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

Eightieth Session
March 20, 2019

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:34 p.m. on Wednesday, March 20, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Patrick Ashton, Committee Policy Analyst
Katelyn Malone, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Dan Musgrove, representing Healthcare Reform Coalition
Carrie Embree, Governor's Consumer Health Advocate, Office of Minority Health and Equity, Office for Consumer Health Assistance, Department of Health and Human Services
Christine Noellert, Group Leader, MS Invincibles
Jason Jaeger, Physician, Advanced Spine and Posture, Las Vegas, Nevada
Benjamin Lurie, Chief Executive Officer, The Neck and Back Clinics, Las Vegas, Nevada
Janet L. Kallet, Private Citizen, Sparks, Nevada
Laura Hale, Private Citizen, Carson City, Nevada
Joan Hall, President, Nevada Rural Hospital Partners
Joanna Jacob, representing Dignity Health-St. Rose Dominican Neighborhood Hospitals
Tom Clark, representing Nevada Association of Health Plans
Tray Abney, representing America's Health Insurance Plans
Tom McCoy, Nevada Government Relations Director, American Cancer Society Cancer Action Network
Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance
Chelsea Capurro, representing Health Services Coalition
Thomas D. Dunn, District Vice President, Professional Fire Fighters of Nevada
Marlene Lockard, representing Nevada Chiropractic Association
Andy Donahue, Market Representative, Laborers-Employers Cooperation and Education Trust, Las Vegas, Nevada
Daisy Cortes, Medical Director, Hemostasis & Thrombosis Center of Nevada, Las Vegas, Nevada
Betsy VanDeusen, Executive Director, Nevada Chapter of the National Hemophilia Foundation
Alison Brasier, representing Nevada Justice Association
Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada
Aviva Gordon, Legislative Committee Chairwoman, Henderson Chamber of Commerce
Tyre Gray, representing Las Vegas Metro Chamber of Commerce
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Paul Young, representing Nevada Resort Association
Jonathan P. Leleu, representing National Association for Industrial and Office Parks
Kerrie Kramer, representing International Market Centers
David Cherry, Government Affairs Manager, City of Henderson
Nick Vander Poel, representing Reno Sparks Chamber of Commerce
Craig B. Friedberg, Lawyer, Law Offices of Craig B. Friedberg, Las Vegas, Nevada

Chair Spiegel:
[Roll was taken. Committee rules and protocols were explained.]

[Assemblyman Frierson assumed the Chair.]

Vice Chair Frierson:
We will open the hearing on Assembly Bill 170.

Assembly Bill 170: Revises provisions relating to health insurance coverage. (BDR 57-278)

Assemblywoman Ellen B. Spiegel, Assembly District No. 20:
Assembly Bill 170 is all about access to health care. Patients often have trouble getting to a health care provider who is in network. This especially becomes a problem if a patient has a chronic condition or has been recommended by a doctor to see a specialist about a concern. I often refer to what I call, the "mythical mole." In this example, a "mythical mole" is an unusual spot that a patient's doctor sees on their skin and is concerned about, and so refers them to a dermatologist. However, when the patient calls the dermatologist to schedule an appointment, they cannot get an appointment for six months. If the mole is benign, this is not really an issue, but if the mole is carcinogenic, the patient could pass away by the time they have the initial consultation. It is extremely important for patients to have access to health care.

During the interim, the Legislative Committee on Health Care heard a lot of testimony on the narrowing of networks and how it has become increasingly difficult for Nevadans to find doctors and receive in-network care. In the last few years, we have also seen the introduction of more health plans, particularly in the individual health insurance market. If a patient on an exclusive provider organization (EPO) plan, much like a health maintenance organization (HMO) plan, goes out of network, there is no coverage. The patient would be required to pay the entire bill, unlike in a preferred provider organization (PPO) where a patient would only be required to pay a small amount of the bill. This makes it important that patients have access to providers who are in network.

Nevadans have issues finding providers who are in network. Even though it is not within the scope of its duties, the Office for Consumer Health Assistance (OCHA) had 457 cases regarding access to care issues in fiscal year 2018. My presentation [page 2, (Exhibit C)] indicates that there were 257 cases, but that is incorrect. Access-to-care cases represented about 19 percent of the office's caseload for the year.

The office does great work and a great job of helping people. About two weeks ago, one of the clergymen who led our prayer before an Assembly floor session told me about his parishioner who was receiving chemotherapy treatments. The parishioner had recently changed insurance companies and was having problems finding an in-network provider who could continue his care, chemotherapy, and cancer treatment. The clergyman asked if I had any ideas of what he could do to help. I suggested his parishioner call the Office for

Consumer Health Assistance and provided him with the phone number. When I spoke with him later, he informed me that someone else had provided his parishioner with OCHA's phone number, and that they had helped him get a same-day appointment with an in-network provider.

Assembly Bill 170 addresses this problem and puts in place a procedure for when a patient cannot get to a doctor in network. It has presented a lot of challenges for many stakeholders. First, Nevada has a shortage of providers in some specialties, and we cannot help that. This made the bill logistically impossible to implement as written. Additionally, there were issues with the process identified in section 4 of the bill. The distance between many rural Nevada cities would make the provisions in section 4 difficult to abide by. There may not exist any specialists within 25 miles of Tonopah, for example, which is an issue that cannot be fixed. The mandatory time frames resolution was going to be a challenge as well. There was a question of how much to pay out-of-network providers because they are not under contract. The bill also presented unintended consequences related to prescriptions and continuity of care. I have heard this from patients as well. Even if they were to see an out-of-network provider and the appointment was covered by their insurance, any prescribed medications or additional treatments are not necessarily covered.

When I began probing and asking additional questions, I learned that insurance companies all have similar processes in place for handling these situations. If a patient cannot get an appointment with an in-network provider, they are instructed to call the phone number on the back of their insurance card. Each insurance company employs a navigator, case manager, or facilitator to help that patient. Sometimes they are able to immediately obtain an appointment for the patient with someone in network, but when they cannot, they have the ability to work internally to obtain a Single Case Agreement with a provider. This is a one-time contract with an otherwise out-of-network provider so that the patient can see the provider as if they were in network. It addresses the problem, because the patient receives the care in network, prescriptions and any follow-up visits are covered, and the contract delineates how the provider will be paid. This is what should happen in a perfect world.

However, we do not live in a perfect world. Currently, there are issues with the system that patients are experiencing. First, patients are unaware that this is the current process. Patients do not necessarily know that they can avail themselves of this benefit. Second, the person answering the insurance company's phones is often unaware that a navigator, case manager, or facilitator is available. I recently met with a consumer who had to call her insurance company eight times to reach a navigator, case manager, or facilitator, even though she was aware that such a person existed. It can be very challenging for patients to work with the current system.

I am proposing an amendment to the bill that will replace the language in section 4 with a new process. The amendment will require insurers to provide OCHA with the contact information—both phone numbers and email addresses—for their navigator, case manager, or facilitator. Insurers are required to provide this information annually and when the contact information changes. The Office for Consumer Health Assistance will then be able to

assist consumers with reaching the navigator, case manager, or facilitator and scheduling an appointment with an in-network provider in a timely manner. The Office for Consumer Health Assistance is able to help consumers, but we need to make it easy for them to intervene and provide assistance.

Previously, I spoke about the mythical mole. A patient's doctor can advise them to have a mythical mole examined by a dermatologist, but a primary care physician is not qualified to tell the patient whether or not he or she believes the mole to be cancerous or concerning. It is their due diligence to advise their patient to see a dermatologist, but the patient does not necessarily know how urgent it is that they do. The navigator, case manager, or facilitator has staff who have the ability to work with a patient's primary care physician to determine how critical it is that the patient get an appointment and within what time frame. When navigators, case managers, and facilitators are negotiating a Single Case Agreement, they know if the patient needs to be seen within two weeks, or if they can wait two months. That way, patients can see the specialty providers they need to as quickly as their medical condition warrants.

I would also like OCHA to collect data for us, including the number of cases regarding access-of-care issues, aggregated by insurer type. Stakeholders have told me that they are unsure if this is truly an issue, because we do not have data. I have heard complaints anecdotally from patients and constituents, but we do not know which types of insurers the issues are stemming from—large group, small group, individual, self-insured, or other types. The Office for Consumer Health Assistance will collect data by insurer type, record how many cases require the use of a navigator, case manager, or facilitator, and how many cases are resolved by them. The office will also collect data on the time frame associated with resolving the cases, such as how long it takes for a patient to book an appointment, and how much time OCHA spends on each case. They will be required to submit data to the Legislature annually so we can determine which aspects of the process need to be improved and create effective solutions. The Office for Consumer Health Assistance will also have the ability to provide consumers with instructions for filing a complaint with the Division of Insurance and to assist consumers with filing complaints as necessary.

A section of the bill includes language about preexisting conditions and writing them in statute. The Senate has discussed in detail the appropriate language to be used in statute, and the consensus language in Senate Bill 235 is being voted on today, which will define a preexisting condition. I want to use the same consensus language in this bill as well, once it is approved.

Lastly, there is a conceptual amendment (Exhibit D) that allows chiropractic physicians to be treated the same as other physicians in regard to reimbursement for services rendered.

Dan Musgrove, representing Healthcare Reform Coalition:
We have submitted an amendment (Exhibit D) that we believe strengthens the existing statutory language in regard to how chiropractors are treated in comparison to other physicians in terms of reimbursement. The current language has been in statute since the

mid-1980s. In the interim, we discussed with the Division of Insurance how they could help us enforce this statute. I would guess that about 70 percent of the insurance companies that our chiropractors contract with are not treating them the same as they would other physicians. The Division of Insurance suggested that we strengthen the existing language in *Nevada Revised Statutes* (NRS) 689A.049 and 689B.039. The existing language provides that chiropractors should not receive less than the treatments allowed or an amount less than other physicians. However, we want to ensure that the legislative intent is clear and that chiropractic physicians are entitled to reimbursements for treatments within a range that is commensurate with other physicians.

