

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

**Seventy-fourth Session
May 3, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:05 a.m. on Thursday, May 3, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Assemblyman Bernie Anderson, Assembly District No. 31
Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblyman Joe Hardy, Assembly District No. 20

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Lynn Hendricks, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Gloria Gaillard-Powell, Committee Secretary

OTHERS PRESENT:

Robert L. Compan, Farmers Insurance
Alfredo Alonso, Lewis and Roca LLP; Alliance of Automobile Manufacturers
Michael D. Geeser, AAA Nevada
Jeanette K. Belz, Property Casualty Insurers Association of America; Nevada
Ophthalmologic Society

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Keith L. Lee, Nevada Board of Medical Examiners; Consumer Loans of Nevada
Debra Scott, Nevada State Board of Nursing
Susan Fisher, Aesthetic Association of Las Vegas
Lawrence P. Matheis, Nevada State Medical Association
Amber Tsang, The Skin Institute
David Wright, Son MedSpa
Christy Thomas, N.P., The Skin Institute
Tiffany Osborn, Spa Manager, Radiance Medspa of Las Vegas
Fred L. Hillerby, Nevada State Board of Nursing
James Wadhams, Nevada Dental Association
Scott Seidenstricka, Genesis Salon & Medical Spa
Judge Stephen J. Dahl, Nevada Judges Association
Captain W. Scott Ryder, Commanding Officer, Naval Air Station Fallon
Judge Fidel Salcedo, Senior Justice of the Peace, Washoe County
Kathleen Delaney Senior Deputy Attorney General, Bureau of Consumer
Protection, Office of the Attorney General
Barry Gold, AARP Nevada
William R. Uffelman, Nevada Bankers Association
Robert A. Ostrovsky, Nevada Lenders Association
Terry K. Graves, Koster Financial
Cheryl Blomstrom, Nevada Consumer Financial Association

CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (A.B.) 145.

ASSEMBLY BILL 145 (2nd Reprint): Revises provisions governing the assignment of benefits for health insurance. (BDR 57-1068)

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):

Assembly Bill 145 is trying to fix something that is difficult to fix and I appreciate the delay you are offering.

CHAIR TOWNSEND:

I will close the hearing on A.B. 145 and open the hearing on A.B. 2.

ASSEMBLY BILL 2 (1st Reprint): Revises provisions relating to automotive repairs. (BDR 52-92)

ASSEMBLYMAN BERNIE ANDERSON (Assembly District No. 31):

I have prepared testimony to hand out to the Committee ([Exhibit C](#)). I do not consider myself an expert on automobile repair, maintenance or body work. This bill is not a reflection of my personal experiences, but it stems from the need to close what appears to be a gap in our statutes relative to what some body shops are doing and the resulting fallout for consumers. The insurance industry cannot in good faith meet the demand for service because of what can only be described as fraudulent practices at some garages and body shops. I believe this bill is pro-consumer. By adding body shops to the existing law and signage requirements that currently apply to garages, it tightens the language about repair estimates. It requires the garage or body shop to notify both the owner and the insurer of any revisions on the original estimate.

ROBERT L. COMPAN (Farmers Insurance):

Today's testimony is in support of A.B. 2. It is a consumer bill representing our company's customers pertaining to repairs completed at Nevada body shops. This bill provides an avenue for our customers and our company to address a growing problem related to completion of repair estimates. The bill requires the shop to notify the customer and the purveyor of the estimate should they decide to deviate from the original estimate. This bill also places into statute the Consumer's Bill of Rights that is afforded to garages under the garage portion of the chapter.

The chapter gives the customer the ability to lodge complaints of fraud through the Attorney General's Office and also through the Department of Motor Vehicles.

To prosecute a claim against a body shop for fraudulent activity in Nevada is very hard. This bill gives the consumer peace of mind that their vehicle will be repaired to the manufacturer's specifications. It will ensure vehicles repaired in Nevada will be safe on our highways.

SENATOR CARLTON:

The concerns that I have are regarding repairs in accordance with specifications of the manufacturer. I am an owner of older car and truck. Sometimes you cannot get the part you need. Even in newer cars, why would I want to spend \$200 more to get a part from the Ford dealer when I can get a look-alike that will function just as well? Would the language prohibit me, as a consumer, from making the more economical choice?

