MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
March 20, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:33 a.m. on Monday, March 20, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen B. Spiegel, Assembly District No. 20

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Marlene Lockard, representing Nevada Women's Lobby; and Service Employees International Union Nevada, Local 1107
Stacey Shinn, Policy Director, Progressive Leadership Alliance of Nevada
Kent M. Ervin, Ph.D., Legislative Liaison, Nevada Faculty Alliance
Teresa Twitchell, representing Washoe County Employees Association
Lisa Perryman, Private Citizen, Reno, Nevada
Katherine Provost, representing Nevada Justice Association
Bailey Bortolin, Statewide Legal Services Legislative Liaison, Legal Aid Center of Southern Nevada; and representing Washoe Legal Services

Chairman Yeager:
[Roll was called and protocol was explained.] There are two bills on the agenda this morning, and we are going to take those bills out of order. At this time, I will open the hearing on Assembly Bill 276.

Assembly Bill 276: Revises provisions relating to employment practices. (BDR 53-289)

Assemblywoman Ellen B. Spiegel, Assembly District No. 20:
Even though there are a number of laws on the books at the federal and state level which are designed to ensure that pay equity is in place, in practice it has not been happening. According to a study by the American Association of University Women, women are still earning about 80 cents on the dollar compared to men. Comparing various women to non-Hispanic white men, Asian women earn 85 cents on the dollar, non-Hispanic white women earn 75 cents on the dollar, African-American women earn 63 cents on the dollar, and Hispanic or Latino women earn 54 cents on the dollar.

Part of the reason why I believe the disparity goes on is because women lack an ability to find out that they are not being paid equitably. Drawing from my own personal experience, I want to share two stories with you. The first is one that happened to me. A number of years ago, I was working in corporate America. My job got to be so big that the workload was just crushing, and my job was split in half. They took my job and hired a man to work with me. We had the exact same responsibilities, the exact same job, but looked at different territories. We were both working really hard and working really late all the time. We worked on weekends and put in a lot of hours.

One night, this man named Paul said to me, "I cannot believe how hard we are working and I am only making $34,000 a year." I looked at him and said, "How much are you making?" He said, "$34,000 a year." I said, "Wow. I am in the 20s." I had been there longer, I had more experience beforehand, and I went to a better school than he did, yet I was earning so much less. The next morning, I went in and spoke to my boss. I told her, "Here is what happened, and Paul said he is making $34,000 a year." I do not remember my exact words, but it was something like, "So what is up with that?" She looked at me and said, "Well, Paul is a guy." I said, "Yes, I know Paul is a guy. What does that have to do with anything?" She said, "Paul is getting ready to propose to his girlfriend, he is saving up for a ring, they are going to be a two-person household, he is going to have to be supporting her, and he needs the money." I looked at her and I said, "I do not understand. I am single. I am supporting myself. There is no safety net in my household. It is just me. I need the money." She said, "Well, Paul is a guy." I was perturbed by that.

One of my childhood friends happened to work in human resources (HR), and we were out for dinner one night and I was telling her what happened. It was in confidence; I really did not want to make a big deal about it. I was letting off steam, talking to an old friend. She was outraged. She thought that this just could not be possible. She actually brought this to the attention of her boss and her boss's boss. The next thing I knew, I was called into a senior vice president's office—a corner office. This is down on Wall Street and a high-powered place. Another woman, who was the senior vice president of HR, sat me down and said to me, "There is the door." I said, "Excuse me?" She said, "There is a company policy against having a discussion about wages. If you do not like what we are paying you, there is the door. I will tell you something else. You violated the policy, and I could be firing you right now. But based on the story you told me—and quite frankly, based on the story that Paul told us—we know that you did not initiate the conversation, so we are not going to fire you. But we are going to put a warning in your file. If it happens again, you are going to get fired. And by the way, we are not going to fire Paul because, well, he is a guy." It really sat with me that that was not right, and through the years I have tried to do things to remedy the situation. Ultimately, in corporate America, it still has not been fixed, which is part of why I personally started my own business so that I could pay myself whatever I wanted. The problem still goes on. It has been over 20 years since that personal experience I had—actually it is closer to 30 years at this point. I knew that it was still going on, but it is really hard to find because people do not come out and share the stories. If they share the stories, they know they stand a good chance of getting fired.

In December, I saw a post on the Internet with a story that I want to read to you. It is from a woman named Mattie Huffman, who lives in Dallas, Texas. She wrote,

> This summer, I started a job in a powder coating warehouse working next to a 400 degree oven in 100 degree Texas weather. I was always the first one in and the last one to leave. I picked up the trade quick and produced good, quality work in a safe and timely manner. When the rest of the crew complained it was too hot to wear steel toe boots and jeans, I never wavered.

> It was brought to my attention that, even though I would media blast, prep and powder and maintain job flow, I was getting paid a dollar under every male I worked beside. When I brought that to the attention of the manager, I was told that if I improved my attitude and smiled more they would consider me for a raise in a month or so. I gave them my 2 weeks notice at that point. I'm happy to say that today, I start a Blacksmithing apprenticeship and by the end of 2017, I will have completed an associates in welding and have obtained my certification as a Welding Inspector.

I was somewhat surprised and pleased that this woman Mattie had the fortitude to give her notice on the spot, quick, without having another job and not letting it go that far. I wrote to her and asked her if it would be okay for me to share her story with you. I told her about this bill and told her that I am trying to fix things. I would like to read her response to me.

> Hi, Ellen. Feel free to share my story. When I approached the manager with the pay concerns, I was told that talking wages was grounds for termination, too. It is funny though, I never brought up wages with the guys I worked with. I honestly did not care or think twice about it. I was just happy to be working and learning something new. But when it reared its ugly head, I could not ignore it. Thank you for fighting for Nevada women and workers!

