

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

**Seventy-Fourth Session
February 12, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:37 p.m., on Monday, February 12, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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:

Mr. John Ocegüera, Chair
Mr. Marcus Conklin, Vice Chair
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry, Jr.
Ms. Barbara E. Buckley
Mr. Chad Christensen
Mrs. Heidi S. Gansert
Mr. William Horne
Mrs. Marilyn Kirkpatrick
Dr. Garn Mabey, M.D.
Mr. Mark Manendo
Mr. David R. Parks
Mr. James Settelmeyer

STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Patricia Blackburn, Committee Secretary
Gillis Colgan, Committee Assistant



OTHERS PRESENT:

Kathleen Delaney, Senior Deputy Attorney General, Bureau of Consumer Protection
Barry Gold, Director of Government Relations, American Association of Retired Persons, Nevada
James J. Jackson, representing Consumer Data Industry Association
Cindy Jones, Administrator, Employment Security, Nevada Department of Employment, Training and Rehabilitation
Robert A. Ostrovsky, representing Nevada Resort Association
Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
K. "Neena" Laxalt, representing Nevada State Board of Hearing Aid Specialists
Dr. Kathleen Vander Wall, Chair, Nevada State Board of Hearing Aid Specialists

The roll was called and a quorum was present.

Chair Ocegüera:

We will open the hearing on Assembly Bill 24.

Assembly Bill 24: Revises provisions governing the release of a consumer report by a credit reporting agency. (BDR 52-518)

Kathleen Delaney, Senior Deputy Attorney General with the Attorney General's Bureau of Consumer Protection:

It is a privilege to be here today on behalf of the Attorney General, Catherine Cortez Masto and the Consumer Advocate, Eric Witkoski, to introduce A.B. 24. Assembly Bill 24 is a simple bill. It seeks to amend *Nevada Revised Statutes* (NRS) 598C.320 to allow seniors to place or remove a security freeze on their credit report free of charge. As the statute currently stands, all persons, regardless of age, who are not victims of identity theft must pay between \$15 and \$20 to use this important identity theft tool. By way of comparison, only one other state imposes a higher fee for non-victims who wish to use the protection proactively, and three states currently charge no fee at all to obtain at least the initial security freeze. I have provided an exhibit entitled State Security Freeze Requirements and Fees ([Exhibit C](#)).

As this may be the first identity theft-related bill the Committee has had before it this session, some information regarding identity theft may be helpful to put this bill into context. Identity theft remains one of the fastest-growing financial

crimes, with nearly 10 million Americans falling victim each year. Study groups have found that the average identity theft victim spends 330 hours resolving the effects of the identity theft and between \$850 and \$1,200 in out-of-pocket expenses, exclusive of the actual losses occasioned by the identity theft itself.

It is also estimated that identity theft costs businesses billions of dollars annually in losses. Nevada, specifically and consistently, ranks at the top of the list of numbers of victims per capita. I have also provided an exhibit ([Exhibit D](#)) that is a report released last year by the Federal Trade Commission. The report is specific to Nevada and shows Nevada ranked second in victims per 100,000 units of population. The number of identity theft complaints by seniors in Nevada exceeds the national average by several percentage points.

The security freeze allows consumers to stop identity thieves from getting credit in their names. The security freeze locks, or freezes, the release of the consumer's credit report and credit score to credit grantors. Without this information, few, if any, businesses are likely to issue credit, thus giving consumers one of the strongest tools yet to prevent identity theft. Since security freeze legislation was implemented in Nevada last session, the number of states that provide this protection has increased from 11 to 26, and 16 more states are currently seeking to add this protection this year. In addition, the number of states that have exempted seniors specifically from paying the costs associated with the freeze has increased from one to six, and at least two more states are asking for such exemptions this year.

Finally, in order for the statute that was proposed originally to conform to other laws providing protections for seniors, the Attorney General's Office is seeking to amend the age for exemption from 62 years of age and older to persons 60 years of age and older ([Exhibit E](#)). This would match state laws concerning crimes against older persons, and it would conform to the federal Older Americans Act.

At this time, it would be my pleasure to answer any questions the Committee may have.

Assemblyman Conklin:

I am looking through your presentation and I am curious if you have any "hard" numbers on how many folks use this in Nevada and then, of those people, how many of them would fit under this bill?

Kathleen Delaney:

We have asked the Association that represents these agencies if that data is available at this time. There are some general statistics about the number of seniors who are victims of identity theft; we have been unable to obtain any specifics on how this would actually impact any agency's bottom line. If you look at the figures that were provided in the Federal Trade Commission Report ([Exhibit D](#)), you have approximately six percent nationwide, but nine percent in Nevada, of seniors over the age of 60 who are victims. Using that number, more than 3,000 victims in Nevada would be eligible to ask for the exemption. In terms of how many seniors have utilized this procedure, we do not have that statistic. Since the legislation became effective in October of 2005, it has been difficult for consumers to get access to at least the knowledge of how to use these programs. That information is now readily available on two of the three credit bureau websites. But, I think those numbers are going to continue to grow.

Chair Ocegueda:

Mr. Horne?

Assemblyman Horne:

I have two quick questions. First, were there any other jurisdictions that provided for this type of protection for others at risk? We know the rationale behind protecting seniors, but what about those who do not meet that age qualification, but are under the care of others? Is that provided already in the statute or other jurisdictions?