MR. COMPAN:

We worked with the body-shop industry, dealers association, retail association and the manufacturing association to come up with language for this bill. Originally, we were going to say industry standards but apparently this is a common term and the language preferred from our research is manufacturer specifications. If you were to get an after-market part, as long as it meets or exceeds the stringent requirements of the manufacturer specifications, it is fine. If you were to get a fender repaired, as long as the damage can be repaired and the fender replaced to the manufacturer safety specifications, you are okay. The intent of the language was not to say you have to use a manufacturer's part. It is just saying it has to be repaired to the manufacturer's specification.

SENATOR CARLTON:

I had an old Ford Ranger and the gas tank started to leak. We did not realize the gas tank was plastic. A couple of years later, it was figured out plastic gas tanks were not a good idea. The manufacturer's specifications on the gas tank were such that if we would have tried to put in a different tank, they would not have been allowed to sell it to us because it probably would not have met the specifications. What would I have done under those circumstances?

CHAIR TOWNSEND:

Would that be covered under the term of any specifications by the manufacturer? Did they change the specifications after they found the defect?

MR. COMPAN:

After ten years, the manufacturer's specifications are no longer required. Anything new or a model ten years and newer would be required under the manufacturer's specifications. This language outlines that it has to be repaired to the specification whether it is an after-market part or not.

SENATOR CARLTON:

Is there any specific language that deals with that? If the part is not available, I do not want someone to be put in the situation where they cannot repair the car.

MR. COMPAN:

I would have to refer that to counsel. I believe the Chair's interpretation of the statute is correct.

ALFREDO ALONSO (Lewis and Roca LLP; Alliance of Automobile Manufacturers):
Manufacturers' specifications change constantly. An issue like the plastic gas tank would immediately change. The specifications are engineering and it is also constantly changing with respect to the automobile industry particularly with the new cars. If they find a part does work correctly, the specifications will change. The only reason to have industry standards is to ensure the parts are manufactured properly and will fit the automobile.

CHAIR TOWNSEND:

"I want to go on record that I do have some small, passive investments in car dealerships, but we do not have any body shops."

Where it states, "and the person authorizing the repairs" causes me concern. It is one thing for a consumer to go in and say fix my car, but when the third party is paying for it, what does that mean? Does that mean authorizing the repair by both the customer and the third party? Who signs off?

MR. ALONSO:

That is correct. That was not the intent of the original bill, but in working with various organizations, it was deemed prudent. That was part of negotiations in earlier conversations.

CHAIR TOWNSEND:

If there was damage to an older vehicle and it was in for repairs, then the customer decided to have a custom grill installed not related to the original work, does that have to be performed outside of the original repair order?

MR. ALONSO:

The repairs are provided from the written estimate. Any other repair to the vehicle is between the consumer and the body shop. We worked with Mr. Compan on some of these issues. The issue was brought up making sure the owner was involved. Section 7 was missed with respect to authorization. We believe the owner should also have authorization for any significant changes.

MR. COMPAN:

We concur with the recommended change. This was worked out with the dealers and the body shop owners. This ended up with "or" instead of "and".

SENATOR CARLTON:

When I read that portion originally, I took it as either one of them would be able to take care of it. Now, do we have to find parties in order to get this accomplished? Will that slow things down?

MR. ALONSO:

In our conversations with the dealers and the body shops, they did not believe it would and they felt it was important to let the owner know the reasons for the change. Now the owner is knowledgeable and could tell the insurance company they are okay with the change.

SENATOR CARLTON:

Do you foresee a situation where the insurance company is going to override the owner's decision?

MR. COMPAN:

The final decision on any repairs in Nevada rests upon the consumer. The insurance company is just the mechanism of which payment is paid. They have the decision of accepting the estimate and the repairs.

In the garage keeper statute, there is already a waiver of authorization. If you want to take your automobile into a shop and say I trust my insurance company to make the right decisions, they can sign a waiver at the body shop so they do not have to be contacted. This gives them the opportunity to be notified if the shop is going to deviate or change the estimate. If they disagree with the body shop, the ultimate decision rests on the consumer.

SENATOR CARLTON:

Who receives the check?

MR. COMPAN:

With Farmers Insurance, if it is a third party, the check is made directly to the claimant and sent to the body shop. They could get a power of attorney to sign the check. If it is an insured of ours, we will make the check out to the body shop on behalf of our client.

