

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

**Seventy-third Session
March 30, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:30 a.m. on Wednesday, March 30, 2005, in Room 2135 of the Legislative Building, Carson City, 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 Dennis Nolan, Clark County Senatorial District No. 9

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Jane Tetherton, Committee Secretary
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Keith Marcher, Supervising Senior Deputy Attorney General, Office of the Attorney General
K. Neena Laxalt, Nevada State Board of Veterinary Medical Examiners
Paul Thomsen, Nevada State Board of Optometry
Gina Spaulding, Executive Director, State Board of Architecture, Interior Design and Residential Design
William Buzz Harris, Nevada State Board of Cosmetology

Senate Committee on Commerce and Labor
March 30, 2005
Page 2

James T. Russell, Nevada State Board of Accountancy
Noni Johnson, Executive Director, State Board of Professional Engineers and
Land Surveyors
Susan Fisher, Chiropractic Physicians' Board of Nevada
Dorothy B. North, President, Board of Examiners for Alcohol, Drug Abuse, and
Gambling Counselors
Orville Reed, Jr., Certified Safety and Health Manager
Renny Ashleman, Southern Nevada Home Builders Association
Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry
Brenda Kindred-Kipling, Appraisal Officer, Real Estate Division, Department of
Business and Industry
James F. Nadeau, Nevada Association of Realtors
J.C. Melvin, Keller Williams Realty
Keith Kelley, Immediate Past President, Nevada Association of Realtors
Buffy J. Dreiling, Nevada Association of Realtors
Alfredo Alonso, SuperPawn

CHAIR TOWNSEND:

I will open the hearing on Senate Bill (S.B.) 276.

SENATE BILL 276: Establishes uniform disciplinary process for certain regulatory
bodies which administer occupational licensing. (BDR 54-98)

KEITH MARCHER (Supervising Senior Deputy Attorney General, Office of the
Attorney General):

This bill has two goals. First, it creates an investigative unit within the Office of
the Attorney General to help smaller boards with limited resources with
investigations into consumer complaints. Second, it creates a uniform
disciplinary hearing process for the boards in the bill. A number of boards have
asked to opt out of the provisions of the bill.

SENATOR HECK:

How did you select which boards would be included in the bill?

MR. MARCHER:

We focused on boards with a smaller number of licensees. Bigger boards, such
as the State Board of Nursing, the State Board of Pharmacy, the Board of
Medical Examiners and the Board of Dental Examiners of Nevada, have the

Senate Committee on Commerce and Labor
March 30, 2005
Page 3

resources to accomplish these functions themselves. They employ their own investigative staffs and their own attorneys.

SENATOR HECK:
What number of members did you use as a cutoff?

MR. MARCHER:
There was no specific number.

SENATOR HECK:
I applaud the concept of a uniform hearing process. Did you consider helping the individual boards attain this rather than creating another governmental office to enforce it?

MR. MARCHER:
The two functions of the bill are not related. The office to be created would conduct investigations rather than enforcing the uniform hearing process.

SENATOR TIFFANY:
This bill creates a new position to be called the Commissioner of Occupational Licensing. How would this be funded?

MR. MARCHER:
It would be funded through the General Fund. We are also asking for two investigators and one support staff person.

SENATOR TIFFANY:
Would there be enough work for the Commissioner to require a full-time position?

MR. MARCHER:
Easily. A number of boards have approached the Office of the Attorney General recently asking for help with their investigations. Their alternatives are to do the work themselves or to hire a private investigations firm, which can be quite expensive. Currently, boards that use the Office of the Attorney General for investigations and legal representation must pay for these services, which is an onerous burden for the smaller boards. This bill would allow investigations to be done without cost to the boards.

Senate Committee on Commerce and Labor
March 30, 2005
Page 4

SENATOR TIFFANY:
Would the office serve as a clearinghouse?

MR. MARCHER:
The office would receive complaints, assign them to investigators and refer the completed cases back to the Office of the Attorney General. This would speed up the process and provide the boards with a professional and objective investigation.

SENATOR TIFFANY:
Would the Commissioner have authority over the deputy attorneys general assigned to the specific boards?

MR. MARCHER:
No. We envisioned the process as a team approach between the Commissioner, the executive director of the board involved, the investigator and the deputy attorney general assigned to that board.

SENATOR CARLTON:
What do you consider the most important part of this bill?

MR. MARCHER:
The most critical part is getting some fashion of investigative help for the boards that want to remain in the bill. The uniform discipline process is a close second.

SENATOR SCHNEIDER:
Will this bill help the boards with the cost of legal representation in lawsuits?

MR. MARCHER:
No.

