MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 1, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Wednesday, April 1, 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 David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn Stewart, Assembly District No. 22
Assemblywoman Heidi Swank, Assembly District No. 16
Assemblywoman Ellen Spiegel, Assembly District No. 20
Assemblyman John Ellison, Assembly District No. 33

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Nancy Davis, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Kimberly M. Surratt, Chair, Domestic Committee for Nevada Justice Association and Chair, Lobbying Committee for the Family Law Section of the State Bar of Nevada
Josef Karacsonyi, Member, Family Law Section of the State Bar of Nevada
Anthony Wright, Private Citizen, Las Vegas, Nevada
Shann D. Winesett, Private Citizen, Las Vegas, Nevada
Mark Segal, Private Citizen, Las Vegas, Nevada
Nick Vassiliadis, representing Nevada Collectors' Association
Joanna Jacob, representing the Clark County Collection Service
Lauren Hulse, representing the Nevada Judgment Coalition
Jessica Anderson, Private Citizen, Reno, Nevada
Sarah Hardy Cooper, Private Citizen, Reno, Nevada
Kristin Erickson, representing Nevada District Attorneys' Association
Kari Lepori-Cordisco, Deputy District Attorney, Family Support Division, Washoe County District Attorney
Marshal S. Willick, Private Citizen, Las Vegas, Nevada

Chairman Hansen:
[Roll was called and Committee protocol was reviewed.] We will start with Assembly Bill 370.

Assembly Bill 370: Revises provisions governing child visitation. (BDR 11-201)

Assemblyman Lynn Stewart, Assembly District No. 22:
I am here with a very short bill, representing a group of people called grandparents. This is about visitation for grandparents. I had a constituent,

whom I have lost track of, who was having trouble visiting his grandchildren. In this very tumultuous society that we have today, couples have a relationship, they have a child, and then they separate. The court then rules on who will have custody of the children. Usually, the female gets custody of the children. Oftentimes, the parents of the male part of the relationship are denied the opportunity to visit their grandchildren. Sometimes it is their only grandchild. In the past, visitation rights have been granted by a judge based on whether this visitation will be a clear benefit to the child. What this bill does is demands that the judge consider one other thing: would the person requesting the visitation, in this case the grandparents, be able to have a good relationship with that grandchild if the parent was not denying them that right.

Assemblyman Elliot T. Anderson:
This bill appears to be broader than just grandparents. It says, "If the child and party seeking visitation have a prior relationship." Can you explain what other situations that might apply to? Could any person, under that language, come and say, I want rights to visit the child?

Assemblyman Stewart:
It could be another relative, such as an uncle. This gives the judge another item to consider in whether he would grant that visitation. The control is by the judge; he has to determine if the visitation were granted, would it be to the benefit of the child, and, is the person with custody preventing this relationship from taking place.

Chairman Hansen:
We have a couple of bills on grandparent rights. There are some court cases that say grandparents do not have any rights except those that a parent is willing to delegate. We are trying to establish some reasonable grounds to allow grandparents access to their blood relatives. This bill is adding a few more reasons for a judge to be able to overcome the rebuttable presumption that the parents always have complete say as to who can and cannot visit with their children. Is that correct?

Assemblyman Stewart:
That is correct.

Assemblyman Araujo:
Hypothetically, when a parent has sole custody of a child and the parents of the parent who does not have custody have a desire to visit with that child, would the grandparents now have grounds to bring the parent who was able to obtain sole custody to court to petition for visitation rights?

Assemblyman Stewart:
The grandparents would probably do that anyway. This gives the judge another consideration to keep in mind as he determines whether to grant the visitation for the grandparents.

Assemblyman Araujo:
That is where my concern would lie. I hope the judge would consider that he is potentially reopening some wounds for the parent who filed for sole custody in the first place. That would be my biggest concern.

Assemblyman Stewart:
I think there is always that chance, but we have to consider the wounds of the grandparents. The mother or father with custody has a relationship with that child on a daily basis, and the grandparent just wants visitation; maybe just on special occasions. The case that I brought this forth for, they only had one grandchild and they loved that child dearly, yet they were not able to have a relationship with him.

Assemblyman O'Neill:
What is the definition of visitation?

Assemblyman Stewart:
It is my understanding that the relative would not be able to take the child, but they would be able to be with the child, possibly at a birthday party or other occasion. Again, much of this would be up to the judge.

Assemblywoman Seaman:
My concern is that family custody lawsuits are expensive. I think what we are now doing is having the parents defend themselves if they do not want a relative to see their child. It looks like a good bill, but that is my concern.

Assemblyman Stewart:
That would already have happened. If the grandparent wanted the visitation, they would still go through the same process. This gives the judge one more factor to consider when making his decision.

Chairman Hansen:
I will now hear anyone else who would like to testify in favor of A.B. 370. I see no one. Is there anyone who would like to testify against A.B. 370?

Kimberly M. Surratt, Chair, Domestic Committee for Nevada Justice Association and Chair, Lobbying Committee for the Family Law Section of the State Bar of Nevada:

I have addressed similar bills to this for the past five sessions. I first testified against this bill in 2005. It keeps coming back in different variations. I know why, it is a sympathetic bill. In an ideal world, we would all like to make sure there is a great relationship between grandparents and grandchildren. There is a very fundamental reason why this bill is problematic.

There is a U.S. Supreme Court case, *Troxel v Granville* 530 U.S. 57 (2000), which states that parents have a fundamental due process right under the *U.S. Constitution* to raise their children the way they see fit. We do have a statute for third party visitation, which is often nicknamed the grandparent visitation statute. It applies to grandparents, but it also applies to third parties, which was created in reaction to *Troxel;* to create a system and process in order for third parties to have access and visitation rights to children. *Troxel* set forth that you must have a best interest reason for the child in order to issue the visitation. There was a statute out of Washington state that opened it up and said, you can petition for visitation under any circumstances. That is problematic because we are talking about intact families, meaning married couples with no abuse, no neglect, nothing wrong in the family structure, and nothing going on with that child, and we are allowing these parental rights that are a fundamental constitutional right to be altered. Mind you, in all those other circumstances, if there is something wrong, abuse or neglect, we have many other avenues within our family law structure to deal with that. We have the guardianship chapter, adoptions, child protection services, and the Division of Child and Family Services (DCFS), meaning we can do an abuse or neglect case under *Nevada Revised Statutes* (NRS) Chapter 432B. Under these circumstances, we went in with *Troxel* and said we can have visits but we are going to narrowly define it.

In Nevada, we said it has to be a family that is not intact in order to access visitation rights. That means there is either a death or divorce or some other extreme circumstance in which you can access that family.

The next level that we put into our statutes to be in compliance with *Troxel* and not stomp on those constitutional rights was that you had to be completely cut off from visitation with your grandchildren; meaning zero contact. That one weekend or one dinner a month, phone calls, et cetera were not going to qualify. You had to have been completely cut off.

The next level we looked at was the best interest of the child, meaning the relationship that the child has had with the grandparents or the third parties was

important enough for the child's best interest in order to allow that visitation. When you think about a child who has been living with grandparents and suddenly the ex-spouse or the widow cuts those grandparents off and tells them they cannot have any visits, that child has already developed a relationship with his grandparents. The statute is more open than just grandparents, and the theory behind that was stepparents; if the child had been living with stepparents and is cut off from them. The best interest for the child is the fact that a relationship had developed with that person and it needs to continue to be satisfied and developed for that child because it is not in his best interest to grieve those grandparents that he has been living with or visiting and suddenly does not see them.

When I first read this bill, I saw that it was different from all the other sessions. What was under attack in the other sessions was the intact family provision. That is not attacked this time. Instead, it is a different angle; we want to access this third party visitation when the child has no relationship with the third party—no relationship. There is a likelihood that the child does not even know who the person is. This bill is wide open for any visitation where the child does not even know the person. Where is the best interest of the child? Again, this goes back to our fundamental constitutional right to raise our children the way we see fit. It is a strict scrutiny standard in order to interfere with a fundamental constitutional right, and you do not want to take the best interest of the child out of this. In family law, that is sacred ground. We deal in the best interest of the children, which is what we always deal in. I always say to my clients, it is unfortunate and may sound cruel, but I really do not care about you, neither does the court. We care about the kids. We care about the child and what is in the best interest of that child. In this circumstance, we are fighting a little bit for the fundamental constitutional right, but the best we can do is to say we are going to stomp on that right only when we have the best interest for the child.

Assemblyman Elliot T. Anderson:
Would these provisions allow full regular visitation rights, for example, every week, like a parent might have? Does this allow for that?

