

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Eighth Session  
May 13, 2015**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair James A. Settelmeyer at 8:39 a.m. on Wednesday, May 13, 2015, in Room 2135 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 James A. Settelmeyer, Chair  
Senator Patricia Farley, Vice Chair  
Senator Joe P. Hardy  
Senator Becky Harris  
Senator Mark A. Manendo  
Senator Kelvin Atkinson  
Senator Pat Spearman

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Michelle Fiore, Assembly District No. 4

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Policy Analyst  
Dan Yu, Counsel  
Patricia Devereux, Committee Secretary

**OTHERS PRESENT:**

Jan Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders  
Dan Unumb, Executive Director, Legal Resource Center, Autism Speaks  
Charles Marriott, Founder and Owner, Autism Care West  
Shannon Crozier, Ph.D., Director, University of Nevada Las Vegas Center for  
Autism Spectrum Disorders, Department of Educational and Clinical  
Studies, College of Education, University of Nevada, Las Vegas

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Gary Gordon, U.S. Chamber of Commerce  
Dan Burdish, Chief Executive Officer, Citizen Outreach  
Ryan Hamilton, Las Vegas Sands Corporation  
Danny L. Thompson, Executive Secretary/Treasurer, Nevada State AFL-CIO  
Jack Mallory, Southern Nevada Building and Construction Trades Council  
Vanessa Spinazola, American Civil Liberties Union of Nevada  
Yvanna Cancela, Culinary Workers Union, Local 226  
Richard Daly, Laborers Union International of North America, Local 169  
Greg Esposito, Nevada State Pipe Trades  
Stacey Shinn, Progressive Leadership Alliance of Nevada  
Yolanda King, Chief Financial Officer, Finance, Clark County

**Chair Settlemeyer:**

We will open the work session with Assembly Bill (A.B.) 227 and A.B. 231; there are no amendments, as noted in the respective work session documents (Exhibit C and Exhibit D).

**ASSEMBLY BILL 227 (1st Reprint)**: Revises provisions governing the practice of medicine. (BDR 54-412)

**ASSEMBLY BILL 231 (1st Reprint)**: Revises provisions governing the practice of chiropractic. (BDR 54-701)

SENATOR SPEARMAN MOVED TO DO PASS A.B. 227 AND A.B. 231.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Marji Paslov Thomas (Policy Analyst):**

Assembly Bill 85 (Exhibit E) revises provisions governing alcohol, drug and gambling counselors. Steven Burt, Executive Director of Ridge House, Inc., proposed an amendment to delete provisions that pertain to or reference "certified peer support specialist."

**ASSEMBLY BILL 85 (1st Reprint)**: Revises provisions governing alcohol, drug and gambling counselors. (BDR 54-388)

**Chair Settlemeyer:**

The inclusion of that term's definition made the bill problematic, and put it in jeopardy of being killed.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 85.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Ms. Paslov Thomas:**

Assembly Bill 93 revises provisions relating to the continuing education required to renew certain licenses. There are six proposed amendments as shown in the work session document ([Exhibit F](#)).

**ASSEMBLY BILL 93 (1st Reprint)**: Revises provisions relating to the continuing education required to renew certain licenses. (BDR 54-27)

**Ms. Paslov Thomas:**

The first proposed amendment would require psychiatrists, psychologists, clinical professional counselors, marriage and family therapists and social workers to furnish proof of compliance with the requirements for continuing education as set forth in regulations adopted by their licensing boards.

The second proposed amendment would require a psychiatrist licensed by the Board of Medical Examiners or the State Board of Osteopathic Medicine to complete at least 2 hours of instruction on clinically based—rather than evidence-based—suicide prevention and awareness.

The third proposed amendment would require the Board of Medical Examiners and the State Board of Osteopathic Medicine to encourage each holder of a license to practice medicine, except psychiatrists, to receive training concerning suicide prevention as a portion of his or her continuing education. The

fourth proposed amendment would require advanced practice registered nurses to complete at least 2 hours of instruction on clinically based suicide prevention and awareness in order to renew their licenses.

The fifth proposed amendment would require people licensed by the Board of Examiners for Alcohol, Drug and Gambling Counselors and detoxification technicians to complete at least 1 hour of instruction on evidence-based suicide prevention and awareness for each year of the term of their licensure or certification, as set forth in regulations adopted by the Board. The sixth proposed amendment specifies that continuing education requirements for the licensed professionals in the bill become effective on July 1, 2016, and expire by limitation on June 30, 2026.

**Chair Settlemeyer:**

I talked to sponsors and other parties interested in A.B. 93 who were concerned there might not be enough continuing education classes for professionals. However, that is not the case.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 93.

SENATOR SPEARMAN SECONDED THE MOTION.

**Senator Hardy:**

In Proposed Amendment 7171, Exhibit F, section 5.3, subsection 1, does "each year" mean if people have 2-year licenses, they can take 2 hours of instruction for 2 years, or do they have to take 1 hour per year?

**Dan Yu (Counsel):**

The licensing-renewal cycle for each board is different. For a 2-year license, classes must be taken for 2 hours of continued education courses for certification; for a 1-year license, it would be 1 hour. The requirement would be proportionate.

THE MOTION PASSED UNANIMOUSLY.

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**Ms. Paslov Thomas:**

Assembly Bill 409 requires makeup artists who work in licensed cosmetological establishments to register with the State Board of Cosmetology. I will read from the work session document ([Exhibit G](#)).

**ASSEMBLY BILL 409 (1st Reprint)**: Revises provisions relating to cosmetology.  
(BDR 54-1050)

The bill eliminates the requirement to pass a nationally recognized written examination as a requirement for applicants who are licensed in a branch of cosmetology in another state or jurisdiction to obtain a license to practice that type of cosmetology in Nevada.