Part of the issue we are seeing across the board—and whether it was me or this woman Mattie or others—is that it is not necessarily women who are bringing up these conversations. But when women are finding out about it, we need to be able to go and do something about it without running the risk of getting fired. Assembly Bill 276 very succinctly says that if you ask someone or tell someone about your wages; it is not grounds for firing or retaliation. The one exception is in section 1, subsection 7, which says that if you have access to everyone's pay as part of your job—such as if you work in HR or work in one of those kinds of positions—someone cannot come up to you and say, Could you tell me what someone else is earning? That person is allowed to maintain the confidentiality of those other employees.

The other thing I want to point out about this bill is that if you are asked by a coworker what you earn, you are under no obligation to disclose it. You can say, I am not comfortable having that conversation, and that is fine. You are not requiring employees to disclose it. You are simply making it possible that someone can have a conversation.

Hopefully, over time, because people will have the ability to find out that they are not being paid equitably, we will be able to shrink that gap down to nothing.

Assemblyman Pickard:
I am a proponent of equal pay. All of my female employees make the same as men—and historically have—wherever I have worked. I am wondering if there are other reasons employers might have to keep compensation information private? Are we upending it?

Assemblywoman Spiegel:
I am not quite sure what you are getting at. Would you clarify a little more? And thank you for giving your employees equal pay.

Assemblyman Pickard:
Employers might have other reasons than to keep gender inequities going that they might have to keep compensation information private within the HR perspective. I know that under various federal laws, there are a lot of things that we as employers must keep private, that certain identifying information has to be kept private. There are all sorts of things, and I am not an expert in HR. I am just wondering if there are other reasons to keep compensation information private that do not have to do with gender.

Assemblywoman Spiegel:
The main intent of this bill is looking at peer-to-peer working situations. I am sitting and talking with my coworker, Paul, who is telling me that he is earning a whole lot more money than I am. This is not going through personnel and it is not going through HR. Section 1, subsection 7 has the exception that covers the HR situation. It should also be pointed out that this bill is not attempting to say that everyone needs to earn the exact same amount dollar for dollar. People can have differences in their pay based on their personal experience, based on their level of education, and other factors. You would not expect a master of business administration (MBA) with 20 years' experience to be earning the same thing as someone with a bachelor's degree who is right out of school and in their first job.

Assemblyman Pickard:
I appreciate that. I tend to agree that peer-to-peer conversations probably should be protected in some way. I am concerned that we may have an issue where, for whatever reason, an employer needs to keep that compensation information private. I am concerned that we might be undermining it. Rather than ask a question, I think I will wait to see what other testimony provides, and maybe we can get an answer to it.

Assemblywoman Jauregui:
Thank you for being so bold in bringing this bill forward. I think it is great that you are championing this issue. I know that the Center for American Progress released a report that said one of the main reasons women cannot get ahead and get equal pay is because of their inability to find out what their male counterparts are being paid. It is especially difficult for those who are single mothers because they are also afraid to ask because they really need their job. Thank you so much.

Assemblyman Hansen:
I think we all support the concept. I have heard this repeatedly in the building lately, and it is that there is a big issue on unfair pay. *Nevada Revised Statutes* (NRS) 608.017 subsection 1 states, "It is unlawful for any employer to discriminate between employees, employed within the same establishment, on the basis of sex by paying lower wages to one employee than the wages paid to an employee of the opposite sex who performs equal work which requires equal skill, effort and responsibility and which is performed under similar working

conditions." That has been the law since 1975 in Nevada. I understand where yours dovetails into it to give you an opportunity to talk about it. I think the bigger picture is that we have had it in the law for a long time, so I wonder if there are that many cases of MGM Resorts International or the Las Vegas Sands deliberately paying females less than males. Where are the lawsuits and the efforts to address those concerns?

Assemblywoman Spiegel:
This is exactly why I brought the bill forward. The laws have been on the books for years, but if employees find out that there is a problem and they go to seek redress, they can get fired for having had that initial conversation. It becomes a catch-22 where you cannot ever prove that you are being paid inequitably, because if you admit to having the conversation, you can get fired.

Assemblyman Hansen:
I support that concept completely. I think there is a misconception out there that it is not already the law and that the law in Nevada allows sexual discrimination based on pay. I want to make sure that is on the record. I have been concerned because it has been the law for a long time. I can see your point. If you are getting paid substantially less than a coworker, you have no way of knowing that since you are not in the HR department signing the paychecks. It is a very interesting point. I think it is important to note that most of the laws on sexual discrimination in statute do, in fact, prevent it.

Assemblyman Thompson:
Thank you for bringing this bill forward. I know we are dealing with gender but also race and religion. There are all sorts of ways people are being discriminated against and not really receiving an equal amount of pay. Is this the whole gamut—union, nonunion, public, and private employers?

Assemblywoman Spiegel:
Correct.

Assemblyman Thompson:
If this is ratified, how will people know it is okay to have the conversations? Is there some type of outreach that can be done, especially with employers? How will people know that it is okay?

Assemblywoman Spiegel:
Thank you for pointing out that it helps not just women, but it helps everyone. When and if we are fortunate enough to have this enacted into law, we will be able to get the word out through traditional media, social media, and various networking.

Assemblywoman Tolles:
This is interesting to me because I came across an expert who studied this. David Burkus gave a TEDx Talk at the University of Nevada, Reno in January 2016. He has done

extensive research on transparency in pay, and I would like to read a couple of points he made.

> It turns out that pay transparency—sharing salaries openly across a company—makes for a better workplace for both the employee and for the organization. When people don't know how their pay compares to their peers', they're more likely to feel underpaid and maybe even discriminated against . . . . But keeping salaries secret does exactly that, and it is a practice as old as it is common, despite the fact that in the United States, the law protects an employee's right to discuss their pay. . . . And in study after study, when people know how they're being paid and how that pay compares to their peers', they're more likely to work hard to improve their performance, more likely to be engaged, and they're less likely to quit.

I just wanted to put it out there on the record that there are reasons beyond gender that tie into this. I want to confirm that this bill, as I interpret it, is not requiring companies have to utilize pay transparency. There may be reasons why, for HR purposes, that they have the right to be able to still do that, but if someone discloses, they will not face retribution.

