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

Eightieth Session
April 3, 2019

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:35 p.m. on Wednesday, April 3, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconference 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
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

Assemblywoman Sandra Jauregui (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Dave Ziegler, Majority Leadership Policy Analyst
Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel

Karen Easton, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Peter J. Goats, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada
Jennifer Jeans, representing Coalition of Legal Services Providers
Shane Piccinini, representing Food Bank of Northern Nevada; and Human Services Network
John Sande IV, representing Nevada Franchised Auto Dealers Association
Jesse A. Wadhams, representing Las Vegas Metro Chamber of Commerce
Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association
Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada
Aviva Y. Gordon, Private Citizen, Henderson, Nevada
Chris Ferrari, representing Nevada Credit Union League
Connor Cain, representing Nevada Bankers Association
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Alfredo Alonso, representing American Legal Finance Association
Keith L. Lee, representing Injury Care Solutions

Chair Spiegel:
[Roll was called. Committee rules were explained.] I am going to move the presentation on payday lending from today to Friday's agenda. We will now open the hearing on Assembly Bill 477.

Assembly Bill 477: Enacts provisions governing the accrual of interest in certain consumer form contracts. (BDR 8-935)

Peter J. Goatz, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada:
I am here in support of Assembly Bill 477 which includes the Consumer Protection from the Accrual of Predatory Interest After Default Act. Too many Nevadans are at the mercy of form contracts which contain provisions that a consumer does not get to bargain for, including the charging of high interest rates years after they have defaulted on a debt. I would like to give an example, which is also in my written testimony that was submitted (Exhibit C).

In February of 2015, a 24-year-old cosigned for the purchase of a vehicle on credit for his cousin. The sale was in the form of a retail sales contract. The total purchase price was about $11,500, of which $10,200 was financed at 23.99 percent for 42 months. His cousin fell behind on payments, and in April 2016, the vehicle was repossessed by the finance company and sold. At the time of the repossession, about $11,625 was owed. The vehicle

was sold, and after costs and credits were assessed, a deficiency remained of approximately $8,000. After waiting almost a year while interest accrued at 23.99 percent, the finance company then sued both individuals to recover the deficiency. A default judgment was entered in May 2017 for the principal amount of $8,000. After adding attorney's fees, costs, and prejudgment interest, the original bargained-for contract was the same price as after the deficiency judgment was entered. The 24-year-old then came to the Legal Aid Center for assistance. Because this had been going on since April 2016, and interest continued to accrue at 23.99 percent, after just three years the interest had increased by almost $6,000.

While consumers may understand what they are signing up for when they are purchasing a vehicle, they do not understand that they are agreeing to 24 percent or more interest in perpetuity. What they do not foresee is the scenario that after a year the car breaks down, it gets repossessed because they cannot afford the repairs, and they cannot afford to make payments on a vehicle they cannot use. The creditor can sit on these loans that have been defaulted on for up to four years while interest continues to accrue at that very high rate. The default judgment can last forever—until collected. Nevada law states a judgment lasts for six years, and can be renewed every six years.

I will now walk you through Assembly Bill 477. Sections 1 through 8 set forth definitions to be used in the construction of these contracts. It defines a consumer form contract; the retail sales contract is one form of these consumer contracts. These are contracts of adhesion, and the consumer has little or no say in the negotiation of the terms of the contract. These are forms that are presented on a take-it-or-leave-it basis. They may be used for the purchase of furniture, vehicles, or services. Usually these contracts call for performance over a period of time, and generally for installment payments.

The Coalition of Legal Services Providers has submitted an amendment (Exhibit D). In section 8, it would define "consumer form contract" to not only include a contract that was drafted by the business, but also a contract that was drafted by a third party for use by the business.

Section 10 of the bill would exempt out a wide range of businesses, including banks; mortgage lenders; business, commercial, and agricultural lenders; and high-interest title loans and check cashing businesses. Section 11 contains a choice of law provision and forum selection clause. This would ensure Nevadans receive the benefits of Nevada law and not have to go to a foreign jurisdiction to resolve their disputes.

Section 14 deals with what happens if one of these form contracts contains a provision that is prohibited by this act. I think it is a little unclear, because it says, "If only one provision of a consumer form contract violates this chapter, a court may refuse to enforce other provisions of the consumer form contract as equity may require." The court could either sever that provision or void the entire contract.

Section 15 states that contracts entered into with consumers and businesses who were not properly licensed by the state would be void. Section 16 limits the cause of action by which the creditor can sue the consumer for breach of contract.

