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

Seventy-Fourth Session
February 19, 2007

The Committee on Commerce and Labor was called to order by Chair John Oceguera at 1:33 p.m., on Monday, February 19, 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 Oceguera, 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:

Valerie Rosalin, RN, Director, Governor's Office of Consumer Health Assistance
Steven Kondrup, Acting Commissioner, Financial Institutions
David Stone, Nevada Association Services
Marel Giolito, Nevada Collectors Association
John Wanderer, Attorney, Wanderer Law Office, P.C.
K. Neena Laxalt, representing Board of Hearing Aid Specialists

The roll was called and a quorum was present.

Chair Oceguera:
I would like to remind the members of the audience of adopted Standing Rule number 19. You will notice it posted at both doors. It says "Please respect the privacy of the Committee members and staff. You may only approach the dais if a Committee member or staff requests your presence." I am going to start enforcing strict compliance with that rule. It is difficult to have a private conversation with someone standing over you. If you need to speak to one of the legislators, I would appreciate it if you would do that outside of the Committee room unless it is a dire emergency and the member calls you up.

We will open the hearing on **Assembly Bill 88**.

Assembly Bill 88: Revises provisions governing the collection of debts by collection agencies. (BDR 54-630)

Chair Oceguera:
Who will be speaking in favor of this bill?

Valerie Rosalin, RN, Director, Governor's Office of Consumer Health Assistance:
Assembly Bill 88 revises provisions governing the collection of debt by collection agencies. [Spoke from prepared testimony, (Exhibit C)] This bill is written in the same language as the Federal Regulation on Collection Agencies. It places the Nevada Statutes in compliance. The need to include this language in the Nevada Statutes resulted from receiving numerous complaints from consumers regarding the manner in which collection agencies have conducted their business.

Some collection agencies use threatening letters on an attorney's letterhead and do not include the information needed to identify the debt.

This bill would not only protect those that have medical debt, but would also protect the general public as well as the collection agency. We do not promote all debt being written off. We are requesting that the collection agency validate the debt and the consumer be given the opportunity to pay it back.

I have included in your packet (Exhibit D), examples of the letters we have received with the attorney's letterhead that did not include the date of service or the date of debt. We have also included case examples (Exhibit E).

Chair Oceguera:
Ms. Rosalin, I do not believe we have that information. Did you provide it in Las Vegas?

Valerie Rosalin:
We sent it by mail the middle of last week.

Chair Oceguera:
I have four of my committee secretaries shaking their heads. Is that something that you have available with you today that could be faxed to us?

Valerie Rosalin:
Yes, I will have it faxed to you.

Chair Oceguera:
Please give it to the staff there in Las Vegas. We will make copies when it is received and distribute it to the Committee members.

Valerie Rosalin:
In the packet, there is a copy of the federal law (Exhibit F), and the language that was adopted into A.B. 88, almost mimics it completely.

Chair Oceguera:
For now you will have to be descriptive because we do not have it in front of us. Please walk us through it.

Valerie Rosalin:
One of the examples is a letter we have received from an attorney. The letter states the law office name and the amount due. The original creditor shown is the collection agency. It does not say whom it is from. It does not list the date of service. This makes the consumer quite upset because they do not know where the debt originated. We have had a few of those, but we have also had copies from collection agencies that do not show the date of service nor the original creditor.

A large amount of the complaints originated from the University Medical Center (UMC) sale of bad debt. Along with the Financial Institution Division, we have provided public service announcements.

Steven Kondrup, Acting Commissioner of Nevada Division of Financial Institutions:
I was involved with the situation, along with the Director, in regards to what took place here in Las Vegas with the selling of bad debt from one of the local hospitals. In fact, it was UMC. The amount of complaints we were receiving on a daily basis was averaging from 12 to 15. Once the debt was sold from UMC to a company that purchased it, it was no longer a debt of UMC, but a debt of the individual company that bought it. They contracted with a local collection agency to attempt to collect the debt that was purchased by this company. Part of the problem was that some of the debt was very old, in fact, eight or nine years old. The statute of limitations should have applied here, and the debt that the company sold should not have been attempted to be collected by the collection agency. (Exhibit G)

The letters the consumers were receiving from this collection agency, as the Director indicated, made threatening comments to the consumer. From the complaints we received in our office, phone calls were made to individuals in an attempt to collect the debt. Threats were made concerning their property, credit reports, and other things. The information on the debt was not actually verified prior to the sale of the debt. Some of the debt was in reference to Medicare payments and other co-payments that should have been in place. What the Director has done with this bill is an attempt to try to protect the consumers in the State of Nevada so that before they acknowledge they owe a debt, they will be given sufficient information to provide them with the necessary documentation to ascertain that they do, in fact, owe it.

