

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

**Seventy-Fourth Session
April 20, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:00 p.m., on Friday, April 20, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman David R. Parks
Assemblyman James Settlemeyer

STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Judith Coolbaugh, Committee Secretary
Olivia Lloyd, Committee Assistant

Minutes ID: 1024



OTHERS PRESENT:

John F. Wiles, Division Counsel, Division of Industrial Relations,
Department of Business and Industry
Jeanette K. Belz, representing the Property Casualty Insurers Association
of America
Rocky Finseth, representing Carrara Nevada and the Nevada Association
of Realtors
Gail J. Anderson, Administrator, Real Estate Division, Department of
Business and Industry
Teresa B. McKee, representing the Nevada Association of Realtors
Keith Kelley, representing the Nevada Association of Realtors
Keith Lynan, representing the Nevada Association of Realtors
Charles Kitchen, Owner/Broker, Charles Kitchen Realty
Curry Jameson, Commissioner, Real Estate Commission, Department of
Business and Industry
Michael E. Stoberski, Attorney at Law, Olson, Cannon, Gormley &
Desruisseaux

Chair Ocegüera:

[Roll called.] I am opening the hearing on Senate Bill 20 (1st Reprint).

**Senate Bill 20 (1st Reprint): Revises provisions governing claims against
subsequent injury accounts. (BDR 53-562)**

**John F. Wiles, Division Counsel, Division of Industrial Relations, Department of
Business and Industry:**

This is not a bill that impacts injured workers' benefits in any way. This is a housekeeping bill from the Division. It will give the Division a little more time to consider the subsequent injury applications that we receive. Over the years, our workload in this area has been increasing, and it is getting more difficult for us to achieve our statutory 90-day deadline. We are requesting an extension of the time period from 90 to 120 days. Also, this bill will eliminate the requirement for a notice of a possible claim to the Subsequent Injury Accounts. For every claim we receive, we get 20 to 30 notices of possible claims. We date stamp and file them for future reference. The process does not seem to serve much of a purpose. Elimination of this requirement will lighten the workload for the insurers who had to comply with that requirement, and the Division that had to maintain the documents. I will be happy to answer any questions.

Chair Ocegüera:

Are there any questions?

Assemblyman Conklin:

I completely understand the reasons for the elimination of the notification process. In Section 5, subsection 5, it says the private carrier must submit a claim for reimbursement. Is there a deadline for claims to be filed?

John Wiles:

As we originally proposed this bill, we had established some deadlines for the submission of claims. There was considerable opposition to that provision on the Senate side. To get this bill through, we deleted that provision. Therefore, there is no deadline for a submission of a claim to the Subsequent Injury Account for Private Carriers. However, the longer the claim sits around the more difficult it might be for the insurer to establish entitlement for reimbursement.

Chair Oceguera:

Are there further questions? Are there others in support?

Jeanette K. Belz, representing the Property Casualty Insurers Association of America:

We are in support of this bill. The proposed change will give the insurer greater certainty that the account administrator has enough time to evaluate the status of a claim. We did oppose the time deadline on the Senate side. We are the fund-providers of these accounts, so we should have the ability to remove the funds. We agree that the longer a claim sits around, the harder it becomes to establish entitlement for reimbursement. It is in our interests to get the claim in as fast as we can. I have submitted a copy of my testimony for the record ([Exhibit C](#)).

Chair Oceguera:

Are there any questions? Is there anyone opposed to the bill? Is there anyone wishing to speak from a neutral position? Seeing none, I am closing the hearing on S.B. 20 (1st Reprint), and opening the hearing on Senate Bill 69 (1st Reprint).

Senate Bill 69 (1st Reprint): Revises provisions related to real estate brokers, salesmen and qualified intermediaries. (BDR 54-457)

Rocky Finseth, representing Carrara Nevada and the Nevada Association of Realtors:

This bill was sponsored by Senator Schneider on behalf of the Association. It addresses the issue of minimum service providers in the real estate industry. As the property market has expanded over the last several years, there have been new business models developed within the industry. These are commonly

known as minimum-service or limited-service brokerages. The public knows them by the names: Help-U-Sell and Assist-2-Sell. They offer a menu-driven service to the consumer. They charge \$500 for listing the property, and another \$200 if the seller wants the agent to show the property.

