

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

**Seventy-Fourth Session
March 16, 2007**

The Committee on Commerce and Labor was called to order by Chair John Oceguera at 12:07 p.m., on Friday, March 16, 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:

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

STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst



Judith Coolbaugh, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Renee Diamond, Administrator, Manufactured Housing Division,
Department of Business and Industry
Layke M. Stolberg, Private Citizen, Las Vegas, Nevada
Lisa Gianoli, representing Washoe County
Susan Fisher, President, Fisher Consulting, representing the City of Reno
and the Nevada Manufactured Housing Association (NMHA)
Jason Frierson, representing Clark County
David B. Stuart, President, Board of Dispensing Opticians
Samuel P. McMullen, Attorney at Law, Snell & Wilmer, representing
LensCrafters

Chair Ocegüera:

[Roll called.] We are opening the hearing on Assembly Bill 224.

Assembly Bill 224: Makes various changes to provisions governing the regulation of factory-built housing, manufactured buildings and modular components. (BDR 43-583)

Renee Diamond, Administrator, Manufactured Housing Division, Department of Business and Industry:

Gary Childers, Supervisory Codes and Compliance Officer, is to my left at the table. If there are any technical questions, he will be answering them. This bill originated with my Division. The Division currently licenses a class of servicemen as "specialty servicemen," who perform a limited scope of work. Sections 1 through 5 provide that a specialty serviceman who is holding another license such as a Contractors' Board license can perform work that is similar to other work under the Division's statute. That person may be given a waiver of examination and other requirements when applying for licensure with our Division.

The substantive language is stated on page 5, lines 38 through 45. It will simplify the process of licensure, but maintain the skill level we require. This new language will recognize that these servicemen have already met the requirement of licensure from another board, so the requirements for our license will be streamlined. This should help our goal of having more licensees available to work on homes, particularly in rural areas.

Page 6, Sections 3 and 4 add a requirement that a Division licensee—before performing any work on a home—must provide a written agreement to each person who is pertinent to the sale, installation or occupancy of the home. The written agreement must include the following provisions:

- (1) the scope of the work;
- (2) the cost for completion of the work;
- (3) the date on which the work will begin;
- (4) the anticipated date of completion of the work; and
- (5) that no additional work or cost may be charged unless agreed to in writing before the additional work is performed or costs incurred.

This will prevent the inflation of costs to the dealer or owner for installation or service. The dealers already use the Division-prescribed sales contract, which discloses specific charges to the consumer. This bill will extend to servicemen, licensed by the Division, the requirement of specific written disclosure. It will protect both the consumer and the dealer.

Page 6, Section 7 removes from statute the specific codes and standards that are required to be adopted by the Division. As national and local codes change, the Division will be permitted to adopt the codes and standards in a timely fashion by regulation. Since the codes are in statute, the Division lags behind in changing them because it is difficult to coordinate the changes with legislative sessions and deadlines. A case in point is the fact that the Uniform Building Code (UBC) was abolished and absorbed into another code in 2000. Our statutes still mention this obsolete code. Most governments and state agencies change codes by ordinance or regulation. We do adopt temporary codes through regulation. We have been advised by the Legislative Counsel Bureau (LCB) that we should take the codes out of statute and make them part of our regulatory function. This would be a benefit. Are there any questions?

Chair Ocegüera:

I am satisfied with Section 6, subsection 3, because a written agreement appears to be consumer friendly. Similarly, I agree with the Division being able to adopt the codes through regulations. My question is about servicemen working on a manufactured home. Is that type of work considered a specialty? Does the work require a serviceman to have specialized knowledge? It may be knowledge he would not necessarily have if he has only worked on "stick" homes.

Renee Diamond:

Yes, specialized knowledge is required. We envision waiving the examination on items such as painting and flooring. These types of jobs can be done on anyone's home, and do not require special knowledge. We do not want to

waive the education requirements, just the examination requirements. The waiver would only be for servicemen who are doing "cosmetic" work, such as painting or flooring. Air-conditioning, heating, electrical, and those types of specialized jobs would not be waived.