CHAIR TOWNSEND:
Many of the small boards cannot pay the bill for representation by the Office of the Attorney General. In that case, the General Fund absorbs the cost. I would like to know the total amount owed to the Office of the Attorney General for this service.

Senate Committee on Commerce and Labor
March 30, 2005
Page 5

MR. MARCHER:

I will get the information for you.

CHAIR TOWNSEND:

Those boards wishing to opt out of this bill, please state if your board owes money to the Office of the Attorney General for legal representation.

K. NEENA LAXALT (Nevada State Board of Veterinary Medical Examiners):

We wish to opt out. We do our own investigations and have a budget for this. We recommended the bill be enabling and that uniform disciplinary procedures be placed in the statutes governing each individual board. We do not owe money to the Office of the Attorney General.

PAUL THOMSEN (Nevada State Board of Optometry):

We wish to opt out. We are concerned about where the funding for the investigations unit would be found. We do not owe money to the Office of the Attorney General.

GINA SPAULDING (Executive Director, State Board of Architecture, Interior Design and Residential Design):

We wish to opt out. We employ a full-time staff of investigators and handle our own complaints. We are in support of uniform disciplinary processes. We do not owe money to the Office of the Attorney General.

WILLIAM BUZZ HARRIS (Nevada State Board of Cosmetology):

We wish to opt out. We have our own investigators and are concerned about who would pay for the investigations unit. We do not owe money to the Office of the Attorney General.

JAMES T. RUSSELL (Nevada State Board of Accountancy):

We wish to opt out. We have our own part-time investigator. Our investigations require a special technical knowledge concerning accounting. A better way to create a uniform disciplinary process would be to amend *Nevada Revised Statute* (NRS) 233B, the Nevada Administrative Procedure Act. We do not owe money to the Office of the Attorney General.

Senate Committee on Commerce and Labor
March 30, 2005
Page 6

NONI JOHNSON (Executive Director, State Board of Professional Engineers and Land Surveyors):

We wish to opt out. I am submitting a copy of our rules of practice for your reference ([Exhibit C](#), original is on file in the Research Library). We follow a disciplinary-violation matrix to keep discipline consistent. We do not owe money to the Office of the Attorney General.

SUSAN FISHER (Chiropractic Physicians' Board of Nevada):
We wish to opt out.

DOROTHY B. NORTH (President, Board of Examiners for Alcohol, Drug Abuse, and Gambling Counselors):

We support this bill and wish to opt in. We have had many complaints, some of which were egregious and required lengthy investigations. We do not have the money to pay knowledgeable investigators. We have so far been able to pay the Office of the Attorney General for representation, but if we have to go to trial we will not be able to pay their bills. We are not the only small board in this situation.

CHAIR TOWNSEND:

I will close the hearing on S.B. 276 and open the hearing on S.B. 278.

SENATE BILL 278: Revises provisions relating to occupational safety and health.
(BDR 53-1347)

ORVILLE REED, JR. (Certified Safety and Health Manager):

This bill asks for title protection for Certified Safety and Health Manager (CSHM) and Associate Safety and Health Manager (ASHM) to restrict those initials to professionals certified by the Institute for Safety and Health Management. This protects the public from those who advertise themselves as CSHM or ASHM without being qualified to do so.

CHAIR TOWNSEND:

Has this happened in the past?

MR. REED:

I know of one incident in Las Vegas. The bill would prevent it from becoming a bigger problem.

Senate Committee on Commerce and Labor
March 30, 2005
Page 7

SENATOR TIFFANY:

Why are you restricting certification to the Institute for Safety and Health Management?

MR. REED:

The Institute for Safety and Health Management is the only institution that grants the titles CSHM and ASHM. They set the industry standard and are recognized by the 14 other states with legislation similar to this bill.

CHAIR TOWNSEND:

I will close the hearing on S.B. 278 and open the hearing on S.B. 300.

SENATE BILL 300: Revises provisions governing regulation of contractors.
(BDR 54-1061)

RENNY ASHLEMAN (Southern Nevada Home Builders Association):

We are currently working on an industry-wide compromise on this bill. We will report on our progress to the subcommittee.

CHAIR TOWNSEND:

I will close the hearing on S.B. 300 and open the hearing on S.B. 332.

SENATE BILL 332: Revises provisions relating to real estate. (BDR 54-230)

CHAIR TOWNSEND:

I need to disclose that my wife is a licensee of the Real Estate Division, Department of Business and Industry.

SENATOR SCHNEIDER:

I need to disclose I have two nephews who are licensees of the Division. Kelly Wade used to be chair of the Commission of Appraisers of Real Estate, and Jimmy Hill is an appraiser.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

I will give an overview of the bill.

