

The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close  
Senator Hernstadt  
Senator Sloan  
Senator Raggio  
Senator Dodge  
Senator Don Ashworth  
Senator Ford

ABSENT: None

SB 262 Specifies certain rights and liabilities of the lessor and lessee upon termination or expiration of lease of motor vehicle.

David Hagan, Nevada National Bank; Dearm F. Sharp, Security Bank; and John Colouris, Central Bank of California testified in support of this measure. They distributed for the committee's review, several proposed amendments. See attached Exhibit A.

Mr. Colouris stated that, by virtue of a recent court decision (Nevada National vs. Huff, 94 Nevada 140), there is a void in Nevada law. In that case, the court was trying to figure out what the rights and remedies were of the lessor and lessee. Since there was no other comprehensive area of law to look to, the court turned to Article 9 of the Uniform Commercial Code, which deals with secured transactions, and applied those rules. In applying those rules, the court re-characterized the lease transaction as a secured transaction, which it most definitely is not. In light of this, the disclosure obligations under both the Nevada Installment Sales Act and the Federal Truth in Lending Act, become quite unclear. It is not clear if it is an installment sales, which the court suggests, or a lease, which the federal law states it is.

However, Mr. Colouris stated that the most important problem presented by this decision is that the identification of the transaction from the tax viewpoint is seriously clouded. The lessors go into these transactions with the understanding that they are going to have an investment tax credit. If this is re-characterized as a secured transaction, there is no investment tax credit and there is no accelerated depreciation. An integral part of their profit picture will evaporate, which will seriously hamper the future of open-end leasing in Nevada.

Senator Hernstadt questioned the possibility of abuse of "commercially reasonable manner" with regard to the disposition of the vehicle at the end of the lease term.

Mr. Colouris replied that this language had been taken from the U.C.C. and the Vehicle Licensing and Registration Act. Also, under the Consumer Leasing Act, the lessee's liability at the end of the lease is limited to three monthly payments. Deficiency cannot exceed that amount unless, through a court showing, it can be established that the deficiency was caused by excessive abuse of the vehicle.

He further stated that the lessee has an additional protection with the 10-day notice requirement. Ten days prior to establishing the value of a vehicle, the lessor must advise the lessee that he has the right to submit a written bid. This will effectively prevent low-balling (bids that are far below market value). The Federal Reserve Board has ruled that giving the customer the right to submit a bid is not the same as a purchase option so there is no tax problem in that regard. The highest bid received would be credited to the lessee's obligation.

Senator Ashworth pointed out that the bill does not require the lessor to accept the highest bid.

Mr. Sharp suggested that that might be taken care of by their proposed amendment number 4. He also stated that under the Truth in Lending Act, the lessee has the right to obtain an independent appraisal if the parties cannot agree on the bid.

Senator Sloan suggested that that be included in this measure also.

Senator Hernstadt expressed concern that the dealer is under no obligation to sell the vehicle to the lessee even though the lessee has submitted the highest bid.

Mr. Colouris stated that under a lease transaction, the lessee has no right of title, ownership, or equity in the vehicle. The lessee's liability at the end of the term hinges on the value of the vehicle. The main concern is the establishment of the value of the unit. Once having done that, the lessor has the option of doing whatever he wants with the property. It is something that he has made a capital investment in.

The committee reviewed each section of the bill with the proposed amendments.

SECTION 2: Mr. Sharp stated that the amendment to subparagraph 1 is intended to allow them to include certain travel trailer-type units that meet the weight limitations.

In subparagraph 2, the definition of "person" has been taken from Chapter 97 of the Retail Installment Sales Act. This will include "governmental entity" which, according to Mr. Colouris, is a prime lessee.

Senator Close questioned whether or not this bill covers the closed-end lease. He stated that the definition of motor vehicle would exclude closed-end leases insofar as the method of handling these types of transactions.

Mr. Hagan responded that both the closed- and open-ended leases fit the definition of the bill. The portions of the bill which pertain to the determination of the lessee's obligation at the termination of the lease are irrelevant to the closed-end lease because, by definition in the contract, there is no liability of the lessee at the termination of the lease.

