

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Third Session
March 28, 2005**

The Committee on Commerce and Labor was called to order at 2:15 p.m., on Monday, March 28, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Ocegüera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County
Assemblyman Scott Sibley, Assembly District No. 22, Clark County
Assemblywoman Debbie Smith, Assembly District No. 30, Washoe
County
Assemblyman Joseph Hogan, Assembly District No. 10, Clark County

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst
Russell Guindon, Deputy Fiscal Analyst
Keith Norberg, Deputy Fiscal Analyst
Vanessa Brown, Committee Attaché

OTHERS PRESENT:

John Sasser, Statewide Advocacy Coordinator, Washoe Legal Services,
Nevada Legal Services, and the Washoe County Senior Law Project
Marshall L. Schultz, Founder and President, Residents Information Center
Incorporated; and Sponsor, Nevada Renters' Hotline
Judy Cook, Private Citizen, Real Estate Broker
Jim Nadeau, Legislative Advocate, representing the Nevada Association
of Realtors
Milton Schwartz, Private Citizen, Las Vegas, Nevada
Hallie M. Fisher, Private Citizen, Las Vegas, Nevada
Roger Scimé, Private Citizen, Reno, Nevada
Abigail Richlin-Schwartz, Private Citizen, Las Vegas, Nevada
Neena Laxalt, Legislative Advocate, representing the Nevada State Board
of Veterinary Medical Examiners
Dr. Gary Ailes, Past-President, Nevada State Board of Veterinary Medical
Examiners
Dr. Jon Pennell, President, Nevada State Board of Veterinary Medical
Examiners
Dr. Joe Coli, Chairman, Legislative Committee, Nevada Veterinary
Medical Association
Dr. James Nave, Member, Nevada Veterinary Medical Association
James Sala, Legislative Advocate, representing the Southwest Regional
Council of Carpenters
David Kersh, Government Affairs Director, Carpenters/Contractors
Cooperation Committee, Las Vegas, Nevada
Thomas A. Morley, Political Action Director, Laborers Local 872,
Las Vegas, Nevada
Jack Jeffrey, Legislative Advocate, representing Southern Nevada
Building and Construction Trades Council
Danny Thompson, Executive Secretary/Treasurer, Nevada State AFL-CIO
Richard Daly, Business Manager, Laborers International Union, Northern
Nevada Local 169, Reno, Nevada
Paul McKenzie, Organizer, Operating Engineers Local Union No. 3

John Madole, Executive Director, Associated General Contractors, Nevada Chapter

George DelCarlo, Private Citizen

John Wagner, The Burke Consortium of Carson City

Ted Olivas, Director of Government and Community Affairs, City of Las Vegas, Nevada; and Chair, Nevada Public Purchasing Study Commission

Santana Garcia, Legislative Advocate, City of Henderson, Nevada

Kathleen S. Rand, Private Citizen, Sparks, Nevada

Scott Watts, President, Nevada Alliance for Retired Americans

James Brown, Private Citizen

George Ross, Legislative Advocate, representing National Association of Chain Drugstores

Marty Bibb, Legislative Advocate, representing the Retired Public Employees, Nevada

Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons of Nevada

Lora E. Myles, Attorney for Retired Senior Volunteer Program; Carson and Rural Elder Law Program

Susan Swenson, Public Guardian, Office of the Public Guardian, Carson City, Nevada

Julie Arnold, J.D., the Senior Citizens Law Project, Las Vegas, Nevada

Scott Smith, Director, Southern Nevada Multi-Housing Association

Michael Tanchek, Labor Commissioner, Nevada Department of Business and Industry

Vice Chairman Oceguela:

[Meeting called to order. Roll called.] I'll open the hearing on Assembly Bill 404.

Assembly Bill 404: Removes exemption for certain landlords from provisions relating to landlords and tenants and exempts certain landlords from requirements for state business license. (BDR 10-646)

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County:

Those who have served on this Committee have heard this bill perhaps four times before. It removes the small landlord exemption in order to provide tenants in these situations with the very same protections as those who happen to live in a rental where the landlord owns more than four. Those of us with teenagers who are getting ready to move out on their own might be very surprised to learn that, if their first apartment or duplex is owned by a landlord

with four or fewer units, they do not have the same protections as if they lived in the same unit owned by a landlord who happened to own five units. These protections are basic habitability protections in NRS 118A.180 [*Nevada Revised Statutes*]. John Sasser will answer technical questions. Marshall Schultz operates a hotline for renters who need assistance.

[Assemblywoman Leslie, continued.] The second part of the bill is something you haven't heard before. I included it in response to a constituent who quickly brought this to my attention. There is a provision in the tax bill last session that annoyed her. Her accountant advised her that she needed to get a business license from the City of Reno if she intended to continue renting out the adjacent duplex as she had been doing for 50 years. The cost was around \$100, but that was not her biggest objection. Her objection was the inference that she was running a business by renting out the duplex. I told her I agreed and would bring this issue to your Committee for your consideration. Section 2 of the bill repeals that provision.

John Sasser, Legislative Advocate, representing Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:

[Read from [Exhibit B](#).] I'm in support of A.B. 404. I'll cover Section 1 of the bill, which eliminates the "small landlord exemption" of NRS 118A.180.2 (c).

The legal services programs that I represent provide free assistance to low-income tenants. Due to a shortage of attorneys, the help offered rarely takes the form of representation in court. Typically, the programs provide advice and brief service, including self-help pamphlets and forms. They are in position to observe the impact of the current law on tenants and the need to eliminate the "small landlord exemption" at NRS 118A.180.2 (c).

When Nevada's Residential Landlord and Tenant Act passed in 1977, there were many revisions, in terms of whether there should be an exemption for small landlords. The bill went through a number of changes and ended up with an exemption for those who own fewer than seven dwelling units. This provision was revisited in 1983. At that time, I worked for the Apartment Owners Association on a jointly sponsored bill. The bill totally eliminated the small landlord exemption. That bill passed the Assembly later in the session, but did not arrive in the Senate in time to have a hearing.

In 1985, I was again involved with a nearly identical bill, A.B. 504 of the 63rd Legislative Session. The Apartment Owners Association and the tenants wished to totally eliminate the small landlord exemption, which still remained at less than seven. In the Assembly Judiciary Committee, we received an objection from the Southern Nevada Builders Association. They believed that eliminating the exemption might hurt their ability to sell four-plexes to seniors moving over from California.

The section was next visited in 1999, where a bill granting tenants the right to withhold rent if landlords refused to provide essential services was offered. Upon the approval of the Southern Nevada Builders Association, essential services were added to the list of provisions that do apply to small landlords.

Mr. Schultz, who owns a tenants' hotline in Reno, approached me in 2002 and said he was getting a number of complaints regarding the failure of small landlords to comply with the warrant of habitability. I contacted Ms. Porter with the Southern Nevada Homebuilders Association to see if they still cared about this exemption. She said they did not. Therefore, A.B. 89 of the 72nd Legislative Session went forward in the last session.

I'll go over the impact of eliminating the small landlord exemption. Right now, small landlords must comply with six different provisions in NRS 118A, and the rest do not apply. The more important ones, however, do not apply. They're exempt from the provisions covering security deposits, the warranty to habitability, legal lockouts, and retaliations. Therefore, we have a set of laws clearly governing the conduct of larger landlords and major confusion regarding the small ones. It is frequently unclear to the court which law applies because it's hard to determine how many units a landlord owns. Under the laws governing the security deposits, there is a limit on the amount of security that can be charged and a procedure set up for refund of a security deposit. There's a procedure for a tenant who wants to challenge the amount with help. The small landlord that pays a security deposit has no governing law. The court must use its best attempt to apply the old common law of contracts to the facts.

It's true that essential services are required to be supplied by a small landlord, but if they don't put a roof over the apartment or supply a floor, the law is not violated under the warranty of

habitability. If you pass this bill, the same law will apply to landlords regardless of size. We believe this bill removes a longstanding inequity in our laws. I ask you to pass it.