Kimberly Surratt:
I do not know that this particular bill is changing that analysis. Already, within the chapter, the court is going to have to decide if it gets past the fundamental issue of whether that third party should have visits, then they analyze how much. We try to make that analysis based on the best interest of the child on a case-by-case basis. If a child had been living 100 percent with his grandparents and suddenly is not, then yes, you may be looking at an every other weekend, almost a split custody type scenario because that child needs to

wean off of or maintain that relationship in some way. For grandparents who have, at most, seen their grandchildren on holidays, maybe it would be a phone call once a month and a little visitation time here and there. It all depends on what that child's experiences were. In this bill we cannot even go off of that analysis because the child would not have had any relationship with that third party to even figure out what that visitation schedule would be and how we would determine it. All grandparent and third party visitation cases are extremely different and the results are different in every circumstance.

Assemblyman Nelson:
You stated that if there is no prior relationship, you are automatically assuming it is not in the best interest of the child. Is that your opinion, or is that Nevada law?

Kimberly Surratt:
I would not assume automatically that it is not in the child's best interest. However, when you read and analyze *Troxel*, one of the things the case puts forth is that you have to utilize the best interest of the child as a determinant. Our statutes cannot be wide open or it would be a violation of *Troxel*. One of the ways to try to be in compliance with *Troxel* was to put the determinant that the prior relationship is one of the ways we get to the best interest of the child. That is just to try to narrow it down so we do not have floods of these cases. As Assemblywoman Seaman very aptly pointed out, these cases are expensive. It is bad enough when parents are having their own custody disputes, but to be disputing every other third party; uncles, aunts, and every other relationship, the litigation costs are going to boom at that point, and all for a family with no abuse, no neglect, a solid family unit, intact, raising their children the way they see fit. There may be a dispute between the grandparents believing in corporal punishment when the parents do not. The grandparents executing corporal punishment does not rise to the level of abuse and neglect, but the parents are saying, no way, you do not get to be around my kids because we do not believe in that. There is a fundamental difference in raising their children. In that scenario, there was some form of relationship. This provision leaves it wide open for someone who has had no relationship with the children.

Assemblywoman Seaman:
I have seen these parents who go in for custody, and I have seen it bring them further apart and add more animosity. There is no healing in constantly going into court. Do you think this will make it harder to heal and naturally come together?

Kimberly Surratt:
Most grandparents who come into my office do not qualify under this chapter. My advice is, litigation is not going to solve anything. It will tear you apart. It will make you miserable. You will spend way too much money. Honestly, the court system is the poorest location to deal with family dynamics and issues that need therapy and emotional healing. It is a very poor system for that. It may work fine for a car accident or a criminal violation, but it is horrible for families. Having more access to this type of litigation is not going to help or heal anyone. Many of the grandparents who come to me who do not qualify, do qualify under the guardianship chapter, if there is abuse or neglect happening within that family dynamic. There could be drug use and other things happening, and the grandparents are rightfully upset that their grandchildren are being raised in that atmosphere, and they have a very easy pathway through the guardianship chapter. They do not need this chapter in order to do that. If they can prove the abuse and neglect, they can get guardianship over their grandkids. That is a very different dynamic from the healing perspective, and how this tears the family apart, because there is an outside element such as drugs or alcohol or something else that is interfering with the family dynamic. Getting more access to litigation to attack an intact family is not the best solution.

Chairman Hansen:
Has this chapter ever been challenged constitutionally?

Kimberly Surratt:
If you mean in Nevada all the way up to the U.S. Supreme Court, no. *Troxel* was the leading case that said all states need to reassess and look at the grandparent visitation statutes and make sure they are in compliance. Our statute was in reaction to that U.S. Supreme Court case.

Chairman Hansen:
As I read this bill, it just adds a couple of additional elements for a court to consider as to whether the rebuttable presumption can be breached. You are indicating this is way beyond that, correct?

Kimberly Surratt:
It is my opinion that this bill goes beyond that. I did take a hard look at this because it is different from the other sessions. I reassessed this and *Troxel.* Because *Troxel* does not say exactly how to write your statutes to be in compliance with the *U.S. Constitution*, it does leave some things broader and more open. Once I got to the parts of *Troxel* that really discuss best interest of the child, and there was a lot of discussion in that case—there was a suicide and the grandkids had lived with the grandparents—about the relationship and

bond that was built, which is the reason why they were willing to tromp on the constitutional rights of the parent, because of that dynamic. The one thing we learned from *Troxel* is that you have to keep a narrow window and be very precise when you do and do not allow these cases. I thought about whether we could deal with one of the provisions and not another, is there an amendment we could write to add that factor? The problem is the opening of access to these cases. Now you have taken all of these third party people who do not know this child but are going to have court access to litigation by telling parents, you have got to let uncle, aunt, neighbor, stepparent, all of them have access to your child. This provision allows for the third party to say, I do not know this child and I want to, and you, as a parent, have to let me get to know him.

Assemblyman Nelson:
Would the statute, as written, violate *Troxel*? Also, would you be more amenable to it if it was limited to grandparents?

Kimberly Surratt:
There has been a lot of debate whether the chapter, as it sits without any amendments, is in compliance with *Troxel* or not. I think it is. There are different ways of looking at it across the country. Everyone has a different twist in the way of dealing with those visits. My personal opinion as a family law attorney who deals with children and sees the heartache and terribleness of family court consistently, that if the child does not have a relationship with the person and you force him to spend time with that person, I do not see that as a benefit to the child ever.

Chairman Hansen:
I have asked Brad Wilkinson to give us a legal opinion on how broad this opens things up.

Brad Wilkinson, Committee Counsel:
This actually does not open it up to more people than can currently petition. If you look at the current statute, the list of people who can petition are: great-grandparents, grandparents, and other children of either parent of the child. Section 1, subsection 2 says the child has resided with a person with whom the child has established a meaningful relationship. That would typically be a stepparent, it could be another person, but that pertains to someone who has a meaningful relationship so it does not apply. The short answer is this does not expand who can seek visitation rights, it just includes people who fall within the class who can currently seek visitation rights, but who do not have a prior relationship with the child. Indiana has a statute that includes a similar provision to this. One of the factors they look at is whether the person seeking

visitation has a prior relationship with the child or has tried to have a prior relationship with the child, but has not because the parent has not allowed visitation.

Assemblyman Elliot T. Anderson:
How can visitation rights for someone who does not have a relationship with a child ever be in the best interest of the child? It would have to be in a real broken home; that is the only circumstance where that presumption could be rebutted, correct?

Kimberly Surratt:
It is very far-fetched when you think about it. From a family law practice perspective, it does not change the number of petitioners who can initially petition under the statute but, we go through an analysis with the client about the likelihood of their success if they petition. All of the factors that are listed in that chapter become part of that analysis as to whether they should even petition the court and the success rate. For me, this changes a number of dynamics of the cases I will have. When they come to me and say, I have zero relationship with this child, my analysis with them is tough. Under current statute, I do not know under what circumstance you are ever going to win. They can make that argument to the court now. It is difficult to determine who would qualify under that scenario. I can tell you, over the years, people have very fundamental ideas about their children and the way they are being raised. The corporal punishment argument was one of them. In every one of these circumstances, it will always be that the parents of the grandchildren are prohibiting them from visiting the child. Once that factor of a relationship is met, does it up the odds of getting access? It is a circular analysis.

Assemblyman Trowbridge:
Most of the discussion today has been about relationships with the child and a third party. You seem to be focusing on older children. There is no way that a grandparent or other third party could have much of a relationship with an infant. The grandparent could have been denied access simply because of the age or physical location of the child. I represent Assembly District 37, which includes Sun City. There are a lot of grandparents and great-grandparents there who have been involved in these types of issues. Most of the time it was because of denial of access simply for spite. Those are far more frequent than those situations that you describe. You describe the one in a thousand case, while I am talking about the nine out of ten cases, where it is simply spiteful denial.

Kimberly Surratt:
The harsh truth is that the grandparents do not have constitutional access to those children. That is the part that is horrid to have to say in this building, but they do not. Parents get to make those decisions for their children: who they associate with and who they do not associate with. When we want to start to access that visitation and interfere with the parents' constitutional rights is when history has determined that the child does have a relationship with that person and needs to continue to have it, because that child has been impacted. If that child has never been impacted, then you do not have a right to interfere with that constitutional right of those parents. It is really hard to have to say that because I understand grandparents, the emotion and how hard it is, but we utilize this argument over and over in society. Parents get to make medical decisions for their children and they get to decide if they will be homeschooled. The government does not get to interfere and tromp on the rights of those parents. You have to decide when and where you are going to play with that right.

Chairman Hansen:
Is there anyone else who would like to testify in opposition to A.B. 370 at this time? Seeing no one, is there anyone in the neutral position on this bill? Assemblyman Stewart, would you like to make any closing comments?

