

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

**Seventy-third Session
February 9, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:01 a.m. on Wednesday, February 9, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Jane Tetherton, Committee Secretary
Shirley Parks, Committee Secretary
Lynn Hendricks, Committee Secretary
Donna Winter, Committee Secretary

OTHERS PRESENT:

Christina Dugan, Las Vegas Chamber of Commerce
Paul Enos, Retail Association of Nevada

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Michael E. Buckley, Ombudsman for Owners in Common-Interest Communities,
Real Estate Division, Department of Business and Industry
Karen J. Brigg, Ombudsman for Owners in Common-Interest Communities, Real
Estate Division, Department of Business and Industry
Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry
Sonya G. Meriweather, Ombudsman for Owners in Common-Interest
Communities, Real Estate Division, Department of Business and Industry
Eldon Hardy, Ombudsman, Ombudsman for Owners in Common-Interest
Communities, Real Estate Division, Department of Business and Industry
Mark Kaplinsky
Margi A. Grein, Executive Officer, State Contractors' Board
George Lyford, State Contractors' Board

CHAIR TOWNSEND:
I will open the hearing on Senate Bill (S.B.) 7.

SENATE BILL 7: Makes certain opt-out provisions in contracts with consumers
unenforceable under certain circumstances. (BDR 52-11)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):
This bill addresses recurring charges on a person's credit card, without the card
holder's permission. I was prompted to write S.B. 7 because of an experience
I had with a discount travel club. I noticed a \$99.99 charge from Genesis Inc.
on my credit card statement. My credit card company informed me that Genesis
Inc. is a discount travel club. I called Genesis Inc. and was told a recurring
monthly charge of \$19.99 would also be charged to my credit card.

CHAIR TOWNSEND:
Did you ever agree to these charges?

SENATOR WIENER:
No, I did not agree to these charges. I had to take an assertive step to have
these charges deleted from my credit card. When I initially brought up the bill, it
was for instances in which charges do not appear on a credit card statement for
a couple of months. Making certain acts deceptive trade practices is in the bill
draft. This is identity theft.

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CHAIR TOWNSEND:

The issues you brought to our attention are important. I would like to have a representative from the office of the Bureau of Consumer Protection in Las Vegas present at future meetings in which S.B. 7 will be heard. We will have a subcommittee meeting immediately following this meeting. The subcommittee will consist of Senators Lee and Hardy and me.

CHRISTINA DUGAN (Las Vegas Chamber of Commerce):

Currently the Las Vegas Chamber of Commerce has 6,800 business members. The small business owner makes up 85 percent of these members. I am concerned with certain provisions in S.B. 7, especially the effect it will have on the small business owner. I will hold my comments for the subcommittee meeting but I wanted to get on the record today.

PAUL J. ENOS (Retail Association of Nevada):

I agree with Ms. Dugan and look forward to working with Senator Wiener and the subcommittee.

CHAIR TOWNSEND:

The Commission for Common-Interest Communities will now start their presentations.

MICHAEL E. BUCKLEY (Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry):

The Commission for Common-Interest Communities was created from S.B. No. 100 of the 72nd Session. I have a report about the start-up and ongoing activities of the Commission ([Exhibit C](#)) and a report on the activities of the Ombudsman's Office ([Exhibit D](#)). The Commission is funded by a payment of \$3 per door that every unit in the state pays; it registers with the Real Estate Division and annually pays a \$3 fee to the division. The regulations that are adopted by the Commission are key issues. One of our key issues this year will be statutory authority. In conclusion, it has been a learning process and we have laid the groundwork for other states.

SENATOR HARDY:

I wanted to thank you for the excellent response to my letter. Why did it take so long to get regulations?

MR. BUCKLEY:

After the Commission finishes the work on its proposed regulations, they are forwarded to the Legislative Counsel Bureau (LCB). There were many regulations proposed in June 2004. The LCB does an excellent job processing the regulations. I cannot say what causes the lengthy process.

SENATOR HARDY:

Do you have any thoughts on how to expedite the regulatory process?

MR. BUCKLEY:

I have no thoughts on how to expedite the regulatory process. The Commission was brand-new; we had to create staffs and we had no guidance from other states.

SENATOR SCHNEIDER:

Mr. Buckley and I will be traveling to California on March 9, 2005, to give a presentation to a legislative committee on how to protect homeowners in California. Several states have expressed interest in what Nevada has accomplished. The Real Estate Division has been a tremendous help in the start up of the Commission. The bill that is in the Office of the Governor has to do with licensing individuals for positions of managers in homeowner associations.