Marshall L. Schultz, Founder and President, Residents Information Center Incorporated; and Sponsor, Nevada Renters' Hotline:

[Read from ([Exhibit C](#)).] The Residents Information Center, Incorporated, is a 501(c)(3) organization. We sponsor Nevada Renters' Hotline, to which many state and local government offices refer callers, since there's no other place in the state to refer them, other than the legal services John Sasser represents. The referrers are the Governor's Office, the Attorney General's Office, the Manufactured Housing Division, Real Estate Division, et cetera. We are the only organization in the state compiling data on rental problems from all around the state and we are not part of or funded by the government. We are not funded by the government or foundations.

Tenants of small landlords are shocked when I tell them that their landlord may be exempt from most of NRS 118A. Tenants are flabbergasted and often ask questions like, "Are you serious? We have no right? Is this in the United States?" The basic issue here is about fairness. A rental agreement is just another business transaction with each party giving something of value in exchange for something else of value and that's where the problem occurs in the small landlord exemption. The landlord doesn't have to give much of anything in value.

A.B. 404 strengthens the lawful rights of both parties through the rental agreement. NRS 118A.180.2(c) maintains inequality and discriminates unfairly against tenants in favor of small landlords. We ask that you pass this bill.

Judy Cook, Private Citizen, Real Estate Broker:

I'm a real estate broker and property permit holder in Nevada. I've been managing residential property for over 25 years. My primary business is training and consulting with property managers throughout the state. I'm in support of A.B. 404. I have submitted written testimony to you ([Exhibit D](#)).

Assemblyman Anderson:

I need to disclose that my brother and I own a single rental and would be affected by this legislation. It doesn't affect me any differently than from other people who own pieces of property.

Chairwoman Buckley:

I'd like to disclose that I used to. Being a landlord is not easy. There are similar disclosures for Mr. Ocegüera, Mr. Conklin, and Mr. Parks.

Jim Nadeau, Legislative Advocate, representing the Nevada Association of Realtors:

As we did in 2003, we support this legislation, in particular the new part dealing with business licenses.

Chairwoman Buckley:

I'll close the public hearing on A.B. 404.

ASSEMBLYMAN SEALE MOVED TO DO PASS
ASSEMBLY BILL 404.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Anderson abstained from the vote.)

Chairwoman Buckley:

I'll open the hearing on Assembly Bill 263.

Assembly Bill 263: Requires licensed veterinarian to obtain informed consent from owner of animal under certain circumstances. (BDR 54-1279)

Assemblyman Scott Sibley, Assembly District No. 22, Clark County:

This bill would require veterinarians to obtain written consent from an owner of an animal before administering vaccinations and to discuss the potential effects of those vaccinations. The bill is a consumer protection bill that would protect the pet owner from uncertainties with these vaccinations.

Milton Schwartz, Private Citizen, Las Vegas, Nevada:

[Submitted [Exhibit E](#).] If any of us go to a doctor and he/she writes a prescription, the doctor or the pharmacist tells us about the side effects and what the prescription will do for us. A pet, however, has no one to talk for him so that the pet can think about it and be informed as to its consequences. If any of you has ever lost a pet, you know it's a devastating experience. It's like losing a member of the family. I lost such a pet, and it happened because we were uninformed of what would happen from the vaccinations our dog received.

This bill has no fiscal effect upon the state, but it protects the consumer to protect their pets. The only objection to this bill would be from veterinarians who want to continue to give vaccinations or procedures that they make a lot of money on without being held accountable. If they have to think about what they're doing and inform their customer of what they're doing, in some cases the consumer will say, "Wait a minute, you mean that could kill my dog or cat?" and "Do we really need eight or ten vaccinations at one time?" which happened to my dog. She received eight vaccinations at once, which killed my dog. I urge you to send this bill to the Assembly with do pass.

Chairwoman Buckley:

Was your dog young, to have eight vaccinations at once?

Milton Schwartz:

The dog was five years old. The only reason that she got the vaccinations is they make a lot of money on these vaccinations and if a customer loves their animal and can afford to pay for it—when my wife brought the dog in she said, "Do what has to be done." She loved the dog. So they gave the dog eight vaccinations at one time. It was the eight vaccinations given at once that killed my dog. Trying to save the dog after that took four months of more medical care and tens of thousands of dollars.

Hallie M. Fisher, Private Citizen, Las Vegas, Nevada:

I own two cats, and I think it's very important that this bill get passed. I would appreciate it if you support it and send it to the Assembly.

Roger Scimé, Private Citizen, Reno, Nevada:

As an animal lover and an advocate of free enterprise, there is no way that free enterprise can exist and flourish in an atmosphere of ignorance and darkness. Informed consent must be the basis of anything along those lines, especially when human beings must advocate for animals. I support this bill and wish to see it continue on to the Assembly.

Abigail Richlin-Schwartz, Private Citizen, Las Vegas, Nevada:

I know a couple of the vets that are here today. I'm a registered nurse and I know about vaccinations and informed consent. I'm not against pharmaceuticals, but I'm here to speak about the fact that I didn't have a list of what vaccinations and medications would be given to my animal. Had I had that list, I would have decided not to get what was given. It's excruciating not to know and it's a good law to have for the future. By passing this bill down to the Assembly, the people who are here to talk today are going to talk about what I should have heard when I went to the vet. You may hear a lot about what I should have heard or what you all should hear when you walk into the office.

You're going to hear about it at the wrong place. My issue is not with vaccinations, it's with vaccination protocol. It's not with germs, bacteria, and diseases, it's with protocol. That's what I hope you take into consideration.

Assemblyman Anderson:

Since you have a medical background, you're probably in a better position to understand some of the information that might come to you versus other people who are not medically trained. I've been a dog owner all my life, and trips to the veterinarian have always been positive. Whenever I bring my dogs in I've always been told exactly what shots they were going to get. I've been told about whether it was time for kennel cough or any new thing that was going to happen. You knew nothing?

Abigail Richlin-Schwartz:

I did not know the eight live vaccinations that were injected. This isn't really about vaccines, it's about protocol. What they're giving out is unnecessary. They're selling you unnecessary drugs. The lives of the drugs are not proven. You don't need to revaccinate, and you don't need boosters. The vets are very nice when you come in with your pets.

Assemblyman Anderson:

Have you used the same veterinarian for a long period of time?

Abigail Richlin-Schwartz:

No, this was a recent graduate who did this because there was no protocol in the office and she took it upon herself—without a record, by the way—what she thought was appropriate. The Board will dismiss the case, like they dismiss most cases in Nevada and you don't hear about them, because they don't have people who think quickly enough. I left emotions aside and grabbed the charts and went to get all the records before they could fraudulently copy them or rewrite what they wanted to—which they did, by the way. When you do come to see the vets, some people will explain, but the vaccinations they give to your pets are unnecessary. If you read up on them, you would have an idea in the future about what you are getting, but most people don't follow up or do research unless something happens.

Assemblywoman Giunchigliani:

In subsection 2, Section 2, I think it's pretty clear the intent is that a licensed veterinarian can, in their own judgment, if there is an emergency, make some decisions. When I take my pets or "children" in, my vet tells me I'm giving them Lyme Disease [vaccine], which should be my call as well. They should tell me whether or not that's the right thing or the animal might have a reaction to it or whatever because there are allergies. The intent is to get notification ahead of

time? My vet always does that, so I'm curious. Unfortunately, the loss of your pet was because it was a new person who didn't deal with it in this manner?

Abigail Richlin-Schwartz:

Veterinarians are giving you vaccinations without telling you adverse effects. They're giving you too many at one time. They're giving you things you don't need. Why do you think you're being asked to come in once a year anymore? Because they've made a slight change in what they've learned. They learn it bit by bit, but they don't want to absolutely not bring you in. You don't have to go in but every few years or every five years on some of these medications.

Assemblywoman Giunchigliani:

Is it your understanding that the Veterinary Board does not accept or act on—do they have a procedure when you have basically a medical malpractice claim?

Abigail Richlin-Schwartz:

I went to one Board meeting. You must talk to an attorney who's worked with or against the Board, because the majority of the cases aren't heard, because you don't have a person who has the time to follow up on an illness caused by a vet. You don't have someone that has the medical background to read charts, pick them up, or go follow through with out them, before they change them and then follow through with the actions. People don't have time to do this.

