

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Eightieth Session
March 8, 2019**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 12:44 p.m. on Friday, March 8, 2019, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Melanie Scheible, Vice Chair
Senator Julia Ratti
Senator Ben Kieckhefer
Senator Pete Goicoechea

GUEST LEGISLATORS PRESENT:

Senator Pat Spearman, Senatorial District No. 1

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Heidi Chlarson, Committee Counsel
Becky Archer, Committee Secretary

OTHERS PRESENT:

Patricia Arquette
Kara Jenkins, Administrator, Nevada Equal Rights Commission
Tiffany Tyler-Garner, Ph.D., Director, Department of Employment, Training and Rehabilitation
Marlene Lockard, Nevada Women's Lobby
Izzy Youngs, Nevada Women's Lobby
Sarah Mahler
Marla Turner

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Donna West
Brooke Malone, Make it Work Nevada
Laura Hale, Indivisible Northern Nevada
Alanna Fitzgerald, Indivisible Northern Nevada
Jeri Burton, National Organization for Women
Mackenzie Baysinger, Human Services Network
Nancy Stiles, Nevada's Coalition for Women's Equity; American Association of
University Women
James P. Kemp, Nevada Justice Association
Molly Rose Lewis, NARAL Pro-Choice Nevada
Christine Saunders, Progressive Leadership Alliance of Nevada
Steve Dolan
Sarah Adler, Nevada Coalition to End Domestic and Sexual Violence
Kimberly Mull
Jared Busker, Children's Advocacy Alliance
Karina Provost, NARAL Pro-Choice Nevada
Sherrie Scaffidi, Transgender Allies Group
Kent Ervin, Nevada Faculty Alliance
Bill Sims
Laura Cadot
Jennifer Cantley
Priscilla Maloney, American Federation of State, County and Municipal
Employees
Paul Moradkhan, Las Vegas Metro Chamber of Commerce
Mendy Elliott, Reno Sparks Chamber of Commerce
Bryan Wachter, Retail Association of Nevada
Tim Brooks
Randi Thompson, National Federation of Independent Business
Craig Madole, Nevada Chapter of Associated General Contractors
Andy MacKay, Nevada Franchised Auto Dealers Association
Kerrie Kramer, NAIOP
Brian Reeder, Nevada Contractors Association
Paul Enos, Nevada Trucking Association
Dennis Perea, Deputy Director, Department of Employment, Training and
Rehabilitation

CHAIR PARKS:

We will open the hearing on Senate Bill (S.B.) 166.

SENATE BILL 166: Revises provisions relating to employment. (BDR 18-5)

SENATOR PAT SPEARMAN (Senatorial District No. 1):

It is an honor to introduce Senate Bill 166 which addresses long overdue changes to Nevada's employment laws—and the enforcement of those laws by the Nevada Equal Rights Commission (NERC)—relating to wages and certain discriminatory actions.

This bill was first drafted in 2015 and heard in the Senate Committee on Government Affairs in 2017. This is the third time this bill is being discussed, and I hope the third time is the charm.

Nevada's law regarding employment practices serves to protect employees from a number of forms of discrimination. A person's employer, an employment agency or a labor organization is prohibited from discriminating against a person based on a person's race, ethnicity, religion, sexual orientation, gender identity or expression, age, disability or national origin. It is surprising, especially with the recent awareness campaigns relating to "equal pay for equal work," that discrimination still exists, and Nevada employment law has not fully addressed issues relating to wage discrimination.

Data varies, but, in general, women in the United States today are paid, on average, only about 80 cents for every dollar paid to men. However, a recent study by the Institute for Women's Policy Research shows this might be closer to 50 cents on the dollar. No matter the gap, a gap still exists. United States Census Bureau data released in 2017 shows this wage gap is worse for women of color. African-American women earn only 61 cents, and Latina women earn only 53 cents for each dollar earned by white males. Over an entire 40-year career, the National Women's Law Center has calculated the career loss wage gap for black women to be \$946,120. For Native-American women, this gap is \$977,720; for Latina women, it is over \$1.13 million. These astonishing statistics underline the reason many women retire in poverty because wages have been unequal.

Caesars Entertainment recently reviewed the pay data of approximately 32,000 of its employees from corporate headquarters and 40 of its properties. This was part of a partnership formed in 2017 with the Billie Jean King Leadership Initiative to launch the Gender Equity Initiative. In September 2018, Caesars announced "no meaningful differences in the average pay of men and

women in almost all jobs” but have committed to conducting regular pay equity reviews to ensure 100 percent equity at all levels.

Other companies such as Starbuck’s, Adobe, Apple and Intel have launched successful campaigns to achieve pay equity. To those companies that may come before you later today saying this cannot be done, that it is a burden or it is too expensive, I urge them to do what is right and follow the lead of these highly respected corporations.

To help address America’s unfair and unacceptable wage gap, former President Barack Obama signed the Lilly Ledbetter Fair Pay Act on January 29, 2009, restoring the protection against pay discrimination that was stripped away by the U.S. Supreme Court’s decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*

You may find S.B. 166 familiar. Former Senator Michael Roberson and I both introduced the same bill in 2015, with the exception of many of the accountability statutes I wanted to present. Last Session, I requested S.B. No. 397 of the 79th Session which, unfortunately, was vetoed. Note that portions of S.B. No. 397 of the 79th Session were approved in A.B. No. 276 of the 79th Session. These provisions prohibit an employer with 15 or more employees, an employment agency or a labor organization from discriminating against a person’s employment or membership for inquiring about, discussing or voluntarily disclosing information about his or her wages. Even with the passage of A.B. No. 276 of the 79th Session, more needs to be done. That is why I am here today.

The Nevada Equal Rights Commission accepts employment discrimination complaints alleging unlawful discriminatory practices. Any individual who believes his or her rights have been violated may file a charge of discrimination with NERC. If NERC determines an unlawful practice has occurred, it may order the person engaging in the practice to cease and desist. For a case involving an unlawful employment practice, NERC may restore all benefits and rights to which the aggrieved person is entitled.

Senate Bill 166 will increase the remedies available to NERC and to an aggrieved employee when employment discrimination relating to wages has been determined. First, section 2 of S.B. 166 clarifies the time under which an employee may bring a claim before NERC relating to an unlawful discriminatory

practice regarding compensation. The bill also requires NERC to issue the employee a notice indicating the time frame under which he or she has the right to sue if NERC determines an unfair employment practice has occurred.

Section 3 of S.B. 166 clarifies if a cease and desist order is issued to a person by NERC for an unlawful employment practice, that order must include the corrective action the person must take. Section 3 also revises the powers of NERC to order remedies for unlawful employment practices. Specifically, this section sets forth a tiered system of civil penalties, rather than a flat civil penalty, which progressively increases if an employer is found to have multiple instances of pay discrimination within a five-year period. I propose \$10,000 for a first offense, \$15,000 for a second offense and \$25,000 for the third offense. Before these civil penalties are imposed, however, the Commission must allow the person found to have willfully engaged in an unlawful employment practice 30 days to take corrective action. As part of my compromise, there is a provision to allow a 30-day cooldown period where the employer and employee can talk about what is going on and see if they can come to some type of agreement. This corrective action option is new from the 2017 bill and provides an opportunity for the person to avoid the civil penalty.