Section 2 establishes limited license recognition for real estate salesmen licensed and in good standing in another jurisdiction within the United States.

They would be considered to have met the prelicensing education requirements and the portion of the exam relating to principles and practice. For brokers and broker-salesmen, this bill allows the Real Estate Commission to enter into reciprocal licensing agreements with other United States jurisdictions. This is not a license-for-license reciprocity, since some jurisdictions have licensing categories or requirements that do not match ours.

Section 3 proposes the creation of a booklet for consumers outlining all the requirements regarding disclosures. This is a combined effort of the Nevada Association of Realtors and the Education Research and Recovery Fund.

Section 4 allows the Division to recover costs associated with financial audits from the real estate brokers being investigated. Such costs can sometimes run to several thousand dollars. Reimbursement would be for actual costs and fees only, not staff time.

A portion of the bill deals with owner-developers who register with the Division to sell their homes. They are currently allowed to hire real estate sales agents to sell their homes. We are proposing that owner-developers who are not licensees of the Division be required to hire broker-salesmen as managers to supervise the licensed sales agents. This does not remove the owner-developer from the broker level of responsibility in the law; rather, it gives direct supervision of licensed sales agents to licensed broker-salesmen. This is covered in several sections of the bill. Section 6 amends the definition of broker-salesman to allow them to report to a registered owner-developer as well as to a broker. Section 7 clarifies the language of NRS 645.280 regarding compensation.

Section 9 would allow the Division to deny a license to an individual who has ever had a real estate license revoked or suspended elsewhere. Currently this is limited to revocations and suspensions occurring within the previous ten years. The bill would remove the time limitation.

A major portion of the bill has to do with the creation of a fingerprint verification form. This is in sections 12, 13, 18, 25 and 27 of the bill. Current law requires that the application for a license be submitted with a completed fingerprint card. This bill would allow the Division to create a verification form, to be filled out by an approved vendor of non-latent fingerprints stating the applicant's fingerprints have been submitted digitally to the Central Repository for Nevada Records of Criminal History for processing. This will speed up the background check

dramatically, especially once the Repository has the ability to respond to us electronically.

SENATOR CARLTON:

I applaud this effort. We would like to see all the boards establish procedures like this to expedite background checks and get applicants licensed faster.

MS. ANDERSON:

Sections 15 and 16 detail a few technical corrections. Section 26 clarifies the duties of a time-share representative as distinct from a time-share sales agent. Section 29 is a housekeeping measure missed in legislation from the 72nd Legislative Session.

BRENDA KINDRED-KIPLING (Appraisal Officer, Real Estate Division, Department of Business and Industry):

This bill offers amendments for NRS 645C. I will review the sections dealing with appraisers.

Section 17 clarifies that a licensed residential appraiser cannot appraise complex property.

Sections 20, 21, 22 and 23 place education, prelicensing and continuing education requirements in regulation rather than statute. This will allow us to stay in compliance with Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 more easily and quickly.

Section 24 increases the statute of limitations from three years to five years to allow us to take disciplinary action against a licensee. This brings us into compliance with Title XI.

SENATOR LEE:

Could you explain the limit of \$1 million in section 17, subsection 1, paragraph (a), subparagraph (1)?

MS. KINDRED-KIPLING:

There are three different levels of licensure for appraisers: licensed residential appraiser, certified residential appraiser, and certified general appraiser. This section refers to the licensed residential appraiser, who can perform appraisals on one to four single-family units that are not complex and with a total value

Senate Committee on Commerce and Labor
March 30, 2005
Page 10

less than \$1 million. A certified residential appraiser can also appraise complex units and those worth more than \$1 million.

SENATOR SCHNEIDER:

The exploding real estate market in southern Nevada has the potential to trigger a resulting explosion in litigation for fraudulent or inaccurate appraisals. Are you prepared to deal with this situation?

MS. KINDRED-KIPLING:

We have already seen an increase in complaints, and we expect them to continue to increase. We will be ready for it.

JAMES F. NADEAU (Nevada Association of Realtors):

We support this bill. We have worked with the Division to expedite background checks, and this portion of the bill is sorely needed.

SENATOR CARLTON:

Does your organization have a position on the reciprocity issue?

MR. NADEAU:

We do not have a position at this point.

CHAIR TOWNSEND:

We will close the hearing on S.B. 332 and open the hearing on S.B. 315.

[SENATE BILL 315](#): Provides for regulation of business brokers. (BDR 54-1135)

SENATOR DENNIS NOLAN (Clark County Senatorial District No. 9):

Let me disclose that I am a licensed real estate broker in Nevada. This bill does not benefit me in my professional capacity.