Assemblywoman Giunchigliani:

This bill doesn't really deal with the Board itself, maybe having a lack of investigation authority or—

Abigail Richlin-Schwartz:

The Board would like to have nothing to do with changing the way the Board works. Accountability takes away a lot of financial freedom.

Neena Laxalt, Legislative Advocate, representing the Nevada State Board of Veterinary Medical Examiners:

I have the past president, Dr. Gary Ailes, and also Dr. John Penell, and I will turn it over to Dr. Ailes to start testimony.

Dr. Gary Ailes, Past-President, Nevada State Board of Veterinary Medical Examiners:

I've been on the Board for seven years. We are opposing A.B. 263 because we believe it's redundant based on the laws in front of us. NAC 638.0175 [*Nevada Administrative Code*] defines a "Veterinarian-client-patient relationship." This definition incorporates the veterinarian obtaining informed consent of the client

for medical treatment of the animal and the veterinarian obtaining the agreement of the client for medical treatment of the animal.

[Gary Ailes, continued.] The American Veterinary Medical Association (AVMA) "Principles of Veterinary Medical Ethics," has been adopted by reference into NAC 638.046, and allows the Board to impose discipline if there is a violation. The AVMA "Principles of Veterinary Medical Ethics" states, "Attending veterinarians are responsible for choosing the treatment regimes for their patients. It is the attending veterinarian's responsibility to inform the client of the expected results and costs and the related risks of each treatment regime."

NRS 638.1402, "Fraudulent Acts. The following acts, among others, are grounds for disciplinary action: (4) Engaging in any conduct likely to deceive, defraud, or harm the public, including the dissemination of information by a veterinarian, licensee of the facility or agency or an employee of either, concerning the services of the licensee which is false or misleading and which the person knew or should have known was false or misleading."

Those three all give us the right to go ahead and to do investigations and discipline. I think it's covered the same as what is in this current bill.

Dr. Jon Pennell, President, Nevada State Board of Veterinary Medical Examiners: I've been on the Board of Veterinary Medical Examiners for seven years. Of course, I feel very badly for and offer my condolences to Mrs. Schwartz. Unfortunately, the Board is still investigating that case and we would not be able to answer any questions; however, I disagree with her statement that the "Board does not offer any punishment." There are quite a few veterinarians in this state who would disagree with that because they have received punishment from us. We had a case five years ago that recently went to the Supreme Court, and they upheld our decision. I'm here in opposition to this bill for the same reasons that Dr. Ailes has mentioned.

Chairwoman Buckley:

When folks are frustrated with a result, sometimes they move to change the law. I do it myself. The law is fine, but it's not being enforced. The frustration at it not being enforced makes you feel that you must make it clearer in the law so it is enforced for the next person. That's what it sounds like I'm hearing. What assurance does the public have that you're truly enforcing the laws that are on the books when someone doesn't have informed consent, or when someone is interested in not having too many vaccines delivered on a day? How can the public feel assured that you all, as Board members, are enforcing the laws and the practices that we already have?

Gary Ailes:

I'd be happy to open the Board books to you at any time. You can look at all of the cases we've investigated and why the decisions went the way they did. It's totally open and we do put out discipline. In a case like this, we can't comment on it while we're still investigating, particularly in relationship to vaccines, because the whole profession is in transition at this time, just as it is in human medicine, as to what is necessary and what isn't. They quit vaccinating for whooping cough in Nebraska and there was an outbreak this year in Omaha. We haven't seen that in many years. I agree with your comment, "What can we do to let people know that we are willing to prosecute or discipline?" The fact that we took a case that we felt strongly about all the way to the Supreme Court indicates that when we feel we have a case that is definitely a violation, we're willing to follow through as far as necessary.

Assemblywoman Giunchigliani:

Thank you for the attachment on the NAC ([Exhibit F](#)). That clears up what the intent of the bill is, which is for informed consent. However, most people don't have access to the NAC, so I think what the requester of the bill might be asking is in NRS, you at least have a minimum. Number three, "The veterinarian obtains the informed consent of the client for medical treatment of the animal." You codify it in statute, so at least people know where they need to go. I think that gives people a little bit more comfort. Is there a bill of rights that's posted for the clients and their owners?

Gary Ailes:

I don't know of any bill of rights that everyone would have. I think that's done on a per office basis on how a person decides that they want to run their business and what they're willing to post.

Assemblywoman Giunchigliani:

While this is an emotional issue, it is making sure that we are still dealing with the safety and the health of the public, as well as making sure veterinarians are protected in their profession. Balance is missing here.

Dealing with the number and types of investigations, how does a complaint actually get filed with the Board?

John Pennell:

A client would call the Board office, discuss what has happened with them, and request a form that they would fill out, get notarized, and send to the Board office. The Board office appoints an investigator and this case is thoroughly investigated and presented to the Board. Then the Board hears the case. It is done anonymously.

Dr. Joe Coli, Chairman, Legislative Committee, Nevada Veterinary Medical Association (NVMA):

The NVMA is strongly opposed to A.B. 263. Although we are sympathetic to the intent of this proposed legislation, it is unnecessary and will encumber the ability of veterinarians to provide care to our patients. Members of the NVMA have stated existing statutes and regulations that render A.B. 263 unnecessary. The NVMA does not have a problem with informed consent. We are currently required to provide for this as previously described.

The vaccination process, although routine, is one of the most complex procedures that we provide. The American Veterinarian Medical Association's Council on Biologic and Therapeutic Agents has studied the principles of vaccination and has concluded at this time that there exists inadequate data to scientifically determine a single best protocol for vaccination or revaccination. The specific protocols for vaccine use are adapted for each patient by the veterinarian based upon patient species, breed, location, environment, individual health statute, and economics. These are issues that are currently discussed with our clients by veterinarians. Providing a written consent form that addresses all of these factors specifically for each patient would be extremely cumbersome and time-consuming. For this reason, A.B. 263 would effectively eliminate low-cost vaccination clinics, such as those provided by Humane Societies. Our clients and patients may suffer due to this proposed legislation, and we respectfully request that you do not pass it.

Dr. James Nave, Member, Nevada Veterinary Medical Association (NVMA):

I'm the former president of the American Veterinary Medical Association and did quite a bit of work with the American Animal Hospital Association and the American Association of Feline Practitioners in trying to address this issue of vaccinations. The Council on Biologic and Therapeutic Agents, under the NVMA Executive Board, which I served on for nine years, wrestled with this issue a great deal. It is very uncertain with little science to say exactly what a correct protocol is.

It boils down to the veterinarian knowing the patient and the veterinarian and the client working together to determine what the best vaccination is. I really do believe that if this bill is passed on the vaccination issue, with written and informed consent, it will greatly create more confusion. Our profession, in the next few years, along with other bodies like the United States Department of Agriculture, will come up with better protocols. It's not there now and there's not enough science to it.

On the written informed consent on diagnostic procedures: certainly, all veterinarians want to do the best they can to have their clients fully informed of

what they're doing. That is the absolute best way to have a result, where a pet is best taken care of and the client is happy. If you make a situation where there's informed written consent on all diagnostic procedures, and the only exception would be where he thought there was immediate danger to the animal, that would absolutely paralyze our ability to take care of our patients. It would cause tremendous hardship on our clients and the public in general because many of the procedures that we do are not very difficult or hard to explain. We can do it on the phone and many of them are done as a result of conversations that we've had with the client when the pet's in the hospital. Some of them are done early in the morning, late at night, and on the weekends. I think this would add tremendous difficulty in providing care to our patients. It would be a tremendous setback to the clients themselves. I encourage you not to pass the bill. I truly believe veterinarians do the best they can. Veterinarians are fully aware that informed consent is the best way. This bill as written would not serve the public.

Chairwoman Buckley:

I'm going to close the public hearing on A.B. 263. [Dr. David Thain, State Veterinarian, submitted ([Exhibit G](#)).] I'll open the hearing on A.B. 287.