The Coalition has proposed an amendment (Exhibit D) that would further define what defaults would trigger the right of a business to initiate an action to recover on the defaulted consumer form contract. The two limits are: when a consumer fails to make payment; and when the relationship between the parties is such that it is significantly impairing the collateral assets. The burden would be placed on the creditor to establish that sufficient facts exist that there is an impairment on their part.

Section 17 talks about the prevailing party in an action. If the business is the prevailing party, they can receive interest at the statutory interest rate, which is two plus prime, for the amount set forth in the contract. Section 18 deals with attorney's fees. We often see attorney's fees in these low dollar amount cases well in excess of the actual principal that was loaned. This section would limit that to either 15 percent of the principal amount of the debt, excluding otherwise chargeable attorney's fees and costs, or a reasonable hourly rate multiplied by time. Section 19 makes attorney's fees reciprocal. We often see in these consumer form contracts that they only run to one party—generally to the business and not to the consumer.

We submitted an exhibit which outlines the pre- and post-judgment interest rates from other states (Exhibit E). Many states have similar laws that would drop the interest rate down after a default to their state maximum—we do not have that. This bill would correct that.

Chair Spiegel:
Ms. Jeans, do you have anything to add to the presentation?

Jennifer Jeans, representing Coalition of Legal Services Providers:
I do not have anything to add but Mr. Goatz and I are available to answer any questions.

Chair Spiegel:
Would this bill limit the accrual of interest based on the period from the date of the judgment until it is collected? Would accrual of interest stop on the date of judgment?

Peter Goatz:
The intent is that the default interest rate, the lesser of two plus prime or what is stated in the contract, would run from the date of default throughout the collection of the judgment.

Assemblywoman Neal:
I am not sure I understand the language you are proposing in section 11, subsections 1 and 2, regarding choice of law. Could you please explain that?

Peter Goatz:
In the consumer form contracts, the choice of law often indicates other states. While there are standard rules of construction in legal cases, this would direct the court to ignore what the contract says regarding the jurisdiction, and require that Nevada law apply to a consumer form contract against a Nevada consumer that is entered into in Nevada.

Assemblywoman Neal:
That is my understanding of how it reads, which is why I disagree with it. Typically, under choice of law and contract provisions, there are several things set out in terms of case law. It is not just where the person resides, where the contract negotiations occurred, and other various things. I have some concerns with following state law versus the other rules of construction that are out there. I do not like that it is all going to be in this state, which may not be the proper venue.

Peter Goatz:
I think we can address your concerns. This bill is really focused on contracts that are signed while the consumer resides in this state. The intent of this bill is that it should only apply to contracts entered into in Nevada, with Nevada consumers. Generally, a creditor has to sue the defendant either where the contract is made or where the defendant resides. This is to say if you are going to sue a Nevada consumer in Nevada, use Nevada law.

Assemblywoman Neal:
That is why I think the provision is obsolete. The law will lead them here if it is proper for the case to be here. To exclude any option that it be in another state does not make sense. You do not need the provision if the majority of what happened occurred here. I do not understand why you need section 11 at all.

Peter Goatz:
That is true. Except in these form adhesion contracts where the choice of law provision and the form section clause is not bargained for between the consumer and the business it is on a take-it-or-leave-it basis. In these contracts, they may select a different choice of law and a different forum to litigate in even if the consumer is in Nevada. That would be binding because it is a contract and everyone agreed, in theory, to litigate their claims in another state.

Assemblyman Kramer:
I agree with Assemblywoman Neal. I could construe this to say that if I bought the car and moved to Nevada, this contract is now void because it does not require Nevada law. Whatever else you are amending, I think you need to touch that up. The rule of law in this ought to be where the contract was signed, or where the person lives. I think the way it is written could be deceptive.

Peter Goatz:
We would be happy to work with you to craft language that would satisfy your concerns.

Assemblyman Kramer:
I do not see a harm to the public by doing this. I am a little concerned because it sets the interest rate at default. If someone completes their contract, everything is fine; if they do not complete the contract, that is when this comes into play. The issue on these types of loans is related more to the disclosure up front. If you are signing a loan for 23 percent interest, it is probably because you have bad credit; they do not expect it to be paid off. I do not see anything in this bill that causes for disclosure beyond someone just wanting a car and going in and buying it. You have the change in interest, the change in the contract, and it seems like the part that would be most beneficial is to educate someone up front.

Chair Spiegel:
Is there any testimony in support of Assembly Bill 477?