There are five proposed amendments. The first will change the section 3.3 requirements that must be met before the Board may issue a certificate of registration to a makeup artist who engages in the practice of makeup artistry in a licensed cosmetological establishment to add that applicants must have completed at least 2 years of high school.

The second proposed amendment will establish certain requirements for makeup artists—except those who practice in a licensed cosmetological establishment and are therefore required to register with the Board—that must be met before practicing in the State. The third proposed amendment will require the Board to charge a fee of not more than \$25 for registering a makeup artist.

The fourth proposed amendment deletes section 3.7, which requires the Board to prepare a written examination on sanitation to administer to makeup artists required to be registered with it. The fifth proposed amendment will include “registrant” under the provisions of *Nevada Revised Statute* (NRS) 644.440 concerning, “Notice and hearing for denial of license; citation for violation of regulation concerning sanitation or health; grounds for immediate suspension and automatic revocation.”

SENATOR FARLEY MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 409.

SENATOR MANENDO SECONDED THE MOTION.

**Senator Atkinson:**

In the third proposed amendment, [Exhibit G](#), does the \$25 registration fee mean the bill must now go to the Senate Committee on Finance?

**Chair Settlemeyer:**

Discussions determined that amount is potentially de minimis, so the bill will probably not have to go to the Senate Committee on Finance. That fee is consistent with those charged to hair braiders and other professions licensed by the Board.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Settlemeyer:**

We will open the hearing on [A.B. 6](#).

**[ASSEMBLY BILL 6 \(1st Reprint\)](#)**: Revises provisions relating to autism spectrum disorders. (BDR 54-67)

**Jan Crandy (Commissioner, Nevada Commission on Autism Spectrum Disorders):**

You have my written testimony ([Exhibit H](#)). [Assembly Bill 6](#) addresses registered behavior technician (RBT) staffing shortages and replaces the RBT State credential with a national credential, at a cost savings to insurance companies. The bill doubles the current treatment-hours insurance benefit to \$72,000 allowing autistic children to receive more treatments per week. That benefit will allow about 25 hours per week of treatment, compared to the current 10 hours per week. The benefit would take effect on January 1, 2017. I know how important treatment is because my daughter and grandson are autistic. Treatment has changed their lives, and they will now become voting citizens.

**Dan Unumb (Executive Director, Legal Resource Center, Autism Speaks):**

The Autism Speaks Legal Resource Center works nationwide on legal issues pertaining to autism, especially those involving insurance coverage. You have a copy of my slide presentation ([Exhibit I](#)), from which I will quote. Applied behavior analysis (ABA) is a demonstrably effective autism treatment, according to many scientific studies. It is covered by insurance in 41 states.

The savings provided by ABA are tremendous and well documented. According to a Harvard University study, the lifetime societal costs for those who do not undergo ABA treatment is \$3.2 million, which has been increased to \$3.7 million for inflation, compared to \$603,448 for treated children.

Forty-seven percent of autistic children may be mainstreamed after intensive, effective ABA, while 42 percent make substantial gains. This translates into substantial savings. Applied behavior analysis is a driver of cost to the State, particularly in Medicaid and special education services.

The premium cost for ABA is about 30-cents-per-member per month (PMPM). Assembly Bill 6 will lift the insurance ABA service cap limit. Based on actuarial projections, there would be about a 17-cent increase in premium cost. The current PMPM premium cost for the State health plan is 26 cents, so the cost would rise to about 43 cents per month. That is the same as in Missouri, which has the most comprehensive cost data. The Missouri Department of Insurance is tasked with providing an annual report breaking down the cost of autism coverage. The monthly cost for total autism coverage is 50 cents PMPM, half of which are ABA costs.

Missouri's law removed caps on large-group, small-group and individual policies. New Jersey's PMPM rate is 63 cents. We are talking about less than a \$1-PMPM cost, with an incredible return. The Missouri Department of Insurance 2015 report concluded its law has been an unqualified success by every metric. The RBT credentialing change in A.B. 6 is appropriate and consistent with laws in other states, in terms of mandates and licensure.

**Charles Marriott (Founder and Owner, Autism Care West):**

You have my slide presentation ([Exhibit J](#)), from which I will quote. Autism Care West is a Las Vegas autism treatment provider. I am a licensed and board-certified behavior analyst. I support doubling the maximum benefit of ABA treatment to not less than the actuarial equivalent of \$72,000 per year. That will increase the treatment outcomes for ABA services.

I support the addition of reimbursement for providers with the RBT credential. This equates to hours of ABA treatment provided by line-level therapists or certified autism behavior interventionists (CABI). They implement treatment plans designed by board-certified behavior analysts. The RBT credential allows providers like me to streamline the credentialing process. Adding the RBT

credential will remove barriers to services because Nevada has a workforce shortage problem. I recently credentialed three staff members as RBTs and the process was fairly efficient.

The CABI credential has served Nevada well. The Behavior Analyst Certification Board, Inc., is the national governing body that oversees the practice of ABA and certifies supervisors at my level. The RBT includes everything in the CABI credential. There is a standardized curriculum, competency assessment, criminal background check, national registry and ongoing oversight and supervision. There are mechanisms by the Behavior Analyst Certification Board to protect consumers if concerns arise regarding delivery of services by RBTs. Ethics and professional conduct are taken very seriously.

**Shannon Crozier, Ph.D. (Director, University of Nevada, Las Vegas Center for Autism Spectrum Disorders, Department of Educational and Clinical Studies, College of Education, University of Nevada, Las Vegas):**

You have my written testimony ([Exhibit K](#)). Assembly Bill 6 will expand the hours of ABA therapy by raising the cap on PMPM insurance benefits. Increased credentialing of RBTs and CABIs will help address the critical workforce shortage in our field. The RBT credential will allow us to get people into the workforce more efficiently with fewer barriers. That will help us build a vertical career path in which people can move from being RBT into more senior positions.