Senator Close pointed out that that would not necessarily be true according to the proposed amendment to subparagraph 1 of Section 3. He felt that the inclusion of "notwithstanding any provision to the contrary in the vehicle lease" pursuant to the determination of liability on the part of the lessee, would effectively vitiate the distinction between the two types of leases.

Mr. Colouris agreed that the definition of motor vehicle lease should be amended to pertain only to the open-ended lease.

Senator Close further suggested that this specifically include that this is not intended to affect closed-end leases.

SECTION 3: Senator Close expressed concern over the use of "notwithstanding any provision to the contrary." He felt this would be very misleading to the lessee.

Mr. Sharp stated that this was intended to require the leases to follow the procedure for fixing the value, even though the lease itself might provide some other method.

Senator Sloan suggested that perhaps the statute should require that that be spelled out in the lease.

Senator Dodge disagreed. He did not believe this should interfere with, or statutorily circumvent the lease provisions.

Senator Close suggested that if the lease was silent in this regard, you could stipulate that the statute would take precedence.

Mr. Colouris stated that that would be acceptable to them.

Continuing on with Section 3, Mr. Sharp stated that they are requesting that "or the lessee fails to carry out his duties pursuant to the terms of the lease" be deleted. The purpose of this section goes to whether or not the lessee and lessor can agree to the value of the vehicle. If not, then they will follow the procedure as outlined.

Senator Close asked if the "value" referred to was the residual value agreed upon at the outset of the lease, or the market value of the vehicle at the termination of the lease.

Mr. Colouris replied that it was the market value. However, he stated that they were hesitant to use that term in that they were not sure that was a defined term.

Senator Ashworth stated that it was his understanding that the lessee was obligated contractually for the estimated residual value and not the fair market value of the vehicle.

Mr. Colouris stated that the lessee contracts to be liable for the estimated residual value but that his net liability hinges on the fair market value.

Mr. Sharp further stated that the lessee's obligation is the estimated residual value of the unamortized, capitalized cost. The phrase "do not agree in writing on that value" refers to the fair market value at the end of the lease term. That is a different writing altogether from the initial contract.

Senator Ashworth suggested that that be specifically set out so that there would be no question as to what writing was being referred to.

With regard to (b) of subparagraph 1, Section 3, Senator Close asked how you could determine the value of the vehicle by re-leasing it.

Mr. Sharp stated that this tracks the Uniform Commercial Code and the Truth in Leasing Act. He felt that in that type of a situation, the lessor will lease the asset for the highest value possible, which would set the value of the previous lessee's obligation.

Senator Dodge disagreed. He felt that in determining the prior obligation, there should be a bidding procedure or an independent appraisal.

Senator Close asked what was meant by "or otherwise dispose of the motor vehicle."

Mr. Colouris replied that there could be a retention or an exchange of the vehicle. He further stated that he believed that whatever form of disposition occurred, or however value was established, the lessee was protected in that it had to be done in a commercially reasonable manner. This conforms to the U.C.C. and appears to be working well.

Senator Close stated that they were not conforming this bill to the U.C.C. He informed them that they were receiving many more benefits in here than they would be if it was tracked to the U.C.C.

SECTION 4: With regard to (a) of subparagraph 2, Senator Close stated that the Consumer Leasing Act provides for a maximum liability of 3 monthly payments. He asked why they would not want to inform the lessee of that maximum liability.

Mr. Colouris responded that the purpose of this was to give the lessee a statement of his outside liability.

Senator Close stated that the outside liability may exceed that to which he can be found legally responsible. He felt that this was very misleading to the lessee.

SECTION 7: Senator Hernstadt asked why they were proposing this new section which would make this measure applicable to all existing leases.

Mr. Colouris replied that if the Huff decision is deemed to apply to their existing portfolios, they stand to lose the investment tax credit on \$80,000,000 worth of open-ended leases. He stated that this would do serious damage to their financial situation.

Senator Hernstadt asked in what way would the rights and obligations of the lessee be changed if this were made retroactive.

Mr. Colouris stated that he believed that the lessee would be in an improved situation, particularly with the right to submit a bid for the vehicle.