Shane Piccinini, representing Food Bank of Northern Nevada:
When the recession hit in 2008, there were a lot of people who had great jobs and great credit. Through no fault of their own, they lost everything because the industry they were working in collapsed. In those situations, there are very few places people can go. In 2015 we were serving over 100,000 people every month; currently we serve 90,000 a month. When working with our clients through the Getting Ahead program, one of the biggest hurdles they had to financial stability was being able to pay off the short-term loans they had to get in order to keep from losing everything. In some cases, they lost their house and were just trying to hang onto their car. In other cases, they lost both and were trying to figure out how to get money together to put a deposit down on a weekly rental, or another rental someplace else. I thank the bill sponsors for bringing this forward, and I appreciate your time.

Chair Spiegel:
Is there anyone to testify in opposition?

John Sande IV, representing Nevada Franchised Auto Dealers Association:
We have reached out to the bill sponsors and they have agreed to work with us on some of the concerns we have. Without the amendment, the bill did not necessarily apply to us. The retail installment contract is governed under *Nevada Revised Statutes* Chapter 97, which provides the Commissioner of Financial Institutions shall provide the form for the retail installment contract for a motor vehicle sale. The Commissioner is actually the one who has promulgated that document. It has been in place for a number of years, and has been amended for a number of years. We worked with Legal Aid on a number of occasions to provide what those provisions would look like. In addition to being promulgated by the Financial Institutions Division, it is also required to comply with the federal Truth in Lending Act (TILA). The TILA is to provide disclosure to customers.

A retail installment contract outlines the annual percentage rate, breaks down what the finance charge is, tells the total amount financed, and the sales price. That is all required under the TILA. In addition, there are a number of other disclosures. New car dealers have relationships with banks and credit unions; it is our job to shop interest rates for our

customers—the contract will then be assigned to the creditor. Our dealers do not typically hold the notes and are not servicing them. A lot of this probably would not apply to us. There are some times when financing falls apart; it is rare, but the dealer would then be required to hold the note. My concern is if something is inconsistent with this law, it would invalidate the entire contract. I think that would be a concern for commerce generally.

Regarding attorney's fees, I did not read it to be reciprocal. It looks like only the debtor is able to receive attorney's fees. Another provision of concern is that if the debtor chooses, he may actually request the attorney's fees that the creditor paid his attorneys. The Federal Arbitration Act (FAA) permits contracts in commerce to have arbitration clauses to try to officially handle disputes. Some of our contracts do have arbitration clauses, and some do not. I believe that is preempted by federal statute.

Assemblyman Kramer:
Do your contracts state that if they go to court it would be in Nevada?

John Sande:
I think it says the forum of the creditor; I do not think it specifically says which state has jurisdiction.

Jesse A. Wadhams, representing Las Vegas Metro Chamber of Commerce:
We have some concerns with the language used in the bill. Throughout the bill it makes these contracts void rather than voidable. The distinction might be useful as you are working with the trier of fact. I do think prohibiting arbitration is covered by the FAA. Section 16 of the bill mandates only using breach of contract as the cause of action, and specifically includes the concept of quantum meruit. This raises a concern because you have voided a contract; somebody could get the benefit of at least part of the bargain without ever having paid for the value that was received.

The way I read section 19, it turns the concept of attorney's fees on its head. Typically, if you are recovering attorney's fees, it means you are not paying to defend your rights. If you were suddenly able to have the option to take the attorney's fees that were paid to the other side, it does sort of make it more of a punitive issue rather than a recovery of that which you were using to defend yourself.

Assemblywoman Hardy:
Are you referring to section 14 when you said it would make the contract void instead of voidable?

Jesse Wadhams:
It is actually used in a few places; I noted it in sections 13, 14, 15, and a few other places.

Assemblywoman Hardy:
Are you saying that the whole contract would be void?

Jesse Wadhams:
That is the way I read the bill.

Assemblyman Yeager:
I agree that section 19 is worded in an unusual way. I imagine the intent is for debtors who are not represented by counsel. What if we added a prevailing party, if successful, would be entitled to recover some kind of civil penalty? I think the intent is probably to recognize that as a debtor, going through litigation is not a nice process. If you finally win, you are not liable, but maybe you should be compensated in some way for having gone through that.

John Sande:
It might be more appropriate for the financers to answer that question, since they are typically the ones that would have to deal with this—I do not think the car dealers would. I think in the worker's comp realm, typically you are going to litigation because an insurer has denied a claim for injury and there is potentially some bad faith components to that; but it is a slightly different litigation than a creditor that is going after money owed to him or her. I agree with you that litigation today is more impactful, more than just financially; also from the time perspective and the emotional factors that go into it. I do think that worker's comp and adversarial proceedings are somewhat different, and maybe would not justify a civil fine.

Assemblywoman Neal:
How do you interpret section 16?

