to pay that judgment. For some people 25 percent of their wages is the difference between having a roof over their head or having food on the table. Assembly Bill 129 acknowledges this reality and says that those making above \$770 a week can still be garnished for the full 25 percent, but those people making less than \$770 a week will get a reduction from 25 percent to 18 percent. To some people 7 percent may not seem like a lot, but to others this could be the difference of having a roof over their head or sleeping in their car.

Thirdly, I want to mention the provision in A.B. 129 that deals with out-of-state judgments. Currently under Nevada law, if there is an out-of-state judgment that an out-of-state creditor wants to collect in Nevada, they have to bring that judgment to Nevada, file it with the Nevada court, domesticate it in Nevada, and then that judgment can be collected under Nevada law. What we are seeing at the center of this is that an out-of-state creditor will obtain a judgment out-of-state. If the judgment is against a Nevada resident who works for a multistate corporation, or banks at a multistate institution, occasionally the out-of-state creditors are obtaining a writ of garnishment from an out-of-state court. They then take it to the local bank branch that Nevada resident or employee uses. The bank or the employer then garnishes the wages of a resident in Nevada even though that judgment has never been brought to a Nevada court. Essentially the out-of-state creditor is effectuating a garnishment in Nevada even though they have not complied with Nevada law. If the judgment debtor in Nevada wants to challenge that judgment, or wants to

exert an exemption, there is no way to do it in Nevada since the judgment was never brought to Nevada; there was no court case filed in Nevada. The Nevada resident then has to go to another state to fight that judgment. This bill allows the judgment debtor to sue the out-of-state creditor for violating existing Nevada law. This bill benefits judgment creditors and debtors, and I would encourage you to support it.

Assemblyman Wheeler:

I understand a writ of garnishment can be used for child support and alimony. I do not see anything in this bill that carves that out. Are you telling me that someone will be able to default on their child support because of this bill?

Jon Sasser:

If you look on page 26 of the bill, under present law it talks about the writ of garnishment. The restrictions in section 12, subsection 3, paragraphs (a), (b), and (c), which are the amount of wages that can be withheld, "do not apply in the case of: (a) Any order of any court for the support of any person; (b) Any order of any court of bankruptcy; (c) Any debt due for any state or federal tax." This does not affect the ability to collect child support.

Assemblyman Wheeler:

Again, it says support of any person, so it would affect the ability to collect alimony, correct?

Jon Sasser:

The changes in percent do not apply to any of these three areas. It would include both child support and alimony. *Nevada Revised Statutes* (NRS) Chapter 31 deals with the garnishment of wages and NRS Chapter 31A deals with the assignment of wages and withholding of income. Typically child support is collected under NRS Chapter 31A; they do not garnish wages. A separate process is used that does not require getting a judgment and having a court garnish the wages. This is a more streamlined process that goes straight to the person's wages. There are some limits noted in subsection 4 on page 26 of how much can be taken for child support, and that is all current law.

Assemblyman Gardner:

It is my understanding that when these out-of-state creditors use these interstate banks or corporations for their collections, oftentimes the people being garnished do not even know that collections are being sought from them. Is that correct?

Jon Sasser:

Yes, and at Legal Aid we have seen examples of that happening where someone had a default judgment against them in Pennsylvania, where they lived five years ago. They did not even know about the judgment, then all of a sudden they are having their wages garnished.

Assemblyman Elliot T. Anderson:

Just so the Committee is clear, your garnishments are for unsecured debts of some type. This debt would be wiped out in bankruptcy since it would be unsecured. Correct?

Jon Sasser:

Yes, bankruptcy is an option, and these are usually unsecured debts.

Assemblyman Elliot T. Anderson:

Odds are in bankruptcy unsecured debts are not very well protected, and the entire obligation will go away. Correct?

Jon Sasser:

Yes.

Chairman Hansen:

Is anyone else here to testify in favor of A.B. 129? Seeing no one, we will move on to opposition.

Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada:

We understand the good-hearted intent of this bill. We have seen this effort session after session. I would not be sitting before you if this chapter of Nevada law were not already so extensive in its protection of Nevadans and their ability to make a living. Most states around us have fewer restrictions from garnishment including California. With the federal rate, you cannot take anyone with earnings up to 30 times minimum or less. Nevada is even higher at 50 times. However, let us talk about the reality of this, and I am not asking anyone in this room to play any violins for big corporations. We are talking about small-business owners who deserve to be paid for the services they provide. Sometimes when you go through this process it can take almost two years to get a judgment and finally be paid the money you are owed.