In some cases, due to the time frame of eight or nine years, the consumers did not realize that the debt had not been paid by an insurer. The information was not available to the consumer to verify the debt.

Chair Oceguera:
Are there any questions from the Committee? We are in the process of receiving your fax at this time.

Assemblyman Horne:
I need to clarify that this bill's purpose is to bring the statute in line with the federal statute. Is that my understanding?

Valerie Rosalin:
Yes, it does mimic the federal law. It just identifies the process in which a collection agency is to provide certain information to the debtor. A copy of the federal law was faxed to you.

Assemblyman Horne:
When you say "mimic" that tells me that it is not identical. What differences exist here that are not in the federal statute?

Valerie Rosalin:
The language is exactly the same as the federal.

Chair Oceguera:
Dr. Mabey?

Assemblyman Mabey:
Would this bill only apply to collection agencies and not to a business? In other words, if a business wanted to collect on their debt, this bill would not apply to them. Is that correct?

Valerie Rosalin:
This would be under the jurisdiction of the Financial Institutions Division, which is over collection agencies.

Chair Oceguera:
Are there further questions? We have received two pages, Ms. Rosalin, of your faxed documents. How many other pages should we be expecting? [No response.]

Mr. Settelmeyer?

Assemblyman Settelmeyer:
Do you think five days is a substantial enough time frame? For instance, if you had a three-day weekend, and someone called on Friday, are you saying by Tuesday you would have to serve notice to them? Or, is it five business days?

Steven Kondrup:
The Fair Debt Collection Practices Act (FDCPA) requires that if an individual disputes the debt, they have a certain amount of time to write a letter to the collection agency requesting the documentation to prove the debt. This bill would require the 30 days, but it also says that within five days after the initial communication with the debtor, they are required to send that information, if they have it.

Assemblyman Settelmeyer:
Would that be calendar days or business days?

Steven Kondrup:
That would be business days. I would recommend business days.

Assemblyman Settelmeyer:
I do not read this bill that way.

Chair Oceguera:
Ms. Erdoes, would that be five business days? Is that standard in statute? Does it have to be defined specifically?

Brenda Erdoes:
It does not have to be defined specifically, but there would be some ambiguity if you do not have it in there. There is a provision about notice, but I do not think it would apply here to make that clear.

Chair Oceguera:
Are there further questions from the Committee? Mr. Parks?

Assemblyman Parks:
I am somewhat confused, in that I am one of those individuals who has received repeated phone calls from a debt collector seeking somewhere in the range of $20 for, apparently, a bill that I was never sent in the beginning. After several conversations (and every time you start a conversation, it is a totally new conversation with the debt collector), I was able to find out that it was a UMC bill. UMC had sent it to the insurance company, but had never billed me for the co-pay.

They continue to call, but they have not yet sent me anything in the form of documentation to prove I owe that debt. So, I am a little confused, as to whether or not it is their requirement under current law that they send documentation to prove I have an outstanding debt?

Steven Kondrup:
They are required, once you dispute the debt, to provide you with the proof that you requested.

Assemblyman Parks:
I am still waiting for that. I have been getting phone messages for weeks and weeks. As I said, every time I call, it is a new person and they have absolutely no recollection of any previous conversations.

Steven Kondrup:
I will send you an email with my address. If you will provide me with the information, I will research that for you.

Chair Oceguera:
Part of the problem with us hearing your testimony in Las Vegas, is that it appears that both microphones are on. If you could just use one microphone at a time, it might help us to hear you.

So, Ms. Rosalin, now that we have copies of your exhibits, is there anything that you want to go over specifically, so that we can correlate what you sent us and what you were talking about?

