# MINUTES OF THE
# SENATE COMMITTEE ON COMMERCE AND LABOR

## Eighty-first Session
## May 3, 2021

The Senate Committee on Commerce and Labor was called to order by Vice Chair Dina Neal at 8:05 a.m. on Monday, May 3, 2021, Online and in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Dina Neal, Vice Chair
Senator Melanie Scheible
Senator Roberta Lange
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Keith F. Pickard

**COMMITTEE MEMBERS ABSENT:**

Senator Pat Spearman, Chair (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34
Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Howard Watts, Assembly District No. 15

**STAFF MEMBERS PRESENT:**

Cesar Melgarejo, Policy Analyst
Wil Keane, Counsel
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

David Brody, Digital Justice Initiative, Lawyers' Committee for Civil Rights Under Law
Steven Cohen

Dora Martinez, Nevada Disability Peer Action Coalition
Janine Hansen, Independent American Party of Nevada
Bob Russo
Karen England, Nevada Family Alliance
Lynn Chapman, Nevada Families for Freedom
Glen Fewkes, Health Care Access & Affordability, AARP
Barry Gold, AARP Nevada
Andrew LePeilbet, Military Order of the Purple Heart
Misty Grimmer, Alzheimer's Association
Tom McCoy, Nevada Chronic Care Collaborative
Bryan Wachter, Retail Association of Nevada
Connie McMullen, *Senior Spectrum* Newspaper
Will Pregman, Battle Born Progress
Marlene Lockard, Retired Public Employees of Nevada
Katie Ryan, Dignity Health - St. Rose Dominican
Natalie Eustice, Nevadans for the Common Good
Paul J. Moradkhan, Vegas Chamber
Nick Vander Poel, Reno Sparks Chamber of Commerce
Jennifer Richards, Office of Attorney for the Rights of Older Persons and Persons with a Disability, Aging and Disability Services Division, Department of Health and Human Services
Julie Strandberg, Executive Director, Chiropractic Physicians' Board of Nevada
Louis Ling, Board Counsel, Chiropractic Physicians' Board of Nevada
Sophia Romero, Consumer Rights Project, Legal Aid Center of Southern Nevada
Andrew MacKay, Executive Director, Nevada Franchised Auto Dealers

VICE CHAIR NEAL:
I will open the hearing on Assembly Bill (A.B.) 207.

**ASSEMBLY BILL 207 (1st Reprint)**: Provides that certain businesses which offer goods or services through an Internet website, mobile application or other electronic medium are places of public accommodation. (BDR 54-567)

ASSEMBLYMAN HOWARD WATTS (Assembly District No. 15):
In 2011, I was involved in an effort assisting members of our LGBTQ+ community in an effort to update our State's nondiscrimination laws to be fully inclusive. At that time, we looked at three key policies: employment, housing and public accommodations laws. We were successful in making those updates, making us an early national leader in providing legal protections from

discrimination to all Nevadans. Nevada's current public accommodation law protects us from being discriminated against based on our race, color, religion, national origin, disability, sexual orientation, sex, gender identity or gender expression in places where the public is invited or where public use is intended, including most businesses.

However, the law has not kept pace in the ensuing decade, as the greater share of our interactions have moved from brick-and-mortar establishments to the digital realm, a shift that has been clearly highlighted by the Covid-19 pandemic. Assembly Bill 207 addresses this by clarifying that our public accommodation protections apply to e-commerce.

Section 1 of the bill defines online establishments and adds them to the definition of public accommodations for the purposes of our nondiscrimination laws. In the first reprint of the bill, we made an adjustment to clarify that this definition would not place any additional requirements on existing brick-and-mortar businesses as it applies to their websites.

Section 2 of the bill looks to mirror an existing exemption for some private clubs by defining and including private online chat forums with fewer than 1,000 members.

Ultimately, this is about trying to make sure there is parity. Many of our online interactions are secure from acts of discrimination because they happen almost instantaneously—a good or service is offered and a transaction occurs, and there is no personal interaction. But when discrimination does exist, we want to make sure online businesses are held to the same antidiscrimination laws as brick-and-mortar businesses that are offering the same goods or services. This bill aims to cross the digital divide and level the playing field so all businesses operating in Nevada are open to all Nevadans.

DAVID BRODY (Digital Justice Initiative, Lawyers' Committee for Civil Rights Under Law):

The Lawyers' Committee for Civil Rights Under Law is a nonprofit, nonpartisan racial justice organization founded in 1963 at the request of President John F. Kennedy to combat discrimination and inequality of opportunity. The Digital Justice Initiative works on issues at the intersection of civil rights, privacy and technology, such as discrimination in online commerce, internet-enabled hate crimes, and discriminatory uses of personal information.

Public accommodations laws are a cornerstone of civil rights protection in the United States. These laws are one of the key mechanisms used to end Jim Crow segregation and discrimination in everyday commerce. Many of these laws were enacted during the civil rights era in response to protests, sit-ins and boycotts by Black Americans and others seeking equal rights. Today, if a business posts a sign saying, "Whites Only," it should not matter whether it is written in ink or pixels. The discrimination is the same; the harm is the same. Under Nevada law, the legal consequences should be the same.

Public accommodations laws are general purpose antidiscrimination statutes. They state that if a business offers goods or services to the general public, they must serve everyone regardless of race, sex, religion, national origin, sexual orientation, disability or other protected characteristics. Classic examples of places of public accommodations include hotels, stores, restaurants, theaters, buses and stadiums. These laws, including Nevada's, typically prohibit two forms of discrimination. First, they prohibit covered businesses from denying service or charging higher prices on the basis of protected status. Second, they prohibit violence, threats or harassment by third parties when someone seeks to patronize a business. To give the historic example, these laws both prohibit a lunch counter from refusing service on the basis of race and prohibit a racist mob from blocking access to the lunch counter.

Despite all our advances on civil rights, discrimination and hate continue today. We have seen it recently as hateful threats and violence targeting Asian Americans have spiked nationwide. These types of incidents interfere with our equal enjoyment of places of public accommodation by intimidating our neighbors, especially senior citizens, and stop them from feeling safe when they go out in public. These harms occur online as well. Online threats, harassment and intimidation frequently target people of color, women, LGBTQ+ individuals, religious minorities, immigrants and people with disabilities. The Pew Research Center recently reported that 40 percent of Americans have experienced online harassment, and 25 percent have experienced physical threats, stalking, sexual harassment or sustained harassment online.

These hateful acts interfere with the right to equally enjoy online commerce. They discourage speech and civic engagement, and they cause serious harm. Businesses suffer when customers are not safe. When users self-censor or stop using a website because they are being threatened, those users are deprived of their rights to enjoy the services offered by that business.

Discrimination also continues to infect the marketplace, where consumers of color continue to receive worse treatment and experience unequal access to goods and services. This discrimination increasingly occurs through online business practices. For example, Facebook, Google and other major technology companies have been sued or investigated repeatedly for discriminating in their advertisements for housing, employment and credit. Retail websites have been found to charge different prices based on the demographics of the user. Communities of color are targeted by predatory and low-income for-profit online colleges. Algorithms that set car insurance rates have charged minority neighborhoods higher premiums than white neighborhoods with the same risk levels.

Absent antidiscrimination protections, online businesses can refuse service on the basis of race, charge higher prices on the basis of religion, provide sub-par products based on gender or sexual orientation, or ignore the accessibility needs of people with disabilities. Public accommodations laws are meant to close these gaps. However, because most public accommodations laws were written decades before the invention of the internet, they do not always apply equally online and offline. Assembly Bill 207 seeks to amend the State's public accommodations statute to ensure that Nevadans receive the same protections against discrimination from billion-dollar websites that they do from a mom-and-pop corner store.

Currently, five states explicitly apply their public accommodations laws to the internet: California, Colorado, New Mexico, New York and Oregon. Wall Street and Silicon Valley are already covered in their home states. Our analysis shows that another 17 states have laws that are likely to apply to the internet, but the courts have not yet addressed the question in those states. For Nevada's statute, our research shows that it is unclear whether the State's public accommodations laws applies to online businesses. This legislation clarifies that.