This bill will establish a new category of license for real estate brokers who specialize in the sale or purchase of businesses rather than buildings or land alone. This is a distinct specialty, since the value of a business includes such factors as good will, stock, fittings, customer lists, and staff. A broker without expertise in this area is of little use to either buyer or seller. This bill would not apply to the sale of the building only.

Senate Committee on Commerce and Labor
March 30, 2005
Page 11

SENATOR TIFFANY:

Does this bill require you to use a business broker when selling a business?

SENATOR NOLAN:

No. A sale can still be concluded between buyer and seller without a broker. However, any broker involved must be a licensed business broker.

SENATOR TIFFANY:

Has this been a significant problem, that brokers selling businesses do not understand the process?

SENATOR NOLAN:

Yes. There are many details involved in selling a business that do not occur in selling a house or a piece of land.

SENATOR TIFFANY:

Are there special educational or technical knowledge requirements for this field?

J.C. MELVIN (Keller Williams Realty):

The business broker requires a completely different skill set than the real estate broker. This bill provides consumer protection, particularly for the novice or out-of-state buyer.

SENATOR NOLAN:

The Division currently issues 2,000 to 13,000 new licenses per year. Many of these licensees are coming into real estate as a second career and to take advantage of a booming market. As the statute stands, people with little or no business skill can represent themselves as experts in this field. This is an important consumer-protection bill.

SENATOR LEE:

This is an incredibly complex area. In my experience, it is the seller who is most often hurt by an ignorant broker, when obligations that should have been handled are not met.

CHAIR TOWNSEND:

I will close the hearing on S.B. 315 and open the hearing on S.B. 319.

SENATE BILL 319: Revises provisions governing certain disclosures required to be made by real estate brokers, real estate broker-salesmen and real estate salesmen. (BDR 54-95)

SENATOR NOLAN:

This bill protects both consumers and well-intentioned real estate licensees from issues of which they had no knowledge. The current statute, NRS 645.252, holds the licensee responsible for defects of which he knows or should have known. The bill would change this requirement to defects "of which he has actual knowledge." This protects the licensee from liability for facts withheld from him by a disingenuous seller. This protects consumers by requiring licensees to acquire actual knowledge of the properties they sell.

SENATOR CARLTON:

With all due respect, I read this language differently. With this new language in place, it would be to the licensee's advantage to know nothing of the property so they will be held accountable for nothing. This bill has significant consumer ramifications.

SENATOR NOLAN:

The intent was to make the standard more stringent.

CHAIR TOWNSEND:

I agree with Senator Carlton. If your intent was to increase the standard, this language would seem to have the opposite effect. Mr. Powers, am I wrong?

KEVIN POWERS (Committee Counsel):

You're not, Senator Townsend. Let me just explain. The existing language says "knows, or which by the exercise of reasonable care and diligence should have known." That establishes the two general levels of knowledge that are recognized in the law. That is, "knows" is actual knowledge, "by the exercise of reasonable care and diligence should have known" is constructive knowledge. This bill, as it stands now, is removing constructive knowledge from the standard and limiting it to actual knowledge. What that would mean is you would have to have actual knowledge to have a duty to disclose. If you didn't have that actual knowledge, you wouldn't have a duty to disclose. With the constructive knowledge component that's in the statute right now, you couldn't claim

ignorance if the situation and facts were present that a reasonable real estate broker or salesman would have that knowledge and therefore would have to disclose it.

MR. NADEAU:

We have an amendment to offer ([Exhibit D](#)).

SENATOR HARDY:

Mr. Powers, does this amendment have any practical impact on the problem?

MR. POWERS:

Unfortunately, the amendment actually creates more confusion than it solves. It restores the "he knows" component, which is actual knowledge, and then it restores the introductory language, "which by the exercise of reasonable care and diligence," which would imply constructive knowledge. It then inserts "actual knowledge." Essentially, this amendment is saying "actual knowledge" and "actual knowledge."

SENATOR HARDY:

You need to go back to the drawing board on this issue.

KEITH KELLEY (Immediate Past President, Nevada Association of Realtors):

I was the president of the Nevada Association of Realtors in 2004 when this bill was conceived. In January 2004, the Clark County Department of Aviation sent out a letter dated October 21, 2003 ([Exhibit E](#)), to all real estate licensees in Clark County regarding flight paths in and out of McCarran International Airport in Las Vegas. Though the flight paths were changed after that date, no further notification was sent out; however, all licensees were held liable for the new knowledge. Also, those who were licensed after January 2004 are considered liable for the information, though they never received the letter. This is unfair. I had a listing in Clark County that was listed for several months before an offer was made. During the final walkthrough, we heard the roar of a lion from a house four houses down. If it were not for that circumstance, I would not have known of the existence of the lion; however, I would still have been held liable for the knowledge.