Jesse Wadhams:
It reads to me as if the only cause of action is whether or not the contract was performed. I think it says that the person enforcing the contract can only say, did you or did you not breach, but the opposing party can come back with a whole host of defenses that can be alleged as causes of action. It changes the nature of how these would be litigated.

Assemblywoman Neal:
That is how I interpret it. I know under contracts you may have six or seven more defenses. Regardless of the cause of action asserted, a consumer may raise a defense based on the reasonable value—it changes the structure of how contract rules work and how you set up a cause of action. If you are challenging a contract, it now says, here are the rails for which you can have a defense. Do you have some concern about that?

Jesse Wadhams:
I think you hit on a few of those issues with regard to how section 16 reads. It says that the person enforcing the contract can only say, did you or did you not breach, yet the opposing party can come back with a whole host of defenses that you cannot allege as causes of action. It does change the way cases would be litigated.

Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association:
Ditto to what was said by Mr. Wadhams and Mr. Sande. I would like to address a couple of questions from Assemblyman Kramer. With respect to cosigning on a loan, as part of the

retail installment contract, it lays out every part of the deal: the cost of the vehicle, sales tax, sales tax credit, et cetera. There is a law library of approximately 25 different forms—one of them specifically addresses cosigning on a loan. At the top of the form, in bold letters, it says that by cosigning on this loan you own the debt as well as the other individual. I cannot say how nonfranchise dealers operate, but it is part of the contract for franchise dealers. If the cosigner does not acknowledge and sign it, then the deal does not move forward. Section 9 could have a negative impact on consumer protection.

Assemblywoman Carlton:
I typically do not associate these high-interest loans with franchise dealers. I associate them with the small car lot on the corner. How would this affect franchise dealers?

John Sande:
I do not think the impact on the auto dealers will be too significant. In the franchise environment, we are assigning the papers to the banks that we made the arrangements with. Our concern would be that our retail installment contract, which was promulgated by the Commissioner of Financial Institutions, would need to be reworked, revised, and go through the regulatory process to accomplish that. The small car dealers typically hold onto their notes, have their own financing arm, are the ones who are going to repossess the vehicles, and are the ones who try to make collections. New car dealers do not do that.

Assemblywoman Carlton:
Do you want to sell cars to people who can afford them?

John Sande:
I would like to put an exclamation behind yes. We are not out trying to sell cars to people who cannot afford them.

Assemblywoman Carlton:
My perspective on this bill is we have a subset of people who are the bad guys, not the ones in this room, but dealers who are selling cars to people who cannot afford them.

John Sande:
I would like to think so, and I appreciate your comments.

Chair Spiegel:
If this bill were to be amended to deal with some of the contract concerns that Assemblywoman Neal pointed out—the arbitration concerns that were addressed, the attorney's fees, and a limitation where the provisions of this only kicked in if the interest rate charged on the initial loan were above a set percent, would you then be supportive of this bill?

John Sande:
I think you addressed every concern we had. I do not know why we would not support that measure.

Andy Mackay:
Take this as a punt; the devil is in the details. I cannot make a commitment until I actually see it on paper. I do not mean to be evasive, but I think the Committee respects that position until I actually see it. It would certainly make the bill much more palatable. We have to take into consideration our financing partners.

Chair Spiegel:
Can I at least get a commitment to working with the bill proponents?

Andy MacKay:
You have that commitment.

Andy Peterson, Vice President, Government Affairs, Retail Association of Nevada:
Ditto Mr. Wadhams' testimony.

Aviva Y. Gordon, Private Citizen, Henderson, Nevada:
I am a small business owner and member of the Henderson Chamber of Commerce. We are here in opposition to Assembly Bill 477. [She submitted and spoke from (Exhibit F).] We have concerns with sections 13 and 14. In section 13, the prohibitions in the form contract language may affect a choice to do any business within the state of Nevada. Those limitations may adversely affect the ability of consumers to receive goods and services that they are currently receiving from the state of Nevada. In section 14, the language in the first sentence indicates that a contract that violates the chapter would be void and unenforceable. It goes on to say, if there is only one provision of a consumer form contract that violates the chapter, a court may refuse to enforce other provisions of the contract. I think the current status of Nevada law is if you can sever out offensive terms within the contract, the rest of the contract should survive. The concerning language is the first sentence; the balance of section 14 embodies the current state of Nevada law, and that is the way it should continue. We are willing to work with this Committee or the sponsor to arrive at a resolution.

Chair Spiegel:
Is there anyone to testify in neutral?