The University of Nevada, Las Vegas Center for Autism Spectrum Disorders has nearly finished an online RBT training program ([Exhibit L](#)). It is an in-State system that will keep resources and revenue local as we expand our workforce.

SENATOR HARRIS MOVED TO DO PASS A.B. 6.

SENATOR FARLEY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Settlemeyer:**

We will open the hearing on A.B. 356.

[ASSEMBLY BILL 356 \(2nd Reprint\)](#): Prohibits certain unlawful acts. (BDR 3-844)

**Assemblywoman Michelle Fiore (Assembly District No. 4):**

You have my written testimony ([Exhibit M](#)). The genesis of the bill is the protection of people's First Amendment right to protest and of the right of businesses to lawfully conduct commerce. The bill will not prevent anyone from protesting or picketing businesses. It does not limit anyone's First Amendment rights or stop organizations from legally posting protestors or picketers at any location. [Assembly Bill 356](#) does allow businesses to legally protect themselves from illegal acts perpetrated by demonstrators or picketers.

Section 2 of [A.B. 356](#) disallows people from damaging, injuring, harming, threatening or maliciously disrupting the lawful conduct of business. Section 3 disallows damaging, marking or destroying the merchandise of lawful businesses. Section 4 states that the intent of [A.B. 356](#) is not to limit the lawful exercise of First Amendment rights.

Section 4.5 of [A.B. 356](#) allows businesses to sue for damages from unlawful acts outlined in sections 2 and 3. It stipulates presumed damages of \$2,500 plus court costs and attorneys' fees for a violation of section 2, unless a business can prove damages in excess of that amount. It allows for a civil action for violations of section 3 for the actual damages, plus court costs and attorney's fees. Damages may only be assessed if protestors violate specific sections of the bill. Sections 5 through 9 were deleted by amendment.

Section 9.3 of [A.B. 356](#) further defines unlawful actions during demonstrations against or picketing of businesses. It does not allow for disrupting traffic or blocking public rights-of-way to interfere with businesses. It does not allow language threatening immediate harm to be used against customers entering businesses, nor does it allow demonstrators to abuse said customers. Section 9.5 of [A.B. 356](#) brings violations of section 9.3 into the general provisions of medical facilities and physicians' offices.

Section 9.7 repeals NRS 641.160, which limits picketing by labor organizations and is unconstitutional in the bill supporters' opinion. Instead of a statute limiting labor picketing, [A.B. 356](#) treats such picketing the same as picketing or demonstrations by any person or organization. We felt it was unconstitutional to specifically target labor picketing in NRS 641.160, and [A.B. 356](#) will fix that. Section 10 makes the bill's provisions effective upon approval.

Assembly Bill 356 is designed to protect both protestors' First Amendment rights and the rights of businesses. When I submitted my bill draft request, I was thinking about the despicable protest tactics used by members of the Westboro Baptist Church in Topeka, Kansas; actions taken against businesses by both pro-life and pro-choice protesters; ridiculous stunts pulled by members of People for the Ethical Treatment of Animals and the out-of-control actions of some labor protestors.

The bill is not anti-anything; it is a commonsense way to protect all sides in protests. Nothing in A.B. 356 will stop demonstrations, nor is it intended to. It is intended to require a sense of civility from demonstrators and allow people to conduct lawful businesses without having to worry that customers could be threatened at their doors. Nothing in the bill limits the ability to protest or exercise the right to free speech. Anyone who says otherwise must ultimately want to intimidate, bully or threaten businesses's customers or destroy property. The U.S. Chamber of Commerce and Legislative Counsel Bureau helped me ensure the bill's provisions comply with the First Amendment and the provisions of the National Labor Relations Board (NLRB).

**Gary Gordon (U.S. Chamber of Commerce):**

I am a Michigan attorney who works with the U.S. Chamber of Commerce on legislative matters for that state. I was the assistant attorney general of Michigan, so my approach to reviewing statutes is from the perspective of arguing the constitutionality of laws before federal judges. I became the chief legal counsel to the state of Michigan on labor matters.

The Chamber has asked me to address two issues that commonly arise with legislation like A.B. 356 related to preemption of the field by Congress and to the First Amendment. Preemption usually takes the guise of the *Garmon* preemption, named after the Supreme Court case, *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (U.S. 1959), in which Congress indicated its intent to occupy the field through legislation. The *Machinists* preemption is named after the Supreme Court case, *International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976). Congress indicated it did not intend to preempt an area of legislation, but has occupied the field, so there was not much left for Wisconsin to legislate.

Picketing is an area in which Congress has, through the National Labor Relations Act (NLRA), expressed its intent to preempt much of the field. In *Garmon*, Congress left the door open for state regulation of matters of great state concern. First Amendment issues deal with matters in which the content of speech and the speaker's identity—as opposed to that of other speakers—is sought to be regulated or carved out by the state.

In NRS 614.160, unions are identified and prohibited from engaging in certain conduct. By repealing that statute, those prohibitions will be applied to everyone. That statute would probably be held to be unconstitutional or challenged because it specifically regulates speech by union members. Assembly Bill 356 will broaden the scope of prohibition to all persons. The *Garmon* preemption states “obstructive picketing or threatening conduct may be directly regulated by the State.” The U.S. Supreme Court stated, “The dominant interest of the State in preventing violence and damage cannot be questioned. It is a matter of genuine local concern.” The Court has upheld regulations by states of the type in A.B. 356.