Just about all Nevada brick-and-mortar businesses must already comply with the statute even when operating their own websites, but it is not clear if online only businesses would be covered. Passing A.B. 207 would level the playing field between online and offline commerce, requiring online businesses to meet the same nondiscrimination requirements as physical businesses and protect the rights of all residents.

SENATOR PICKARD:
I am struggling to understand why we need this bill. Much of the examples given were inapposite; there are no lunch counters in the online world. I am concerned that the term "public accommodations" is well beyond the scope of the kind of discrimination that was described.

Also, does A.B. 207 expose purely online entities to Americans with Disabilities Act (ADA) complaints? Someone with vision deficits might have trouble navigating a website because the font was too small or the colors were bad, though those sorts of issues can often be addressed in the user's browser.

This bill is going to be a trial lawyer's dream. I am one, and I am thinking, "Man, if I were still in injury law, I could sue nearly every internet site I encounter." We already have laws on the books that expressly prohibit discrimination in all the forms described. Can you give me a better example of a group of websites that is such a widespread problem that we need to expose every single website to a potential lawsuit?

ASSEMBLYMAN WATTS:
Yes, I can give you a great example. Imagine George owns a photography business that does event photography, and he runs it out of a small brick-and-mortar retail establishment. If someone walks in and asks for pictures for a wedding, and George refuses on the basis of any of the protected characteristics, that is a violation of our public accommodations law. However, if George closed the brick-and-mortar store and operated exclusively online, and he then chose to make that same denial for the same reason, it is unclear whether our law would protect that citizen. That is what A.B. 207 is seeking to address.

In regard to your question about websites, we added an amendment, working with some of the other stakeholders from the business community, to clarify that this would place no additional requirements on folks who are already operating a brick-and-mortar establishment here in Nevada. The intent has never been to place additional requirements on websites.

You mentioned the ADA; that, of course, is a federal law. No State action that we take is going to make a difference one way or the other on how that law may or may not be applied to the accessibility of websites. We have worked to clarify those issues. This is not necessarily about accessibility. We are just

making sure the online business that operates 100 percent online is held to the same standards as a brick-and-mortar business offering the same goods and services.

SENATOR PICKARD:
I agree with the theory that everybody should be on the same playing field in terms of nondiscrimination. However, I would respectfully disagree about the ADA. We can sue in State court on ADA concerns because we have a comparable set of laws. This would open the door to an online establishment having liability on the premises, which would be greatly expansive in terms of the impact on businesses.

How is the law we have today insufficient? We have public accommodations laws; we have nondiscrimination laws. Where is the gap? Can you point to it?

ASSEMBLYMAN WATTS:
I respectfully disagree with you.

This bill amends *Nevada Revised Statutes* (NRS) 651. The intent is that it is limited to the confines of that chapter. Public accommodations are discussed in many places in statute; this just seeks to amend that one chapter, which deals with issues of discrimination.

To your question about the gap this addresses, if you review NRS 651, it is completely silent on whether it would apply to e-commerce. Much of the language talks about businesses operated in a physical location, places to which the public is invited or where public use is intended. It is not clear, and the analysis done by Mr. Brody's organization has indicated that the same is true in many states, whether these protections would apply to Nevadans engaging in commerce with online-only businesses. That is what this bill is seeking to fix. If you have suggestions for tighter language, please send it along.

SENATOR PICKARD:
Mr. Brody, does your firm pursue these cases in litigation?

MR. BRODY:
We do bring civil rights suits under a number of different statutes, yes, including public accommodations laws.

SENATOR PICKARD:
Would this bill directly improve your client base pool?

MR. BRODY:
It could if we end up bringing any lawsuits in Nevada. I am not familiar with any cases we have brought under antidiscrimination laws in Nevada. If there were, we would use a variety of statutes. The short answer is yes, it could.

SENATOR HARDY:
I have a question about the phrase, "is not operated from a physical location in the State." The company Switch is definitely operated in a physical location in the State, and all of those wires and semiwires are all in the State. Would this apply to Switch?

ASSEMBLYMAN WATTS:
The short answer is yes. Switch has physical locations in the State, but if you visit the company, you find that their facilities are not exactly open for public access; they are highly secured. However, you may be speaking about businesses that operate online but do have some sort of physical location in Nevada. This is something I have been discussing with some of the stakeholders, as well as with the Legal Division. We may bring an amendment to clarify the intent further and indicate that if you are already operating a brick-and-mortar business that would apply as a public accommodation, this bill is not seeking to put any additional requirement on your business. If you are operating entirely online in the digital sphere, we want to make sure those interactions are held to the same nondiscrimination standards as they would be if they were being offered from a brick-and-mortar location.

SENATOR HARDY:
My point on Switch is that the company does not control who uses their online services.

ASSEMBLYMAN WATTS:
In that particular instance, you are discussing data centers. Switch hosts certain entities, and you are asking what happens if there is discrimination by one of those entities. In that instance, Switch would not be liable; it would be the company directly interacting with consumers that has an issue of discrimination. This bill is not intended to apply to hosting services or data services such as Switch.

SENATOR SETTELMEYER:
You brought up the example of photography. I can imagine a situation in which those same individuals wanted to use an online printing service to print wedding invitations, only to find that the actual printing is being done overseas. If they then find they have been discriminated against, how will the Attorney General go after a business located in another country?

ASSEMBLYMAN WATTS:
We have considered some questions about civil actions and how to proceed if the entity is not physically based in Nevada. There is quite a bit of case law to describe how those cases would be pursued and have been pursued when there are conflicts, even if not all the entities are within the same state.

As for international law, that is something I am less clear on. We would probably have to ask the Legal Division for some additional clarification.

SENATOR SETTELMEYER:
That is my concern. So much of the digital commerce is not done in the United States; it is done in another country. If you go to an online printing service and have wedding cards printed, you may not be dealing in the United States at all, and most likely you are not. You can see that in where the final product gets shipped from.

ASSEMBLYMAN WATTS:
That would have to be decided on a case-by-case basis. Some activities may be outsourced overseas, but the business itself may have a license and principal headquarters within the United States. If an act of discrimination occurred and action needed to be taken, the most likely avenue would be to pursue it within the United States.

SENATOR SETTELMEYER:
Some friends of mine were getting married and wanted a plate made up to celebrate the marriage. When they tried to order it, however, it turned out the plates were made in India, and the manufacturers refused to do it because it was a same-sex marriage. How are you going to go after a company in India? Their cultural beliefs are quite different from ours.

WIL KEANE (Counsel):
As far as the reach of this law, there is nothing wrong with Nevada enacting it, though there will be limits on how far Nevada can reach. This bill only purports to apply to websites that are actually available in Nevada. We would have to see whether that would be sufficient contact to support jurisdiction.

The U.S. Supreme Court cases of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), and *World-Wide Volkswagen Corp v. Woodson*, 444 U.S. 286 (1980), are still the law of the land. The Supreme Court recently issued an opinion, which I have not yet had a chance to read, revisiting those well-known cases.

There is nothing wrong with Nevada passing the law. Some of these entities are going to have sufficient contacts, and when they do not, the case will fail on jurisdiction.

SENATOR SCHEIBLE:
I am thinking this might cover a gap in the law that addresses businesses that are conducted entirely online. A lot of online businesses still have a physical component; they make physical products that they mail to you when you buy them, something like that. There are also businesses with little to no physical component; you log on and pay to access an article or an image. There are newspapers that have gone completely online at this point and no longer publish a physical edition. Are those the kinds of businesses this bill would target?

ASSEMBLYMAN WATTS:
I would say yes in both regards. It would apply to entities that are 100 percent digital, as you referred to, but also to the example I gave of photography services. We have seen, especially during the pandemic, more people working from home, not having a brick-and-mortar location that is open for certain hours that people can come into to ask for goods or services. Again, our law is unclear on whether consumers are protected from discrimination from businesses that operate without a physical location.

SENATOR SCHEIBLE:
Let me pose a hypothetical case under current law. I am a photographer who agrees to take photographs for a family at the Main Street Park on Thursday. When I get there, I learn that the family is multiracial and refuse to take the pictures. You are saying that currently, there is no law to protect that family

because the photographer does not have a brick-and-mortar store and there is no place of public accommodation. This bill would say that the place of public accommodation would be the website through which the family originally booked me as their photographer.