Valerie Rosalin:
The examples are only part of what we received, especially through the UMC billing issues. Assemblyman Parks is giving an example of his own, but that illustrates the issue that we have found. The sale of bad debt goes back some 20 years. Between 12 and 20 percent of the complaints we received were people who were insured, either privately, with managed care, or with Medicaid that had to be written off. There were threats for money when the consumer was contacted by telephone, and if they were elderly, they were told that they had to send $20 to start the statute of limitations. We want to be sure that the information follows the federal rule. Here in the State of Nevada, the collections agencies abide by those rules that state the potential debtor is given the information regarding the time, date, and to whom the debt is owed. I realize that it is under the jurisdiction of the Financial Institutions Division; our office just wanted to be sure that those rules were followed.

Chair Oceguera:
Thank you, Ms. Rosalin. I am reading your letter and would like you to give me some idea of numbers. Your letter states we have received "numerous" complaints from consumers. Numerous to you means . . .?

Valerie Rosalin:
Numerous means that we have had over 100 cases that fell under the Bureau for Hospital Patients. We actually had about 43 percent of our caseload, which

is about 4,000 cases, fall under the Bureau for Hospital Patients, and of those, 12 to 20 percent were for collection of bills.

Chair Oceguera:
Are there further questions from the Committee? I do not see any. Thank you for coming and testifying today. Are there any others wishing to testify in favor of A.B. 88? I see Mr. Wanderer on the list; it does say he is in favor of this bill.

We will move to those opposed to the bill.

David Stone, Collection Agency owner from Las Vegas, Nevada:
I am an owner of a collection agency here in Las Vegas. While I am certainly sympathetic and understand the situation with the fallout with UMC, I am opposed to A.B. 88. As it stands now, collection agencies in our state are subject to a great deal of scrutiny by the Financial Institutions Division. We are required to comply with yearly audits within our office, review of our forms, discussions of pending litigation, and so forth. There is also a complaint process in place through the Financial Institutions Division whereby consumers who feel they have been treated inappropriately or illegally, have an avenue to file complaints against collection agencies.

As a collection agency, we are bound by the Federal Fair Debt Collection Practices Act (FDCPA). Since its enactment, there have been thousands and thousands of lawsuits, against agencies by consumers, which have paved the way for defining and clarifying many aspects of an otherwise hazy FDCPA. Incorporating the FDCPA into the state statute is not going to accomplish what the Director is trying to accomplish.

Under A.B. 88, I think the term used by the Director was "mimic." The proposal of the FDCPA within A.B. 88 does a great job of mimicking the federal statute, but as Assemblyman Horne correctly referred to it, that is all it does: "mimic." It is not an exact carbon copy of the FDCPA. There are areas open for interpretation; do we follow the state law or the federal law; which is more restrictive; which one is not; and this could open up a floodgate of potential state litigation and higher costs to the consumers. For example, under the FDCPA the term "debtor" is often used. Under A.B. 88, the terms "debtor" and "consumer" are often interchanged. Assembly Bill 88 requires a certain disclosure in the initial communication unless the debtor has paid the debt.

Under the Federal Fair Debt Collection Practices Act, you are required to give certain disclosures, unless the information has been provided in the initial communication. That is a huge difference between the FDCPA and what is

proposed in A.B. 88. Assembly Bill 88 refers to collection agencies. Under the FDCPA the collection agency will assume the debt is valid. Those are two very different words with different meanings.

As it stands now, the collection agencies in this State are highly regulated. We are governed not only by the State; but also by the Fair Debt Collection Practices Act, and the Federal Trade Commission, which has jurisdiction over collections agencies. We have a lot of entities, including the State, looking down on us, and an integration of a "mimicked" FDCPA is not going to achieve what this bill is trying to achieve. Thank you.

Chair Oceguera:
Thank you, Mr. Stone. Are there any questions for Mr. Stone? Mr. Horne?

Assemblyman Horne:
If we were to adopt FDCPA in its entirety, an exact carbon copy as you stated, would that be more favorable?

David Stone:
Favorable to whom? Certainly not favorable to the consumer, because the consumer is already afforded considerable protections through federal law. They are also afforded a number of protections through the State and the Financial Institutions Division. We can certainly incorporate the FDCPA by reference; however, that is not going to address the situations that are a result of the UMC fallout.