Chair Ocegueda:

Are there questions from the Committee?

Assemblyman Anderson:

The new adopted national and international codes were those recommended by earthquake safety standards. To try and meet that codification several sessions ago, the codes were promulgated through state legislation. In this way, individual counties would know what is expected of them. Are you asking the Legislature to abrogate its responsibility to set high standards and leave the code setting only to agency regulation?

Renee Diamond:

No, that is not the case. As you can see from the "laundry list" in Section 7, subsection 1, we have all kinds of adopted codes. The *Nevada Revised Statutes* (NRS) 461.170, where the codes are contained, covers modular construction. All kinds of codes come into play, including plumbing and mechanical codes. We also have the Fire Protection Association (FPA) codes. The difference is no particular code is being abrogated. It will just give us the ability to respond more quickly to changes in the codes. Regulations are easier for us to adopt, even if we adopt them on a temporary basis. They will be made permanent when the Legislature ends. The reality is the code agencies, beyond the seismic codes that you are referring to, meet in Washington, D.C., and other parts of the country on a regular basis. They change codes on a two to three-year cycle. Since our legislative year does not match their cycles, we are always behind. If the code was changed last year, we would have to submit a bill. Unfortunately, the Division only gets one bill each time the Legislature meets. Our regulations, whether they are temporary or permanent, can be changed at any time.

Assemblyman Anderson:

I think you missed the point of the question. In the manufactured home industry, they have to meet certain code requirements at the point of origin. When the manufactured home is reassembled here, it must meet our state requirements. You are requesting us to give up control of an issue which we were comfortable with in the past. The regulations you are referring to are in Section 7, subsection 2 (c), and state, "The Division shall adopt by regulation nationally recognized codes and standards for the construction of factory-built housing, manufactured buildings and modular components." You indicated that

there were only problems in the rural areas. I do not live in a rural area, but I hear complaints all the time. It is a broader issue. Which nationally recognized codes are you referring to and who is the recognizer of those codes? If not the Legislature, will your Division be doing it through regulation? Who pays for those regulations?

Renee Diamond:

The issue of service people is in the first section of the bill. We are trying to make it easier for people to license with us. We are talking about nationally recognized codes. Every state agency which deals with construction issues, such as the Fire Marshal and the local building departments, adopts the codes mandated by the nationally recognized agencies. Those agencies are the ones listed in this bill under Section 7. These are not codes that we are developing. These are codes that every agency and building department must meet. This section is in NRS 461.170, not NRS 489, which deals with manufactured housing. Those codes come from the Department of Housing and Urban Development (HUD). We do not have any influence over those codes.

This request relates to modular homes and modular buildings that come into the State. On a daily basis, Mr. Childers examines plans from companies that build their units out of State. Those companies have to build to comply with the national codes. The dilemma comes because the State has not adopted those codes. When the plans are being examined, it is difficult for us to tell if their plans meet the requirements of the most recent codes. We have to adopt and stay even with the national codes in the same manner the Fire Marshal's Office does and the same way every local government does. They adopt codes by regulation on a general basis. These are not specific codes. If there is a national seismic code, it would be included in our "laundry list" that we would adopt by regulation. We do not tamper with those codes. They are created by the national code agencies which have a regular cycle of change. We are trying to keep up with that change. Because it is in statute, it is a more cumbersome process. This budget in NRS 489 and 461 has the money for regular regulation changes. When we were speaking on Assembly Bill 216 the other day, the Department of Housing and Urban Development has its own budget, and it does not have money for regular regulation changes.

Assemblywoman Gansert:

I am looking at that portion of the bill which is referring to specialty servicemen. Why do we have a specialty service license? If someone has a plumbing or painting license, they could perform the work. I read the language to mean if you have some type of license, it will open up the possibility for you to do everything else.