ASSEMBLYMAN WATTS:
Essentially, yes. If you operated a photography studio out of a strip mall and people could come in to engage your services, the family would be covered under current law. Because you have that physical presence, it does not matter whether someone comes to you in person or online; any discriminatory action you take is subject to our public accommodations law. However, if your only way of offering those services is through your website and you take that discriminatory action, our law is not clear at all on whether the family would have any protection or recourse. That is what this bill is seeking to address.

SENATOR SCHEIBLE:
That makes sense to me, and it seems like an important gap to fill in the law.

On the disability piece, I understand there is a difference between reasonable accommodation and actual discrimination based on a disability. It is not my area of expertise, but say the same photographer does not make an accommodation for someone who has some kind of disability. Could the customer sue that photographer based on discrimination theory?

ASSEMBLYMAN WATTS:
I appreciate you making the distinction. This measure is specifically focused on acts of discrimination. To the extent that federal or State laws apply to reasonable accommodations, this is focused on acts of discrimination based on disability. Could someone bring a suit making that argument? I am sure they could. Would it be upheld as discrimination versus being referred to based on its reasonable accommodations? That distinction would have to be made if a case like that were brought forward.

This bill is focused on acts of discrimination, so there would have to be discriminatory intent and action, whereas with reasonable accommodation there does not have to be any intent. That is the balance this law is seeking to address.

SENATOR SCHEIBLE:
If the photographer simply cannot accommodate someone's disability, that would be a matter of reasonable accommodation. If the photographer responds to a request with an offensive email that says, "I refuse to photograph you because of your disability," that would be a matter of discrimination. Presumably, those two cases would be treated differently once they get to a court of law.

ASSEMBLYMAN WATTS:
Correct. This bill is seeking to address the latter example you gave, explicitly discriminatory behavior.

VICE CHAIR NEAL:
This bill brings me back to law school. When I read it, I immediately thought of *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964). That was a Title II case around public accommodations. There was a Fifth Amendment argument about the right to choose who you would like to engage in your business.

With A.B. 207, we are moving into a new online frontier, and there are still some legal arguments to be made in this context. Can you talk to me about the right to choose your client in an online environment, and how this may be different from a brick-and-mortar environment?

MR. BRODY:
Businesses have always had the right to refuse service on the basis of reasonable grounds for doing so—if someone is belligerent to other customers, for example, or violates the business's "no shoes, no shirt, no service" policy. But when a business is a place of public accommodations, the law has recognized for 50 years to 60 years that there are certain criteria upon which you are not allowed to refuse service. You cannot refuse service because of someone's race, sex or other protected characteristics. You cannot charge different prices based on those protected characteristics. You cannot serve White customers through the front door and Black customers through the back door, as decided by one of the famous Supreme Court cases mentioned. Businesses have a great deal of discretion in terms of how do they want to advertise and what type of clientele do they want to curate, but there is a limit. When they start to discriminate on the basis of these protected characteristics, that is when the law steps in and protects the rights of the public.

VICE CHAIR NEAL:
When we talk about NRS 651, it walks these provisions into the door. You could have an accusation that a business is acting "under the color of law," which triggers a State law. In this context of us inserting online establishments into NRS 651, which is public accommodations, how would the "acting under color of law" provision be triggered and a State action occur if someone alleges discrimination?

MR. BRODY:
First, let me issue a caveat by saying I am not a Nevada law expert, so I will defer to the advice of Mr. Keane and others. But generally speaking, when an entity is acting under color of law, that means it is a state actor. It means it is a state agency or a law enforcement officer or someone like that. When a private entity is discriminating, it is not necessarily acting under color of law, but the law still applies. In the case of Title II of the Civil Rights Act of 1964, it applies to private actors whether or not they are acting under color of law. There are additional provisions of the Civil Rights Act specifically focused on state actors.

VICE CHAIR NEAL:
I do not want to get into a law session, but I know that "under color of law" goes beyond state actors. I will leave it there.

Talk to me about the remedial actions that you would expect to occur if someone triggers this as a plaintiff. What would be the perceived remedial actions that would come into play? If someone challenges an online establishment, it is not clear who was given access, whether you are black, white, orange or a Muppet. How do we discern that this was a violation of equal protection and the person was not given access?

MR. BRODY:
My understanding of Nevada law is that it is an intentional discrimination statute, which would mean the plaintiff has the burden of showing that the defendant intended to discriminate against them on the basis of a protected characteristic. There are various ways the plaintiff could gather that information. In some types of online businesses, it would be obvious what someone's race or sex was. For example, I am testifying in this Committee today via videoconferencing; I am on camera. You can see my race, you can tell what my gender expression is and you can make some assumptions about my gender identity.

There are other types of businesses where race, sex and/or religious information is disclosed. For example, platforms like Google or Facebook require users to disclose their sex so they can target the ads they show them. There are entire fields of research around how certain types of information, whether it is where you live, patterns in names or other types of information, reveal someone's race or other characteristics.

The short answer is that the burden is on the plaintiff to show that the defendant intended to discriminate on the basis of the protected characteristic. The remedy available could be damages; it could also be an injunction to order the defendant to change their business practices in order to stop discriminating.

VICE CHAIR NEAL:
All markets are not equal. At the end of the day, the presence a business has within the State builds its connectivity in order for us to touch them. With online establishments, although you are plugging them into public accommodations, I do think there could be an argument made around the market they are playing in. Someone could also argue that they are being treated differently because they do not have a brick-and-mortar presence.

MR. BRODY:
With regard to the jurisdiction issue, again, I am not an expert on Nevada law, so I do not want to speculate too far. Depending on what Nevada law says about personal jurisdiction and how far it goes, as well as what the U.S. Constitution says about the limits of personal jurisdiction—well, as Mr. Keane said earlier, it would have to do with the degree of contact the business has with the State. For example, there might be an online-only business that was specifically targeting Nevada residences for some sort of product or service. They are marketing to Nevada residents in a very specific way; they are specifically going after that market. There is a stronger case there for why an out-of-state business in that circumstance would have minimum contacts with the State. But again, I am not an expert, so take it with a grain of salt.

VICE CHAIR NEAL:
When I read this bill, I immediately thought of *South Dakota v. Wayfair, Inc.,* 585 U.S. ___ (2018). I am not having a *Wayfair* discussion, but there is a distinct argument outside of *South Dakota v. Wayfair* about something more

than physical nexus. They talked about market competition, market distortion and a lot of different things.

Here is another hypothetical. Sally in Georgia has the opportunity to participate in an event in Las Vegas, and she feels she was discriminated against. The online establishment booking that event does not necessarily have a physical place of business in Nevada, but it is doing business here. Sally has no real relationship to that business. She encountered it once or twice, and now she is claiming public accommodations and discriminatory behavior. What do we do in those circumstances?

MR. BRODY:
If I understand your hypothetical, the plaintiff is in Georgia; she interacts with an online-only business that is doing business in Las Vegas, but the business itself is not based in Nevada.

VICE CHAIR NEAL:
Correct.

MR. BRODY:
That is a situation where the exact facts would be very important, and the scope of Nevada's personal jurisdiction law would come into play. That is something I am not an expert on. That is more of a jurisdictional question apart from this bill. I can only speculate on how Nevada courts would interpret that.

VICE CHAIR NEAL:
I understand what you are saying, but it does invoke some jurisdictional questions.

SENATOR SETTELMEYER:
Section 1, subsection 3 refers to "a business, whether or not conducted for profit." Does this include online entities that do genealogy and things of that nature? Would those entities now have to register and show and track same-sex marriages that they currently do not?

ASSEMBLYMAN WATTS:
I might need a little more clarification, but I will speak broadly to the first part of your question. A nonprofit entity that offers goods or services broadly to the community from a physical location already falls within our public

accommodations law. The goal of this bill was to mirror that in the expansion into the digital realm.

SENATOR SETTELMEYER:
I will have to look into that further. Some entities run large genealogy programs that help track family heritage, and they may not necessarily agree with same-sex marriages. I will take that offline.

VICE CHAIR NEAL:
In section 1, subsection 4, paragraph (p), can you put on the record how that provision would work?