CHAIR TOWNSEND:

The *Nevada Revised Statute* (NRS) 597.540 references those notified of additional changes. This is different than the original repair of the vehicle.

MICHAEL D. GEESER (AAA Nevada):

This bill affects our line of business. We have a full car-care center in Henderson, as well as a series of certified AAA-approved repair shops throughout the State. We think this is an excellent bill for the consumer. It opens the lines of communication that we feel is desperately needed. We fully support this bill. It speaks to a new service we have introduced, a concierge service. We take the car from our member who has been in an accident and return it when it is fully repaired. This allows us to perform the service and takes the pressure off our client to get the car fixed. This is a pilot program only and has not started throughout the State, but we feel it will catch on.

JEANETTE K. BELZ (Property Casualty Insurers Association of America):

We concur with this bill and are in agreement with the proposed amendment to section 7 to change the "or" to "and" proposed by Alfredo Alonso.

We have spent a lot of time trying to fight fraud and auto theft. There are a lot of variables.

CHAIR TOWNSEND:

I read an article that Las Vegas has the highest frequency of automobile theft. Do you know why they think Nevada is number one in auto theft?

Ms. BELZ:

I could not answer that question.

CHAIR TOWNSEND:

I will close the hearing on A.B. 2 and open the hearing on A.B. 385.

ASSEMBLY BILL 385 (1st Reprint): Makes various changes concerning the practice of medicine. (BDR 54-356)

KEITH L. LEE (Nevada Board of Medical Examiners):

I will walk you through the bill and then present you with a proposed amendment ([Exhibit D](#)) to section 4 of this bill. Essentially, it allows the Board of Medical Examiners to issue a special restrictive license to qualified foreign physicians to practice in specific clinics. The practice is limited to the specific clinics and only as long as the person is practicing there. It is to permit clinical practice but also research practice. We think this will be an aid to the cancer center and the brain institute. It allows the qualified foreign physician who might

otherwise not meet the three years of continuous postgraduate study that we require of our physicians. It allows them to come in under limited circumstances and practice in the limited area, in a specific clinic.

Section 5 of the bill provides an injection of any cosmetic or chemotherapeutic substance can only be done by a licensed or certified person under the supervision of a physician. This has been amended by the Assembly to provide the Board of Medical Examiners will prescribe the requirements for supervision pursuant to that section.

Section 6 talks about a supervising physician that means an active physician licensed and in good standing can supervise a physician's assistant. It is deleting the word "employs".

Sections 7 and 8 are cleanup language. Last session we imposed a fine not to exceed \$100 for a physician who fails to let us know of a change of address within 30 days. We are hoping by raising the fine from \$100 to \$250 we will get better compliance.

Section 10 takes existing language and expands it by stating a physician who is retired from an active practice can volunteer and may obtain a license to not only provide care to indigent persons but to uninsured or those unable to afford health care.

Section 13 adds language regarding disciplinary actions that the Board of Medical Examiners must be advised of by a physician including the federal government or foreign country.

Section 15 adds those that are immune from civil liability in their professional capacities. The peer reviewers, the employees or volunteers of a diversion program were added.

Section 16, we are adding physician assistant for rendering care in an emergency situation.

The amendment I am proposing is to delete subsection 1 of section 4, lines 21-25, and deletes subsection 1 of section 15.5. I am proposing the following, "The Legislative Committee on Health Care shall appoint a subcommittee to review issues concerning the regulation of the use of lasers and intense pulsed

light therapy in the performance of medical procedures on patients. The subcommittee must consist of: (To be determined)."

There are a number of different kinds of lasers, some of which may not need to be regulated. We need to look at what type of certification and training is required before you can use the instruments on individuals. We also need to define the scope of those who may provide treatment using these devices under the supervision of a physician.

SENATOR HECK:

In the change to section 13 where you are requiring the report of any disciplinary action without limitation, how are you going to define disciplinary action? Does it include somebody who has a complaint filed, or there is a hearing opened? Is the physician going to need to report that as a disciplinary action?

MR. LEE:

Yes. That would still be a reportable event. It would show it was resolved in favor of the physician.

SENATOR HECK:

I do not think those are reported to the Board. If the complaint is dismissed for no cause, I do not think it goes to the Board.

MR. LEE:

I will check on that, and you may be correct. The intention of this is to make it clear the disciplinary action has to be resolved. If there is an issue about it being reported and resolved in favor of the physician, we can deal with it.