The problem with this type of menu-driven service is it violates current Nevada law. The law provides that an agent must present all offers. That provision is in *Nevada Revised Statutes* (NRS) 645.252 and NRS 645.254. To further compound the problem, the consumer does not always know what services and duties an agent is supposed to provide under the existing statutes. The resulting transaction can cause hardship for the buyer's agent. When the unrepresented consumer, usually the seller, needs assistance in writing a valid contract, the buyer's agent is put in a difficult position. The seller, without help, has difficulty in following the laws for moving the sale transaction through escrow to closing. This bill has three main components: It provides for legal operation of alternative business models, for consumer protection by establishing a vehicle to permit a fully-informed consensual waiver of the duty to present all offers, and for protection for the agent remaining in the transaction. By necessity after the waiver of duty, the buyer's agent must communicate directly with another agent's client.

In addressing alternative business models, the real estate industry has received the attention of the United States Department of Justice. A number of states have been struggling with this issue over the last two years. We have reviewed the other states' proposals, and we have worked with the Department of Justice in bringing forward this bill. The Department of Justice's primary concern is to have a provision in law that specifies a fully-informed consensual waiver is required.

Chair Ocegura:

Is there anyone else wishing to testify in favor of the bill?

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:

The Real Estate Division fully supports this bill. For the last two years, the issues Mr. Finseth identified in his testimony have been discussed in Real Estate Commission meetings. The Division's concern was to ensure that the State would not be illegally restraining competition, harming consumer choice, or limiting the ability of a consumer to obtain low-cost real estate brokerage services. After many discussions at public meetings, the Real Estate Commission established a task force in April 2006. The task force's function was to evaluate these issues and find some resolution for the problems. They

provided a paper with recommendations, which the Commission reviewed and accepted at their July 2006 meeting.

The Commission addressed four of the five recommendations with a temporary regulation. The issues will be re-addressed when the temporary regulation period ends. The term "agency" needs to be defined to include the different types of real estate agency agreements permitted by Nevada law. The Commission needs to ensure that a consumer has an informed consent for the services the agent will provide when a consumer enters into a brokerage agreement. In addition, statutory changes are necessary because the current provisions in the law delineate certain duties required to be performed by a Nevada real estate licensee. This means consumers involved in a real estate transaction will know that certain services will be provided. They will also know what duties and responsibilities they have. The proposal in this bill is to allow a waiver.

The Real Estate Division also asks for clarification and amending language in Section 1 ([Exhibit D](#)). As this section is written in the bill, it states that the term "agency" means a relationship between a principal and an agent arising out of a brokerage agreement whereby the agent is engaged to do certain acts on behalf of the principal in dealing with a third party. Our amending language would add the words, "to do certain acts for which a license or permit is required under this chapter." Those acts require a license for performance per NRS 645.

Chair Oceguela:

The Committee has just received a faxed copy of your amendment.

Gail Anderson:

The Division fully supports this bill, and we have worked with the Real Estate Commission and the industry on resolving these issues.

Teresa B. McKee, representing the Nevada Association of Realtors:

I will go through the bill. Section 1 is the key part of the bill. The task force's focus was to define the term, "agency." The task force decided real estate licensees had an agency relationship with a client. However, this provision was never clarified in the regulation or statutory language. It is important that the term be stated because Nevada is an agency State. The task force looked at many different definitions of agencies throughout the nation. This is the choice they came up with. We are in agreement with Ms. Anderson's amendment to the bill and fully support it.

The heart of the bill is found in Section 3, subsection 3 (b), which states a waiver to present all offers may be signed by the client. Currently, this type of waiver is being signed, but it is not legal. Consumers are going into real estate transactions not knowing what they are really doing. As part of waiving the duty to present all offers, the Department of Justice is concerned that a consumer's consent to waive must be a fully-informed decision. The form for the waiver will be prescribed by the Division. A proposed waiver of presentation of offers has been submitted ([Exhibit E](#)). The waiver can apply to either a seller's or a buyer's agent, but most often the seller's agent will be affected. The consumer needs to know that the buyer's agent is not going to represent them. This is the information that the consumer currently does not have. If the consumer does want help, he can ask the buyer's agent, but he will have to enter into an agreement with the buyer's agent. The consumer could also go back to his own agent or hire another one.

Because of the waiver, there was a gap in the transaction process. A buyer's agent would not be allowed to communicate directly with the seller if the seller's agent is no longer present in the transaction. In Section 4, subsection 2, the language will allow for this direct negotiation or communication up to the time of closing between the remaining agent and the consumer who has released his own agent. This will give the agent remaining in the transaction protection without incurring direct liability. If an agent chooses to cross the line and give advice to the consumer, they enter into an agency relationship. If their communication is just to negotiate the rest of the contract, and help with closing the transaction, the agent would not be liable to the consumer. It would not create an agency relationship. I have also included an article from a minimum service realtor that explains what they will do for the seller ([Exhibit F](#)).