The bill also regulates picketing on private property. Federal courts have recognized states have the ability to regulate conduct on such property. The *Garmon* preemption to the NLRA allows states to legislate picketing when matters of public concern—violence, obstruction, threatened violence—are at issue.

In other cases, the Court recognized states have the ability to regulate the use of private property, which A.B. 356 will do. The Court also recognized states may regulate conduct, but not speech. The revised bill removes references to “speakers” in current law and only addresses conduct. This makes it more defensible from a First Amendment perspective since it does not directly regulate labor from a preemptive perspective; that is positive. The revised bill regulates anyone's access to private property, which is generally recognized as being within the state regulatory purview. The bill regulates conduct, not speeches or speakers, therefore avoiding First Amendment issues such as those addressed in *Garmon* and *Machinists*.

**Senator Hardy:**

If I were to define “business,” would that include a mosque, church or synagogue?

**Mr. Gordon:**

I would have to refer to the NRS to answer that.

**Assemblywoman Fiore:**

That is my intent.

**Senator Spearman:**

When Mr. Gordon spoke about speech versus activity in front of businesses, I had flashbacks to the civil rights movement of the 1960s. While no speeches occurred, sit-ins were held to change unjust laws. Based upon what you said, it seems sit-ins would have been prohibited under A.B. 356, and our society would not have advanced as far as it did.

**Mr. Gordon:**

The bill specifically addresses business issues and picketing on private property. Many of the civil rights speeches occurred in public areas. Demonstrations included marches, such as the one at the bridge at Selma, Alabama and on public thoroughfares, which would not be regulated under A.B. 356.

**Senator Spearman:**

There were nonviolent sit-ins at lunch counters by the Student Nonviolent Coordinating Committee. Those were private businesses. I have older activist friends who still show the effects of beatings they suffered on private property. Based on what you just said—that the bill is about limiting activity, not speech—if A.B. 356 had been in place 50 years ago, civil rights might not have advanced so far.

**Mr. Gordon:**

You are asking about specifics that I am not prepared to address.

**Senator Farley:**

The bill is asking that the rights of one person do not affect those of another. If people in a public space are exercising their rights of free speech without harassment, intimidation or destruction of private property, they would be allowed to continue sitting-in, protesting, carrying signs or calling their voting pool. Is the bill simply saying your rights as an individual cannot affect my rights as an individual

**Assemblywoman Fiore:**

That is correct.

**Senator Harris:**

Would schools, which might be private, be included in the bill's definition of business?

**Assemblywoman Fiore:**

Yes.

**Senator Hardy:**

Sometimes in statute, we look at "business" as exempting nonprofits like churches, even if the intent of A.B. 356 is to include them. We are talking about protecting freedom of speech from picketers. However, as per section 9.3, subsection 1, paragraph (c), "Knowingly to threaten, assault or in any manner physically touch the person ... ," if verbal threats are prohibited, are we protecting protestors' right to talk to people entering buildings, businesses, churches, mosques, etc.? Or, are we saying that is not "threatening"?

**Mr. Gordon:**

A lot of threatening speech can be assaultive in itself. If I threaten to harm you, that can be a misdemeanor if it places you in fear of bodily harm. That is not protected by the First Amendment. Senator Hardy's point is valid: in some circumstances, the line is not clear as to what constitutes threatening. That is a troublesome issue with which courts grapple. "Threatening to harm" is more acceptable language than simply "threaten."

**Dan Burdish (Chief Executive Officer, Citizen Outreach):**

*Nevada Revised Statute* 614.160 contains the same language as section 9.3, subsection 1, paragraph (c) of A.B. 356.

**Senator Hardy:**

Are we trying to tighten that language to fix Nevada law so it passes constitutional muster? If we say we are not limiting freedom of speech, are we limiting the right of someone to yell "fire!" in a crowded theater? We are limiting that freedom if it impinges upon that of the person whose nose is apt to be mashed.

**Mr. Burdish:**

Essentially, yes. Increasing anyone's rights will limit those of someone else. A balance between the two must be struck. You cannot yell "fire!" in a theater; that is correct. You cannot threaten to kill someone because that person is entering a business or church. We believe NRS 614.160 is unconstitutional because it only covers labor-dispute picketers. We want to put those provisions back into the general statutes so it will then be constitutional and problems avoided.

**Senator Manendo:**

If someone were to threaten a union picketer with being shot in the head or something of that nature, how would that fall under the language of A.B. 356?

**Mr. Burdish:**

If business owners threatened union picketers, they could be held accountable under the bill. The picketers could take the businesses to court, and vice versa, for a similar threat. It works both ways.

**Senator Manendo:**

Does not current NRS allow for that? There are protections for both businesses and for members of the public who walk by a protest they do not like and say something vulgar.

**Mr. Burdish:**

There is nothing addressing that scenario in current statute. Anyone can sue anyone under our system of justice, and there is nothing in Nevada law limiting that. The bill puts certain rights into statute, so a business owner can go after a disruptive picketer or a picketer can go after a disruptive business owner.

**Senator Farley:**

There is a motive behind harassing, bullying and intimidation. I can be on a nonprofit board that has nothing to do with my business, and if individuals do not like a decision I make on the board, they can rally their base and come to my business. The same treatment could occur if, perhaps, people do not like the products I am selling. It becomes more of a constant harassment situation with social media bullying. How will A.B. 356 prevent this? That is what is really going on. We can ask protestors to stay on public property and be respectful, but will the bill really prevent the underlying cause of the bullying and intimidation?

**Mr. Gordon:**

The eliminated statute, NRS 614.160, addressed actions of labor organizations. Any party engaging in conduct prohibited in A.B. 356 would be subject to the sanctions in section 4.5.