Assembly Bill 287: Requires contractors and subcontractors to provide bona fide health care plan for certain employees employed on public work. (BDR 28-723)

Assemblyman John Ocegüera, Assembly District No. 16, Clark County:

Nearly 45 million Americans under the age of 65 lacked health insurance coverage in 2003. There has been an increase of more than 1 million uninsured people in a single year and over 5 million people since 2000. Although a majority of Americans obtained health insurance through their employers, being employed does not guarantee that a worker will have health insurance. The uninsured come primarily from working families with low and moderate incomes, families for whom coverage is not available in the workplace or is unaffordable.

Medicare covers virtually all those 65 and older, while Medicaid and the state's Children's Health Insurance Program help provide coverage for many low-income people. However, there still remains a significant gap in coverage, a gap so large that approximately 20 percent of the adult population under age 65 lacks health insurance.

As depressing as those national figures are, the situation in Nevada is even worse. The Henry J. Kaiser Family Foundation reports that in 2003, the percentage of adults in Nevada between the ages of 19 and 64 without health insurance was about 23 percent, a bit higher than the 20 percent figure for the nation as a whole. Eighty-five percent of these uninsured Nevadans were employed, so having a job does not guarantee that a person will receive health insurance coverage. A.B. 287 is designed to address this problem.

[Assemblyman Ocegüera, continued.] The bill provides that every contract for a public work to which a public body of this state is a party must require a contractor or a subcontractor who performs work under the contract provide a bona fide health care plan for a worker who the contractor or subcontractor employs in connection with that public work. The necessary health care coverage must begin before work commences on the public work and continue during the period in which the covered worker is performing work under the contract. The contractor or subcontractor must pay the entire cost of the premiums or contributions or coverage required by this bill.

The bill also requires that the Labor Commissioner adopt regulations establishing minimum standards for the required coverage. The bill provides for a hearing and the imposition of penalties in the event that a contractor or subcontractor fails to provide the required health care coverage. The bill will help ensure that health coverage is provided for a segment of Nevada's workforce that is currently uninsured. I urge your support of this bill.

James Sala, Legislative Advocate, representing the Southwest Regional Council of Carpenters, Nevada:

[Read from ([Exhibit H](#)).] I have been working with the Labor Commissioner's Office and with public bodies since around 1998 in order to improve the construction industry overall. We've always tried to take an industry view so that it benefits workers, contractors, the public bodies, and hopefully the community as well. This bill does that.

Requiring health care on public works is good public policy and a smart use of taxpayers' dollars. It benefits fair contractors, workers, public bodies, and, I believe, will save the taxpayers money as well. This bill does it without costing anyone any additional money and may actually save money to contractors and taxpayers.

The prevailing wage is set annually in a survey by the Labor Commissioner of workers and mechanics in certain classifications.

I have used the carpentry example as one of those classifications in construction. The 2003 and 2004 carpenter prevailing wage in Clark County was \$37.98 total package, which is inclusive of wages and benefits. In the left-hand column on page 2 of my packet ([Exhibit H](#)), you'll see \$26.61 an hour, plus \$4.69 in pension, \$3.92 in health and welfare, \$2.41 in vacation, and \$0.35 in apprenticeship and training. An employer who is not party to a collective bargaining agreement like ours ends up paying \$37.98 on the paycheck.

[James Sala, continued.] Prevailing wage is actually made up of benefits and wages together. That money is basically built into the prevailing wage that contractors bid at and the public bodies pay in regard to their contractors. Why is this good for the contractors? They'll benefit in two ways. One, they'll put the money into pre-tax benefits, which our contractors do. They will actually have to pay less in regard to tax burdens, like worker's compensation, Social Security, and unemployment. That should provide real cost savings to contractors who should pass that savings along in the form of more competitive bids.

On the back of the packet ([Exhibit H](#)) in chart number 2 is a very small typed chart that was done by a small contractor that does public and private works. It's their computerized breakdown of the wage for prevailing wage broken down by benefits in the left-hand column, ([Exhibit H](#)). They would have to pay \$26.61 in Social Security, worker's comp, general liability, and all the other things, including the Nevada Business Tax. In the right-hand columns, \$37.98, as it would apply to that burden without pre-tax benefits. There is about a \$3.00 an hour difference per worker that could be saved by putting money into benefits already accounted for in prevailing wage. If a company was putting all of those benefits in with a crew of 20 workers working 2,000 hours a year, they would save almost \$120,000 per year by putting that money into pre-tax benefits.

The second area where employers could save money is a state business tax incentive for employer-paid health care. The contractor can receive significant tax breaks. There is a bill up again this year to maybe strengthen that. In our last chart, which is the next to the last page in my packet ([Exhibit H](#)), I broke down \$37.98 times 2,000 hours, which comes out to \$75,960. The taxable burden on that times 0.65 percent would be \$494 in taxes.

For a crew of 20, it would be \$9,875. The second column is an employer who paid those monies in health and welfare into a pre-tax benefit and would thus end up saving \$3,330 over the course of that term for the same size crew. Those two ways would be a significant savings to contractors and hopefully the public.

[James Sala, continued.] Workers would receive a benefit because employers would be encouraged to provide health care plans and to pay for those. The pre-tax benefit saves the worker money. Sometimes employees get paid the money on the check, and then they turn around and have to pay it back to the employer in the form of healthcare, if they can afford that at today's costs. These employer-sponsored plans should result in lower health care costs for the employee for a comparable plan that they may be purchasing with non-pre-tax funds.

It's also good for taxpayers in the community. The health care issue and the rising cost put a lot of pressure on workers. In a recent study for UMC [University Medical Center, Las Vegas] of indigent care costs by Professor Jeff Waddups, that 27 percent of the estimated \$40 million dollars a year in indigent care comes from the construction industry. If we could take a bite out of that, that's a significant savings. It makes very little sense to pay for wages and benefits in the prevailing wage, then have taxpayers go back and pay for indigent care because employers didn't provide an opportunity, or health care for workers who worked in construction on public works, since that was funded with public money.

This bill is long overdue. There are benefits for everyone in the industry, workers, contractors, hopefully public bodies, and taxpayers alike. Those with health care plans now usually end up helping to subsidize the cost of indigent care at private hospitals that are not like UMC. They just pass those costs along to people who do have insurance. This is a very reasonable way to start to solve the problem. I urge you to recommend approval of this bill, but I do realize after talking to participants in the industry that the way the legislation was drafted may have had some unintended consequences. Our original draft of the bill was going to be put into bid specifications. The way it came out of LCB [Legislative Counsel Bureau], it appears that every single project that a public body would let might be subject to this, including little \$1,000 jobs. It was our intention to have it be covered under NRS 338, the same way that prevailing wage is covered. Any projects that are

\$100,000 and up would really be covered. We may have to go back and tweak that a little bit and to work with the Labor Commissioner that we have a clear definition of a bona fide plan.

David Kersh, Government Affairs Director, Carpenters/Contractors Cooperation Committee, Las Vegas, Nevada:

I want to echo Jim Sala's statements in regard to this bill being good for contractors, agencies, workers, and for the community. It's really in the spirit of the prevailing wage law, in that it's trying to ensure taxpayer money is well spent and that we set an example in terms of maintaining high standards in the industry. It's a reasonable way of dealing with the issue that Assemblyman Ocegueda spoke to. As our organization goes out there every day talking to workers, visiting public works job sites, we encounter too many schemes, unfortunately, of contractors who look for ways to gain an unfair advantage to deny workers their wages.

Recently, we had a situation where a contractor on about 5 projects was trying to not pay workers their pensions, even though their certified pay records did state that money was going into a pension plan, and as a result, you have about 80 to 90 workers who are going to get a total of almost \$400,000 in restitution. It's important to hold contractors accountable. This is a smart bill and we need to move forward and I urge your support.

Thomas A. Morley, Political Action Director, Laborers Local 872, Las Vegas, Nevada:

We strongly support this language.

Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council:

We certainly support the concept of this bill. I think there are some problems that need to be worked out. We do need a definition of what a bona fide plan will be so we know what we're looking at. In the second page of the Carpenters handout ([Exhibit H](#)), the health and welfare cost is on a per-hour basis in the building trades throughout the craft unions. The carpenter cost is probably pretty close to what everyone else's cost is. It varies some around \$0.50 or so in either direction. I want to be sure, because of bid process and the way the bid process works, if a contractor is able to get a plan certified that for some reason costs less than what is figured on the prevailing wage, any excess money that may be left should go to the worker. If it goes to the contractor, then the contractor can reduce their cost that much and unlevel the playing field in that area.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

We have the exact concerns Mr. Jeffrey has, and we would like to work with the sponsor of the bill to address our problems.

Richard Daly, Business Manager, Laborers International Union of Northern Nevada, Local 169, Reno, Nevada:

We're also in general support of the concept of the bill. I don't view this as a union/non-union issue. It's about providing health insurance to the workers in this state, similar to other measures that the government takes to try to set a good example. If you're going to do business with the state, we believe this is good public policy and you should implement it when you go into business with the state. Part of this needs to go forward. We have the same issue on what a bona fide health insurance plan is. We should try to work it out rather than leave it to a regulation developed by the Labor Commissioner. I haven't had good luck in that arena.

Paul McKenzie, Organizer, Operating Engineers Local Union No. 3:

We, too, support the concept of health insurance on public works jobs. I spoke with the sponsor of the bill about that and he tasked me with finding what a bona fide plan was, if I didn't want the Labor Commissioner to do it. I'm still working on it. Many of the ambiguous sections that we have in our law we task the Labor Commissioner with defining. If this legislation goes forward, we should have a definition of a bona fide plan in the legislation.

John Madole, Executive Director, Associated General Contractors (AGC), Nevada Chapter:

No one is opposed to people having health insurance and having players help with it, but Mr. Sala used the term "unintended consequences," and there might be a few here. There's a tremendous burden of paperwork already imposed on these, particularly public works contractors. This just adds that much more and expands the authority of the Labor Commissioner to where he's getting into more difficult things. It might make it more difficult for minority and disadvantaged contractors to get started, because now you are imposing something on them that might be more difficult for a one- or two-man operation. You can't even get insurance right now if you don't have two employees.

I talked to a contractor the other day who has just two people and they had no employees. Both had their insurance coverage furnished through their spouses' places of employment. Under this, you would have to purchase that insurance even if you didn't need it. This might actually keep some people off public works jobs, which tend to pay more. If you did have eight or ten employees,

and you chose not to insure two or three of them, in order to comply with the law you would make sure that they never got on these public works jobs.

There are references here to forfeitures, which is a way that the public agency keeps from paying the contractor. We already have some issues with forfeitures in this section on which sometimes you can make a \$0.10 mistake that might cost you \$50 in penalties. We need to go lightly here.

George DelCarlo, Private Citizen:

I own a couple of trucking companies, a concrete pumping company, a management concrete supply company, and a concrete placement company. We are for health benefits for employees; in fact, we provide them for the majority of them. It took us two years to make enough money at our trucking company to provide them. Not every job we go on is a public works project. We don't get the prevailing wage for every project we go on. There are nine months or more out of the year, if we're lucky to have a good year and the weather holds up, where we may only have three months of a public works project. That money is just not there. It took our pumping company over a year to do that. We were financially sound, so not only could we provide our employees a health care plan but we also have retirement benefits. Those first two years for the trucking company and one year for the pumping company, we could not physically do that. If I didn't have the piece of equipment, I could not hire the employee to take that piece of equipment on a job site, whether it was public works or not.

If we don't take care of our employees by public health, they're going down the street and they'll work for someone else. We take care of them by providing health care, but please don't put the burden on me that before I can even bid a job, I have to provide them health care. We have turnaround of employees. If I only have 20 employees and I get ready to go on a public works job and two of them get sick and they're not there, it takes me three to six months to get somebody qualified and on a health plan. I'm short four employees going into a public works job. Contractors are not going to keep me around if I can't do the job. I can't stay in business if I can't have quality employees. We need to think this through all the way to the logical conclusion. It's nice to sit back and say, "We're helping all these people in the United States that don't have health benefits." We're trying to give them health benefits, but I can't give them health benefits if I can't grow my company big enough to provide health care and be financially solvent. So when things happen and I don't get that public works bid, how do I pay for his health care?

A typical health care, depending if it's a point of service or an HOS [health outcome survey], is a difference of about \$50. It makes a difference.

\$50 a month per every employee you have, if you have 100 employees, is a lot of money. We want to give our employees health care, and we will give them health care, but give us some time so we're financially solvent and don't tie our hands so we can't bid on public works jobs.

John Wagner, The Burke Consortium of Carson City:

We don't like the state getting involved too much in employee/employer relationships. It's better if that employee and employer work things out together. Not all workers need full health insurance. A young guy at 21 years of age is free and he can go out and have a good time with no responsibilities. He doesn't need to have a big health package.

Chairwoman Buckley:

And if he gets cancer the next day?

John Wagner:

There's always that, too. Does he need spousal or children coverage? If he gets married next week, he's going to need more insurance. It's interference in the state. The objective is very good. My daughter's husband is on her insurance. He doesn't need to have any insurance taken out. This is a problem too. If there's a certain package for the employee, maybe that employee should decide for himself with his employer what specific package he wants. There are provisions for catastrophic things such as cancer. The state should be very much involved when it comes to public safety.

Ted Olivas, Director of Government and Community Affairs, City of Las Vegas, Nevada; and Chair, Nevada Public Purchasing Study Commission (NPPSC):

The NPPSC was established in 1975 in NRS 332.215 [*Nevada Revised Statutes*] to study practices in governmental purchasing and laws relating thereto and to make recommendations with respect to those laws. Individually, the members of this group work for their particular local government jurisdictions; collectively, we work for you to look at purchasing-related laws.

I'm testifying in opposition of this bill. It's a difficult bill to oppose, because we share John Madole's opinion that health care coverage is a huge problem in every industry. I did discuss our concerns with Assemblyman Ocegueda. I apologize for not getting to him earlier and providing him something in writing. The concerns relate to the fiscal notes, as there is no impact to the state and local governments. We are required to manage this program and that takes labor. There is an impact to our operations.

[Ted Olivas, continued.] In Section 1, it appears to apply to all public works projects. In the definition of a public work in NRS 338, there is no dollar limit. Mr. Sala testified that the intent was for this to be projects over \$100,000 that relate to prevailing wage jobs. That would require a certain fix. The bill appears to only apply to local government public works projects, yet there are other jurisdictions that do public works construction, so it just makes changes to NRS 338. This could reduce the number of general contractors and subcontractors willing to submit bids on our projects. We have a reduced pool of bidders and it's really tough to get bidders to bid on our projects. Our goal is to remove barriers to our bidding process. Less competition equates to higher bids for the jurisdictions and, ultimately, to the taxpayers.

The bill says that contractors and subcontractors must provide health care coverage, but what if the employee declines the coverage? This bill creates an additional management effort by the local government and applies, in its current form, to all public works contracts regardless of value that's been discussed. It's not all-inclusive as to its application to the jurisdictions and it could have a negative impact on the contracting community: reducing the number of bidders, competition, and potentially increasing the prices for our projects. It also adds barriers to the public works bidding process and erodes our ability to contract for these projects as would private industry.

Health care coverage for all workers is a worthy goal, but it's not one that should be superimposed over the traditional goals sought to be achieved by our bidding statutes, which is fair competition, efficiency in economy, and taxpayer savings. Because employee enrollment in a health plan is no measure of a bidder's responsiveness, responsibility, and ability to perform, it ought not be mixed into or confused with the principle upon which procurement standards are based.

Santana Garcia, Legislative Advocate, City of Henderson, Nevada:

We'd like to echo the concerns enumerated by Mr. Olivas. Our concerns end with the mechanics of the bill or the impacts on local governments, but on the overarching larger social question of health care for workers, the City of Henderson is neutral. We are opposed to some of the impacts on local governments, but on the overarching social question—we leave that to the determination of the Legislature.

Chairwoman Buckley:

We'll close the public hearing on A.B. 287 and we'll open the hearing on A.B. 276.