Small-business owners have to pay their bills, their employees, and their taxes as well. We are not looking to weaken current law but are satisfied with the law as it stands today. We certainly do not believe that we need to make it even harder for small-business owners to collect their debt.

There was mention of a deal on agreement between Mr. Sasser and the Nevada Collectors Association. You will notice if you look back at the record of Senate Bill No. 373 of the 77th Session, which was vetoed, there were several organizations that opposed that bill, including the Collectors. However, no other opposition organization was approached or ever agreed to this deal. You will see in the record letter after letter from small business owners concerned about being able to collect their debt. Remember, the Collectors exist because of my members; we are the ones who hire the Collectors to get the debt that the small-business owners are owed. Therefore, we appreciate your time and urge you not to process this bill.

Lauren Hulse, Capitol Partners LLC, Reno, Nevada:

I am here on behalf of a number of businesses which offer services including the Federal Emergency Management Agency (FEMA), International Test Solutions, and Bio Management. As Mr. Abney already testified, Nevada is one of the most favorable debtor states. He mentioned that all the surrounding states follow the federal standard for income and, although the proponent mentioned in his letter that Arizona and California have hardship provisions to allow reductions in the case of extreme hardship, that is not what this bill is proposing. They offer the lesser of 25 percent of weekly disposable earnings or 30 times the federal minimum wage per week. In Nevada, it is the lesser of 25 percent of disposable weekly earnings or 50 times the federal minimum wage per week. We understand this bill is supposed to help during hard times, and we do not want to be insensitive to those who are struggling, but the current law adequately protects them. There are many benefits and property exempt from collection: social security payments, Public Employee Retirement System payments, welfare, unemployment compensation, and veterans benefits to name a few. Your vehicle is protected if equity is less than \$15,000, and any vehicle that is modified for a person with a disability is also protected. For a small-business person, we believe this is taking it too far in the wrong direction and we ask that you oppose A.B. 129.

Alexis Miller, Director, Public Affairs, Amplify Relations, representing National Federation of Independent Businesses:

I am here in opposition to A.B. 129. It can take months for small businesses to recover fees owed by bad customers, and it often requires hiring a lawyer or using a collection agency, all of whom take a percentage of what the business is owed by that customer. It is a frustrating, costly process, and this bill would make it harder for small businesses to be paid for services and products that they have already provided. As we all know, it is the intent to protect those that have fallen upon hard times; however, it is not fair to transfer the burden upon the small business owner, many of whom are still suffering from the economy and struggling to stay afloat. Garnishment is approved by a judge

acknowledging that a debtor owes the money, and it is the very last opportunity a small business has to collect on that debt. We urge you to oppose A.B. 129.

Assemblyman Jones:

It seems that the out-of-state provisions are concise. Do you have any comment on that, or is it just the raising to 82 percent?

Tray Abney:

I do not have any comment on that. Again, we were not involved in any of the discussions as this bill moved forward.

Assemblyman Thompson:

Do you have an estimate of how many successful 100 percent collections you have received at the 25 percent rate? It appears this bill will allow the opportunity to make better collection practices as well as getting 100 percent of the collection back versus someone midterm in paying their debt at 25 percent maybe losing their job. Do you have an estimate of how it is working under the current law?

Alexis Miller:

I do not have that information but I will get it for you.

Assemblyman Thompson:

I just wanted to get an idea. It seems to me that by this change the businesses might have a better chance of getting 100 percent of the debt.

Assemblyman Elliot T. Anderson:

Mr. Abney, I am looking at Mr. Sasser's testimony; I am not sure if you have it. If this information is correct, and I would expect that it would be as Mr. Sasser is thorough, you said California has stricter protection than what is in this bill, but what I am reading is California can limit garnishments larger than 75 percent if a person can prove need. It seems that would allow more than our current law.

Tray Abney:

The information I have says that in California the creditors are allowed to garnish the lesser of 25 percent of your disposable earnings, or the amount by which your weekly earnings exceed 30 times the federal hourly wage. Right now, Nevada has this set at 50 times. I do not have the same information that you have, and I would not mind further discussion, but we were not involved in the meetings that addressed these compromises.