ASSEMBLYMAN WATTS:
The modifications in paragraph (p) are there because we are adding online establishments to the statute, so we wanted to clarify that it still applies to physical establishments. This section particularly applies to online entities within resorts, which are clearly covered within public accommodations law. We are trying to describe online places that are located within physical places. There cannot be any barriers to people accessing those.

A lot of the new language is just to maintain the statute's original intent for physical locations as we are adding online entities into the statute.

VICE CHAIR NEAL:
Are you talking about a situation where you are already operating a physical location, but then you are doing some online activity inside of that physical location?

ASSEMBLYMAN WATTS:
No. As we are adding online establishments into NRS 651, these amendments were added to clarify paragraph (p) to maintain its existing statutory framework, which is all physical. That is why we added "and physically contains." We wanted to clarify that entities operating online are not covered within paragraph (p). This is existing statute that was meant to include various brick-and-mortar entities within our public accommodations law. We are just seeking to clarify that the statute is not being broadened by the addition of online establishments under the bill.

SENATOR PICKARD:
Of course, this discussion brings up *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. ___ (2018). I recognize that case was decided on an administrative law principle, but the dicta was pretty heavy. As I recall, it was Justice Anthony M. Kennedy who wrote the opinion, and he left open the door for the individual to decide who his customers would ultimately be. This bill is beginning to look like an attempt to clarify a position with respect to the dicta in *Masterpiece v. Colorado*. Would this not further erode the individual's right to choose their customers?

ASSEMBLYMAN WATTS:
Folks do have the right to choose their customers. However, when they do that in a discriminatory fashion, State public accommodations laws can step in. Not being an expert in the nuances of that decision, my understanding is if a Nevada bakery was generally open to the public, operating from a brick-and-mortar location, and clearly refused to provide service based on one of those protected characteristics, that is a violation of existing State law.

This bill seeks to clarify that if those same services are being offered through a website only and that same act of discrimination occurs, our nondiscrimination laws would apply there as well. I believe there is a balance between the ability to choose one's customers and the responsibility to be nondiscriminatory in one's activities. That is what this bill is seeking to address.

STEVEN COHEN:
I am speaking in support of A.B. 207.

I want to address a couple of concerns that were raised. The public accommodation theory was most recently tested in California in 2018. Ultimately, it was decided in favor of the consumer. Essentially, the business, which was a pizzeria, said that because there were no guidelines on how to make their website accessible, they were not subject to the law cited. In addition, plaintiffs who have the burden would have the choice of law where to bring the suit under these circumstances. In looking at the statute in the state where the pizzeria is headquartered, their statute under public accommodation is a lot less restrictive than ours. If I were in that consumer's shoes, I would be bringing it here.

Title III of the ADA as amended in 2008 already covers this issue, but then we do have a similar framework in terms of antidiscrimination. This is just expanding that to ensure folks have equal rights to access businesses as their peers.

As one last point, the reasonable accommodation theory that was brought up typically applies to Title I employment issues.

DORA MARTINEZ (Nevada Disability Peer Action Coalition):
We are in support of this bill.

JANINE HANSEN (Independent American Party of Nevada):
We oppose A.B. 207. I have written testimony (Exhibit B) explaining our position.

BOB RUSSO:
I oppose A.B. 207 for the following reasons. I have concerns that the government regulation of large, online, not-for-profit discussion groups could place limits on what is discussed on these forums and who those running those forums wish to invite to participate. It may also affect nonprofit groups' fundraising activities.

If we already have nondiscrimination laws on the books, is this bill necessary? Just listening to the discussion this morning reveals that this bill has lots of unanswered questions. Its complexity and lack of clarity could end in numerous lawsuits. Also, will this bill restrict religious freedom and one's choice in choosing customers based on their faith and moral positions? I think it could and thus should be rejected in its current state.

KAREN ENGLAND (Nevada Family Alliance):
I am speaking in opposition to A.B. 207. It is a clear violation of the First Amendment. The definition of "online establishment" is extremely broad and truly unprecedented. Under A.B. 207, any for-profit or nonprofit organization that merely offers goods or services to a person in Nevada is subject to the law. It does not require a sale. A Jewish graphic designer in New York who has a website could be punished if that designer refused to create an anti-Semitic design at the request of a customer in Nevada. A bakery in Colorado that shipped custom decorated cupcakes could be punished if it declined to create cupcakes that were blue on the outside with a pink filling for a Nevadan who

wanted to celebrate that he was going to be identifying as a female. Even a retailer in China or India could be subject to this broad definition of online establishment.

This bill seeks to broadly extend the reach of its regulation to every corner of the Country and will significantly impact First Amendment rights of countless Americans in other states. I urge a no vote on A.B. 207.

LYNN CHAPMAN (Nevada Families for Freedom):
We oppose A.B. 207. We appreciate all the questions and comments, but there do seem to be many questions relating to this bill. The one thing we see is that our liberties are being eroded more and more every day. As Benjamin Franklin wrote in *The New-England Courant*, July 9, 1722, "Without Freedom of Thought, there can be no such Thing as Wisdom, and no such Thing as publick Liberty without Freedom of Speech."

In section 2 of the bill, the threshold for inclusion in this bill is 1,000 participants. How long will it take for that threshold to be reduced to less than a hundred? How will this section be implemented, and how will the State know if there are 1,000 participants or not? Will the State be working with Big Tech? How will a person or group be charged with a misdemeanor, and how will damages be figured out? We should be very careful with this section, and I am not sure we would be careful.

I have one more quote for you to consider, from a speech before Congress by President Harry S. Truman on August 8, 1950:

> Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear.

VICE CHAIR NEAL:
I will close the hearing on A.B. 207 and open the hearing on A.B. 190.

**ASSEMBLY BILL 190 (1st Reprint)**: Provides certain employees with the right to use sick leave to assist certain family members with medical needs. (BDR 53-379)

ASSEMBLYWOMAN SHANNON BILBRAY-AXELROD (Assembly District No. 34):
This bill would allow persons who need to take time off to care for loved ones to use the sick leave they have already accumulated. The use of sick leave for this purpose would be to assist an immediate family member with a medical appointment or other authorized medical need. The same conditions that apply to the employee when taking sick leave would apply to family sick leave.

The measure authorizes the employer to limit the amount of sick leave that may be utilized for this purpose to an amount that is equal to but not less than the amount of sick leave an employee accrues in six months. Immediate family members include child, foster child, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent and step-parent of an employee.

The difference between this program and the federal Family Medical Leave Act (FMLA) of 1993 are as follows. First, FMLA is used for serious or long-term leave needs, such as the birth of a child, adoption or foster care, or to care for an immediate family member who has a serious health condition. The A.B. 190 program helps caregivers with short-term healthcare needs, such as providing for an immediate family member with a brief illness, transporting an immediate family member to a medical appointment or rushing an immediate family member to a hospital or urgent care facility. Second, FMLA provides eligible employees with up to 12 weeks of unpaid job-protected leave per year. The A.B. 190 program would provide access to paid leave per the sick leave rules of the employer. Third, FMLA applies to all public agencies and companies with 50 or more employees. The A.B. 190 program would apply to all employers who offer sick leave.

There is a trend right now for employers to move to the personal leave option, under which an employee can take time off for any reason, like needing a mental health day. By contrast, this bill is specifically for companies that have a sick leave policy for employees to use when sick.

This is now my third time bringing this bill, so I have heard every argument against it. One of the things people have said to me is that they sometimes find themselves in a position of having to lie to the boss and act sick because Mom has an appointment. If those employees were allowed to use family sick time, they could just use time to take their Moms to the doctor and would not have to lie about being sick.

This last year has shown us the importance of the role of caregiver and how quickly our world can be turned upside down. According to AARP and the National Conference of State Legislatures, 10,000 baby boomers turn 65 every day, and each of them has a 70 percent chance of needing some type of support or long-term care in their remaining years. The bulk of the care is provided by unpaid family caregivers, and it has been found that family caregivers help seniors remain independent.

In 2017, I was an unpaid caregiver for my husband, who was in a coma for three weeks and after rehab needed caregiving at home for several months. I was lucky that my boss at the time worked with me to see how she could accommodate me, but not everyone has that opportunity. That is why I thought this bill was so important.