Assemblywoman Spiegel:
Thank you for the added research; it is great to hear, and I appreciate it. Yes, that is absolutely correct. No one will be required to disclose.

Assemblywoman Krasner:
Are you saying that even though there are already laws on the books to prohibit discrimination based on race, color, religion, sex, sexual orientation, age, disability, or national origin, that the way people learn about pay discrimination and discriminatory practice is by the discussion they might have and discussing information with a coworker about salaries? As the law stands now, a business can make it illegal for the employees to have this discussion about their rate of pay? Your concern is this is a way that employers are circumventing the law by putting that provision in?

Assemblywoman Spiegel:
Yes. Our laws do say that employers cannot discriminate on the basis of race, gender, and all the other criteria that you mentioned. Nevada is a right-to-work state, and people can be fired for any reason unless it is carved out of law. If a company has a policy that says you cannot discuss your wages with a coworker and you have a discussion—right there, there is a reason for it—but even as a right-to-work state, people are just not having the discussions because they are afraid of getting fired. It is really easy to get fired, and this will just put up one more barrier so that hopefully people can have the discussions. I believe the way people find out about it is by having conversations with their coworkers.

In both my personal experience and from the experience of Ms. Huffman, whom I met through the Internet, it is not women initiating these conversations. It is typically men. I have heard that from other friends as well. It is not where I would be going up to every

single colleague and saying, So tell me what you earn. It is that you are having a conversation and someone says, I cannot believe we are working this hard and I am just making $34,000 a year. I hope that clarifies it.

Assemblyman Wheeler:
I want to look at this from a different standpoint that I do not know if we have covered yet. As a chief executive officer of a firm in a past life, we had actual pay scales that varied a little bit, but it was all by position. If you worked in this position, this was your pay scale. Some people would make the low end of that scale, and some people would make the top end of that scale, but it was strictly based on performance, attitude, et cetera. We had the policy you are discussing right now, which is that if you discussed pay, it could be disciplinary. We never said that we were going to fire you for it, but it could be disciplinary. The reason we did that was because, quite bluntly, even though I had two vice presidents and a president underneath me, as soon as someone found out that their coworker was making more, even if that person had been there 10 years, they would come in and demand a raise because they were a better employee every time. I wonder about the unintended consequences that this bill may put out. If people have to start paying more because of this, do you see any way that it brings more cost to business, which of course ends up being more cost to consumers with the products or services they provide?

Assemblywoman Spiegel:
I understand the point you are making. I have also worked for companies ranging from very large employers with tens of thousands of employees to the business that I own, which has two employees, and various things in the middle. I understand pay grades and salary grades and that there can be absolutely legitimate reasons for having pay disparities even within a salary grade. As I said before, I would not expect a 20-year MBA to be making the same amount as someone who is just out of school. We will never be able to solve the problem if we can never have the discussion. There can be absolutely legitimate reasons for having pay disparities, but if you cannot even have the discussion, we will never be able to solve the problem. I understand that there can be a discussion where someone would go to HR and say, I have had perfect employee reviews. I have completed all of my work on time and I have been graded excellent in every category. Someone else might say, Well, I have been satisfactory. You can look at disparities on the basis of that. But to not be able to have the conversation is what is leading to this inequity. I do not know if that fully answers your question, but I understand your point.

Assemblyman Wheeler:
At one point, I think we had 234 employees in the company, and the president of the company—who was directly underneath me—happened to be a lady who had been there for the least amount of time, but she was the right person for the job. She made more money than anyone else, except me. I got questions all the time from other people about why she made so much more than anyone else. I would say, "Because she earns it." It is that simple.

I wonder if the disparity that we see out there—especially with NRS Chapter 608 where it is illegal to pay someone differently based on any of those conditions—exists as badly as

everyone says it does. What it comes down to in the end is will it cause a rise in prices. As a businessman, that is what I look at. What can I do to get my product or service competitive in the industry?

Assemblywoman Spiegel:
The thing I keep coming back to is the American Association of University Women study. The research was done in 2015 and was published in 2016. They used Internal Revenue Service statements and went back and looked at jobs that people actually had, along with the W-2 forms. That is where they came up with the data. I acknowledge that not all employers are discriminating. Not all employers are having these wage gaps. It exists enough that, on the average, women are still earning 80 cents on the dollar. This affects our hard-working families across the board. They do not have enough money to go out and spend money in the economy and do things like go out to eat, buy clothing for their families, take their kids to the doctor or the dentist, save money for college, or whatever they need their money for: housing, cars, et cetera. Coming back to pay equity in the long run will help our economy work even better. There can be some short-term glitches or hiccups, but in the long run, we will be further ahead as an economy.

Assemblywoman Jauregui:
It does exist. I had a conversation with the Nevada Equal Rights Commission (NERC) and NERC exists because there are still discriminatory practices in the workplace. I had a conversation with them regarding the gender wage gap and pay inequity, and they had 1,000 people file complaints in 2016, out of which they took 700 of those cases. This is very much a real issue. These are their figures.

Assemblyman Ohrenschall:
Nevada Revised Statutes 608.017 is only as good as the teeth we give it. If people cannot find out about unfair disparity in wages due to gender, then I feel like it is almost impossible for an employee to go to the Labor Commissioner and say, I think my employer is violating NRS 608.017. I think it is a great bill. If this passes into law, do you anticipate more activity by the Labor Commissioner to enforce NRS 608.017, because now she may have that knowledge as to disparity in wages for equal work due to gender?

Assemblywoman Spiegel:
I am not sure of the answer to your question. I think there could be more complaints to the Labor Commissioner. I mentioned this bill to the Labor Commissioner, and she said she is already getting complaints. This will allow more teeth as part of the complaint.

Assemblyman Ohrenschall:
I am all for more teeth for that statute.

Assemblywoman Cohen:
What are we seeing as far as national trends? Have bills like yours been presented throughout the country, and if so, how have they been accepted in other legislatures?