Vice Chair Frierson:
Are there any questions from Committee members?

Assemblywoman Jauregui:
To clarify, we will not be moving forward with any of the provisions set forth in section 4 as written. Is that correct?

Assemblywoman Spiegel:
That is correct.

Assemblyman Daly:
Most of my questions came from section 4, but it seems you have identified and found solutions for most of the issues. I did support the language on preexisting conditions but had some issues with the other language. However, you have explained how you plan to replace section 4, and I look forward to seeing the revision.

Assemblyman Kramer:
There is no requirement for people to have health insurance. Therefore, there will be people who only purchase health insurance when they realize that their disease will be expensive to treat without it. Those with preexisting conditions will now be covered by their health insurance. Can you tell me how this is fair for both parties involved?

Assemblywoman Spiegel:
The Affordable Care Act added preexisting condition language into federal statute as a way to help Americans obtain access to health care. This bill applies that concept to state statute. If the Affordable Care Act is repealed, Nevadans will still be protected. Many people have preexisting conditions; it has been said that life itself is a preexisting condition. We want to ensure that Nevadans will be able to have access to insurance.

Prior to the passage of the Affordable Care Act, people with preexisting conditions were unable to get individual health plans. Anyone who was self-employed or did not have access to insurance through their employer could not get insurance in Nevada, not even a catastrophic plan. The ability for people to have health insurance is extremely appropriate. It is also less expensive to preventatively treat people, even those with chronic conditions, than it is to treat them after their health has deteriorated.

Assemblyman Kramer:
I do not think there is any argument that preexisting condition language benefits patients. What we need to recognize is that these treatments need to be paid for, and insurance companies, in order to cover the cost, will raise rates for everyone. Health insurance costs will increase across the board, both for those who purchase health insurance prior to becoming sick and for those who purchase health insurance after they become sick.

Assemblywoman Spiegel:
Noted.

Assemblywoman Carlton:
Since you are replacing section 4 in its entirety, can you walk us through what the new process will be for consumers contacting their insurance companies? Also, I am unsure of what data you are trying to collect. Can you clarify what data will be reported and evaluated?

Assemblywoman Spiegel:
The process would be twofold. First, insurance companies will keep their current processes in place. They will still have patients call the phone number on the back of their insurance cards for assistance. The Office for Consumer Health Assistance's involvement will be the component of the process that is new. The bill provides OCHA with the tools they need to intercede. This is a key component of the bill and of what section 4 will become. Additionally, there would need to be some patient education, but that component is not addressed in the bill. Each year, insurance companies will contact OCHA to provide the contact information of a case manager, facilitator, or navigator in the case that a patient needs to contact them. As OCHA currently does, the office would assist consumers who call them, but the largest component of the bill is the collection of data.

I want OCHA to collect data on the number of cases regarding access-to-care issues broken out by insurer type. The data will not be broken out by company. The purpose is for us to determine if there are issues with a particular class of insurer and not to single out any particular companies. It is important to note that not all calls regarding access to care will require the assistance of a navigator, case manager, or facilitator. There may be an instance in which a patient reaches out to OCHA because they are having trouble getting transportation to their appointments. That is an issue of access to care, but it would not be solved by a case manager, navigator, or facilitator. We want to drill down to find out how many calls truly relate to the issue at hand. I also want to collect data on the number of cases that were resolved by the case manager, navigator, or facilitator. Lastly, I want to collect data on the time frames associated with closing a case—how long it takes to close a case, how long it takes to schedule an appointment for a patient, and how much time OCHA employees spend on the cases. This will help us understand their workflow and determine what it costs the state to provide these services to Nevadans.

Assemblywoman Carlton:
What resources will OCHA need to carry out the provisions of the conceptual amendment? If there will be a fiscal impact, it would be nice to know what that will look like.

Carrie Embree, Governor's Consumer Health Advocate, Office of Minority Health and Equity, Office for Consumer Health Assistance, Department of Health and Human Services:
The Office for Consumer Health Assistance currently has employees who handle access-to-care cases. We handle cases that require contact of a navigator, case manager, or facilitator as well. If I am understanding what Assemblywoman Spiegel wants, we will need to be able to capture specific data to identify problems and the extent of them. We will need resources to specify the data that she is requesting.

Assemblywoman Carlton:
Since this conceptual amendment has not been introduced to the public, its fiscal impact has not been identified. Will there be a fiscal note on this bill?

Carrie Embree:
At this time, based on what I have heard today, I do not think so. However, I will need to see the bill's final language before knowing for certain how it would impact OCHA.

Vice Chair Frierson:
Do the facilitator, case manager, or navigator positions already exist? Or are you proposing that these positions be created to collect data and provide information?

Assemblywoman Spiegel:
The people in navigator, case manager, or facilitator positions are currently employed by the insurance companies. These roles already exist, and OCHA already has staff in place who work on these cases. Hopefully, there will be more Single Case Agreements negotiated, fewer people going out of network for their care, and fewer billing issues for OCHA to resolve on their end.

Assemblywoman Neal:
I have a question about section 19 of the bill, which amends NRS Chapter 695A. Who are the fraternal benefit societies that would be offering insurance?

Assemblywoman Spiegel:
I do not have an answer to that question. I want the bill to affect everyone who has insurance and those who offer insurance products, because I want all Nevadans to be able to get the help that they need. The Legal Division has taken every chapter of NRS that references insurance products and amended them in the various sections of the bill. I cannot provide an example of a fraternal benefit society that would offer insurance, but I can find out.

Assemblywoman Tolles:
In regard to the amendment proposed by the Healthcare Reform Coalition (Exhibit D), what is the impact of adding language that chiropractic physicians would be "entitled to reimbursement for treatments within a range commensurate with other physicians"? Oftentimes, a chiropractor's services may include nutrition, lifestyle counseling, and other scopes of practice.

Dan Musgrove:
We are modernizing and clarifying the existing language. We feel as though we are revising the language to reflect what should be in practice now, although some insurance companies currently do not abide by it. However, our intent is to seek commensurate reimbursements when the services received are similar. If the service is unique to chiropractors and other physicians do not provide the service, then it does not apply to this amendment. But if a service is similar across all insurance plans or all physicians, then this amendment would apply.

Assemblywoman Tolles:
It is my understanding that chiropractic treatments are not always covered by insurance. What is the current coverage of chiropractic treatments, and how would the amendment impact coverage going forward?

Dan Musgrove:
Our amendment does not require insurance companies to cover any service that is not already covered. If an insurance plan covers chiropractic treatments, the insurance company would need to treat chiropractic physicians equally to physicians in regard to the number of treatments allowed. If a patient needs ten chiropractic treatments, the insurance company would not be allowed to cap those treatments earlier than they would a treatment from a physician. There will be no mandates on insurance companies that do not cover chiropractic treatments.

Vice Chair Frierson:
We will now hear testimony from those in support.

Christine Noellert, Group Leader, MS Invincibles:
[Christine Noellert read from prepared text (Exhibit E).] I have had multiple sclerosis (MS) for 16 years. I am the founder of and have managed the Reno MS Invincibles support group for the past seven years. We are a supportive group, with 30 members who help each other with the many challenges we face every day living with multiple sclerosis.

This bill is very important to me as well as to a growing number of multiple sclerosis patients in Nevada who are still striving to live their best life in spite of a chronic illness. There is no cure for multiple sclerosis, but there are a variety of very expensive drugs and treatments that help slow the progression of the fast-moving, chronic disease. As patients, we cannot control the health insurance racket that I am forced to deal with in order to receive my treatments.

Sadly, the health insurance companies control us with their in- and out-of-network policies. My neurologist and I should have the right to make the best decision about my MS treatment course, not the health insurance companies.

The best way to quickly illustrate this problem is to tell you about what happened to one of my members recently. She was uncomfortable sharing her story here today, but gave me permission to share it for her. After 12 years of trying various MS drugs with no success, her neurologist suggested that she try a new monthly infusion treatment, which required that she have the MS treatment at an authorized infusion center. She called her health insurance company to get preauthorization for this treatment. Thankfully, the drug was on their formulary; however, it was a Tier 5 drug and would be very expensive, to the tune of $15,000 per month. She was desperate and wanted to try it, and would figure out how to pay for it at a later time. Three weeks after the treatment, she received a separate bill from the infusion center. Apparently, the authorized infusion center was an out-of-network facility, and her insurance company only paid a portion of the infusion cost. She would be responsible for the balance of $2,530 per month. During the preauthorization process with her insurance company, she was never told that the infusion facility was out of network. The insurance company only disclosed the drug cost, not the infusion cost, and she thought the drug cost included the cost of the infusion treatment.

This is only one MS patient's story, but there are thousands more stories that occur every day. Please pass A.B. 170 to take these costs out of the control of health insurance companies and back into the control of doctors and patients, where it belongs.

Jason Jaeger, Physician, Advanced Spine and Posture, Las Vegas, Nevada:
I am currently serving as the president of the Chiropractic Physicians' Board of Nevada and hold a position on a subcommittee of the Nevada Chiropractic Association, although I am not representing either of these organizations today. First, my overall support for A.B. 170 is very personal, as I lost my father in December as a result of an access-to-care issue. If he had been able to see his doctor two months earlier, he would be alive today. I would like to thank Assemblywoman Spiegel for bringing this bill forward.

Second, as a chiropractic physician, I would like to reiterate what Mr. Musgrove stated. The language in the proposed amendment is an update to what was written in the 1980s. The health care arena was quite different in the 1980s; for example, an insurance company could send a check directly to a patient. The language, as it is written now, still reflects that. It has become outdated in our current health care system. Bringing the language up to date will make us consistent with our licensing board and the Affordable Care Act. Section 2706 of the Affordable Care Act discusses parity and equality of patients and physicians. We believe that the update is a simple modernization.