GLEN FEWKES (Health Care Access & Affordability, AARP):
Bills like A.B. 190 are part of a larger trend of states recognizing the tremendous work of family caregivers and better supporting them. Since 2014, over 500 family caregiver focused laws have been enacted in the 50 states. With respect to the type of bill the Committee is considering today, a dozen states already have similar laws on the books. These bills often have strong bipartisan support. I am not aware of any evidence that this has been burdensome on businesses or that there has been any need for states to go back and adjust these laws on that basis. In addition, another 13 states that have state paid leave requirements allow for that leave to be used for family caregiving purposes.

Assemblywoman Bilbray-Axelrod has asked that I go through the provisions of A.B. 190 and give a summary of the bill.

Section 1 of the bill has seven subsections. Subsection 1 requires that if a private employer provides employees with either paid or unpaid sick leave benefits, those employees must be allowed to use that sick leave to care for the illness or medical need of an immediate family member. This does not require employers to provide extra time or extra benefits. It is simply expanding the acceptable usage of sick leave benefits that already exist. An employee's use of sick time to assist a family member would be subject to the same conditions as sick leave for the employee's own illness. This includes how notice is given, whether a doctor's note is required and so on. There are no potential Health Insurance Portability and Accountability Act (HIPAA) issues here. If the

employer requires a doctor's note, one can be provided with the consent of the sick family member. This is exactly how it works currently when an employee takes FMLA leave.

Subsection 2 of section 1 allows an employer to limit the amount of an employee's sick leave that can be taken to assist a family member. It provides that the employee should be allowed to use at least half of their yearly sick leave for family medical leave.

Subsection 3 of section 1 requires the Labor Commissioner to prepare a bulletin about these requirements to be posted online and in a conspicuous spot in each workplace. My understanding is that this requirement is comparable to, or exactly the same as, other requirements for posting information about other wage and hour laws in Nevada.

Subsection 4 of section 1 provides that employees will still have access to other benefits, rights or remedies as may be provided by their employer or by law. Essentially, this bill is meant to be a floor and not a ceiling on employee sick leave rights. Specifically, this subsection mentions that this bill will not extend leave available under the federal FMLA. How employers provide and treat FMLA is not touched by this bill.

Subsection 5 of section 1 prohibits an employer from retaliating against an employee for using existing leave as allowed by this bill.

Subsection 6 of section 1 states that A.B. 190 does not apply to the extent that it is prohibited by federal law. For example, federal law exempts certain railway employees from certain state employment laws. Those employees would fall under the prohibition here. Similar language was included in the Illinois and New Mexico bills that passed in recent years. Subsection 6 also excludes employees who are covered under a valid collective bargaining agreement.

Subsection 7 of section 1 defines the immediate family for whom an employee's sick leave may be taken, as noted by Assemblywoman Bilbray-Axelrod. This includes any person for whom the employee is a legal guardian.

Sections 2 and 3 of the bill outline the enforcement mechanisms, including setting forth penalties for violation. It is my understanding that these sections

simply put this bill on an equal footing with other wage and employment laws in Nevada statute.

BARRY GOLD (AARP Nevada):
I have a fact sheet (Exhibit C) on this bill which includes statistics about family caregivers in Nevada.

A famous founder of a nationally renowned caregiving organization once said that there are four kinds of people—those who are caregivers, those who have been caregivers, those who will be caregivers, and those who will need caregivers. That is what defines humanity: we take care of each other. That is what we do. People taking care of each other is just the natural, humane thing to do, and it saves the State a lot of money. As we heard before, it is the primary source of care. People would rather stay at home and be taken care of than go into an institution.

We have studied caregiving extensively, and Exhibit C includes some statistics about caregiving from AARP. In addition, as Assemblywoman Bilbray-Axelrod said, more companies are moving toward offering a general paid leave, but sick leave is not going away. The AARP research showed that in 2020, 58 percent of businesses still give paid sick leaver to their employees. That is an increase from 50 percent in 2015. We also know that three out ten employees who are caregivers have had to stop working because of their caregiving responsibilities.

Some people have asked what happens if employees abuse their paid sick leave and say they are caring for someone when they are not. The same provisions apply as if they were misusing sick leave for themselves. We have found that employees who are caregivers are much more productive and much better workers if the corporation they work for has caregiver-friendly benefits.

I would also like to say that many businesses are already doing the right thing in this regard. Many businesses are already letting people have this humane use of their sick leave; however, there are many that are not. We want all businesses to extend this benefit to Nevada caregivers, who deserve this flexibility to care for their loved ones without having to sacrifice either their financial security or their families.

SENATOR PICKARD:
We adjusted this statute in S.B. No. 312 of the 80th Session to say that all employers have to raise or provide paid leave at a certain amount per hour of work. I am not necessarily antagonistic to A.B. 190, but it seems to expand the unpaid FMLA leave to the same requirements in State law for paid leave. That causes me some concern. Larger employers with a fair amount of turnover typically require a doctor's note, and they do not get HIPAA releases for them. We end up in a situation where we have employers documenting the employee's absence with a doctor's note that is covered by HIPAA, so they are not allowed to disseminate that information.

What is going to be required of employers when it comes to record keeping and privacy rights?

ASSEMBLYWOMAN BILBRAY-AXELROD:
There are a few things I would like to unpack from that question. The bill that was passed last Session was for employers who employ over 50 employees, and it was limited to personal time off (PTO). That means you could take it because you need a mental health day. This bill is for the 75 percent of businesses in Nevada that have under 50 employees, so they were not covered by the bill last Session.

As for your questions about HIPAA and FMLA, I will turn it over to Mr. Fewkes.

MR. FEWKES:
Nothing in HIPAA would prevent the family member for whom the sick day is taken from allowing a doctor's note to be provided to the caregiver's employer, just to verify the reason for the employee's time off. It does not need to have any more detail than just the doctor verifying that fact. Yes, it would be an extra step, but the employer does not have to require this. If they do require it, the employee would need to understand that this kind of documentation is going to be required. As was mentioned, this is how it already works when an employee takes long-term leave under federal FMLA. If an employee takes FMLA leave to care for an ill family member, they need to submit a medical certification to the employer that includes health information of a family member. As part of that process, the ill family member authorizes their health provider to release the necessary information. The process would be similar with this bill.

I do not want to lose sight of the fact that we are talking about family members helping each other out. It is hard to imagine that it is going to come up very often that an ill family member would not be willing to release some basic information so their family member can help them while they are sick. If that were the case, employers can always adjust their policies to account for that and remove the requirement.

MR. GOLD:
I cannot remember the exact number of Nevada businesses that had under 50 employees, but it was more than 70 percent. That means the vast majority of businesses in Nevada are less than 50 employees, which that paid time off bill that was passed last Session would not apply.

SENATOR PICKARD:
I agree that under FMLA, the current practice is you get that medical necessity certification, but that does not usually include a release for dissemination. If it were used as part of a disciplinary action, that would be a technical violation of HIPAA. To avoid that would require a release from the family member for the use of that information prior to the leave, and I do not know if that would be practical. However, I have never heard of an action brought under HIPAA for that. You say more than a dozen states have implemented this rule. Have we seen any litigation on this point in any of those states where HIPAA was involved or use of the records was considered inappropriate, to your knowledge?

MR. FEWKES:
I am not aware of any litigation involving HIPAA questions in those states. As I mentioned, the fact that these are taking place within families is probably going to nip 99 percent of those problems right in the bud. The medical certification that requires some kind of a doctor's signature would work for this purpose with the addition of a line for a signature for the family member to authorize this type of release. Again, remember that this is only needed if the employer decides to require that kind of certification.

SENATOR LANGE:
With regard to the 50 employees, would that be 50 full-time employees or 50 employees of any sort? How would you define that?

ASSEMBLYWOMAN BILBRAY-AXELROD:
That was in reference to the bill we passed last Session. This bill does not have a number and applies to all businesses in Nevada. According to S.B. No. 312 of the 80th Session, if you have more than 50 employees, you do not have a sick leave policy; you have a PTO policy. This bill is trying to capture the 78 percent of businesses in Nevada with under 50 employees that were not captured by S.B. No. 312 of the 80th Session.