Kathleen Delaney:

We have not found any other jurisdictions that have sought to broaden the scope of the protection. With the exception of three states, it is available to everyone, at a charge. We have not found any other states that have sought to broaden the scope to include disabled persons or persons of need. I believe one state is seeking to amend to include the military. We have not seen that language. We felt strongly that the trend of exempting seniors was where we should start. One of the reasons why we did not go further with this bill at this time is that there is an effort to try to get some sort of uniform legislation on the federal level. We thought we would see it between last session and this one, but we have not. At this time, it does not look as if it is going to be coming anytime soon. We feel it was necessary to at least try to amend the bill to address this particular segment of the population, because they are not only particularly vulnerable, but they are also in the best position to take advantage of it, as well. We have been advised by many senior advocacy groups that seniors are less likely to use credit as often as other groups and, therefore, the

freeze would not be as much of a hindrance to them as it might be to others. To answer your question, we have not seen other legislation that broadens the scope beyond the senior exemption.

Assemblyman Horne:

I would like to see if we could look into the practicability of broadening the scope to those other persons who are at risk. That leads into my second question, which concerns children. I understand there is an increase in the number of people obtaining credit through the use of children's social security numbers. I suppose they would have to charge the parents if it were determined that someone was using their child's social security number and obtaining credit.

Kathleen Delaney:

Again, the ability to obtain the freeze is available to everyone. The issue is who could possibly be deterred if there was a cost involved with obtaining it, and who would benefit if the cost were removed. Again, the most likely group to enjoy that benefit at this time would be seniors. We do not have those statistics, but we are anticipating the Federal Trade Commission to release a more current report with the 2006 statistics. We have not seen that yet, but all of the trends show a growing number of identity theft cases as more people become aware of how to report it. If we want to make a freeze more available and free to everyone, which seems to be the trend, this would be a nice opportunity to increase the value of this protection. At this time, we are waiting to see what happens on the federal level. Knowing that there is a particular group that is vulnerable and could benefit, that being seniors, that is where we focused our attention.

Chair Oceguela:

Mr. Christensen?

Assemblyman Christensen:

My questions are a follow-up to my colleague's question. Is the \$15 to \$20 fee per agency, or does that cover all three?

Kathleen Delaney:

That is per agency. Because this is not a standardized protection available on the federal level, similar to a security alert, each agency is entitled to put together its own process for obtaining it, which is why there is some difficulty in understanding what that process is. Each agency is entitled to charge a fee up to the amount allowed by statute — currently \$15 for the first freeze and \$18 or \$20 to remove the freeze for a particular period of time or to a particular person.

Assemblyman Christensen:

Thank you. Since we are looking at those who are at the highest level of risk, are there other states that have extended this to everyone? Whenever there is an irregularity and a person wants to put a freeze on their credit, are they just able to do that as part of their state's statutes?

Kathleen Delaney:

The security freeze is available free of charge to all victims of identity theft. All statutes in all states are set up that way. If you actually have an irregularity or have been victimized by identity theft, it is free to you. This issue about the fees arises when you are talking about somebody wishing to use it proactively. Of the other states that currently have statutes that make this protection available, six of those exempt seniors from having to pay the associated fees. There are 16 additional states that are looking to add legislation, and at least half are trying to obtain a first freeze at no cost for everyone. Even if states have the first freeze available for free, (and there are currently three such states), approximately eight more states are seeking that option. They do have some minimal charge for the subsequent removal. The trend is clearly toward removing the fees for some groups and ultimately removing the fees altogether.

Assemblyman Christensen:

Thank you. That answered my question.

Chair Ocegueda:

Are there any further questions from the Committee? Are there other proponents of the bill?

Barry Gold, Director of Government Relations, American Association of Retired Persons, Nevada:

[Testified from prepared script ([Exhibit F](#))]. The American Association of Retired Persons (AARP) is a nonprofit, nonpartisan membership organization for people aged 50 and older. We provide information and education; advocate on legislative, consumer, and legal issues; and assist members to serve their communities.

On behalf of AARP Nevada's 307,000 members across the state, I appreciate the opportunity to testify on A.B. 24, which would give Nevada consumers 62 years of age and older the right to place a security freeze on their credit reports for free. We would like to thank the Attorney General for raising the issue of fees related to security freezes.

Identity theft is an important issue to AARP and its members. It is a serious crime that is both widespread and costly. People whose identities are stolen can spend months or years — and their hard-earned money — cleaning up the mess thieves made of their good name and credit record.

In addition, the almost daily news reports about data breaches and mishandling of consumers' personal identifying information demonstrate how important it is to safeguard the personal information that not only identifies us, but also provides entry to our most sensitive financial information.

That is why we believe that something needs to be done to protect consumers from the threat of identity theft. Clearly, those who hold our most sensitive personal and financial data need to be held to a high standard for maintaining, securing, and disposing of that data. We need to put in place stringent penalties for those who would steal and use that data; but, we should also enable all consumers to take proactive steps to protect themselves. That is where this security freeze comes in.

The prior testifier did a very good job describing the use of security freezes, so I will skip to the end of my testimony.

