MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-ninth Session
May 10, 2017

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:10 a.m. on Wednesday, May 10, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Pat Spearman, Vice Chair
Senator Nicole J. Cannizzaro
Senator Yvanna D. Cancela
Senator Joseph P. Hardy
Senator Heidi S. Gansert

COMMITTEE MEMBERS ABSENT:

Senator James A. Settelmeyer (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Nelson Araujo, Assembly District No. 3
Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Bryan Fernley, Counsel
Christine Miner, Committee Secretary

OTHERS PRESENT:

Ruben Murillo, President, Nevada State Education Association
Warren B. Hardy II, Nevada Restaurant Association

Tray Abney, The Chamber; Retail Association of Nevada
Paul Moradkhan, Las Vegas Metro Chamber of Commerce
Marcos Lopez, Field Director, Generation Opportunity, Nevada Chapter
Ryan Uhlmeyer, Americans for Prosperity - Nevada
Ronald Najarro, The LIBRE Initiative, Nevada Chapter
Randi Thompson, Nevada State Director, National Federation of Independent Business
Elliott Parker
Steven Gleicher, Right at Home
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Mike Ramirez, Las Vegas Police Protective Association Metro, Inc.
Ryann Juden, City of North Las Vegas
Daniel Hansen, Office of the City Manager, City of Reno
Kelly Crompton, City of Las Vegas
Phyllis Gurgevich, Nevada Bankers Association
Tiffany Banks, Nevada Association of Realtors
David B. Sanders, Greater Las Vegas Association of Realtors
Tennille Pereira, Legal Aid Center of Southern Nevada
Jon Sasser, Legal Aid Center of Southern Nevada
Mike Dyer, Director, Nevada Catholic Conference
William Horne, Advanced America; Enova International
Alisa Nave-Worth, Moneytree; Check City; Check-Into-Cash; QC Financial
Sean Higgins, Dollar Loan Center
Stacey Shinn, Progressive Leadership Alliance of Nevada
Michael Hillerby, LoanMax Title Loans
Keith Lee, Community Loans of America, Inc., Board of Medical Examiners
Allan Smith, Lutheran Engagement and Advocacy in Nevada
Rusty McAllister, Nevada AFL-CIO
Jason Mills, Nevada Justice Association
Mark Joseph
Ron Dreher, Nevada Law Enforcement Coalition; Police Officers Research Association of Nevada
Michael Sean Giurlani, President, Nevada State Law Enforcement Officers' Association
Paul Enos, Nevada Self-Insurers Association
Jim Werbeckes, Employers Insurance Group
Priscilla Maloney, American Federation of State, County and Municipal Employees - Retirees

Marlene Lockard, Service Employees International Union Local 1107; Las Vegas Police Protective Association Civilian Employees
Ryan Beaman, Clark County Firefighters Union Local 1908
Rick McCann, Nevada Association of Public Safety Officers
Todd Ingalsbee, Professional Fire Fighters of Nevada
Robert Balkenbush, Public Agency Compensation Trust
Les Lee Shell, Director, Office of Risk Management, Department of Finance, Clark County
David Cherry, City of Henderson
Jeff Fontaine, Nevada Association of Counties
Ana M. Andrews, Risk Manager, Risk Management Division, Department of Administration
Susan Fisher, State Board of Osteopathic Medicine
Catherine M. O'Mara, Executive Director, Nevada State Medical Association

CHAIR ATKINSON:
We will open the hearing on Senate Joint Resolution (S.J.R.) 6.

SENATE JOINT RESOLUTION 6: Proposes to amend the Nevada Constitution to provide for certain increases in the minimum wage. (BDR C-867)

SENATOR YVANNA D. CANCELA (Senatorial District No. 10):
In 2006, Article 15 of the Nevada Constitution was amended to include section 16 which established a State minimum wage. On the effective date, an employer was required to pay a wage of $5.15 per hour if the employer provided health benefits, and $6.15 per hour if the employer did not provide health benefits. Wages are adjusted annually by July 1 by the amount of increase in the federal minimum wage over $5.15 per hour or, if greater, by the cumulative increase in the cost of living as measured by the percentage increase by the Consumer Price Index. This information is published by the U.S. Department of Labor.

Currently, the minimum wage for Nevada employees with health benefits is $7.25 per hour, while the minimum wage for all other employees is $8.25 per hour. Senate Joint Resolution 6 proposes to amend the State Constitution to increase the minimum wage to $9 per hour. Beginning January 1, 2022, the minimum wage must be increased by $.75 per hour each year until the minimum wage is $12 per hour. Tips or gratuities received by employees must not be credited as being any part of or offset against the minimum wage rate.

If, at any time, the federal minimum wage is greater than the amount calculated under S.J.R. 6, the minimum wage in Nevada must equal the federal minimum wage. Further, the Legislature is authorized to increase the minimum wage to an amount higher than the minimum wage calculated under this proposed law.

This Resolution also proposes to amend the Constitution to remove the provisions authorizing an employer and an employee to waive the minimum wage requirement in a collective bargaining agreement. A collective bargaining agreement entered into, extended or renewed on or after the effective date of this amendment cannot waive the requirement to pay the minimum wage set forth in S.J.R. 6.

Finally, S.J.R. 6 authorizes an action against an employer for violating the minimum wage requirement be brought as a class action lawsuit and provides that an employee who prevails in an action for a violation of the minimum wage law is entitled to damages in an amount equal to three times the amount the employee would have been paid if the employer had complied with the minimum wage requirement.

RUBEN MURILLO (President, Nevada State Education Association):
The Nevada State Education Association supports S.J.R. 6. I will read from my written testimony (Exhibit C).

SENATOR GANSERT:
Are the bus drivers and so forth making less than minimum wage?

MR. MURILLO:
Yes, the wage is lower in parts of the State. In Clark County, the wage is $15.05 per hour. There are paraprofessionals in some segments of our education community making less.

SENATOR GANSERT:
Are they making less than $15 per hour, or less than the $7 or $8 per hour?

MR. MURILLO:
Less than $15 per hour. The living wage has been estimated in Clark County to be $15.05 per hour. There are many people making less than that amount.

SENATOR GANSERT:
So they are not making less than minimum wage, they are making less than the living wage.

CHAIR ATKINSON:
I have written testimony in support of S.J.R. 6 from Janette Dean (Exhibit D).

WARREN B. HARDY II (Nevada Restaurant Association):
Since the minimum wage has been placed in the Constitution, we have argued before that this is the method to continue the minimum wage legally or to have the debate. The most important commodity to any business, particularly for restaurants, is a happy satisfied employee. In the restaurant industry, employees are the public face of the establishment. It is an advantage to have a happy employee and significant disadvantage to have an unhappy one. The motivation is to have happy employees. The restaurant industry utilizes minimum wage more than any other industry for entry level workers. It views minimum wage as the bottom rung of the economic ladder. Statistics show that 70 percent of those individuals who started as servers or as minimum wage employees go on to upper senior management positions or even owning restaurants. The advancements are significant.

Restaurant minimum wage employees, in some cases, make $60,000 per year and up. Law requires servers be paid a minimum wage, but these are tipped employees. The correct method to address the minimum wage in Nevada is in the Constitution. From that perspective, the Association does not have any objection. Before the law goes public, the concern is with the prospect of putting damages and penalties in the State Constitution. That is the objection of the Association. Putting the penalty provision into the Nevada Constitution sets a dangerous precedent.

The members of the Association do not object to reasonable increases in minimum wage as long as they are accompanied by a tip credit. The tip credit provision is used significantly in other states. It allows individuals to receive at least minimum wage, based on their tips and other income, but does not put additional burdens on the employers. The biggest challenge in the industry is with regard to its 2 percent to 3 percent profit margin. Many employees make very good livings. The industry would prefer to take any additional revenue to pay higher wages to the back-of-the-house employees.

TRAY ABNEY (The Chamber; Retail Association of Nevada):
The Chamber and the Retail Association of Nevada oppose this resolution and have concerns. The Chamber and the Association approve of the language authorizing the Legislature to increase the minimum wage. These organizations never agreed that minimum wage be set in the Constitution. This is an amendment to our Constitution. The Constitution has two purposes: limit government and articulate the freedom of the citizens living under that Constitution. The fact the resolution includes treble damages and private rights of action always causes concern, especially when referring to the State Constitution.

The removal of the health care credit for minimum wage is concerning. That provision was put in to provide incentive for employers to provide health care to employees.

The resolution would be more palatable to restaurant owners if it included tip credits. I have spoken to restaurant people, and some of their servers make minimum wage but are actually making $25 to $30 per hour with tips. In the meantime, the cooks and back-of-the-house employees are making just above minimum wage, or $10 to $12 per hour. A tip credit would make wage increases more palatable to small business owners. The daily overtime rules which negatively affect employers and employees are still concerns of The Chamber and the Retail Association.

PAUL MORADKHAN (Las Vegas Metro Chamber of Commerce):
The Las Vegas Metro Chamber of Commerce is concerned with the removal of the health care credit in section 16 of Article 15 of the Nevada State Constitution, subsection 1 on page 2 of S.J.R. 6. The Chamber is also concerned with damages and penalties defined in subsection 5 of the proposed changes to the State Constitution.

When minimum wages increase, direct costs to employers increase as well in Modified Business Taxes, unemployment insurance and workers' compensation. The increases in overall costs to employers are direct correlations which cannot be looked at separately but should be looked at holistically. There are components of benefit packages and salary costs to be taken into consideration.

MARCOS LOPEZ (Field Director, Generation Opportunity, Nevada Chapter):
I am the Field Director for the Nevada Chapter of Generation Opportunity, a nonprofit organization that advances policy change, holds policymakers accountable, fights for opportunity and defends the freedoms of young Americans in Nevada. On behalf of young people across Nevada, I urge this Committee to reject S.J.R. 6, which would initiate a ballot referendum to raise the minimum wage.

When Washington, D.C., Oakland, Los Angeles, San Francisco, Seattle and Chicago raised their minimum wage rates, job creation dropped to its lowest in the last five years in the leisure and hospitality sector. Many minimum wage jobs fall within this field, which includes restaurants and hotels. As job opportunities diminished in these areas, unskilled workers began to leave for other cities around the Country searching for jobs. According to Joan Monras of the Paris Institute of Political Studies, these are not isolated incidents. Areas that increase minimum wages routinely see a reduction in the number of unskilled workers. Paradoxically, the young and unskilled workers that minimum wages are designed to help are the first to flee whenever the policies are implemented.

The impacts of raising Nevada's minimum wage to $12 per hour will be far more destructive. The damage will not be limited to restaurants. Everyone from retail workers to gas station employees will be affected by this law. As employees become more expensive to hire, business owners will turn to automation to do the work. This will not only put individuals out of work but will disproportionately impact those who have just begun acquiring the skills necessary to succeed in the workplace. Making matters worse, average wages in the cities I just mentioned are higher than in Nevada, so even their disastrous jumps were not as serious as what will soon happen in our State if we go down the same path.