Assemblyman Horne:
I am confused, Mr. Stone. You say that it will not address the problems that occurred with the UMC situation, and you do not think the adoption of it in its entirety will help, but you say that you already have the regulations in place. But, those are, obviously, not helping either. I have heard you point out some of the inconsistencies with A.B. 88 and the federal standard, but what I am uncertain about is, would A.B. 88 or the FDCPA be better, if we wish to fix a problem that has been made apparent to us?

David Stone:
I believe that the issue has to do with clarity as to who the original creditor is. This is based on the testimony I have heard this afternoon. In addition to the statute of limitations on collecting those debts, that seems to be the crux of the problem. These two small issues can certainly be addressed through line item changes within NRS 649. The FDCPA does not address a statute of limitation with respect to what period of time a debt collector would have to safely pursue a debt. The statute of limitations with respect to that is not outlined in the

FDCPA. It would be beneficial to pinpoint the problems that have resulted from the UMC fallout, and address those on a case by case basis through legislation, which is easily done. I do not believe that simply incorporating the federal law will address those problems.

Chair Oceguera:
Are there further questions from the Committee? I do not see any. Thank you, Mr. Stone, I appreciate your testimony. Are there others wishing to testify against A.B. 88?

Marel Giolito, President and CEO of Credit Bureau Central:
We have been in business since 1928. Mr. Stone and I are also members of the Nevada Collectors Association, which is the state unit of American Creditors and Collectors International. We are very consumer oriented in our businesses. I also have a great deal of experience in fair credit reporting. Several years ago some changes were made to the Fair Credit Reporting Act (FCRA). For instance, it says that if a consumer is disputing an item, it needs to be in writing and they need to be specific and provide documentation. That would tell the creditor or the collection agency what is needed. However, that was the Fair Credit Reporting Act, and it has not been translated into the Fair Debt Collection Practices Act. Nevada collectors have a problem with A.B. 88 in that it restates only a portion of the Fair Debt Collection Practices Act. It also takes the liberty of changing some words, leaving some things out, and putting some others in. The entire act is not reproduced. When I took my collection agency manager's license test several years ago, it addressed NRS 649 and the Administrative Code that makes the rules for that act, but, it also addressed provisions in the FDCPA. If a consumer contacts my office and says they do not wish to apply money to a specific account, that they want it to go to another account, I know I need to do that. This provision is not specifically itemized in NRS 649.

A validation statement is sent to a consumer by the debt collector. That statement says that if they dispute any part of the debt, they need to contact us and we will then send them the name of the creditor, information on the judgment, and other relevant information. That statement says they may contact us. It does not say you must contact us in writing.

What I am trying to explain here are the differences in interpretations, not only in state law and federal law, but also what the industry says as a whole. In our validation letter we cannot state that you can only get this information in writing. A.B. 88 specifically states, "in writing." What is the debt collector to do? We get hundreds of telephone calls over a period of time asking us to send proof of the debt. We do. We do not demand that it is in writing. We do not

demand that the consumer be specific or send documentation. We do not, because we cannot. That is an FCRA issue and not an FDCPA issue.

We are saying that if the FDCPA wishes to be addressed, and it has been addressed, that it somehow be mentioned in A.B. 88, but not partially reproduced or have any of the language within that law be changed, because that creates confusion amongst the consumer, the collection agency, and the regulators.

The unfortunate situation with the UMC sale of medical debt has happened. Possibly, it was not handled properly. On the other hand, those consumers have legal options that are very well defined in federal court. If a collection agency sends a letter, and it does not have certain information in it, or if it is abusive to the consumer or not in compliance with the law, that consumer has a very broad range of legal options.

Chair Oceguera:
Mrs. Kirkpatrick?

Assemblywoman Kirkpatrick:
When you receive a bill from a collection agency, it only gives you a balance. Are you telling me that your collection agency would set a higher standard? Do you justify that balance so that the consumer does not have to ask for justification? If someone sent me a bill of $6,000 I would want to see where they came up with that amount. I believe that is what this bill is asking. Are you saying that it is not necessary?