Assemblywoman Tolles:
What are the experience and education requirements of a chiropractic physician?

Jason Jaeger:
A chiropractic physician's education requirements are almost identical to that of a doctor of medicine and a doctor of osteopathic medicine. There is a difference in the number of in-classroom training and internship hours required, potentially a variance of up to 100 hours. There is a rigorous national licensure and a state licensure that must be obtained for a chiropractic physician to be able to practice as a chiropractor. At a federal level, there are only five types of health care providers that are deemed physicians. Chiropractic physicians are one of them, and we are also deemed portal-of-entry doctors.

Benjamin Lurie, Chief Executive Officer, The Neck and Back Clinics, Las Vegas, Nevada:
There is no greater pleasure as a chiropractic physician than to serve the community where I grew up. I have been a chiropractic physician for almost 18 years. I also served eight years on the Chiropractic Physicians' Board of Nevada under former Governor Sandoval until my term ended on October 31, 2018. I also served one year on the National Board of Chiropractic Examiners, which oversees chiropractic colleges and the nationwide proficiency examination that allows students to take the state jurisprudence exam to practice as a licensed physician in the state of Nevada. I appreciate each of the Committee members' service and commitment to the state of Nevada.

We appreciate the amendment and want to thank Assemblywoman Spiegel for accepting it. In brief, I will echo Dr. Jaeger's statement. Nevada has been known to be an unfriendly insurance state, which deters a lot of graduating chiropractic students from practicing in our state due to the reimbursements being unequal to those of other physicians for similar services. We definitely have a shortage of chiropractors in the state, and we see a shortage of chiropractic students. On average, we have approximately one chiropractic student per month taking the examination to practice in Nevada.

Dr. Jaeger spent a lot of time speaking with the Division of Insurance about this amendment. We appreciate their providing us a platform to discuss the issues with them. I appreciate the language in the amendment. I support A.B. 170, particularly the chiropractic physicians' amendment.

Janet L. Kallet, Private Citizen, Sparks, Nevada:
[Janet Kallet read from prepared text (Exhibit F).] I am a person living with multiple sclerosis (MS) and a litany of other health issues. As my generation—the Baby Boomers—ages, access-to-care issues are becoming the rule rather than the exception. I see 12 specialists and subspecialists, in addition to my primary care physician. Because my care is complex, simple procedures can become very serious for me, even life-threatening. Since I moved from the Bay Area [San Francisco] to the great state of Nevada 14 years ago, my out-of-pocket costs have ranged from $30,000 to $50,000 per annum. Most of the costs come from paying to see several out-of-network physicians, and in one case, from being hospitalized in an emergency at an out-of-network hospital. The rest of the costs come from the many copays for provider visits, magnetic resonance imaging, and Tier 5 medications

that the insurer has arbitrarily decided to label "off-formulary." If I do not pay these insane costs, my condition would rapidly deteriorate, and I would not be standing here before you, or probably even sitting here before you.

I realize that this is not sustainable for me much longer and, for so many others, it is not affordable at all. I do not want any more people to struggle to pay these prohibitive costs when a solution lies in part in Assemblywoman Spiegel's bill. It is past time to put the interests and the welfare of the people of Nevada ahead of the need for insurance companies to increase their profit margins. In my opinion, as a retired nurse practitioner, health care for profit has not worked for decades and is now circling the drain. Let Nevada be a leader in our country and show everyone that there is a place for compassion and care, as well as insurance companies' bottom lines.

Please consider voting for A.B. 170. For many of us, without hyperbole, it is a matter of life and death. In closing, as a nurse practitioner and a former registered nurse, I spent the bulk of my career taking care of patients with AIDS and cancer at Zuckerberg San Francisco General Hospital and Trauma Center. As a retired and disabled person, I think that I now deserve to be cared for in return.

Laura Hale, Private Citizen, Carson City, Nevada:
I am here to testify on behalf of Vivian Leal, who is unable to be here today. I would like to read her prepared testimony (Exhibit G).

> I am a poster child for the power of medical research. I am aware that I am not what most people think of when they think of someone with multiple sclerosis. I am aware of how lucky I am to have been diagnosed 20 years ago. As older medications have stopped working for me, new medications have come along just in time. The newer infusion medications, such as Tysabri and Ocrevus, have been particularly effective, especially after a relapse caused by advancing lesions in my spine that, for a time, left me unable to walk. I have also been unusually lucky to have been able to maintain health insurance coverage, either through my husband's jobs or in my own right, thanks to the Affordable Care Act.
>
> Nonetheless, I have had to fight. I have had to appeal, submit research, and plead with doctors, formulary managers, and billing departments. Even for me, being as lucky as I have been, it has never stopped. My latest saga began in June 2017 when I started taking Ocrevus at the Stanford Multiple Sclerosis Center, as they were one of the first to offer the drug. The center was in network for my Nevada Health Exchange plan, and my doctor had high hopes that the drug would work for me. When my plan left the Nevada Health Exchange because of the Affordable Care Act sabotage and the mayhem under the Trump Administration, my new plan refused to cover my treatment at Stanford. I tried to switch to Renown Regional Medical Center in Reno, which by that time offered Ocrevus, but my insurance denied that too.

My insurance company wanted me to find an in-network, stand-alone clinic in Reno certified to infuse Ocrevus. That clinic, of course, did not exist as there was no such place here at the time. After an exhausting full-court press with multiple doctors, nurses, and even the medication manufacturer, my insurance company finally approved a clinic in Sacramento two months later. My husband or friends drove me back and forth and I would pay for a hotel room nearby, which did not count toward my out-of-pocket maximum. By then, I was already a month late for my treatment. I was having trouble locating my feet without looking at them, spinning and tripping around in space like a drunkard. You see, immune system diseases will not wait for you to sort things out. If there is a gap in treatment, they will pounce.

Because I speak so publicly about health care access challenges, I do not want you to think that I am immune to this endurance test. Please know that, just like with everyone else I know, each round of denials and appeals has a cost beyond the obvious physical one. After the third or fourth phone call, while the course still looks bleak, I cry when I hang up the phone. It is humiliating, I feel helpless, and I resent having to spend the energy I parcel out so carefully, just to get coverage for services that my health insurance policy, that I have carefully chosen and paid for, already includes. I get angry because I know that others will not feel well enough or have enough resources and information to navigate what feels like an intentionally burdensome process meant to make us give up. Sometimes to make the next phone call, I ask my husband or a friend to sit next to me and hold my hand. Assemblywoman Spiegel's bill feels similar to that—like someone extending their hand to me to make this easier. If you have problems with the specifics of the bill, please work with her; but patients with serious chronic illnesses need you to pass A.B. 170.

Joan Hall, President, Nevada Rural Hospital Partners:
The issues that have been identified by Assemblywoman Spiegel are real, and I appreciate her bringing this bill forward and allowing the parties involved to discuss our different perspectives on the issue. I want to emphasize that the issues she discussed in her presentation are valid. There are shortages of providers, there is a limited ability for specialists to see patients in a timely fashion, and there are time and distance challenges, especially in rural areas. The education and increased awareness of navigating the process for calling the phone number on the back of an insurance card are important, not only for patients, but for staff and providers. A better understanding of the process would be key to better, more timely, in-network care. I also think the data collection she spoke of will be very important to either prove or disprove the issues that we hear about in anecdotal stories. I urge you to support this bill.

Joanna Jacob, representing Dignity Health-St. Rose Dominican Neighborhood Hospitals:
I agree with Ms. Hall's comments. We also think it is important, in our mission to deliver health care in southern Nevada, to help patients navigate this process. The concerns that were raised in the stakeholder meeting and identified in the presentation today are real. Having participated in and attended the Network Adequacy Advisory Council meetings since its inception, I know that the challenges sometimes stem from data. To echo Ms. Hall's comments, we think it is important to look at the data and whether it can prove or disprove the issue or define the scope of the problem for you as policymakers. We will continue to work with the sponsor of the bill.

Vice Chair Frierson:
Is there anyone else, either in Carson City or Las Vegas, who wishes to provide testimony in support? [There was no one.] We will now hear testimony in opposition.

Tom Clark, representing Nevada Association of Health Plans:
We are opposed to the bill because of a couple of different components. First, I want to thank Assemblywoman Spiegel for using the language from S.B. 235, because Senator Ratti worked with us so intensively on it. We applaud the effort to narrow in on the language in the Affordable Care Act that is to be written in state statute in the event that the program is repealed on a federal level.

However, we are very concerned about the conceptual amendment that Assemblywoman Spiegel brought forward that replaces section 4. By adding OCHA to the process of a patient getting an appointment, we are concerned that it could cause more confusion. The provider can best answer the patient's questions and provide services to the consumer. To Assemblywoman Carlton's point, calling the phone number on the back of the insurance card puts you in touch with the insurance provider who has the tools to help you through the process. There are a number of other pieces of legislation that address network adequacy, the number of providers, and can hopefully provide more services to more people. We do not believe that adding this layer on a state level will make it easier for the consumer to reach the end goal and get an appointment with their provider. We are also concerned about the chiropractic amendment that Mr. Musgrove brought forward.

Tray Abney, representing America's Health Insurance Plans:
We are here in what I would consider friendly opposition because we are opposed to the bill as introduced. We believe that the conceptual amendments are steps in the right direction, although we echo the concerns of Mr. Clark and appreciate Assemblywoman Spiegel working with us.

In regard to the chiropractic amendment, I agree with Mr. Clark's testimony. We have concerns about the language that is proposed for chiropractic parity. America's Health Insurance Plans has always had concerns when a specific group of providers are singled out for parity. Whom are we comparing them to? How is the quality of service increased by doing this? We are also worried that it could increase costs. A chiropractor is not the same

as a dentist or a podiatrist. They have different training requirements, incurred expenses, overhead costs, and performance metrics. We should always encourage the highest quality care at the best value for the consumer. We are certainly concerned about our ability to contract with different providers moving forward. We will continue to work with the sponsor to address our concerns.