Even armed with the best of intentions, we cannot make young workers better off just by passing a law to mandate higher wages. Experiment after experiment has shown that when government dictates to employers what they must pay, younger and less experienced workers are hurt the most. When the government artificially increases the costs to hire and retain workers, businesses are forced to choose between raising prices, laying off workers or closing up shop, hurting exactly those whom the law was intended to help.

Economic conditions in Nevada vary greatly by region, and the Legislature should be wary of one-size-fits-all approaches. Voters in wealthier cities should not be able to dictate how much employees in rural areas are paid and vice versa. To create a ballot referendum that would bind the entire State with one policy would deprive voters of the right to set minimum wage rates that are right for them.

On behalf of Generation Opportunity and those we represent in Nevada, I urge you to reject the one-size-fits-all approach that will allow big cities to dictate policy for the rest of the State.

SENATOR SPEARMAN:
Where did you find the statistics quoted in your testimony regarding Washington, D.C., and other cities? I would like a copy.

MR. LOPEZ:
The statistics came from various studies. The primary study came from a report by Joan Monras of the Paris Institute of Political Studies. I will supply the Committee with copies of the studies used for this testimony.

RYAN UHLMEYER (Americans for Prosperity - Nevada):
Americans for Prosperity is the Nation's largest free market advocacy group. It opposes S.J.R. 6. I will read from my written testimony (Exhibit E).

SENATOR SPEARMAN:
You mentioned union and progressive activists' motivation for supporting minimum wage. How many of them have you spoken with and have they told you of their motivations? Or is this hyperbolic?

MR. UHLMEYER:
I have not personally had anyone tell me this exactly.

SENATOR SPEARMAN:
Anything similar?

MR. UHLMEYER:
No, not to me personally.

SENATOR SPEARMAN:
How did you arrive at your conclusions?

MR. UHLMEYER:
"It is apparent with the way these people ..."

SENATOR SPEARMAN:
No. You made a statement and expect this Committee to believe it as truthful. So, how do you know that?

MR. UHLMEYER:
I will provide more information to you.

RONALD NAJARRO (The LIBRE Initiative, Nevada Chapter):
The LIBRE Initiative is a nonprofit, nonpartisan organization that advances the principles of economic freedom to empower the U.S. Hispanic community. It opposes S.J.R. 6. I will read from my written testimony (Exhibit F).

RANDI THOMPSON (Nevada State Director, National Federation of Independent Business):
The National Federation of Independent Business opposes S.J.R. 6. I will read from my written testimony (Exhibit G). The average wage provided by most small businesses is $11 per hour. As minimum wage is raised, all wages are raised. I previously testified and expressed the views of the Federation on minimum wage at the hearing for S.B. 106.

SENATE BILL 106: Requires certain increases in the minimum wage paid to employees in private employment in this State. (BDR 53-865)

CHAIR ATKINSON:
How many businesses have closed since September?

MS. THOMPSON:
Sixty restaurants in the San Francisco Bay Area have closed since San Francisco implemented its minimum wage law.

CHAIR ATKINSON:
Are you attributing the closings to the raise in minimum wage?

MS. THOMPSON:
It is blamed especially due to high costs. It is not the only reason, but the article in Exhibit G references the minimum wage increase as the cause of restaurant closures. This was also seen in Seattle when that city implemented its minimum wage increase. It experienced a loss of 12,000 jobs in the first 6 months. It balances out as the economy returns. In Seattle, restaurants left the area.

SENATOR SPEARMAN:
What are the other intervening factors for the restaurant closures in the San Francisco Bay Area? What was the percentage correlation to the closing of the businesses?

MS. THOMPSON:
I do not have the data specifically. The article states the high cost of living in San Francisco and the increase in wages caused restaurant closings. I will provide further information.

SENATOR SPEARMAN:
I will read from the abstract of a paper by the National Bureau of Economic Research. It relates to family values. The title is "Effects of the Minimum Wage on Infant Health," by George Wehby, Dhaval Dave and Robert Kaestner, June 2016:

> The minimum wage has increased in multiple states over the past three decades. Research has focused on effects on labor supply, but very little is known about how the minimum wage affects health, including children's health. We address this knowledge gap and provide an investigation focused on examining the impact of the effective state minimum wage rate on infant health. Using data on the entire universe of births in the US over 25 years, we find that an increase in the minimum wage is associated with an increase in birth weight driven by increased gestational length and fetal growth rate. The effect size is meaningful and plausible. We also find evidence of an increase in prenatal care use and a decline in smoking during pregnancy, which are some channels through which minimum wage can affect infant health.

ELLIOTT PARKER:
I am a professor of economics at the University of Nevada, Reno. I received my Ph.D. in economics from the University of Washington. I have taught economics for 25 years. I am in favor of S.J.R. 6. On March 13, I published a column on minimum wage in *The Nevada Independent*.

The national minimum wage has failed to keep up with inflation for the last 50 years. The U.S. Congress rarely increases it and has not indexed it to price inflation like they have social security benefits. Nevada's constitutional amendments of 2004 and 2006 did index the wage to inflation but at lower wages than current federal minimums.

Adjusting for inflation, the 1968 minimum wage was about $10.90 in 2017 dollars. Unemployment rates were very low then, about 3.4 percent, suggesting that perhaps a high minimum wage does not necessarily lead to high unemployment. Both minimum wage and the median wage have stagnated since 1980 and have failed to keep up with the productivity of average workers. During this period, income inequality has grown significantly.

I will focus on a $12 wage because the evidence is clearer at that level. While I might personally support a higher wage of $15, there is less research and precedent for it, so it is harder to draw conclusions. By the time a $12 minimum wage phases in, it will be worth about $10.35 in today's dollars. In real terms, it was higher 50 years ago. Comparing the minimum wage to the median wage in each country, the U.S. currently has the lowest minimum wage of any developed market economy in the world. A $12 wage would bring us closer to average.

There have been many estimates of the elasticity of labor demand for low-income workers. A high-side estimate is around 0.2, meaning that at worst a 25 percent increase in real minimum wage would mean 95 percent of minimum wage workers would be better off, but 5 percent of them would not be able to find jobs. That is the worst-case scenario.

Many other elasticity estimates are much lower and suggest the employment effect would be even smaller, maybe even zero. In theory, there are good economic reasons for this. If firms can pay lower wages without having all of their best workers leave, then it is possible that raising the wage could increase

employment. Better-paid workers also tend to work harder and be more productive.

Nationwide, 3 million workers, fewer than 4 percent of wage workers, earn minimum wage or less. In Nevada, the number is 20,000, about 2.5 percent of wage workers. There are many more who earn a wage only a little above the minimum, and they will also be affected. Adults who get pay increases are less likely to need food stamps or other government support, as a significant increase in the minimum wage will pull large numbers out of poverty. This should put less of a burden on the State budget for social services. The minimum-wage workers tend to spend all of their disposable income. This can be helpful during a recession because it provides demand for goods and services that other low-wage workers produce.

As a Nevada voter and concerned citizen, I support increasing the minimum wage because no adult who works fulltime should live in poverty. As an economist who has examined the published evidence, I am confident the positive consequences of a $12 minimum wage, indexed to inflation, will far outweigh any negative consequences.

CHAIR ATKINSON:
Are you able to evaluate the difference between $12 and $15 per hour in Nevada?

MR. PARKER:
There is not enough evidence to do this. Other countries have it. There are few examples of $15 per hour outside of Seattle. It is difficult to make a direct comparison to Nevada.

CHAIR ATKINSON:
Is California at $15 per hour and Arizona at $12 per hour? Are they doing this on a scale? Do you have information on why they chose those numbers?

MR. PARKER:
The amounts of increases in minimum wages are political decisions. The effects are difficult to examine until the policies have been in place for a while.

SENATOR SPEARMAN:
I will read an excerpt from an abstract in the *Forum For Social Economics*, "The Minimum Wage, Bargaining Power, and the Top Income Share," March 2016, by Dr. Liam C. Malloy, "... higher top marginal tax rates, are successful in reducing overall income inequality, mainly by reducing the share of income going to the top 1% of the income distribution."

STEVEN GLEICHER (Right at Home):
Medicaid has not raised its personal care agency rates in over a decade. Personal care agencies are paid $17 per hour to provide Medicaid services. There are 3 million hours of Medicaid services being provided in Nevada. If minimum wage is raised without raising the reimbursement to the personal care agencies, these agencies will go out of business. The State cannot raise $4 per hour of agency costs and not raise agency revenues. Consider the impact of this. There are no kiosks and no electronics. The one-on-one personal care agencies that provide to those in need cannot be replaced.

SENATOR CANCELA:
The tip credit issue creates unpredictable wages for workers. It puts employees in a situation, for example, of making $200 one week and less than that the next week. Wages are no longer tied directly to the employer but are tied to the amount of the worker's tips. If the restaurant is slow, these individuals earn less. This treatment of employees and these life styles lead to unpredictable family lives and is very hard for employees to design their lives. This is one reason a minimum wage is so important. It disproportionally affects women workers who make up two-thirds of the tip jobs in Nevada and in the Country. Minimum wages create situations in which employees do not have to worry about whether they will be making more money this week and less money the next week. Stability is created across the board which creates happier employees.

If employers abide by the law, the damages provision to an employer will not apply. There have been those employers who have not abided by the law, and there needs to be recourse for workers. The damaging behavior affects the entirety of the workforce. The provision protects workers and employers from unpredictability in the process of how recourse should happen.

Much of the discussion on minimum wage is how it affects jobs. The reality is there are studies in favor and studies against its influences. Only in recent

history have we seen minimum wage increases happen. It is difficult to obtain conclusive data. What is conclusive is looking at numbers. Arizona increased the minimum wage from $8 to $10 per hour and will reach $12 per hour in 2020. This year, 7,800 new jobs have been created in the restaurant and bar sector. This is according the State of Arizona Office of Economic Opportunity. These are undeniable numbers. Data can be represented one way or another. The LIBRE Initiative, which funded its own study, was largely funded by the Koch brothers group. It is easy to see why the conclusions were drawn from its study. It is hard to create change. Raising the minimum wage is one instance in which taking the risk on workers who are most vulnerable is necessary for Nevada.

CHAIR ATKINSON:
We will close the hearing on S.J.R. 6 and open the hearing on Assembly Bill (A.B.) 161.

ASSEMBLY BILL 161 (1st Reprint): Revises provisions relating to certain rental agreements. (BDR 10-733)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
I will present A.B. 161. There are issues in my District about the removal of individuals who occupy homes unlawfully. These individuals are called squatters. I proposed A.B. No. 386 of the 78th Session. I worked with a judge, law enforcement, Realtors, the Nevada State Apartment Association and the Legal Aid Center of Southern Nevada to understand why we were unable to do anything with regard to the squatter issue. Prior to last Session, everything in law dealt with landlord-to-tenant relationships. A squatter is neither a landlord nor a tenant. Last Session, definitions were created in law to help the courts and law enforcement and, essentially, created the crime of squatting. Today, through communications with law enforcement, I have found it is necessary to do more.