CHAIR TOWNSEND:

I commend Senator Schneider on his work on this issue. Ms. Brigg, what are you hearing from other property managers? Are there different trends in complaints?

KAREN J. BRIGG (Ombudsman for Owners in Common Interest Communities, Real Estate Division, Department of Business and Industry):

When the Commission was put in place, management companies were having difficulties; managers were hard to find. Homeowner associations must be run by educated people. I agree with Senator Schneider about the licensing of people for these positions. There will be a learning curve at first but educated managers will help in decreasing complaints. Senator Hardy, we are the foundation for other states. It will take time to expedite the regulatory process.

CHAIR TOWNSEND:

If you lived in a community before the homeowner association came into existence, do you have to belong?

MR. BUCKLEY:

I have heard that referred to as "behind the gate." The legal opinion is you have to contribute for the upkeep of streets but you do not have to pay for the security if you do not want the security.

SENATOR SCHNEIDER:

Yes, that is it. These homeowners reap the benefits. This problem needs to be addressed by the Committee. A possible suggestion is when the property sells, the new homeowner has to join the association.

CHAIR TOWNSEND:

Do the homeowner associations need to retain lawyers to draft new Conditions, Covenants and Restrictions (CC&R) when this occurs? They would have to redo the rules concerning this problem.

MR. BUCKLEY:

It actually goes through the Ombudsman to the State. The Attorney General and Real Estate Division bring the complaint.

SENATOR LEE:

If it was the first violation, would there be any reprieve from the \$250 fine?

MR. BUCKLEY:

There are no fines from Commission action. The Real Estate Division makes a recommendation to the Commission of what the fines should be, based on a case-by-case basis. Since it is an administrative fund, the Division will determine the fines.

SENATOR LEE:

Does the money collected go into the General Fund or does it enhance your association?

MR. BUCKLEY:

I believe it goes into the General Fund.

CHAIR TOWNSEND:

A change that has evolved over time is that all monies collected by any department, division or group are given back to the General Fund. These monies

are given back to the individual department, division or group based on budget. Monies would also be reallocated if there were any revisions or reversions.

SENATOR LEE:

I understand the term "unlicensed activity." Unprofessional conduct and professional incompetence are vague to me. What would those terms mean if I was serving on a board?

MR. BUCKLEY:

The duties of a board member are statutory. A member must show good business judgment and honesty.

SENATOR LEE:

If a nonprofessional person was hired to be a manager, would that person be held to the same competency standards as a professional?

MR. BUCKLEY:

A board member is a volunteer and would not be held to the same standards as a professional manager. Unfortunately, we depend on the volunteer to run our associations.

MS. BRIGG:

The commission has worked diligently on hiring staff to handle complaints. My concern is that some cases are hard and cannot be processed as quickly as others. We need to address this in the future.

GAIL J. ANDERSON (Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry):

I will give you a brief summary on the implementation of the program since S.B. 100 of the 72nd Session from the administrative end of the Real Estate Division. The Commission has gone from 4 full-time employees to 13 full-time employees. The three field officer investigators, one in Carson City and two in Las Vegas, handle phones, walk-ins and investigations. These officers report to the Ombudsman. I brought a newsletter from the Nevada Real Estate Division ([Exhibit E](#)).

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SONYA G. MERIWEATHER (Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry):
I will be discussing the statistical report of the Ombudsman's Office as required in S.B. 100 of the 72nd Session. The Intervention Affidavit Report, Homeowners Association Registration Statistics, Education Seminars, Alternative Dispute Resolution (ADR) Report and Foreclosure Sale Notices resulting from homeowners' association liens ([Exhibit F](#)) is the order of my discussion.

CHAIR TOWNSEND:
How do you notify an individual that their affidavit is incomplete?

MS. MERIWEATHER:
A template letter is sent to the claimant to notify them that their affidavit is incomplete and what is needed to complete it.

CHAIR TOWNSEND:
The hot topics appear to be the election process, the right to review association records and the maintenance of the common area. How do you keep the managers and associations on top of these issues?

MS. MERIWEATHER:
I have contracted with the Burdman Law Group to run our education seminars. This is how our managers and associations keep on top of the hot issues.

CHAIR TOWNSEND:
What topics do they cover? Do you sit in on these classes?

MS. MERIWEATHER:
No, but each presenter must submit the agenda on what the class will cover.