Assemblywoman Spiegel:
There are other bills out there now that are tackling this. In the past, there have not been very many. Last year, I was honored to have participated in two separate White House round tables on middle class issues. The pay gap was one of the issues—and in the bills that were presented, it was not really a focal point talking about it—but something from one of the presentations sparked me to remember this personal experience I had and say to myself, If you cannot talk about it, you cannot find out that there is a problem and you cannot address the problem. I think there are some moves that are going on in various states now to be enacting legislation like this, but I do not have the data to talk to you about other states and what has happened there.

Assemblyman Watkins:
In looking at section 1, subsection 7, my concern is the enforcement on this bill. If it were to pass, would you agree that there would be one of two ways, either through the Labor Commissioner or a civil suit?

Assemblywoman Spiegel:
Yes.

Assemblyman Watkins:
I certainly would want to be able to tell my HR department they are not allowed to disclose, absent an order from one of those two bodies because, frankly, some employees may have more access to information and some may not because of the better relationship with HR, so it is better for me to have a bright-line rule. If we are ordered to do it, then you have to do it.

I am a little concerned with the language of "charge, complaint or investigation." That seems pretty broad whereas an employee can come and say, I think I am not being paid fairly. That could be considered a charge under the statute, and now my HR department would be permitted to disclose, and we would have a little gap there between what I want done and what the employees want done.

Assemblywoman Spiegel:
I am not an attorney, but I am happy to work with you to come up with language that would address the concern you are expressing.

Assemblywoman Miller:
I have worked in all the fields there are to work in when it comes to private corporations and public service. For the first 15 years of my career, I always had to negotiate my salary, and I had to learn as a woman and a person to be more aggressive about what I was demanding, what I expected, and what I deserved. Now as a teacher, the nice thing is we know there are many government fields and positions where everything is position, everything is public, and gender and other groups' biases have been taken out. One of the things that relieves me as a teacher is that I am not walking around thinking, I wonder what he is making. I wonder what she is making, because we all know—based on experience,

years, qualifications, and degrees—what every person would be making. Teaching is a female-dominated career.

What is interesting is if you look at another female-dominated career—nursing—now, male nurses make more than female nurses. This is a female-dominated career, which shows the same thing. You have to have certain degrees, certain experience, and yet male nurses walk in making more than female nurses. Even in that female-dominated career, we have to recognize there are many things at play and, again, most hospitals are more private. I really appreciate this, and there are a lot of places we need to be looking.

When and if this bill gets enacted, is there a grandfather date or certain clause for how far we can go back to enforce it? For instance, if we have been working for the same company for ten years, and we may have started at different incomes ten years ago, at this point there could be a huge gap in between certain employees. Have you thought of a date as to when this would be retroactive?

Assemblywoman Spiegel:
I understand your question, except I think it is outside the scope of this bill. This bill is just that, effective July 1, 2017, you can have the conversation with your colleague and not get fired for having that conversation. The action you would take as a consequence of that falls under other areas of law.

Assemblywoman Miller:
Okay.

Assemblyman Elliot T. Anderson:
Thinking back to what I remember about the National Labor Relations Act, that act protects concerted activity discussions with your colleagues about the workplace. I am wondering if this might already be covered by federal law. Have you discussed this with the Legal Division at all? I am fairly sure that talking about wages is protected concerting activity.

Assemblywoman Spiegel:
I have not had this specific conversation with the Legal Division. In my experience, when I go to the Legislative Counsel Bureau and talk to them about a bill, if it is already in statute somewhere else, they tell me that. By putting it into NRS in this manner, it is telling employees it is okay to have the conversation. It is underscoring it. Even if you go back and say, the National Labor Relations Act has been in statute for decades, we still have Hispanic or Latino women earning 54 cents on the dollar to non-Hispanic white men. We need something more. We need women and others who feel they are being discriminated against in their pay to have the ability to have a conversation and proactively know that it is okay to have the conversation. That is what this bill does.

Assemblyman Elliot T. Anderson:
I would appreciate it if you would check. I am fairly certain that conversations about wages are already protected concerted activity. I think the workplace policy you mention may have been illegal under the 1935 law, because people are familiar with the National Labor Relations Act as it relates to forming a union or not, but it covers people who are not in unions as well. It covers anyone who engages in concerted activity. I think it would behoove us to check it out, because it is a well-developed body of law that has stringent protections in it. I think it is worthwhile to determine it.

Chairman Yeager:
With respect to the effective date of this legislation, would you be amenable to making it effective upon passage and approval rather than July 1?

Assemblywoman Spiegel:
Absolutely.

Chairman Yeager:
Are there any other questions? [There were none.] Thank you for your presentation on the bill. At this time we will open it up for testimony in support of A.B. 276.

Marlene Lockard, representing Nevada Women's Lobby; and Service Employees International Union Nevada, Local 1107:
I am very pleased to announce to you today the pay equity issue is a top priority for the Nevada Women's Lobby. You can see our members sitting in your gallery. They do exist. Yes, there are laws on the books, but the reality remains that there is pay inequity still going on in this state and in the country. This is another tool. I had many years as a state employee, and there is absolutely no problem. The salaries are listed, everyone knows what everyone makes, and as in the teacher example, the world has not caved in. The reason there is still inequity is because there are always ways to get around the current laws. This is just one more tool for us to finally fill the gap, and that is what we spent a weekend talking about—filling the gaps in equity for women across this state which, as determined by all the neutral research, does exist. We strongly encourage your support of this legislation.

Chairman Yeager:
I know we have a number of people who are signed in in support of the bill but indicated that they did not want to testify. May we have a show of hands if you are here in the gallery and you support this bill but do not want to testify? [Audience members raised their hands.] Thank you for being here, signing in, and sitting through our hearing today.