Section 3 also extends the amount of back pay an aggrieved employee will be awarded. In this bill, NERC is authorized to award back pay for a period beginning two years before the date of filing a complaint and ending on the date NERC issues an order regarding the complaint. Furthermore, NERC may require the awarding of reasonable attorney fees to the complainant. As stated in section 1 of the bill, the penalties and fines imposed by the Commission due to a finding of certain unlawful employment practices must be credited to the State General Fund. The Commission may later present a claim to the Interim Finance Committee for the money, if it is required to pay for attorney's fees and/or the costs of an investigation. Section 1 also clarifies the tiered civil penalties I referenced earlier must be deposited in NERC's Gift Fund.

Section 4 of S.B. 166 clarifies the Commission may recover reasonable costs and expenses incurred by NERC, its members, the Administrator or agents from any person who willfully resists, prevents, impedes or interferes with the Commission, its staff or agency.

Section 5 adds applicants for employment to the list of persons who are protected from certain unlawful employment practices.

Nevada law specifies in *Nevada Revised Statutes* (NRS) 613.350 the circumstances when it is not unlawful to hire and employ employees based on religion, sex, sexual orientation, gender identity and age. Specifically, the law says that such considerations are permitted when they are a “bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.” Section 6 offers new language to define this “bona fide occupational qualification” to provide that it is an unlawful employment practice to use a qualification which is based on gender differences or based on a qualification that an employer has refused to change after being presented by an affected person with an alternative practice that would serve the same purpose in a manner less discriminatory on the basis of sex.

Section 7 of S.B. 166 clarifies any person injured by an unlawful employment practice relating to an employee’s or an applicant’s inquiry, discussion or voluntary disclosure of wages or the wages of another employee may file a complaint to that effect with NERC.

Section 8 provides that if NERC concludes an unfair employment practice has not occurred, the Commission must issue a letter stating this fact to the person who filed the complaint. The letter must notify the person of his or her right to apply to the district court for an order relating to the alleged unfair employment practice.

Finally, section 9 of S.B. 166 extends the period of time by which a claimant can bring a case before NERC. Specifically, in addition to the existing time frame, a person may have—whichever is later—180 days after the issue date of the letter described in section 8 to apply to a district court for relief. This should give flexibility and more time based on either the alleged act or the NERC notification of the employee’s rights, whichever occurs later.

These changes help us achieve the goal of encouraging equal pay for equal work and give anyone a remedy when people face pay discrimination.

I worked with several of the chambers of commerce and some other businesses and was presented with a possible list of changes. In response to those concerns, I will justify further the bill’s origin. Specifically, the language in section 3, subsection 3, paragraph (b), subparagraph (3) of the bill, which authorizes NERC to award reasonable attorney fees in cases of unlawful employment practices, was modeled after Title 42 USC section 2000(e)(5).

The language in section 3, subsection 3, paragraph (b), subparagraph (4) of the bill which authorizes NERC to order back pay—including commissions, tips, cost of living adjustments, merit increases, promotions and other fringe benefits—was proposed by NERC during the 2017 Legislative Session.

The language in section 3, subsection 3, paragraph (b), subparagraph (5) of the bill is similar to employment discrimination laws from certain other states.

This language in section 3 authorizes NERC under certain circumstances to order a civil penalty in increasing amounts for an unlawful employment practice NERC determines is willful. The amount of civil penalty is tiered based on the number of violations.

Furthermore, some states such as Massachusetts, Michigan, New Hampshire and Ohio have higher civil penalties. Those states impose a civil penalty of \$50,000 for a third or subsequent violation. I have included a listing of states that impose civil or administrative fines for discriminatory employment practices ([Exhibit C](#)).

Because of the National Conference of State Legislatures, we have made friends across the Country, and I called upon those friends in these particular states to find out if this hurt their businesses. One hundred percent said no.

The language in sections 3 and 4 of the bill authorizes NERC to award back pay for a period beginning 2 years before the date of the filing of a complaint regarding an unlawful employment practice and ending on the date NERC issues an order regarding the complaint. This language was modeled after the Lilly Ledbetter Fair Pay Act of 2009 which was enacted by Congress.

The language in sections 3 and 8 of the bill authorizes the court to impose punitive damages if the court determines that the employer's act or failure to act was the result of malice or reckless indifference. This language was modeled in part after federal law. Since federal law imposes certain caps on punitive damages, to align Nevada with federal law, I have proposed an amendment ([Exhibit D](#)) to revise the language in sections 3 and 8 of the bill to include similar caps to the punitive damages.

We are talking about equality. Two years ago in 2017, we were in this same room talking about equality when we heard the Equal Rights Amendment (ERA). We ratified the ERA, and now we must fix the issue on pay equality.

PATRICIA ARQUETTE:

I am an actress and a mother. But today, I am here as an American woman asking for change, calling for fairness and daring you to ensure equality. That is why it is an honor to be here supporting the passage of S.B. 166, which proposes some long overdue changes to Nevada's employment laws relating to wages and certain discriminatory actions and the enforcement of those laws by the Nevada Equal Rights Commission. In short, this bill makes a number of changes regarding the filing of complaints with that Commission. It expands the remedies the Commission may order when responding to unlawful employment practices, including complaints regarding unlawful discrimination in compensation—commonly known as pay inequity.

It takes courage for a woman to lodge a complaint and rely on laws that are supposed to protect her from retaliation and remedy discrimination. Laws and regulations are meaningless if they do not have real teeth. It is a Herculean effort to have her case heard and hope for a meaningful remedy. Ask Lilly Ledbetter, who is struggling in her elder years daily with the impact of unequal pay on her pension and retirement. The impacts last a lifetime.

I am surprised—given Nevada's trailblazing history of recognizing women—that S.B. 166 is even necessary. In 1914, Nevada became one of the first states in the Nation to recognize a woman's right to vote—a full six years before the adoption of the Nineteenth Amendment to the United States Constitution. In the Nevada Legislature, the first woman selected to a leadership position was Louise Aloys Smith in 1951. Barbara Buckley and Marilyn Kirkpatrick have served as Speakers of the Assembly, and just this week, Senator Nicole Cannizzaro was selected as Nevada's first female Senate Majority Leader. Finally, following the 2018 election, the Nevada Legislature became the first female-majority legislature in the United States. Passing this milestone pay equity legislation in S.B. 166 during the current Legislature is even more important given this incredible accomplishment.

I was fortunate enough to win an Academy Award in 2015. In my acceptance speech, I used that visible platform to demand equal pay for equal work. I was not specifically referring to Hollywood alone in my speech but instead to the

98 percent of all industries in America who pay women less. But visibility alone only goes so far. I flew here today because I care about the women of Nevada; it is my hope you take action today to prove that you do too. I will save the details of the bill for Senator Spearman, who is the primary sponsor of this legislation. Instead, I will share some startling statistics.