Privacy is of considerable concern to AARP members, and surveys that we have conducted across the country show that most do not believe that their personal information is being adequately protected. The AARP believes the security freeze to be the best form of identity theft protection that consumers currently have at their disposal to protect themselves from identity theft. Even though it is by no means a 100 percent guarantee of safety, it can provide some peace of mind for consumers. The security freeze also provides consumers a measure of control over their financial security that is not otherwise available.

We are grateful you have taken the time to consider this important issue and look forward to continuing to work with you to protect all Nevadans from identity theft.

Thank you for the opportunity to testify.

Chair Ocegueda:

Thank you, Mr. Gold. Ms. Buckley?

Assemblywoman Buckley:

I am having trouble seeing why we would further differentiate between victims and non-victims. If someone is using your credit you can put a security freeze

in place, free of charge. For example, you could have a senior who is very wealthy, or one who is very poor; you could have someone 50 years old who is either very wealthy or very poor. The system is working now, why would we want further changes?

Barry Gold:

I think we need to look at what Ms. Delaney had mentioned before, that Nevada has some of the highest fees for security freezes. The AARP would prefer that the fees be lowered for everyone to take advantage of that. Most states charge only \$10, either to initiate or to lift a freeze, whether it is temporarily or forever. In the meantime, for people who are having trouble and need to initiate this, this is an attempt to help them in that situation.

Assemblywoman Buckley:

Okay. Thank you.

Chair Ocegüera:

Are there further questions of Mr. Gold? I do not see any. Thank you for testifying.

Those wishing to speak against the bill, please approach the witness table.

James J. Jackson, representing Consumer Data Industry Association:

I will be very brief. [Distributed prepared testimony and memoranda ([Exhibit G](#))]. Ms. Delaney and I have had the opportunity to speak before today's hearing and I agree with many of the comments she made. My client and I disagree that there is a trend toward no cost freezes. That is something that has to be watched and certainly my clients and their member organizations are watching it very keenly. I would reiterate that any person who has been the victim of identity or credit theft, credit card theft, or anything affecting their credit has the ability to seek and obtain a freeze for free. The concern is that when this legislation was passed in 2005, it required these agencies and organizations to create a method by which freezes could be imposed. That has been done at the expense of the industry and the industry seeks only to recoup some of the cost for that having been done.

As a compromise that we suggested to the Attorney General's Office, and that I have set forth in my memorandum to the Committee, a reduced fee would seem appropriate so that there can be some recoupment of the cost. The other concern is that this bill would allow someone to freeze or unfreeze repeatedly, which creates not only havoc in the system, but havoc with the individual's credit as well. We would suggest that in addition to limiting or reducing the

fees as was suggested, that we also look at a limitation as to how many times this could be done.

Chair Oceguela:

Thank you. So in your opinion, is there some workable ground here?

James Jackson:

I believe there is. Ms. Delaney and I did not have the opportunity to speak until last Friday. I think we get along fairly well, and I am more than willing to work with the Attorney General's Office and this Committee.

Chair Oceguela:

Ms. Buckley?

Assemblywoman Buckley:

Mr. Jackson, from a chart that was given to us showing non-victims throughout the country, it appears that the Nevada charges are higher than any other state. Why do our consumers have to pay more than every other state's consumers?

James Jackson:

I cannot argue to what is set forth on the chart. Those were the amounts that were discussed, negotiated, and agreed upon in S.B. 80 of the 73rd Legislative Session. I don't recall why they are higher. Clearly, as the chart indicates, they are higher than some of the other states.

Assemblywoman Buckley:

Do you believe that your client would be willing to have us be consistent with the other states, especially since we are number two in identity theft rates?

James Jackson:

I hope you can appreciate the fact that I have not had that discussion with my client, but would be happy to do so. In the six sessions I have represented this client, I have never seen them unwilling to discuss and compromise and come to agreement.

Assemblywoman Buckley:

Thank you.

Chair Oceguela:

Mr. Horne?

Assemblyman Horne:

Your memorandum states that there were 220 Nevadans over the age of 65 who would fall into this exemption. Perhaps higher if we amended the bill to age 60. Is that a huge burden for this industry to absorb in the state of Nevada?

James Jackson:

That was the Federal Trade Commission Report. We are hoping for a new report to come out. Unfortunately, they used statistics down to age 64, and some of that is extrapolation of the data. In terms of the fees they are not able to charge, 220 times \$18 or \$20 does not seem like a lot of money. Remember, that does not capture the full cost of setting up and maintaining the system and then doing the freeze/unfreeze, as I have discussed. In reading the bill a second time, I was concerned that there was absolutely no limitation as to how many times a freeze or an unfreeze — or even a temporary unfreeze, if someone wants to go and make a major purchase — can be done. I do not think I can give you an exact number of what that cost would be, but it entails more than just the waiver of the fees.

Chair Ocegüera:

Are there further questions of Mr. Jackson by the Committee? I do not see any. Is there anyone else speaking? Mr. Jackson and Ms. Delaney, I hope you can get together and report back to Mr. Conklin in the Commerce and Labor office by next Friday.