Chris Ferrari, representing Nevada Credit Union League:
I am here in the neutral position, but would like clarification regarding sections 9 and 10. Section 10 specifically says, "Except as otherwise provided in section 9." While there appears to be a clear delineation or exemption for credit unions on page 3, line 13, the first line referencing back to section 9 raises a question. We just want to make sure we are not limited from offering all of our customers different options along the way.

Connor Cain, representing Nevada Bankers Association:
We share the same question the credit unions have and believe there might be some ambiguity in section 10.

Peter Goatz:
We just want to thank the bill sponsor and the Committee for considering this issue. We will be working closely with the people who testified to resolve their concerns, as well as the concerns of the Committee.

Chair Spiegel:
We will close the hearing on Assembly Bill 477 and we will open the hearing on Assembly Bill 305.

Assembly Bill 305: Revises provisions relating to certain financial transactions. (BDR 52-1060)

Assemblyman Edgar Flores, Assembly District No. 28:
For my presentation of Assembly Bill 305, I will first offer a quick overview of presettlement loans and/or presettlement funding loans, sometimes referred to as lawsuit loans. I will then explain some of the issues we have identified; specifically how consumers are sometimes taken advantage of. Third, I would like to walk you through the conceptual amendment (Exhibit G). The only thing I will be using from Assembly Bill 305, as currently drafted, are the definitions in sections 2 through 11. I will refer only to the bill when addressing those specific definitions. Everything else will refer to the conceptual amendment.

A presettlement funding contract is when, for example, an individual is involved in a severe car accident and they are not at fault. That person is not able to work for an indefinite period of time, and they need to figure out how to pay their mortgage or other bills they may have. Sometimes they may decide that the best recourse is for them to get a loan. There are companies that will loan money on a settlement check you will be receiving.

I have a specific case to share with you. This particular person was supposed to be in Las Vegas to testify; however, she was in so much pain she was unable to make it. She was confined to a hospital for an extended period of time, her bills were stacking up, and she needed to do something. She was receiving monthly loans from $1,500 to $2,000. She ended up borrowing a total of $71,000 over the course of two years. That $71,000 loan turned into $458,000. When I had the opportunity to meet with her, we tried to figure out how that happened—what went wrong in the contract and how was it possible someone could be charged that much? In reviewing the contract, we think the company was capitalizing the loan. When they received the loan in March for X amount, then they received a loan in April for another amount, they were capitalizing the interest—and it became a huge uncontrollable number.

During conversations with fellow legislators, it was brought to my attention that a legislator of ours had looked into this issue in the past. They had a similar scenario—a constituent went to his legislator and told him that a $9,000 loan had turned into a $75,000 repayment. How is this happening? I realized that on top of the issue of capitalizing the interest, the other thing is that they are operating outside of no cap. In other words, there is no interest cap that they are working with. In addition, the way these contracts are written, the

individual who is borrowing the money has no idea how much they are going to pay back. It is just something they did because they were desperate. When we have desperate individuals who are going to be signing a contract, we need to make sure to set up some protections and safeguards. That is where this conceptual amendment comes in (Exhibit G).

Sections 2 through 10 of the amendment, as previously stated, simply explain the definitions. Section 11 authorizes a licensed provider to enter into a presettlement funding contract with a consumer. A provider can lend money to a consumer as a lump sum or as a series of periodic advances. The provider must set up an open-ended account for the consumer. The consumer can pay off the account at any time without penalty. The contract must specify the maximum amount the consumer may be obligated to pay from his or her award, if any, on the legal action. Section 12 reiterates that there is a 40 percent cap, which falls in line with some of the language we have in *Nevada Revised Statutes* (NRS) Chapter 675. Section 13 indicates that this section allows a licensee to apply for certain fees and charges as may be set forth in loans under NRS Chapter 675.

Section 14 allows the provider to give the consumer a written statement at the end of each billing cycle: if the contract provides for periodic disbursements, the billing cycle is monthly; if the contract provides for a loan in a lump sum, the billing cycle is no longer than one year.

Section 15 lists a number of prohibited acts, meaning the lending company may not: pay commission for a referral; refer the consumer to a specific attorney or medical provider; make a loan to a consumer who has already entered into a funding contract on the same legal action; influence or attempt to influence the consumer's, legal action; agree to take a percentage of the recovery on the consumer's claim; or renew or extend the contract if it results in an annual percentage interest greater than 40 percent.

Section 16 provides that anyone who violates any provisions within this bill will forfeit any interest, charges, fees, or other return of the principal. Section 17 makes it clear that the presettlement funding contract loan is regulated under NRS Chapter 675. Sections 18 and 19 mention other sections that are covered and applicable to this act and the effective date.