Renee Diamond:

Under the Contractors' Board statutes, they have classes of licenses. They have a specific line in their statute that says, "...this does not permit you to work on manufactured homes," meaning HUD-coded homes. They have been trained in the UBC and other similar codes. They are not current on the codes relating to a HUD-built house. Therefore, we are the licensing agent for those HUD-built homes as specified under NRS 489. Part of our licensing process includes annual education requirements for license renewal. There are certain classes of licenses for what I refer to as "cosmetic" work, where the general education that those people have can be translated into the requirements of manufactured housing. In those areas the codes are not different from those in the UBC.

Assemblywoman Gansert:

The specialty servicemen licenses have limited specialties in which they are allowed to practice. It is not one license for everything. Is that correct?

Renee Diamond:

Yes, that is correct. The Contractors' Board has general licenses for general contractors, but the majority of people who have Contractors' Board licenses have them in the subspecialties. It might be a subspecialty that has to do with elevator service or with flooring. That person would have a Contractors' Board license, and the work is similar whether it is a HUD home or a UBC home. Therefore, we can expedite those licenses for those people. Servicemen, such as electricians, plumbers, and air-conditioning and heating workers, need to know our product—the HUD-produced home—so we would not waive our requirements for them.

Assemblywoman Kirkpatrick:

Can you give a particular example where this would make a difference? My husband is a master plumber, but I know a manufactured home would not be something that was in his field of expertise. I am concerned when we start moving away from building codes because local governments tend to run behind on adopting them. In Clark County they have just adopted the 2004 plumbing codes. Certain cities in Clark County are not consistent. Some of them are using the 2002 or the 2004 codes. When you start changing that in statute, you have something to base your opinions on. Otherwise, you will have people throughout the State doing different things rather than looking at the national codes. This is why I am asking for a specific example to explain why this bill was brought forward.

Renee Diamond:

We always follow what the Fire Marshal's Office follows because NRS 461 covers modular buildings. Often the Fire Marshal has certain jurisdiction over portions of those buildings. For us, we need to have the exact same code as they do. For example, the National Fire Protection Association (NFPA) in Washington, D.C., has a three-year cycle for changing codes. The Fire Marshal codes are in regulation. Adopting codes by regulation is covered for them in NRS 233B. This is what we are asking to do. If it is during the legislative session, they have to adopt the code as a temporary regulation. If it is not during that period, they can adopt it as a permanent regulation. In any case, if it is a temporary regulation they can change it to a permanent one. That is what we have been doing. We have been told by the LCB if it is in statute, it is "etched in stone." Regulations can be changed to meet the current national codes. The majority of modular buildings are coming from out of State. We are the importing State. Those buildings are built to the current national code, which has already been adopted by the state in which the building was made. Having our Division "behind the curve" is not a good idea. We are stuck with contradictory codes. To get the most current codes, we need to adopt a regulation, even if it is a temporary one. Those requirements are in statute. The LCB says there is a conflict with adopting current codes by regulation and having them still remain in the statute.

Your husband's Contractors' Board license would allow him to work on manufactured homes if he is licensed with us. Part of our licensing process would be the education portion, which would test the ability to identify the differences between site-built homes and unique HUD manufactured homes.

Assemblywoman Kirkpatrick:

You have explained the difference between a general serviceman and a specialty serviceman. Is that correct?

Renee Diamond:

Yes, that is exactly correct. A specialty serviceman would be the plumber or the air-conditioning person. They need to know about the systems that are unique to HUD manufactured homes. A general serviceman would be the painter or the flooring contractor. They would not need the specialty serviceman's license.

Assemblyman Manendo:

I have similar concerns. I do not see a fiscal note on this bill. The other day at our hearing on A.B. 216, you testified that because we were adopting regulations there would be a fiscal note. Was this one submitted without one? Does adopting regulations require some type of funding?