Kathleen Delaney:

Yes, of course, whatever time schedule would work for the Committee, we will meet. I would like to clarify a few points, if I may. One thing to keep in mind about this is that the security freeze requirement has been in place for five years and it has grown. There are currently 26 states where people are paying for this protection. After five years, we should be approaching the point where costs have been recouped. I am not sure why we would be adding fees when we should be reducing fees. I am not sure if this is a drafting issue or an issue about what is appropriate. Obviously, we felt it was appropriate to begin to carve out those most vulnerable and most in need of protection from the fees and then go further if the federal legislation does not come through and help that. If the Committee is not willing to entertain the bill at this point, I am not sure if the amendment could go forth or if we should go back to the drawing board for the entire works. We will do whatever is necessary to get some common ground.

Chair Ocegüera:

Yes. We would like to have you come with a workable solution that you are both in agreement with. If that is not possible, we will certainly do that for you.

Kathleen Delaney:

Are we rescheduled for Friday?

Chair Ocegüera:

No. That will be when you report back to us. Report back to Mr. Conklin in the Commerce and Labor office so that I am aware of what direction we are taking, one way or the other.

Are there any others wishing to testify on A.B. 24? We will close the hearing on A.B. 24.

We will open the hearing on Assembly Bill 34.

**Assembly Bill 34: Revises provisions governing unemployment compensation.
(BDR 53-610)**

Cindy Jones, Administrator, Employment Security, Nevada Department of Employment, Training and Rehabilitation:

The intent of the bill is to harmonize several sections of NRS Chapter 612 with current practices by providing the Administrator with the authority to enter into interlocal agreements with other public agencies and to conduct appeal hearings on its behalf; and to align NRS Chapter 612, Section 551, with the intent of an amendment made to this section during the 1997 Session. Changes to NRS Chapter 612, Sections 490, 500 and 520, are requested in order to align statutory provisions with current practices and with an Attorney General's opinion issued in 1995 that clarified the Division's authority in regard to the employment of appeal referees. Amendments to this section do not change the appellant structure of the Unemployment Insurance System or eliminate any of the functions that are currently housed under the Board of Review. The bill only seeks to clarify the responsibilities of the Administrator in overseeing the appeals section, and to clarify the role of the Board of Review in that function; and to clarify that the current practice of the agency is for one appeal referee to hear an individual unemployment insurance case rather than the three-member panel that is envisioned in this Section. The section regarding a three-person appeal panel has been in place since 1951; however, it has never been implemented by the Agency.

Through an amendment to Section 490, the Division also seeks the authority to enter into interlocal agreements with other public agencies to hear appeal

hearings on its behalf. The purpose of doing so is to ensure both workers and employers who are aggrieved by the Agency's decision have the opportunity for a full, fair and timely hearing in the event where the demand for such hearings exceeds the capacity of the Agency's appeal section.

Lastly, the Division is requesting an amendment to NRS 612.551 to clarify language regarding the non-charging of an employer's experience record under the provisions applied to a last or next to last employer. Assembly Bill 279 of the 1997 Legislative Session sought to relieve an employer's experience rating if a person collecting unemployment benefits quit their last or next to last employer to accept other employment. However, the final language was not as concise as deemed necessary. As testimony on the bill revealed, the intended application was for that provision to apply to the last or next to last employer. The Agency did implement the provision based on legislative intent. Recent inquiries regarding the provision, and its application to only the last or next to last employer, were addressed through administrative regulations adopted in January of 2006. If the language in Section 612.551, particularly number 3, is applied without the interpretation that it pertains to the last or next to last employer, it could be considered not uniform with other provisions of Nevada's unemployment compensation law. Lack of uniformity within an individual state's unemployment compensation laws could raise potential conformity issues with the federal/state unemployment partnership, federal statutes, and regulations. Should Nevada be found to be not in conformance with federal requirements for unemployment insurance programs, the Federal Unemployment Tax Act credit offset enjoyed by Nevada employers could be jeopardized. This offset is currently valued at approximately \$432 million a year. I hope you will favorably consider this bill, and I would be happy to answer any questions.

Chair Oceguela:

Are there questions? Mr. Anderson?

Assemblyman Anderson:

Should I draw the conclusion that the Agency is out of compliance with NRS statutes as it currently stands?

Cindy Jones:

I do not believe we are out of compliance.

Assemblyman Anderson:

In your introductory statement, you mentioned the fact that the purpose of this bill is to bring us into compliance with your practice.

Cindy Jones:

Right, to harmonize with the current practices. Some of the provisions, for instance, in the appeals section were permissive as to a single person or a three-person appeals tribunal conducting appeals hearings. The Agency has always used a single person tribunal. We are just eliminating the provision of a three-person panel.

Assemblyman Anderson:

Which is correct, the regulation or the statute?

Cindy Jones:

I believe we are in compliance with statutes, some of it just was not as clear for the readers as it was to those who were implementing the statutes. We are just seeking clarity for the users of the statutes. There was some confusion in the reading and the interpretation of that.

Chair Oceguela:

Mr. Horne?

Assemblyman Horne:

Mr. Anderson already touched on my question.

Chair Oceguela:

Are there further questions from the Committee? Ms. Buckley.

Assemblywoman Buckley:

If you leave your current employer to take other employment or you are discharged, benefits must not be charged; and now it changes on page 4, line 14, to the last two employers. Does that adversely affect the employee in any manner?

Cindy Jones:

No, it does not affect an unemployment insurance claim in any way. All it does is affect the charging of benefits against an employer's experience rating for the purpose of establishing their unemployment insurance tax rate. The claimants are still entitled to benefits they would get whether this provision changes or not. The costs of those benefits are just socialized, rather than charged to an individual employer.