Assemblyman Stewart:
Once again, we are just trying to give the judge another factor to consider when he makes a decision. This is not opening a can of worms. We are not asking for any additional rights. We are just saying, Mr. Judge, would you please consider this factor in addition to the other factors that you are considering? These grandparents are just trying to form a relationship with their blood relation, their dear grandchild.

Chairman Hansen:
I will now close the hearing on Assembly Bill 370 and open a hearing on Assembly Bill 362.

Assembly Bill 362: Revises provisions relating to domestic relations. (BDR 11-745)

Assemblywoman Heidi Swank, Assembly District No. 16:
I picked up this bill because I had an open bill draft request (BDR) and thought I could learn a little bit more about family law. I am going to give a brief overview and hand it over to folks who are experts in this area. This is a technical correction that the Supreme Court of Nevada asked us to fix in 2014. Assembly Bill 362 allows for property that was overlooked in a divorce

to be divided after the divorce has been completed. More often than I thought, property is overlooked and does not get considered in the divorce. Couple that with the fact that more than 60 percent of parties in a divorce, either one or both, do not have legal representation. In cases where people do not have lawyers, they do not even realize that they have some very valuable assets, most often pensions, which are considered property and should be recited on the face of a divorce decree. Assembly Bill 362 allows for the equal division of such property that should have been divided but was somehow missed in a divorce.

Kimberly M. Surratt, Chair, Domestic Committee for Nevada Justice Association and Chair, Lobbying Committee for the Family Law Section of the State Bar of Nevada:

Assembly Bill 362 is one that was vetted through the State Bar of Nevada for the Family Law Section to be able to sponsor and support this bill. When we do that process it goes out to every one of the sections of the State Bar, everything from Gaming to the Real Property Section, for everyone to review, assess, and comment. We had no objections to this bill, and we were granted permission by the Board of Governors to testify in favor of this bill on behalf of the Family Law Section.

The gist of this bill is relatively simple. In Nevada, we have community property. From the day you get married until the day you are divorced, anything acquired in between is community property, whether it be assets or liabilities. At divorce, the court is required to equally divide those assets and debts unless there is a prenuptial agreement or a compelling reason to have an unequal division. Often we see people get a divorce and have omitted an asset, whether it is omitted by mistake or concealment of the asset or debt. I see this most frequently in my practice with people who have utilized the self-help forms that the court has and did not understand the definition of community property and did not know what it was that they were dividing or should have divided. Ultimately, what happens is they will reach retirement age and realize that there was a retirement account that was missed and should have been included. You will also see this through active concealment, fraud, or misrepresentation. Under the current law, under the *Nevada Rules of Civil Procedures* 60 (b) that allows us to file a motion with the court to set aside an order that was issued by the court, the decree of divorce, based on fraud, mistake or newly discovered evidence.

Nevada Rules of Civil Procedure 60 (b) is utilized in all areas of law, but in the family law context, the problem with it is that you can only do this for six months after entry of the decree of divorce. If the asset that was left out is discovered after that, there is nothing that can be done with the court. In fact,

parties cannot mutually go to the court and say, we both want to divide this asset. They would not have access to the divorce court to go back into the divorce, reopen it, and have that asset redistributed.

Then there are the contested issues, where there is fraud, active concealment of assets which were not disclosed. There is a Supreme Court of Nevada case, *Doan v Wilkerson*, 327 p3rd 498 (2014), which pointed out to us that you need to get a legislative fix on this. That case says: "The fact that the Federal Aviation Administration (FAA) retirement benefit was not mentioned in the decree is not an exceptional circumstance justifying equitable relief. It is up to the Legislature whether to create an action, or permit continuing jurisdiction, for partitioning property that was merely left out of a divorce decree. California has done so: 'A party may file post-judgment motion…in order to obtain adjudication of any community estate asset or liability omitted…by the judgment. The trial court may divide a community property asset not mentioned in the judgment.' But under current Nevada law, Catherine is barred from maintaining an independent action to partition the FAA retirement benefit without showing extraordinary circumstances justifying equitable relief, and she has not done so here." The easiest thing to point out is that California is not the only community property state that has a similar statute for division of an omitted asset. All eight of the other community property states also have a similar statute. Arizona, California, Idaho, Louisiana, New Mexico, Texas, Washington, and Wisconsin all allow for that post-judgment relief to divide an omitted asset. One of the worst things we can see in these situations is there be civil litigation of an asset versus re-accessing our divorce courts and taking the easy route in getting this asset or debt divided.

Assemblyman Elliot T. Anderson:
I realize this is an equitable measure we are considering, but what comes to mind for me is that equity does not reward those who sleep on their rights. I think the time frame should be more than six months, but this is unlimited. At some point I would like there to be some certainty. Maybe for a pro se litigant the time limit could be even longer, because you may have someone who does not know the law going into court, and a lot of people in family law situations get help from the Family Law Self-Help Center in Clark County, or something similar. Is there some point where we can say, maybe 15 years and it will be closed, and a little less time when a lawyer is involved? I think we would expect more from the Bar when they are handling these cases. If not, why should there not be a limit. I think there is a reliance interest that attaches to the parties as well.

Kimberly Surratt:
The quickest answer is to say that Nevada has a substantial line of cases that indicate that any item of community property omitted from the divorce proceedings remains the joint property of the parties. We are not talking about asking for damages or equitable relief that they do not have a right to; what we have is a party that is stuck co-owning this property with no means of dealing with that asset that needs to be divided. The *Doan* decision makes a distinction between community property omitted from the divorce decree and community property omitted from the divorce proceedings. We are not talking about stuff they knew about or things that were listed in any way, shape, or form. These are things that were truly omitted, not those that were analyzed, discussed, and thought about when reaching the divorce decree. Again, the best answer I have is no one is gaining damages or additional rights, the asset is already co-owned, and it is still community property that needs to be divided.

Assemblywoman Seaman:
If two people do not have counsel, they can talk about all of their assets and agree to get a divorce. This seems to open a can of worms where one party can come back later and claim no knowledge of an asset. What if the defendant does not have the money to have counsel? I think a divorce is an ending and this makes it where you have to worry about being brought back into court.

Kimberly Surratt:
This is not meant for people who analyzed an asset. The bill does say that the asset could not have been considered in an unequal division. In most of these cases, especially with those using the self-help forms, they did not discuss retirement. You would not believe how many people come in my office for a consult and are surprised when they find that retirement is part of community property. I have also seen scenarios where they used the self-help forms and divided the retirement that they were earning right then, but one of them had worked for a different company ten years ago and had another retirement and they both completely forgot about it; it was not discussed in the analysis. That retirement needs to be divided. The problem with these retirement accounts is that you cannot just go to the company and ask them to divide it; you have to have a separate order, what we call a qualified divorce relations order. Now there is a whole other level of complications that they need to access the courts for. The bill also has a provision in section 1, subsection 3, paragraph (b) which says, "The court determines a compelling reason in the interests of justice to make an unequal disposition..." That means the court does not have to divide it if there is a compelling reason not to divide it.

Assemblywoman Seaman:
The problem I see are the unintended consequences. These cases can cost upwards of $10,000 to $100,000 to pay the attorneys and go to court. When people get a divorce, I think they want to move on with their lives, and some people may not have money to defend themselves in these cases.

Kimberly Surratt:
I see all of the unintended consequences of not having this provision. It is the person who gave up $250,000 to $300,000 in retirement and could be living off of it, but instead is in poverty as a result of not having it. Mind you, there are not floods of these cases, but the ones that do happen when there is a large asset are very problematic. This is not meant for people who listed all of their assets and failed to give each other half of it. This is meant for truly omitted, not discussed assets.

Assemblywoman Seaman:
Do we have remedies for that now?

Kimberly Surratt:
No, that is the problem. The only remedy we have is if you figure it out within six months.

Assemblyman Ohrenschall:
When one spouse files for divorce and the other does not respond, the spouse is granted divorce through default. In that scenario, we have one spouse just not wanting to participate in terms of coming to court. Would this still apply in that scenario, where the divorce has been granted by default where truly the other spouse has sat on his rights? Would that spouse still be able to come back and say, wait, there is a retirement account?

Kimberly Surratt:
It all depends on how the default was entered, and if assets were ever divided in the default, or which side of that scenario had the asset that needed to be divided. There are so many factors to consider. Sometimes those defaults just say, you are divorced.

Assemblyman Trowbridge:
I share some of Assemblyman Anderson's concerns on no limits. I feel very strongly if someone with malicious forethought withholds information about the value of an asset, it should be reopened. Why is annulment considered the same as a divorce in this bill? Perhaps I need clarification on what an annulment is and why a person involved in an annulment would be included? Also, in a situation where you have changing value of assets, where at the time

of divorce she may say, I will take the new sports car and you can keep your retirement. Fifteen years later, that sports car is not worth anything, can she now come back and request access to his retirement? Is there any discussion about the changing value of distributed assets?