Assembly Bill 276: Requires registered pharmacist, upon request by patient, to transmit prescription for patient to another registered pharmacist under certain circumstances. (BDR 54-1266)

Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County:

A.B. 276 requires pharmacies to transfer prescription drugs to another pharmacy at the request of the customer. Current law is permissive, but the pharmacy may refuse to transfer the prescription. I have provided an amendment ([Exhibit I](#)) suggested by the Pharmacy Board that greatly simplifies the language in the bill. It takes out the specifics mentioned in Section 1 and deals only with the requirement to transfer. More importantly, it takes into consideration concerns that were expressed by certain agencies and groups.

[Assemblywoman Smith, continued.] On line 27 of the amendment ([Exhibit I](#)), subsection 3, paragraphs (a), (b), and (c) exempt prescription transfers in violation of federal law, Medicaid, and third-party requirements. This did address the concerns that were brought forward to me. This bill was brought forward at the request of Kathleen Rand, who is here today and will testify regarding her unpleasant pharmacy experience and the need for this legislation. A.B. 276 is public policy that serves our constituents well.

Kathleen S. Rand, Private Citizen, Sparks, Nevada:

[Read from [Exhibit J](#).] Please allow me to relate a series of circumstances from the summer of 2004. I had poor service at Rite Aid pharmacy at 1410 E. Prater Way in Sparks. They were putting the wrong doctor's name on my prescriptions. I decided to move all my prescriptions to Sav-on Pharmacy at North McCarran Boulevard. I phoned the pharmacy at Sav-on and said that I wanted to transfer a prescription. Sav-on said okay and that they would call Rite-Aid. Later that day, I received a phone call from the Sav-on pharmacy, stating that Rite-Aid had refused to allow the transfer of the prescription. Needless to say, I was shocked that a pharmacy had refused. I thought I could take a legitimate prescription to any pharmacy I wanted.

I called the Pharmacy Board to complain about Rite-Aid. The person at the Pharmacy Board said that a pharmacy could refuse to transfer a prescription. I thought that was not the best practice for consumers, so I contacted Assemblywoman Smith.

Scott Watts, President, Nevada Alliance for Retired Americans:

I'm here in support of A.B. 276. It makes sense to seniors. We have some control over our prescriptions that our doctors give us. This cuts across all party lines; it's not partisan. We don't see any reason this shouldn't reach the Governor's desk for a signature.

James Brown, Private Citizen:

I also have changed pharmacists for two reasons: one for lower price and the other because of an error made by Rite-Aid pharmacy. We took this to the Pharmacy Board, and the Pharmacy Board was deceived in their investigation, and resolved the matter without the person who committed the error taking the responsibility. It is essential that I be able to change because it's my medicine, my body, and I should not be held at bay by the state law saying that I cannot change. I urge support of this bill.

George Ross, Legislative Advocate, representing National Association of Chain Drugstores:

We are very much in favor of this bill as it's been amended by Assemblywoman Smith ([Exhibit I](#)). We feel those are very significant improvements. It's very good for the consumer and our client. We endorse this bill as amended.

Marty Bibb, Executive Director, Retired Public Employees of Nevada:

We're in support of this legislation, because anything that will assist in expediting the provision of prescriptions to people who need them, particularly retirees, for whom timing is essential, is very important, and we do support this measure.

Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada:

[Read from ([Exhibit K](#)).] AARP Nevada's Advocacy Campaign, "A Prescription for Nevada," centers on affordability and accessibility. Consumer choice is a fundamental concept of accessibility. Allowing consumers to pick which pharmacy seems like an obvious concept. I was surprised to learn that this is not currently done. If someone finds a different pharmacy with a lower price, they should be able to do that. If they move, why should that prohibit them from getting their medicine?

With the time and cost of going to the doctor, [this is] not something the consumer should bear. Whenever possible, we should support consumers' freedom of choice. A.B. 276 will assist consumers by helping them get lower costs, increase accessibility, and provide for consumer choice. We hope you pass the bill.

Chairwoman Buckley:

We'll close the public hearing on A.B. 276.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 276.

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Conklin, Mrs. Gansert,
Ms. Giunchigliani, and Mr. Seale were not present for the vote.)

Chairwoman Buckley:

We'll open the hearing on Assembly Bill 278.

Assembly Bill 278: Revises certain provisions governing termination of
residential leases. (BDR 10-1147)

Assemblyman Joseph Hogan, Assembly District No. 10, Clark County:

This bill will provide much-needed relief to our low-income seniors. The bill addresses a housing problem that sooner or later confronts many of our seniors. Jon Sasser of Washoe County Legal Services will continue with details of the legislation.

Jon Sasser, Statewide Advocacy Coordinator, The Washoe County Senior Law Project:

This bill updates a section in the Nevada Landlord Tenant Act that's existed since 1977. That provision of the act allowed a senior whose spouse is deceased and who is in the middle of a lease term to break the lease. This bill modernizes that provision in a couple of ways. The old provision was limited to seniors whose incomes were \$10,000 or less. That income provision would be removed. Second, in the event of a death, it would expand the ability to break the lease to those who are not just spouses, but when a roommate dies. Many seniors today, due to the cost of living, live with other seniors or roommates, and if one dies, the one who is left in the lease may not be able to afford the lease.

The bill would allow them, upon the giving of a notice to the landlord, to be released from the obligations of the lease. The bill also goes beyond seniors to people with mental or physical disabilities who are required to move due to a health condition. Typically, if someone needs to go into a nursing home because their health has deteriorated and they're no longer able to live independently,

they would give a notice to a landlord, and upon that notice they would be able to be relieved of their obligations as they go into the nursing home. Similarly, a co-tenant who is left in the unit who cannot afford the unit would be allowed to, upon notice, be relieved from the obligations of the lease.

The landlord must be given 30 days' written notice within 60 days after a person relocated or, in the case of death, 6 months remain in the time period involved. Also, if the reason for asking to be excused from the obligations of the lease is because one must now, due to health reasons, move somewhere else, then there is the requirement that reasonable verification of existence of the condition that required the move be provided to the landlord. This bill arose out of conversations among senior advocates over the last year and was put together by the State Division of Aging Services.

Assemblyman Hettrick:

I don't have a problem with the intent of this, but I'm concerned about line 28 in the bill. It says, "if a physical or mental condition requires the relocation from his dwelling." It doesn't say "moved to a nursing home," it just says "requires." Now we're coming down to who determines what requires their move. That doesn't say they're going to a nursing home. It's very vague.

Jon Sasser:

It does not just allow somebody, because they have a disability or because they're over 60, to just get out of a lease for any reason they want. They have to show that their condition requires the relocation. They must provide verification of that fact. Nursing homes are one example. One may be required to move into a hospital, an assisted living facility, or a group home. We didn't limit it just to nursing homes, because there are a variety of different types of supported living arrangements as one ages, or if their condition deteriorates, that they might need to go to.

Chairwoman Buckley:

Do you contemplate the written notice section of it requiring further proof: a letter from a doctor, a letter from the nursing home showing acceptance, an assisted living, or they're moving in with a relative, along with a doctor's verification? Did you contemplate any of that, perhaps, to allow for different locations, but more proof?

Jon Sasser:

We have the language "reasonable verification," and "reasonable" does have a legal meaning under the circumstances. If it would make the Committee more comfortable to provide more specification there, then we are open to that.

Assemblyman Hettrick:

We're going in the right direction but are asking for a little cleanup, because verification that you have a condition that entitles the person to terminate the lease doesn't mean that you're moving to a nursing home. It means you have a condition that would allow you to maybe move to a nursing home. It doesn't mean you're going to. It means you can terminate the lease. I don't think that's what you're trying to do. If in line 28 it's something like "a physical or mental condition that required a higher level of care and therefore relocation from his dwelling," then I'd be more comfortable. I don't think the average person is going to use this to terminate their lease. The person who signed the lease made an obligation both ways and the person who did the lease has the right to expect that it would be fulfilled. The state is saying you can terminate the lease. That would give reasonable cost.

Jon Sasser:

Something like "higher level of care" does not create a problem for us.

Chairwoman Buckley:

Someone might move in with a caretaker, for example. It's not necessarily higher, it's just different to accommodate. We have two brilliant lawyers, so we'll see what you come back with and I'm sure it will solve the problem very well.