Senator Hernstadt asked if the lessee's rights were being harmed in any way.

Mr. Colouris responded that he did not believe so. He further stated that if that could be shown, they would be willing to amend the measure.

Senator Close asked that they draft the proposed amendments, taking into consideration the concerns of the committee, and return for further review.

No action was taken at this time.

SB 269 Provides certain rights to professional engineers and land surveyors.

Mr. Reese Harper, Nevada Association of Land Surveyors, testified in support of this measure. He stated that this will include registered engineers and land surveyors in the mechanics and labor lien law.

Senator Ashworth expressed concern that this might commence the lien statute running for other people even before construction begins.

Mr. Harper stated that there would be no lien rights for anyone until construction had actually begun.

In regard to Section 2, Mr. Harper stated that this would give them the same rights that government surveyors presently have. It would allow private surveyors to enter onto private property to use controlling property corners, government section corners and quarter corners.

Senator Dodge stated that this goes even further than that by allowing them access for the purpose of making "examinations, surveys, and maps of the property."

Mr. Walt Knights, a registered land surveyor, stated that that language comes from the public domain statute.

Marsha Hudgins, Public Works Department, City of Las Vegas, testified that the land surveyors of the City of Las Vegas were opposed to this measure for two reasons:

- 1) they felt it was unnecessary; and
- 2) the City Attorney felt that the bill would be constitutionally questionable as an invasion of privacy in property rights.

Senator Ford stated that that would be true of Section 2 and asked if Ms. Hudgins would be opposed to the lien provisions of Section 1.

Ms. Hudgins replied that they would have no objections to that.

No action was taken at this time.

Senator Close presented the following item for committee introduction:

BDR 7-1126 Authorizes judicial review of corporate takeover bids.

Senator Hernstadt opposed the introduction.


Senator Close stated that he had been requested by Charles Wolff, of the Department of Prisons, to have the following items drafted for committee introduction:

- 1. Provides for a 90 day evaluation before sentencing by the department of certain offenders.
- 2. Provides that a person can be held for 120 days of an intensive treatment program rather than being sentenced to prison.
- 3. The Executive Officer of the Parole and Probation Board shall administer all activities and services of the Board and shall be responsible for the management of the Board.

The above items were approved for drafting and for future committee introduction.

There being no further business, the meeting was adjourned.

Respectfully submitted,

  
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 Cheri Kinsley, Secretary

APPROVED:

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 Senator Melvin D. Close, Jr., Chairman

PROPOSED AMENDMENTS TO SENATE BILL 262

Amend the Bill by:

1. Strike subparagraph 1 of section 2 and insert:

1. "Vehicle" means every device in, upon or by which any person or property is or may be transported upon a public highway, except devices:

- (a) Moved by human power;
- (b) Used exclusively upon stationary rails or tracks; or
- (c) Having a gross weight of more than 10,000 pounds, exclusive of the weight of any slide-in camper in NRS 482.113 which may be on it.

2. Strike subparagraph 2 of section 2 and insert:

2. "Person" means an individual, partnership, joint venture, corporation, association, or any other group however organized and includes any governmental entity.

3. Strike subparagraph 3, section 2 and insert:

3. "Vehicle lease" means a bailment or lease of a vehicle by a person for a period of more than four months. The term does not include retail installment contracts as defined in NRS 97.105.

4. Strike subparagraph 1 of section 3 and substitute:

1. When the lessee's obligation on the date the vehicle lease terminates or expires is based on the value of the vehicle and the lessor and lessee do not agree in writing on that value, the lessor, notwithstanding any provision to the contrary in the vehicle lease, may for the purpose of establishing value and thereby the lessee's obligation:

- (a) Obtain bids; or
- (b) Sell, lease or otherwise dispose of the motor vehicle.

5. Strike the word "motor" on page 2 in lines 4, 9, 10, 12, 16, 18 and 29.

6. Strike the word "motor vehicle" on page 2, lines 42, 44 and 46 and insert the word "goods".

7. Add a new section:

Sec. 7. This Act shall apply to all vehicle leases terminating or expiring after its effective date.