Kimberly Surratt:
We have two forms of annulments in Nevada. We have marriages that are void and marriages that are voidable. A void marriage is void from the day it was entered into. A voidable marriage is void as of the day we make the determination that it was voidable. There may have been an accrual of community property during that time. That is the necessity of having annulments included in the statute. As for a change in value and reassessments, no, that would not happen because that retirement versus the value of the car scenario was contemplated and considered in the divorce. This bill is regarding things that were truly omitted and not discussed and were not utilized, even in an unequal distribution. We do unequal distributions all the time for various reasons. The standard default is 50-50, but someone may take a different asset or more cash than the other as a form of compensation. That has all been contemplated in the divorce. This bill is not meant for those circumstances. That is spelled out in section 1, subsection 3, paragraph (a), which states "The community property or liability was included in a prior equal disposition of the community property of the parties or in an unequal disposition" is not part of the analysis. Regarding the time limits, my concern is that the majority of these that I see are the retirement scenario that they do not have a realization of until they hit retirement age. You might have individuals who were divorced at 40 years old and had been married for 20 years. Until they reached retirement age there was not that realization that the retirement was an asset to divide.

Assemblyman Gardner:
My reading of the bill says that this will reopen all divorces and all alimony cases that have anything to do with property. Also, one scenario that I have thought about is: a party to a marriage, one of the spouses, has an idea; it is my understanding that intellectual property is community property. So a spouse has an idea for a company before he gets divorced. Twenty years later that company becomes Google, Apple, or Twitter, some very large company. Can the other spouse, under this law, say we did not divide that in the divorce because it was not worth anything, now I want half of that company?

Kimberly Surratt:
No, you cannot because it was contemplated during the divorce. Just because the value is set at zero does not mean it was not contemplated. If it was utilized and divided, even if someone did not take it, does not mean it was not

utilized in the assessment of the marriage. We do a balance sheet, and we assess all the assets and debts. Just because they have a zero value does not mean they were not divided. When something gains value after you get divorced, it is separate property. Community property is defined by the date of marriage and date of divorce. After divorce it is separate property and not divisible in the divorce.

Assemblyman Gardner:
I meant it was not even contemplated during the divorce. I had an idea for a company, but no one put it on the assets. Is this retroactive? Can all divorce, annulment, or separate maintenance cases be reopened if this bill is passed?

Kimberly Surratt:
Technically, yes, it would be anything discovered from here forward. If you discover that you have an omitted asset, even though your divorce was ten years ago, this would correct that problem.

Assemblywoman Diaz:
I think sometimes we forget divorces are very difficult on individuals. I know from personal experiences that some individuals zone out during the divorce process and want to do what is in the best interest of their children and sometimes neglect themselves. A spouse gets in a situation where he just wants the process finalized. He does not really think that now he has all the debt, she took all the assets, and he is in a very tough place. I think that many people do divorces on their own, through self-help and do not get the legal counsel to know that everything should be divided equally, whether it be a debt or a property. I have seen way too many situations where one makes out like a bandit and the other is left with the debt. They then think there is no recourse, no way to remedy it once the decree is final. I think this is something that is worth moving forward. Many of my constituents who go the self-help route and do not get the legal counsel will definitely benefit.

Assemblywoman Swank:
I would like to mention that since this bill dropped, I have received several calls from constituents and other concerned folks who are wondering about its applicability because those similar things have happened in the past, when they were very stressed out and trying to get through the process as quickly as possible. Then later they find out that their spouses had pensions or other things and they have no recourse to.

Assemblyman Araujo:
Regarding the value of the property, for example, retirement. If one spouse had retirement funds of $300,000 but when the ex-spouse reopens the case, there

is only $150,000 left, can the ex-spouse petition for the original $300,000, or does he now petition for the $150,000?

Kimberly Surratt:
In the bill, section 1, subsection 2, paragraph (b) states the assets are to be equally divided unless, "The court determines a compelling reason in the interests of justice to make an unequal disposition of the community property or liability and sets forth in writing the reasons for making the unequal disposition." The court should analyze that situation. If there was fraud and misrepresentation, or an intentional hiding of that asset, I do not know what the court will do, but really they only have control over that asset that was not divided. If there is a compelling reason to make an unequal distribution of the asset because the $300,000 is not there, and they find reasons for that, then they can do an unequal distribution. Maybe if there was fraud, the court could grant the entire $150,000 to the ex-spouse.

Chairman Hansen:
In a normal year, how many divorces are granted in Nevada?

Kimberly Surratt:
I do not know the answer. I could not even venture to guess.

Assemblywoman Fiore:
Marriage is a sacred institution, and I promote the idea of marriage. I look at this and I see a decline in marriage when you have a two-part divorce. My question is, a couple goes through a divorce which takes one year to finalize. Either as an attorney, doctor, businesswoman, or a real estate agent, while going through the divorce, one spouse has many things in the works, and when the divorce happens, things start happening with the business and income changes. Is this a loophole to go back and do a second divorce based on the current circumstances? Also, you get divorced and suddenly your business declines, or something bad happens, do you get to bring the spouse back to court and say hey, give me all of my stuff back because my business is not valued at that anymore?

Kimberly Surratt:
I agree, marriage is sacred, and as a divorce attorney, cynicism on that is getting worse over the years. What I see is nasty. But, absolutely no. This bill is not for change in value of assets and reassessment of the divorce. This is truly for an omitted asset that was not dealt with in the divorce. We had the conversation about the value of the car versus the change of values, all of that was contemplated in the divorce; it is a final decision. This is merely about something that was completely omitted and not divided, not discussed, not part

of that analysis. There is a lot of fraud that happens in divorce. People will very intentionally do what we call divorce planning. They will start scooting their assets off to other people, hiding them, and not disclosing them. When the divorce is finalized and the other party learns about that, unless they learn about it within six months, there is nothing they can do.

Assemblywoman Fiore:
I have been divorced twice, and I just feel if there were a problem with a divorce, my ex-spouse could take me back to court without this particular law? Am I incorrect on that?

Kimberly Surratt:
I believe you are incorrect, absolutely.

Assemblyman Elliot T. Anderson:
I understand where this is coming from and it makes sense to me; it just seems that at some point people have a reliance interest and things need to move on. In the *Doan* case, there was a lawyer who withdrew and there were two pro per litigants. I understand they are not experts. Is there any way we can bifurcate this and set some limits? If both parties are represented by counsel, maybe set the limit to five years. We cannot be in the business of fixing every mistake that lawyers make. That is what malpractice insurance is for. For pro per litigants, maybe we could set that limit to 15 or 20 years. At some point people enter contracts, start businesses, or buy houses. Is there a way that we can provide for that reliance interest?

Kimberly Surratt:
In my opinion, that is a slippery slope. The reason is because I am a family law attorney and I see thousands of cases and the facts are so dramatically different every time. You will most definitely, inevitably cut off someone who had a very justified right to an asset. Again, it is back to my original answer, which was they own that property jointly. That is not the issue; it is just the tool to get it divided. It is not whether it should or should not be divided; it is owned jointly, indefinitely. In the fraud and misrepresentation cases, those are the absolute most horrid ones because one party gets away with it. That is what we are seeing. I am fearful of time frames because I have personally had someone come in my office 20 years down the road, when he hit retirement age and there was the realization. Again, this does not just apply to people who are fighting about it, it also applies to people who may want to jointly, in agreement, go to court and ask for assistance in how to get it divided and get that special qualified divorce relations order because they cannot make the plan administrator do anything without the assistance from the court.

Josef Karacsonyi, Member, Family Law Section of the State Bar of Nevada:
There is one point that I would like to emphasize: this proposed legislation really gives effect to our community property law. Under NRS 123.225, the interest of spouses in community property during marriage are present, existing, and equal interests. When you have a situation where someone has a piece of property in his or her name, and following the divorce, that asset was not adjudicated in the divorce and he or she is allowed to retain that property, you are not treating community property as equal, present and existing. You are treating the property as though it has more value to the person in whose name the property is held because in those situations, where the property is not actually adjudicated, that person will have the ability to keep the property in its entirety. This legislation does not deal with these situations; this is not a do-over legislation. This is not to re-litigate divorces and property that were already adjudicated. This applies solely to those assets where you look at your decree of divorce and the asset is not mentioned; it is not divided. It applies only to community property. It does not apply to separate property. The legislation is necessary for the protection of all individuals. Anyone in a divorce who is in a situation where a piece of property of significant value has not been divided has really not had his community property rights enforced. Those are the points that I would like to emphasize.