SENATOR LANGE:
And A.B. 190 would capture them?

ASSEMBLYWOMAN BILBRAY-AXELROD:
That is correct.

SENATOR LANGE:
A lot of small businesses have just enough employees to run their day-to-day operations and really cannot afford to have anyone gone. They do not have sick leave, and it is hard for them when people are gone. This would add another layer that would impact those small businesses. I am wondering how you see that working.

ASSEMBLYWOMAN BILBRAY-AXELROD:
You just nailed it when you said they do not have sick leave. If a company does not have a sick leave policy, this bill does not apply to them. It is only for companies that have a sick leave policy.

SENATOR LANGE:
In businesses with a sick leave policy, employees will be able to use it to care for family members, but they will still have their own sicknesses. I can see instances where I use my sick leave to take my mother to the doctor, and since she goes fairly regularly, I miss a lot of days. I might end up exhausting my sick leave on my family, and if I then get sick, I have no more sick leave. In your research, did you find states that limited how much of a person's sick leave can be used for family?

ASSEMBLYWOMAN BILBRAY-AXELROD:
That is in this bill. You can only use half of the time you have for family sick. If you get ten days of sick leave annually, you can only use five of those days for family. However, I think you will see a more productive workforce because this

now allows employees to say, "I'm going to add that additional hour to my lunch," or "I'm going to come in an hour late because of this," instead of taking the full day. What we have seen in other states has proven my theory that you get more productivity.

SENATOR LANGE:
Thank you. I thought it was important to get those facts on the record.

SENATOR SCHEIBLE:
I am looking at the definition of "immediate family" in A.B. 190, which I am guessing has been reviewed many times and discussed in depth. My question is not about expanding or changing it, but whether every company would be limited to this definition or could add additional people to the definition. I ask because the relationship I do not see in here is a stepparent-in-law, which might sound distant, but if your spouse's stepparent is an important person to them, you may end up wanting to help that person.

ASSEMBLYWOMAN BILBRAY-AXELROD:
I am surprised I did not think of that, since my husband often takes my stepfather to doctor appointments. I do not know if counsel has an opinion on that, but I assume this is the narrow scope.

MR. KEANE:
This definition in section 1, subsection 7 of the bill provides a minimum. Employers are free to provide more benefits to their employees if they want to; they can give them more sick time, or they can allow them to use sick time for more people. This is just saying what the minimum requirement is: if an employer offers sick time, they have to allow at least half of it to be used for family sick time, and for those purposes, "immediate family" means the people listed. If an employer wanted to minimize their obligation, they could limit the employee to only using immediate family members included in the definition. But this is a floor. It is not limiting an employer from doing more.

MR. GOLD:
We also included foster child in that list. The Children's Action Alliance asked for this because a lot of foster children have serious chronic medical conditions.

SENATOR SCHEIBLE:
That makes perfect sense to me, thank you.

ANDREW LEPEILBET (Military Order of the Purple Heart):
We fully support A.B. 190. It has a direct impact on our veterans and their families. With that said, we are concerned about its fiscal and financial impact on the smaller businesses in our State.

MISTY GRIMMER (Alzheimer's Association):
We are happy to support A.B. 190 on behalf of all the caregivers who take care of family members with Alzheimer's and dementia. The pandemic has drawn a huge bright line around the need for recognition of the role of family caregivers. As family members have brought loved ones home due to concerns about facility safety or have needed to step up their role because of the fear of bringing outside caregivers into the home, the burden on families has been huge. This bill helps provide protections to employees who need more flexibility on how they can use their sick leave.

TOM MCCOY (Nevada Chronic Care Collaborative):
Our members are Nevada advocates working together to bridge the gaps in chronic care. One of those gaps is caregiving. Representing Nevada patients with chronic diseases, we know that the need for ongoing or even short-term caregiving often goes unmet. This bill would help to meet those unmet needs: family caring for family. We ask the Committee to pass A.B. 190.

BRYAN WACHTER (Retail Association of Nevada):
We are in favor of A.B. 190. A lot has been said about the PTO bill passed last Session. While it does not apply to employers with less than 50 employees, we believe this is a good step in the right direction to make sure our employees are happy, healthy and taking care of what they need to take care of.

It is important to note that the bill does not require sick leave to be offered. It does not require any more expenditures from businesses than they are already comfortable with. We believe this bill empowers employees and employers to be able to provide the right mix of benefits that will enable their businesses to grow to the point where they are subject to the PTO bill.

CONNIE MCMULLEN (*Senior Spectrum* Newspaper):
I am very much in support of A.B. 190. This is the third time around for this concept, and maybe the third time will be the charm. When I was a young parent, I needed to take care of my children, and this would have come in very handy.

WILL PREGMAN (Battle Born Progress):
We support A.B. 190 to expand paid sick leave to employees caring for ill family members. This bill allows family members to provide support when it is needed, whether taking family members to doctor appointments or caring for them directly. Nevada working families deserve the chance to care for family members. Denying time off in these circumstances puts family members in need at risk, but also the well-being of employees themselves who cannot be there for their loved ones.

MARLENE LOCKARD (Retired Public Employees of Nevada):
We are in strong support of A.B. 190 and thank Assemblywoman Bilbray-Axelrod for her tenacity in getting this important legislation passed. So often, seniors rely completely on family members to assist them. This bill does not ask for any additional time off or any new benefits. It simply provides a person who is already entitled to sick leave to use it when caring for family members.

KATIE RYAN (Dignity Health - St. Rose Dominican):
I am here today in support of A.B. 190.

NATALIE EUSTICE (Nevadans for the Common Good):
We support A.B. 190. I have a letter of support (Exhibit D) that includes my personal experience in this regard.

PAUL J. MORADKHAN (Vegas Chamber):
The Vegas Chamber is neutral on A.B. 190. We were originally opposed to this bill in 2019. However, we do not have an issue with this expansion of the definition of sick leave as many employers have been transitioning to PTO programs because of the greater flexibility it offers to employees.

I would also like to mention that many of our members, both large and small, have provided greater flexibility in the use of leave time during the pandemic.

NICK VANDER POEL (Reno Sparks Chamber of Commerce):
We are neutral on this bill. I echo the statement of Mr. Moradkhan.

JENNIFER RICHARDS (Office of Attorney for the Rights of Older Persons and Persons with a Disability, Aging and Disability Services Division, Department of Health and Human Services):
We are neutral on A.B. 190.

I would like to highlight for the Committee some salient facts from Elders Count Nevada 2021. Elders Count Nevada provides authoritative data on Nevada's older adults and is the product of a collaborative effort between the Center for Healthy Aging, the Office of Statewide Initiatives at the University of Nevada, Reno, School of Medicine, and the Aging and Disability Services Division. Nevada continues to see higher growth rates in the population of older adults as compared to the rest of the United States. In addition, on average, Nevada grandparents are living with grandchildren and other family members, especially in southern Nevada, at higher rates than our counterparts. Additionally, most caregivers reported having the care recipient living in their homes, meaning that their caregiving role extends to 24 hours a day, 7 days a week. Because social security benefits are a primary source of income for many older adults in our State, that leads some to stay in the workforce longer as they age.

This bill is an important step to allow Nevadans to provide immediate care for their family members suffering from chronic conditions. The bill does not create paid time off for businesses under 50 employees. Instead, it provides that if employees do have sick leave, they can choose to use that time to provide caregiving. This bill will help support the well-being of Nevadans and help older adults and people with disabilities remain in their homes.

VICE CHAIR NEAL:
I will close the hearing on A.B. 190 and open the hearing on A.B. 210.

**ASSEMBLY BILL 210 (1st Reprint)**: Revises provisions governing the practice of chiropractic. (BDR 54-140)

JULIE STRANDBERG (Executive Director, Chiropractic Physicians' Board of Nevada):
The general intent of A.B. 210 is to address four issues. First, it authorizes the Chiropractic Physicians' Board of Nevada to register, inspect and regulate chiropractic practices that are not wholly owned by Nevada licensed chiropractic physicians. Second, it harmonizes language throughout our practice act to use the current and modern term "chiropractic physician" in place of the term "chiropractor." Third, it updates our licensing statute to lessen the barriers

to licensing in the hope of encouraging retention and recruitment of more chiropractic physicians to Nevada. Fourth, it authorizes chiropractic physicians to recommend, dispense and administer lawful over-the-counter (OTC) products.