According to a 2017 Pew Research Center study, women in the United States earned 82 percent of what men earned. Globally, women earn a mere 23 percent of what men make. For 2019, Equal Pay Day is April 2, the ninety-second day of the year, which symbolizes how far into the year women must work to earn what men earned in the previous year.

It is true Hollywood can command headlines, and many in my industry have spoken about the vast pay inequities in the entertainment business. Take, for example, the reshoots made for Ridley Scott's *All the Money in the World* when it was revealed Mark Wahlberg earned 1,500 times Michelle Williams' paycheck or when Natalie Portman, a fellow Oscar winner, explained that her male costar was paid 3 times as much as she was. Amanda Seyfried noted in an interview with *The Sunday Times* that she was paid 10 percent of what her male costar was making and she felt "we were pretty even in status."

While Hollywood may get the headlines, this problem goes far beyond Hollywood and includes inequities in nearly all job categories. Millions of women Nationwide are carrying this economic burden with little relief. An April 2018 study by the Institute for Women's Policy Research found "women's median earnings are lower than men's in nearly all occupations, whether they work in occupations predominately done by women, occupations predominately done by men, or occupations with a more even mix of men and women." For example, women employed as retail salespersons make 74 percent of their male counterparts, and female managers in all categories earn 23 percent less than male managers. Personal financial advisors have the largest gender wage gap with women earning about 59 percent of men in the same category. That is a corresponding wage gap of 41 percent.

Finally, you might think jobs most common to women would pay women equally or nearly equally to men. Even in these occupations there is a pay gap. Registered nurses, elementary and middle school teachers, and secretaries and administrative assistants make up 13 percent of the female workforce. Despite these numbers, women in these top three female occupations, on average, earn

between 10 to 14 percent less than men. Study after study has shown that female-headed, single-mother households have a substantially higher likelihood of living in poverty. This does not impact women alone. It is also impacting millions of children single mothers are trying to provide for.

We need to reexamine how we view women in the workplace and how we value their worth. It does not make sense that we view janitors and maids differently—men are typically janitors and women are typically maids—and that we pay janitors substantially more. This is why I support S.B. 166.

This bill is an important step toward equal pay and equal treatment in the workplace, and I urge you to pass this critical legislation.

There are women in Nevada who are working full time, raising children and still living in poverty. These women and their children are powerless. They are powerless to enact bills. These women are powerless to draft legislation with real teeth which will meaningfully hold discriminatory employers accountable. Unequal pay for women means it takes them years longer to pay off college loans and to purchase their own homes, and women are twice as likely to retire in poverty as their male counterparts.

These longstanding norms of bias will not change on their own. Business will not correct itself. It never has. Opponents of this bill may claim it harms business. The only businesses that could be harmed are those that are harming women.

The remedy is in this room and in your hands. Women in Nevada can have real economic equality if you want it for them, if you make it happen and if you care. I have the power of visibility, but you have the power to improve the livelihoods of the women of Nevada.

Pay and equality cross party lines. It impacts Republican, independent and Democratic women equally.

It is said that with great power comes great responsibility. I ask that you hold in your minds and your hearts the gravity of the economic circumstances of Nevada's women and children when you vote on this bill.

SENATOR SPEARMAN:

Last summer during one of the Interim healthcare committees, Southern Nevada Health District gave a presentation. The presenter showed several different aspects of children's lives, one of which was their academic success. The presenter concluded that in single-parent households, the academic success was less than in a two-parent household. I asked specifically what the correlating data between single-parent households and economics is. The presenter stated in most of those households, the woman is working at least two jobs. Some people say, "Wow, well, just get one job that pays a lot." It does not work that way. The same people tell us parents should be involved with their children's lives and education. Those are the people who need to support this bill because without equal pay, that mother is still going to have to work two or two-and-a-half jobs, and it is not right.

This is the twenty-first century, and we need to get this done. I worked the last three weeks with members of several chambers of commerce trying to come to a conclusion or compromise. I did accept two: the 30-day cooling-off period and the cap on the remedies. We have been more than fair given what other states have done. Many other states have a floor of 4 employees while Nevada has 15.

There is nothing to be afraid of when you walk into a convenience store and see a sign on the door showing "under surveillance." I am not worried as I am going in to get a soda or chips and I am coming out. That warning does not scare me. If, however, I were going in to do something illegal, I would be concerned about that warning.

As Ms. Arquette said, it does not harm good businesses, but it gives significant encouragement to businesses that are bound to continue to pay women less than their male counterparts.

Other aspects of this bill take into account pay inequities that could be a difference in skillset, longevity and other things. Those are things an employer can tangibly explain. For those that pay employees less based upon gender, in 2019, time is up.

SENATOR KIECKHEFER:

The part added from last Session, is that shown on page 6, lines 8 through 14 of the bill which reads if someone is determined to have violated this law

willfully and would be otherwise subject to a civil penalty, if the employer corrects the infraction within 30 days, the civil penalty is waived?

SENATOR SPEARMAN:
Yes.

SENATOR KIECKHEFER:
On top of page 5 of the bill, the amendment to section 3, subsection 3, paragraph (b) subparagraph (1) where NERC issues a cease and desist from the unlawful practice and includes in the order the corrective action the person must take, is that designed to say what violation must be corrected or to direct specifically what the employer has to do to correct the violation?

SENATOR SPEARMAN:
The order specifically states what the problem is and the corrective action that should be taken. Once the investigation process begins, it should be clear why the person made the complaint and how the employer can correct it.

SENATOR KIECKHEFER:
Is it possible there could be multiple ways to correct an error?

SENATOR SPEARMAN:
There can be. The investigation process does not happen in isolation. The process is meticulous and focused on finding out whether there is an employment practice.

I am a graduate of the Defense Equal Opportunity Management Institute, which is a U.S. Department of Defense school. Before I retired from the military, I was an Army equal opportunity officer for headquarters in an operations center. When complaints came to me, I would investigate to see what happened. I would then report to a two-star general if something was plausible. I give you that background to say I am familiar with how intense these investigations are. I was asked by our general to be the equal opportunity officer because he knew I had a background from the Equal Opportunity Management Institute.

Some people are afraid this bill will give trial lawyers a free pass. That is not true. You heard Ms. Arquette say, and we all know this to be true, many women are being discriminated against even now. There is a possibility women in this Chamber or in the hearing room in Las Vegas are experiencing pay

inequity. These women have to balance keeping their job against being blacklisted or making a complaint and making it difficult at work.

There is a meticulous, detailed and focused process in place. The Nevada Equal Rights Commission is nonpartisan. This issue is nonpartisan because it affects Republican women, Democratic women, independents and nonpartisans. It affects women equally.

SENATOR KIECKHEFER:

I do not deny the problem. I am trying to understand the mechanics of how it gets implemented. When NERC issues the cease and desist, is there flexibility for the employer to decide how to correct the action if there are multiple ways it can be corrected as long as the failure gets corrected?

SENATOR SPEARMAN:

That is a little deeper dive. Nevada Equal Rights Commission will be speaking and you can ask them. I do not want to state something that is incorrect.

SENATOR KIECKHEFER:

Did you consider including a definition of "willful" in statute rather than leaving it up to the regulatory process? I do not know if NERC has other regulatory authority where willful is already defined; if so, will it get copied and pasted into this authority?