SENATOR HECK:

As a clean up in subsection 2 of section 15.5, I would request on line 5 instead of saying approved by the board that it should be approved by the American Osteopathic Association's Bureau of Osteopathic Education.

MR. LEE:

I have no problem with that change.

SENATOR CARLTON:

I have great respect for the Nevada Cancer Institute and what they are trying to do. I have tried to help them in any way possible. I do have a problem with section 3 in the eminent physician section. Since there is no ending date, my concern is when the physician finishes they will automatically have to be sent back to their country of origin, and they will not be allowed to stay. I am not sure if they are going to seek citizenship. In our other visa programs for foreign doctors there is a time limit involved. They have geographic restrictions to a point but not a specific location. If the physician is at a certain facility and is needed at another facility for someone who is quite sick, they would not be able to help the sick person because they would be limited to only one facility. That gives me concern. Has there been any discussion about allowing them to provide consulting services? I do not want the physicians to feel they are locked into only working for one employer or they have to go home.

MR. LEE:

After our discussion, I talked with the executive director of the Board of Medical Examiners. The way this is drafted will not allow that licensed physician to go to another facility or to otherwise work outside the facility. One of the questions we discussed is to what extent would that person's expertise be available to those who cannot otherwise afford it. I heard there is indigent care for those not otherwise able to afford the treatment at the Cancer Institute to those who ask for help. The intent is that the physician is restricted to that facility for which they are licensed.

SENATOR CARLTON:

Was there any discussion on timelines on this? There are a couple of programs where they can come here and spend four to five years. You know very clearly how I feel about this. I wonder why we are not putting a timeline on this so the doctors are not totally restricted.

MR. LEE:

The answer is no, we did not discuss this. As you and I discussed before the hearing today, Dr. Heard and I talked about this issue in a general sense. I have assured Dr. Heard that I will call this to the attention of the Board of Medical Examiners and put Dr. Heard in direct contact with the executive director to discuss this issue.

SENATOR CARLTON:

That is a separate issue. This one is this particular issue; one employer, one option, no choices and no timeline.

MR. LEE:

I understand that. I would be happy to talk to you and see if there is something we can work out that might satisfy your concerns. The timeline is as long as the person practices in that clinic under that license. The license automatically ceases should that person leave the clinic.

SENATOR HECK:

There is a similar situation that was in S.B. 412 that this Committee processed. It is not about getting more foreign doctors through visas as trainees or to stay here and practice. We are talking about physicians that are so eminent in their field; they are not looking to immigrate to the United States. This is to bring them on a sabbatical to come and teach and research at these institutions. If you would scour the potential roster, you might find 20 to 25 physicians worldwide who would probably meet the criteria that would have the ability to come and do some research and education at one of the institutes that are now developing here in Nevada. I think it is important to realize these are two very distinct issues about trying to get more doctors in Nevada. This is looking at bringing in people who are so esteemed in their field to try and get them to come here and give them a license to do research and education. It is not even really for clinical care, but more the research and education. We are trying to get them to come to the United States and allow them to have a license to do that.

[Senate Bill 412](#): Makes various changes regarding health care. (BDR 54-540)

CHAIR TOWNSEND:

What is laser surgery or intense pulsed light therapy on the globe of the eye, section 4? In section 15.5 it says laser surgery or intense pulsed light therapy. It does not go on the globe of the eye. Is that a drafting problem?

MR. LEE:

On page 12, subsection 2 of section 15.5, it parrots word for word the language in subsection 2 of section 4.

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CHAIR TOWNSEND:

It does not say it on line 42 of page 11, and I was curious if there was a reason.

JEANETTE K. BELZ (Nevada Ophthalmologic Society):

Section 4, subsection 2 on page 3, starting on line 26, is the exact same with the exception it applies to osteopaths as in section 15.5, subsection 2, top of page 12.

CHAIR TOWNSEND:

Do subsections 1 and 2 pair each other?

MS. BELZ:

Correct.

CHAIR TOWNSEND:

What are we talking about?

MS. BELZ:

We are talking about surgery on the eyeball.

CHAIR TOWNSEND:

Why do we want to study that?

MR. LEE:

We do not. We think it is fine the way it is. I am not suggesting we delete subsection 2 of each of those sections, only subsection 1 is deleted.