Stacey Shinn, Policy Director, Progressive Leadership Alliance of Nevada:
This was also voted as one of our top five priorities for the 2017 Legislative Session by our 30-member group back in November. I want to express the importance of pay equity. We are also a member of the Nevada Coalition for Women's Equity, and this is one of their top five priorities for this session. I also know, just being a woman in the workforce, that I have come up against this problem in my employment in discussing wages. I feel it is an

issue, even if you maybe have not seen it as a man; but as a woman, I can tell you it is out there and real.

Kent M. Ervin, Ph.D., Legislative Liaison, Nevada Faculty Alliance:
The Nevada Faculty Alliance is the statewide association of faculty at all eight Nevada System of Higher Education institutions. The Nevada System of Higher Education already has a strong policy of antidiscrimination for place of work and learning free of discrimination on the basis of sex, age, disability, gender, sexual orientation, gender identity, genetic information, national origin, race, or religion. As public employees, faculty salaries are already public information.

I believe transparency in both pay and performance evaluations make for a healthier and more productive workplace. If you are able to know the system is fair, you are going to work harder and feel like working harder will be rewarded. Good managers should easily be able to explain salary differences that are justifiable, or they should make equity adjustments when appropriate. As faculty, when our students go out into the workforce, we want them to find a fair and open workplace.

Teresa Twitchell, representing Washoe County Employees Association:
Because we are a public agency, I just want to echo and say "Me, too" as to what Marlene Lockard had stated as well as the gentleman next to me.

Lisa Perryman, Private Citizen, Reno, Nevada:
I am a single mom. I went to the Career College of Northern Nevada as a pharmacy technician and worked there for about a year and a half. I started with a wage of $11 an hour and got a $1.10 raise, which I was very happy about. On my last day of working there, I found out I was making less overall than everyone else. I was always too afraid to speak up and ask my coworkers what they were making. Because it was between females, I found out after I was hired a female was making more than I was, even though I had been taking on new responsibilities. It was an unspoken rule that you do not speak about what you earn, and I was so afraid to just ask.

Assemblywoman Cohen:
I would like to ask the women in the audience, if anyone feels like she was paid over the years less than her male counterparts who had the same qualifications, experience, and education, would you please raise your hand? [Most of the audience members raised their hands.]

Chairman Yeager:
I think we had a majority of the people in the room. Thank you for the question. Is there anyone else who would like to testify in support of A.B. 276? [There was no one.] Is there anyone opposed to A.B. 276? [There was no one.] Would anyone like to testify in the neutral position on A.B. 276? [There was no one.] I would like to invite Assemblywoman Spiegel back to the table to provide any concluding remarks.

Assemblywoman Spiegel:
Thank you for this hearing and your great questions. I will get with Assemblyman Watkins and will also get the answer to Assemblyman Anderson's question.

Chairman Yeager:
We will close the hearing on A.B. 276. We have a second bill that we are going to hear which involves domestic relations and divorce custody. You are welcome to stay if you would like. If not, I will give everyone a couple of minutes to make their way out of the committee room. Thank you for joining us.

We will now formally open the hearing on Assembly Bill 167.

Assembly Bill 167: Revises provisions relating to domestic relations. (BDR 11-588)

Assemblyman Keith Pickard, Assembly District No. 22:
By way of background, Nevada courts have two perennial problems when it comes to family law cases: access to the courts and the complexity of the process. Assembly Bill 167 attempts to address both. First, most cases involve two parties who are not represented by attorneys. They are forced into an adversarial process that they do not understand. This puts judges in the unenviable position of having to guide them through the process, which slows the process considerably. For those who cannot agree on the terms of the final decree, the court has to go to great effort in getting them to the finish line. But many cases are not contentious. Many parties come to the table with their issues resolved.

Summary proceedings give litigants an easier time in their cases. Summary proceedings allow for the parties who have reached agreement on all of the details to avoid court hearings altogether by simply filing a joint petition followed by the rest of the necessary forms. Current law allows for summary proceedings only in the case of divorce. This bill provides summary proceedings for the typical cases where adversarial proceedings are currently required.

This bill also clarifies what happens after a party has already been allowed to relocate with the children. Under current law, a party must obtain permission from the other parent or the courts when they seek to move out of state or a distance that would impair the nonrelocating parent's ability to maintain a relationship with the child. However, no provision was made for subsequent relocations, and this bill clarifies that a subsequent relocation need not require a court proceeding in advance unless the nonrelocating party has maintained regular contact and involvement in the child's life. Notice will still be required, and the nonrelocating parent may object on proper grounds. This procedure balances the interests of the relocating parent to pursue career and personal goals and the nonrelocating parent's legal rights to participate in the major life decisions of the child.

This bill is the result of efforts of many family law attorneys and the Family Law Section of the State Bar of Nevada. I have with me Katherine Provost, who is the past president of the Family Law Section of the State Bar of Nevada, who will discuss the revisions proposed by

the attorneys who reviewed the initial work. This was a prefiled bill, so we went in early with language that was then vetted and fine-tuned by members of the Family Law Section. First, let us discuss the issue between separation and divorce. I will give a brief summary of each of the sections and then Ms. Provost will go over the amendment proposed by the Family Law Section. When we come to legal separation, formally called a decree of separate maintenance in the law, we have a summary proceeding for divorce but not a summary proceeding for the separate maintenance, or legal separation. Section 2 of the bill creates a summary proceeding for permanent support and maintenance of a parent and their children in certain circumstances without applying for a divorce, or in other words, what we call legal separation. One of the things we debated when we first addressed this bill was whether or not we were going to go through the effort of changing the entire statutory scheme to change the reference from separate maintenance to that of legal separation. We will touch on that a little more in Ms. Provost's presentation. A joint petition for divorce is signed by both the husband and the wife and must state the date and place of the marriage, the mailing address of both the husband and the wife, whether there are children and if the wife, to her knowledge, is pregnant. It addresses other factual scenarios, but it allows for the litigants to avoid a court proceeding. Under current law, the litigants are allowed to file the petition, but section 3 allows them to revoke a filed joint petition if, before final judgment, they determine they no longer agree on the important terms.