One issue is training law enforcement. New laws do not automatically fix everything. The learning curve for law enforcement is difficult. There is still the issue of law enforcement showing up to the door of a suspected squatter home with the intent of removing the individual unlawfully occupying a property. The police officer is unable to find the rightful owner, and the occupant often shows the officer a fake lease. How do we give law enforcement a tool to circumvent the fake lease? Assembly Bill 161 will address this issue. The bill will not fix the

problems. It is meant to give law enforcement another tool to address the squatter issues, which are ever-growing in southern Nevada.

After discussions with stakeholders, the bill has been modified. I want to create a rebuttable presumption that if the lease is not notarized, does not have the landlord's name, address and phone number, the individual is not lawfully occupying the dwelling. When law enforcement knocks on the door of a suspected dwelling, and a lease is presented, there are two things the officer can do. One is to check if the lease is notarized. If not, it triggers the rebuttable presumption that the dweller is not lawfully occupying the dwelling. It can be rebutted by the dweller by providing the landlord information, proof of monthly payment and so forth. If the occupant cannot provide this information, then the officer will move forward with an investigation.

Section 1, subsection 4, paragraph (b) states,

> The agreement is valid and enforceable against the landlord and the tenant regardless of whether the agreement: (1) Is notarized; or (2) Includes the current address and telephone number of the landlord or his or her authorized representative.

The reason this is included is because there may be a person who rents a property and the agreement is sometimes renewed by email. In the absence of a notarized lease, it does not automatically make the lease invalid. It creates the rebuttable presumption. The bill is strictly offering a tool for law enforcement. No one gets penalized for not following the notarization and landlord information provision.

Subsection 7 specifically excludes commercial buildings, apartments and condominiums from the bill. The squatter problem is primarily related to single-family residences. There is a proposed amendment being submitted by the Nevada Realtors Association. We are looking at it but at this time, it is not considered a friendly amendment. It is my intent to work out their issues.

BRIAN O'CALLAGHAN (Las Vegas Metropolitan Police Department):
There are four victims a detective looks at in his or her investigation into a squatter complaint. The first is the investor or landlord who lives in town, owns a second home as a rental, and discovers a squatter in the home. These situations are easy investigations because the owners are available. The

second is the bank-owned situation. The asset manager overseeing the home has the proper paperwork. The third are the homeowners associations or neighbors. These are difficult and time-consuming investigations. It is known a house is vacant and suspicious activity is reported. It is a challenge for law enforcement to perform title searches and find ownership on vacant homes. In some circumstances, individuals walk away from their homes when their homes are in foreclosure. The banks owns the homes, but there are no victims. The fourth is the absentee owner. For example, a home could be in probate and family members know the individuals in the home are there unlawfully, but there is no written document showing ownership of the home.

Since the new squatting law was implemented after the Seventy-eighth Session, there have been 148 cases and over 50 arrests. In my presentation (Exhibit H), I will illustrate how the squatter situation affects the quality of life for our citizens. Traditionally, the problem of squatters was a civil matter. Squatter reports are increasing, and many of the squatter homes have criminal activity associated with them. I will read from the presentation the various instances of violence in various properties in the Las Vegas area. This illustrates the problem of squatters and how it affects the entire region.

If a person commits a burglary by breaking into a home, it is a felony. If a person takes over a vacant property as a squatter, it is a gross misdemeanor on a first offense. On the other hand, if a person breaks into a car, it is a felony.

ASSEMBLYMAN FLORES:
Law enforcement is highlighting their frustration with the act of squatting being considered a gross misdemeanor. They would prefer it to be otherwise. They are justified in their argument that the penalty is disproportionate to the crime and the crimes resulting from the squatting situations.

Assembly Bill 161 does not address or change any penalties. The purpose of the bill is to give tools to law enforcement to make it easier and more efficient to weave out who is a squatter and who is not. If the notary stamp on a lease is fake, that in itself is a crime. It allows law enforcement to accuse the suspects not only of squatting but also the crime of falsifying a document. It opens doors for law enforcement to enforce Nevada's laws.

As a protection to a renter, section 1, subsection 4 states the lease must contain a disclosure saying if the agreement is not notarized and does not have the three validating factors, there is a rebuttable presumption against the renter.

CHAIR ATKINSON:
There is a difference between a residential property versus a leasing company that rents an apartment. Apartments have on-site managers who can tell if there are squatters. Does this apply to apartment complexes?

ASSEMBLYMAN FLORES:
It does not apply to apartment complexes, condominiums or commercial buildings. The intent is to go where the issue is and that is with single-family residential homes.

CHAIR ATKINSON:
What responsibility does the homeowner carry to make it easier for law enforcement? You mentioned a lease should have the name, address and phone number of the landlord. Why is that?

ASSEMBLYMAN FLORES:
A fake lease could contain a fake name and a fake phone number. Since there is no guidance on how to verify leases and there is no mandate on what information is required on leases, law enforcement must investigate to find the real landlord. It is a nightmare for investigators. Requiring the name, address and phone number of the landlord on the lease allows law enforcement to expedite what is now a very long and tedious process in investigating squatting problems.

If the lease is not notarized and does not have the required landlord information, it does not mean the lease is no longer enforceable. For investigative purposes only, there is a rebuttable presumption the person is not authorized to be in the home. A person can easily rebut that by providing landlord information and demonstrating proof of residency.

CHAIR ATKINSON:
How would law enforcement make contact with the landlord? Do they call the number from the lease? How would the officer know it is the landlord he or she is actually speaking with?

MR. O'CALLAGHAN:
The officer will call and possibly meet with the landlord and ask certain questions through the investigation to vet the person.

CHAIR ATKINSON:
So, would the officer meet with the landlord?

MR. O'CALLAGHAN:
That is correct.

SENATOR HARDY:
With the instances of violent and criminal activity, how does law enforcement approach the homes?

MR. O'CALLAGHAN:
There are hot spots where most of the squatting is being done and where the criminal activity is taking place. Law enforcement does not know on a call for service who will be confronted. The investigation will vet out if it is a false lease which could eventually result in a search warrant. That is when the criminal activity reveals itself.

SENATOR HARDY:
If the tax rolls were available, is this an easy way to find who owns a property?

MR. O'CALLAGHAN:
That is one way. The tax rolls may be available, but the owner may live in another state.

SENATOR HARDY:
This bill gives the officer tools to find the owner, but it does not make squatting a felony. Why are we not doing something more about the squatter breaking the law?

ASSEMBLYMAN FLORES:
There are two types of victims with regard to the squatting issue. The typical scenario is the property owner. The person owns a home, yet does not know there is a squatter in the home or is having trouble getting that person out of his or her home. This is the primary scenario the bill addresses. The other scenario is when there are two victims: the property owner and the renter. A renter may

be renting from someone who is not the actual property owner. The person acting as the property owner is renting the property on a false basis. In this case, the renter is the victim and is the person we want to protect.

If a law enforcement officer knocks on the typical person's door and asks for information, normally a person has no problem producing landlord information. Someone who is there unlawfully can give out the information or not. There is no law saying it is mandatory. This bill will create a pathway for law enforcement to lawfully force the issue.

Why are we not treating the squatters as felony law breakers? I do not want to go there yet. I do not know that treating the squatting problem as a felony automatically is the correct way to deal with this. I do not have all of the data on the squatter, who perhaps does not realize he or she has a lease with a bad actor. I am also concerned with situations in which people are staying in their homes, for example, for a foreclosure caused by hard times. I do not want to put a felony on people in these situations.

The first offense for squatting is a gross misdemeanor. A second offense is a felony by law. If a person has a history of squatting, that person is acting willfully and taking advantage of the law and playing the system. These are the people we are after. I will work with law enforcement for the next two years to see how the data works and how the law unveils itself. The future may bring stricter consequences for squatters.

SENATOR HARDY:
Where in the bill does it address the false landlord?

ASSEMBLYMAN FLORES:
Section 1, subsection 4 provides the requirement for the disclosure language on the first page of the agreement. This is there to protect the renter.

SENATOR HARDY:
I want to know about the false landlord. Where is this addressed in the bill?

ASSEMBLYMAN FLORES:
That is not in the bill. There are three other statutes that would apply to that person. Forgery is one of them.

SENATOR HARDY:
So, are there laws in place that would apply to them?

ASSEMBLYMAN FLORES
There are other laws we can use for the crimes they are committing.

MR. O'CALLAGHAN:
The gross misdemeanor offense for squatting begins the process. We do not want to go down the felony road this Session. It is a rare occurrence for a person to issue a false lease to a renter. In the case I presented on this, the management people assisted the renters in finding another dwelling. It was difficult to find the false landlord because the arrangement was dealt with in cash. There were no names or information to follow up on.

MIKE RAMIREZ (Las Vegas Police Protective Association Metro, Inc.):
The Las Vegas Police Protective Association Metro, Inc., supports A.B. 161. I work graveyard, and the resources are limited at 1:00 a.m. or 2:00 a.m. on who can be called and what can be looked at. This bill will benefit officers with the provision for providing the name, address and phone number of the owner. If the owner is local, another police unit can be sent to knock on the door of the landlord if the phone is not answered. This will help resolve the problem. Nine out of ten times, squatters will leave the premises when the real homeowners appear. Most of the crime in these situations happens after law enforcement leaves. If the perpetrators vacate, they can come back and often vandalize the property. It is an unknown factor when law enforcement approaches the door of a suspected squatter property. This bill is a step toward resolving the issue little by little.

RYANN JUDEN (City of North Las Vegas):
The city of North Las Vegas supports A.B. 161. Squatting is an issue we have been dealing with in North Las Vegas, and it has a squatter task force. It has been successful in dealing with this issue, but any additional tools provided will help. Our police department is strained on resources, and our detectives are working on many cases. This tool will help the police quickly determine if the individuals in a home are there lawfully.

DANIEL HANSEN (Office of the City Manager, City of Reno):
The city of Reno supports A.B. 161.

KELLY CROMPTON (City of Las Vegas):
The city of Las Vegas supports A.B. 161. The additional tool for our code enforcement officers who work in conjunction with the Las Vegas Metropolitan Police Department (LVMPD) will help them deal with squatter issues.

PHYLLIS GURGEVICH (Nevada Bankers Association):
The Nevada Bankers Association works with different municipalities, law enforcement and task forces to prevent and deal with squatter issues in Nevada, particularly southern Nevada. Law enforcement carries the biggest burden. The Nevada Bankers Association supports A.B. 161 for providing additional tools to our law enforcement.

CHAIR ATKINSON:
I have written testimony from Chris Giunchigliani, Clark County Board of County Commissioners in support of A.B. 161 (Exhibit I and Exhibit J).