Marel Giolito:
No, I am not saying that at all. If my company sends a letter to a consumer, along with their name and address, we use the account number of the original creditor. We also have our own account number on that statement. We tell them what the date of service was, and we tell them what the amount was. That information is available. If a consumer needs additional information, even though it is not a requirement to provide that at this time, it would be very expensive and foolish not to include that information. Many people, when you contact them, will know what that bill was for. They can call us and ask if that was what it was for and then we can send them additional information. It is foolish not to include that information on the bill, itself, as well as the original creditor's name. We have no problem with that.

Assemblywoman Kirkpatrick:
So, when you buy these collections, are you just receiving a one line item or are you getting detailed information? I am not sure how it comes to you.

Marel Giolito:
I do not buy debt. I do contingency debt. In other words, you ask me to recover your bad debt, and I will do that for you. I need certain information from you in order to validate that debt. What goes to the agency on debt purchases varies according to the information they receive. If you are going back over a long period of time, there are certain things that are, or should be, automatically sifted out, such as bankruptcy information or a fraud account.

Assemblywoman Kirkpatrick:
What I am looking for is, for example, my husband is in the hospital with a heart attack and he is seen by ten doctors over a ten-day period. Do you get all that information, and would it be a fair statement, that, as a consumer, I would want to see that information in order to be sure I am paying the correct bills? Is that the information you ask for when you take on a contract? It is a simple yes or no.

Marel Giolito:
Typically, yes.

Chair Oceguera:
Are there further questions? Is there any more information you would like to provide? Would Mr. Stone and Ms. Rosalin return to the witness table, please?

Is there anyone else in Las Vegas or Carson City that would like to testify on this bill? I do not see any. It appears that all the interested parties are in Las Vegas. I would request that you work together to work out something on this bill. Is there any middle ground? Since the federal policy is what you are following, it seems that we could find some common ground in state law. I would like for you in Las Vegas to work together and report back to Mr. Horne by February 26th. Since we are in a compressed 120-day session, we do not have much time to work on these things. Mr. Horne will let me know where we are as far as compromises, so that we can better protect the consumer while keeping in mind your businesses as well, and your ability to do business. Does that sound like a reasonable proposition?

David Stone:
I am more than happy to get a work session going with Mr. Horne, and do whatever needs to be done in order to give the Committee what it is looking for with respect to this bill.

Chair Oceguera:
Thank you.

John Wanderer, attorney Wanderer Law Firm, P.C.:
I did sign in and indicated that I was in favor of the bill. I did not intend to testify but I heard a lot of questions asked, and I think I might be able to assist the Committee in responding to some of the issues which were raised. For the record, I am an attorney here in Las Vegas, and I have practiced here for 33 years in the area of commercial and retail collections.

Chair Oceguera:
Mr. Wanderer, the Committee has almost decided what they are going to do with the bill, but I can give you two minutes to make your points, and I am happy to have you work with the proponents and opponents of the bill.

John Wanderer:
The bill, A.B. 88, does contain many of the provisions of the Fair Debt Collection Practices Act, but, in a few areas, it does not. Under section 2.1(f), the statement indicating that if the debtor pays or agrees to pay the debt, the payment agreement can be construed as acknowledgement of the debt and a waiver of any applicable statute of limitations. That is not in the federal act, and is a warning to a debtor that his agreement to pay the debt could have that effect. Whether it actually is a waiver of the statute of limitations is something that the court would have to deal with.

Another area which I noted was in section 3, which states that if there are multiple debts, a collection agency shall apply the payment in accordance with the debtor's directions. I do not believe that is in the Fair Debt Collection Practices Act. I believe that is a matter of case law.

Another interesting thing here is the Fair Debt Collection Practices Act only applies to consumer debt and retail collection matters. This section would apply to any agency which is licensed in the State of Nevada, or also to any agency which is registered as a foreign collection agency under Nevada law. That means that it would be applicable not only to retail debt, but also to commercial debt, which the FDCPA does not cover.

With the process of debt buying, those who have purchased the debt do not always have the accessibility to specific information. Many times what debt buyers get is a computer printout with a bunch of names and an amount. It does not indicate when the services were rendered.

I hope that has been somewhat helpful. One other issue that Assemblyman Horne raised is the five-day notice. That is exactly what the Fair Debt Collection Practices Act says. What it contemplates is that the agency may

have a collector make a telephone call as the first communication. Consequently, what you are talking about with the five-day notice is giving the written validation notice that the FDCPA provides for, or what would be requested under section 2, subparagraph 1.