SENATOR SPEARMAN:

We did consider it. It is already defined in other places. I appreciate your questions because I had similar conversations with those who oppose this bill. The bottom line is when the investigation is finished, the investigator will know whether it is an "Oops, I made a mistake" or "I don't care." The investigator will also know many offenders in Nevada are repeat offenders. The process we have now is not working. Employers continue to do the same thing over and over again. When you do that and we accept that, that is the definition of crazy.

KARA JENKINS (Administrator, Nevada Equal Rights Commission)

I will answer Senator Kieckhefer's question about how NERC gives the guidance within the 30-day grace period. Nevada Equal Rights Commission is not in the position to tell an employer how to run its business. However, the U.S. Equal Employment Opportunity Commission's (EEOC) guidance for Equal Pay Act of 1963 violations is that a solution is not to lessen the man's pay to make it on

par with the female's pay. The notice from NERC will state cause was found of a pay discrimination by the employer, request solutions and restate the statute, authority and civil penalties as well as request the employer to take corrective action within 30 days.

SENATOR KIECKHEFER:

Does the definition of willful already exist in NERC's regulations?

MS. JENKINS:

Willful is legally defined as intentional conduct or reckless indifference. We will use that same definition.

SENATOR KIECKHEFER:

Page 6 of the bill, section 3, subsection 7, paragraph (b) states if the court determines the employer's act or failure to act was the result of malice or reckless indifference, the court may impose punitive damages. Subsection 7 talks about what happens after an employer fails to correct their bad act. Does the court's determination that the employer's act or failure to act shown in section 3, subsection 7, paragraph (b) refer to the initial act of discrimination or the employer's negligence to remedy it as discussed in subsection 7?

MS. JENKINS:

I will get back to you on that to be sure I provide an accurate answer.

SENATOR KIECKHEFER:

At the top of page 6, section 3, subsection 4 regarding the last couple of lines addressing all unlawful practices which occur during that period and which are similar or related to an unlawful practice in the complaint, what is the intention of the additional language that expands it from the original complaint?

MS. JENKINS:

The EEOC has said that when you have an Equal Pay Act claim, you may also have a Title VII of the Civil Rights Act compensation discrimination complaint. You may pick up two complaints based on the original complaint. It is called a frame charge where the aggrieved person files a complaint, that becomes framed, and the investigator finds the charge also fits under Title VII wage discrimination as well as the Equal Pay Act. There are subtle differences between Equal Pay Act discrimination and Title VII sex discrimination. For instance, Equal Pay Act discrimination focuses on the establishment, so it is the

comparators within that establishment, whereas with Title VII, the Americans with Disabilities Act or discrimination based on sex, it does not have to be limited to your location or your comparator. There are fine-line differences that can be picked up in an investigation. The initial charge expands into other charges.

SENATOR KIECKHEFER:

On page 5, section 3, subsection 3, paragraph (b), subparagraph (4), if there is a discrimination claim on the basis of sex alone, rather than any other protected class, enhanced remedies are available. Are there other instances within statutes you govern where one single-protected class has access to remedies that are different than others?

MS. JENKINS:

Yes. There are instances where the remedies would be different, depending on the complaint filed. For instance, employment has a different scheme of remedies than enjoyment of public space or housing. As an example, if I wanted to access a public restroom and I was denied based on gender identity, actual damages would be the standard, whereas with employment, a back pay matrix is used considering what a person would have earned but for the discriminatory practice. This is inclusive of everything except punitive damages.

The Nevada Equal Rights Commission has looked at this section of the bill and sees it as fair and consistent with our mission. We are encouraged by this particular paragraph.

SENATOR KIECKHEFER:

I appreciate that. My question is related to what the discrimination is based on. In lines 20 and 21 on page 5 of the bill, in cases involving an unlawful employment practice relating to discrimination on the basis of sex, it adds what to consider in calculating the amount to pay as compensatory damages. Is the payment calculation different if a person is discriminated against based on race, sexual orientation or something to that effect?

MS. JENKINS:

It is not necessarily different. It is fully defined and spelled out in this bill to never be mistaken what a female would be entitled to. If someone filed a complaint of race discrimination employment, the employee would be entitled to back pay which could include these provisions. It is just not expressly in statute.

However, Senator Spearman drafted this bill so there is no question what a woman is entitled to. From a negotiations standpoint, when settling these cases, it makes it a lot easier. Through statistics and EEOC data, cases have been identified where women have not received full compensation for their work performed based on substantially similar work or for work they were qualified to do because they were women.

SENATOR KIECKHEFER:

That clarifies my question. I appreciate it.

MS. JENKINS:

As far as NERC's assessment of this bill, it is on par with our mission, and we are encouraged by this legislation. We attached a fiscal note to this bill requesting two additional compliance investigators in anticipation of more cases being filed.

TIFFANY TYLER-GARNER, PH.D. (Director, Department of Employment, Training and Rehabilitation):

I echo Ms. Jenkins' sentiments and support the vision of this work in accordance with the expectations set forth today.

MARLENE LOCKARD (Nevada Women's Lobby):

Few experts dispute an earnings gap exists between women and men. However, the fact remains nearly two-thirds of minimum-wage workers across the Country are female. Unfortunately, women are underrepresented in government which makes changing the laws relating to this condition more difficult. In Nevada, we are no longer underrepresented. Thanks to the perseverance of this Legislature, we have made history.

Now, we need to change the laws in Nevada with respect to women's pay equality. These efforts, and being here today, are not about women like me or all those that have come before me. Rather, it is about women like my legislative assistant, Izzy Youngs. Senator Spearman told you the total cost of loss of wages for poor, underrepresented women in different categories. But even with someone like Izzy who has a bachelor's degree and is now beginning her career, she stands to lose—if we do not take action—over \$713,000 on average over 40 years. It is worse for women of color, as has been stated.

IZZY YOUNGS (Nevada Women's Lobby):

The gender pay gap is not a theory. It is based on years of data and academic studies. Behind every study and statistic are people who knew or did not know their work was being devalued because of their gender or their careers were being devalued because of stereotypes.

I will share my story. When I was 21 years old, I was up for a promotion at my job. It was clear to everyone in my unit I was eager for this opportunity, and I was the most-qualified person in line for the position. I had more progressive responsibility than five or six women below me. When I applied, the hiring manager explained despite being the most-qualified person, there were concerns about the ability of my male coworkers to take instruction from a woman. My employer hired a man, who was not the second, third or fourth most-qualified person. I was, in a way, lucky to receive such honesty.

Not every woman knows why she missed a promotion or was not hired. Some women are told they are not as good at their jobs as their male coworkers. Over and over again, women are internalizing what we get is what we deserve, and our worth is only a fraction of a man's. We deserve more. We are worth more. We are not a fraction or a percentage.

The realization that I was being devalued encouraged me to make a change. I got my bachelor's degree and will get my master's degree. However, according to the U.S. Bureau of Labor statistics, in my field, I may lose over \$450,000 in my lifetime. What is more heartbreaking is even with my master's degree, I may make less than a man with a bachelor's degree. I will have more debt for less financial security.