Assemblywoman Buckley:

Explain to me the rationale behind this bill, again. I still do not see it. What does "socialize" mean?

Cindy Jones:

Right now, the way the unemployment insurance tax rating works is that if someone collects unemployment insurance benefits, the employer who paid their wages during what is called the base period, would be charged for those benefits against their experience rating. It is like getting into an automobile accident and then it affects your insurance rate. What this bill does is clarify that if someone were to leave their last or next to last employer, for the purpose of accepting employment with another employer, that the first employer's experience rating would not be charged. An example is someone who worked for an employer during the base period and then quit, gained other employment and was subsequently laid off. Without this provision, the first employer's experience record would be the one charged, because the second employer was not a base period employer. It is an opportunity to relieve the employer of charges when they have no control over the situation.

Assemblywoman Buckley:

Okay. I will ponder that some more.

Chair Oceguera:

Mr. Conklin?

Assemblyman Conklin:

I want to go back to Mr. Anderson's question about Section 2. I understand it is not a current practice, but once we take it out of statute, it can never be a practice, if we are going to follow the statute. Is it wise to take it out of statute? Would there be sometime out in the future where this type of practice may be necessary for certain appeals? Or, is it just that we have had it in there for 20 years and it has never been used and never will be?

Cindy Jones:

That practice has never been implemented. That law has been in place since 1951, and it has always been a single appeal referee who hears that first level of appeal of a decision made by the Agency. If an aggrieved party is not satisfied with the results of a decision from the appeal referee, they have the opportunity to appeal to the next level, which is a three-member Board of Review that has been appointed by the Governor. At that level they have an opportunity to be heard by a three-member tribunal.

Chair Oceguera:

Dr. Mabey?

Assemblyman Mabey:

I need to go back to what Speaker Buckley brought up. Can you just give me a practical example? For instance, I am an employer, this employee of mine leaves and then goes to work for another employer and then becomes unemployed. What if this person has worked for the new employer for over a year? Where, as a first employer, do I come in?

Cindy Jones:

It depends on the length of the employment. The base period is the first four of the last five completed quarters. That is the most recent period of time that the Agency will have wage items on file for all workers in Nevada. If an employer had wages that were included in that base period calculation and they were the last or next to last employer, they would be charged for the cost of those benefits if the employee was found to be eligible for unemployment. In the example you gave, if you had employed someone during the entire base period, and they left to work for another employer and got laid off, it would be your rates that would be affected by the person collecting benefits because you were the employer for the entire base period. The second employer did not have wages during the base period. I know it is complex. By having this provision in place, when you receive a notice of determination that somebody has collected unemployment compensation against wages and taxes that you reported and paid in, you could present evidence that the person quit that employment and we would remove that from your experience rating. This could happen when it adversely impacts your tax rates.

Assemblyman Mabey:

Okay, to be sure I understand — I have been an employer for 15 years and one employee has used this unemployment benefit. What if I have a nurse who works for me for a year, and then quits? She goes to work for another doctor and does not like it, so she quits. So it is going to come out of my experience rating. But, could I appeal and say that she quit here, and so it should not come out of mine?

Cindy Jones:

Right. You would receive notification from the Agency that you were considered a base period employer and you have the opportunity to protest any charges being made against your experience rating.

Assemblyman Mabey:

Then, would you side with me? In other words, I had this one person who quit and then she found another job, but started taking unemployment benefits and then we found that to be the case, but then your Agency just kept paying her anyway.

Cindy Jones:

It does not affect whether someone is paid benefits; it is a separation from the last or next to last employer that determines whether someone is paid benefits. It is whether you are charged for the benefits paid that is at issue.

Chair Ocegueda:

Mr. Conklin?

Assemblyman Conklin:

I am just going to make some assumptions. Let us assume that we pass this bill in its current form. What we have done is extended out the process by which we do not add to the experience rating for certain people. Who is going to pay the bill, if we have not adjusted the employee who is no longer employed and is collecting unemployment? That rate has to go somewhere.

Cindy Jones:

It becomes a socialized cost, and all the rest of the employers end up paying on those. It becomes a socialized cost of the program. Instead of being attributable to any one individual's experience rating, it is attributable to everyone's.

Assemblywoman Buckley:

Going back to Section 5, what happens in a situation where someone leaves their employer during the base period to get a better job, and they leave for a good reason, then they are laid off from the second job. In this example, the employer from the second job is contesting it (because you only get unemployment if you are laid off or you are not fired for willful misconduct or other reasons), saying that it was willful misconduct. If the employee is contesting it, saying it was just negligence, he could not do the job; does the previous employer during the base period, under this change, get to jump into the case because their experience rating is at issue? Or does it just become the second employer?

Cindy Jones:

Are you talking about the charging of the experience rating or the determination if someone is eligible for unemployment insurance?

Assemblywoman Buckley:

Both.