TIFFANY BANKS (Nevada Association of Realtors):
The Nevada Association of Realtors opposes A.B. 161. It is proposing an amendment (Exhibit K). The Association supports protecting private property rights and the work being done to remove squatters. The disclosure portion of the bill is of concern. The bill has an impact on all landlords, the small mom-and-pop landlords as well as real estate licensees. Our amendment will remove the disclosure requirement if the agreement is signed by an authorized agent properly licensed under *Nevada Revised Statutes* (NRS) 645. If the agreement is signed by a licensee, anyone can look the licensee up on the Website of the Real Estate Division of the Department of Business and Industry which maintains a list of active properly licensed agents. It is available 24 hours per day. In NRS 118A.260, the tenant must have the landlord or authorized agent contact information. Standard leases also require that information. This amendment will not change this or the fact that a properly signed lease, not notarized, is still valid and enforceable. A contract is a contract regardless of whether it is notarized. This amendment does not change the rebuttable presumption provision. The amendment can give the Real Estate Division an avenue to pursue a fake licensee.

SENATOR HARDY:
If a mom-and-pop landlord does not have a real estate agent but puts his or her name and address on the lease, is that the same thing as the real estate agent being able to put his or her name and address on the lease?

MS. BANKS:
The Association considers it the same. We are seeking the exemption for Nevada Real Estate Division licensees.

SENATOR HARDY:
Are you after the mom and pops, not the real estate licensee?

MS. BANKS:
We would like to protect everybody, but a licensee is easier to look up on the Real Estate Division Website. Exempting the licensee from the disclosure provision would be applicable.

SENATOR HARDY:
I understand what you are saying. Consider the mom-and-pop landlord who has another house and provides his or her name and address on the lease. I do not see the difference between the nonnotarized mom-and-pop lease and the nonnotarized real estate agent lease. The police could call either of them.

MS. BANKS:
I am speaking specifically to the disclosure portion of the bill. The concern is every property manager who sees the provision will default to having to get every lease notarized.

SENATOR GANSERT:
Is that accurate that a lot of absentee owners use agents to help them with their properties? Would this help with the ease of locating someone who could substantiate or support a lease? Is the purpose of the amendment because your members have information readily identifiable on an online published list?

MS. BANKS:
A tenant is required to have the information of either the current landlord or the authorized agent according to NRS 118A.260. Our amendment would release the agent from having to put the disclosure on the top of the lease saying if the lease is not notarized it creates a rebuttable presumption.

SENATOR HARDY:
What is the difference between a real estate agent supplying contact information on the lease and a mom and pop putting a name and address on the lease?

MS. BANKS:
The difference would be the licensee information is readily available, including the licensee name and license number. If law enforcement sees that, they can go to the Division Website and confirm if the licensee information is valid and if that person is an active or inactive licensee. In a mom-and-pop situation, the police would seek contact with the person.

SENATOR HARDY:
If the mom-and-pop business has a Website accessible at any time, is there a difference?

MS. BANKS:
Yes. The Real Estate Division Website ensures the person is properly licensed under NRS 645.

SENATOR HARDY:
So, are we going to have to license every mom and pop?

MS. BANKS:
No.

CHAIR ATKINSON:
Is this amendment considered unfriendly?

ASSEMBLYMAN FLORES:
Yes.

DAVID B. SANDERS (Greater Las Vegas Association of Realtors):
In 2015, when the original squatter bill was passed, I met with some representatives of the LVMPD and created a series of forms to assist them in investing the squatting issues. At the same time, it ensured the members of the Greater Las Vegas Association of Realtors would avoid any potential confrontation or violence at a squatter home. The documents were created in conjunction with LVMPD. These documents contain all of the requirements of the new bill except the notarizing and disclosure provisions. There is a single-page owner authorization form that the owner of a home executes authorizing the real estate professional to file the related documents with the LVMPD. There is a document from the licensee already created in conjunction with the Henderson Police Department and LVMPD which establishes the

authorization. The forms created provide a great relationship with LVMPD, address most of the concerns and allow LVMPD to investigate the squatting crimes as well as ensure the safety of the real estate professionals.

SENATOR HARDY:
Do you feel notarization is not necessary because the forms you provide already give what the police need?

MR. SANDERS:
The documents being provided to LVMPD already address most of the concerns. The private-public partnerships the Association has with LVMPD and Henderson Police are positive ones. Owner information is supplied to investigators. The Association members are instructed not to contact patrol officers but to take the information to LVMPD's local substation or to the Henderson Police headquarters. We work in conjunction with law enforcement to maximize police resources. These documents provided by the real estate professional to the police contain most of the information the police need to get a jump start on an investigation.

SENATOR HARDY:
Is this duplicated in Reno, North Las Vegas and other parts of the State?

MR. SANDERS:
The Association has had discussions and is working directly with the North Las Vegas Police Department, and I have been personally invited to speak at their squatter task force. This police department has chosen not to use our forms. I cannot speak of what happens in northern Nevada, but am willing to share the forms with real estate professionals throughout the State.

SENATOR HARDY:
If LVMPD does not have this form, by definition, the person who is squatting is squatting. Can actions be taken?

MR. SANDERS:
In the packet, there is a document being executed by an individual submitting a police report claiming the person on the property is there unlawfully. It is a crime in Nevada to file a false police report. Documentation in the packet from the real estate people address the concerns.

SENATOR HARDY:
If LVMPD does not have the packet for whatever reason, is the person a squatter?

MR. SANDERS:
Are you asking, without the packet, is the individual in the property already deemed to be a squatter? The documents are for the use of the membership to submit to police when they have a property they are managing and see there is an unauthorized individual living on a property. The members are instructed to take the paperwork to the local police department and have the police conduct an investigation.

CHAIR ATKINSON:
So, in your scenario, would the person in the home have to have his or her lease and the documents you are describing?

MR. SANDERS:
The documents we provide are to assist the police. The property manager or the real estate professional managing the property will know if a person is unlawfully occupying one of these properties. The manager will then gather the paperwork and submit a victim's report based on the municipality and turn it into the police department for its investigation. By turning in the paperwork, he or she has already made the decision that whoever is occupying the property is not an authorized tenant.

CHAIR ATKINSON:
You keep saying LVMPD and North Las Vegas, but both of those agencies have testified that they would like to see this additional tool. I take their word for it that this tool will be helpful.

MR. SANDERS:
The members of the Greater Las Vegas Association of Realtors are providing the information needed for law enforcement to proceed with its investigations without the additional burdens of notarization and disclosure.

CHAIR ATKINSON:
Are you saying because you are providing everything to LVMPD, then LVMPD should not need anything else and they do not need this additional tool?

MR. SANDERS:
The tool is not necessary if LVMPD is working in conjunction with licensed professionals pursuant to NRS 645. Working with other landlords, LVMPD might need extra documentation. The real estate professionals are already giving the information and have been since 2015.

CHAIR ATKINSON:
The LVMPD is saying this could be an extra tool they could use. What am I missing?

MR. O'CALLAGHAN:
Mr. Sanders is correct. When there is an identified squatter, the real estate people put together the paperwork which makes it easier for detectives. Other cases of foreclosures and probate require investigations, and the provisions in the bill will help detectives.

SENATOR SPEARMAN:
Are you against the bill or the process? The bill will give law enforcement additional tools to handle squatters. Are you against the bill? Or are you against the process by which the elements of the bill would be carried out?

MR. SANDERS:
The amendment proposed by the Nevada Association of Realtors wants exemption for licensees from the notarized document requirement. This requirement is the crux of its position.

MS. BANKS:
The portion of the bill the Association is opposed to is the disclosure portion. Section 1, subsection 4 states, "In addition to the provisions required by subsection 3, any written rental agreement for a single-family residence must contain a disclosure at the top of the first page of the agreement ... ." The members have a problem with putting the disclosure language on every lease agreement. Many leases are renewals, and there are already standardized leases without the disclosure language. The Association wants its licensees to be exempt from that portion of the bill. The Amendment, Exhibit K, reads:

> In addition to the provisions required by subsection 3, any written rental agreement for a single-family residence, which is not signed

> by an authorized agent properly licensed pursuant to NRS 645, must contain a disclosure ... .

SENATOR HARDY:
Do you want to delete all of section 1, subsection 4?

MS. BANKS:
We do not want to delete all of that section. We want to add, "... which is not signed by an authorized agent property licensed pursuant to NRS 645." If agreements are signed by property managers or licensees under NRS 645, they are exempt from the requirement for the agreements to contain the disclosure on the top of the first page in the required font size. A mom-and-pop business and other landlords will be required to include the disclosure on agreements, but real estate licensees would not.

SENATOR HARDY:
Are you okay with section 1, subsection 4, paragraph (a) stating "There are rebuttable presumptions" and so forth to the end of that subsection?

MS. BANKS:
If an agreement is signed by an authorized agent properly licensed pursuant to NRS 645, it is requested that notarization be waived.

SENATOR GANSERT:
Is the reason for the exemption request because it would be confusing to a renter who might think it is not a valid document unless it is notarized?

MS. BANKS:
The disclosure on the top of the first page, saying that if a lease is not notarized, it creates a rebuttable presumption and so on, is the biggest concern for our members. Licensees will get the notarization in order to cover all bases.

SENATOR GANSERT:
Is their issue with taking the extra step of notarization since they have valid agreements and documents worked on with and provided to LVMPD?

MS. BANKS:
Yes. Having to add the disclosure portion to leases as they are renewed and redoing all of the standard leases are issues for the members.

SENATOR SPEARMAN:
Speaking to the objection of getting the documents notarized, are there not notaries inside real estate offices or notaries your agents work with?

MS. BANKS:
Offices vary, some have notaries and some may not. Not all offices have notaries readily available. Sometimes there are landlords living in other states, and this would be more difficult.

SENATOR GANSERT:
When you have an absentee owner who hires an agent, does that agent have the right to sign on behalf of the landlord on an agreement?

MS. BANKS:
Yes. The property management agreement sets forth the duties and obligations of the property manager.

SENATOR GANSERT:
The notarization requirement must be with the two parties to the agreement who could be a representative and an individual. I think the disclosure makes it more complex for mom-and-pop businesses.

MS. BANKS:
I agree. It is difficult for property managers and mom-and-pop businesses.

ASSEMBLYMAN FLORES:
I agree it is going to be a little more difficult for the mom and pops to add the disclosure language than the property managers. I want to make some clarifications on what the bill does. It does not say anything has to be notarized. It clearly states in section 1, subsection 4, paragraph (b), "The agreement is valid and enforceable against the landlord and the tenant regardless of whether the agreement: (1) Is notarized; ... ." Even if the agreement is not notarized, it is valid. Whatever property managers are using now is enforceable. The bill addresses that concern.

The mom-and-pop landlords can continue to use what they are using now for their leases. We are creating a rebuttable presumption. I want a savvy renter to see the notarization language and not want a rebuttable presumption placed against him or her. The renter will be happy to get it notarized. The notarization

adds another layer of protection. There is a notary journal with landlord information and renter information which aids law enforcement in investigations. If a notary stamp is fake or falsified, it allows law enforcement another tool to seek action against the perpetrator for falsifying a document. I want to encourage leases to be notarized, but it is not mandated. If a person chooses not to notarize a lease document, it creates a rebuttable presumption.