Section 4 provides that the entry of the final judgment upon a petition for a summary proceeding for legal separation constitutes a final adjudication of their rights and includes support of minor children, division of community property, and the assumption of liabilities. It also addresses the amount and manner of spousal support, typically called alimony within a divorce context, and they also then waive certain respective rights relating to appeal and notice. If they are coming into this together, it does not make sense that we would require formal notice to be given to both parties, since they both brought it.

Section 5 allows for an ex parte action for divorce to follow a proceeding for separate maintenance. Currently, Nevada law requires that even when parties come in and agree to the terms of separate maintenance, or legal separation, they must then, if they decide they want to divorce, file a new action; in other words, a new adversarial proceeding. As the law currently exists, it requires them to essentially face off a second time. Mind you, the only thing remaining in a properly drafted decree of separate maintenance is the marriage agreement or the marriage contract itself. A properly formed legal separation would divide the assets. It would address the support. It would address custody and child support as well. The only thing remaining is this legal relationship.

Section 5 allows for an ex parte action for divorce to be determined by a summary procedure when those conditions have been met. I will also mention a friendly amendment from the Legal Aid Center that we met with this morning. Their representative's concern was about notice, so we are going to add a requirement to section 5 that notice to the other party must be made at the time of filing. Section 6 allows for an ex parte proceeding for divorce to be commenced by filing of an affidavit and a petition. The petition must state the same facts that are required in the divorce summary proceeding.

Section 7 provides that upon the receipt of the ex parte application, the court can enter judgment for decree. This allows parties to obtain what they can obtain anyway without further court proceedings, thus reducing cost and inconvenience for both the litigants and the courts as well. Section 7 also makes any order for child support that was part of the judgment for permanent support in accordance with its terms and any judgment for support and maintenance will be deemed alimony, so we do not need to revisit those arguments when we get there. Section 8 deletes the language for summary proceedings for divorce and replaces it with the new statutory references.

Similar to sections 2 through 4, sections 9 through 11 of this bill create summary proceedings for permanent support and maintenance when certain factors are present for both the husband and wife when they both agree to the summary procedure. Section 14 states that the proceedings, pleadings, and practices must conform to the Nevada Rules of Civil Procedure as much as possible. This is language mirroring the existing language in the summary divorce proceedings. Section 15 creates summary procedures to resolve certain custody issues. In other words, when parties are not married, summary proceedings are not available to them to resolve the issues. They cannot even do it on a joint petition, even though all of the issues may have been resolved. They have to start out with a plaintiff and a defendant. The plaintiff files a complaint for custody, the defendant then has to file an answer, and we start them off in an adversarial posture. This bill eliminates that need. They can come to the table with an agreement and simply file for summary proceedings and obtain a judgment without a court hearing.

Section 16 allows for the summary proceedings to be filed in any district court. Section 17 allows for the revocation of the joint petition at any time before the entry of the order. This terminates the summary proceeding with respect to the child custody issue. That only happens when they determine they disagree as to material terms and so they must hash it out. This allows them to do that. Section 18 provides that the entry of a joint petition for a summary proceeding determining the custody of children constitutes an adjudication of the rights and obligations of the parties. However, an order entered does not prejudice or bar the rights of either party to petition the court to modify or vacate the order if the circumstances permit. I will remind the Committee that all custody determinations are to be determined solely on the best interest of the child, and this does not upend that. When considering the physical custody of a minor child, the courts set out specific considerations in determining what is in the best interest of the child.

Section 19 of this bill adds to these considerations whether the parents have established an agreement concerning the division of rights and duties relating to the child and whether either parent is seeking joint custody primarily to avoid the payment of child support. This is something that is unfortunately rampant in current domestic cases. Sections 20 and 21 of this bill allow a parent who has relocated with the required consent from the other parent or permission from the court to subsequently relocate without obtaining additional consent or permission upon providing notice to the other parent at least 30 days before relocating.

However, consent or permission will be required if the noncustodial or nonrelocating parent establishes that the subsequent relocation will prevent him or her from continuing to maintain contact with the child or to participate in certain major decisions concerning the child.

Sections 19 and 22 through 30 replace the term "sole" with "primary." This has to do with the fact that the current statutory scheme makes reference to sole physical custody, even though there is no actual provision in the scheme for sole custody. It is primary physical custody, and in certain circumstances, a court can require that a parent have primary physical custody with no visitation to the noncustodial parent, usually for safety concerns or incarceration or that they would have visitation at that primary physical custodian's discretion. At no place is the term "sole physical custody" defined in the statutory scheme, so these sections simply remove the term "sole" and replace it with "primary" so it is consistent with the physical custodial requirements within the statutory scheme. That is a brief overview of the bill as it was originally written. Ms. Provost is here to provide the input from the Family Law Section in our collaborative process.

Katherine Provost, representing Nevada Justice Association:
I am a family law practitioner. I have been in private practice for the duration of my career in the last 14 years. I have also been pleased to be the former chair of the State Bar of Nevada Family Law Section. I am also a fellow of the American Academy of Matrimonial Lawyers, which is considered one of the highest designations that a person practicing in family law can obtain in this field. I am also a lobbyist for the Nevada Justice Association (NJA), and I am here today on their behalf as well.

With respect to this bill, it was discussed at our recent Nevada Family Law Conference, which was held in Bishop, California, approximately three weeks ago. The proposed amendments to this bill were floated through this Section as well. While I do not have authority to speak on behalf of the Section as a whole—which is due to the State Bar policy for when someone can represent the State Bar on behalf of the entire membership versus individual attorneys or Section members—I am here in the latter capacity as an individual attorney and on behalf of Section members as well as the NJA.

As Assemblyman Pickard presented, there have been some discussions of amendments to this bill. With respect to those, the first being that the preference of the family law attorneys is to remove the reference to the antiquated language of ". . . legal support and maintenance" and replace it with the terminology of "legal separation," especially with respect to access to justice and our unrepresented population. If you speak with an individual who is not in the legal field, they all know what the term "legal separation" means, but they will not necessarily know what "legal support and maintenance" means or know that it is the same thing. So to make it a little simpler for those to understand, we have suggested the amendment to Chapter 125 of *Nevada Revised Statutes* (NRS) to replace that antiquated language, which actually dates back to 1919, with the more common term of "legal separation." That change will be throughout NRS Chapter 125.