Assemblywoman Carlton:
It has been my experience that when a consumer calls the phone number on the back of their insurance card, the insurance company can help you get an appointment with a provider. They triage you during the phone call to determine where you fall within the scope of care that you need. It is my understanding that a patient can, in the new process, reach out to OCHA to receive access to care if they were unable to get help through the insurance company. What is your issue with this process? If a patient cannot get an appointment through their insurance company, this provides them another resource that may be able to help.

Tom Clark:
As the conceptual amendment is laid out, that is not the case. Our biggest concern is the confusion that the bill might cause. It puts OCHA in a position to provide consumers with a phone number that can be provided by the insurance company as well, but a consumer may think that OCHA can get them an appointment with an out-of-network provider. However, the process is still the same, except a state agency will be doing the work—OCHA will be able to get a patient an appointment with an in-network provider. The current process works for a large majority of patients and consumers. Adding an additional layer for OCHA to intervene may yield some data, but will reach the same end.

Vice Chair Frierson:
If the process were simple and was working, I do not think that Assemblywoman Spiegel would be offering language to revise the process. If the process is complicated, the bill provides for a state agency to intervene and make the process easier for consumers. I am concerned as to why it would bother anyone to provide a phone number of a person who already exists and whose job it is to help these consumers.

Tom Clark:
If this Committee and this Legislature decide to make this conceptual amendment law, we will abide by the policy that is put forward. We want to establish that we firmly believe that our consumer specialists are helping patients and have the tools available to help patients.

Vice Chair Frierson:
If I am understanding you, this process is already in place. What is the concern about putting something into statute that you already do? What would change for your clients' lives if someone else was able to provide this phone number?

Tom Clark:
Our clients are divided on this issue—some members claim that nothing will change, and some claim that there will be changes. We are here in opposition simply to state that the process we have in place, without a state agency stepping in, works well. However, if this Committee and this Legislature feel inclined to add OCHA as an additional layer of the process, then we will not fight that. We are doing everything that we can to fight the perception that calling the phone number on the back of your insurance card places you into a deep, dark hole, because that is not the case. Our employees are there to help patients, and we want them to receive the care that they need. An additional layer in the process could add some confusion for the consumer.

Vice Chair Frierson:
The additional layer in the process is for the consumer, not for you. Is that correct?

Tom Clark:
Yes, the consumer would have another resource for a solution that we can already provide.

Vice Chair Frierson:
It is also my understanding that the consumer could receive a phone number from OCHA that you can provide as well. I do not think that the language changes anything that you have described, so I am confused about your stating that there will be an additional layer.

Tom Clark:
You are correct.

Assemblyman Kramer:
Mr. Abney made a correlation between podiatrists, dentists, and chiropractors and their required training. I am not sure how that related to his opposition to the amendment, if he could clarify that.

Tray Abney:
We are always concerned when a specific group of providers in NRS is singled out, especially when it is required for a health insurance provider to pay them a certain amount, or pay them the same as another group of providers. Chiropractors, dentists, podiatrists, and general practitioners are all physicians, but they all have different training requirements, incurred expenses, and overhead costs. If it is required to pay a chiropractor the same as another provider, the cost may not be the same to provide the type of medical service that they provide. We want to have the ability to contract with the providers within our network and determine, between the health plan and the provider, what the best contract and rate is, without dictating that chiropractors or other groups must be paid a certain amount.

Assemblyman Kramer:
Last session we discussed telemedicine and how the insurance rates compensating telemedicine doctors were to be essentially the same as the insurance rates compensating local physicians. Now, we are discussing the differences in setup and other costs, but I do

not think there is one solution to the problem. We are working with old language in which chiropractors were singled out and trying to clarify the intent of that. I do not believe that we disagree, and I do understand where you are coming from.

Vice Chair Frierson:
Is there anyone else who wishes to provide testimony in opposition? [There was no one.] We will now hear neutral testimony.

Tom McCoy, Nevada Government Relations Director, American Cancer Society Cancer Action Network:
Access to care is one of our primary policy pillars, because access to timely care for people with cancer is a matter of life and death. We appreciate the intent of the bill, although the initial bill raised some concerns, and we still have questions regarding the Single Case Agreement that was referenced. Single Case Agreements often cause continuity-of-care issues, and that is our primary concern with the way the bill currently reads. We will take a second look at it once it is complete. Perhaps we will then be in a position to change our position of neutrality.

Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance:
We are interested in the bill's effect on the Nevada Public Employees' Benefits Program (PEBP). As of last week, the PEBP staff stated that there would be no impact from the original bill, because they already abide by the processes laid out in the bill.

Chelsea Capurro, representing Health Services Coalition:
We had some concerns with the original language. We have not seen the final language, but based on our conversations with the sponsor and on the bill's conceptual amendment, we think we will be okay with the bill. The chiropractic amendment is new to us, as of today, so we will have to take a look at that and get back to the sponsor. We want to thank Assemblywoman Spiegel for all of her work on the bill, specifically on the preexisting conditions language. We think that mirroring the language in Senate Bill 235 will be helpful.

Thomas D. Dunn, District Vice President, Professional Fire Fighters of Nevada:
We initially signed in in opposition to this bill, but after hearing the conceptual amendment, we are testifying in neutral. The lack of access to providers is a huge issue, especially in northern Nevada. Some of our members have found that the phone number on the back of their insurance card is supposed to assist in finding a physician for care. However, it has been my experience that providers can be found online. This list of providers is updated quarterly, but the providers are added and dropped from the insurance company monthly, which causes an issue. We find that providers are denying treatment or care to patients, whether it is intended or not. We appreciate Assemblywoman Spiegel working with us on the bill, as I think everyone here would like to see our members in the state of Nevada have better, more timely access to health care and access to more affordable health care.

Marlene Lockard, representing Nevada Chiropractic Association:
We appreciate the sponsor of the bill for allowing the opportunity for the chiropractic amendment to be added to the bill. We strongly support the bill and the amendment.

Andy Donahue, Market Representative, Laborers-Employers Cooperation and Education Trust, Las Vegas, Nevada:
We fully concur with the Health Services Coalition's testimony, and we commend the ongoing work on this issue.

Daisy Cortes, Medical Director, Hemostasis & Thrombosis Center of Nevada, Las Vegas, Nevada:
I am here to speak to you on behalf of my experience as a physician in the state of Nevada and to testify to keep the previous language in section 4. I was trained in California, in a place known for having multiple federally funded hemophilia treatment centers. I came to Nevada understanding the great need for a provider with a specialty in bleeding and clotting disorders to provide care for the entire population of the state, as well as assist those in the emergency and operating rooms who may not be comfortable managing patients with bleeding disorders. I was alarmed and appalled to see insurance companies try to dictate care without fully understanding a patient's disease and to see the uninsured patients have difficulty accessing care.

The federally funded clinic that I am a part of travels throughout the state of Nevada to provide care. Currently, my team is in northeastern Nevada caring for patients. We invest our time to provide comprehensive care, along with a social worker and physical therapist. I am only one of two providers in the state with this dedicated subspecialty within a subspecialty. Studies have shown that a center of excellence, such as a federally designated treatment center, has been able to reduce mortality and morbidity rates in males with hemophilia by 40 percent. We have also managed the care of women with bleeding disorders during pregnancy who have gone previously undiagnosed.

I would like you to consider replacing the language in section 4 with the original language, recognizing that "qualified" means: within an entity recognized as a center of excellence as a federalized hemophilia treatment center for persons with bleeding or clotting disorders, and a physician, physician assistant, or nurse practitioner who is board-certified in the specialty requested. The language in section 4 had also previously stated: does not schedule an appointment with an in-network provider located within 25 miles of the residence of the person, the health carrier must approve the request, offer to empanel the provider at in-network rates within 90 days, and provide written authorization for the person to obtain the service from an out-of-network provider. The authorization must include, without limitation, a statement of any copay or coinsurance for which the person will be responsible, in addition to approved number of visits. I would also like you to keep in section 4: providing the service to the person and any follow-up care required from the service.

As a specialist in hematology, I see patients on a continual basis for continuity of care and to manage their medical treatments. It is important to note that the field of hematology is quite

broad, but the majority of adult hematologists manage oncological issues, such as leukemia and lymphoma. A navigator may not know the difference between an oncologist and a hematologist, and just because a doctor is in network, it does not mean that they can offer the care or services that a patient needs. The experience and knowledge of those who have invested their time and are educated in what modern medicine has to offer these patients is what provides the confidence in care, as well as the quick management that could save a life. We need to ensure that we do our part to improve Nevada's health care and understand what it will require to move forward with providing proper care.

Betsy VanDeusen, Executive Director, Nevada Chapter of the National Hemophilia Foundation:
I am here on behalf of Nevadans who are affected by bleeding disorders and to share our disappointment with the changes that are proposed to be made in section 4 of A.B. 170. Network adequacy is a major concern for our families. Bleeding disorders require specialized care, and the failure to connect with a qualified provider can increase hospitalizations and cause long-term disability or mortality. Nevada has a designated center of excellence that offers comprehensive care and is proven to reduce morbidity and hospitalization rates, but many of our families have been unable to access the center because it is out of network.

As an example, patients in the Reno metropolitan area have called our foundation in distress because they were told by their insurer that they would need to travel to Las Vegas or Oakland for their weekly appointments, despite there being a qualified center in Reno. The center had applied to be on the panel but was denied for no reason. Dr. Cortes and the center have worked extensively with Medicaid and insurers, with no success, to get the center on the panel and solve these network adequacy issues. There is a systemic problem with network adequacy. Medicaid standards require there to be one provider per 1,500 patients. There are only 500 Nevadans with diagnosed bleeding disorders, which means that it is required to have only one provider in the entire state. This is not a fair solution for people who are not living where the provider is located.