**Senator Spearman:**

I am struggling to understand how, if the U.S. Constitution already protects the free speech outlined in A.B. 356, it would become impotent once it crosses into Nevada. Does the U.S. Constitution still have the same potency here?

**Mr. Gordon:**

I do not have a good answer for you. You are referring to a situation in which the entity against which a protest occurs was already engaging in unconstitutional activities. The bill and caselaws do not address that. Public, or civil, disobedience were the terms used.

**Senator Spearman:**

I have moved beyond that comment. The protection we are allegedly trying to provide for people and businesses against bullying already exists in the Constitution. If so, what makes Nevada different in terms of the potency of constitutional protections such that we need to infuse our laws with similar language?

**Mr. Gordon:**

Assembly Bill 356 codifies and cleans up existing prohibitions in Nevada law, remedies weaknesses in the constitutionality of those laws and provides a remedy for businesses and others for violations that are not covered by constitutional protections. If something violates a broad constitutional theory, there may not be an appropriate remedy. The bill provides protections and a remedy for parties against certain conduct, while cleaning up questionable State statutes.

**Ryan Hamilton (Las Vegas Sands Corporation):**

The Las Vegas Sands Corporation supports A.B. 356.

**Danny L. Thompson (Executive Secretary/Treasurer, Nevada State AFL-CIO):**

In 1984, there was a citywide strike in Las Vegas. The Musicians Union, the Culinary Workers Union, the International Union of Operating Engineers and

hotel workers went on strike. It was a very violent strike with many clashes on picket lines. Ultimately, it was settled, and everyone went back to work.

In 1985, Republicans took control of the Nevada Assembly and introduced a bill similar to A.B. 356. *Nevada Revised Statute* 614.160 is what is left of that bill, which, basically, outlawed strikes. The AFL-CIO went to court, and most of the provisions of NRS 641.160 were struck down. Everything in it is unconstitutional. We had a caselaw and we overturned its provisions. Some Las Vegas hotels have built sidewalks on their property. When unions try to picket them, they say, "That's our property, and you can't be there." However, when they open the sidewalks to the public, they become public domain, so we have had, and won, all of those arguments.

The AFL-CIO is adamantly, unequivocally opposed to A.B. 356. It is the worst bill I have seen this Session. In response to Senator Spearman's line of questioning, there are many ways to prevent free speech or activities. One way is to tell people, "I'm going to charge you \$2,500 if you do that," as stated in section 4.5. Another way is a poll tax. Assembly Bill 356 is the same type of thing.

I bought a piece of equipment from a local company that was defective. The store refused to allow me to return it because all sales were final. I told them, "Well, you sold me something that wasn't any good," and they said, "All sales are final." I stood in front of the door of the business with a sign and told people, "Don't come in here, or you're going to get ripped off." I suppose I was threatening the business owners because I was making a point. This incident would fly in the face of the right of all of the Committee members' constituents to do the same thing. If that is all right with you, vote for this bill. It is constitutionally questionable and will probably be thrown out in court. I can guarantee that it will be challenged in court.

**Jack Mallory (Southern Nevada Building and Construction Trades Council):**

I agree with Mr. Gordon that NRS 614.160 needs to be repealed. The rest of A.B. 356 is mostly unnecessary. Section 9.3, subsection 1, paragraphs (b) through (h) are already in existing statute, with penalties for violations. To create a new category of penalties simply because they are tied to protest activities is irresponsible and inappropriate.

As stated in section 9.3, subsection 4, "A person aggrieved by a violation of this section may petition a court of competent jurisdiction to enjoin any ongoing activity ... is entitled to a rebuttable presumption of irreparable harm." There is an automatic presumption that the person has been harmed.

The Southern Nevada Building and Construction Trades Council engaged in a protest activity at Tivoli Village mall. We shined a light on the side of a building informing the public of health code violations perpetrated by the business. It filed a complaint in State court alleging we had trespassed. The judge erroneously found it was not a free speech issue and that we were actually trespassing. That decision is being appealed in federal court. According to A.B. 356, because we were accused of trespassing, we were found to be engaging in activities that could be used to damage or intimidate the business. We would thus be subject to the \$2,500 fine or actual damages or attorneys' fees and court costs, when in fact all we did was shine a light.

The bill is over broad in the extreme, its provisions are contained in other statutes, it creates a huge penalty that exceeds those in the aforementioned statutes and is mostly unnecessary. The only relevant sections are 9.7 and 10.

**Vanessa Spinazola (American Civil Liberties Union of Nevada):**

The American Civil Liberties Union of Nevada opposes A.B. 356, particularly section 9.3. Subsection 1, paragraphs (a) and (b) raise First Amendment concerns, and the rest of the paragraphs are over broad and vague. The government has the right to impose time, place and manner regulations on public sidewalks. Section 9.3, subsection 1, paragraph (b) addresses entering and leaving businesses, most of which are accessed by public sidewalks.

The concern has to be a compelling government interest, disruptive or violent; it cannot be just because you do not like what someone on the sidewalk is saying. Even if we say this is a constitutional debate—which it is not—there could be an as-applied challenge. For example, if someone is involved in a protest at an abortion clinic and the clinic wants that person to be charged with a misdemeanor and another person in front of the clinic offers to give the protestor a ride home or place to stay, the clinic does not call the police to arrest the second person. The government is now engaged in making a decision about what kind of speech is permissible on public sidewalks. If the legal application is protestors are continually charged with misdemeanors and their helpers are not, there is a constitutional problem with that application.

In section 9.3, section 1, paragraphs (a) and (b), there is no knowing and intentional requirement that said the activity be disruptive in any way. Violations of the law should not be misdemeanors; we should be concerned with what types of conduct we are criminalizing. In section 9.3, subsection 1, paragraph (c), if people put flyers on windshields in mall parking lots, are they guilty of a misdemeanor? That activity falls under the paragraph's language. In paragraph (d), if someone delivers a busload of people to the Legislature to testify against a bill, and the bus sits there for 3 minutes, is the driver guilty of a misdemeanor? The answer would be yes, according to paragraph (d).