Anthony Wright, Private Citizen, Las Vegas, Nevada:
I endorse this bill. I have been practicing law in Las Vegas for the last ten years, primarily family law. Las Vegas is an international city; there are roughly 2 million people in Clark County at any given time. People who have English as a second language and many people who are poor and need self-help go to paralegals. I would say a fair amount of my business over the last decade has been fixing poor decisions and poor orders because things were accidentally omitted. This would be one good step toward fixing something that is major in peoples' lives and that is the assets that need to be divided yet were omitted.

Assemblywoman Seaman:
I asked earlier if there was a remedy for this, and I was told no. You just said that you have spent most of your time fixing these cases, so there is a way to actually fix some of these cases, is that correct?

Josef Karacsonyi:
Prior to *Doan,* there was *Amie v. Amie*, 106 Nev. 541, 796 P.2d 233 (1990) that basically allowed us to divide these assets that were omitted from decrees of divorces. That was the law we were all operating under up until the recent decision in 2014. The law prior to the *Doan* decision, the way it was applied in family court, was that we were allowed to go ahead and divide those assets that had not been adjudicated in the underlying divorce action.

Shann D. Winesett, Private Citizen, Las Vegas, Nevada:
I have been dealing with family law issues for almost 20 years. I am also on the Bench Bar Committee for the State Bar. When the *Doan* decision was passed down by the Nevada Supreme Court, I was the one who presented it to both the Bench and the Bar in the Eighth Judicial District. The one thing that everyone had concerns with is that the *Doan* decision changed the way that Nevada has been dealing with these omitted assets since 1991. What this does is place back what we have always been doing. Concerns that the Legislature may have about a flood of litigation taking place or that somehow the divorce cases are wide open because of this legislation should not necessarily be a concern because we have been dealing with these issues for two decades. This is not a new issue, and what this legislation is trying to do is to recalibrate the way it has always been done.

Assemblywoman Diaz:
Have you come across a scenario where one spouse is responsible for all of the financial matters, she is basically the accountant for the family, and the other person is not really privileged, because he totally trusts the other spouse. Then they go through a divorce and he does not have a clue what is out there. Do you run across this at all in your practice?

Shann Winesett:
Yes, that does happen. That is why the family lawyers are united on this legislation, because the *Doan* decision has altered our ability to make things right when there is that type of overreaching. That overreaching can be fraud; it is often that the person does not know that the assets exist, or even if they do know the assets exist, they do not know that it is actually community property. I would like to echo something that was said earlier; I have clients come to me all the time and at initial consultations, they do not realize that retirement is an asset. They look at it as an income stream, and so that asset, which is so important, especially as the constituents age, is omitted and that can cause serious difficulties for the persons as they reach retirement age. That is why we are trying to remove the deadlines so we can address it.

Another concern is about the cost of litigation. What this legislation also provides is that we can do this by way of a motion to the family court rather than having to establish the case by an independent action, which causes much more litigation for the parties. This bill also avoids having to initiate additional litigation against an attorney, if the parties were represented by an attorney in terms of a legal malpractice. That is really cold comfort for someone at retirement age that they do not get the chance to get to a stream of income that they are entitled to, but they can go ahead and sue an attorney who may not even be in the jurisdiction anymore.

Assemblyman O'Neill:
Could a party, either side, who gets divorced in a state that does not have this law move to Nevada and have standing to open up their divorce for some of the community property assets?

Josef Karacsonyi:
No, this is only for Nevada divorce actions. If they were divorced in another state and the decree was subject to the continuing jurisdiction of that state, they would have to proceed in that jurisdiction. Incidentally, if it was in one of the other nine community property states, then they would have the same right that they would have here under this legislation.

Assemblyman Elliot T. Anderson:
We are defining this as an exceptional circumstance that justifies an equitable action. I understand for pro per litigants, they do not know when they are sleeping on their rights. I guess what I am worried about are the situations where both parties are represented by counsel, then we are just fixing the mistakes of lawyers.

Josef Karacsonyi:
The way the statute is proposed, it allows the court to still consider all equitable defenses. A common equitable defense is laches; someone knows about his rights and he has sat upon them. The court can still consider equitable defenses and compelling reasons not to make an equal division after the fact. The rules we have are intended to promote and require full disclosure. We have *Nevada Rules of Civil Procedure* 16.2 which basically requires both parties to a divorce to disclose all of their assets. This is intended to reduce the cost and streamline litigation so that you do not have to go on massive discovery hunts to try to find each and every piece of property that is owned by the spouses. This legislation will actually decrease the cost of litigation because, if you do not have legislation like this, then you have attorneys in a situation where you have to take every possible discovery step to discover every possible asset that someone may or may not be disclosing in violation of our rules and our laws. By having this statute, it provides for a remedy in the event that someone did not disclose an asset during the underlying divorce action. The other thing I would point out is that 60 percent of cases in Clark County involve divorces where one or both parties are not represented by counsel. This is not about fixing attorney malpractice, this is about protecting all citizens, whether represented by counsel or not. Even in the cases where both parties are represented by counsel, rather than having to chase an attorney who may or may not be insured, may or may not have an ability to satisfy a judgment, and may or may not still be practicing, the better solution is to allow both parties to go back to court and get the asset, where we know there is an ability to recover

that which the law says is theirs because of an equal present existing interest during the marriage.

Assemblyman O'Neill:
I received an email from one of my constituents, Peter Jaquette, who is a former chairman of the Nevada State Bar Family Law Section. He is unable to be here today and has submitted his testimony in support of A.B. 362 (Exhibit C).

Chairman Hansen:
Is there anyone in opposition? Seeing no one, is there anyone in the neutral position? Seeing no one, I am going to close the hearing on A.B. 362. I will open the hearing on Assembly Bill 207.

Assembly Bill 207: Makes various changes to provisions relating to the enforcement of judgments. (BDR 2-738)

Assemblywoman Ellen Spiegel, Assembly District No. 20:
I would like to talk to you about an issue that affects all of us and all of our constituencies. That has to do with bankruptcy [showed slide presentation (Exhibit D).] Nevada consistently has one of the highest number of bankruptcies in the country. We all know people who have been hurting, people who have had problems with jobs, people whose assets have been depleted, and people who have found that they have no other alternative, other than to declare bankruptcy. In 2005, Nevada was third in the country, by 2011, we were number one; not a list that we want to be on the top of. I do not have any more recent data, but we all know folks who were really hurt during the downturn. People who have not gone through bankruptcy think that it is caused by reckless spending. In reality it is caused by financial hardship. It is caused when people have lost their jobs or cannot afford to deal with unexpected major expenses, such as medical bills. If you go to a hospital, you can wind up with thousands of dollars in bills that you were not expecting and do not have the means of paying or have not been able to set up a payment plan, especially if you lose your job at the same time this bill becomes due.

In looking at where consumer debt comes from, 38 percent of all consumer debt is associated with health care; it is a major contributing factor, it is a major issue. Twenty five percent comes from student loans; most of those loans cannot be renegotiated. Thirteen percent is from credit cards, and it goes down from there. Government debt, which is taxes, is at 10 percent, retail is 3 percent. So when we think of the people who go out and spend a fortune frivolously and then declare bankruptcy, only 3 percent of consumer debt is associated with that.

Contrary to many perceptions that people have, the average person who files for bankruptcy is older and married, has a high school education, and makes less than $30,000 a year. Interestingly enough, 8 percent of those who file for bankruptcy have filed at least once before. Repeat filers are responsible for 16 percent of all bankruptcy cases. What happens is people are not successful coming out with bankruptcy plans. A 2011 bankruptcy study suggests that those with some college education but not a degree are at the highest risk of declaring bankruptcy because they have the financial burden of student loans but do not receive the higher salaries associated with college degrees.

Assembly Bill 207 really just does two things, along with a third in the conceptual amendment that I will be introducing. The bill does not just deal with bankruptcy, it also deals with wage garnishment and other judgments. I am looking to limiting this to only situations of bankruptcy. What this bill does is, on the day of bankruptcy, the judge looks at what obligations the person has and what exemptions and assets he is allowed to keep. One of the things he is allowed to keep under current statute is $1,000; it is called a wildcard exemption that can be used for the person to pay rent, make car payments, buy food, buy clothing, or buy medications. That is the safety net. That was introduced a number of years ago and frankly, expenses have increased and if you have $1,000 that you are allowed to keep and your rent of $1,200 is due in two weeks, that safety net is not going to help you much. I would like to increase the wildcard exemption from $1,000 to $2,500, again, looking to get people on a plan that they can be successful at.