Assemblyman Elliot T. Anderson:

I just wanted to put that on the record that I think California has more generous protection for people who have need. Moreover, as I understand need, the provisions of this bill are trying to dial down what it is to be needy.

Assemblyman Ohrenschall:

Mr. Berchtold mentioned the difference this bill could make for people who are making less than \$770 a week being the difference between paying rent or living in their car. When I hear that kind of evidence I just have to ask, is 18 percent of something better than 100 percent of nothing? I fear if we do not pass this statute, and someone cannot pay rent, has to live in their car, then loses their job, are the people we are trying to make whole shooting themselves in the foot? We want that person who owes the debt to be able to stay gainfully employed so they can make that payment.

Tray Abney:

I understand where you are coming from and the intent of this bill. If the rest of this chapter did not exist, and the rest of the language in current law did not exist, absolutely we should be protecting those people. However, I think our argument is that we have many protections in place. We are not asking to weaken the protections or make it more difficult to pay these debts; we just think current law is sufficient to handle this issue.

Assemblyman Ohrenschall:

Do any of you have data on recovery rates under existing law versus debts that are written off due to not being able to collect?

Tray Abney:

I think you are getting at the same thing Mr. Thompson was, and I do not have any data, but I will work on getting it for you.

Assemblyman Wheeler:

There have been a number of statements saying that it might be the difference between someone's rent or food, et cetera. Does the judge not already have that discretion to lower the rate to 18 percent from 25 percent?

Tray Abney:

I am not the one to answer that question, as I am not a lawyer.

Jon Sasser:

Right now judges do not set the amount of payments. That provision of the bill we had in the last session was removed. Sometimes it can happen informally; however, there is no statute for the judge to have that right in every case.

Assemblyman Wheeler:

However, there is no statute that says the judge cannot do it, is that correct?

Jon Sasser:

The judge usually gives a judgment and an amount. The court authorizes the garnishment, but the judge is not involved in setting amounts and such things as that.

Assemblyman Wheeler:

There is no statute that says a judge cannot do that, is that correct?

Jon Sasser:

There is no statute that says a judge cannot set an amount at the time that judgment is awarded. Most of these judgments are defaults.

Assemblyman Nelson:

I was wondering if any of the witnesses have seen the letter on the Nevada Electronic Legislative Information System (NELIS) from the Nevada Dental Association ([Exhibit L](#))?

Tray Abney:

I think I saw it last night; however, I do not have it in front of me.

Assemblyman Nelson:

I just want to get it on record that they have also filed in opposition.

Assemblyman Gardner:

One of the things we have been hearing is that this will harm small business. If you look at Mr. Sasser's letter, he lists many states that have a lot more than we do. In Texas, South Carolina, and Pennsylvania, all wages are exempt. Virginia, New York, and New Jersey are 90 percent exempt. Massachusetts, Illinois, Nebraska, and Vermont are 85 percent exempt. I see many states that are big states that do a lot more than us; they have good economies and many small businesses. I am wondering if this is an exaggeration, or is this something you think will really harm them? Why is it not harming them in these other states?

Tray Abney:

I cannot speak for those other states. I do know that it can sometimes take two years for a business to be paid. In that time, they still have to continue providing services and goods to their customers and, if they are not being paid, it means that money has to be made up in other ways. That could be wages,

prices and other things. We are certainly more debtor friendly than most of the states around us.

Assemblyman Araujo:

I just want to echo the sentiments of some of my colleagues where it appears that increasing this aid will only help fix the problems of being able to collect the funds that are owed. Speaking on behalf of the residents of my district, District No. 3, which is a working class district, I think if we are looking at it full circle and looking at all the parties at play, if we have consumers that can pay their debt and businesses which can collect the debt, then overall we are supporting our state by making sure that everyone has the opportunity to fulfill their responsibilities and to thrive as a great small business in our community.

Chairman Hansen:

At this point there are no further questions, so I would like to go to Las Vegas where there is one gentleman waiting to speak who has been very patient.