We were excited about the original language in A.B. 170. Admittedly, the language needed some fine-tuning, but it was a great start for removing barriers for patients to receive qualified, accessible care. Unfortunately, we are unable to support the bill with the amendments at this time. The navigation services provided by insurers have been proven not to resolve issues for our patients. At best, we could expect a Letter of Authorization that would need to be removed monthly, but this does not guarantee continuity of care and places a burden on providers and patients to maintain that relationship. We encourage you to revisit the original concept of the bill, and we thank the sponsor for her concern for network adequacy. Going forward, we hope to be a resource for her.

Assemblywoman Spiegel:
I want to thank everyone who testified in support, in opposition, and in neutral. These are very important, complex issues, as we are discussing people's lives. I would like to clarify the process for patients to reach out to OCHA. Oftentimes, it is helpful to call the phone

number on the back of the insurance card, but others try numerous times with no success. For those people, it may be helpful for them to reach out to a state agency. The Office for Consumer Health Assistance may not provide the same phone number to a consumer but can reach out to the insurance company or reach out to the correct contact at the insurance company. They will have the ability to tell the insurance company that a patient has tried numerous times to reach them and require them either to help the patient or let us know why they cannot help the patient. The data that I have requested will be submitted for these cases, so the Legislature and the Division of Insurance are aware of what is happening. This is also the reason for allowing OCHA to facilitate the complaints being submitted to the Division of Insurance. When I return, I hope to have finite language that is easier to understand, that touches on the issues that were raised today, and that provides solutions.

Vice Chair Frierson:
Thank you. Lastly, as it pertains to Mr. Clark's concerns, I stand corrected. The process is not as simple as I thought. We will close the hearing on Assembly Bill 170.

[(Exhibit H) was submitted, but not discussed, and will become part of the record.]

[Assemblywoman Spiegel reassumed the Chair.]

Chair Spiegel:
We will open the hearing on Assembly Bill 197.

Assembly Bill 197: Revises provisions relating to consumer practices. (BDR 52-899)

Assemblyman Edgar Flores, Assembly District No. 28:
I am here today to present Assembly Bill 197. In the United States, specifically in Nevada, it has become increasingly difficult, if not impossible, to purchase a product online or receive service without entering into forced arbitration. This is a problem for consumers, especially if the consumer is harmed and finds themselves having to travel to a different state to become whole again. In today's world, it is likely that every consumer who shops online has clicked "I agree" without reading through their contract. We do this because these contracts have become commonplace; they are the norm as opposed to the exception. It creates a problem for consumers, because they often find that they cannot go to court as an injured party, because they have signed away their rights to pursue available remedies, both at the state and federal level. They have inadvertently given up their power to the business or the party that provided the product. As previously stated, sometimes a consumer will learn that to pursue arbitration, they must file a claim in another state, which is convenient for the drafting party, but not necessarily the consumer. Assembly Bill 197 addresses these issues.

Assembly Bill 197 mandates that a contract that deprives a consumer of his or her rights provided by state and federal law not be the norm. There is a rebuttable presumption that if the venue is not within the state of Nevada or a consumer is forced into arbitration before they are harmed, the contract terms are deemed unconscionable. In this scenario, a rebuttable presumption allows for the drafting party of the form contract to provide the other party with

the opportunity to dispute the contract when the drafting party does not perform as promised. I also want to clarify that the bill makes it unconscionable to require that a forum be located elsewhere. If a contract states that the consumer must resolve a dispute in another state, it is deemed unconscionable. If the injured party is located in the state of Nevada, if the injured party signed the contract in the state of Nevada, or if the injury occurred in the state of Nevada, the venue must be set in the state of Nevada, both at the state or federal level.

I also want to clarify what the bill does not do. On contracts between two parties in which each party had the opportunity to negotiate the contract, the bill automatically excludes that. The bill specifically addresses blank form contracts.

Section 1, subsection 1 creates a rebuttable presumption that specific contractual terms are unconscionable when included in a form contract to which a party to the contract did not draft. This lays the foundation that the bill only applies when there is a form contract, typically drawn between a business and a consumer, or an employer and an employee, that when signed, puts all bargaining power on the drafting party and takes it away from the consumer or employee. Section 1, subsection 1, paragraphs (a) through (e) outline the definition of unconscionable terms. We want to provide some direction as to when the terms will be deemed unconscionable. Specifically, if the forum is not laid here in Nevada or if the nondrafting party is located in the state of Nevada and the venue is set elsewhere, the contract will be deemed unconscionable. If the injury occurs in the state of Nevada and the venue is set elsewhere, the contract will be deemed unconscionable. If the contract was signed in Nevada and the venue was set elsewhere, the contract will be deemed unconscionable.

Paragraph (b) states that "A limitation or waiver of the right of the nondrafting party to assert a claim or seek a remedy available under state or federal law." Oftentimes, when a consumer signs a form contract, they sign away their ability to take certain actions. The contract will often state that the consumer cannot sue the drafting party for money, but can only cancel the contract. Sometimes there will be terms that force the consumer to seek only one of the many available remedies. If the contract excludes rights that are afforded by state or federal law, the contract will be deemed unconscionable.

Paragraph (c) states that "A limitation or waiver of the right of the nondrafting party to seek punitive damages for any claim for which punitive damages are available." If the contract states that a consumer cannot pursue punitive damages and that right is afforded by state or federal law, the contract will be deemed unconscionable. Paragraph (d) states that "A requirement that the nondrafting party bring a claim arising under the contract within a time period which expires earlier than the statute of limitations for that claim." Oftentimes, a statute of limitations will dictate how much time an injured party has to file a lawsuit following a dispute. Sometimes, a form contract will force a consumer to agree to a lesser statute of limitations, which will be deemed unconscionable.

Lastly, paragraph (e) states that "A requirement that the nondrafting party pay fees and costs to bring a claim which are substantially in excess of the fees and costs required to bring such

a claim in state or federal court, as applicable." This paragraph speaks to the idea of forced arbitration. Contrary to what many may argue, arbitration can be significantly more expensive than going directly to court. If a business is a repeat offender and has a forced arbitration clause, all of the injured consumers would have to go through arbitration to become whole again. In this scenario, the business has the upper hand. The business is the arbitration company's client. The arbitrator forges a relationship with the business because the business is repeatedly generating revenue for the arbitrator. A judge who witnesses a business repeatedly being sued and losing would become suspicious, but an arbitrator will never become suspicious of the business. They want to consistently produce results that benefit the business to ensure their client returns repeatedly. If a business does not like the results of one arbitrator, they can take their business elsewhere, which puts all the bargaining power on the business and takes it away from the consumer.

Section 1, subsection 2 requires that the parties must be afforded a reasonable opportunity to present evidence to a court when terms appear unconscionable. If there is a presumption that a term of the contract is unconscionable, both parties will have the opportunity to provide evidence to prove otherwise.

Section 1, subsection 3 defines the actions that the court can take regarding the enforcement of a contract when contract terms are determined to be unconscionable. Specifically, section 1, subsection 3, paragraph (b) states that the court "May refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." When there are two parties disputing a contract in court, the judge will review the contract to determine if it is favorable to one party over the other, so much so that it cannot be enforced. This is something that the court already reviews. If a specific contract term is unconscionable, a judge will read the contract as if the unconscionable term is excluded. Additionally, if there is a question of interpretation, the court may rule that they will interpret it consistent with state or federal law to avoid an unconscionable result.

Section 1, subsection 4 sets statutory damages not to exceed $1,000 for each unconscionable contract term. This is not to say that there will be a $1,000 fine each time, but sets a cap for the judge to determine. This subsection gives the bill teeth. If there are no consequences for drafting parties, there will be no incentive for them to comply with the law. Businesses would be able to draft unconscionable contract terms and continue to put consumers in the position that they are in now. This also makes it difficult for consumers to know what rights are afforded to them.

Section 1, subsection 5 exempts from the bill contracts involving parties doing business pursuant to authority of law and includes a list of such businesses, to avoid any federal preemption issues. If the list needs to be expanded with the assistance of the Legal Division, it can.

There is a friendly amendment to section 1, subsection 6, paragraph (a) (Exhibit I), which revises the definition of "Drafting party." There are two amendments to this bill, but only

one is considered friendly. We define "Drafting party" as "a person who either drafted a form contract or provides a form contract drafted by a third party and is a party to the form contract." We want this definition to cast a wide net, to ensure that we are adequately defining who is in control and who is not. In section 1, subsection 6, paragraph (b), we defined "Form contract" to mean "a contract or agreement with standardized terms that is imposed on a consumer without a meaningful opportunity for the consumer to negotiate the standardized terms." Section 1, subsection 6, paragraph (c) defines "Nondrafting party" as "a natural person who did not draft a form contract but is a party to the form contract." Lastly, section 2 provides the effective date of the bill.

I want to address and preempt some of the concerns that have been raised. First, the bill should not impact any contracts with negotiations, as they are automatically excluded, and does not attempt to discredit negotiations between businesses. We are solely focusing our efforts on protecting consumers. Blank form contracts between a business and a consumer have become a nationwide trend. There is federal legislation in the works that seeks to address these concerns, and if the federal legislation were to pass, we would be protected at the state level as well. However, I am concerned that the legislation may not pass, and the state may need to take action.

Alison Brasier, representing Nevada Justice Association:
To provide some history of these arbitration provisions and why they have been enforced on the federal level, the original intent was to allow businesses that were in equal bargaining positions with similar resources to enter into contracts, like binding arbitrations, to resolve a dispute. Over time, as we know and have seen, these binding arbitrations invaded the daily lives of almost every consumer in America. Forced arbitration provisions can be found in nursing home agreements, cell phone provider service contracts, employment agreements, download agreements for cell phone applications, and cable television agreements. The provisions get buried in the lengthy terms-of-service agreements. Consumers are not reading the terms, because they want the service and do not have the opportunity to negotiate the terms of service. While these provisions were originally meant for and used solely for business-to-business negotiations, they are now used for contracts between multimillion- or multibillion-dollar corporations and individual consumers who have no choice in the matter in order to receive the service or product.