It is not true that property managers will have a difficult time adding disclosure language to leases. It is adding a paragraph to what they are using now. They use the same document over and over again. It is an easy process to add language to a document on a computer. The idea that this is complex for a property manager who does this all the time is not true. It might be more difficult for a mom-and-pop landlord. I have more concerns about them.

I took a class online and became a notary. I have a stamp and can now notarize documents. I do it often in my law practice. Realtors are on both sides of the discussion. I am told most Realtors have a notary on-site. They are required to have documents notarized often, and it is rare not to have a notary on-site.

I am committed to working with the Nevada Realtors Association. Law enforcement and I have looked at the squatting problem where a property manager was involved, and the police still could not do what they needed to do. We are investigating how often this happens, and that is why I am not considering it a friendly amendment at this time.

SENATOR HARDY:
I do not see where it says without the provision, it is an enforceable lease or agreement.

ASSEMBLYMAN FLORES:
Section 1, subsection 4, paragraph (b) states.

> The agreement is valid and enforceable against the landlord and the tenant regardless of whether the agreement: (1) Is notarized; or (2) Includes a current address and telephone number of the landlord or his or her authorized representative.

SENATOR HARDY:
Subsection 4 uses the words "must contain a disclosure" on the agreement. So, does everything fall under the "must" thing?

ASSEMBLYMAN FLORES:
The only "must" the bill addresses is the disclosure. There must be a disclosure letting the renter know that if the lease is not notarized and does not have landlord information, there is a rebuttable presumption the renter does not have the right to be there. That disclosure is a requirement. The bill clarifies in the absence of that disclosure that the lease is still enforceable. The only mandatory requirement in the bill is the disclosure information to the renter.

SENATOR GANSERT:
The information you talked about would be helpful as far as incidents involving licensed agents. The licensed agent is the easiest to track and verify. I recognize the disclosure is the requirement and the agreements are enforceable. The language is confusing and could be misleading, and some might think the lease is not enforceable if not notarized because of the disclosure. My concern is the confusing language.

ASSEMBLYMAN FLORES:
I disagree that the language is confusing. It does not say it is not an enforceable lease. It just says if not notarized, the lease is a rebuttable presumption. That is meant to encourage notarized leases.

SENATOR GANSERT:
The term "rebuttable presumption" is not something most people will understand.

CHAIR ATKINSON:
We will close the hearing on A.B .161 and open the hearing on A.B. 163.

ASSEMBLY BILL 163 (2nd Reprint): Revises provisions governing certain short-term loans. (BDR 52-737)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
I will present A.B. 163. The genesis of this bill began when I found out who the people are that are securing payday loans, when they are becoming victims of the never-ending debt treadmill and why and what loopholes exist in NRS that

keep these people on this treadmill. Many of my constituents use payday lending and perhaps the lack of jobs and lack of financial literacy are part of the problem. As a Legislator, I am not doing enough in Nevada and Assembly District No. 28 to protect individuals from having to go to a payday lending company to pay bills. I am not saying payday lending is evil. There are over 400 branches of payday lending companies in Nevada. There are some bad actors among these lenders who are taking advantage of our laws. They are reading our laws in ways which help them keep people on the debt treadmill.

It has taken many hours and months of meetings with the good stakeholders to put this bill together. The three issues we are addressing in the bill are: ability to repay; assets being determined in loans; and defaults, what triggers them and what they mean.

When a high interest loan is issued, it is important the borrower has the ability to repay. Ability to repay has never been defined in statute. Individuals request loans and determining their ability to repay is as simple as signing affidavits saying the individuals have the ability to repay. Or, an individual shows the title of a vehicle and requests a loan, even though that person is unemployed, has significant debt and no income. It is obvious the person will not be able to pay back the loan. The lender accepts the title of the vehicle as collateral and uses that as the ability to repay the loan. I disagree that the individual will have the ability to repay the loan. Assembly Bill 163 creates a definition of ability to repay.

There are individuals requesting loans using assets they do not own. The person requests a loan on a vehicle. That person's name is not on the vehicle title. The loan is still granted. Another scenario is a person requests a loan of a certain amount and does not have the income to pay it. The spouse of this person has a job and has a certain income, and that income is taken into account for the loan. A loan should not be granted to a person who does not have income.

Another issue is the default trigger protection. If a person is in default on a loan, a protection is triggered. Some payday lenders are choosing when defaults get triggered. The protections then do not come into play immediately. The default is supposed to stop extreme interest rates from multiplying. Assembly Bill 163 clarifies when defaults are to be triggered. There is specific language in the bill breaking this down. The issues are led by victims' real life situations, and these were used to craft the language in the bill.

TENNILLE PEREIRA (Legal Aid Center of Southern Nevada):
I am a consumer litigation attorney at the Legal Aid Center of Southern Nevada. I will summarize my written testimony (Exhibit L). I work with consumers who have found themselves in debt cycles with payday and title loans. It is a familiar problem. Prior to law school, I was on active duty in the military for ten years. I had some financial difficulties. I found myself securing payday loans, and this began my payday loan debt cycle. I know how my clients feel when they bring these problems to me for help. I want to help protect consumers on this issue.

Section 1 of A.B. 163 requires an analysis of ability to repay. It requires a lender to look deeper into the customer's ability to repay. In working with the members of the industry, language was drafted to provide customer protections and ensure the ability to repay. The lenders are required to consider a consumer's current or reasonably expected income, current employment status, credit history, monthly payment and the amount due. These are factors considered in the general underwriting of loans.

A recent client works in sales and his wages fluctuate from month to month. He secured 12 payday loans in 18 months. When this person could not pay one loan, he secured another. The cycle continued and the amounts increased, and he did not have the ability to repay the loans. Statute requires a cap of 25 percent of the monthly income for payments. The lender used a two-week time period from nine months earlier indicating the customer made enough to pay the loans. The new language in A.B. 163 will shore up this issue. The lender will need to ensure a borrower has current ability to repay.

Section 1.7 provides the provision for an extended payment plan for deferred deposit loans. These loans are considered the traditional payday loans. The loans are offered for short periods of time allowing borrowers time to make it through to the next payday. The problem with these loans are the paybacks of the loans are lump-sum payments. If the customer cannot make it to the next payday and a huge payment is taken out of the customer's bank account, it will be difficult to make it to the next payday and the customer will continue to struggle to pay the loan. This provision in A.B. 163 gives the borrower the option to request an option to pay. This will allow for an extended payment plan. The borrower will not be required to pay additional interest, but the bill will allow the borrower more time to pay the loan. This should cut down on the number of defaults for deferred deposit loans.

Title loans are nonrecourse loans. The titled owner of a vehicle is the only person losing if there is a default. The bill ensures the titled owner has the ability to repay the loan and is the only one putting the title up for the loan. This helps a co-borrower from losing his or her vehicle.

I had a client who had only her car as an asset. She used the vehicle to look for work. She used the title of her car for a loan. She lived in the same household as a person with income and used that person's income to help secure the loan. When the loan came due, the other individual refused to pay the loan, having not known about the loan or felt the need to pay it. The bill will prevent this by not allowing the lender to consider the income from an individual who does not have an interest in the loan.

Another client purchased a vehicle with her live-in boyfriend. They were both on the title. She used the vehicle for her job. Her boyfriend got a title loan using this vehicle without her knowledge. He did not pay the loan, and her vehicle was repossessed. A provision in the bill will require both titled owners to sign for the loan.

The bill seeks to clarify defaults. By law, contract interest rates drop on a default to prime plus 10 percent, approximately 15 percent interest. It allows a borrower unable to make payments an off-ramp. A repayment plan is offered at 15 percent interest to allow the borrower to become debt-free. Lenders are circumventing this provision by not declaring the person in default. The bill clarifies statute to define when a borrower goes into default. This will trigger current protections to help borrowers get out of the debt cycle.

One of my clients was a small business owner who was on the verge of going out of business due to lack of revenue. To make payroll, he secured a title loan on his family vehicle. He was able to make only one payment. The lender allowed him to just pay what he could. The lender never put him in default. He received a letter saying he was in default and he was entitled to a repayment plan. He contacted the lender. The lender told him to disregard the letter and just pay when he could and would consider the loan in good standing. He attempted to do this but was unable to come current on his loan. The loan ran 210 days with 300 percent to 400 percent interest. When the lender was unable to charge any further interest on the contract, the lender declared him in default. If the default had been declared from the first time he was unable to

make the payment, he could have paid off the loan and the family car would not have been put in jeopardy.

The grace period in law is being clarified in the bill. The term grace period has created confusion in the industry. Lenders continue to charge the contract interest by not recognizing the grace period. The grace period is designed to be a gratuitous time period with no charges to the borrower during that period. The TitleMax case is the best example of this issue. It was found a grace period was being offered that violated law or was an unlawful extension of the loan. Title loans can only be for 210 days. TitleMax offered a grace period addendum to a contract for an additional 210 days. During the addendum grace period, the charge was 210 days of contract interest at the beginning of the loan. The borrower was forced to pay 210 days of high contract interest, then would be required to pay an additional 210 days of contract interest plus the principal. The company was unable to pay this. Clarifying the grace period will help lenders and borrowers avoid these issues.

The bill attempts to educate consumers on payday loans, what their rights are and who they can contact when they have a problem. The bill restricts the number of times an electronic debit can be passed through borrowers' accounts. I had a client with $2,000 in bank charges because the lender continued to pass the debit transaction through, even though the client notified them there was no money in the account.

These client stories are just a small sampling of what I see on a consistent basis when dealing with payday loans. For the protection of my clients and all consumers, I strongly urge the passage of A.B. 163.

JON SASSER (Legal Aid Center of Southern Nevada):
In section 4, subsection 1, paragraphs (a) and (b) of A.B. 163, the language may not accomplish the intent of the bill. Further clarification may be needed to ensure the intent has been accomplished. This section refers to extensions and grace periods.

Section 1.3 addresses the various factors the lender must consider for a borrower's ability to repay a loan. Subsection 2, paragraph (e) of section 1.3 is a list of things that should be considered. No one factor should be controlling.

There was concern by one of the stakeholders. The question asked regarding section 7 was,

> I understand from the discussion below that if an individual's income is to be considered, they must be on the loan agreement as a signer or co-signer. Is the intent to preserve the option of allowing a co-owner to consent to the pledge of the co-titled vehicle without signing the loan agreement providing that income is not considered?

The answer is yes. Another person's income may be considered, but if he or she is co-titled on a vehicle, he or she can sign and consent for the vehicle to be pledged as income.

Another remark made from a stakeholder was, "If a borrower independently qualifies for a loan and does not need a co-borrower to qualify, making a co-owner sign the note as obligor will violate a federal regulation." Our response is we are not asking the co-owner of the vehicle to sign as an obligor but would allow a co-owner to consent to the pledge of the co-titled vehicle.

Section 7, subsection 3 refers to community property income under law. Any concerns raised are covered in the bill without the need for additional language.

SENATOR SPEARMAN:
You mentioned lack of jobs as one of the reasons people are getting into the payday situations. Are low wages a factor in this? Even a person working full time could be forced into the loan cycle.