That is why I need this bill; my friends, mother and future daughters need this bill. The government of Nevada could use this bill as well because it is being shortchanged on the tax it could collect from women's increased economic power. This bill will not bankrupt small businesses or overwhelm prosecutors. As my favorite feminist, Stacey Shinn, pointed out last Session, "Women, with our huge bank accounts, extra time and team of lawyers will not be coming forward in unmanageable droves to wreak vengeance."

We are tired of being a percentage. This will not end sexism or the many other problems and factors contributing to the pay gap. Antidiscrimination laws

should not be performative or symbolic. This bill gives us leverage. We are worth more and deserve to be made whole.

SARAH MAHLER:

I am reading from my written testimony in support ([Exhibit E](#)).

MARLA TURNER:

I am a native of Las Vegas and have been working since I was 14 years old. Today, I am 60 years old, and I have experienced gender bias throughout my entire professional career. It is hard enough to be one of the few women sitting at the decision maker's table surrounded by men and trying to be heard. Then comes the added insult of learning you are not being paid the same as your male counterparts for the same or even higher work.

I spent 27 years working in health care. I have lost out on jobs to male applicants, being told men had priority because the men had families to support. I have seen new male employees hired at a higher rate of pay for the same job I was already doing at a lesser rate. I have been paid less than my male counterparts for doing the same job or even higher.

One time in particular, I was working as a department manager for a large hospital in Nevada. I reported directly to the chief operating officer of the company and was responsible for department operations. I learned that a male employee, whose position was lower than mine on the service grade and who technically fell within my area of supervision, was being paid approximately \$15,000 a year more than I was. He was technically my subordinate. At the time, I was a single mother with two small children. He was a married man with two children and a stay-at-home wife. I was told the salary difference was justified because he was the head of household.

I was further told I did not have the right to inquire about his salary in comparison to mine nor the right to complain about it. My employer vaguely intimated that inquiring or objecting to that practice was illegal, could jeopardize my job and told me in no uncertain terms not to make a fuss about it.

The reality is one's salary is oftentimes seen as a measure of skill level or company value. As such, that measurement tool is flawed and an inaccurate representation of a woman's professional contribution.

Despite millions of homes being headed by women, like I once did, despite women providing the only source of income for many families, women have been penalized for working outside the home for generations. This happens not only during our working career but also in retirement due to receiving lower retirement benefits than we deserve.

To be clear, I made less on the job than male colleagues and subordinates and received less through my 401(k) retirement funds as a result. This impacts me to this day.

Women encounter lack of support on the job regarding child care and scheduling issues when our children get sick. We have been relegated to last position behind men for advancement and lower pay for the same work as our male colleagues for far too long. I urge your support of S.B. 166. Leveling the playing field and creating equal opportunity for all is not just fair but what every person in America is promised when reciting the Pledge of Allegiance of the United States, demanding and promising liberty and justice for all. Pay equity is justice, and I ask you to vote in support of S.B. 166.

DONNA WEST:

I served the State as Administrator of the Department of Motor Vehicles for 30 years. As a public employee, I knew I was paid the same as my male counterparts. I was assured by my equal pay that I could support my retirement goals and my life after public service. Every woman deserves the same right and security that I enjoyed. If women in public service can count on equal pay, all Nevada women in the workplace deserve no less.

As a public employee, I also knew if I was discriminated against in any way, I worked within a system where I was able to raise claims and be assured the claims would be heard. Every Nevada woman in the workplace deserves the same.

Nevada employers must know if they intentionally discriminate in pay based on sex or are recklessly indifferent to women in the workplace, women can and will bring forward claims that will be heard. The employers will be responsible for making women whole. I urge you to support and pass S.B. 166.

BROOKE MALONE (Make it Work Nevada):

I support S.B. 166 because pay equity is one of the paramount issues of our time.

Today, more women are the main breadwinners for their families than ever before but are still paid 80 cents to the dollar of their male counterparts. Black and Latina women earn 61 cents and 53 cents, respectively, to the dollar of their white male counterparts.

In Clark County, women of color are the predominant heads of household and consistently face pay discrimination in their workplaces. We can no longer afford to stay silent about discrimination in salary and earnings. I, too, was one of those women.

In 2013, I was a supervisor with a consulting firm. I managed a team of 60 individuals and oversaw the day-to-day function of their work. I considered myself loyal and hard-working. I was managing people twice my age, so I thought this was a sign that my boss viewed me as an asset and valued my contributions to this organization. Not once did it cross my mind that I was being paid unfairly, but I was wrong.

One day, I was participating in breakroom banter with men who reported to me. The men were going on about how the workload was too much for the little bit of money they were being paid. I concurred with the sentiment as a sign of solidarity, but when one of the men stated his actual salary, I was shocked.

I maintained my composure but was surprised to learn this man who reported to me was making twice my salary. I spoke with my boss and respectfully requested a raise. I was told to wait for my annual review, which would not have been until eight months later.

I was fortunate enough to be able to resign from that position because I was not willing to knowingly be discriminated against any longer. I understand as a single mother not everyone has the luxury to leave a job when issues like this arise.

This story is not unique to me. This is the story of thousands of women across this Country who have been treated unfairly and still find a way to make it work. What is most devastating is according to the National Women's Law

Center, women of color will lose more than \$3.4 million in wages during their career due to the wage gap.

Senate Bill 166 is good public policy to help end discrimination in pay that women face in the workplace. Businesses need to be called out and held accountable for their discriminatory practices.

Our families, friends and neighbors deserve this. We are uniquely positioned as the State with the first female-majority Legislature to pass this bill. I urge bipartisan support for S.B. 166.

LAURA HALE (Indivisible Northern Nevada):

I will read from my written testimony in support of S.B. 166 ([Exhibit F](#)).

ALANNA FITZGERALD (Indivisible Northern Nevada):

I speak today as a licensed Nevada social worker for 19 years, part-time instructor and intern supervisor at the University of Nevada, Reno, and lead for the Economic Security and Fairness Issue Team for Indivisible Northern Nevada.

As an educated, trained and licensed social worker, I tend to look at the world through a different lens than a lot of people. Social workers are guided by both State law and professional ethics.

Three of our ethical principles speak to the issues of pay inequity and employment discrimination: one, to help people in need and address social problems; two, challenge social injustice; and three, respect the inherent dignity and worth of the person.

Our education emphasizes understanding our biases so we can work with our clients—be they individuals, communities or organizations—and maximize the benefit of our work together.

Living and working in Nevada for nearly 50 years, I have seen rampant and blatant employment and wage discrimination in many ways.

I remember the secretary I worked with at a bank in the 1980s. During her annual review, she was told there was a limited amount of money to divvy up for raises and "Well, she was married and the money is needed more by the

men who have families." In those times, it was out on the table and not thought of as wrong.

This is still a common thought today, although sometimes it is expressed in a more nuanced way. A large part of that thought comes from inherent personal and cultural biases by the employers and/or the hiring system. This bill is needed to help educate and guide employers to do what is right. I support this bill.