Lora E. Myles, Attorney, Retired Senior Volunteer Program (RSVP); Carson and Rural Elder Law Program (CARE):

My suggestion would be language that followed along the line of "Requires care which cannot be provided in the living situation, or cannot be provided in the place that they're currently living." This bill is the start to addressing problems seniors face in dealing with liable right and tenant placement of the senior in long-term care and also at the time of their demise. The inability to terminate a lease is a severe handicap on rural seniors, at a time when the seniors' limited funds are most needed for medical costs. A senior must pay rent on a property a senior can no longer occupy.

In a recent case, a client was in a long-term care facility due to severe dementia. Her daughter was informed by the client's landlord that she must pay the rent or he would get a court order forcing payment. Because the client's income was being used for rent, the client was denied Medicaid and evicted from the nursing home. The landlord would not allow her to return to her apartment she was paying the rent for, due to her inability to care for herself. This case was one of the more harsh ones that we've faced, but this is not an uncommon situation in our practice out in the rural counties. We support this legislation.

Susan Swenson, Public Guardian, Office of the Public Guardian, City of Carson City, Nevada:

I've run into this same situation. I have situations where somebody's paying rent for an apartment, and even with the 30-day notice, they end up in the hospital with a possible stroke or a broken hip and they cannot return to the home. In some cases, I absolutely cannot pay the rent, because I have an obligation to the person at the ward of whom I'm guardian. I cannot afford to have them evicted from the long-term care. In those cases, I must pay the long-term care bill and the rent doesn't even get paid and I don't have time to give a 30-day notice. This happens when a person is eligible for Medicaid and is living month to month on their Social Security benefits.

Personally, I had a mother-in-law, about eight and half years ago, who at 89 years old moved from another state into Nevada and signed a lease for a home. The day she moved in she ended up in the hospital from a major stroke. The landlord was very generous with the 30 days' notice. He allowed her to break that lease, but he could have taken her to court and demanded a full year's worth of rent from her, when she did not have the ability for the rest of her life to live alone. I am in support of this bill. I agree with the cleanup of the language.

Julie Arnold, J.D., Senior Citizens Law Project, Las Vegas, Nevada:

We are in support of this bill. The need has been well explained to you.

Scott Smith, Director, Southern Nevada Multi-Housing Association (SNMA):

We also have some concerns about the language. Originally, when this was introduced by Assemblyman Hogan, he was talking about a protection for low-income seniors. The bill has no restrictions on income whatsoever. This is anybody who qualifies either through age or physical or mental disability. With the disability issue, those are questions that are not defined and frankly give us great concern about what could be used there. If you take the existing law, this bill will be a benefit to roommates and not people who are 60 or older, the ones you've heard about who need to move into the assisted care or long-term care.

Landlords are able to offer lower rents and deposits to people who will give them a certain amount of time, a promise that they will pay the rent for 6 months to a year. If there is a restriction where anyone, including the roommates, can just terminate this when they feel like it, landlords will have no choice but to charge what market rent would be for a month-to-month tenancy because they do not have those great assurances. If there's a way for them to lower their rents and increase their occupancies, landlords will. If someone has a roommate who's not a senior, or who is not physically disabled and is fully capable of working and wants to leave the lease, they can be terminated. We're

concerned about that. We want to tailor the language so it will protect those it's seeking to protect, the seniors and those truly unable to stay there.

[Scott Smith, continued.] There has been mention today that if this person with the stroke had gone to long-term care they're going to be obligated for a year's worth of rent. Any landlord who has a lease for any amount of time has a duty to mitigate their damages under Nevada law. If rent isn't paid, they don't get to sit there for a year and then come after the tenant for it. They have a duty to mitigate their damages and get someone else in and most likely aren't looking at more than a month's rent for damages. A landlord who sits back and expects the disabled person to be able to pay the rent for a year is not going to be able to get that under the law as it is, so this isn't offering them protection they don't already have.

Jon Sasser:

Moving to line 28, on page 2 of the bill, "if a physical or mental condition requires a degree of care which cannot be provided in the home" is the language we came up with.

Chairwoman Buckley:

On page 3 as well: "If the person is terminating the lease, the person should include reasonable verification of the existence of the condition and the alternate care that is required."

Jon Sasser:

I would just repeat the language that I mentioned before in that sentence.

Chairwoman Buckley:

If we tightened up the language so that it's clear that this is certainly a case where a different care is required, would that meet your concerns?

Scott Smith:

Will there be some requirement that a licensed doctor will verify that?

Chairwoman Buckley:

We would keep "reasonable" in, so that a person's not required to go to the doctor if they have a letter from the nursing home. The apartment complex would work it out with the tenant, and if there's a dispute, the judge could decide it. Our bill drafters don't usually like us to get into the details in terms of which provider. They like to keep it somewhat open-ended. If you didn't agree, if they didn't provide it to you, then you could take them to court for the rent and then the judge decides how reasonable it was. Does that sound okay to you?

Scott Smith:

We appreciate the language. If it's possible to give us some sort of standard about who could provide that, we are grateful for that. We are asking for a change to those who are really in need rather than just their roommates. The roommate would be required to provide the same sort of verification.

Assemblywoman Giunchigliani:

Should it not say, "If a physical or mental condition increases in its severity"? Just because you're mentally or physically disabled is not necessarily a reason to get out of your lease. You're talking about problems that occur down the road that increase with severity.

Jon Sasser:

There are a variety of circumstances that would kick in the need. I had an interesting discussion with Ms. Cook, the property manager who testified earlier. It could be someone who becomes disabled, the stroke victim that we heard about before, so there's a new condition. It could be somebody who has a condition that worsens or it could be somebody who makes a good-faith effort to live independently and they're unable to do it. Those three circumstances would kick this in.

Assemblywoman Giunchigliani:

Maybe there could be a tightening up of the definition of what we're talking about, because it seems pretty broad.

Assemblyman Hettrick:

The second thing that might need to be looked at—I would agree with the terminology on the co-tenant, but there is also another valid point. You could have a person who leased an apartment, who then took in someone to live with them. That person might have signed on the lease, while the first person might be financially capable of carrying that lease. The person who moved in after the fact could become ill, move out, and now we have a person who signed the lease. He could just decide to terminate the lease because he no longer has a co-tenant.

It was intended to address low-income seniors, but what we're doing is saying, if your co-tenant moves out for a responsible reason, you're alleviated from the lease whether you can pay it or not, signed it, and are in good health. I don't think that's the intent of the bill either. Maybe there's a little clarity there that could be done. Everyone agrees with the intent of where we're trying to go.

Chairwoman Buckley:

You'd come back to "tenant" as defined under NRS 118A.170: "a person entitled to a rental agreement to occupy the dwelling unit to the exclusion of other."

You certainly could limit the applicability of this new chapter to someone who originally leased the unit without changing "tenant" in every other area. We'll close the public hearing on A.B. 278 and move to our work session.

Assembly Bill 58: Enacts various provisions relating to industrial insurance.
(BDR 53-250)

Diane Thornton, Committee Policy Analyst:

Assemblyman Ocegura met with the interested parties to this bill. As a result, a consensus amendment was proposed ([Exhibit L](#)). The amendment deletes Sections 1 through 8 of the bill, eliminating the licensing adjusters. Proposed licensing might not accomplish the intended goal, which was to provide greater accountability. Instead, the amendment requires the reporting of claim and benefit denials. In addition, the amendment allows for compensation if a worker must travel 50 miles from his place of employment to health care facilities. These payments may be made in half- or full-day payments.

Chairwoman Buckley:

Assemblyman Ocegura worked this bill out, since he was the Vice Chair of the Interim Committee.

Assemblyman Ocegura:

We were able to come to some consensus on this bill. The parties worked very hard, and this seemed like a reasonable solution for all parties involved.

Chairwoman Buckley:

I know there was a lot of discussion about the employee traveling. Could you elaborate on the discussion?

Assemblyman Ocegura:

At first we thought this would be just a rural problem, where you were driving from Lovelock to Reno to have to get some specialized kind of care. As the discussion evolved, we found that it could actually happen in Las Vegas. You might be gone from 30 minutes to 3 hours. This was a point where we could have some consensus. Fifty miles was a point where everyone was happy.