Chair Oceguera:
Thank you Mr. Wanderer, that has been very helpful. Would you be available to work with this small working group?

John Wanderer:
I would be happy to assist.

Chair Oceguera:
Is Ms. Rosalin in the room and agreeable to this? (An affirmative response was heard from the audience.) Great. We will close the hearing on A.B. 88. Please direct your comments to Mr. Horne prior to next Monday.

That is the only bill on the agenda today. We are moving now to a work session.

In the work session today we have three bills. We will take them in order. Assembly Bill 9, (Exhibit H), is a bill for people who meet the qualifications to be licensed mortgage agents. I have seen no amendments so far and I have had no opposition. Committee members, I would entertain a motion.

ASSEMBLYMAN CONKLIN MOVED TO DO PASS A.B. 9.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

Is there discussion? Mr. Arberry?

Assemblyman Arberry:
Thank you Mr. Chairman, please let the record reflect that I will abstain from the vote.

Chair Oceguera:
Are there any other comments, concerns, questions, or discussion? I see none.

THE MOTION PASSED. (ASSEMBLYMAN ARBERRY ABSTAINED FROM THE VOTE. ASSEMBLYWOMAN BUCKLEY WAS EXCUSED AND DID NOT VOTE.)

We will move on to Assembly Bill 27, (Exhibit I). This is the bill that talks about the Public Utilities Commission of Nevada (PUCN) and their ability to have an administrative fine. There is an amendment in your folder, proposed by Mr. Horne, which is on page 3 of the mock up on lines 1, 2, and 3. This would award reasonable attorney fees and costs for the prevailing party in an action brought pursuant to this subsection.

We need to have more discussion on this bill. Mr. Conklin?

Assemblyman Conklin:
I had a chance to speak with Jan Cohen, who is legal counsel for the PUCN, about this bill and I had some concerns about the size of the penalties. The current statute allows for $1,000 per day when you are in violation and a cap of $100,000. Also the current statute provides that this is a civil penalty, which means that you have to go to court in order to get it. They would be out attorney fees, et cetera. Most agencies have an administrative fee provision. The Department of Motor Vehicles, for example, has provisions to regulate dealers and towers, et cetera. I think it makes practical sense to make these administrative fines, but I was concerned with the dollar amount. One of the reasons for the higher amounts in the bill is so they do not have to return because of inflation.

I am for the administrative fee portion, but would like to leave the dollar amounts the same.

Chair Oceguera:
I agree. I think that would be a worthwhile proposal. It is in line with other agencies. Are there questions, comments or concerns from the Committee? Mr. Anderson?

Assemblyman Anderson:
Are you saying that we are not going with the mock up version? Are we going to retain the original language?

Chair Oceguera:
Please tell me again, I am trying to find that.

Assemblyman Anderson:
I am looking at the original bill in the bill book and also looking at the mock up.

Chair Oceguera:
The mock up in the binder is mostly concerned with Mr. Horne's amendment.

Assemblyman Anderson:
That is what I was trying to clarify. Are you going to retain, in the original bill, section 3, subsection 5, page 4 of the bill, and page 5 at lines 18 and 19? Are you also retaining the fees as they are found in subsection 4 and other places in the bill?

Chair Oceguera:
I believe so. Mr. Anderson, I think what Mr. Conklin is suggesting, is that in section 2 at line 40 in the original bill, those numbers remain the same: $1,000 instead of the correction to $10,000, and, $100,000 retained as opposed to the correction to $1 million.

Assemblyman Anderson:
Then are the other references to the delinquencies going to remain the same? Or, are they going to be removed? Or, should we wait for the bill drafter to clean it up?

Assemblyman Conklin:
I need some clarification from Mr. Anderson. My intention was to accept the bill with the exception of section 2, lines 40 through the following page, and lines 1 and 2, where we would leave the original language of $1,000 and $100,000. The other language still needs to be changed because we are changing from a civil penalty to an administrative fine. I do believe that Mr. Horne's amended portion which speaks to section 2, paragraph 5, still applies in the case of someone not paying their penalty. We would like to then have the opportunity to collect the penalty, plus lawyer's fees, should they prevail.