CHAIR TOWNSEND:
Sometimes those agendas are not followed. You should be present at some of these classes and pay attention to whom you hired.

MS. MERIWEATHER:
The last item I will discuss is the notice of sale. The sale is reported to the Commission, but not foreclosures. Statutorily, reporting foreclosure is not required.

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CHAIR TOWNSEND:

It is important. Why can you not require notification of foreclosures?

MS. MERIWEATHER:

Yes, it is important and the Committee has looked at this issue.

SENATOR SCHNEIDER:

This does need to be controlled. Also, the management and foreclosure companies have a fee of \$147. If a homeowner is behind on payment of the \$147 fee, it goes to the foreclosure process. The fee can then escalate into thousands of dollars. A control needs to be put on this process also.

SENATOR LEE:

Nevada has programs for assistance with energy expenses and property taxes. Possibly \$3 of each fee paid or a portion of license renewal fees can go into a benevolent fund. I would like to work with Mr. Hardy on this.

ELDON HARDY (Ombudsman, Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry):
We have to understand the complexity of the problems.

CHAIR TOWNSEND:

Where do most of your complaints come from, newer or older associations? Do you see any recurring themes?

MR. HARDY:

I cannot give you an answer; the complaints are across the board. People ignorant of what they are really involved with is a recurring theme. The Governor of Florida has appointed an ombudsman for condominiums. The other states are looking at Nevada to see what we are doing.

CHAIR TOWNSEND:

Since most condominiums in Florida are high-rise, the ombudsman in Florida may be the person to contact for answers.

MR. HARDY:

I have to work on balancing the loads of the field officers. Two letters are sent to claimants, 15 days apart. This helps resolve issues because it explains the

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process to fix the problem or the intervention process. The ADR claims-closed report ([Exhibit D](#)) shows how effective our process is in resolving these claims.

MARK KAPLINSKY:

I represent the homeowner with no connections and no affiliations. I have provided a copy of my testimony ([Exhibit G](#)).

SENATOR SCHNEIDER:

I would like you to do a presentation on watching the meetings on the Internet when we have the hearing.

CHAIR TOWNSEND:

Mr. Kaplinsky, you take a lot of your time to do this. Thank you for the good work. The presentation from the State Contractors' Board will begin now.

MARGI A. GREIN (Executive Officer, State Contractors' Board):

I have provided a copy of my presentation ([Exhibit H](#), original is on file at the Research Library).

CHAIR TOWNSEND:

I would like you to touch on the following: how many licensees, complaints, suspensions, revocations, and fines are involved for the Board and what the single biggest issue is that the Board has on a regular basis.

Ms. GREIN:

Tab 2 ([Exhibit H](#)) reflects the number of licensees.

CHAIR TOWNSEND:

On your pie chart, it shows 30 percent out-of-state licensees. Do you have a bigger problem with them?

Ms. GREIN:

No, I do not believe so. The out-of-state contractors are usually the major contractors such as Bechtel and General Electric Company. Tab 3 ([Exhibit H](#)) reflects the number of complaints and disciplinary actions and the recovery fund.

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CHAIR TOWNSEND:

How caught up are you with complaints? Did you discuss with your board the idea of not going through your licensing procedure for a couple of months until the backlog of complaints is caught up?

Ms. GREIN:

No, I have not but I will discuss that tomorrow with them.

SENATOR CARLTON:

Delaying licenses would make people have to wait longer for their livelihood.

CHAIR TOWNSEND:

We are there to protect the person who contracted for the work, not the licensee.

SENATOR LEE:

The Legislature will be enacting a law that allows people to start contracting without a license if applicants have to wait longer. Applicants will continue to work to support their families.

CHAIR TOWNSEND:

Ms. Grein, find out how long it will take to get caught up. If you are constantly behind, you are not helping the public. I hear good things about the Board and I want to make sure you have a chance to get caught up.

Ms. GREIN:

A lot of measures have been put in place to reduce the backlog. A period of ten days is given to a contractor to fix an alleged problem before a complaint is opened. The number of complaints has decreased. The recovery fund, tab 3 ([Exhibit H](#)), highlights what has been accomplished.

SENATOR CARLTON:

What is the turnaround time on recovery fund claims?

Ms. GREIN:

It is usually 30 days but it depends on the thoroughness of the paperwork. The 16 pending claims in tab 3, page 9 ([Exhibit H](#)), are reinvestigations and will not go to the back of the line. Under administrative changes, proactive programs have been instituted.

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SENATOR HARDY:

Ms. Grein, can you comment on the legislation regarding pools and spas?