The other thing that I would like to establish is a new category of exemption that allows people to hold onto money to pay for health insurance premiums. Under federal law, people have to have health insurance, but if someone is going through bankruptcy, we are saying they do not necessarily have to have the money to pay the premium. If they have to pay health care premiums and they do not have the money, they could incur penalties and fines or end up receiving Medicaid. The goals are to increase people's success on payment plans and being able to meet obligations coming out of bankruptcy. I want to decrease the need of people refiling for bankruptcy. A common myth is that people think you can refile for bankruptcy soon after your first declaration. That is not true; there is a waiting period of several years. But there is still a large percentage of folks who refile for bankruptcy; I think it is because they are not given the opportunity to be successful.

I want to help people reduce the need for reliance on social services. I want to have them be fully productive members of society and be out there on a get-well plan, turning things around and strengthening our economy.

Mark Segal, Private Citizen, Las Vegas, Nevada:
I have been practicing law for 49 years. I have lived in Las Vegas for 37 years, and I have been practicing bankruptcy law for 30 years. I am testifying today in favor of A.B. 207, particularly the increase in the wildcard exemption as it will clearly make it easier for people to get through the financial hardship of filing bankruptcy. Many people concentrate on the fact that when people file bankruptcy, they will be able to avoid paying certain obligations, but life goes on. As Assemblywoman Spiegel pointed out, rent still has to be paid, food still has to be purchased, car payments have to be made. The way the bankruptcy system works is it incorporates in the bankruptcy process the federal system, and our state exemptions that are provided under *Nevada Revised Statutes* (NRS) 21.090, subsection 1. That is why I am here today. Our statutory exemptions from judgment creditor claims as provided in NRS 21.090 are effective and protect people who file bankruptcy. But, there is no specific exemption in our law for cash. The only way you can hold on to cash is under the wildcard exemption. That exemption protects cash. It protects income tax refunds, which are not exempt from creditor claims, and I personally believe that the greatest difficulty that people have in filing bankruptcy is the impossibility of acquiring and keeping enough cash to keep them going while they are in the bankruptcy process. Many people who file bankruptcy are unemployed. They have no job, yet those obligations continue after they file bankruptcy. I firmly believe that by increasing the wildcard from $1,000 to $2,500, it will provide everyone who files bankruptcy an easier path to get through the bankruptcy process and continue to pay the obligations that they will have when the bankruptcy proceeding is over. The general bankruptcy process takes anywhere from four to six months before an individual gets what we call the discharge, that is the release from certain obligations that the bankruptcy allows them to avoid, but they still have bills incurring and they still need money to pay those bills, and the increase in the wildcard exemption would enable them to do that.

Assemblyman Gardner:
I practiced a little bit of bankruptcy law and I would like to back up what Assemblywoman Spiegel stated; most of the clients I had were people who were earning $200,000 to $300,000, working as contractors on the Strip, and putting in a lot of overtime. They had very large incomes. They have to show four years of tax returns when they file for bankruptcy, and the income would go from $200,000 the first year to $100,000 the next year, then it would drop to $40,000, and then $30,000. That was when they would come talk to me. They would say, I am not sure I will even make $30,000 this year. In the thousands of bankruptcies I have dealt with, I have met one person trying to scam the system. I would just say that I appreciate this bill.

Assemblywoman Diaz:
I do see the need for increasing the wildcard exemption. How did you reach the amount of $2,500? Did you look at the limits in other states?

Mark Segal:
It is an arbitrary amount. One does not know, because of the breadth of the population, who files bankruptcy. Some people will be working and better able to provide for the rent and the continuing expenses than others will be. The number could be any amount that the Committee and the Legislature would feel is proper and enables someone to go through the difficulty of the bankruptcy process. I would echo the comment made earlier; I have not met anyone who has deliberately wanted to file bankruptcy, who has deliberately put himself in the position where he basically lost everything.

I have been in Las Vegas for 37 years, and I have seen us go from hotels that were two stories high, which was the Sands, to the high-rise buildings that we now have. People made awfully good wages while those buildings were being built. They incurred bills because they thought they would continue to make those dollars, then the jobs were lost, or their income was decreased. I think the increase from $1,000 to $2,500 is a moderate increase. We know bills have gone up and will continue to go up; there is no reason to believe they will go down, and this may be an issue that the Legislature will have to visit again in another few years, just as we are visiting it now. I do not want to say arbitrary, but, it could have been $5,000 just as easily as $2,500. This is an amount that Assemblywoman Spiegel felt would be an appropriate amount.

Assemblywoman Spiegel:
One example that Mr. Segal gave to me as I was learning more about bankruptcy is that when a person goes through bankruptcy, the judge is looking at that day as a snapshot in time. There is an exemption where the debtor is allowed to keep his car as long as it is worth no more than $15,000. If someone has a car that is worth $17,500, theoretically, the way bankruptcy works, he could sell the car and keep the first $15,000 and surrender whatever is left over. If he had the wildcard exemption of $2,500, some of that overage could go towards the value of the car. One of the challenges that people going through bankruptcy have is that if you had to sell your car, you would probably have a very difficult time buying another car because you will not have access to credit. You probably will not be able to get a car that is as reliable as what you already have. I think anybody who ever looks at used cars knows that a used car that you have had for years and you have maintained is a much better deal than what you would get for the same car that came from someone else. This is looking at all of the components, not just the cash, but cash plus assets and values.

Assemblyman Gardner:
Regarding that cash exemption, Nevada is actually on the low end. Every state has different amounts. I believe California is $1,900, but they have a couple other exemptions as well. Arizona is at $4,500. The states vary on what the exemptions are; we are one of the lower states.

Chairman Hansen:
Section 2 of this bill is five pages of exemptions from possibly paying off debt. If I am loaning someone money, there is a reasonable expectation of repayment, yet we keep increasing the number of exemptions. Should there not be a reasonable balance between the lender and the debtor? It seems that we keep adding more reasons why we cannot collect a legitimate debt. Anytime money is loaned there is risk involved for both parties, yet it seems as though we are constantly tipping the scale so that whoever loans money in Nevada is not going to loan money anymore because he no longer has a reasonable expectation to recoup his money.

Assemblywoman Spiegel:
I understand your concern. When someone does borrow money, there is a reasonable expectation that he will pay it back. Overwhelmingly, the reason people file bankruptcy is because something unexpected happens: he loses his job or he has a major health expense. Again, 38 percent of bankruptcies are caused by health care related debt. If you are in the hospital, you are not thinking, I cannot afford this medical care. You and your family are saying, get the medical care and we will figure out what to do. You can be in an in-network hospital and an out-of-network provider can come in for treatment, and suddenly you get a bill that includes the 20 percent of your in-network and also a very large bill from an out-of-network provider, even though you were never informed of that. You can break your leg, and the person who is providing the durable medical equipment may not be in-network, and you may not even know they are not hospital staff. What this bill is designed to do is to help people be successful on their payment plans and make it possible for them to be successful coming out of bankruptcy, and also to reduce their need on reliance of public assistance and social services.

Chairman Hansen:
Is there anyone who would like to testify in favor of A.B. 207? Seeing no one, is there anyone who would to testify in opposition to A.B. 207?

Nick Vassiliadis, representing Nevada Collectors' Association
We do not believe that this particular legislation represents a balanced approach, giving equal considerations to all of the interested parties, both the business community and the stakeholders. We are supportive of another bill that we do

believe maintains that balance. We do not believe this bill provides that balance of interest between the consumers, the debtors, and the business community. With the vast amount of exemptions that are already given, we do think the balance is critical to maintain.

Joanna Jacob, representing the Clark County Collection Service:
I am in opposition to A.B. 207. We have spoken to Assemblywoman Spiegel about this bill and about her conceptual amendment. I wanted to listen to the intent of the amendment, and there are a couple of things I want on the record. We appreciate her intent, but we do not believe that altering the wildcard and increasing exemptions for health care insurance at this point is prudent. Consumer protections in Nevada have increased almost every legislative session. There are a large number of exemptions as has been mentioned. We are here on our clients' behalf. We represent many small businesses. Trying to collect and get the small business paid for a service that they rendered, any change to these statutes limits the ability to do so. That is the other side of this issue. I understand that we are trying to protect people who are going through bankruptcy, which is why I would like to work with Assemblywoman Spiegel, but this is going to impact the way we do wage garnishments and the way we ultimately collect debts. The road to garnishment is a very long road. Clark County Collection Service often works in setting up payment plans, and writs of garnishment are our last step in the process. We have done case studies in the past about an initial debt that was in the amount of about $1,000. The first garnishment and payment made to this small business did not come until two years later in the amount of $54.91. That took a very long time to collect. As a small business person, if a client does not pay his bill for two years, it puts them at a great disadvantage. It is a very difficult issue. We have been here for many sessions, and we wanted to come up in opposition and work together on the amendment.