Renee Diamond:

The bill we were referring to the other day and the regulations that I was requesting to have removed were in the landlord/tenant portion of NRS 118B. That landlord/tenant section has its own budget. That budget contains no money for changing regulations because their requirements are in NRS 118B. They have very few regulations. In this case, the requirements are in NRS 489 and 461. These two statutes are in our budget. There is a regular line item for changing regulations. At the request of Interim Finance last year, we lowered fees by changing the regulation since our fees are all in regulation. We have a regular line item budget for regulations that would cover this expense.

Brenda Erdoes:

I apologize. It is our policy to include a fiscal note when regulations are required to be adopted. That note would go back to the requestor of this bill so they could indicate the dollar amount required. We evidently got that incorrect on this bill. I can talk to the Fiscal Division and get that going for you.

Chair Ocegüera:

Are there further questions?

Assemblyman Manendo:

If they have enough money in their budget to be able to use some of their staffing hours for the other bill, maybe it would be a wash. I am glad the Fiscal Division will look into it.

Chair Ocegüera:

Are there further questions or others wishing to testify in favor of A.B. 224?

[Chair Ocegüera left and Vice Chair Conklin took over the hearing.]

Layke M. Stolberg, Private Citizen, Las Vegas, Nevada:

I am here to discuss Section 6, subsection 3. It is the section of the bill that would require service providers to provide written contracts to mobile home owners for work. I became familiar with manufactured housing laws when I accepted a pro bono case from Clark County Legal Services in August 2006. My client is a low-income, 78-year-old female resident of J.C. Mobile Home Park. It is located in Assemblywoman Buckley's district. She came to Legal Services after a mobile home contractor filed a lien on her mobile home for \$30,000. She had hired the contractor to do work on her newly purchased mobile home before she could move in. After getting to know the contractor, she asked him to do further renovations. The contractor never gave her a written contract, a proposal, or a scope of work. She did not know how much

the work would cost until April 2006 when she received the bill for \$28,000. She refused to pay because of the high cost. The contractor filed a lien on her home and threatened to foreclose. Her mobile home is only worth \$40,000. The amount of the bill is more than her yearly income.

We are fighting the lien on the legal end, but we did file a complaint with the Manufactured Housing Division. This is how I learned that they could not really do anything to help because the current law does not require the contractor to give a written contract, a bid, or a proposal. They could not impose a fine or do anything against the contractor. Under the current law, contractors who work on mobile homes are only required to be licensed with the Manufactured Housing Division. They do not have to be licensed with the Contractors' Board. This means contractors who work on mobile homes are treated differently than those who work on stick-built homes. It also means that residents of stick-built homes and residents of mobile homes are treated differently. Residents of mobile homes are often low-income elderly citizens. The way the law currently stands, the Manufactured Housing Division does not have the tools to protect this extremely vulnerable population from unscrupulous mobile home contractors.

The proposed law will require the mobile home contractors to provide written contracts, bids, and the scope of work in writing. This will give minimum information to mobile home owners about the work that is being done on their homes. This law would avoid the exact type of situation that my client now finds herself in. In addition to the proposed language, the statute should go even further and state those contractors not in compliance with this provision would be subject to disciplinary action pursuant to NRS 489.381. That is the section that would provide fines and other disciplinary action against mobile home contractors who do not provide a written contract. The statute would then provide the same accountability for mobile home contractors that their licensed peers already have under NRS 624. More importantly, it is an example of how a small change in the law can greatly affect a population that needs help. I am here to voice my support of A.B. 224. I welcome any questions.

Vice Chair Conklin:

Are there any questions? Is there any additional testimony in support of A.B. 224? Is there anyone wishing to testify in opposition? Is there anyone who is neutral on this bill who would like to testify?

Lisa Gianoli, representing Washoe County:

Washoe County would like to go on the record with some general comments about this bill. Washoe County has concerns with adoption of national codes that may or may not include local or regional consideration of issues such as snow loads, wind loads, and fire-resistive construction. There is also a concern

about notification on which particular codes and standards have been adopted. Without a formal adoption process and/or a formal notification process, there may be confusion as to which codes have been adopted and are in effect at any given time.