Some of the arguments in opposition to this bill will claim that consumers have a choice in the matter. If they do not want to agree to the provision, they can decide not to do business with the corporation or buy the product. I think they have a false choice, when you consider how this impacts people's daily lives. First, consumers do not know what they are agreeing to. They click through agreement terms, sign contracts with language buried deep within them, and are asked to give up their rights before they have been harmed. If the consumer has a choice, it is an uninformed choice at best. Second, individual consumers do not have bargaining power. A business has bargaining power with another business. However, forced arbitration provisions put an individual consumer up against a multimillion- or multibillion-dollar corporation that has all the power in these situations.

Take, for example, a nursing home. If a consumer is lucky enough to have health insurance that will provide coverage for nursing home services, they might have one or two options for providers under their insurance plan. If those providers have a binding arbitration clause in their service agreements, the consumer's choice is to either sign the agreement to receive the services they need, find a way to pay out of pocket for a nursing home without a binding arbitration clause, or go without service. These truly are not choices in this situation. In another example, every major cell phone provider includes forced arbitration provisions in their service agreements. If a consumer wants to have a cell phone, they must agree to these provisions. They have the choice either to agree to forced arbitration or not have a cell phone, which for most people in this country is not a realistic option. Finally, if a person is being offered a job by an employer who includes a forced arbitration provision in the employment agreement, their choices are either to sign the agreement and give away their rights or give up the job opportunity in hopes that they will find another employer with better terms of employment. For a large majority of our workforce in Nevada, the latter is not a realistic option.

I want to speak briefly about how forced arbitration provisions can be used by corporations to hide their bad actions from the public. Forced arbitration agreements almost always include a confidentiality provision. When "bad actor" corporations are sexually harassing or discriminating against their employees, the employees are forced to go through a confidential arbitration process that allows companies to hide the issues behind closed doors. Not only is this a bad policy for the victim, but it is a bad policy for the corporation's other employees, the corporation's stakeholders, and the general public who should be informed of what happens behind closed doors. The provisions are a way for corporations to shield themselves from the public finding out about their bad actions.

In forced arbitration provisions, the business gets to decide who the arbitrator is, where the arbitration will take place, and when the arbitration will take place. Usually, the businesses use the same arbitrator time and time again, in order to build the relationship. Arbitrations have costs associated with them as well. In my previous example, a person may be forced to bring a claim against a nursing home for improper treatment. To resolve the claim, the nursing home may dictate that the claimant needs to be in Philadelphia, Pennsylvania, within two days' time and have $10,000 to pay for the arbitration. For most people, this is not a realistic option. To claim that they have a choice in the matter is a false choice.

I also want to address the concern that limiting forced arbitrations will flood the courts with additional class action and other lawsuits. It may be true that limiting forced arbitrations may increase the number of class action lawsuits that are brought, but I do not think that this is a bad thing. For a lawsuit to be considered a class action lawsuit, the same bad actor is harming multiple people multiple times, and a class action lawsuit is the only way that an individual consumer can receive compensation for the business' wrongdoing. Class action lawsuits usually deal with small monetary amounts for each individual person. For example, an individual consumer may have been charged a fee by their cell phone company or an overdraft fee by their bank that they should not have been charged, to the tune of $5, $10, or maybe $50. Each individual would never spend thousands of dollars to arbitrate their

individual claims and businesses know this, which essentially gives businesses a free pass to continue doing this. The consumer may switch banks or cell phone carriers, but businesses can continue to harm individuals with no consequences when they do not allow class action lawsuits to be brought.

To summarize, the intent of the bill is to hold wrongdoers accountable. We achieve that by evening the playing field between businesses and individual consumers and injecting choice and fairness into the process of resolving these claims.

Chair Spiegel:
Are there any questions from Committee members?

Assemblywoman Neal:
Section 1, subsection 1, paragraph (a) states that "a requirement that resolution of any claim arising from the form contract take place in a forum." How does this bill address jurisdiction issues, and how will you work around federal jurisdiction?

Alison Brasier:
That is a valid concern. I think the decision as to which court, state or federal, would have jurisdiction is a decision to be made once the litigation is filed.

Assemblyman Flores:
I also want to make it clear that section 1, subsection 1, paragraph (a), subparagraph (2) addresses federal court. The answer to whether an injured party in the state of Nevada shall go to federal court in the state of Nevada or state court is currently dictated elsewhere. There currently exists case law that addresses these concerns and determines jurisdiction.

Assemblywoman Neal:
I found it interesting in the *Atlantic Marine Construction* case [*Atlantic Marine Construction Co., Inc. v. United States District Court for the Western District of Texas*, 571 U.S. 49, 59 (2013)], that the Supreme Court ruled "when the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause. Only under extraordinary circumstances unrelated to the convenience of the parties should a §1404(a) motion be denied." Does this bill somehow revise the ability for a court to transfer a case through a §1404(a) motion under federal civil procedure, or can that action still be granted to a party to transfer a case?

Alison Brasier:
I am not familiar with the specific case that you are citing, but I believe it is a case in which the Supreme Court upheld a forced arbitration provision. This bill seeks to define what is unconscionable in the state of Nevada. In the *Atlantic Marine Construction* case, I believe the federal court ruled that states can define what they believe to be unconscionable. If a contract provision is unconscionable under state law, state law will be enforced. The specific term "unconscionable" is used in this bill and defined as it is, because the state of Nevada would be able to enforce it, even under the federal case law that has been established.

Assemblywoman Neal:
I have concerns about the language in section 1, subsection 1, paragraph (a), subparagraph (2) that states if "A claim is brought in, or removed to, a federal court" in which the contract was made. Does this imply that a defendant can no longer remove the case to a federal court? Assuming that the contract was drafted in Nevada, and all other stipulations are met, how do you arrive at the conclusion that the removal to federal court be deemed unconscionable? How do you arrive at the conclusion that the contract is deemed unconscionable if it was removed to "a federal judicial district other than the federal judicial district in which the contract was made"?

Alison Brasier:
If a case is removed to a jurisdiction or to a federal court other than where the party resides, where the injury occurred, or where the contract was written, it is deemed unconscionable. We find in these forced arbitration provisions that regardless if Nevada were the state in which everything took place, the parties agree to resolve the dispute in another state which has no relationship to the injury or the parties because it is more convenient for the corporation. The bill states that if the case is removed to a federal court that does not meet the three criteria, the contract would be deemed unconscionable.

Assemblywoman Neal:
I want to reference again the Supreme Court case, *Atlantic Marine Construction*. The balancing of interest standards in regard to evaluating a forum-selection clause has been codified in several cases. In reality, it is not one-sided, but something that the court will evaluate to determine how to balance the interests of both parties. I understand where you are coming from, in that one party has more power in the contractual agreement than the other; however, there exists a balancing of interest. A corporation may have a heavy hand in the agreement, but it does not lose its capacity for the court to review its interest in the case and select a suitable venue. You seem to imply that the balance shifts in the opposite direction, and that the consumer will have the power to select a forum of their choice.

Alison Brasier:
I think that concern is addressed in the creation of a rebuttable presumption. The court will begin with the assumption that the contract has an unconscionable provision, but the drafting party will have the chance to dispute or argue for why the contract should be enforced and why the balance of interest should weigh in their favor. The contract provision will not automatically be void, but the drafting party or corporation will be forced to prove why the interest balance is in their favor.

Assemblywoman Jauregui:
I have a question regarding section 1, subsection 5 in which the excluded businesses are listed. Do the organizations that are excluded from the provisions of the bill not have form contracts with forced arbitration provisions? Why are some businesses included and others excluded?

Assemblyman Flores:
This subsection that excludes certain businesses from the provisions of the bill is included because we do not have jurisdiction over these organizations. The conversation regarding this specific subsection is currently being held at the federal level.

Assemblywoman Jauregui:
Mortgage bankers are mentioned in this subsection, so would the bill exclude mortgage loans and insurance of all types as well? A mortgage is part of a real estate transaction, so would a real estate contract be excluded from this bill as well?

Assemblyman Flores:
Can you clarify what type of real estate contract you mean? Do you mean the contract that a consumer enters into with the bank, or the contract that a consumer enters into with a Realtor?

Assemblywoman Jauregui:
A consumer would be required to enter into a contract with their mortgage provider, so I wanted to know if the exclusion would encompass the purchase contract that they enter into with a seller.

Assemblyman Flores:
Yes, those contracts are excluded.

Assemblywoman Jauregui:
Lastly, "form contract" is mentioned in the bill, but where is the term defined?

Assemblyman Flores:
On page 3, line 40, "'Form contract' means a contract or agreement with standardized terms that is imposed on a consumer without a meaningful opportunity for the consumer to negotiate the standardized terms."

Assemblywoman Tolles:
I appreciate the value of the bill and the intent behind it. In our conversations, it seems we have expanded how this could be applied, with the exception of the exclusions in section 1, subsection 5. I am concerned that this bill could expand too broadly, especially in reference to section 1, subsection 4. This is a valid conversation to have, but it seems so much more expansive than how I was originally reading the bill. Can you speak to that?

Assemblyman Flores:
Many employment contracts include a forced arbitration agreement that includes a requirement to enter into a nondisclosure agreement. For example, an employer can consistently prey upon his employees, and an employee can find the strength to come forward, but the employee was forced into a nondisclosure agreement prior to the employer harming them. We have cast a very wide net with this bill, but we are trying to punish bad actors. In this room, there are good actors with legitimate concerns because they have

a strong business sense. But I can assure you that the biggest offenders, who will be most impacted by this legislation, are probably not in this room. Businesses have been getting away with bad behaviors for a few years now, and as a nation we have allowed it, but we need to put a stop to it.