Lauren Hulse, representing the Nevada Judgment Coalition:
The Nevada Judgment Coalition is made up of a variety of businesses that are affected by debtors who do not pay for services rendered. Multiple accounts have to go to collections. We also learned about the conceptual amendment yesterday and are looking forward to working with the sponsor of the bill. As mentioned, we are concerned about the continuous increasing and adding of the exemptions. There are pages of exemptions already there to protect the judgment debtors, including any retirement payments, social security payments, disability, unemployment benefits, unemployment compensation, any money deposited with the landlord for rent is exempt, and 75 percent of their take-home pay is exempt—that is a form of cash that is already exempt from being collected—child support, alimony, and the list goes on. We recognize that people are put in these hardships and we are not against helping them; it is just

that the exemptions have been increased multiple times. When the wildcard exemption was put in, in 2007, there was a voice of concern about having that put in and having it continually increase session after session, which seems to be what is happening now. Again, we appreciate the conceptual amendment and hope to work with the sponsor and continue to voice our concerns.

Chairman Hansen:
Is there anyone else who would like to testify in opposition of this bill? Seeing no one, is there anyone in the neutral position? Seeing no one, Assemblywoman Spiegel, is there anything you would like to add?

Assemblywoman Spiegel:
I would like to thank the Committee for your consideration. I will work with those in opposition. I had some preliminary discussions with some of them and am looking forward to working with them. I do think this bill can help Nevadans. I would also like to point out that I understand the issues of the debt collectors. I spent years at American Express in customer service operations and the credit and collections department worked hand in hand with my department. Part of why I limited this to bankruptcy only is because by the time someone is filing for bankruptcy, much of the debt that the collectors are going after is being discharged in the bankruptcy. I really want to help the people get on good plans and be successful and come out of the bankruptcy stronger and more vibrant.

Chairman Hansen:
I will now close the hearing on Assembly Bill 207 and open the hearing on Assembly Bill 98.

Assembly Bill 98: Revises provisions governing child custody, child support and visitation. (BDR 11-49)

Assemblyman John Ellison, Assembly District No. 33:
I am here to introduce Assembly Bill 98. The intent of this bill is to remedy the inequities which exist under current law with respect to child support, especially as it applies to joint physical custody cases. The purpose is to ensure that neither parent receives a windfall in the child support arena, while at the same time ensuring that the children receive adequate support from both of the parents. Here to explain the bill and amendments are family law attorneys Jessica Anderson and Kimberly Surratt.

Jessica Anderson, Private Citizen, Reno, Nevada:
When A.B. 98 was first introduced, it caused quite an upheaval in the Family Law Bar. The language was problematic, hard to understand, and hard

to apply. We met extensively with Assemblyman Ellison and when we waded through the language of the bill, we figured out exactly what his intent was. We have helped with an amendment (Exhibit E). We believe that the amendment represents a good and fair change to existing law.

With respect to *Nevada Revised Statutes* (NRS) 125.150, where the original bill had substantial changes, we believe that no change should be made to existing law. In NRS 125.490, again, we believe no changes should be made to existing law. We think it would be prudent in NRS Chapter 125C to add definitions of primary physical custody and joint physical custody.

The Nevada Supreme Court has given definitions for both primary and joint physical custody. The case *Rivero v. Rivero,* 125 Nev. 410 (2009) creates a guideline in determining whether a time share qualifies as joint custody. The guideline is if the child is in your custody and control more than 60 percent of the time, then you are a primary physical custodian. That equates to approximately 220 days a year. If your child is in your custody and control at least 40 percent of the time, 146 days a year, you are a joint physical custodian. It is important to note that the only relevance of a custody designation is for purposes of determining child support. The court is required to figure what custody time share is in the children's best interest. After they do that, the child support is determined. Six days ago the Supreme Court of Nevada decided *Bluestein v. Bluestein*, 131 Nev. Adv. Op. 14 (Mar. 26, 2015) where it clarified that the *Rivero* 40 percent guideline should serve as a tool in determining what custodial arrangement is in the child's best interest. We believe *Bluestein* would have no effect on this amendment.

The presumptive maximums listed in NRS 125B.070 have been increased. Added to the amendment is an inclusive paragraph on how the courts should calculate child support in the case of a primary custody situation. Paragraph 5 of the amendment codifies current law, there is no change.

With respect to paragraph 6, this is the paragraph that tells the court how to calculate child support in cases where the parties share joint physical custody. This partially modifies current case law. In 1998, the Nevada Supreme Court told us how to calculate child support in joint physical custody cases, that case is *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998). In the *Wright* case the Nevada Supreme Court said, when parents have joint physical custody, you take the income of one parent and calculate child support; you take the income of the other parent, calculate child support and then offset the two. The higher income-earning parent pays the lower income-earning parent the difference. That decision was clarified in a 2003 case called *Wesley v. Foster*, 119 Nev. 110, 65 P. 3d 251 (2003), which is a very short decision. It was

decided at a time when joint physical custody was not the norm; over a decade ago joint physical custody was not the typical arrangement. Primary custody was the typical arrangement and we were arguing for joint custody. Now, while there is not a legal presumption of joint physical custody at the outset, that is practically where we start. Also, $500 was the maximum amount of child support that any parent would pay presumptively. The *Wesley* issue was, when do you apply the presumptive maximum? Do you do that before you do the offset for joint custody, or do you do it afterward? The court said you do it afterward. The reasoning behind that was so that children receive adequate support. Again, the presumptive maximum at the time was only $500. We believe now that is inequitable. Under *Wesley*, in a joint custody situation, if you apply the presumptive maximum after you do the offset, if the parents' incomes are far enough apart, the parent who has joint physical custody and is the higher income-earning parent receives absolutely no benefit at all in the child support arena for having that child half the time. That parent pays the same as a noncustodial parent at the same income level. We think that is inequitable and should be remedied. It can easily be remedied by paragraph 6.

Under current law, let us assume that the father earns $250,000 a year and the mother earns $110,000 a year. Both parents make a lot of money; the child is well-taken care of in both households. If they share custody on an equal basis with one child, the father would still pay the mother the presumptive maximum in child support of $1074 each month. He pays whether he is the joint custodial parent or the noncustodial parent; mom receives that amount whether she makes $110,000 or $20,000, unless the court determines to deviate, which does not always happen.

The reason the presumptive maximums have been increased in this amendment is because when we looked at the disparities between the income brackets, we found that there were inequities. For instance, if you make $50,000 a year, you pay 15.8 percent of your income according to the presumptive maximum in child support. Whereas, if you make $180,000 a year or more, you only pay 7.2 percent. We think it would be equitable and wise to close the gap on those percentages. I do not think that someone who makes $180,000 should have to pay an outrageous amount in child support; it should be based on the children's needs to ensure they are adequately supported, but we do not want anyone to receive a windfall. At the same time, it does not make sense that someone who only makes $50,000 a year pays so much more of their net income than someone who makes $180,000. The new presumptive maximums go from 15.8 percent when you make $50,000 a year to 11.8 percent if you make $180,000 or more.

The other items in the amendment deal with the deviation factors in NRS 125B.080. We added to subsection 9, paragraph (l), where it says, the relative income of both parents, including the contributions made to the payment of household expenses by an adult cohabitant. That is already the law; we added it to make it clearer. We also added in subsection 9, paragraph (m), which says, the child's standard of living in each household. The focus should be on the child's standard of living. That is the entire purpose of child support. I can think of many different reasons why it may not be equitable just because one parent earns substantially more than the other, that he or she should be paying the presumptive maximum in child support because the standard of living may be the same or better in the person's house who is receiving child support. We also think it would be appropriate to add subsection 9, paragraph (n), which is the specific circumstances of any child who has not graduated from high school and remains subject to a child support order despite reaching the age of majority. The law in the state of Nevada is that you pay child support for a child who is 18 years old if he is still in high school, until he graduates from high school or turns 19. That is still going to be the law. There are some cases though, where it would be nice if the court could consider that in the child support arena. For instance, what if there is evidence where the mother, who is the recipient of child support, intentionally made it so the child had not graduated from high school in order to continue to receive child support?

Number 10 was added for a specific purpose. It says the court shall apply the deviation factors set forth in subsection 9 in order to establish a child support obligation that is adequate to the child's needs and fair to both parents based on the circumstances of the case. That is a quote directly from *Fernandez v. Fernandez*, 222 P. 3d 1031 (Nev. 2010). The reason that was put in is because we have experienced the district courts relying heavily on a 26-year-old case, *Barbagallo v. Barbagallo*, 105 Nev. 546, 779 P.2d 532 (1989), where the court said that the deviation factor should be the exception not the rule and going for consistency, which makes sense but at the same time, the courts have hamstrung themselves with that language.

Sarah Hardy Cooper, Private Citizen, Reno, Nevada:
My comments would echo Ms. Anderson's comments. The amendments have been vetted through the family law community, and most people agree that a change needs to be made and this would accomplish that.