MS. GREIN:

There are still ongoing complaints. The problem has not taken care of itself, or if it has, it is because of awareness of the law within the pool industry.

SENATOR HARDY:

Would you say that the residential pool and spa industry has been brought back in line with other trades in the construction industry?

MS. GREIN:

No, but we are moving in that direction.

SENATOR LEE:

If a warranty is purchased, can it be included in the recovery fund?

MS. GREIN:

It would be included if the warranty was paid for by the customer.

SENATOR LEE:

A constituent of mine had a claim denied because it was a warranty issue. I would like to work with you on adding warranties to the program within the next 120 days. If a person pays additional money for extended coverage, this should be included in the recovery fund.

MS. GREIN:

The recovery fund is a fairly new process and is ongoing. There are two proactive enforcement groups; tier-one is for initial review and tier-two is for repeat offenders. Tab 4 ([Exhibit H](#)) reflects the Board's public relations summary.

SENATOR CARLTON:

I still have not heard how these programs can stop the contractor who pulls up to a street corner and loads a bunch of guys into the back of his truck and takes them to a housing development to work.

MS. GREIN:

The proactive enforcement groups can deal with this.

SENATOR CARLTON:

These people are working under the radar and are not the educated ones. You need to put someone on those street corners and start taking down license plate numbers.

Ms. GREIN:

It would have to be a joint effort with the Office of Labor Commissioner and workers' compensation.

CHAIR TOWNSEND:

You need to talk with your enforcement groups when you see this happening.

SENATOR LEE:

Tab 3, page 12 ([Exhibit H](#)), states the Board under the Business Review Program can make random unannounced visits to contractors' offices.

Ms. GREIN:

Tier-one reviews are voluntary. A new licensee, that is, one within the first six months, might get a random unannounced visit to make sure the job is being done correctly. The tier-two reviews are conducted following disciplinary actions.

SENATOR LEE:

Thank you. I did not read it that way.

GEORGE LYFORD (State Contractors' Board):

If the Board orders a disciplinary hearing, then we would do a business review. When reviewing a file, if we see one contractor has the same complaint history, we would do a business review.

SENATOR LEE:

Does a new licensee have to sign a release stating you can come by anytime and make sure the business is being conducted the right way?

MR. LYFORD:

No, we do not have them sign a release. However, we have had some contractors call us and ask us to come by and look at their records.

SENATOR LEE:

"Let the record reflect, I am a licensed contractor and I want to make sure I am complying and understand that I am doing things I need to do also."

SENATOR TIFFANY:

In 1993, a bill was passed that a complaint file could be opened and reviewed by the public. The intent was to allow the public to review a subcontractor or contractor's complaint file before they did work on their communities.

MS. GREIN:

In 1998, we made everything open, and then it went back the other way for disciplinary action. The law changed in 2003 as to what is public information and what is not. The Board will give out certain information to the public. The complaint files are not made public unless there is a hearing.

SENATOR TIFFANY:

Mothers in my district complain about day workers being in the same areas as their children's bus stops. I was not sure who had jurisdiction of that matter.

MS. GREIN:

It would depend on whether they were acting as an unlicensed contractor, acting as an individual to install sprinklers or acting as a contractor picking up day workers.

CHAIR TOWNSEND:

We will be more than happy, Ms. Grein, to help you determine the jurisdictions.

MR. LYFORD:

The four proactive individuals, two in the north and two in the south, have the authority when on a job site to ask questions. They have given out 500 to 600 criminal citations a year.

SENATOR TIFFANY:

Does their jurisdiction begin when they arrive at the job site?

MR. LYFORD:

Yes, that is correct. We have the complete jurisdiction of the crime at that point.

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SENATOR HARDY:

I would like to take this opportunity, since the Contractors' Board is here, to disclose that I am the president of the Associated Builders and Contractors of Southern Nevada Construction Trade Association.

CHAIR TOWNSEND:

Ms. Grein, do you have any bills submitted this session?

MS. GREIN:

Yes, we have one bill draft request (BDR) that has not yet been introduced. It will address some issues concerning fraud, unlicensed contractors and out-of-state licensed contractors who come to Nevada and commit crimes. All we can do is punish them by our State laws. Also, we would like to increase the statute of limitation on unlicensed contractor's offenses from one to two years.

CHAIR TOWNSEND:

The meeting is officially adjourned at 10:33 a.m.

RESPECTFULLY SUBMITTED:

Donna Winter,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____