Chair Ocegüera:

Are there any questions?

Assemblywoman Buckley:

Will the waiver to present all offers cover all realtors, or are we just trying to accommodate the newer real estate business models?

Teresa McKee:

This provision would apply to any licensee. It specifically addresses the problem facing the minimum service realtors, but it is not limited to them. Currently, any broker can authorize in writing for another broker to communicate directly with his client. That is in the law. The form of the writing is not clear. The Real Estate Division expects a representative in a Multiple Listing Service (MLS) transaction to contact the seller directly. That is why consumers are confused. The waiver will apply across the board to any

licensee. They may be a buyer's or seller's agent in a full-service or limited-service real estate brokerage. There may be circumstances where the consumer wants to sign a waiver. For example, if you have worked with your agent for many years and you are comfortable conducting business on your own, you may still want your property on the MLS. The seller would use his agent to do the advertising, but the seller would negotiate his own deal. A consumer can ask his agent to allow a buyer's agent to contact him directly.

Assemblywoman Buckley:

Maybe we need a separate section in the statute that specifically addresses limited-service real estate companies. It would prescribe what their duties are. That would make the language clear. It would include the provision that they can act as a facilitator. I do not like the idea that a full-service realtor does not have to present all offers to a client. Oftentimes, a property is an exclusive listing, so the consumer cannot change his agent. If an offer comes in that is lower than what the seller wanted, he should still have the ability to receive it.

Teresa McKee:

This waiver is only a consumer option. The agent does not have this option to waive.

Assemblywoman Buckley:

I understand that. I would be okay with a separate section in the law to only address the limited-service brokerages. In a full-service brokerage, the realtor should tell you all the offers on your listed property.

Teresa McKee:

That is the current law.

Assemblywoman Buckley:

You are proposing to change the current law with this section.

Teresa McKee:

The consumer would have to specifically waive that right to receive all offers. This section says a consumer is allowed to waive that right. It does not say that limited-service brokerages can waive the presentation of all offers.

Assemblywoman Buckley:

I am still concerned. Some realty companies are not the best, and they may just put the waiver in for a consumer to sign. I see this happen every day in my legal practice. It does not seem to be a good provision to put in a full-service realty contract.

Chair Oceguela:

Are there further questions?

Assemblyman Settlemeyer:

Was this amendment offered in the Senate? If not, why not?

Gail Anderson:

It came to my attention that there was a need for clarification, and I was not aware of that when the bill was heard in the Senate. I felt it was appropriate to bring it forward now for consideration.

Chair Oceguela:

Senator Schneider, the sponsor of the bill, also informed me that he was aware of the amendment, and he supported it. Are there others wishing to testify in support of the bill?

Keith Kelley, representing the Nevada Association of Realtors:

As a licensee and a broker, I strongly support this bill. As a broker, I am responsible for my agents executing clean transactions. If there is a problem, the liability for the agent's errors comes back on me. The increase in the use of limited-service real estate business models in southern Nevada creates confusion for the consumer, for the licensee, and for the broker who is responsible for making decisions that affect them all. The task force had a difficult job in balancing the interests of the consumer and the licensees. This legislation is an integral part of the whole system. Brokers take their responsibility to supervise and educate their agents seriously. This bill will give the licensee and the consumer greater protection, and it will allow brokers to better manage, supervise, and educate their agents.

Chair Oceguela:

Are there any questions?

Keith Lynan, representing the Nevada Association of Realtors:

I strongly support this bill as a first step. The real estate brokerages that use the limited-service business model do cause confusion for all parties in a transaction. This bill, in conjunction with regulations adopted by the Real Estate Commission, will make consumers aware that if they waive the duty of their listing broker to present offers, the buyer's agent does not have to help the seller. The buyer's agent has no duty to help them, and will not help them. In addition, this bill will protect the remaining agent from liability for required acts to fulfill duties to the remaining agent's client in order to complete the sale. It is incumbent upon our industry to educate licensees on the fine line between giving advice, which would create a liability, and simply giving instructions on a

matter of fact. There is no sure way to absolve an agent of all liability. Nor can he cure all ills in the marketplace when dealing with an unrepresented party. This bill offers an important protection by requiring signed, fully-informed, consensual waivers. There are dangers posed to unrepresented clients. In most cases, these people are sellers of properties that are worth thousands of dollars.

Chair Ocegüera:

Are there any questions?

Charles Kitchen, Owner/Broker, Charles Kitchen Realty:

Certain problems have arisen when consumers use limited-service realtors. It is also a problem in northern Nevada. I support this bill, and I would be happy to answer any questions.