Chair Oceguera:
Does that answer your question, Mr. Anderson?

Assemblyman Anderson:
In part, it does.

Chair Oceguera:
Let us make sure that everyone gets a copy of the mocked up version prior to taking it to the Floor. Would that work for you, Mr. Anderson?

Assemblyman Anderson:
I do not want to delay your action on the bill, but whatever you want to do will be fine.

Chair Oceguera:
Dr. Mabey?

Assemblyman Mabey:
Could I ask questions on section 3 and 4? In subsection 5, of section 3, where it talks about the fee and states that no fee may exceed $1,000, for each delinquent payment are we going to reinsert that and just use the word "fee" instead of "penalty?" That same wording is also in section 4 of the bill.

Assemblyman Conklin:
I believe that would stay because it is pertinent language. I felt as if the amounts they are asking for are substantial. I would prefer to see the amount they can currently get, but, just give them an easier way to get it.

Assemblyman Mabey:
Thank you Mr. Chairman. I agree with Mr. Conklin.

Assemblywoman Gansert:
I, too, agree. I believe when we had the hearing on this bill most of the companies which they might levy these fines on were very small companies.

Chair Oceguera:
So, if I am hearing everyone correctly, we are going to leave in the amounts? Are there other comments? What we can do is have that mocked up again with those changes. I would like to entertain a motion at this time on Mr. Conklin's "theory," and Mr. Horne's amendment. Then we could look it over before we bring it to the Floor. Ms. Erdoes?

Brenda Erdoes:
Could I just clarify this so that I understand what you want? On the mock up, are you leaving the language on page 3, lines 38 and 39, about whichever is greater, but no penalty may exceed $1,000?

Chair Oceguera:
We would leave that in as the original, not strike it out.

Brenda Erdoes:
Okay, so we will put it back into the bill. Thank you.

Chair Oceguera:
Mr. Conklin?

Assemblyman Conklin:
Just to make sure that we have this fully understood, my reading of this is that if you take the $10 to $1,000 out, a small penalty is only going to have a one

percent fee if it goes unpaid, but a large penalty could have a $10,000 fee if it is left for too long. If we are going to leave the $1,000 to $100,000 cap, you could leave the $10 to $1,000 on page 3 of the mock up, either in or out, because it is still one percent of the fee. You are giving them a broader discretion. Is that correct?

Brenda Erdoes:
Yes, I believe that is correct. I just need to know which way you want to go.

Chair Oceguera:
Leaving it in seems reasonable. Mr. Anderson would you concur?

Assemblyman Anderson:
I will wait for the mock up.

Chair Oceguera:
Are there other comments, concerns or questions? Mr. Conklin, would you like to put that in a motion?

> ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 27 WITH THE FOLLOWING CHANGES. LEAVE THE ORIGINAL AMOUNTS IN STATUTE FOR FINES, SPECIFICALLY THAT WE DO NOT CHANGE FROM $1,000 TO $10,000 PER DAY FOR ADMINISTRATIVE FINE TO A MAXIMUM OF $1 MILLION, BUT LEAVE IT AT $1,000 WITH A MAXIMUM OF $100,000, AND ALSO LATER IN THE BILL, TO LEAVE THE ORIGINAL LANGUAGE WHERE IT SPEAKS OF THE PERCENTAGE EARNED ON FINES LEFT UNPAID AND ALSO ACCEPT THE AMENDMENT PROPOSED BY MR. HORNE.
>
> THE MOTION WAS SECONDED BY ASSEMBLYMAN MABEY.

Is there any further discussion? I will say for the record that I will get the mock up to the Committee members before we go to the Floor with it.

> THE MOTION PASSED UNANIMOUSLY.

Chair Oceguera:
We will move now to Assembly Bill 35. (Exhibit J). This is the bill on hearing aid specialists. This is not the fee bill; it is the bill that states if a hearing aid specialist has not turned in their required information to renew, they will have to re-test if it is under a five-year period. Mr. Ziegler did a little research concerning what other Boards do. Other Boards are different but similar. The

consequences for their failure to renew have generally resulted in suspension and/or re-testing, or being placed on an inactive status. This does not seem too far off from what other professions must do.

Are there any comments?