ASSEMBLYMAN FLORES:
Yes, low pay is a problem. In Nevada, we must ask is the present minimum wage what a human hour is worth to us? My answer is absolutely not. Part of the equation when we talk about why people go to payday lenders and how to stop it is to ensure people get paid a livable wage. It is ensuring people have financial literacy and for people to understand that this model of asking for what you need and buying what you want is incorrect. Things need to be fixed in our State and in our communities. As Legislators, we are accountable for that. It is important to find the loopholes in the payday industry and provide whatever protections we can to help people get out of the debt treadmill. For me, part of

that is being fully vested in addressing larger questions needing drastic changes in Assembly District No. 28.

MR. SASSER:
To clarify a concern of the title loan lenders, if a spouse is not on the title to a vehicle being considered for a loan but consents his or her income be considered, the loan can be made.

MIKE DYER (Director, Nevada Catholic Conference):
The Nevada Catholic Conference strongly supports A.B. 163.

WILLIAM HORNE (Advanced America; Enova International):
Advanced America and Enova International worked with Assemblyman Flores and Legal Aid Center of Southern Nevada and support A.B. 163. If section 4 is written as intended, it will not be necessary to submit an amendment.

ALISA NAVE-WORTH (Moneytree; Check City; Check-Into-Cash; QC Financial):
Moneytree, Check City, Check-Into-Cash and QC Financial work hard to ensure compliance with existing law and with best practices in the Nation. These companies worked with the Legal Aid Center of Southern Nevada to craft A.B. 163. Section 1.3 was improved by the industry to clarify the heart of the challenge before us. The extended payment plan in section 1.7 is a best practice implemented by these companies and is a national best practice. The automatic withdrawal provision is a platinum practice executed by these companies and implementing it takes the bill from good to great. The companies are concerned with any legislation seeking to limit access to critical capital in a highly regulated market. There is a role for deferred deposit loans for those in emergency situations or who do not have the income to make ends meet or to fill a gap created by loss of income due to a job loss. That service and source of capital should be accessible to all Nevadans.

SEAN HIGGINS (Dollar Loan Center):
The Dollar Loan Center supports A.B. 163. This industry is highly regulated in Nevada. Payday lending is a tool used by many Nevadans. The stories of people who have suffered by the industry are real, but these are limited. The industry does not want these incidents to occur because it puts a black eye on the entire industry. The bad lending practices creating these incidents are used by a limited number of lenders in the industry. We thank the sponsors for working with the Dollar Loan Center.

STACEY SHINN (Progressive Leadership Alliance of Nevada):
On average, a payday loan borrower takes out 8 loans of $375 each year and spends $520 on interest. There are 5 groups with higher odds of taking out payday loans: those without a 4-year degree, home renters, those earning less than $40,000 per year, African Americans and those who are separated or divorced. Most borrowers are young women. Parents are more likely than nonparents to use payday loans. Twelve percent of people with disabilities have used payday loan services. This is an economic issue and a gender and racial justice issue.

MICHAEL HILLERBY (LoanMax Title Loans):
Payday lending and title lending are different parts of the larger industry regulated by NRS 604A. LoanMax Title Loans supports the bill if it is to be interpreted and enforced in the spirit in which Mr. Sasser described it. The provisions in section 1.3 apply to all of the lenders under NRS 604A. Title loans tend to be different. They are not payday advances or check cashing and do not automatically deduct payments out of bank accounts. The existence of the bank account is not part of the title lending process. The language in section 1.3, subsection 2, states "and" and "without limitation." This concerned LoanMax. It understood each of those items had to exist for the loan. Federal regulations require no discrimination based on age or employment status. If the bill is to be interpreted and enforced that way, those are things to be considered.

If there is an amendment to be considered by the Committee, LoanMax would like the words "to the extent available" be added after the word "consider" in section 1, subsection 3. This would clarify for LoanMax the ability to look at any or all of the evidence necessary but not a mandated list.

KEITH LEE (Community Loans of America, Inc.):
Community Loans of America, Inc., does business in Nevada in 12 different locations as Nevada Title and Payday Loans. The vast majority of its portfolio are title loans, and it is considered a title lender under NRS 604A. It also offers other products available under NRS 604A. It appreciates the clarification supplied by Mr. Sasser on some issues. Nevada Title and Payday Loans considers itself one of the good actors in the industry. It abides by and helps adopt the national best practice rules. This company does not want to repossess an automobile. It wants the person to repay the loan in a timely fashion. Only 5 percent of defaults require repossession. Things are worked out with the borrower to whatever extent possible. The underwriting criteria in

section 1.3 do not prohibit or limit who can be granted a loan. Forty percent to 50 percent of this company's customers are unbanked or underbanked and do not have bank statements. The clarification in section 7, subsection 3 is appreciated with respect to the community property of a spouse who is not on the title of a vehicle but consents to sign a loan agreement, and community income can be considered.

ALLAN SMITH (Lutheran Engagement and Advocacy in Nevada):
The Lutheran Engagement and Advocacy in Nevada supports A.B. 163.

ASSEMBLYMAN FLORES:
I am grateful to Legal Aid of Southern Nevada and the stakeholders who have been working together on the process. We will check section 4 to be sure the spirit of the intent was captured, or we may have an amendment to adequately reflect the intent of what was agreed to.

CHAIR ATKINSON:
We will close the hearing on A.B. 163 and open the hearing on A.B. 267.

ASSEMBLY BILL 267 (1st Reprint): Revises provisions governing industrial insurance. (BDR 53-650)

ASSEMBLYMAN NELSON ARAUJO (Assembly District No. 3):
I will highlight the provisions in A.B. 267. If an industrial insurance claim is denied for firefighters, arson investigators or police officers suffering from cancer, lung disease or heart disease and ultimately that claim was found to be legitimate, the party who denied the claim would be required to pay reasonable legal fees and back pay to the claimant. There is an amendment that will change some of the language.

The bill will change the process of dissemination and usage of physical examinations done on firefighters, arson investigators and police officers suffering from cancer, lung disease or heart disease.

The bill exempts firefighters, arson investigators and police officers suffering from cancer, lung disease or heart disease from the requirement that an occupational injury and or disease incapacitates an employee for at least 5 consecutive days or 5 cumulative days within a 20-day period from earning full wages.

RUSTY MCALLISTER (Nevada AFL-CIO):
Assembly Bill 267 addresses several issues with getting coverage for workers' compensation for various types of claims. It concerns NRS 617.455 and 617.457 for lung and heart disease for firefighters and police officers. Years ago there were problems getting the claims accepted. The 1989 statute provided that these occupational diseases are conclusively presumed to have arisen out of and in the course of the employment under certain circumstances. Claims are continually denied and are extended over long periods of time.

Existing law states an employee must be off work for at least 5 cumulative days within a 20-day period for a disability claim. Police officers and firefighters work 24-hour shifts, and many have a problem getting 5 consecutive days off. If a firefighter or police officer has a problem with atrial fibrillation, he or she visits the doctor on his or her days off. The doctor will diagnose, treat, prescribe medication, and the employee can return to work. Yet, he or she may be on medication for the remainder of his or her life. This employee is suffering from some form of disability. Not taking the five consecutive days off disqualifies the employee for disability. Section 1 of this bill exempts a claim for compensation under chapters 616A to 616D of NRS for disability for the occupational diseases of cancer, lung disease and heart disease from the 5-day prohibition.

Section 2 provides for medical benefits for employees under NRS 617.453, 617.455 and 617.457. Section 3, subsection 3, adds new language. The problem has arisen in some locations, though not the majority, when firefighters or police officers get their annual physical exams as required by statute. The results of the exams are then shared with multiple people outside of the process of physician, employee or workers' compensation or risk management personnel. The results of the exams have been shared with the fire chief, chief of police, town board members who are being brought in if there is a controversy within the department, and some even will dress down the employee about his or her exam results. Some have had their jobs threatened. This section attempts to fix this. It follows the Health Insurance Portability and Accountability Act (HIPAA) privacy rule. Exam results can only be shared with the employee, the doctor and insurer or workers' compensation insurer or the risk management person of the local governmental entity if a claim is filed.

Since it moved out of the State Assembly, an unsolicited fiscal note has been put on the bill by the Department of Administration regarding section 3. Our

intent is not to create more work or the need to hire additional employees to address this issue. We will work to find a way around this if possible.

Sections 4 and 5 attempt to stop insurers and third-party administrators from denying claims arbitrarily. These actions put claimants into the appeals process. Claimants ultimately prevail but only after a long time and with large attorney's fees. The intent in these sections of the bill is to create disincentives for insurers to arbitrarily deny claims. The measure applies to NRS 617.455 and NRS 617.457 regarding lung and heart disease. If a claim is denied for a conclusively presumed benefit and the claimant prevails, the claimant would be awarded reimbursement of his or her attorney's fees. A number of insurance companies have recently approached, asking if we would be willing to consider replacing the attorney's fees with a benefit penalty. The conceptual amendment (Exhibit M) addresses this.

Another issue arose and became obvious that some insurers are using the denial and appeal process to avoid paying medical benefits for the claimants of heart or lung disease. An additional part of Exhibit M states from the time the claim is denied and an appeal is requested, the workers' compensation insurer is responsible for paying the medical expenses of the injured worker. Workers' compensation exists to take care of injured workers. The system has been denying claims and expecting other health insurers to pay the medical charges. There is a provision in the amendment saying if the insurer were to prevail, it would be reimbursed by the responsible insurer for the cost paid out on behalf of the employee. It will allow the injured worker to get necessary medical treatment immediately.

JASON MILLS (Nevada Justice Association):
The primary issue is the distinction between claims being denied because of the five-day hurdle. It was never the intent of our law to deny occupational disease claims if a person is not disabled for a period of five or more days. The bill is attempting to rectify this provision. The five-day requirement is designed for short-term disability compensation, not the compensation of the claim itself or to receive medical benefits. The courts, third-party administrators (TPA) and insurers are interpreting the five-day hurdle as a hurdle to get a compensable claim that is wrong for these heart, lung and cancer claims.

MARK JOSEPH:
I retired in September 2014 as Captain of the Operations Division at the Churchill County Sheriff's Department. One month prior to retiring, my cardiologist completed form C-4, an employee's claim for compensation and report for initial treatment. The doctor told me I had aortic stenosis and aortic insufficiency and gave me a projected timeline for surgical intervention. If it followed a normal course of transition, that would be five to six years. My claim was immediately denied, and it has been denied seven times. There have been seven hearings. My health is continuing to deteriorate with no improvement. I was hospitalized in the cardiac ward in January at St. Mary's Regional Medical Center. I have not received and am not receiving any benefits to pay for my medical care for my heart disease. It has been a long process, and I have thousands of pages of documents and at least 50 individual legal processes, including delays, postponements, cancellations and conferences with no resolution. I cannot return to work according to my doctors. I am not here to benefit myself. My situation happened prior to the introduction of A.B. 267. I support the bill for future firefighters and police officers in hopes they will not be denied medical care or benefits.

SENATOR SPEARMAN:
When your claim was denied seven times, was it for the same thing or were different reasons cited?