The form contract has become so normal, but legal scholars and individuals who follow the evolution of the business and consumer industry will argue that it is not so common. It has not been a part of our transactions in the past and is a huge problem that has evolved and become the norm. The Internet has made it seem normal, but it is not normal. We need to ensure that consumers have the ability to become whole when they have been harmed, and currently they do not. It is very important to make clear that when a consumer is harmed, the individual has the right to pursue arbitration. Arbitration should be a choice when you are harmed; but if arbitration is not the best option, then every remedy afforded to you by state and federal law should be available.

Assemblywoman Tolles:
I certainly do not disagree with the desire to make an individual whole after they have been harmed. It is important to have these conversations, but it is also important to recognize the differences between different contracts. It is important for the law to clearly define the contracts and how they are to be dealt with individually. How can we establish the clarity of what we originally wrote in the law and the ripple effects it could have?

Assemblyman Flores:
I can commit to making this bill as clear as possible. I can work with the Legal Division and anyone on this Committee to do so. It is our intent to be clear, and we will draft the bill in whichever way we have to for clarity.

Assemblyman Kramer:
As I look at the institutions that are excluded from this bill, per section 1, subsection 5, I notice that some of the institutions could be federal institutions while some could be state charters. Perhaps we need to clarify which are excluded from the bill and which are not. We may also need to provide more specific definitions of some institutions. For example, "trust companies" means more than one thing to me, depending on whom the trust involves. Second, why will this bill not be effective until October 1, 2019? It seems to me that it ought to be effective when passed.

Assemblyman Flores:
I can have the Legal Division provide a synopsis of our concerns with federal preemption, specifically as it applies to this subsection. That will better explain why we specifically chose the language that we did. In regard to the effective date, we understand that there are a lot of companies that use form contracts. We think there should be some time allotted for companies that use form contracts to amend them and make adequate adjustments.

Chair Spiegel:
My entire career has been in the private sector, and I have signed many employment contracts. Oftentimes, the contract protects the employer with nondisclosure agreements or confidentiality clauses, which specify that the person or entity with whom I am engaging in business conduct is entrusting me with proprietary and confidential information. If those contracts were declared unconscionable and essentially null and void, what would happen to the ability of an employer or business to protect their proprietary and confidential information? I understand the example you gave earlier regarding sexual harassment in the workplace, but what effect would this bill have on businesses and entities that should be protected under those provisions?

Alison Brasier:
I think we have addressed this concern in section 1, subsection 3, paragraph (b). If the court finds one section of a contract to be unenforceable, it can sever that section and enforce the rest of the contract. That condition is commonly written into most agreements.

Assemblyman Flores:
Page 3, lines 5 through 9, reads "When it is claimed or appears to the court that a contractual term described in subsection 1 is unconscionable, the parties must be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination." The intent of this language specifically addresses your concern as well. If a contract term is deemed unconscionable, the drafting party will have the opportunity to prove the validity of the rest of the contract.

Chair Spiegel:
If an employee makes an allegation of sexual harassment, and a portion of their employment contract is deemed unconscionable, would the employee be released from the other provisions of confidentiality since the confidentiality clause had been declared unconscionable? In this case, how will we continue to protect the employer?

Assemblyman Flores:
The bill states that it is unconscionable not to have remedies available to an employer afforded to them by state and federal law. As the bill is written, it protects those rights. In a question of whether or not an employee could disclose other confidential information, the moving party shifts and would be the drafting party, expressing that their employee cannot come forward with this information based on their agreement. More importantly, I will reference page 3, lines 5 through 20, which are crucial to ensure the court affords the parties an equal opportunity to demonstrate evidence. In my opinion, this is what the court will always fall back on. A reasonable judge will always review the case and determine how to proceed. Furthermore, it is important to clarify that the process is transparent and there is always an appeal process. There are a number of available avenues to ensure everyone is whole. In arbitration, the standards and laws are not enforced. The question is, is it better to let a judge decide, or deprive the consumer and employer of these protections?

Chair Spiegel:
We will now hear testimony from those in support.

Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada:
I am here in support of A.B. 197. First, I want to thank Assemblyman Flores and the cosponsors of the bill for bringing it forward and accommodating our friendly amendment. This bill will be extremely beneficial for our clients as consumers who often enter into contracts of adhesion because they have no bargaining power. This bill will help protect their rights from the onset and is a great step toward leveling the playing field.

Chair Spiegel:
Is there anyone else, either in Carson City or Las Vegas, who wishes to testify in support? [There was no one.] We will now hear testimony in opposition.

Aviva Gordon, Legislative Committee Chairwoman, Henderson Chamber of Commerce:
[Aviva Gordon read from prepared text (Exhibit J).] The Henderson Chamber of Commerce represents more than 1,800 member businesses of all sizes and in all sectors. I am here representing their interests today in opposition to A.B. 197. When we first reviewed the bill, and prior to hearing the earlier testimony, I do not think we fully appreciated the intended impact in respect to employment agreements. I appreciate Chair Spiegel's questions and comments on that topic.

There are several aspects of the bill that we are seeking clarity on, and we have been communicating with the bill's sponsors about these concerns. As a professional who has represented a multitude of parties in contractual negotiations and litigations over contracts, I want to express the challenges associated with the language in A.B. 197. While we wholly endorse the effort to create a more balanced approach to consumer contracts that contain unconscionable clauses, we are troubled by the authority granted in section 1, subsection 3, paragraph (b) that would enable a court to wholly invalidate a contract rather than severing the offensive language. We are also concerned about the discretion given to a court in section 1, subsection 3, paragraph (a) to determine whether a clause is unconscionable. There are insufficient standards to give notice to a contracting party when a clause would ultimately be deemed unconscionable. The language contained in section 1, subsection 4 is punitive. It would materially affect businesses that contract within the state of Nevada and eliminate a sense of a fair judiciary in contractual interpretation where there is no advanced standard for such contractual drafting.

There has been much testimony with respect to forced arbitration clauses. The bill itself does not reference anything with respect to arbitration. In addition to that, Nevada has long had in place the Uniform Arbitration Act, which includes a presumption that indicates that the claims are meant to go forward with arbitration. I fear, in listening to the intent of the bill,

although not the language of the bill, that the bill would create a dramatic conflict between the long-standing presumptions of arbitration under the Uniform Arbitration Act for those arbitration clauses. We look forward to working with Assemblyman Flores to gain clarity on these issues.

Assemblywoman Neal:
Section 1, subsection 5 states that "The provisions of this section do not apply to a contract to which one of the parties is a person doing business pursuant to the authority of any law of this State." There is an "or" statement, and then there is a list of organizations that are excluded. How do you interpret this particular phrase?

Aviva Gordon:
My interpretation of section 1, subsection 5 is that the section does not apply to an organization doing business pursuant to the laws of the state. I would have separated the phrase "or the United States" with commas, and then listed the organizations excluded. I would interpret this clause, and the way I would expect a court to interpret this clause, to read that the balance of this bill, if it were to become law, would not affect the contracts of the institutions listed after "relating to."

Assemblywoman Neal:
I thought that the clause seemed to lean toward giving preference to the bargaining power in Nevada. I was concerned with it, but I wanted to hear your thoughts.

Aviva Gordon:
I think the disjunctive is between the state of Nevada law and the United States law, as opposed to anything else that distinguishes it from the contracts.

Tyre Gray, representing Las Vegas Metro Chamber of Commerce:
The freedom of contract is a bedrock principle, so much so that it is mentioned in the *United States Constitution*, impairing the state's opportunity to pass laws that interfere with the obligations of a contract. This bill would have a broad, sweeping impact on contracts in Nevada and how the contracts are litigated. It has the ability to impact contracts so drastically that a drafting party entering a courtroom would need to defend their innocence, which could have impacts on the burden of proof.

One of the bedrock principles of contracts is that we all have a duty to read them. We must remember this when we discuss and speak about this bill. As Assemblyman Flores mentioned, the courts already have the opportunity to evaluate the terms of a contract and determine if they are unconscionable or should be enforced. Forum-selection and arbitration clauses have been held as constitutional. This bill would have a dramatic impact on how we view contracts in Nevada, and that is why the Las Vegas Metro Chamber of Commerce is opposed to the bill.

Assemblyman Daly:
I would argue that a contract needs to exist between two parties who have reasonably equal power to negotiate and agree to the terms. Does the consumer really have a choice? Is there an opportunity to negotiate? Who would the consumer negotiate with, and how long would the negotiations take? I think I agree with the sponsor of the bill on this matter.

Tyre Gray:
It depends what individual consumers consider to be necessary and unnecessary. Personally, if I can live with the terms of the contract, I will accept the service. If I do not agree with the terms of the contract, I will not accept the service. The decision depends on the individual, and the duty is put on the consumer to read and consider the terms of the contract.

Assemblyman Daly:
I can share a personal example from when I was working with my attorney to set up a trust fund. Typically, my attorney and I review a contract before entering into an agreement, but in this scenario, his approach was different. He told me that it did not matter if I agreed with the contract, because they would not negotiate with us. My choices were to accept the service or not. We can agree to disagree on this matter. I agree with the sponsor of the bill.

Bryan Wachter, Senior Vice President, Retail Association of Nevada:
We want to point out that there seems to be a pattern in the legislation that is being introduced as of late. There seems to be an underlying presumption that businesses are bad, are bad actors, and cause problems. This bill mandates that businesses have to rebut that they are behaving badly. I think it is representative of a movement to legislate for bad actors, and hope the good businesses can become successful despite the hurdles, as opposed to legislating for the behavior we hope to encourage in our state and isolating bad behavior.