We would like to propose an amendment ([Exhibit C](#)) to the language in the bill. On page 7, line 29, we are requesting that the word "reasonably" be deleted. What is reasonable to one person may not be reasonable to the next. We found that word to be ambiguous. We would be willing to work with the sponsor of this bill to try and refine the language to make it more palatable to local building officials.

Vice Chair Conklin:

You are not testifying against the bill. The requested change that you are asking for is to delete the word "reasonably." Is that correct?

Lisa Gianoli:

Yes, that is correct.

Vice Chair Conklin:

In other statutes, we frequently use the term "reasonably," especially in the Public Utility Commission (PUC) statutes. It is defined by the PUC through regulations and it is a public process. Is that not the case under this statute?

Lisa Gianoli:

Our building officials have indicated to me that it would be difficult to enforce the law with the word "reasonably" left in the bill's language.

Vice Chair Conklin:

Do you mean without some definition for it?

Lisa Gianoli:

Yes, that is correct.

Vice Chair Conklin:

Are there any questions?

Assemblyman Anderson:

Washoe County has adopted the recommended international standards for seismic and other building code standards that were promulgated in the 72nd Session. Each county was given a modicum of time to implement. Is that correct?

Lisa Gianoli:

I believe that is correct, but I will double check with our building officials on that.

Assemblyman Anderson:

Since those codes are in place and less frequently changed by the individual industries, is it easier to meet that compliance standard?

Lisa Gianoli:

Yes, I will double check that with them, but I believe that is their position.

Vice Chair Conklin:

Are there any other questions?

Susan Fisher, President, Fisher Consulting, representing the City of Reno and the Nevada Manufactured Housing Association (NMHA):

We are in general support of the bill. However, the City of Reno does have similar concerns with the word "reasonably" on page 7, line 29. The NMHA also supports this bill in general and we support the Division's efforts.

Vice Chair Conklin:

Are there any questions?

Jason Frierson, representing Clark County:

I wish to echo the sentiments expressed by Washoe County. We have the same concerns.

Vice Chair Conklin:

The Committee members want to know if Clark County is concerned about the snow provision.

Jason Frierson:

Occasionally, we do get snow, but I do not believe that was the bulk of our concerns.

Vice Chair Conklin:

Are there any questions? Is there anyone here to testify in a neutral position on this bill? We are closing the hearing on A.B. 224, and we are opening the hearing on Assembly Bill 249.

Assembly Bill 249: Revises provisions relating to dispensing opticians. (BDR 54-547)

I am not sure who is the prime sponsor of this bill. Is there someone here representing the Board of Dispensing Opticians? Please, come forward. I assume you are in support of A.B. 249?

David B. Stuart, President, Board of Dispensing Opticians:

Yes, that is correct. This bill came about as a clarification effort. I, myself, am an optician. I am not an ophthalmologist. An ophthalmologist is a medical doctor entitled to do surgeries, to write prescriptions for glasses, and to prescribe drugs. Also, I am not an optometrist. An optometrist is a doctor who is skilled in diagnosing eye disorders, recommending glasses, and prescribing certain therapeutic drugs. An optician's duty is to take the doctors' prescriptions, which are generated by the other two specialties, and refine those prescriptions into a pair of glasses. The system falls down over the standards used to make the glasses. For example, an optometrist or an ophthalmologist could write a prescription for a pair of glasses, which could be taken to an independent optical store to have the glasses made. The prescription, itself, may not be followed completely and correctly. The patient or the consumer would have the wrong prescription.

Under the current law, we do not have any standards to judge how the glasses are made. If you go to a gas station, you know what kind of octane you are buying in your gasoline. When you go to a pharmacist to have a prescription filled, you know what the drug is, what the strength is, and the amount of dosage. In the eye-glass world that standard does not exist. We do have certain standards called American National Standards Institute (ANSI) standards. Those national standards set the tolerances allowed on the doctor's prescription. The purpose of this bill is to request the use of those same guidelines in Nevada. A consumer with a prescription for a pair of glasses would be relatively certain that what they are wearing and what they were dispensed is the correct prescription. Do I need to explain some of the other parts of the bill?