JERI BURTON (National Organization for Women):

I support S.B. 166. I am the president of the Nevada Chapter of the National Organization for Women (NOW) and also a national board member of NOW.

The National Organization for Women has been working on pay equity since the group began in 1966, when women earned on the average 59 percent of what men earned. Fifty-three years later, we still do not have pay equity. Every year, NOW marks Equal Pay Day—as NOW President Toni Van Pelt said, "No one's favorite holiday"—to show the number of extra days women have to work to earn as much as their male counterparts. For women of color, the gap is wider. This bill would help us erase Equal Pay Day from the calendar.

According to the Institute for Women's Policy Research, pay equity would cut poverty among working women and their families by more than half and add \$530 billion to the national economy. The Wage Project, looking at full-time workers, estimated that women with high school diplomas lose as much as \$700,000 over a lifetime of work, women with college degrees lose \$1.2 million and women with professional degrees may lose up to \$2 million. This follows them into their retirement years, reducing pensions, savings and social security benefits.

I have a similar story in my career. I am a native of Las Vegas. I worked my way up in a company, working 30-some years into a sales position with a manufacturing company in Las Vegas. I found I was paid \$15,000 a year less than a male counterpart for the exact same job. I was in that position for a year when I found out, and it took two years of negotiating to get the raise. I was a single mom with a young son and did not want to rock the boat, so I kept showing my employer my production numbers to show I was qualified. Later, I was involved in a national Equal Pay Day as a NOW president when my employer saw me and called the company lawyer and said "Maybe we ought to give her that raise." I got the raise. I was grateful to get the money, and it made

a difference to me and my son. In talking to Senator Spearman, I realized I lost \$45,000 in back pay in those 3 years. My lower 401(k) contributions and social security benefits will affect me into my retirement.

I am the chair of NOW's ERA Committee and because Nevada ratified the ERA, we reinvigorated activists around the Country to finally put women in the Constitution. Senate Bill 166 would show Nevada is leading the way in pay equity for women. We ask you to support S.B. 166.

MACKENZIE BAYSINGER (Human Services Network):

I want to touch on another community affected by S.B. 166 that has not been mentioned. A study conducted by the Center for American Progress indicates the earnings of female transgender workers fell by nearly one-third following their gender transitions. The same study found earnings of male transgender workers slightly increased following their transition. Transwomen are women and deserve pay equity.

To ensure the health of our economy and the economic security of our Nation's people, we must do more to eliminate the gender wage gap.

NANCY STILES (Nevada's Coalition for Women's Equity; American Association of University Women):

I will read from my written testimony in support ([Exhibit G](#)).

JAMES P. KEMP (Nevada Justice Association):

I am here on behalf of Nevada Justice Association but also as an employee advocate who has represented Nevadans in employment discrimination matters for 19 years. We support S.B. 166. We echo the testimony presented by others in support of this proposal. It will advance equality in the workplace and give the Nevada Equal Rights Commission an important new tool and the resources to pursue the goals of this bill.

MOLLY ROSE LEWIS (NARAL Pro-Choice Nevada):

I have submitted written testimony in support of this bill ([Exhibit H](#)).

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):

I will read from my written testimony in support of this bill ([Exhibit I](#)).

STEVE DOLAN:

Congratulations on the record-setting membership of females in our Legislature. I support S.B. 166 because discrimination is unconscionable. Before I retired a few years ago, I had a small business of 260 employees. At the time, it did not pass through our minds there was any form of discrimination occurring. Everything since then has come to the surface. With this female majority in our Legislature, it is important to remember you cannot fall asleep with the positive aspects which are associated with that.

In the recent election cycle in Reno, I witnessed a new group I have not seen in Nevada called the Proud Boys—and I have been in business here for 30 years. Their specific goal is a discriminatory format against women. This is a hate organization that has existed for a few years. We should be aware of its prevalence in northern Nevada and possibly all over Nevada as it is scary since it is specifically against women and their rights. I come to this position as an employer but also as a husband for 27 years, father of a daughter and brother of three sisters who schooled me well in the 1970s. Please consider S.B. 166 and ratify it for us.

SARAH ADLER (Nevada Coalition to End Domestic and Sexual Violence):

We support S.B. 166. The vast majority of domestic violence victims are women. Economic insecurity is often the barbed wire that keeps women and their children trapped inside violent households. Part of the insecurity is the low wages paid for much of the work traditionally done by women, but it also exists with pay inequity women experience across the spectrum of professions. Pay equity can literally be the difference between life and death. We urge your support of S.B. 166.

KIMBERLY MULL:

I was not planning on testifying today. I came to see Ms. Arquette who is also a champion for victims of human trafficking. While listening to testimony, I realized someone needs to make the case for how pay inequity not only harms victims of domestic violence but also victims of commercialized sexual exploitation in the State.

While we have testimony on how this affects those in the workplace, I have a personal story to show how this also affects our personal lives.

In 2015 when I lived in Texas, I was working on my master's degree full time and substituting as a teacher during the day. I had a standing date with my male friend next door on Thursday nights at a restaurant that had a buy one, get one free flat-rate price for meals. Being the proud liberal woman that I was, I would make the offer to pay for my half of the meal—even though secretly I was struggling to pay my household bills. My brilliant, educated friend, who is now a prosecutor outside of Houston, one time turned to me and said "As long as we can pay you 78 cents for every dollar I make, the least I can do is buy you dinner." At the moment, I laughed it off and since then it has not come up.

Pay inequity is not only an issue with those employing us but apparently also to the men we are dating. These men are not willfully blind to the research showing women are being paid unfairly. In fact, the men are apparently taking notes that the government is saying it is okay.

As a woman, will you please quit telling employers and men I am less valuable than a man literally?

JARED BUSKER (Children's Advocacy Alliance):

The Children's Advocacy Alliance is in support of S.B. 166 for the reasons already stated in this hearing.

SENATOR SPEARMAN:

I am honored to be part of this bill. I know we can do this in Nevada and heard more than enough testimony substantiating the need for this. Those who are already paying equally have nothing to fear. Those who are not should fear.

It does not harm small businesses. I heard a concern small businesses may encounter problems. For example, while one business owner is talking to an applicant, the other business owner is talking to a different applicant. The owners offer different salaries, and one is higher than the other. If the lower salary being offered is to a woman, that is an example of an innocent mistake. I threw this scenario out to small business owners. The small business owners said this situation would never happen because before an owner offers a salary, owners always talk to their business partners, as money is of the essence.

Please consider everything heard today, including the statistics, and pass this bill.

KARINA PROVOST (NARAL Pro-Choice Nevada):

As a college dropout and caregiver to my disabled mother, finding a job to support us during the Great Recession was an undertaking. I took a job in a male-dominated industry where women were relegated to support administrative roles but rarely in leadership roles. Over a period of 10 years, I slowly climbed into a marketing project management role where I created and managed 45 percent of all campaigns for a multibillion dollar company. I still did not earn \$40,000 per year. I worked 60-hour weeks including overtime while my male colleagues rarely worked a full 40-hour week. I discovered my male colleagues made \$15,000 more each year than what I worked for—while I was working myself to the bone. I was only making 71 cents to the dollar as a Latin woman. In the last 3 years of my employment, when I was at my financial peak, I lost out on \$45,000, which is more than my annual salary would have been.