I agree with Mr. Gray's comments that the services we are discussing are not necessary for survival. These are services and products that consumers choose to purchase. There is a level of consumer responsibility to read the contract instead of automatically agreeing to the terms of service. To the point that form contracts include onerous language for consumers, Nevada law already provides that such language can be deemed unconscionable in *Nevada Revised Statutes* (NRS) Chapter 108. We have questions of how necessary this bill is. We have not seen data or any indication that this issue is an increasing problem that needs to be addressed, or that NRS Chapter 108 is not adequately addressing the problem. We appreciate the opportunity to continue working with the sponsor, but at this time, we are opposed to the bill.

Assemblywoman Neal:
It makes me sad that you feel that this session is antibusiness. What would you suggest to make the bill more balanced? Other than reading the contracts, what can consumers do to share the responsibility for these contracts?

Bryan Wachter:
I am not sure that there is an amendment that we would be comfortable with that could convince us to support the bill. In an industry that does nothing but create products and services for people to utilize, I think form contracts are necessary. If a consumer is presented with a potential service contract, and they do not agree with it, then we hope that the consumer evaluates how necessary the service is in their individual context. To presume that all businesses are behaving badly, and to require them to prove otherwise in order to deem the contract valid, contradicts the original intent of the contracts.

Assemblywoman Tolles:
This is a larger conversation to be had, but how can we address the need to put contracts into layman's terms for consumers to better understand, or the need to provide a snapshot of larger agreements, as an alternative to this bill, which takes a more punitive approach? I am curious if you are aware of efforts to require providers of goods and services to provide plain language summaries in contracts for consumers.

Bryan Wachter:
We could not agree more, and those discussions are taking place in relation to data security and online privacy. I think it is incumbent upon us, as individuals, to better understand what data and information about ourselves we are exchanging for the use of a product or service. When the product is free, we are the product. California has attempted to address the issue, and the European Union has further addressed the issue. Websites that inform visitors about their cookie policy before entering the website are a result of language from the European Union. These are conversations that we want to engage in, but we feel that the bill addresses the issue haphazardly.

Assemblyman Daly:
I disagree with your statement that this bill attacks businesses. Unfortunately, there are bad actors in the industry, and businesses do not include certain clauses to benefit the consumer, or to be fair. The contracts are one-sided, and that is a problem. The provisions are written in a contract, not for the consumer's benefit, but to protect the business against a consumer exercising their rights. I do not see this bill as an attack on business, and I do not believe this body does either.

Bryan Wachter:
Form contracts are used to dictate what will happen in certain situations. They state that a consumer will agree to the following principles while utilizing goods or services, which is why the form contracts are consistent across different service providers of the same type. I think there are a lot of components of the bill that seek to identify, by definition, that all businesses have ill intentions, and it is incumbent upon the business to prove that they did not enter into the contract with ill intent. This is where I derive my frustration of the attack on business.

Assemblyman Daly:
If a contract includes an unconscionable provision, the consumer should have some recourse in the case they are harmed.

Paul Young, representing Nevada Resort Association:
We are opposed to the bill in its current form for several reasons. However, we look forward to working with the bill's sponsor and coming to a resolution on A.B. 197.

Jonathan P. Leleu, representing National Association for Industrial and Office Parks:
We would like to thank Assemblyman Flores for working with us. He brought up our biggest concern, which was ensuring that the focus of the bill was consumer contracts and not business-to-business contracts. We want to ensure that the focus is honed and does not expand to construction contracts, commercial leases, or other business contracts. The National Association for Industrial and Office Parks will continue to work with him going forward as well to make this a better bill.

Kerrie Kramer, representing International Market Centers:
We agree with Mr. Leleu's statement. I met with Assemblyman Flores as well and discussed the same concerns. We are committed to all of the same things.

David Cherry, Government Affairs Manager, City of Henderson:
We also appreciate the sponsor's willingness to work with us. We certainly support the goal of ensuring fairness in contracts. The City of Henderson wants to ensure that our residents and consumers are protected, and that there is transparency, fairness, and honesty in contracts. The City of Henderson does not engage in venue shopping and we generally do not have forced arbitration clauses in our contracts.

That being said, there are a few sections of the bill that we have concerns with, and we would appreciate being included in any working groups that the sponsor may convene. Our first concern is with section 1, subsection 1, paragraph (a), subparagraph (2) which would allow the circumvention of the motion to dismiss the phases of litigation. We are also concerned with section 1, subsection 3, paragraph (b) which could affect the validity of existing case law that supports severability clauses and contracts. Lastly, we are concerned with the language that addresses the drafters of contracts. However, we have not had the chance to review the friendly amendment which may address one portion of our concerns.

Nick Vander Poel, representing Reno Sparks Chamber of Commerce:
I echo much of what my colleagues in opposition have said, but look forward to working with the bill's sponsor and the working group.

Chair Spiegel:
Is there anyone else who wishes to testify in opposition? [There was no one.] We will now hear from those with neutral testimony.

Craig B. Friedberg, Lawyer, Law Offices of Craig B. Friedberg, Las Vegas, Nevada:
I am testifying in support of the bill. The preamble of the bill states that there are other statutes, such as NRS Chapter 104A, that address unconscionable contract terms. However, there are no objective criteria for a court to determine which contract provisions are unconscionable, and I believe this bill addresses that problem. The bill presents seven objective criteria for a court to review and make their determination. The bill also includes the ability for a party to present evidence for a court to review to determine whether the presumption of unconscionable contract terms should be overturned. I do not see the language having a negative effect, especially on consumers, who do not have the ability to omit language from a contract that is presented to them. In regard to the forum-selection clause, it is unrealistic to expect a consumer to defend themselves in an out-of-state forum when all of the transaction elements took place in Nevada and there was no notice of a forum-selection clause. That is a provision that needs to stay in place. There are other statutes, such as those that regulate leases, that address unconscionable contract terms, but they do not include what this does—specific criteria that a court can follow. In regard to allowing for attorney's fees, other statutes address this issue if a court finds that a party has included an unconscionable provision which has harmed a consumer.

Assemblyman Flores:
I want to clarify a point that has been made that I feel is disingenuous. Throughout the history of the Legislature, this body has consistently created laws that address bad actors' behaviors. To say that this bill attacks all businesses is the equivalent of saying that a bill that bans murder presumes that all humans are murderers. It is a scare tactic for an individual to express that a bill punishes everyone, but does not cite a specific section of the bill that does this. No one opposing the bill has demonstrated why it would be better to pursue arbitration as opposed to utilizing our court system. No one addressed why businesses have contracts like these. It is much easier to use a scare tactic in their arguments than to discuss the issue logically.

I am a small-business owner. My law partner and I employ eight people, and this legislation will directly impact me. In fact, we write arbitration language into our contracts. I understand that while I may be a good actor, not every business owner is a good actor. I value my clients enough to change my practices in order to ensure that they are protected from bad actors. I am sure that most people in this room, and the clients they represent, are good actors. In fact, I think that most businesses represented in this building will likely not have to address this concern as much as other businesses. I want to make it abundantly clear that A.B. 197 is not an antibusiness bill. The issues addressed in this bill are real problems that occur in Nevada and nationwide. These discussions are not only happening at the state level, but they are happening at the federal level as well because they are huge problems. Unfortunately, some businesses are bad actors, and we must regulate all businesses as a result.

We can be pro-business and also be pro-consumer. We can be pro-business and also provide a harmed person the right to utilize every remedy that is afforded to them by state and federal law. We can be pro-employer and ensure that employees have benefits and protection, and ensure they will be made whole if they do not.

Lastly, I understand the notion that a consumer can choose not to sign a form contract for certain services. Technically, people could probably survive without each individual product or service, but a human being could not opt out of every form contract and reasonably survive. If they have a choice, it is a false choice. It seems like they have a choice, but if they were to decline each form contract, they could not operate, work, and function within our society.

I look forward to working with the stakeholders who have concerns. I will work with them to the extent possible, but I cannot take away the teeth of this bill because that would discredit what we are trying to accomplish.

[(Exhibit K) was submitted, but not discussed, and will become part of the record.]

Chair Spiegel:
I will close the hearing on Assembly Bill 197. We will open the floor for public comment, either in Carson City or in Las Vegas. [There was none.] The meeting is adjourned [at 4:37 p.m.].

RESPECTFULLY SUBMITTED:

_____
Katelyn Malone
Committee Secretary

APPROVED BY:

_____
Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of a PowerPoint presentation titled "A.B. 170," dated March 20, 2019, presented by Assemblywoman Ellen B. Spiegel, Assembly District No. 20.

Exhibit D is a proposed amendment to Assembly Bill 170 presented by Dan Musgrove, representing Healthcare Reform Coalition.

Exhibit E is written testimony presented by Christine Noellert, Group Leader, MS Invincibles, regarding Assembly Bill 170.

Exhibit F is written testimony by Janet L. Kallet, Private Citizen, Sparks, Nevada, regarding Assembly Bill 170.

Exhibit G is written testimony authored by Vivian Leal, regarding Assembly Bill 170, presented by Laura Hale, Private Citizen, Carson City, Nevada.

Exhibit H is a letter dated March 19, 2019, to Assemblywoman Spiegel, authored by Amber Federizo, Co-Medical Director, Hemostasis & Thrombosis Center of Nevada, Las Vegas, Nevada, in opposition to Assembly Bill 170.

Exhibit I is a proposed amendment to Assembly Bill 197 submitted by Bailey Bortolin, Coalition of Legal Service Providers, and presented by Assemblyman Edgar Flores, Assembly District No. 28.

Exhibit J is a letter dated March 20, 2019, to Chair Spiegel and members of the Assembly Committee on Commerce and Labor, authored by Aviva Gordon, Legislative Committee Chairwoman, Henderson Chamber of Commerce, and Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce, and presented by Aviva Gordon, Legislative Committee Chairwoman, Henderson Chamber of Commerce, in opposition to Assembly Bill 197.

Exhibit K is written testimony submitted by Jenny Reese, Vice President, Nevada Land Title Association, in opposition to Assembly Bill 197.