Vice Chair Conklin:

Are there any questions?

Assemblywoman Gansert:

My question is not pertaining to that portion of the bill. Are you going to cover the other portions of the bill?

David Stuart:

Yes, if the Committee would like me to.

Assemblywoman Gansert:

In looking at the Section 3, subsection 4 (c) that refers to a delinquent license, you are adding the words, "Not later than 2 years after the expiration of a limited license...." The person would pay a fine. If a person leaves the State, without notifying the Board of Dispensing Opticians to put their license on inactive status, what happens when they come back to practice here again, say after a five-year absence?

David Stuart:

That is one of the gaps in the bill that we tried to fix with that language. Currently, every licensed optician has the right and the due diligence to put their license on inactive status when they do leave. Some choose not to do that and just leave. The Board is in a quandary about what action should be taken. We have had people out of the industry or the State for four or five years, and they come back to the State and want to know what they can do. Up to this point, we charge them the late fees and delinquent fees for the five prior years. They also have to complete the continuing education for the five prior years. If you are inactive within the industry for two years, it is the Board's contention that you should have to take the test again or reapply for new licensing.

Assemblywoman Gansert:

What type of examination do you have to take to get your original license?

David Stuart:

We have a State Board examination that is given on the different aspects of statutory and regulatory interpretation of the ophthalmologic optics law. There is also a practical part on the measuring and reading of glasses and contact lenses. In addition, there is a physiology portion of the test.

Assemblywoman Gansert:

Is there a clinical portion and a written portion?

David Stuart:

That is correct. There are two different portions of the examination.

Assemblyman Settlemeyer:

On page 6, line 28, you are changing the wording from "shall" to "may." It currently reads they "shall" be fined and you want to change it to "may" be fined. Is there a necessity to create an option to fine for practicing without a license?

David Stuart:

That change was added by the Legislative Counsel Bureau. It is not important to me or the State Board whether it is there or not.

Assemblywoman Allen:

I have a question unrelated to the specific bill. Does your board have a specific position on the length of time that an eyeglass prescription lasts? In the State of Nevada, I understand an eyeglass prescription is only good for one year. However, in the State of California an eyeglass prescription lasts up to two years on the discretion of the physician.

David Stuart:

That is a "hot bed" of discussion within the State Board. We try to go along with what the originator of the prescription intends. For instance, if an optometrist writes that the prescription expires in one year, we will maintain that. However, if the State Board of Medical Examiners of Ophthalmology says their prescriptions expire in two or three years, then we follow the guidelines that are written on the prescription. We try not to interpret it.

Assemblywoman Allen:

Expiration is defined in statute in Nevada. It states a prescription can only last for a one-year period. I find myself with the same prescription. If I go to get a new pair of glasses at my local LensCrafters, I have to see a doctor again and pay another co-pay. It is an extra \$100 to get the same glasses with the same prescription.

David Stuart:

What statute is that?

Assemblywoman Allen:

I do not want to put Ms. Erdoes on the spot, but it is in the law. That is what they tell me when I go to LensCrafters.

David Stuart:

It is a gray area, and it happens all the time. Many doctors do put an expiration date of one year on the prescription.

Assemblywoman Allen:

Some of the doctors I have spoken with say that for a young person two years is fine, but if you are older you need a yearly examination because there are significant changes in older people's eyes.

David Stuart:

I tend to agree with you, but that is a "hot potato" that I do not want dropped in my lap.

Vice Chair Conklin:

Are there any additional questions?

Assemblywoman Gansert:

Why does the Board want to change the required continuing education credits from 14 hours to a cap at 18?

David Stuart:

We presently have 14 hours of continuing education required. Seven hours are for eyeglasses and seven hours are for contact lenses. With the changes in the environment and the new technology, we wanted to cap the number of hours at 18. Our intent is to leave the required hours at the present amount of 14.

Vice Chair Conklin:

Are there any additional questions? Is there anyone else here to testify in favor of the bill?