On the record, the bill's proponents have acknowledged the "threatening to harm" language needs improvement. Culturally, racially and ethnically, people see threats in different ways. As applied, if certain groups are charged with misdemeanors for "threatening" behavior while others are not, there is a constitutional challenge of speech. As for paragraph (f), about knowingly dropping staples on property, will small children posting pictures of lost cats with broken instruments that drop staples be charged with a misdemeanor?

**Senator Farley:**

We all know what we are really talking about here and what has gone too far. What is the answer? It is not the status quo, or we would not be here today. Our society is turning into one that is not about laws, rational problem solving, public speech or good conversations. It is about threats, harassment, calling people at all hours and making employees and customers uncomfortable. It is not about solving problems; it is about bullying. We wonder why our children are struggling—look at what their parents are engaging in. What is the answer?

**Mr. Thompson:**

That is a good question. In 1991, the Last Frontier Hotel on The Strip informed employees they were abolishing their pensions and health insurance and cutting their pay by \$2 per hour. The workers went on strike and protested on the streets. Was that right? I do not think so. We cannot put everything in one box because there are a million different boxes. If we try to solve one problem with one box, 100 more problems are created. The solution is the U.S. Constitution and the system that is now working.

I walked the picket line at the Last Frontier at midnight. In winter, the company would turn its lawn sprinklers around so protestors would get wet and cold. A testifier said it goes both ways, but A.B. 356 does not recognize that. This is a

constitutional matter. Everyone has the right to an opinion and to say and do what he or she wants under the framework of existing law. Dropping nails, punches in the face and bad-name calling have consequences. If I do those things, you can seek redress in the courts. I cannot tell you how many times the AFL-CIO has been to court over such issues.

**Senator Farley:**

When bullying like that happens, I can take you to court and spend endless hours and money to try to get you to stop. Members of the AFL-CIO governing board are smart people, and there is an answer or some sort of line that should not be crossed. I agree that you have the right to protest. We all agree that America is all about free speech and the ability to stand up for one's rights. It has helped many groups achieve equality, and I would hate to see anything impinge upon that aspect of our culture. However, it cannot go so far the other way that protestors impede my freedom of speech and ability to live my life, feel safe and employ people. That is when it has gone too far. I am asking that we somehow get to a better place than where we are today.

**Mr. Thompson:**

I agree with you. I do not know how we get to that better place. There are conflicts, then protests, then ultimate resolutions. The Last Frontier strike lasted more than 6 years and 4 months, the longest settled strike in U.S. history. There is no single solution to these things. Smut peddlers pass out material on The Strip because it is their constitutional right to do so. Assembly Bill 356 is so far afield of the U.S. Constitution, I do not know how to solve its issues with one law.

**Senator Atkinson:**

Will sit-ins and marches be allowed under the bill?

**Mr. Mallory:**

The answer depends on the location. The question of ownership of and activities on public thoroughfares has been asked and answered. If A.B. 356 becomes law, that question would have to be asked and answered again. As the bill is drafted, we would have to request permission from a property owner to conduct a protest march in front of a business like the Las Vegas Sands Hotel and Casino because it owns the sidewalks. That question would have to be settled in a competent court of law. There are questions about what A.B. 356 could do to existing law. Many "ifs, ands or buts" are connected to

the bill that remain to be asked and answered, and that will extend beyond *sine die*.

**Senator Atkinson:**

Who determines if there is a threat? I do not see that in the bill.

**Mr. Mallory:**

In section 9.3, subsection 4, there is an automatic, rebuttable presumption that "A person who files a petition to enjoin any activity that is alleged to be a violation of this section" is the business owner.

**Ms. Spinazola:**

According to section 9.3, subsection 1, paragraph (b), it does depend on where a person is as to whether a sit-in is permitted. That language needs to be more precise. What does "narrow" an entrance mean? If you are sitting to the side of a doorway, is that narrowing it? The police initially decide if an action is a misdemeanor, which is another reason why the bill needs an intent element. If I am wearing a pro-life T-shirt and standing in front of an abortion clinic's door talking on my cell phone, am I subject to a misdemeanor? That is different from someone in that T-shirt standing completely in front of the door blocking and absolutely obstructing people from entering. Words like "disruption" and "intent" do not appear in paragraph (b). Everyone would be subject to a misdemeanor, as initially determined by the police.

**Senator Manendo:**

I remember the Last Frontier strike. Many days, I walked the picket line with my siblings. In summer, it was hot, and I was one of the picketers who got wet from the sprinklers in winter. We also marched down The Strip and had many rallies and protests. I was asked to meet with the then-owners of the Last Frontier and the Rev. Jesse Jackson, Sr., to work out a compromise. Today's testimony has brought back many memories, many of them not good.

Let us say a customer goes into a business and has a dispute, saying, "The product I'm buying is broken" or "I paid you, and now I'm looking at my dry cleaning, and it's still wrinkled. Can you please touch it up?" The owners refuse to do so. I worry about unintended consequences. How would the bill apply to someone who just says, "Hey, I paid for a product; I paid for a service. I'm not getting it"? Is that threatening if the business owner says, "Please leave my business," then you say, "But, you have my money. Yes, I have my shirt, but

it's all wrinkled, and I'm just asking for it to be touched up?" I worry that this may affect consumers' abilities to speak up for themselves.

**Mr. Thompson:**

That is exactly my point. I stood at the desk and told the person, "You ripped me off, and I'm telling you I'm going to stand here and tell your customers not to shop here." According to the bill, I would be subject to the \$2,500 penalty. That happens to people every day.