Chair Ocegüera:

Are there any questions?

Curry Jameson, Commissioner, Real Estate Commission, Department of Business and Industry:

The Real Estate Commission strongly supports this bill. The Commission created the limited-service task force over a year ago. Any brokerage house can operate as a limited-service broker. The Commission heard complaints from the licensees and consumers about limited-service practices in different real estate business models in Nevada. The task force recommendations were accepted and approved by the Commission. Public meetings and the adoption hearing for the regulatory portion of the recommendations were properly noticed and held. There was a great deal of public input that the Commission carefully considered. The temporary regulation was adopted at the January 2007 meetings of the Commission.

We anticipate permanent legislation to be developed and adopted by this coming fall with few changes. The real estate industry is not static; it is dynamic. New business models are developed daily. We cannot anticipate the future form and function of the real estate licensee or the problems they will be faced with. This bill is the result of hard work on behalf of the industry. I understand Ms. Buckley's concerns. The Commission wanted to make sure that only the consumer had the ability to make the decision to waive the presentation of all offers. If we limited the provision to include only limited-service brokerages, it would not provide an answer to the problem because any real estate firm can provide that same service. That is the reason why the Commission did not separate the limited-service brokers from the full-service ones.

Chair Oceguera:

Are there any questions?

Assemblywoman Kirkpatrick:

Can you explain with a simple example why this bill is necessary? Is it because of competition or liability?

Curry Jameson:

If XYZ Company puts a real estate "For Sale" sign on a piece of property and places the listing with the MLS, a buyer's agent might see it and call the XYZ Company. The XYZ Company says go ahead and show it; you have to talk to the seller directly. What bothers me about that statement is there is a possible problem with the agent becoming associated with a seller he does not represent. In other words, an agency relationship could be created. Next, if the buyer likes the property, the buyer's agent has to write the offer. The buyer's agent calls the listing agent and is told he does not handle offers. The listing agent only places the property on the MLS. There is going to be advice given by the buyer's agent to a seller he does not represent. The XYZ Company has to protect its agent from being sued for giving advice to a client he did not represent. That is why the task force was created and how this bill evolved. We needed to redefine the word "agency."

Assemblywoman Kirkpatrick:

Was somebody sued because of this problem?

Curry Jameson:

Yes, there are several cases that have come before the Real Estate Commission, and the task force heard about several. During the closing of a transaction, something did not occur that should have. The seller had asked the buyer's agent about something, and he gave them advice or negotiated with them. That creates an agency relationship with the seller. The seller has a right to come back to the buyer agent's company because he thought he was being represented by the buyer's agent. In the one case I know about, the court ruled in favor of the seller because there was not a bifurcation of duties and information.

Assemblywoman Buckley:

Let us assume that a seller hires a limited-service company, and the buyer's agent gets into one of these situations where no one is representing the seller or helping them with the paperwork. It must be a difficult situation. The buyer's agent wants to close the deal, but he does not want to get in trouble for advising the seller. If wrong advice is given, then the buyer's agent is open to a liability lawsuit. You do not want the seller to be taken advantage of by

someone who has more information than he does. It places the buyer's realty agency in a predicament.

Keith Lynan:

It creates an adversarial relationship. The seller wants every dime he can get out of his home, and the buyer wants to pay as little as possible. Your scenario is right on the point. The seller has gone to a limited-service provider, and paid a fee to have the property information posted on the MLS. That takes a minimal amount of time. The seller is out there alone with the forms, disclosures, and negotiations. He is at peril. This bill is a good first step in trying to find solutions for these problems and to eliminate some of the confusion that is generated in these situations. Did that help?

Assemblywoman Buckley:

I understand better what this bill is trying to accomplish in Section 1.

Keith Kelley:

Another example would be a consumer who is trying to save some money by marketing his own property. We are currently in a buyer's market placing the seller at a disadvantage. House prices are being reduced because of surplus inventory. A seller can hire a minimum-service company to put his property on the MLS because he wants to market his own property for the least cost. A prospective buyer would have his agent contact the agent who listed the property to make an offer on the property. The listing agent would identify his company as a minimum-service, and direct the buyer's agent directly to the seller. Normally any questions a buyer has about a piece of property are channeled through his agent to the seller's agent. With a minimum-service company, the buyer's agent has to negotiate with the seller. If the seller has any questions, the buyer's agent has to tell him he cannot answer them because the seller has signed a waiver that says the buyer's agent will not be responsible to the seller. This bill will help the buyer's agent and the seller to understand their duties.