VICE CHAIR NEAL:
Section 4, subsection 2 establishes a written policy and procedure for secure storage and transfer of medical records. Is there an issue where people have not been properly storing records?

MS. STRANDBERG:
This particularly addresses registering business entities. This section says that business entities have to provide records the way chiropractic physicians already have to.

VICE CHAIR NEAL:
Can you spell that out a little?

MS. STRANDBERG:
It applies to those practices that are not wholly owned by chiropractic physicians. We are asking that they follow essentially the same guidelines that a chiropractic physician has to follow when it comes to records.

VICE CHAIR NEAL:
Section 7 talks about an applicant actively engaged in the practice in another state. Can you explain that provision?

MS. STRANDBERG:
That section refers to the licensing of applicants as chiropractic physicians. That language allows us to license chiropractic physicians who graduated from chiropractic college before Part III and Part IV of the National Board of Chiropractic exam was available. If a chiropractic physician graduated from college 30 years ago, the exam consisted only of Part I and Part II, but existing law requires all four parts to be taken. This provision reaches out to those folks who took the test when only Part I and Part II were available, but who have been practicing for several years.

VICE CHAIR NEAL:
If I read section 7 correctly, you are grandfathering them in, but you are capping them at ten years without any adverse action. What would happen if someone had an adverse action in that period?

MS. STRANDBERG:
A chiropractic physician who had an adverse action during that period would have to come before the Board, which would have to address it. It would be a Board decision at that point.

VICE CHAIR NEAL:
Section 16, subsection 2 of A.B. 210 states, "A chiropractic physician may recommend, dispense or administer any drug or device for which the prescription or order of a practitioner is not required by federal or state law." I am not clear on what that means, especially "not required by federal or state law." Can you explain that provision?

LOUIS LING (Board Counsel, Chiropractic Physicians' Board of Nevada):
I am the Board's private contract counsel. Our original language for this section included the phrase "over the counter," and the Legal Division rightly said we could not use that term. This is how the Legal Division translated the OTC concept. By law, chiropractic physicians do not and cannot prescribe, administer or dispense prescription medications, and they do not want that authority. This provision is intended to say that chiropractic physicians can recommend or sell OTC products from a chiropractic practice. The language of subsection 2 is an attempt to cover both scenarios. Most drug law is covered by federal law, but some products are recognized by the State that might not be recognized by the federal Food and Drug Administration. This would allow OTC products recognized by the State that might not be recognized by the federal government.

VICE CHAIR NEAL:
Are chiropractic physicians required to consult with a pharmacist? What is the range of products they will be able to sell? What is the relationship on how they purchase these items and put them up for sale in their offices? Are chiropractic physicians doing this already?

When I go to the eye doctor, I do not like them trying to sell me something. I just want to get my glasses, and sometimes they are too expensive and I go to

LensCrafters or somewhere else. If I know I can go to Walgreens or CVS for my OTC medications, why would the chiropractic physician want to sell me these items in their office? Who is having the conversation with me about possible drug interactions? We are not talking about you selling me some BENGAY.

MR. LING:
Actually, that is what we are talking about. What chiropractic physicians have historically sold out of their chiropractic practices have been items like dietary supplements and vitamins. They do not tend to carry or sell common brand name items like Advil or aspirin; they would be more likely to just tell you to go get some at the local store. The items they sell are more likely to be things that might not be generally available, like hemp oil. They could also include topical preparations like BENGAY—pain patches, creams or ointments.

The intent of this section was to say that chiropractic physicians can recommend and/or sell OTC medications. That is all we were trying to do.

VICE CHAIR NEAL:
What do you mean by "device"?

MR. LING:
A device might be a pillow, a sleeping aid, special bed pads, other things to help patients sleep better. It might be a brace for your elbow or your back, something that would give you a little extra support.

VICE CHAIR NEAL:
I am concerned about liabilities. There is little liability on a pillow, but technically, if it is in your possession and you sell it to me and it does not work or is defective, what recourse does the patient have? Do they go back and get a refund from the chiropractic physician? Can they sue the chiropractic physician? What is currently happening in this regard? Can you explain how the liability attaches? I feel strongly about the drug piece; the devices are interesting but not as troubling.

MR. LING:
The liability would be for the decision the chiropractic physician made. If the chiropractic physician recommends a particular vitamin or OTC analgesic, he or she will be liable for assisting the patient with that decision and telling the patient how to take it. If the patient uses the product correctly and it causes a

problem, that is probably going to be with the manufacturer, not the doctor. Aspirin, for example, has certain side effects. As long as the physician has warned the patient about the side effects of aspirin, the physician will be covered when telling the patient to take some aspirin.

SENATOR LANGE:
Would it be fair to say that most of the vitamins you get from a chiropractic physician are more on the wellness side of the spectrum?

MR. LING:
Yes. It has long been part of the practice of chiropractic, as defined in our statutes, that they give nutritive advice, so a lot of them do engage in wellness practices. Part of that is the supplements they may recommend or sell.

SENATOR LANGE:
Would it be fair to say that those supplements are not necessarily supplements you could buy at a pharmacy? They are specialty supplements for particular conditions that the patient might have.

MR. LING:
Yes. Of course, the patient is not required to buy these products from the chiropractic physician. If the chiropractic physician wants you take vitamin D, for example, you can get it from the grocery store, you can order it online or you can buy it from the chiropractic physician. There is nothing in here that would require you to buy it from the chiropractic physician.

VICE CHAIR NEAL:
I will close the hearing on A.B. 210 and open the hearing on A.B. 298.

**ASSEMBLY BILL 298 (1st Reprint)**: Revises provisions relating to noncommercial vehicle leases. (BDR 8-782)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):
I have heard of numerous incidents in which consumers, particularly those who have language barriers or difficulty wading through legal jargon, thought they were purchasing a vehicle and learned later that they were just leasing it. That is an extreme example of something that is unfortunately happening in Nevada, and there are numerous other issues when it comes to leasing a vehicle.

We have been working with the stakeholders to find a way to resolve these issues, and they have been incredibly helpful in ensuring we are going after the bad actors and protecting those in the industry who work fairly. I want to make it clear that I am not suggesting the majority of businesses are doing this; I would estimate it is no more than 40 percent.

When one purchases a car in Nevada, statute requires certain built-in terms in the seller's contract that are helpful to consumers and level the playing field among the industry. This ensures that everyone is working under the same rules, and that we are not in a situation where one business is doing one practice and another business is doing another practice. It levels the field among the dealerships and helps consumers understand where they fall.

However, the same is not true when it comes to leasing a vehicle. In fact, outside of a few federal protections, it is almost the wild, wild West when it comes to auto leases. There are no protections. We have never created standards across the board when it comes to vehicle leases.

Let me give you some examples. Right now, there is no regulation defining "default." We do not have laws about the amount of fees that can be charged. We have no statute that covers the situation when people purchasing cars find out years later that they were only leasing them. Those are some of the issues we need to fix, at a bare minimum.

Ms. Romero is going to walk you through the bill and the proposed amendment (Exhibit E). She works with consumers in this world and has seen this happen often.

I want to make it abundantly clear on the record that this issue impacts all members of our community, especially those who are uncomfortable reading a technical contract, members of underrepresented communities with language barriers and communities of color, who are the most likely to be victimized and fall prey to these predatory practices.

SOPHIA ROMERO (Consumer Rights Project, Legal Aid Center of Southern Nevada):

Amendment No. 242 adopted by the Assembly was not quite what we had discussed with the stakeholders. The amendment in Exhibit E is intended to correct those issues.

We thank Assemblyman Flores for bringing this important piece of legislation. This bill will be a much needed addition to Nevada law and solves a problem we see on an almost daily basis.