Dave Ziegler, Majority Leadership Policy Analyst:
We believe the provisions of A.B. 305 should be moved from NRS Chapter 597, which is Miscellaneous Trade Regulations, to NRS Chapter 675, which is Installment Loans. The main reason is that the Financial Institutions Division already regulates these loans under NRS Chapter 675. The other reason is to characterize these presettlement funding transactions as open-ended transactions, similar to a line of credit. When we talked with Commissioner George Burns about this measure and how to make it as good as it could possibly be, that was the input from the Financial Institutions Division. These are very similar to any other open-ended credit arrangement.

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:

We have been asked to assist in providing information on the subject of this bill. The background given is very good. There are many terms for consumer legal funding, such as presettlement funding, lawsuit cash advances, accident funding, or litigation funding; these transactions can be either pre- or post-settlement. Consumer legal funding is a transaction where the plaintiff in a legal action can be provided money based upon the anticipated settlement of the case. The industry takes the position that this sort of transaction is not a loan; it usually calls for no payment if there is no settlement. Nevertheless, it is a loan secured by an inchoate interest in a possible legal settlement process, and there is still some sort of security interest which would make it a form of lending. In the absence of any other law to the contrary, and to honor the legislative intent of NRS Chapter 675, the Financial Institutions Division has taken the position that consumer legal funding is a form of lending under NRS 675.060, subsection 1.

We currently license consumer legal funding under this general umbrella of NRS Chapter 675 lending, without any specificity for this type of lending. The purpose of A.B. 305 is to provide greater specifics regarding consumer legal funding in order to curb some of the onerous practices that the ambiguity of NRS Chapter 675 creates. One of the presettlement funding abuses we see is unlicensed activity. There are a lot of out-of-state companies on the Internet that people can access and they get a loan through them. When this occurs, the unlicensed lenders are not regulated and examined by the Financial Institutions Division, and they tend to charge interest exceeding the 40 percent annual percentage rate, which is the cap in NRS Chapter 675. If we do get a complaint, we cite the unlicensed activity, bring the lender to task, and oftentimes it gets resolved without having to go any further with disciplinary actions.

The issue of a small loan turning into a huge repayment is the result of compounding interest. Because of the 40 percent cap, the lenders tend to do their loans individually for each advancement. If you need $2,000 for living expenses in month one, they make a loan for $2,000, and then the next month you need another $2,000. What they do is take the second loan, use it to pay off the first loan, and roll the interest into the second loan—so now you are paying interest on interest. If you go through a period where this covers several years, the compounding of interest becomes astronomical. That is how they recover more money in the lending arrangement than the 40 percent cap would permit if it stayed as a single loan. What we do in these instances is very difficult. The NRS allows for this kind of compounding interest, as well as rolling and payoffs—that is the way it operates right now.

We also see what we call "front loading" of interest. They take a loan with a term of six months and say all the interest is due in the first month. Then they begin accruing interest against the total principal and that interest that just accrued in the first month over how many years it takes to settle the case.

Another type of abuse is the sale of loans to other lenders. Oftentimes the presettlement lenders will make the loan and turn around and sell it to somebody else; when they sell it to

somebody else, it again capitalizes that interest, and it begins the whole cycle again. What happens is that loans for less than $100,000 end up costing some individuals more than the actual settlement. There have been complaints where the amount of the settlement did not even cover the amount of the loan—they actually owed money at the end of the process.

We welcome the specificity that Assembly Bill 305 would bring to this because it would make our job at Financial Institutions Division a whole lot easier in regulating this industry.

Chair Spiegel:
One of the things expressed to me by opponents of legislation such as this is that the interest rate needs to be high because these are risky loans, and there is no guarantee of a settlement. If there is no settlement, the loan would not have to be paid back. Does your office have any data regarding how often one of these loans is offered and does not get repaid because the person does not prevail?

George Burns:
We do not have any specific data on that. I know that we currently have nine complaints outstanding in this particular category.

Chair Spiegel:
Do you know if there is any way for us to get a sense of how risky these loans actually are?

George Burns:
I do know they do a very rigorous underwriting before they even make a loan. They are in consultation with the lawyer representing the client asking questions. What is the amount? What is the probability of settlement? They do not make these loans frivolously. I never heard of an instance where they were totally out because there was no settlement at all. What I have heard is there was pressure put on the client to settle sooner, and for an amount lower than perhaps they would be able to get just to get the loan paid off.

Assemblyman Yeager:
In section 11 of the conceptual amendment, subsection 2, the agreement itself contains a statement of the maximum amount the consumer may be obligated to pay. How would that be calculated? I read the bill to indicate you can charge interest and other fees.