In section 4, there is a change and an amendment that is being proposed to subsection 2. It is to add the language that a decree of legal separation can be converted to a divorce by this ex parte summary process unless the parties have stated in their decree of legal separation that they do not want that to happen. The reason for that language to include "unless the final judgment contains a statement by the parties to the contrary" is to ensure that when the parties are going for a legal separation, they are in agreement to be legally separated. The concern that was raised was, What happens when one person decides they want to terminate the marriage contract by this ex parte process and the other person does not know that someone is going to convert it from separation to a divorce? All that remains is the marriage contract itself. It is important to some people. It can be important in several different areas; for example, it can be important to those who are legally separated for purposes of maintaining medical benefits. It can be important to someone who is maintaining the legal separation in lieu of divorce because they are in a military family situation and they need to meet a certain number of years of actual marriage to be able to have the Defense Finance and Accounting Services pay directly to the former spouse. It can also be important from a religious perspective for certain persons. There was a lot of discussion about how do we protect these people who think they are going to agree to a legal separation and they are willing to do that, but they are not willing to divorce. One spouse comes back and says, Okay, well now we are changing it to a divorce. We believe that the language that sets out upfront that they can either opt in or opt out to the summary disposition process gives them that opportunity to say it upfront. If they do not want this process, they say it in their legal separation paperwork.

Assemblyman Pickard:
We have made a copy of their proposed changes, and you should have those on your desk (Exhibit C).

Katherine Provost:
As Assemblyman Pickard stated, we spoke with Legal Aid this morning, and they had some concerns as far as the notice to the other party. We will address that in a subsequent amendment. In sections 15, 16, 17, and 18, the initial bill had reference to a summary process for custody. We have also included an amendment to address parentage, because sometimes parties file an action for parentage rather than an action for custody. In reality, they are going to address the same things, but it also allows that to be done by summary process.

In section 16, the location of where to process a proceeding for summary proceeding in custody of parentage can be brought. Instead of being able to be brought in any district court, it has to be brought in a county where either one of the parties or the child resides. That is because when we have a parentage or custody action, we have to almost always assume, since the court has jurisdiction over those children until they are through with their minority, that there might be subsequent proceedings at some point in time, and having it brought in the county where the child or parent resides allows for those subsequent proceedings to therefore occur where the child or parent continues to reside more often than not as opposed to the example of someone filing in a rural county just because they feel they

can get it through quicker, but no one has ever resided there. In a subsequent proceeding, they would have to go back to that same rural county where no one resides and that makes for difficulties in the future. That is a forethought that was discussed and the amendment brought.

In addressing what is in the best interest of the child, the list that we have in section 18 of the bill, Assemblyman Pickard raised whether or not the parent has a relationship with the child. We have included that in addition to the agreement that they have about the child. You see a lot of litigation over what is an agreement. Do we have an oral agreement or a written agreement? So we have clarified that it is not just an oral or written agreement, but do the parties have a pattern of behavior or actions that are indicative of what they have decided to do with respect to custody of the child.

Finally, with respect to the process for subsequent relocation of parents, the big change to that was initially the language was they only had to give 30 days' notice before subsequent relocation. That was felt to be too short of a period of time, just considering how long it takes to be able to get to an attorney, file a motion, or if you are an unrepresented party, go and get with Legal Aid and find out what your rights are. That has been extended to a 60-day minimum notice prior to a subsequent relocation. Then if the parent wants to object to that relocation, they have to do something about it, and they have to do it within 30 days of getting that notice. So the burden is on the objecting parent to do something. You have noticed that the other parent, who has already left the state of Nevada, for example, has relocated to the state of California, and now wants to relocate to Maine. You might have been okay with their relocating from California to Nevada, but you may not be okay with you living in Nevada and now your child being in Maine. You have to file something, and you have to do something about it.

The bill amendment also includes that, in addition to filing, that parent who is going to object to the subsequent relocation has to do more than say "I object." They have to come out with their offer of proof as to what that objection is actually based on and provide to the court, at the time of that initial hearing, something concrete as to why they are objecting to the relocation.

The reason why the burden is on the objecting parent rather than the moving parent is that the parent who has moved away has already gone through the process to do it. They have either gotten the agreement of the other parent to relocate from the state of Nevada, or they have gone through a very lengthy—typically—court process to get approval to move. So to make them have to go through that same process again, unless there is good cause to do so, really does not make a whole lot of sense for the parent who wants to once again relocate. Again, the protection for the nonrelocating parent is in the fact that they can file that objection and then they can ask the court to make that determination for them.

I believe that is all the subsequent amendments that were discussed.

Assemblyman Pickard:
With respect to the amendment, Assemblywoman Cohen, my colleague in the Family Section, has asked to become a cosponsor on this bill. That concludes our remarks and we are happy to answer questions the Committee members may have.

Assemblywoman Cohen:
I want to thank Assemblyman Pickard for bringing this bill and Ms. Provost for coming and testifying, and also to the Family Law Section for vetting the bill and working so hard on the bill in Bishop. I am so happy that family law has been heard so much in this Committee this session and that it is being taken so seriously this session. We are able to thoroughly vet this material and really dig into the material so much this session. It is so exciting for me to see, and I appreciate the Bar and Assemblyman Pickard for that.

Chairman Yeager:
It is nice to have a couple of family law practitioners on the Committee. I think it helps tremendously. Thank you, Assemblyman Pickard and Assemblywoman Cohen, for your hard work on the number of bills we have heard this session thus far.

Assemblyman Elliot T. Anderson:
I have a question in regard to the summary procedure for support contained in sections 15 through 18. As you are well aware, NRS 125B.070 contains a formula for child support. That agreement would have to either satisfy the formula or the parties would have to stipulate facts in order to justify a court deviating from the formula. Is that correct?