**Yvanna Cancela (Culinary Workers Union, Local 226):**

What is most important to realize is picketing and other forms of demonstrations do not happen because people think they would be fun Saturday activities. They happen because businesses are found to be bad actors. Assembly Bill 356 gives unfair preference to and emboldens businesses to act against people, calling them out for being in the wrong.

The First Amendment expressly protects speech, even if it causes harm, as long as it is truthful. The bill limits that, which is problematic. It tries to preempt free speech by saying it does not violate the First Amendment. In doing so, either the bill does nothing because all speech remains protected or it creates a chilling effect in which what is and is not permissible becomes ambiguous. It prevents people from taking action, thus violating the First Amendment.

Committee members have asked what entities are protected under the bill. Government buildings and places that are not expressly businesses are not covered. That needs to be examined; otherwise, it runs the risk of being discriminatory in its application in that it only protects businesses. What happens to entities and individuals who seek to harm people who are justly picketing? Culinary Workers Union picketers were threatened by Assemblywoman Fiore on a radio show when she said that as an employer, she would definitely hire thugs to throw you right off my property." She also said she had come to our picket lines with a firearm to thank tourists outside of the Cosmopolitan of Las Vegas, which we were picketing. Under A.B. 356, picketers would have no recourse against that type of behavior, which is problematic.

The Culinary Workers Union is probably the most visible symbol of picketing in the State, especially in southern Nevada. We take very seriously the right to picket and express our concerns with businesses. We work closely with the

Las Vegas Metropolitan Police Department to ensure the safety of both picketers and businesses. Criminalizing any type of acts by people who are not professional picketers limits how many individuals and entities can express their complaints against businesses. That is problematic for many reasons.

**Senator Farley:**

We are in the weeds here. No one has addressed the real problem: real violations of other people's rights are occurring, and they are being condoned and organized. Private property is being damaged, and rights are being infringed upon. This is not about whether we do or do not like it; it is about illegal activities. I encourage the bill's supporters and opponents to discuss the real issue. It is not about free speech or lawful conduct; it is about unlawful activities.

Ms. Cancela said you can say anything, even if it causes harm, if it is truthful. We all know sometimes things with a tiny element of truth are twisted so negatively to prove a point that they become untrue, illegal and harmful to society.

**Senator Atkinson:**

If Senator Farley is going to ask that question, she should direct it toward the bill's sponsor. If there is a middle ground, it should be addressed. A bill that passed the Assembly with a 23-19 vote should cause huge concerns. Our questions should have been answered in that House. We need to know what property damage has been done, who has been harmed—I have not heard or seen any specifics. People have the right to protest exactly as they are doing now. I have never seen protests in Nevada conducted in an unpeaceful manner, but I have seen it in other states in ways with which I do not agree. Give us examples of protests that have caused injuries and in which the rights of individuals and businesses in Nevada have been infringed upon.

**Senator Harris:**

We are having a wide-ranging discussion about free speech and how the bill is overly broad and unconstitutional. I cannot find any statutory definition of picketing. If we are going to talk about activities the bill seeks to proscribe, we need to start with particular types of behavior, specific to picketing and the bill's intention. We need to narrow the conversation, then determine if the two sides can achieve common ground. Picketing is defined in the bill's section 7.

**Richard Daly (Laborers Union International of North America, Local 169):**

Sections 2 and 3 of A.B. 356 are problematic, especially the phrase "... or representative of that business with the intent to coerce or intimidate that business." Who is going to decide if that is what is going on? An officer will arrive and be told by the business representative, "They are coercing or intimidating," but the protestors say, "No, we're communicating." It is in the eye of the beholder. I have been called a terrorist by a business while engaging in free speech lawfully on the sidewalk and communicating to the public.

Section 4.5 of the bill says businesses can file lawsuits, not the subjects of the suits. In section 9.3, subsection 4, the "rebuttable presumption of irreparable harm" to a business should include a rebuttable presumption of innocence on the part of the accused, because it is all in the eye of the beholder. What "the intent to coerce and intimidate" means to one person may mean communication and free speech to another. For example, if Chair Settlemeyer does something or casts a vote that I do not like, I can protest in front of his house on the sidewalk, business or church and communicate about what he did. He can not like that all he wants, but I have the right do so.

The definition of picketing is in section 7. There are court cases under the NLRA and other jurisdictions that say picketing is actually more than just speech. Restrictions on it include limitations on its purpose: whether it is representational or informational. There have been disclaimers that say picketing cannot prevent employees from entering their workplace. The bill's definition of picketing, "the stationing of a person or persons at any location or area for the purpose of engaging in a demonstration or protest," is more than picketing.

Recently, the Mont Bleu Resort, Casino and Spa in the community of Stateline hired an asbestos contractor with a bad track record. Dressed in street clothes, members of Laborers Union International of North America, Local 169 distributed handbills outside the resort informing people entering the business that the contractor had a bad history. The general contractor chose not to picket. The next week, union members wearing Tyvek suits with hazardous materials warnings on them passed out handbills, which stopped traffic when drivers wanted to know what was going on. Under A.B. 356, the resort owner could say we coerced, intimidated and prohibited people, and we could be liable for the \$2,500 fine. The owner could say, "One customer did not come in, so I am presumably harmed." The bill is unworkable and definitely limits free speech.

Leafletting and handbilling are not picketing, as has been established in many court cases.

**Greg Esposito (Nevada State Pipe Trades):**

Section 2 of A.B. 356 will create many problems. If I go into a convenience store and knock over a bottle while wearing my union shirt, conceivably the store's owner could say I have damaged his property and ask that I be charged with a misdemeanor and fined \$2,500. Yes, that is an extreme case, but it could happen. Laws need to be clear and should not be used to persecute people without a valid reason.