[Chair Ocegüera returned, but Vice Chair Conklin continued the hearing.]

Samuel P. McMullen, Attorney at Law, Snell & Wilmer, representing LensCrafters:

Basically, we are in support of this bill. We try to work as closely as we can with the Board of Dispensing Opticians. We have some proposed amendments that I would like to present ([Exhibit D](#)).

On page 6, line 28, the changing of the word "shall" to "may" is recognizing that a fine of "not more than \$10,000," by definition, should allow for some level of discretion and exercise of judgment on the part of the Board.

Our proposed amendments are compatible with the Board to the best of our knowledge. We are suggesting that Section 1 be amended to show that the applicable "minimum standards" should be those that are set by ANSI. The standards have built-in tolerances, and they are updated from time to time. We would like that language included in the bill.

Assemblyman Anderson:

Do the ANSI standards have a range or is it just one standard?

Samuel McMullen:

Their standards are expressed in tolerances. They do have a plus/minus range that is acceptable for filling the prescription. In LensCrafters stores the standards are posted in the laboratory area. It is a standard that everyone works with and is used to.

Assemblyman Anderson:

In reality the ANSI standards are considered the minimum. Is that correct?

Samuel McMullen:

Yes, that is correct.

Assemblyman Anderson:

In other words the minimum standard is the acceptable standard.

Samuel McMullen:

The point is, people who work with the ANSI standards know what they are. The consumer will have some protection if an unscrupulous optician fills a prescription that they knew was outside the ANSI standards. It would put some "teeth" in the law. This bill will create an operative standard for the Board to be able to discipline people who are clearly going around the standards. Currently, there is a requirement that says the optician must verify that the prescription has been filled within those minimum standards and tolerances before the lenses are dispensed. This will give the Board the authority to enforce the standards.

Vice Chair Conklin:

Before you continue your presentation I want to clarify that you have shown this proposed amendment to Mr. Stuart. [Mr. Stuart nodded in the affirmative from the audience.]

Samuel McMullen:

Yes, I have, and I asked him if he had any concerns. If he does or if this discussion brings up any questions, we would work with the Board of Dispensing Opticians to make sure the language is compatible with them.

Our next suggestion amends Section 4. We are requesting the maintenance of the current continuing education standard of 14 hours annually with at least seven of those hours in contact lenses. Another issue that the industry faces is the growth in stores. The Board requires supervision by a licensed optician whenever optical devices are being dispensed. We are outgrowing our ability to meet consumer demand. The underlying theory is that maintaining the current education standards will not make it more difficult for stores to obtain the number of licensed opticians they need in stores. It is an operational concern.

Our request to amend Section 6, lines 32-35, is to clarify that the mistaken dispensing of an optical device is not a mandatory violation. If the optician willfully dispenses the lenses and they do not meet the minimum standards, the lenses should be returned and redone. We are requesting that the word "willfully" be included in the language of subsection 1 (h). If that word is not acceptable to the Board, we would be happy to work out some appropriate language with them.

We also suggest that the law provide the authority for the Board to order refunds to customers for the amount paid for ophthalmic devices which do not meet the ANSI standards. This would provide consumer protection. I would be happy to answer any questions.

Vice Chair Conklin:

Are there any questions? Is there anyone else wishing to testify in favor of the bill? In opposition? Anyone wishing to testify from a neutral position? We are closing the hearing on A.B. 249. Is there any other business to come before the Committee?

[The meeting was adjourned at 1:05 p.m.]

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblyman John Ocegüera, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 16, 2007

Time of Meeting: 12:07 p.m.

| Bill | Ex hi bit | Witness / Agency | Description |
|-------------|--------------------------|----------------------------------|---------------------|
| | A | | Agenda |
| | B | | Attendance Roster |
| AB 224 | C | Lisa Gianoli, Washoe County | Proposed Amendment |
| AB 249 | D | Samuel P. McMullen, LensCrafters | Proposed Amendments |