Senate Committee on Commerce and Labor
March 30, 2005
Page 14

MR. MELVIN:

The intention was to protect the licensee from liability for knowledge he had no way of knowing.

MR. POWERS:

From the testimony, it's clear that they do want to eliminate constructive or imputed knowledge from the statute, so that all is left is actual knowledge. The statute requires both now, and it's only going to require actual knowledge. This does change the standard. In response to Senator Carlton's question, ... it does decrease the realm of liability or exposure of the licensee and provides a lesser duty on them when it comes to disclosures.

SENATOR LEE:

I need to disclose my wife has a real estate license. Whether an agent has had a license ten minutes or ten days, there is a responsibility on the agent to look for items like master plans, air traffic patterns, casino overlays and so on. They should know more than the average citizen.

CHAIR TOWNSEND:

I will close the hearing on S.B. 319 and reopen the hearing on S.B. 315.

MR. NADEAU:

We have a second amendment to offer ([Exhibit F](#)). This would remove the "actual knowledge" language and add the rest of the language of S.B. 319 to S.B. 315.

CHAIR TOWNSEND:

Does this bill exempt lawyers and accountants?

MR. NADEAU:

Lawyers are automatically exempted by other elements of the statute. I believe the same is true for accountants. It was not our intent to have an impact on those professions.

MR. MELVIN:

The amendment in [Exhibit F](#) adds language to require the licensee to give all disclosures to any unrepresented parties in the transaction. This is cleanup for

Senate Committee on Commerce and Labor
March 30, 2005
Page 15

Nevada Administrative Code 645.637. We have met with representatives from the Division, and they concur with this change.

CHAIR TOWNSEND:

Are you aware that this substantially raises the bar for the responsibilities of the licensee in a business transaction? The public is going to have much higher expectations of someone licensed as a business broker.

BUFFY J. DREILING (Nevada Association of Realtors):

We expect the education requirements to enable licensees to meet the higher standard. As things currently stand, licensees are being set up for failure because they have the authority to conduct these transactions without necessarily having the expertise.

CHAIR TOWNSEND:

I want to be sure this is your intention. There are great differences between different industries and different types of businesses. An expert in the automotive field would have no particular knowledge to handle the sale of a casino, for example. I do not want to see you back at the next Legislative Session requesting different designations for business brokers in a myriad of industries.

SENATOR CARLTON:

I have concerns about the fee structure in this bill. Fees are set in statute, not in regulation.

MR. NADEAU:

We appreciate that is within the purview of this committee.

CHAIR TOWNSEND:

I will close the hearing on S.B. 319 and open the hearing on S.B. 334.

SENATE BILL 334: Removes statutory limit on rate of interest pawnbroker may charge. (BDR 54-1240)

ALFREDO ALONSO (SuperPawn):

This bill removes a cap established many years ago when the pawnbroker industry was substantially different than it is now. The modern pawnbroker is essentially a bank making small loans and as such is governed by many of the

Senate Committee on Commerce and Labor
March 30, 2005
Page 16

laws that apply to banks. In the 72nd Legislative Session, pawnbrokers were required to pay the financial institutions tax; however, since their interest rates are capped, they must absorb this cost.

CHAIR TOWNSEND:

I have been asking for years why this cap existed.

The record should reflect that at least this member of the body, when we drafted the bill and voted on the bill, had no intention in scooping up a number of people that got scooped up. You were one of them.

Do you anticipate any growth in the industry as a result of this bill?

MR. ALONSO:

Because most jurisdictions cap the number of pawnbrokers operating in the area, we do not expect much growth in the industry.

CHAIR TOWNSEND:

I will close the hearing on S.B. 334.

SENATOR HARDY MOVED TO DO PASS S.B. 334.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO. SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

SENATOR HECK MOVED TO DO PASS S.B. 278.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

Senate Committee on Commerce and Labor
March 30, 2005
Page 17

CHAIR TOWNSEND:

The remaining bills on the agenda – S.B. 182, S.B. 276, S.B. 300, S.B. 315, S.B. 319 and S.B. 332 – will be discussed in subcommittee.

SENATE BILL 182: Revises provisions governing certain alcohol and drug abuse counselors. (BDR 54-303)

CHAIR TOWNSEND:

If there are no further comments, I will adjourn this meeting of the Senate Committee on Commerce and Labor at 9:41 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____