George Burns:
The intent is that instead of making these individual installment loans, it would become an open line of credit. The underwriter would say, Okay, we believe your case is going to be able to settle for $200,000—because of our risk, we are willing to loan you $100,000—that is your credit line on this. If this loan should go for this period of time, then this is the maximum amount you would be obligated to repay. It is the same amount you would see in any Truth in Lending statement on a loan.

Assemblyman Yeager:
In section 14 it refers to providing a statement of the balance owed. Could we add into section 14, in addition to the actual individual, that any attorney of record would receive notice as well? Typically, the attorney is involved in this process to advise the lender about the risks of litigation. I think it might make sense that both the borrower and the attorney receive statements.

Assemblyman Flores:
Absolutely. I think that makes a lot of sense.

Assemblyman Yeager:
Section 18 of the conceptual amendment says this is not retroactive to loans that have been entered into before October 1, 2019, until the contract is extended or renewed. Does this mean if the contract is extended or renewed this provision would then apply?

George Burns:
I think the purpose is because these types of lending arrangements go on for years and years. When a loan did come up for extension or renewal, it would fall under these provisions. Currently, we only have about four companies that operate in the state of Nevada doing this kind of lending right now. They will be made well aware of this, and we will give them notice of the requirements and the due dates for those requirements.

Assemblywoman Neal:
Section 12 of the conceptual amendment adds "must comply with the Truth in Lending Act and Regulation Z." How is the billing cycle affected by this?

George Burns:
There are very specific prescriptions within the Truth in Lending Act and Regulation Z regarding how an open-ended line of credit has to be reported. That is one of the reasons we felt that particular lending mechanism would work very well for this.

Chair Spiegel:
Is there any testimony in support of Assembly Bill 305?

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
No one should have to continue to struggle after settling. Assembly Bill 305 protects consumers from being taken advantage of in desperate and vulnerable situations by providing clear regulations and capping the interest rate.

Shane Piccinini, representing Human Services Network:
This is a problem that we see in our network throughout the year. It makes us wonder what we could do differently. I am excited to see this bill come forward. As a community, we are not very good at providing the tools we need to help people when they are in vulnerable and unfortunate situations. Oftentimes they are placed in these situations through no fault of their own. Our credit counselors often struggle with how to help people in these situations. This

is a way to level the playing field, and to try to help people dig themselves out of the situations that they find themselves in.

Chair Spiegel:
Is there anyone wishing to testify in opposition to A.B. 305?

Alfredo Alonso, representing American Legal Finance Association:
We believe the American Legal Finance Association is among the good players on these types of loans. We agree with everything that has been said today. There is a bill in the Senate, Senate Bill 432, that we believe deals a little more from a global standpoint on how to regulate this industry—making sure the disclosures and the attorneys involved are also included, and that many of the nuances of this type of lending would be included. We look forward to continue working with the sponsor.

Assemblywoman Carlton:
The Chair of the Assembly on Government Affairs [Assemblyman Flores] brought forward some issues such as the caps, the rolling installments, the large increases, and no statements of disclosure. Are those types of issues encapsulated in Senate Bill 432 currently?

Alfredo Alonso:
Yes, there is a cap, and we believe there are more protections in the Senate Bill 432. There are obviously going to be different methods in which to ultimately regulate these people. The amendment to A.B. 305 (Exhibit G) treats these like high-interest loans. The concern there is that there is a payback to that. We do not believe this is a loan; this is more of an advance and treated as a line of credit. We would not necessarily agree with that because if the person loses, there is no payback. This is a risk taken by the companies who are loaning that money. If they win, then that is where the payback occurs. In our opinion, that is not a loan because you should not have to pay it back unless you win.

Assemblywoman Carlton:
So is that basically the crux of your opposition? Or is your opposition simply that there is another bill, and you like that one better?

Alfredo Alonso:
Both. To clarify, we have many additional protections. We include the attorneys in that negotiation. This is a very difficult loan to get in the first place, it should be in consultation with a lawyer, and I think there are many protections in the other bill that we would like to discuss with the sponsor and try to come up with something that works for everybody.

Chair Spiegel:
I did not realize there was a trade association website. Do you have any data on the number of times these advances are not repaid to the funders because the person does not prevail, or the settlement comes in and it is less than anticipated?

Alfredo Alonso:
I do not have that, but I can get it for you. I think the association probably has some idea of what that would look like.