Chairwoman Buckley:

Who did you work with on the amendments?

Assemblyman Ocegüera:

All of the insurers and self-insureds that are in the building, the labor organization, and some labor attorneys.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 58.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Conklin, Mrs. Gansert, and Mr. Seale
were not present for the vote.)

Chairwoman Buckley:

Let's move on to A.B. 63.

**Assembly Bill 63: Prohibits certain practices by health insurers with regard to
injuries sustained while under influence of alcohol or controlled
substance. (BDR 57-207)**

Diane Thornton, Committee Policy Analyst:

Assembly Bill 63 is sponsored by Assemblywoman Leslie. According to testimony during the hearing, the section of the Uniform Health Policy Provision Law that the bill repeals can be used to deny payments to doctors and hospitals, thereby discouraging alcohol screening and the detection of drunk driving in trauma centers in emergency departments. Assemblywoman Leslie proposed an amendment that adds a new subsection 4 to the bill. This subsection would read, "This section does not prohibit an insurer from denying a claim that occurs in connection with an insured's attempt to commit or commission of a felony."

Chairwoman Buckley:

That proposed amendment is similar to what some insurance companies testified as to their current practice. I recall Jack Kim testifying, for example, that many insurers have moved to a felony exclusion rule, not an outright ban of coverage when someone is drinking.

Assemblywoman Giunchigliani:

Part of this bill I like and there are parts I'm concerned with. Is the screening required? What about the confidentiality? I know they want us to try to come up with a longitudinal study of some sort, but there was a lot of discussion about who would have access to this screening.

Chairwoman Buckley:

We'll hold this one until the sponsor and some of the insurance companies can be here to answer any questions about it. We usually give a year out so folks can get their policies corrected, so we'll make note of that. We'll put this bill on our next session and see if we can get some of the insurance companies and the sponsor in to answer those.

Assembly Bill 81: Requires contract for sale of mobile home located in mobile park to include special statements and disclosures. (BDR 43-200)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 81 is sponsored by Assemblywoman Ohrenschall. There were no proposed amendments to the bill.

Chairwoman Buckley:

Let's move on.

Assembly Bill 83: Revises provisions governing compensation of workmen on public works. (BDR 28-759)

Diane Thornton, Committee Policy Analyst:

Assemblyman McCleary and David Kersh from the Carpenters/Contractors Cooperation Committee proposed an amendment removing the cash pay from the bill. By removing it, the contractor or subcontractor can pay the worker the amount due in wages, or part wages and part other contributions.

Chairwoman Buckley:

We're waiting for a final amendment on the companion, which was a little more involved in terms of the amendment. This is one where the companion seemed a bit simpler than that overtime one.

Michael Tanchek, Labor Commissioner, Nevada Department of Business and Industry:

The language in the amendment is the language I discussed with the sponsor of the bill, and the carpenters and I have no problem with it.

Assemblyman Hettrick:

There was some question about how many employers they were working for. The testimony was that they could work on a prevailing wage job in the morning and some other job in the afternoon. There were questions about whether or not it was another employer. If they went to a separate employer in the afternoon, we had to clarify the number of employers; otherwise, we were binding one employer for something their previous employer did. I thought it needed more amendment.

Chairwoman Buckley:

We have the "Companion Overtime Bill" where there were a lot of questions on that one. Let's hold them both, and we'll get the sponsors in here and get it clear on the record.

Assembly Bill 208: Revises provisions governing physicians and osteopathic physicians. (BDR 54-1108)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 208 revises provisions governing physicians and osteopathic physicians. The bill requires applicants for licenses and current doctors to submit to a criminal background check. Assemblyman Horne proposed several amendments in your work session document ([Exhibit L](#)). The first is to amend NRS Chapters 630 and 633, which is the physicians and the osteopathics, by requiring applicants for license to practice medicine to submit to background checks. Secondly, to amend Sections 5 and 6 of the bill by requiring background checks for current doctors upon license renewal; deleting the provisional license part of the bill in Section 1, subsection 2, and in Section 3 of subsection 2 of the bill; deleting the revocation of the provisional licensing in Section 1, subsection 3, and in Section 3, subsection 3, of the bill. Lastly, amending Section 2, subsection 11, by adding paragraph (g), "any offense involving moral turpitude," which makes it parallel to the osteopathics that have that moral turpitude in their statutes.

Assemblyman Anderson:

Will this bring us with the physicians back to where we were prior to the last session, so that we're doing the proper kind of background checks, as it previously existed?

Chairwoman Buckley:

They were never required to do the fingerprints and the background checks, so that part would be completely new. With regard to the grounds, this would add

moral turpitude, so the Board could not profess that the language prevented them from getting some offense that we thought still was clearly related to ability to practice medicine, but the Board was professing that they could not do.

Assemblywoman Giunchigliani:

The irony was that moral turpitude already existed under the medical license, just not under the osteopathic, and you're right, they were trying to use that as an excuse not to yank licenses. I think this will help make it very clear that that's part of their responsibility as a Board. The provisional license was the biggest hang-up because I didn't realize it would flag every single license. By deleting it, you still get the intent, but it doesn't mar their record.

Chairwoman Buckley:

I agree. I think it makes it a lot cleaner.

Assemblywoman Gansert:

The other item in here that we discussed is that under the renewal legislation, the Board would be required to revoke the license of a physician. It got rid of the discretion, not necessarily because they need discretion, but in the original language, it was up to the Board whether to pursue it. We had discussed maybe there should be an investigation but not an automatic move to revoke a license.

Chairwoman Buckley:

They went right back to the existing language so that everything would be grounds, and we'll hope that if it's one of those sexual assault offenses or the serious ones that would require the revocation, but we were going back to the existing statutory scheme. It's a conceptual amendment, so when we get it back from Legal once they stop drafting bills after tomorrow, we can bring it back to the Committee and check it. Basically, it would do these five things and that's it. It's a cleaner approach.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND
DO PASS ASSEMBLY BILL 208.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Conklin, Mr. Oceguela, and Mr. Seale
were not present for the vote.)

Chairwoman Buckley:

We're going to try to add a few work session bills to every agenda so we won't have a backlog. From now on, every Friday afternoon our meetings will last until 5:00 pm. Every hearing we have now is full and we have 40 new bills. We're adjourned [at 4:25 p.m.].

RESPECTFULLY SUBMITTED:

Vanessa Brown
Committee Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 28, 2005

Time of Meeting: 2:00 p.m.

| Bill | Exhibit | Witness / Agency | Description |
|------|---------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| | A | Legislative Counsel Bureau | Agenda |
| 404 | B | John Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project | Testimony in Support of <u>A.B. 404</u> |
| 404 | C | Marshall L. Schultz, Founder and President, Residents Information Center Incorporated and Sponsor, Nevada Renters' Hotline | Testimony Supporting <u>A.B. 404</u> |
| 404 | D | Judy Cook, Private Citizen | Letter in support of <u>A.B. 404</u> |
| 263 | E | Milton Schwartz, Private Citizen, Las Vegas, Nevada | Email from Dr. Bob Rogers |
| 263 | F | Dr. Gary Ailes, Past-President, Nevada State Board of Veterinary Medical Examiners | Amendments to <u>A.B. 263</u> |
| 263 | G | David Thain, D.V.M., Nevada State Board of Veterinary Medical Examiners | <u>A.B. 263</u> Requires licensed veterinarian to obtain informed consent. |
| 287 | H | James Sala, Legislative Advocate, representing the Southwest Regional Council of Carpenters, Nevada | Testimony in support of <u>A.B. 287</u> |
| 276 | I | Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County | Sponsor Assemblywoman Smith's Amendment |

| | | | |
|-----|---|--------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| 276 | J | Kathleen S. Rand, Private Citizen, Sparks, Nevada | Letter in support of <u>A.B. 276</u> |
| 276 | K | Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada | AARP testimony in support of <u>A.B. 276</u> |
| | L | Diane Thornton, Committee Policy Analyst | Work Session Document |