Assemblywoman Gansert:
I have some concerns because it seemed during testimony that the problem had to do with continuing education, and then the money if the person came back five years later, not that they could not qualify. When Ms. Laxalt testified, she explained what they had to do originally to get their license. This included having a Bachelor of Science degree, an internship, and taking a national examination with both written and practical portions. I felt it was extreme to have someone have to go back and retake the examination. Is it really a money issue and continuing education issues versus having to re-certify?

Chair Oceguera:
I think this was re-examination after five years. Let me read some of the comparisons with other Boards.

- Physicians: the term of the license is two years, and then they are placed on inactive status if licensee ceases to practice for 12 months.
- Dentists: the term of the license is two years, then suspension after 12 months, then revocation.
- Osteopaths: the term of the license is one-year. The Board gives 30 days notice, and after 30 additional days it is an automatic revocation.
- Chiropractors: the term of the license is one-year, then an automatic suspension after one year.
- Podiatrists: the term of the license is one-year, and then they are delinquent.
- Optometrists: the term of the license is one-year, then a suspension after one year, then revocation.
- Audiologists: the term of three years, may be reinstated within three years.
- Physical Therapist: expiration.

Assemblywoman Gansert:
I am not sure anyone had to retake an exam. I think they probably had to reapply for their license. So, if you were a physician, you would not have to go through another internship or residency program, but you would have to reapply and make sure that your credentials were current.

Chair Oceguera:
I think you are probably right. It does say, pertaining to the physicians, that the Board may require a re-examination. Dr. Mabey?

Assemblyman Mabey:
I agree with my colleague. Maybe we could compromise and come up with three years. The concern is that the technology is changing so quickly that they want those people to stay up-to-date. Making them re-exam after a year seems onerous.

Chair Oceguera:
Committee members do you have comments? I have heard three years twice. Ms. Laxalt, what do you think about three years? Ms. Buckley?

Assemblywoman Buckley:
Do we have any research on this issue about having to take the examination again, and specifically how that compares to other boards? Some of what you read, Mr. Chairman, stated there were time limits, some were revocations, and some were suspensions. Mrs. Gansert said that still did not get at the re-examination issue. Sometimes, if you pay a fine you could be reinstated. Making sure the continuing education continues should be of prime importance. Do we have anything specific on the exam portion of the bill?

Chair Oceguera:
Mr. Ziegler, you did that research, do you have comments about that?

David Ziegler:
The research was into the language of the *Nevada Revised Statutes* (NRS). To get to the Speaker's question, requires us to take it to the next level and research the *Nevada Administrative Code* (NAC) and the policy of the individual boards. The NRS language is highly variable among all the different licensing professions.

Chair Oceguera:
Ms. Laxalt, do you wish to add anything?

Neena Laxalt, representing Board of Hearing Aid Specialists:
I talked to several boards and as far as the re-examination, it is different from one board to another. There is no set standard. Some boards have better language than others and I would be happy to work on that, if that is what the Committee prefers.

Assemblyman Anderson:
Three years still seems like a reasonable number to me.

Chair Oceguera:
Is that a motion, Mr. Anderson?

ASSEMBLYMAN ANDERSON MADE A MOTION TO AMEND AND DO PASS WITH A THREE-YEAR WINDOW AT LINE 12.

MR. HORNE SECONDED THE MOTION.

Is there further discussion?

THE MOTION PASSED UNANIMOUSLY.

Are there further comments? I see none.

The meeting was adjourned at 2:43 p.m.

RESPECTFULLY SUBMITTED:

_____
Patricia Blackburn
Committee Secretary

APPROVED BY:

_____
Assemblyman John Oceguera, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 19, 2007 Time of Meeting: 1:33 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Sign-in Sheets
AB 88	C	Valerie Rosalin, RN, Director Governor's Office, Consumer Health Assistance	Comments
AB 88	D	Valerie Rosalin, RN	Examples of collection letters.
AB 88	E	Valerie Rosalin, RN	Case samples
AB 88	F	Valerie Rosalin, RN	Copy of the Fair Debt Collection Practices Act
AB 88	G	Valerie Rosalin, RN	FTC Consumer Alert
AB 9	H	David Ziegler	Work session document
AB 27	I	David Ziegler	Work session document
AB 35	J	David Ziegler	Work session document