MR. JOSEPH:
My claim was denied for multiple reasons. There were several times it was denied for the same reason. It was denied at least five times for different reasons.

RON DREHER (Nevada Law Enforcement Coalition; Police Officers Research Association of Nevada):
The Nevada Law Enforcement Coalition and Police Officers Research Association of Nevada support A.B. 267 and the conceptual amendment. I met Mr. Joseph a few years ago, and he has given me permission to comment on his story. I am a retiree of the Reno Police Department, have heart-lung coverage and will address the conclusive presumption issue. Mr. Joseph has heart disease. The Public Agency Compensation Trust (PACT) is the third-party agency which covers many of the rural counties for workers' compensation. This agency has been fighting Mr. Joseph. If someone has a conclusive presumption claim, why is it being denied? Why has Mr. Joseph's claim been

denied seven times? Mr. Joseph and his wife are close to succumbing to their illnesses. It is unfortunate A.B. 267 will not be retroactive because Mr. Joseph has been denied medical benefits for three years. It is important that the Committee realize as law enforcement officers, the conclusive presumption was put into law to protect us from the kind of situation Mr. Joseph is going through. Many other law enforcement individuals are going through similar ordeals. Assembly Bill 267 provides a fix, a penalty on behalf of a person who has been repeatedly denied benefits.

MICHAEL SEAN GIURLANI (President, Nevada State Law Enforcement Officers' Association):
I am President of the Nevada State Law Enforcement Officers' Association and a member of the Nevada Law Enforcement Coalition. I am a 25-year retired veteran of the Nevada Highway Patrol. The Nevada State Law Enforcement Officers' Association supports A.B. 267. Most perceive the law on heart and lung disease as good and if something happens, the person often believes he or she is covered under the law. It is a perception that is far from the truth. January 26, 2012, I suffered a heart attack on duty on a traffic stop. Two weeks prior to that, I had my heart-lung exam with the treadmill and passed the exam. The doctors and I were surprised by my heart attack. I was off work for a few months and eventually went back on light duty and then full duty.

Unfortunately, after the event, I was contacted by a representative of the Cannon Cochran Management Services, Inc. (CCMSI) and told my claim would be denied. I was going to be forced to fight the process. I hired an attorney and for 14 months went through the process and prevailed. A lot of money was spent on both ends to get through the process. I should have been awarded immediately. That is not the end of the story. Just two weeks ago, while attempting to fill a prescription granted by workers' compensation, I was denied the prescription by Cypress Care. They terminated my claim. Again, I had to contact CCMSI and jump through hoops to get my claim reestablished in order to fill my prescriptions. Over the past five years, it has happened almost monthly. This emphasizes the need for your support of this bill for those who may have to go through similar situations. I have been contacted recently by two deputies suffering similar events who have been denied coverage. It is an ongoing process where these wrongs are continuing.

PAUL ENOS (Nevada Self-Insurers Association):
The members of Nevada Self-Insurers Association are comprised of some of the TPAs who administrate these claims. There are some issues that A.B. 267 addresses and need to be addressed in terms of scheduling and the five-day provision. The Association has worked with the sponsor of the bill to address issues we had which disallowed a TPA or risk manager from accessing medical records. Access to the records is needed to adequately administer claims. The Association appreciates working with the sponsor and the proponents of the bill. It has issues with the conceptual amendment regarding the benefit penalty. It wants to work with the sponsor to see if compromise language in terms of scheduling can be agreed to. A $200 per day benefit penalty the Association is being held to is an issue because it has no control over the scheduling of the appeal process, the appellate officers or the attorneys.

JIM WERBECKES (Employers Insurance Group):
Employers Insurance Group supports A.B. 267 and the conceptual amendment. Employers was one of the carriers that had concerns about attorney's fees and bringing these fees into the workers' compensation system. The amendment has a substantial penalty and incentive for insurers and TPAs to do the right thing and pay these claims and move them along in a timely manner. It provides the injured workers with treatment beginning Day One instead of them having to fight for medical care.

PRISCILLA MALONEY (American Federation of State, County and Municipal Employees - Retirees):
The American Federation of State, County and Municipal Employees supports A.B. 267. Multiple members, both active and retirees, are subject to the heart-lung statutes. My first job was as a legal researcher at Nevada Attorney for Injured Workers (NAIW), an agency which provides a court-appointed attorney without an indigency requirement on an administrative appeal through the workers' compensation system. I am familiar with the technical and policy issues encapsulated in the language of this bill. The reason for a penalty statutory scheme in workers' compensation is because Nevada does not allow a cause of action referred to as a bad faith failure to settle a claim. Bad faith failures to settle claims are prevalent in Nevada. This is what NRS 616D is designed to prevent.

MARLENE LOCKARD (Service Employees International Union Local 1107; Las Vegas Police Protective Association Civilian Employees):
The Service Employees International Union Local 1107 and the Las Vegas Police Protective Association Civilian Employees support A.B. 267.

RYAN BEAMAN (Clark County Firefighters Union Local 1908):
The Clark County Firefighters Union Local 1908 supports A.B. 267. Many police and firefighters with denied claims try to get medical treatment. It is very difficult. My father-in-law was a firefighter and went through claim denial for an occupational disease. He fought and spent a lot of time trying to get his claim accepted. I know from this personal experience what a person must go through to get needed treatment.

MR. RAMIREZ:
The Las Vegas Police Protective Association Metro, Inc. supports A.B. 267.

RICK MCCANN (Nevada Association of Public Safety Officers):
The Nevada Association of Public Safety Officers supports A.B. 267. This is an opportunity to take care of Nevada's police and firefighters.

TODD INGALSBEE (Professional Fire Fighters of Nevada):
The Professional Fire Fighters of Nevada support A.B. 267. The bill does not seek to add additional benefits but to stop the games being played with the members of the profession and allow for the medical treatment which is being withheld.

ROBERT BALKENBUSH (Public Agency Compensation Trust):
The PACT is a self-insured association of rural counties and municipalities for workers' compensation. I will highlight the PACT's opposition to the bill from the written testimony of Wayne Carlson, Executive Director (Exhibit N).

I will address the disability component in sections 1 and 2 of the bill. There are two requirements which make benefits for work-incurred diseases compensable. This disease has to rise out of and in the course of employment. Second, a person has to be disabled by the disease.

Assembly Bill 267 seeks to eliminate the disability requirement. The disability component is what precludes these claimants from getting medical benefits they believe would follow from the conclusive presumption. The statute which

covers lung and heart disease and cancer has in it the word "disablement." The claimant must be disabled by the disease. The act, which has been on the books for decades, defines what disability is. This policymaking body can remove disability. If that is removed, it must be removed from the coverage provisions, not just the temporary compensation provisions. Otherwise, courts will be asked to award benefits without having a disability component. Removing the disability requirement eliminates all vestiges of work relatedness. Funding will have to be provided outside of the acts that provide benefits for work-related injuries and diseases. The disability requirement says there is an irreconcilable conflict between the coverage provisions, which require disablement, and the amendment.

Section 3 refers to annual examinations. The PACT opposes this because its members are rural counties and municipalities. It is unlike the large cities in Nevada. The PACT funds a cardiac wellness program and wants this information disseminated to the proper people to allow firefighters and police officers to get help to avoid lung or cardiac events. Putting any limitation on the use of the reports that would interfere with that would frustrate what the PACT has tried to put in place to assist firefighters in avoiding catastrophic events from lung and heart disease. Putting a limitation on the use of the annual physical examinations will interfere with existing policy dealing with subsequent injury fund accounts. If a firefighter or police officer is disabled by heart or lung disease, but only partially, and he or she returns to work, if he or she has a subsequent event and another claim, there is a provision that says there is a subsequent injury account to which everyone contributes. An employer can access this for reimbursement for the cost of the claim. Knowledge of the previous disease and health information has to be provided in a comprehensive way. Knowledge of the percentage of disability is necessary in these cases.

The PACT opposes the limitation on the contents of any report created from the annual physical examination. To be consistent with existing public policy established by the Legislature in 2015, the limitation on any report must include information about tobacco usage and whether the respective police officer or firefighter has a preexisting condition that predisposes him or her to heart disease which is correctable and has been corrected.

The PACT also opposes the reference to the HIPAA privacy rule as unnecessary because this rule permits covered entities to disclose protected health information to workers' compensation insurers without the individual's

authorization. Much of the information in section 3 should be part of collective bargaining agreements, not part of statute.

SENATOR SPEARMAN:
Would you repeat your reference to HIPAA?

Mr. BALKENBUSH:
The PACT opposes the reference to the HIPAA privacy rule as unnecessary because the privacy rule permits covered entities to disclose protected health information to workers' compensation insurers, State administrators, employers and other persons or entities in workers' compensation systems without the use of the HIPAA compliant authorization.

SENATOR SPEARMAN:
Are you saying it is okay to share physical examination information with members of a board or city employees?

MR. BALKENBUSH:
That portion of the bill is unnecessary because the federal privacy rule permits covered entities to disclose the protected health information to workers' compensation insurers, State administrators, employers or other persons or entities involved in the workers' compensation system.

SENATOR SPEARMAN:
So, someone who is a member of a board, on a city council or who is a fire chief has the right to that information? Yes or no?

MR. BALKENBUSH:
It is not a yes or no question.

SENATOR SPEARMAN:
Then you cannot answer it.

MR. BALKENBUSH:
I can partially answer it. You do not have all the facts you need. If the fire chief has to make a decision as to whether or not the condition is correctible, he has to sit with the employee after the annual exam and discuss the predisposing condition the doctors have said is correctible. If the employee does not get it corrected, the employee could lose his or her benefits. Under existing law, the

fire chief is entitled to that information. As far as a town council person, it depends on what role that person has in the event.

Sections 4 and 5 of the bill have to do with attorney's fees. I have not seen the latest amendment. Regarding workers' compensation, the Legislature has maintained for nearly 40 years that costs and attorney's fees are permitted only for frivolous petitions for judicial review. None of the information in support of the bill provides an evidentiary metric or constitutional demand that would require attorney's fees be inserted here. Every employer and insurer who participates in the system pays for free attorneys for injured workers.

When the Legislature is asked to amend existing law, which is public policy, it should be done not on the basis of anecdotal stories but on the basis of evidentiary metrics. Metrics are based on workers' compensation claims over the course of time. I will comment on the testimony of Mr. Joseph, a claimant, and the derogatory remarks made about the PACT by Mr. Dreher. The process of workers' compensation claims includes judges, and we must trust the process that has been put in play by law. On the first claim that Mr. Joseph made, an appeals officer decided the PACT was correct. I feel I must address the statements made in favor of the bill and the attacks on the PACT.

CHAIR ATKINSON:
Please finish with your testimony.

MR. BALKENBUSH:
"The final anecdotal story was from a highway patrolman retiree and …"

CHAIR ATKINSON:
These people are going to want to refute what you are saying, and I do not want to get into that. This is your opinion.

SENATOR CANCELA:
Have you met with any of the bill sponsors on your concerns?