Second to buying a home, purchasing a vehicle is the most expensive purchase of one's life. While not everyone owns a home, almost everyone, especially here in Nevada, has to buy a car in order to get to work, go to the grocery store, go to the doctor, get their kids to school and just live life day to day. Because of the volume of vehicle sales and repairs in Nevada, not a day goes by without someone reaching out to us seeking assistance with a car issue. Unfortunately, abuses surrounding used car leases have become the most common issue we see. We see cars being repossessed when the consumer is less than 24 hours late with a payment, sometimes despite assurances that the vehicle would not be repossessed until a later date so the consumer could have a chance to pay. We see consumers being charged upwards of $25 a day in late fees. We see a monthly payment that increases with time. We have even seen people who had no idea they were leasing a vehicle instead of purchasing one, in spite of oral assurances and representations that it was a sale.

To say this disproportionately affects the non-English-speaking community is an understatement. I sat in a deposition with a client, an older gentleman who was almost in tears because he had to respond to opposing counsel's questions with, "I don't read or understand English," for each of the 72 times she pointed out the word "lease" in his contract. After years of paying and being almost done with his lease term, his vehicle was repossessed for only being a couple days late, despite the dealership's promise that it would not repossess and that he had more time to pay. When he came to our office, I am the one who had the unfortunate task of informing him that what he signed was not a sales agreement as he thought, but rather a lease agreement, which unlike the sales contract that we use in Nevada does not have a built-in 30-day grace period.

A local pro bono attorney and I recently wrapped up a case where in July 2019, a woman leased a 2003 Mercury with 130,000 miles on it. She was required to pay on the lease for a term of 115 months, or 9 1/2 years, and at the end of the lease would still have to pay $3,359.52 in order to own the car. The reality is that this vehicle will not be running nine years from now, and even if it is, there is no way it will be worth $3,300. This woman, who is a native English speaker, was completely shocked when she found out it was a lease agreement, as she thought she was purchasing the vehicle. In addition, her

vehicle was repossessed two days prior to the due date of her next payment, a date the dealership had confirmed with her in a text message.

While it used to be one or two dealerships that engaged in these types of practices, we now not only see these types of abuses on a more regular basis, but we see them from multiple dealerships. It seems like unscrupulous dealerships have caught on to the fact that leases do not require a disclosed interest rate, do not have a cap on late fees and do not have regulations regarding repossession, so they now have switched their business practices to exploit these statutory loopholes.

Because of these practices, we need clear laws regarding consumer vehicle leases. This bill seeks to make practices surrounding lease agreements more defined and help both consumers and legitimate businesses alike.

I will walk through the sections of A.B. 298 as amended by Exhibit E.

Section 1.5 puts into statute the standard default language that is already part of every sales contract in Nevada. We are not doing anything new here with regard to the definition of "default" or anything regarding late payments. Those terms are already included in all of our sales contracts in Nevada. We have one form of sales contract that every dealership must use, and these terms are included in that contract. We are simply expanding that requirement to be applicable to leases.

Section 2 focuses on used car leases and requires certain terms to be included in the lease agreement, including the terms of default; the statement that the document must not be signed if there are blank spaces; the statement that late fees are limited to $15 or 8 percent of the installment amount, whichever is less; and details of the residual value, early termination and default charges.

Section 2 of the bill also sets forth disclosures the dealership must provide to the consumer and the consumer must sign. These disclosures include, in a large, bold font, a disclosure that lets the consumer know it is a lease and not a sale and that they will not own the vehicle at the end of the contract term unless they pay additional money; an instruction to read everything carefully; a warning that if there are oral promises not included in the writing, the writing will prevail; a warning that there is no cooling off period under Nevada law; a statement that if the contract contradicts statutory protections, the statute will

prevail; and a statement that if the disclosures are not provided, the lease will be considered a sale.

Section 4 of A.B. 298 lays out additional protections that are currently included in car sales, such as the legal document rule and the font requirements.

Section 5 adds the requirements that all spaces must be filled in prior to having the consumer sign the agreement.

Section 5.5 puts in the civil right of action for people when the dealership has violated this section.

Section 6 contains the definitions. Sections 7 through 10 ensure the bill and the current statute are cohesive in that what currently applies to open-end leases in commercial leases will now also apply to open-end leases in consumer transactions. However, an open-end lease in a consumer transaction is extremely rare; if even one happens, we usually never see them.

VICE CHAIR NEAL:
Talk to me about the notice provision. If a company fails to put this notice out, what is the remedy?

MS. ROMERO:
If the company fails to provide the disclosure prior to the sale, it would be subject to a civil remedy for violating the statutes. It would be treated like a sales contract. In Nevada, we have a standard sales contract where the terms are all laid out and everything is set forth in statute, and the sales contract is regulated by the Division of Financial Institutions. We would essentially apply those provisions to this contract rather than whatever provisions it might have in the current system.

VICE CHAIR NEAL:
Section 5.5 in Exhibit E refers to deceptive trade practices. You refer to a secondary obligor under the consumer vehicle lease that may bring a civil action. Can you break that out a little bit more to explain?

MS. ROMERO:
A secondary obligor is also known as a cosigner. When you buy a car, if you are a younger person who does not have established credit, you might ask your

parents to cosign the loan. A husband and wife might cosign for each other. This provision means the primary person on the account and the co-obligor, the cosigner, are both able to file a civil action.

SENATOR SETTELMEYER:
How would you know who the co-obligors are?

MS. ROMERO:
Since co-obligors are cosigners, they would have to sign the lease agreement in order to be obligated under the lease agreement. They have to have signed the contract, or they would not have standing to bring a legal matter.

SENATOR SETTELMEYER:
If your spouse signs the lease agreement and you do not, in a potential divorce situation, would you be responsible for those debts?

MS. ROMERO:
In that situation, Nevada community property law would take over. I believe Senator Pickard knows more about community property law than I do. If your spouse signs a contract for a necessity, it is believed to be an asset of the community or a community debt, and therefore the possibility of being liable would be 50-50 because Nevada is a community property state. Nothing in this bill affects that.

ANDREW MACKAY (Executive Director, Nevada Franchised Auto Dealers Association):
I am here to speak in the neutral position on A.B. 298.

We started talking about this problem in November 2019. Needless to say, we were shocked when they let us know what was going on. Assemblyman Flores and his team listened to our concerns, and much of what is contemplated in the amendment in Exhibit E addresses our concerns and focuses on where the problem is, and that is leasing of new vehicles. We certainly believe that what is in front of you will address and hopefully eliminate this predatory practice.

VICE CHAIR NEAL:
Does Exhibit E revise the original bill or the first reprint of A.B. 298?

MS. ROMERO:
The proposed amendment in Exhibit E is different from the reprint in several ways. The reprint, which incorporated Amendment No. 242, has the definition of default as a required term of the contract. Exhibit E puts it directly into statute and says this is how default is defined in Nevada. Exhibit E also changed section 5 to say that the dealerships cannot obtain a signature when there are blank spaces on the contract. The first reprint made an exception for delivery, which does not apply to consumer leases. Usually when you are leasing a vehicle, there is not a delivery issue; you just go to the dealership, pick out the car and take it home. There is no delivery aspect with noncommercial leases the way there is with commercial leases.

Those are the significant changes between the proposed amendment in Exhibit E and the first reprint of the bill.

ASSEMBLYMAN FLORES:
In closing, I brought this bill to get rid of some loopholes and abusive practices that exist in the leasing world because we do not have uniformity across the industry.

VICE CHAIR NEAL:
I will close the hearing on A.B. 298. Unfortunately, we have run out of time for this morning. The hearing on A.B. 200 will be rescheduled for a future meeting.

**ASSEMBLY BILL 200 (1st Reprint)**: Revises provisions governing veterinary medicine. (BDR 54-168)

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VICE CHAIR NEAL:
Is there any public comment? Hearing none, we are adjourned at 10:56 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Dina Neal, Vice Chair

DATE:

| EXHIBIT SUMMARY | | | | |
|---|---|---|---|---|
| **Bill** | **Exhibit Letter** | **Begins on Page** | **Witness / Entity** | **Description** |
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| A.B. 270 | B | 1 | Janine Hansen / Independent American Party | Opposition Testimony |
| A.B. 190 | C | 1 | Barry Gold / AARP | Fact Sheet |
| A.B. 190 | D | 1 | Natalie Eustice / Nevadans for the Common Good | Letter of Support |
| A.B. 298 | E | 1 | Assemblyman Edgar Flores | Proposed Amendment |