Keith L. Lee, representing Injury Care Solutions:
I appear here in opposition to A.B. 305. I furnished a proposed amendment (Exhibit H). My client is different from the ordinary presettlement funding situation that you have heard discussed today. Whether you classify it as a loan, advancement, or whatever, we do not make a loan to the plaintiff or the plaintiff's counsel. We do not grant them an open line of credit. We purchase, at a discount, a medical provider's bill. We then file a lien for the full amount of the bill with the plaintiff and plaintiff's counsel, so when and if there is a settlement, we get paid from that. With respect to my client, we oftentimes continue negotiations after there is a settlement regarding the exact amount to be repaid. If no settlement is received, then there is no recourse back to the plaintiff—the plaintiff and the plaintiff's counsel owe us nothing. We are different than presettlement loans because we do not advance monies directly to the plaintiff, we do not grant any kind of open line of credit, and we do not make a loan. Our only objection to A.B. 305 is in section 6 of the bill [the definition of "presettlement funding"]. At line 29, which corresponds to section 5 of the conceptual amendment, we think the term "or indirectly," should be deleted. I have suggested an amendment and will continue to speak with the sponsor to address my concerns.

Assemblywoman Carlton:
Mr. Alonso, it is my understanding that the people you currently represent are not regulated under NRS Chapter 597. Would they be regulated by moving them to NRS Chapter 675?

Alfredo Alonso:
I believe we have at least one member who is currently licensed under that chapter, if not two. I think the problem is that they are not regulated in at least 40 states.

Assemblywoman Carlton:
Mr. Lee, if your clients stayed in NRS Chapter 597 they would not be regulated. If all the other guys move over to NRS Chapter 675, would that solve the problem?

Keith Lee:
I do not think we fit into NRS Chapter 675 at all, because we do not make loans. To my knowledge, the ordinary factoring company that I referred to is not regulated by any law in the state of Nevada. It is a business between a willing seller, in this case receivables for a medical bill, and the purchaser, with the idea that the factoring company is going to get its profit either from the settlement or in the collection of those receivables.

Chair Spiegel:
I want to get a couple of questions on the record. I think there could be some confusion from Committee members and members of the public about having a discussion about medical receivables factoring in conjunction with this bill. My understanding is that if someone is

injured in an accident and is having medical services performed on a lien basis, that person would never be charged by the medical provider, even if their lawsuit did not prevail. Is that correct?

Keith Lee:
I am not aware of that. If you are asking does a provider of medical services provide a contingent bill to someone who is injured, I have never heard of that situation.

Chair Spiegel:
If it winds up coming back to the consumer for something that had been performed on a lien basis, but then the case was dismissed, did not settle, or the injured person did not prevail, is the consumer charged interest on the balance?

Keith Lee:
What my client does is file a lien for the medical bill with the plaintiff and the plaintiff's attorney. That is the amount that we look to if there is a settlement. There is no interest on that—it is just that amount. Oftentimes if the settlement is less than the anticipated amount, my client will negotiate with the lawyer for the plaintiff to reduce the amount that we would recover. There is no loan agreement or repayment agreement; there is no recourse to the plaintiff.

Chair Spiegel:
So factoring is not a loan to the person who is injured. It is a tool the medical provider has to get payment by selling the debt.

Keith Lee:
That is correct. The two-fold advantage is the medical provider gets paid and does not have to wait, and the plaintiff and plaintiff's family does not have to carry the burden of another bill out there. There is a mutual benefit to both sides.

Chair Spiegel:
Is there anyone who wishes to testify in the neutral position? [There was none.]

Assemblyman Flores:
I look forward to working with all the interested parties in this conversation. There may be a difference of philosophical opinion on certain things, but I will work with everybody, and specifically with Mr. Lee. I think he is outside of the scope of the intent of the bill.

Chair Spiegel:
We will now close the hearing on Assembly Bill 305. Is there any public comment? [There was none.]

The meeting is adjourned [at 2:26 p.m.].

RESPECTFULLY SUBMITTED:

Karen Easton
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 written testimony presented by Peter J. Goatz, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, in support of Assembly Bill 477.

Exhibit D is a proposed amendment to Assembly Bill 477, submitted by the Coalition of Legal Services Providers, and presented by Peter J. Goatz, Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada

Exhibit E is a document dated January 2015, titled "Pre/Post Judgment Interest," submitted by Jennifer Jeans, Coalition of Legal Services Providers, in support of Assembly Bill 477.

Exhibit F is written testimony dated April 3, 2019, submitted by Aviva Y. Gordon, Private Citizen, Henderson, Nevada, in opposition to Assembly Bill 477.

Exhibit G is a conceptual amendment to Assembly Bill 305, dated April 2, 2019, presented by Assemblyman Edgar Flores, Assembly District No. 28.

Exhibit H is a conceptual amendment to Assembly Bill 305 submitted by Keith L. Lee, representing Injury Care Solutions.