Cindy Jones:

They are separate and distinct. In looking to see if someone is eligible for unemployment insurance, we look at the reasons for separation from the last employer and the next to last employer, if the term with the last employer was less than 16 weeks. It has to be determined that a person is unemployed through no fault of their own. They either quit with good cause or were discharged for issues that were beyond their control or were laid off. When it comes to the experience rating, it is separate and apart from determining if somebody is eligible for unemployment insurance. It is only to determine whose rates are affected by the various separations. Right now, if you are a base period employer and you have paid over 75 percent of the wages during the base period, you are charged with the full amount of the benefits against your experience rating. If no one employer is more than 75 percent of the base period, all employers who paid into the base period wages are charged a proportionate share. With this provision, applying only to the last or next to last employer, if someone were to quit to seek other employment, then those charges for that particular employer would just be socialized into the costs of the program.

Assemblywoman Buckley:

Thank you.

Chair Ocegueda:

Mrs. Gansert?

Assemblywoman Gansert:

I have a couple of questions. What is the percentage of cases that go through the first referee and then end up with the three-person tribunal?

Cindy Jones:

I could provide those to you later.

Assemblywoman Gansert:

In trying to find the base year, it sounded as if you would have to work for an employer for five quarters, because you said the first four of the last five — does that mean you have to work for five quarters to release any prior employer at this time?

Cindy Jones:

You do not have to work for an employer for that period of time, that is just the snapshot of time of wages that we look at in determining someone's monetary eligibility— how much in benefits they would be entitled to and who those benefits would be charged to. It would take five quarters before an employer

fell off the base period, that is, before they would no longer be subject to any potential unemployment claims against those wages.

Assemblywoman Gansert:

In your proposed changes, do you now want to eliminate that prior employer, so as soon as you work for someone else, the base year starts to be re-established and the prior employer is off?

Cindy Jones:

This provision does not have any impact on how the base period is calculated or which employers are in there. It just allows the opportunity for employers to assess their experience rating and be relieved of charges should someone have left employment with them to accept other employment.

Assemblywoman Gansert:

Is that for any period of time?

Cindy Jones:

Yes, for any period of time.

Chair Ocegueda:

Are there further questions? I do not see any. Thank you. Are their other proponents of A.B. 34 wishing to speak? Are there any opponents of A.B. 34?

Robert Ostrovsky, representing Nevada Resort Association:

I am speaking in opposition, because I signed in that way as I was as confused as the Committee when I first read this bill. I did meet with the Division just prior to this hearing and have a better understanding of what this bill actually does. I was under the misconception that this bill was attempting to eliminate what I call the "third level of review," a panel made up of labor and management that makes the final determination, short of District Court, regarding whether an individual should receive benefits or not. That has been in place since the 1960s or maybe prior to that, where labor, management, and a third party, a public member, have made final decisions about cases that go to appeal. I have been assured by the Division that this bill does not do that, that this bill really was an attempt to remove from the statute language that was permissive and that the Division had never used. Based on that, I do not have an issue as long as the existing third level of review remains the same. It is an appeals board, not a tribunal.

Second of all, in Section 2 concerning interlocal agreements, it was explained to me by the Division that the issue arose after the unfortunate events of 9/11 when the Division had been overwhelmed with unemployment claims. It took

them a long period of time, beyond 12 months, to be able to clean out and resolve all of those issues. They are, I was told, just preparing for the future, in case anything like that ever happened again. This section would allow them to make an agreement to handle unemployment claims. They most likely would make such agreements with the Department of Administration, which is run by Bryan Nix, who has hearings and appeals officers available to hear these claims. There would be the clear understanding that those individuals would then have the right to go to the appeals board, which is the last and final review prior to court.

Lastly, on the issue of next to the last employer, it is my belief after talking to the Division, the intent here is not to change anything in the way of existing practices. The Division believed that this was always the way it should operate, and has been operating in that manner, and that this language would then conform to the method currently being used. If someone files for unemployment compensation, notice is sent both to the prior employer and the next to last employer, so that the next to last employer could object to the charges, not to the reasons for which the person was applying for benefits — which would be for the last employer — but the separate issue of who would be charged. We think that has worked very effectively, because if I have employed Assemblyman Mabey's nurse for two years and she leaves for a better job, and after one month that employer decides to lay off that employee, why should I, who had the job available, be charged for that individual's unfortunate incident of being laid off? The purpose of this language, and it has been the practice of the Division for a long time, is to socialize or spread the cost of that claim against all employers. For most employers, the spread of the cost is very small relative to the total volume of what you pay into Unemployment Compensation.

With the understanding that it does not affect the final appeals board, we now withdraw any objection we had to this bill.

Chair Ocegüera:

Are there any questions of Mr. Ostrovsky? Brenda, do you think that this is the case, that we are not waiving the appeal panel?

Brenda Erdoes:

I do think that is the case, although I think that you would have to be very careful with the language if you are going to change it.

Let me just clarify. I think the point is that the review panel could always have more than the one hearing officer, if they chose. I do not think it is very likely, based on the Division coming to us and saying that they are not using more

than one hearing officer. I do not think they would lose that statutory requirement with this bill.

Cindy Jones:

Mr. Chairman, the three-member Board of Review panel is established under NRS 612.305 and is not affected by the proposed statutes. It only affects the appeals tribunal under NRS 612.490. The way unemployment works, a decision is made at the Agency level, and if someone is aggrieved of the decision they can appeal to the appeal referee; if they are aggrieved of that decision, they can appeal to the Board of Review, and after that it is District Court and the Supreme Court. It does not have any impact on the Board of Review.

Chair Ocegüera:

Okay. Mr. Thompson?