Chair Ocegura:

Are there further questions? Is there anyone else in favor of S.B. 69 (R1)?

Michael E. Stoberski, Attorney at Law, Olson, Cannon, Gormley & Desruisseaux:

The bulk of my legal practice has been representing brokers and real estate licensees. I am in support of this bill and the amendments to it. The statutes have to catch up with the practices in the real estate industry. This bill would clarify the principles of real estate for not only the brokers and licensees, but also for the attorneys and the judiciary. It also clarifies the duties of real estate

licensees in various situations. I have probably litigated or defended over 500 lawsuits, and I have yet to see a situation where an allegation was made that a licensee failed to present an offer. The industry has a standard to present an offer as soon as it is practicable.

In the example Mr. Jameson gave of the XYZ Company, if the listing agent gets an offer, he has a statutory obligation to present that offer to the seller, even though contractually he has agreed he will not be doing that. It is not his job. This bill will help protect the consumers, the real estate licensees, and the brokers.

I also have an amendment to S.B. 69 (R1) ([Exhibit G](#)). In Section 6, subsection 4 (c), I am requesting the addition of language that there is not a duty to "conduct an investigation of the condition of the property." Under NRS 645D, real estate licensees and brokers are not permitted to conduct property inspections. Home inspectors require a separate license. Too many lay people believe that a real estate licensee or broker knows how to inspect real property, and has an obligation to do an inspection. This language will further clarify the duties of the real estate licensees and brokers. Many realtors are sued for failing to conduct an inspection or an investigation of real property. I would be happy to answer any questions.

Chair Ocegueda:

Are there any questions on the testimony or the amendment? I also received an email from the bill's sponsor saying he agreed with this amendment. He also stated that the Real Estate Division and the realtors supported the amendment.

Assemblyman Manendo:

I received an email from a constituent in which he asks some questions. One question is a scenario where a broker acquires a waiver from the seller stipulating that the listing broker is no longer required to present all offers. It also says the buyer's broker is only required to send the offers to the listing broker. Would that satisfy the statutory requirement to present all offers? Additionally, does the buyer's broker have to present the offers to the listing broker? Is there anyone here who can address these questions?

Michael Stoberksi:

In my opinion, the buyer's broker needs to know whether he is able to send the offer to the listing agent. That is typically handled through the MLS. At the bottom of a MLS listing, it says go to the broker or go to the individual seller. If the MLS said the property is listed under an Assist-2-Sell, the buyer's broker would deal directly with the seller. The buyer's broker would send the offer to the seller, and not to the Assist-2-Sell listing agent.

Teresa McKee:

I will try to answer the questions in terms of what would happen if this piece of legislation passes. If the seller has signed a waiver of the duty to present all offers, the seller's agent no longer has that duty to give the seller offers. Under regulations, when the waiver is signed the agent also has to sign an authorization for the buyer's agent to contact the seller directly. There are two parts to the waiver. The buyer's agent must ask the listing agent for that authorization in writing. The seller's agent must provide that form, or he is in violation of regulation. This stipulation makes it clear to the buyer's agent that they can go directly to the seller.

It would also be a violation of the buyer's agent's duty to his own client to only provide that offer to a seller's agent when the buyer's agent knows the seller's agent is not going to give it to the seller. The waiver and the authorization will affirm for the buyer's agent that he is authorized to give the offer to the seller only. He does not have to go through the seller's agent. Mr. Manendo forwarded those questions from his constituent to us. The questions as they were written were very confusing, and the author also has some misunderstandings about how the waiver is going to work. Only the seller can issue the waiver to their agent, and once it is done there must also be the authorization for any other agent to contact that seller directly. This procedure would satisfy all the required duties under statute.

Chair Ocegüera:

Are there further questions? Is there anyone else wishing to testify in favor? Is there anyone wishing to testify from the opposition? Is there anyone wishing to speak from a neutral position? Seeing none, I am closing the hearing on S.B. 69 (R1).

[The meeting was adjourned at 1:57 p.m.]

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblyman John Ocegüera, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 20, 2007

Time of Meeting: 1:00 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
SB 20 (R1)	C	Jeanette Belz, Property Casualty Insurers Association of America	Testimony
SB 69 (R1)	D	Gail Anderson, Real Estate Division	Amendment
SB 69 (R1)	E	Teresa McKee, Nevada Association of Realtors	Waiver of Presentation of Offers
SB 69 (R1)	F	Teresa McKee, Nevada Association of Realtors	Article
SB 69 (R1)	G	Michael Stoberski, Attorney at Law	Amendment