Brett Wachter, Fremont Emergency Services, Las Vegas, Nevada:

We are an independent emergency room physician's group in Las Vegas providing board certified physicians to eight hospitals. With full disclosure, I am not here as an expert in the collections arena, or with wage garnishment practices and procedures. I am here representing Fremont Emergency Services' concerns with our ability to recruit and retain highly trained physicians in the Nevada market. Emergency medicine is a unique field that requires us to treat and stabilize every patient regardless of their ability to pay. This is covered under federal guidelines. We must rely on multiple avenues to collect for services we have already provided. We feel this bill limits our ability to collect for our lifesaving services, and in the long run will adversely affect our ability to compete with other states in the recruitment and retention of physicians in Nevada. We understand this bill is to protect people with limited income, but we feel the current law adequately accomplishes this. It is not our goal to garnish someone's wages, but it is the last resort we have. Fremont Emergency Services offers self-paid discounts, payment plans, and has contracts with most commercial insurances giving those patients that discount. Limiting the ability to collect for our medical services will drive physicians to practice in other states. I thank you for allowing me to speak in relation to this issue.

Chairman Hansen:

Are there any questions for Mr. Wachter at this time?

Assemblyman Jones:

Do you have any estimate on the number of your customers that you have to use wage garnishment?

Brett Wachter:

I do not at this time; it was given to me last night.

Chairman Hansen:

Mr. Wachter, it might be helpful if you could provide some information on how many, say per thousand, you have to take to garnishment. That might help the Committee in making a decision.

Is there anyone else who would like to testify in opposition to A.B. 129? Seeing no one, is there anyone who would like to testify in the neutral position? Seeing no one, Mr. Sasser, I will ask you to come back up if you would like to make one last comment.

Jon Sasser:

There have been many statements that Nevada is a very generous state for debtors, and in general I would agree with that. We are very generous if you are a high-income person, you can protect a \$550,000 equity in your home, and you can protect \$500,000 in your life insurance proceeds. If you are a high-income person, Nevada is a good place to be if you are trying to run away from your creditors. If you are a low-income person, we have made the decision in Nevada to set the bar a little higher than other states—50 times the minimum wage instead of 30 times, which is \$18,000 a year opposed to \$11,000 a year. This bill is about giving that generosity, to some degree, to the middle- and lower-income working people making \$18,800 to \$40,000 a year. This bill protects 7 percent more of their wages.

In terms of surrounding states, I would be glad to give all the details to the Committee. Some of our neighbors have taken a different approach; they have not changed the percentage, but they have allowed people to come back to court and assert a hardship. That is what Arizona and California do. By requiring more appearances in court on both sides, it creates a burden on our court system. In our discussions with the Nevada Collectors Association, they made it clear this was not the direction they wanted to go. When you say the other states around us are less generous than what we are asking, that is not so; they just use a different process. I would be glad to provide the statutes for those states, or anything else the Committee would like to have in regard to follow-up.

Chairman Hansen:

At this time we are going to close the hearing on Assembly Bill 129 and open up the meeting to public comment. Would anyone like to make a public comment? Seeing no one is there any business before the Committee?

Assemblyman Ohrenschall:

During the work session I neglected to state on Assembly Bill 67 that I did vote in the affirmative for the motion to amend and do pass, but I would like to reserve my right to change my vote on the floor of the Assembly.

Chairman Hansen:

Everyone knows that it is a right you automatically have; just be sure you approach the Chair before you do it on the floor. Is there any further business that needs to be brought before the Committee at this time? [There was none.]

The Assembly Committee on Judiciary is adjourned [at 10:08 a.m.]

RESPECTFULLY SUBMITTED:

Janet Jones
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 20, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 10	C	Diane Thornton, Committee Policy Analyst	Work session document
A.B. 40	D	Diane Thornton, Committee Policy Analyst	Work session document
A.B. 44	E	Diane Thornton, Committee Policy Analyst	Work session document.
A.B. 46	F	Diane Thornton, Committee Policy Analyst	Work session document
A.B. 67	G	Diane Thornton, Committee Policy Analyst	Work session document
A.B. 130	H	Alan Rabkin, Heritage Bank Association	Testimony
A.B. 130	I	William Cashill, representing Nevada Justice Association	Proposed Amendment
A.B. 130	J	Jasen Cassady, Cassady Law Office	Letter from from Clark County Probate Commissioner, Wesley F. Yamashita
A.B. 129	K	Jon Sasser, representing Legal Aid Center of Southern Nevada	Testimony
A.B. 129	L	Nevada Dental Association	Letter in opposition