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

We, like the industry, were confused by this bill, fearing that it impacted the Board of Review. We have had the same representative on the Board of Review since 1969 and he is still there. This is an entity that has worked very well for management and labor, and our only objection to the bill was that it would negatively impact the Board of Review. I think it is clear that it does not, and if there needs to be something to spell that out, we are in favor of that, as well.

Chair Ocegüera:

Are there any questions of Mr. Thompson? Are there others wishing to speak on A.B. 34? Not seeing any, I will close the hearing on A.B. 34.

We will open the hearing on Assembly Bill 35.

Assembly Bill 35: Reduces the period during which a license issued by the Board of Hearing Aid Specialists may be renewed without an examination. (BDR 54-611)

Neena Laxalt, representing Board of Hearing Aid Specialists:

At the witness table with me is Dr. Kathleen Vander Wall, who is the chairman of the Board of Hearing Aid Specialists. [Distributed prepared information about A.B. 35 ([Exhibit H](#)).] Assembly Bill 35 requires licensees to be re-examined in order to reinstate their license if they have let their licenses expire from one to five years. We can compare it to a driver's license. You can go in every year and have it annually updated, you pay the fees. If you do not take care of that on a yearly basis, next time you come in, you have to go through the

examination process. This is a comparison as to how this bill would affect licensees who have let their licenses lapse.

Chair Ocegueda:

Ms. Laxalt, you deal with a lot of these boards, is this consistent with other boards?

Neena Laxalt:

I have not had this issue come up before. I would think that if they let their license lapse, they should be required to at least show they had kept abreast of the new technology by continuing education, not only for that one current year, but all along.

Chair Ocegueda:

Mr. Ziegler, could you do a little research on that and see if we are consistent with other boards?

Assemblyman Arberry:

You mentioned continued education, what is normal — three hours, two hours?

Neena Laxalt:

Currently, there are two different statuses; one is an active status and one is an inactive status. To renew your license on an annual basis, you pay the fee and show proof of taking 12 hours of continuing education per year. This bill is for people who have not paid their fees. They have let their licenses lapse. Currently, they have up to five years to reinstate that license. The problem is the way that they reinstate their license now is not by testing at all, they only have to take continuing education and pay that current year's fees.

Assemblyman Arberry:

They would just have to pay the fee and take 12 hours of continuing education?

Neena Laxalt:

For that year.

Assemblyman Arberry:

For that year.

Neena Laxalt:

So the entire four years that they may have let their license lapse, they had to do nothing. They apply for reinstatement and pay one year's fees, whereas everyone else has been paying all along and taking continuing education all along. These people can let it lapse for up to five years and then come back,

reinstate, and let it lapse again. So, they are finding a loophole where they only have to come back in and pay every five years.

Assemblyman Arberry:

Okay, so we are going after the deadbeats.

Assemblywoman Gansert:

As far as the catch-up on the continuing education, is it 12 units per year, so that if they were out four years it would be 48 hours, or is it just the 12?

Neena Laxalt:

It is just the 12. That is the problem and that is why we are asking that they take continuing education for the 12 hours every year.

Chair Ocegüera:

Ms. Laxalt, would you like your resident expert to speak, as well? Mr. Horne?

Assemblyman Horne:

Just so I understand. If they allow their license to lapse, currently they come back, pay their fee for that year, and just do their 12 hours of continuing education.

Neena Laxalt:

For that one year.

Dr. Kathleen Vander Wall, Chair, Nevada State Board of Hearing Aid Specialists:

In addition to paying a lapse fee, which is \$100, they would pay the current year's fees and provide proof of 12 continuing education hours that were obtained within that last calendar year. The calendar year goes from July 1 through June 30.

Assemblyman Horne:

And, you would have them retest again as opposed to taking continuing education units?

Dr. Kathleen Vander Wall:

No, that is the loophole. If they went beyond the five years, they would be retested.

Assemblyman Horne:

Why not just provide that if you wanted to reinstate, you pay your missed four years of fees? For instance, if I do not pay my bar association dues, they will

not make me take my bar examination again. It sounds like that is what you are asking to be done.

Dr. Kathleen Vander Wall:

I would explain it somewhere between a driver's license and your bar exam. Because of the hearing aid technology continually changing on an annual basis, it would be requested that they do take the test all over again.

Assemblyman Horne:

Could that be covered with continuing education?

Dr. Kathleen Vander Wall:

For that one year, that might be short of what is appropriate for reinstatement of a license.

Chair Ocegüera:

Are there further questions from the Committee?

Assemblyman Arberry:

The Governor has made the statement that he would not sign any increase of fees. Would he sign this?

Neena Laxalt:

This bill does not increase fees.

Assemblywoman Gansert:

What are the educational requirements to become a hearing aid specialist? I do not know what the educational requirements are in Nevada.

Dr. Kathleen Vander Wall:

A hearing aid specialist has to have a bachelor's degree, in any field at all. They have to pass the national exam for a hearing aid instruments specialist, with a specialized training course. They then have to be in a supervised apprenticeship where all of their activities are directly supervised for one year, and they need letters of recommendation from past employers and from two people to whom they are not related. This is analyzed at a board meeting, and then it is determined that they are able to sit for the exam. The examination involves a written portion and a practical portion. This examination has been purchased from the Hearing Aid Specialist group in Michigan. It is a national standardized exam.