Ms. Cancela mentioned radio comments made by Assemblywoman Fiore. After the show, Nevada State Pipe Trades members told me they wanted to take legal action against her. I deterred them because it was a free speech issue. The bill's section 9.3, section 1, paragraph (c) would allow us to take action against someone who threatened our business in that manner. An organization has taken out billboards opposing the Nevada State Education Association telling teachers that they can disaffiliate from and vote out the union. Under the bill's section 2, that will be illegal because a business—the union—is being disrupted.

Mr. Burdish testified that A.B. 356 works both ways and that unions are also protected. However, unions would not be protected against the same attacks as are businesses. Senator Farley asked where the middle ground is. During the civil rights movement, the answer was not stopping the protests; it was fixing the system that caused the protests. Nevada also needs to fix what is causing protests and strikes and then we will not have to worry whether the rights of businesses are being infringed upon.

The NLRA specifies that you have to be moving to be picketing. The definition in section 7 of A.B. 356 says picketers are stationed or stationary. Stationary protests are informational. The section is incorrect and contradicts the NLRA.

**Stacey Shinn (Progressive Leadership Alliance of Nevada):**

The Progressive Leadership Alliance of Nevada is also worried A.B. 356 will add restrictions on workers, consumers and community members in a subjective manner. We would rather strengthen laws that protect workers and consumers, instead of limiting their ability to fight back when there are problems.

**Senator Harris:**

We have spent an hour talking about something for which we all have a different definition. It is difficult to achieve a consensus on, analyze and address a problem when the simple term of picketing is actually not so simple. I am concerned that we have nothing in statute that clearly defines it. A provision in section 7 of A.B. 356 attempts to define it, but I do not know if that matches the NLRA's definition. We cannot solve problems without all communicating with the same terminology.

**Mr. Esposito:**

The NLRA is the bible of union representatives. If Nevada is going to put anything in statute, it should start from the NLRA.

**Senator Harris:**

Does everyone on the opposition panel agree with that?

**Mr. Daly:**

The bill's definition is more than picketing, so we should use the NLRA definition.

**Yolanda King (Chief Financial Officer, Finance, Clark County):**

My opposition to A.B. 356 is specifically to section 9.3, subsection 2, which seems to regulate the use of public property by prohibiting or granting permits or variances for picketing. In general, the bill regulates the use of private property, but section 2 is about public property.

**Assemblywoman Fiore:**

When I presented A.B. 356, I kept the vernacular polite. However, we are all grownups, and with all due respect to the unions, the bill addresses the verbal and physical abuse, spitting and calling 9-year-olds dying of cancer "retards" that picketers perpetrated. I have video of all of this ruckus enacted by the Culinary Workers Union at the Cosmopolitan of Las Vegas.

I generally do not go anywhere without a gun, or someone with me has one with my permission. As for the infamous aforementioned radio show, I am a Brooklyn girl who has been in Nevada for 23 years. I am from a union family; union members related to me by blood are lobbying in the Legislature. I have seen a lot of union-related violence in Brooklyn and Las Vegas. Assembly Bill 356 addresses that. It does not tell unions to stop picketing and

protesting; it says, "Stop battering our tourists in Las Vegas by spitting on them." Your saliva is a battery because it hits another person. Threats of beating are bodily harm threats.

The misbehavior by adults is simply unacceptable. It is what it is, and it happens all the time, especially in Las Vegas. I am good with union protests, and when members and businesses cannot agree on a contract, I am good with union members standing outside the businesses, if they are peaceful. Las Vegas tourists have no idea what is happening, but suddenly are being spit upon, yelled at, punched and arrested. I will give video footage of these activities to every Committee member.

Unfortunately, we have to legislate the Golden Rule. I do not want my children, grandchildren, family and friends coming to Las Vegas to be spit upon or punched. I went to the Cosmopolitan of Las Vegas with a fellow Assemblywoman to welcome tourists to the city as protestors yelled through bullhorns, called people names and were nasty and threatening to tourists. That was the genesis of the bill.

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**Chair Settlemeyer:**

We will close the hearing on A.B. 356. Seeing no more business before the Senate Committee on Commerce, Labor and Energy, we are adjourned at 10:18 a.m.

RESPECTFULLY SUBMITTED:

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Renee Fletcher,  
Committee Secretary

APPROVED BY:

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Senator James A. Settlemeyer, Chair

DATE: \_\_\_\_\_

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	2		Agenda
	B	6		Attendance Roster
A.B. 227	C	1	Senator James A. Settlemeyer	Work session document
A.B. 231	D	1	Senator James A. Settlemeyer	Work session document
A.B. 85	E	1	Marji Paslov Thomas	Work session document
A.B. 93	F	17	Marji Paslov Thomas	Work session document with Proposed Amendment 7171
A.B. 409	G	5	Marji Paslov Thomas	Work session document with Proposed Amendment 7206
A.B. 6	H	4	Jan Crandy / Nevada Commission on Autism Spectrum Disorders	Written testimony
A.B. 6	I	25	Dan Unumb / Autism Speaks Legal Resource Center	Slide presentation "AB6 Autism Insurance Reform"
A.B. 6	J	13	Dan Marriott / Autism Care West	Slide presentation
A.B. 6	K	4	Shannon Crozier / University of Nevada, Las Vegas Center for Autism Spectrum Disorders	Written testimony
A.B. 6	L	2	Shannon Crozier / University of Nevada Las Vegas Center for Autism Spectrum Disorders	Information sheet on online registered behavior technician training
A.B. 356	M	8	Assemblywoman Michelle Fiore	Written testimony