Kimberly M. Surratt, Chair, Domestic Committee for Nevada Justice Association and Chair, Lobbying Committee for the Family Law Section of the State Bar of Nevada:

This is not something we had our hands on early enough to vet it through the State Bar, so the Family Law Section cannot take an official position on this bill. This is something where, because of what came out from Assemblyman Ellison, we jumped in and tried to help him come up with something that would work. We recognize and understand that there are actually a significant number of changes that need to be made to this chapter. This is just the tip of the iceberg. There is a lot of disorganization and there are poorly worded items throughout this chapter. Part of this is modernization issues, where the mother would always get primary custody, which was the standard, and we have really moved away from that. Society has changed and commits to the child needing involvement from both parents.

We worked very hard. It was very difficult to weed out exactly what was needed from Assemblyman Ellison's constituents. We looked at their cases and realized there were some problems. There was a case in Elko where mom had remarried a man who was very wealthy. She was not working and was living in a mansion. The father was a highway patrolman and did not make anywhere near the amount of money as mom's husband. Because of the amount of child support and the way it was calculated, he could only live in a very small two-bedroom apartment and could not afford to do anything extra for his children because he had to give her all this extra money that she did not need. Because of *Barbagallo* and the standard that these deviation factors are the exception not the norm, the courts are very afraid to use them.

Assemblyman Ellison reached out to us, and we had a lot of discussion about judges not doing their job and whether we could legislate that and make them apply the statute. I think there is a solution for that. *Barbagallo* had set forth that standard and courts had really quit using the deviation factors. They very religiously use the health insurance deviation in every single case. That is about as far as you can get unless you have a child with special needs. That is not the intent. We want the courts to use the deviation factors. We want them to look at the actual circumstances of the parties and assist these constituents that Assemblyman Ellison is trying to assist.

We did send this amended language out in February to multiple groups, including Jon Sasser on behalf of Washoe Legal Services and Legal Aid Center of Southern Nevada and the District Attorneys' offices. We were also in communication with the Attorney General's Office. About a week ago I asked Ms. Anderson to send it out once again, and last night I asked her to send it out again because we had not heard back. As of last night the District Attorney's

office said they were in opposition to it. This is my reach out to say we will continue talking with them to see how we can fine-tune this to come to an agreement. If there is any proof that we can do this, it would be the most recent alimony military bill, we can put the hours in and come to a resolution.

Assemblyman Jones:
When was this presumptive maximum amount last updated? This new chart is more than doubling the amount. I understand that you are giving the judge more discretion, but sometimes discretion is not a good thing.

Jessica Anderson:
The language in the statute that you are reading is not the presumptive maximums that are currently being applied. The ones in the statute have been in there since the 2003 Session. They have increased every year with the consumer price index. The current presumptive maximum for someone who earns $4,235 a month is $670. We have not changed that one. If you earn under $50,000 a year, your child support will not change, whether you are a noncustodial parent or a joint custodian. When you earn $6,351 a month, currently the presumptive maximum is $737; we are asking that it go up to $817. If you earn $8,467, currently the maximum is $806; we are asking it to go to $964. If you earn $10,585 a month, currently it is $871; we are asking it to go to $1,151. If you earn $12,701 a month, the current amount is $939; we are asking it to go to $1,338. Again, these are increasing more because those current presumptive maximums are very low. We are trying to bring these up so they are more equitable.

Chairman Hansen:
Is there anyone else who would like to testify in favor of this bill? Seeing no one, is there anyone who would like to testify in opposition?

Kristin Erickson, representing Nevada District Attorneys' Association:
We have a concern with one very small part of this bill. We look forward to working with the sponsors and reaching an agreeable solution with this issue. Ms. Cordisco will explain our concerns.

Kari Lepori-Cordisco, Deputy District Attorney, Family Support Division, Washoe County District Attorney:
We oppose the portion of the amendment in paragraph 6 regarding the joint physical custody and the application of the cap prior to making the offsets of the incomes. Even though the *Wesley* case was issued some years ago, the underlying basis for that decision is making sure that the awards for the children are adequate still remain in effect today. In fact, if we do the application of presumptive maximum prior to making the offset, the lower-income spouse is

going to be affected the most drastically. Even with the adjustment in the amounts of the maximums, there is still an inequitable amount. We believe, especially if we add paragraph 10, which gives the courts more leeway to use those deviation factors, that will give the courts the ability to resolve the situations that Ms. Anderson is concerned about. When you have those high-income parents and the application of the cap, the way it is currently done results in the initial award being the same as if it were a noncustodial and primary physical custody situation. *Wesley* even indicated at that time, in those special circumstances, the court has the ability to adjust those child support amounts downward based on the deviation factors for the timespan or relative incomes. We are not opposed to the rest of the amendment.

Chairman Hansen:
Is there anyone else here to testify in opposition to A.B. 98? Seeing no one, is there anyone who would like to testify in the neutral position?

Assemblywoman Seaman:
Is this percentage based off of any neighboring states?

Jessica Anderson:
I believe that our original child support calculations were based on the Wisconsin formula, but the Wisconsin formula does not have the presumptive maximums. The way our child support is calculated, if there is one child you pay 18 percent of your gross income, 25 percent for two children, 29 percent for three children.

Assemblywoman Seaman:
So why is it capped?

Jessica Anderson:
In 2003, the Legislature decided that the cap was necessary to keep child support at a level where people could pay.

Assemblywoman Seaman:
If someone grosses $1 million, for example?

Jessica Anderson:
Then the court could deviate upward.

Assemblywoman Seaman:
So the court has the discretion to deviate upward?

Jessica Anderson:
They do; they have always had the discretion. The problem we face as practitioners is trying to get the court to use the discretion when appropriate.

Assemblywoman Seaman:
By putting a cap in, it is even more hindering for the courts to use discretion, correct?

Kimberly Surratt:
These are what we call IV-D cases. We have funding that comes from the federal government for enforcement of child support. One of the requirements is that we can specify and demonstrate specific amounts. By putting the caps in, one of the things we have avoided is an audit of our child support program to ensure we are in compliance with the federal government. We did a lot of research about how those original caps and percentages were put in place. My understanding is the amounts and the percentages were completely random and completely made up. I have had several people in this building tell me, "It was fun, we just figured it out, we guessed some numbers and threw them in there." I also understand that we would be treading on very dangerous waters of losing our federal funding if we remove the caps. That was one of my thoughts, just remove the caps and we have a true percentage. However, we would have had a lot more opposition here because of our concerns with the federal funding.

Assemblywoman Seaman:
Do you know how many states do the formula without capping?

Marshal S. Willick, Private Citizen, Las Vegas, Nevada:
At last count, there were seven or eight Wisconsin guideline states. Those are states using a percentage of income of the noncustodial parents. Other states use different formulas. Once upon a time the Family Law Section reviewed the child support statutes for the Legislature. There is a full report in the 1992 analysis of the child support statutes showing the history and evolution of the adoption of the matters. There is no requirement of a cap under federal law. Most states do not have such a cap. It is a choice of evils. In California, for example, they use a totally unique model which requires a computer to operate with no caps. That can lead to some truly extraordinary child support orders where there are enormous disparities between incomes. The Nevada cap was inserted by the Legislature when the Wisconsin guidelines were adopted in 1989. The cap is not part of the Wisconsin model; it was added by the Nevada Legislature.

Kimberly Surratt:
My understanding is that even though it is not mandatory under the federal law, it does prevent us from an audit process.

Assemblywoman Seaman:
I am familiar with the California formula. That formula does not leave it to the discretion of the courts because it goes through the incomes. I am just wondering why no one has ever suggested using California's formula.

Jessica Anderson:
Probably because child support is such a hot button issue and it is one of those things that everyone is afraid to take on. It is one of those issues that people become very enraged about. When Assemblyman Ellison came with this bill, we saw an opportunity to fix something that is very broken. It does not make our statute perfect, but it helps. It helps resolve the inequities that currently exist where a joint physical custodian pays the same amount of child support as a noncustodial parent. If you remove the *Wesley* issue and apply the presumptive maximums before you do the offset, you will ensure that every child support obligation takes into account someone's joint physical custodian status.

Assemblywoman Seaman:
Perhaps if someone did come forth, a fair child support system may not be such a hot button issue.

Chairman Hansen:
I will close the hearing on A.B. 98. I will now hear public comment. Seeing no one, meeting is adjourned [at 10:31 a.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 1, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 362	C	Peter Jaquette	Letter of Support
A.B. 207	D	Assemblywoman Spiegel	Presentation
A.B. 98	E	Jessica Anderson, Private Citizen, Reno, Nevada	Proposed Amendment