Or, to be a hearing aid specialist, you can be an audiologist, with either a master's or doctorate level degree. You can obtain the certificate of clinical competence, which is the national exam, to be able to sit for the state examination. Once you can prove that you do have your certification of clinical competence, you are able to take the test.

Assemblywoman Gansert:

My spouse is an emergency room physician and he has to take an exam every ten years and get re-credentialed. Do audiologists have to pass an exam other than the first time? Do they get re-credentialed at all?

Dr. Kathleen Vander Wall:

As an audiologist, you have to take 15 continuing education credits every year, sanctioned by your referee group. You either have to be passed by the American Speech, Language and Hearing Association or by the Academy of Audiology. So they are very difficult, rigorous types of courses that you have to take. That is all we have to do, we do not have to re-certify.

Chair Oceguera:

Mr. Anderson?

Assemblyman Anderson:

It is the next bill that I have a question about.

Chair Oceguera:

Are there any further questions from the Committee? Are there others wishing to testify? Seeing none, I will close the hearing on A.B. 35.

We will open the hearing on Assembly Bill 36.

Assembly Bill 36: Increases the maximum allowable amount of certain fees charged by the Board of Hearing Aid Specialists. (BDR 54-612)

Neena Laxalt:

[Distributed prepared testimony ([Exhibit I](#))] Before you is Assembly Bill 36 that increases the maximum allowable amount of certain fees charged by the Board of Hearing Aid Specialists. You can see the scratched-out portion of the draft that displays the current maximum allowed to be charged. These maximum amounts were last put into statute in 1995 and the Board did not reach those maximum amounts until 2001, some 12 years after these amounts were placed in statute. They are now asking that those maximum amounts be increased.

The Board has no money to take care of any investigations that currently take place. They have been relying on their own staff. They have one staff person who handles it. They would like these fees increased in order to take care of some of these investigations. I did ask whether this bill went by the Governor's Office. The BDR did go through the Governor's office for BDR approval and was accepted and forwarded on.

Assemblyman Arberry:

So, the Governor will pass this bill and not veto it if it goes over to him?

Neena Laxalt:

Again, according to the staff at the Board, they did submit this BDR as all boards are required to do and it was accepted and then the bill draft was forwarded to the Legislative Counsel Bureau (LCB).

Chair Ocegüera:

Mr. Anderson?

Assemblyman Anderson:

I want to make sure I am drawing the right conclusions. In the previous bill, it would appear that there would be a decrease in amounts received, because you will be charging \$100 per year. Then, you are going to go to a flat reinstatement fee of \$100, before it was for one year.

Perhaps Ms. Erdoes could clear this up for me. When I look at Section 3 in the previous bill, I see that it becomes effective on July 1, 2007. On this bill, it will become effective upon passage and approval. If both of these bills pass, what would be the effective dates?

Neena Laxalt:

I believe that is a drafting decision and not a decision by the Board.

Assemblyman Anderson:

And that is why I am asking.

Brenda Erdoes:

Mr. Anderson, I believe this would fall under those new provisions that you put into NRS Chapter 220 in 2003, that say these would be read including all the changes so we do not resolve the conflicts based on what passes earlier or later, as we used to do. We would be codifying this so that it did not change back on July 1, although I do understand why it would look like that. Because of the way we stack the bills and resolve those conflicts, under Chapter 220, I

do not believe that would occur, and I can tell you that the way we would codify it is that those fees would not go back.

Assemblyman Mabey:

It seems like an annual license fee of up to \$500 is very excessive. I know you do not want to come back every year. I do not know what the salary of one of these persons is, but an annual fee of up to \$500 seems too high.

Dr. Kathleen Vander Wall:

The amount of \$500 is a maximum fee. We have not had any of these fees raised. We are currently running on our maximums as of November 2001. Just because that amount is there does not mean that is the amount we are going to automatically make the fee. It has been very difficult for us to try to have any raised fees approved, so we are looking at a long term.

Chair Ocegüera:

Are there further questions from the Committee? Mrs. Kirkpatrick?

Assemblywoman Kirkpatrick:

I have two questions. One, are these fees consistent throughout the United States, and two, how many potential people would be affected by these fees?

Dr. Kathleen Vander Wall:

We currently have 95 people who are licensed in the State of Nevada. The fees are not consistent throughout the United States, because there are several states that do not even require licensure.

Chair Oceguela:

Are there further questions from the Committee? Are there other testifiers on A.B. 36? Seeing none, we will close the hearing on A.B. 36.

Is there other business to come before this Committee?

The meeting was adjourned at 2:49 p.m.

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblyman John Oceguela, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 12, 2007

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Sign-In sheets
A.B. 24	C	Kathleen Delaney, Attorney General's Office	State Security Freeze Requirements and Fees
A.B. 24	D	Kathleen Delaney, Attorney General's Office	Identity Theft Victim Complaint Data
A.B. 24	E	Kathleen Delaney, Attorney General's Office	Proposed Amendment to A.B. 24
A.B. 24	F	Barry Gold, AARP Nevada	Prepared Testimony.
A.B. 24	G	James Jackson for CDIA	Memorandum.
A.B. 35	H	Neena Laxalt, Board of Hearing Aid Specialists	Memorandum.
A.B. 36	I	Neena Laxalt, Board of Hearing Aid Specialists	Memorandum.