Assemblyman Pickard:
Yes, that is correct. I will alert the Committee that the Nevada Supreme Court is bringing a bill that I am carrying to address the issues of NRS Chapter 125B that currently exist. Yes, the requirement is always that we are consistent with the child support calculations. The parties are required to attest to that fact and, if disputed, they have to present data as to their income and then we work through the statutory calculation. There are some minor deviations currently under NRS 125B.080, subsection 9 that the court can look at, but generally speaking, they always have to be consistent with those rules.

Assemblyman Elliot T. Anderson:
Do you think it might be worth amending to make that clear, just on the face of the summary procedure? I think the more we can make things clear on its face, it might be helpful.

Assemblyman Pickard:
I am perfectly amenable to that. I think simply adding a few words to suggest that they need to be consistent is just fine.

Assemblyman Elliot T. Anderson:
In section 10, it is permissive language as to what a court can do in a divorce action. I am wondering what is the point of attorney fees or costs in this provision? It does not say

"prevailing party." There is no guidance under when a court would award attorney's fees and costs. Would you help me understand what you are trying to get at?

Assemblyman Pickard:
Generally speaking, anytime we are mentioning fees and costs, we are trying to invite the court to assure that cases which are contested before it have merit. Right now, we have the ability to obtain costs under NRS 18.010, and in the south, Eighth Judicial District Court Rule of Practice 7.60 allows us to be able to address the issues of fees and costs when those may not be otherwise forthcoming.

Katherine Provost:
I believe this section allows for the parties to, by agreement, stipulate as to one party paying the entirety of the legal costs in a proceeding. Sometimes even though it is a nonadversarial process, one of the two petitioners is the one actually hiring the attorney and paying for the other side to hire a reviewing attorney. I believe that in that particular instance, having language in the bill that allows for an award of fees and costs in certain situations would make sense. However, there would be no objection from the Family Law Section to clarifying language with respect to when fees could or could not be granted.

Assemblyman Elliot T. Anderson:
I would appreciate that. I think that is broad language right now. The way that I read it, any action pursuant to that section—it looks as though, for any reason, a court could award attorney's fees, and I think traditionally, with the way it has worked, and you can correct me if I am wrong, but it has been when there has been bad faith in the family law chapters that fees have traditionally been awarded. Certainly, in those types of situations, I think they may be justified. I think we should make that more clear about why. That could also dissuade people from bringing actions depending on what is going on.

Assemblyman Pickard:
We are amenable to making anything clearer than what a lawyer might come up with. The whole point of the summary petition is to bring closure quickly and without core proceedings, because the parties have already agreed to all of the substantive terms. Your point is well taken, and we are certainly open to suggestion on it.

Assemblywoman Tolles:
I am looking at section 6, subsection 2, paragraph (d). Knowing that we have a few other bills coming forward, Assembly Bill 204 and Assembly Bill 229, in regard to family law, I am wondering if we should keep the language consistent, particularly looking at section 6, subsection 2, paragraph (d), "Whether the wife elects to have her maiden or former name restored and, if so, the name to be restored . . . ." Could we change that to "Whether the spouse elects to have his or her former name restored," just to make that applicable to all in case there is a husband who wants his name changed and then wants it restored? I think you would also carry that up to section 6, subsection 2, paragraph (b) "The mailing address of both spouses" just for simplicity's sake.

Assemblyman Pickard:
We are certainly amenable to that. I am in support of that effort as well. I have no problem with making that change.

Assemblyman Elliot T. Anderson:
I noticed the same issue in several places. I would think that we should have a default "spouse" and make those things gender neutral.

Assemblyman Pickard:
When we were drafting this, we were working with the statute as it existed. It would make sense to make those conforming changes throughout, particularly if both of these pass.

Chairman Yeager:
Are there any other questions from the Committee? [There were none.] Is there anyone in support of A.B. 167?

Bailey Bortolin, Statewide Legal Services Legislative Liaison, Legal Aid Center of Southern Nevada; and representing Washoe Legal Services:
We want to thank both Assemblyman Pickard and Ms. Provost for working with us as late as this morning to make sure that we fixed one issue that we saw. We work with the self-help center in the courts, so that is where our concern came from. Sometimes people agree to a legal separation for the purpose of not getting a divorce, so we thought putting notice in there a little sooner would clean it up. Otherwise we are very excited about this bill and how fast it will be able to help our clients so we do not become California, and it does not take a year to get a divorce. Thank you for expediting the process when all parties agree.

Chairman Yeager:
Thank you, Ms. Bortolin. I would invite either you or Assemblyman Pickard to send me an email with the proposed language of the amendment. I do not think we have a formal amendment yet to look at, but if you can get it to me, I can make sure we provide it to legal counsel. Is there anyone else in support of A.B. 167? [There was no one.] Is there anyone who would like to testify in opposition to A.B. 167? [There was no one.] Is there anyone who would like to provide neutral testimony? [There was no one.]

Assemblyman Pickard:
I appreciate the Committee's consideration of the bill. As has been noted by you, Mr. Chairman, there has been quite a bit of family law effort. I will note that when we brought Assembly Bill 263 of the 78th Session to amend some of the custody and relocation issues in the first place, there was discussion that a total rewrite of the statutory scheme is in order, and that has been a discussion which has gone on for nearly 20 years. So while we probably could not take that big a bite this session, we certainly want to do the important

low-hanging fruit, and this is part of that effort. I appreciate the Committee's indulgence on having so many family law bills before it and appreciate the hard work that has gone into this effort.

Katherine Provost:
Thank you for your time today.

Chairman Yeager:
We will close the hearing on A.B. 167. Is there any public comment in Las Vegas or Carson City? [There was none.] Thank you for a productive meeting. The meeting is adjourned [at 10:02 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Assembly Bill 167 presented by Assemblyman Keith Pickard, Assembly District No. 22.