As a college dropout, especially during a recession and at a time when finding a job was a struggle, I did not want to appear unsupportive or unappreciative of the potential career ahead of me or even rock the boat. That position, which I left last year, has since been eliminated and replaced by three other individuals. I implore you to support S.B. 166.

SHERRIE SCAFFIDI (Transgender Allies Group):

I will read from my written testimony of support ([Exhibit J](#)).

On a personal note, I transitioned after I retired in 2015. I decided to do a quick, unscientific if you will, experiment wherein after I transitioned, I went back to the employer I worked for in 2014 and applied for the same job I had before I transitioned. I was offered the job at \$1.50 less per hour than I made when I was presenting as male. This is unconscionable. The passage of this bill will mitigate this trend in Nevada. I urge you to pass this bill.

KENT ERVIN (Nevada Faculty Alliance):

I will read from my written testimony in support of S.B. 166 ([Exhibit K](#)).

BILL SIMS:

I support S.B. 166. My mother was a single woman who dealt with pay inequality. She had to work three jobs at once to provide food and shelter for me and my sister as well as to provide a social life for us as kids. It is 2019, and that was almost 25 years ago when my mom had to deal with pay inequality. This bill would be a good step to do things right on pay equality in

Nevada. There is no logical reason why any woman in this Chamber today should make less than I do for doing the same job just because of my sex.

LAURA CADOT:

I support S.B. 166. I submitted a written statement, but my friends are pressuring me to share other experiences. I worked as a public safety communications officer for 30 years. When I was first employed, I received no breaks for the first 15 years of my career. I worked graveyard and was the only female. I covered male deputies to get breaks, and I received none. I worked long hours, many 6-day weeks and 12-hour shifts with no breaks. As a dispatcher, I was ordered to perform jail duties without pay or training for seven years. I was ordered to continue to perform those duties even when I was pregnant. When I asked to be relieved of those duties, I was told Nevada was a right-to-work State with no exceptions, and I would be performing jail duties even though I was pregnant.

Those are not the issues I wanted to stand on. I wanted to talk about the grievance I filed with my second employer for missing breaks. It was contractual that employees would receive one 15-minute break every 4 hours. The dispatch division was the only division in the county that received no breaks. We filed a grievance and won, and with the grievance came back pay. We also were to be paid for any future breaks we were to miss. The county did not want to comply, indicating we were not going to get the back pay. Our representatives took the issue to court and the judge said it was a contractual issue; the grievance hearing was binding. The county would have to pay back pay, and if future breaks were missed, the county would have to pay for those too.

This is why S.B. 166 is important. We need the law to ensure Nevada complies and employers do what is right and fair for their employees. I support S.B. 166 and hope you will too.

JENNIFER CANTLEY:

I am testifying as the female owner of a small business. Part of the reason I started my business was pay inequity issues. When I worked for employers, I made less than my fellow male counterparts. I then had to leave my job for not being supported or getting paid leave after having a child who was sick and in the hospital.

I have started my company to make sure my female employees are paid the same as the men I hire, and I give my employees paid leave after having a child. This bill is an important bill for women's rights in Nevada.

PRISCILLA MALONEY (American Federation of State, County and Municipal Employees):

The American Federation of State, County and Municipal Employees retirees support this bill. This is an important issue.

PAUL MORADKHAN (Las Vegas Metro Chamber of Commerce):

We are testifying in opposition to this bill. The Chamber does not support employment discrimination in the workplace nor defend any employer that does so. The Chamber appreciates and respects the testimony heard today in support of this bill. As the State's largest and broadest business association, we support Nevada's laws that make employment discrimination illegal and support legislative efforts to increase public awareness, the role of NERC and tools available to employers and employees regarding discrimination laws.

Our concerns are not the intent of the bill but rather the technical components of the bill. The Chamber has been in discussions with Senator Spearman about this bill and appreciates the dialogue and time given to us. Unfortunately, we have not been able to come to a resolution in time for today's hearing.

The Chamber's concerns are focused on sections 3 and 4 of the bill involving the expansion of authority given to NERC. The concerns are based on a philosophical shift from an administrative compliance role to judicial authority. The Chamber maintains that since NERC is an extension of the Executive Branch, remedies involving punitive damages should remain with the Judicial Branch. With regard to the proposed fines, the Chamber is concerned about the precedence this bill creates in NRS. In the majority of NRS, employer fines are up to \$5,000 per offense. As proposed, it is based on a scale of \$10,000, \$15,000 and \$25,000. These fines would not be viewed as corrective but punitive in nature.

The Chamber is also concerned about the increased cost of possible litigation and burden placed on employers with changes to the complaint process as proposed. Furthermore, the Chamber is concerned with the length of the award back pay period, beginning two years before the date of filing of a complaint regarding unlawful employment practice and ending at a date the Commission

issues an order regarding the complaint. There should be a definite timeline amended to the proposal.

We will continue our conversations with Senator Spearman.

SENATOR GOICOECHEA:

Does it concern you all penalties and fines are going to be sent to the State Treasurer, but the funds can be reimbursed back to NERC? This would be equivalent to a State highway patrolman writing a person a ticket and being able to take half the money from the fine back to the department rather than the money going to the General Fund.

MR. MORADKHAN:

Yes. It is one of our concerns.

SENATOR GOICOECHEA:

The one thing in the bill I cannot agree with is where the money from fines and penalties goes to. If an agency has the ability to impose a civil penalty and/or fines and the money ultimately comes back to the agency that imposes the fines, "it pays you well to do your job."

MENDY ELLIOTT (Reno Sparks Chamber of Commerce):

I agree with and am not going to repeat Mr. Moradkhan's concerns. We also had the same concern raised by Senator Goicoechea regarding the penalties and assessments and the mechanics of how they are to be applied.

Are there bad actors? Absolutely. One of the interesting pieces of data provided by NERC is that since 1997, the numbers have been relatively flat as it relates to the number of complaints. If you look at the numbers in 1997 and fast-forward to 2017, you will see the numbers on an annual basis of filings are flat even though the State has grown exponentially.

The two largest chambers of commerce and many associations in Nevada are led by women. I appreciate all who testified as I am a woman who entered the market in 1972 starting in retail and working my way up to senior vice president of a major corporation. I have gone through the glass ceiling, worked alongside people, and I have been able to support women and men as they moved through the ranks.

From my perspective, in looking at the numbers and the data, I am trying to understand what issues we have. I understand there are bad actors and the Chamber does not condone any type of discrimination as it relates to equal pay.

From our perspective, businesses know the law. They should know the law; more importantly, businesses should follow the law.

We will work with the bill sponsor on this important issue. We are interested in having continued dialogue as this moves forward.

BRYAN WACHTER (Retail Association of Nevada):

In the interest of time, I will not repeat what was said before. I will highlight the numbers Ms. Elliott mentioned regarding the number of cases. There has not been an increase in the number of cases. We would question why we need additional penalties on something that is already against the law. Every story we heard today is unfortunate, it should not happen and there should be repercussions.