MR. BALKENBUSH:
I do not know who the bill sponsors are. There may be ten Legislators.

SENATOR CANCELA:
The sponsor is sitting behind you. Have you met with him?

MR. BALKENBUSH:
I have not met with this particular Legislator and am happy to do that. He has the written testimony provided.

CHAIR ATKINSON:
There is a sponsor of a bill and there are cosponsors. The sponsor is usually the person who presents the bill. In the future, you should reach out to the sponsor and try to air out your differences. These are our procedures. You should at least reach out to the sponsor.

LES LEE SHELL (Director, Office of Risk Management, Department of Finance, Clark County):
Clark County is concerned with the disability provision going from five days to no disability. This would be unusual in the workers' compensation world. In the research I have done on 50 states, the average waiting period is between 3 and 7 days. The County does not have concerns with section 3 regarding the physical exam reporting requirements. This is dictated through its collective bargaining agreement process. The County continues to have issues with the provision on attorney's fees. As an employer, it pays an assessment to a fund for employees to access attorney services in these processes for free. A person has the right to choose not to use this service and seek other counsel. I have reviewed the amendment, Exhibit M, and there is opposition to that as with the attorney's fees, but the County will continue the conversation with the sponsor of the bill.

SENATOR CANCELA:
Is your interpretation of the amendment the attorney's fees have been stripped from of the bill?

MS. SHELL:
Yes, that is true. However, it puts a benefit penalty into the bill and adds a requirement that the County would be responsible for medical coverage on a denied claim during the appeals process. I am not sure what the benefit penalty would be based on, and I am willing to discuss this with Mr. McAllister.

SENATOR GANSERT:
With regard to the correctible medical condition, if a correctible condition is added to the bill, this may solve one of the issues. In these cases, it seems the

correctible condition is the only issue an employer needs to know besides the other limited information as provided in the bill.

BRYAN FERNLEY (Counsel):
That is an option to pursue. I am not sure that would address their concerns.

SENATOR GANSERT:
Sections 3 and 4 state that insurers have access to medical records.

SENATOR CANNIZZARO:
In the written testimony submitted by Mr. Carlson, Exhibit N, relating to the attorney's fees, there is a portion that says "... the fact that one party prevails by use of a private attorney versus use of the NAIW attorney creates a conflict of interest ... ." What is the conflict of interest?

MR. BALKENBUSH:
Mr. Carlson was intending to communicate that workers' compensation is not supposed to be common law litigation. It is supposed to be an expedited process for people who are hurt on the job to get benefits both monetary and medical. Adding attorney's fees as a penalty tends to encourage people to hire private lawyers. Employers and insurers pay into the fund for government lawyers.

SENATOR CANNIZZARO:
How is this a conflict of interest?

MR. BALKENBUSH:
If would facilitate more litigation by providing incentive to people to hire private lawyers.

SENATOR CANNIZZARO:
That is not a conflict of interest. It is important to realize this because the rest of the sentence says, "... thus encouraging more private attorney usage, not less, due to the incentive to prevail." If I read this correctly, the conflict of interest is hiring a private attorney which means the worker fighting the workers' compensation decision is more likely to prevail with private counsel than with an NAIW. I take issue with this considering the opposition expressed to ensuring reasonable attorney's fees. I understand the workers' compensation process is meant to be an expedited process. Once it is appealed to a court and

engaged in litigation, there are some aspects that do become common law litigation. One of the major points of contention, that there should not be attorney's fees because there is a payment into the NAIW fund and the issue is private attorneys are more likely to prevail, is problematic.

MR. BALKENBUSH:
Mr. Carlson added that sentence to his written testimony at the end of the day. I have been in this industry for 25 years, the current cadre of lawyers in NAIW are very competent.

SENATOR CANNIZZARO:
I am not disputing that. It is interesting that the objection is to awarding reasonable attorney's fees and costs. This is something attorneys and judges are very familiar with. There is objection to that because of the existence of another fund which workers can choose to use or not. The idea that there might be an additional incentive to hire outside counsel because that counsel is more likely to prevail is a problem.

DAVID CHERRY (City of Henderson):
With regard to the new amendment, Exhibit M, the City of Henderson has an issue with the benefit penalty. Sometimes, delays are beyond the control of those involved, and the City would be penalized because of the delays. The City appreciates firefighters and law enforcement officers for keeping the community of Henderson safe. The City of Henderson wants to make this the best bill possible. The City met with the bill sponsor and made a change which allows it to continue to use its TPA. There is only one small issue that is still a concern, which is the reasonable attorney's fees.

SENATOR SPEARMAN:
When we speak of people who are protecting the public, any suggestion these people might not be due what we are obligated to provide sets my hair on fire. In section 3, subsection 3, paragraph (c) states:

> The report must only contain the following information: (1) The name of the employee who was the subject of the physical examination; and (2) A statement that the employee, as applicable: (I) Satisfies the physical qualifications required for his or her employment; or (II) Does not satisfy …

Any information beyond that is a violation. I do not understand how a member of a town board needs to have this information. In the military, we have something called "need to know basis." If there is no need to know, that person should not know.

MR. MORADKHAN:
Las Vegas Metro Chamber of Commerce has concerns with the conceptual amendment, Exhibit M. We will follow up with the bill sponsor.

JEFF FONTAINE (Nevada Association of Counties):
The Nevada Association of Counties agrees with the sentiment of Senator Spearman. Police and firefighters deserve what is due them. The concern of the Nevada Association of Counties is with the five-day period. In reference to section 3, the Association agrees with the need to know basis. It is necessary to be sure the language in section 3 regarding who can receive the information will work for the rural counties. There are a number of rural counties without county managers, human resources or risk management managers. It is important the appropriate person is allowed to receive the information.

ANA M. ANDREWS (Risk Manager, Risk Management Division, Department of Administration):
The Risk Management Division has reviewed A.B. 267 as amended. I will read from my written testimony (Exhibit O). We have submitted an unsolicited fiscal note asking for an additional position.

ASSEMBLYMAN ARAUJO:
I am happy to continue the dialogue and the discussions with all interested parties. We will have discussions on the fiscal note and see how it can be worked out. We will provide updates to the Committee.

CHAIR ATKINSON:
We will close the hearing on A.B. 267 and open the hearing on A.B. 339.

ASSEMBLY BILL 339 (1st Reprint): Revises provisions relating to health care. (BDR 54-729)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):
Assembly Bill 339 is sponsored by Assemblywoman Melissa Woodbury. I will allow the bill to be presented by the Board of Medical Examiners.

KEITH LEE (Board of Medical Examiners):
I will present A.B. 339 and Proposed Amendment 4519 (Exhibit P). Section 1 refers to a situation years ago with respect to an infamous doctor in Reno being arrested. It was discovered the Board of Medical Examiners had no way to seize control of records of a physician or licensee who becomes incapacitated, incarcerated or otherwise unable to practice medicine and closes his or her practice. This bill allows the Board to gain access to the closed practice since there are no personnel to assist the Board in seizing the records. The purpose of taking control of the records is to keep them or keep them with a third-party contractor to do with the records as the patient, who is the owner of the record, directs the Board to do. Patients of the aforementioned physician could not get their records to send to other physicians. This bill will allow the Board to get patient records and to adopt certain regulations in terms of notifications.

Section 3 amends current language which requires the Board to approve information being put on its Website. Since the Board meets quarterly, it is often difficult to put information on the Website in a timely fashion. This bill proposes to allow the Board to adopt policies and procedures for placing information on its Website. It provides for the executive director or staff to place information on the Website following the criteria adopted by the policies. Section 3 changes the word "physician" to "licensee" to encompass all professions licensed by the Board.

Section 3.5 includes a requirement prompted by Board dealings with the federal government. The Legislature adopted the Interstate Medical Licensure Compact, which has several expedited licensing procedures. The FBI informed the Board it could not process fingerprint information for the expedited license procedures. Language is included in section 3.5 to address the concerns of the FBI. This change will allow the Board to provide fingerprint information on an expedited license basis and get return information.

This bill changes the word "registrant" to "licensee" in section 6, since registrant has no meaning. Section 7 clarifies the date of issuance of the renewal license, not the issuance of the initial license.

The deletions of section 8.5, subsections 2 and 3 of Proposed Amendment 4519 are in regard to legislation adopted requiring physicians to report to the Board the occurrence of any sentinel events as a result of sedation. Every physician is required to make the report even if that physician

does not perform any sedation in his or her office. Often, a renewal license is delayed because a physician is unaware of this requirement. In working with Director Richard Whitley of the Department of Health and Human Services, it was determined the information being reported to the Division of Public and Behavioral Health is of no value. The requirement to submit this information to the Division has been removed. The Board will continue to provide the reported information to the Legislative Counsel Bureau and the Governor's Office as required every odd-numbered year.

SUSAN FISHER (State Board of Osteopathic Medicine):
The change in the bill which includes doctors of osteopathic medicine being able to participate in the Interstate Medical Licensure Compact is much-appreciated by the State Board of Osteopathic Medicine.

CATHERINE M. O'MARA (Executive Director, Nevada State Medical Association):
The Nevada State Medical Association supports A.B. 339. It had an issue in Washoe County where a physician was unavailable and the Association tried to help re-refer patients to other physicians. The most difficult part was accessing patient records for transfer. The records portion of the bill is a very important section.

CHAIR ATKINSON:
We will close the hearing on A.B. 339.

Remainder of page intentionally left blank; signature page to follow.

CHAIR ATKINSON:
Hearing no further testimony, we will close the meeting at 12:13 p.m.

RESPECTFULLY SUBMITTED:

Christine Miner,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	7		Attendance Roster
S.J.R. 6	C	1	Ruben Murillo / Nevada State Education Association	Written Testimony
S.J.R. 6	D	3	Janette Dean	Written Testimony
S.J.R. 6	E	11	Ryan Uhlmeyer / Americans For Prosperity	Written Testimony
S.J.R. 6	F	2	Ronald Najarro / The LIBRE Initiative	Written Testimony
S.J.R. 6	G	3	Randi Thompson / National Federation of Independent Business	Written Testimony
A.B. 161	H	16	Brian O'Callaghan / Las Vegas Metropolitan Police Department	Presentation
A.B. 161	I	1	Chris Giunchigliani / Clark County Board of County Commissioners	Written Testimony
A.B. 161	J	2	Chris Giunchigliani / Clark County Board of County Commissioners	Written Testimony 2
A.B. 161	K	2	Tiffany Banks / Nevada Association of Realtors	Proposed Amendment
A.B. 163	L	20	Tennille Pereira / Legal Aid Center of Southern Nevada	Written Testimony
A.B. 267	M	2	Rusty McAllister / Nevada AFL-CIO	Conceptual Amendment
A.B. 267	N	3	Wayne Carlson / Public Agency Compensation Trust	Written Testimony

A.B. 267	O	2	Ana Andrews / Risk Management Division, Department of Administration	Written Testimony
A.B. 339	P	8	Keith Lee / Board of Medical Examiners	Proposed Amendment 4519