This bill dramatically increases the punitive damages by creating the punitive damages to begin with. Those actions should be handled by the Judicial Branch and is concerning to us. To piggyback on the comment Senator Goicoechea made regarding where the money is actually going, the civil fines do not go into the State General Fund or through the requirements of the Interim Finance Committee. The money from the civil fines goes directly back to NERC for its operations and perhaps to go after more cases. The reference in the bill is section 1, subsection 3. This bill creates a situation where NERC is actively encouraged to go after high penalties because that is how the agency would be funded.

We agree pay discrimination is an activity no employer should be engaging in. The Nevada Equal Rights Commission has done an amazing job. There is more that can be done, but the additional penalties on something that is already a crime are overly burdensome.

TIM BROOKS:

I am a Nevada small business owner in Henderson. I have operated my business for 16 years and employ over 160 individuals. I also serve on the Henderson Chamber of Commerce Legislative Committee which represents over 1,800 business members of all sizes and business sectors. We are in opposition

to S.B. 166. While our organizations support any antidiscriminatory employment laws, there are already federal laws in place protecting all classes of citizens, setting forth administrative penalties and individuals' rights to sue and seek remedies.

We share the same concerns regarding rearranging authority and oversight to NERC from the court, which is the right place to make determinations of damages. We are also concerned about the extreme penalty amounts and shortage of construct to protect small businesses from false discrimination claims that may still negatively impact small businesses—both financially and from a credibility standpoint.

As an employer who deeply cares about creating an equal and fair working environment, I understand the desire to eliminate discrimination in the workforce. The extreme penalties outlined in this bill could be detrimental to all Nevada businesses in the foreseeable future.

I appeal to you that we continue to adhere to our existing federal and State laws on this measure. We appreciate Legislators for considering avenues to enhance the employer-employee relationship and for the opportunity to provide our input. However, for the reasons presented by my colleagues, we must oppose this bill in its original context or conceptual amendment.

RANDI THOMPSON (National Federation of Independent Business):

I represent roughly 2,000 small business owners across the State. I will not reiterate what my colleagues have said, but this bill will not stop pay inequality. It is meant to punish bad employers, and I am fine with that aspect. As a woman, I have experienced my fair share of pay inequity. I guarantee in this building the men lobbyists make a lot more money than the women lobbyists. What concerns me about this bill is the impact on small businesses, specifically the excessive fines and guaranteed lawyer fees.

It would be great if angry employees did not file frivolous lawsuits, but they do. I have been subject to one myself. This bill will encourage angry employees to file lawsuits, knowing their legal fees will be paid by their employers. I am concerned small businesses are not exempted in this bill. Fifteen percent of Nevada businesses have 20 or fewer employees. These employees are their most valuable asset. In addition to being hit with legal fees and excessive fines,

an employer could easily go out of business fighting a frivolous lawsuit. For that reason, I stand in opposition to this bill.

CRAIG MADOLE (Nevada Chapter of Associated General Contractors):

We have the same technical issues with this bill, but we are also particularly concerned with section 8 allowing the employee to pursue action in district court with punitive damages and attorney fees even after NERC has ruled nothing was done illegally by the employer. We will continue to work with Senator Spearman but do have the same concerns.

ANDY MACKAY (Nevada Franchised Auto Dealers Association):

For the sake of brevity, my colleagues from the respective chambers of commerce, National Federation of Independent Business and Associated General Contractors have expressed our concerns on this bill. I would be remiss if I did not emphasize, speaking on behalf of every new car and heavy-duty truck dealer from Reno, Elko, Las Vegas and in between, that all forms of discrimination are repugnant and reprehensible. However, this is not the manner in which to address problems which may exist. I appreciate Senator Spearman letting Mr. Moradkhan take the lead on presenting concerns and will also continue to work with her to find the resolution to the bill. We cannot support this measure.

KERRIE KRAMER (NAIOP):

We echo the concerns of the previous opposition.

BRIAN REEDER (Nevada Contractors Association):

We echo the concerns of the previous opposition.

PAUL ENOS (Nevada Trucking Association):

We have the same concerns already expressed. As an industry, there are areas where we have done a good job. When you look at the number of truck drivers who are ethnic minorities, about 40 percent are in the trucking industry. When you look at the number of women employed as truck drivers, this is an area in which we are not doing a good job. Six percent of employees in our industry are women, 94 percent male. This is a male-dominated industry. It is not that the trucking industry does not want female employees. In comparing the safety skills between a man and woman driver, women tend to be the better drivers. Women are less impulsive, safer and take more care, and women drivers do not take risks. Those are folks we want in our industry. Unfortunately, there are different kinds of jobs in our industry that pay differently, and people take those

jobs for different reasons. We do have the same concerns as stated by the Las Vegas Metro Chamber of Commerce and other groups that testified in terms of the penalties and what the real-world implications could be with this bill.

DENNIS PEREA (Deputy Director, Department of Employment, Training and Rehabilitation):

I testify in the neutral. Some comments were made about caseloads remaining fairly consistent with NERC. This is correct, except during the Great Recession where we saw an increase in cases. It would be a mistake to make the assumption that caseloads have not increased with the population within the State because the EEOC opened its Las Vegas office in 2005. The EEOC has taken on a great deal of the work when it comes to the labor discrimination piece. At one point, the Las Vegas EEOC office was backlogged to the point where Nevada cases were shipped to Hawaii to be investigated. I will submit a memo to the Legislative Counsel Bureau staff with updated statistics so you can see the caseload data.

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CHAIR PARKS:

We will close the hearing on S.B. 166. If anyone wants to put anything on the record, we will accept any written testimony. We have received written testimony in support of S.B. 166 from Lieutenant Governor Kate Marshall ([Exhibit L](#)) and a letter in opposition from the Henderson Chamber of Commerce ([Exhibit M](#)) that did not have a chance to testify today. Hearing no further business, the meeting for the Senate Committee on Government Affairs is adjourned at 2:49 p.m.

RESPECTFULLY SUBMITTED:

Becky Archer,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	20		Attendance Roster
S.B. 166	C	2	Senator Pat Spearman	States that Impose Civil or Administrative Fines for Discriminatory Employment Practices
S.B. 166	D	1	Senator Pat Spearman	Proposed Amendment
S.B. 166	E	1	Sarah Mahler	Testimony in support
S.B. 166	F	1	Laura Hale / Indivisible Northern Nevada	Testimony in support
S.B. 166	G	1	Nancy Stiles / Nevada's Coalition for Women's Equity; American Association of University Women	Testimony in support
S.B. 166	H	1	Molly Rose Lewis / NARAL Pro-Choice Nevada	Testimony in support
S.B. 166	I	1	Christine Saunders / Progressive Leadership Alliance of Nevada	Testimony in support
S.B. 166	J	2	Sherrie Scaffidi / Transgender Allies Group	Testimony in support
S.B. 166	K	2	Kent Ervin / Nevada Faculty Alliance	Testimony in support
S.B. 166	L	1	Lieutenant Governor Kate Marshall	Testimony in support
S.B. 166	M	1	Henderson Chamber of Commerce	Letter in opposition