SENATOR HECK:

I agree with Mr. Lee on both counts. The issue is subsection 1 of both sections and what is defined as a medical procedure. The lasers and pulsed light therapies can be used for medicinal purposes but they can also be used for cosmetic purposes like laser hair removal. The issue then becomes, how do you define medical procedure to make sure those things utilizing a laser that are medical procedures are being done by only individuals that are licensed under the NRS Title 54. Those being used for cosmetic purposes like laser hair removal do not have to fall under the provisions of this bill. That is the reason we should send it to a study to find out what is considered a medical procedure and what is not.

MR. LEE:

That is why we feel it is important to have a study during the interim and answer those questions.

SENATOR CARLTON:

I would like to go back to the volunteer doctor section. We did the volunteer doctor provision back in 2001. I want to make sure it is on the record as to what this pertains.

MR. LEE:

You are correct with the intent when we worked on this in 2001. If a physician is retired but still wants to practice on a volunteer basis, we created the indigent care where he could go to a clinic or a neighborhood center to render care to the indigent.

SENATOR CARLTON:

That would still be through a federally qualified health facility. It would not be a private practice. The reason we limited it to federally qualified health care (FQHC) was because they would be covered under the federal tort exemptions. We did not want them to have to purchase medical malpractice insurance while practicing outside the clinic.

MR. LEE:

The latter portion is correct. I do not think this is restricted. This was not intended to require the physician to obtain malpractice insurance.

SENATOR HECK:

The problem with using the term indigent is there is a specific definition of the word. It is a determination made by the social services in the local county. There are a lot of people who are uninsured and they are not classified as indigent. It is a specific determination made to make them eligible for indigent care. There are efforts to try to put together volunteer clinics to provide health care to those who cannot afford it. Indigent care can be provided at the county hospital and is paid for by county social services. We are looking for uninsured or underinsured individuals. Private physicians want to come together to provide those services as a community service for uncompensated care. This provision would then be helpful in providing them coverage under the Good Samaritan section when they are providing gratuitous care to those uninsured or underinsured.

SENATOR CARLTON:

I do not see this as the Good Samaritan-type situation. I understand people wanting to help, but the Good Samaritan clause is more of an on-the-spot, emergency-type issue. This is a planned way to give health care to people who could not afford it. It does not mean we want to do it in a totally different fashion. I want to make sure the doctors and patients are covered. If we start operating specialty clinics outside of FQHCs, how are they covered and what happens if something does not go right? We need to make sure everyone is protected.

MR. LEE:

I understand and will get answers for you.

SENATOR HECK:

The issue Keith Lee is currently talking about as far as indigent care is already in the Good Samaritan statute in the NRS 41.505 also we have the ability to do it outside of the FQHCs. The problem is the term indigent is in there and we are trying to expand that to more than indigent. I want to ask Ms. Scott a question regarding the same provision regarding the Good Samaritan coverage which is in section 16 of the bill. They are adding physician assistant. I noted it said or registered nurse (R.N.) and I want to make sure it includes advanced practice nurses (A.P.N.). Is an A.P.N. considered a R.N., or do we need to specifically add A.P.N.?

DEBRA SCOTT (Nevada State Board of Nursing):

All A.P.N.s in Nevada are licensed as R.N.s. I believe it would include those.

CHAIR TOWNSEND:

Mr. Lee, is this a recent development in regard to this amendment from the other side?

MR. LEE:

I neglected to say the proposed amendment has been run by Assemblyman Mabey who is the sponsor of the bill in the other House. He concurs with the amendment.

SUSAN FISHER (Aesthetics Association of Las Vegas):

We were not involved in this bill on the Assembly side. There was no Aesthetics of Southern Nevada Board at that time. We were very concerned about the bill

as it is written. We felt it would close about 150 businesses in southern Nevada. This would represent hundreds of employees with the proposed amendments. We thank Mr. Lee for working on the amendments with us. It is a good idea to study these issues. We agree there needs to be further discussion. There are some concerns with section 5 of the bill where the Board shall subscribe the requirements for supervision of a physician with regard to treatments. We need this to be clarified. Does it mean the physician is looking over the person's shoulder that is doing the treatment? Is the physician on-site, or are they affiliated with the medical salon?

MR. LEE:

We will go through the regulatory process with hearings to get everyone's input. This amendment was suggested by the Nevada State Medical Association.

LAWRENCE P. MATHEIS (Nevada State Medical Association):

It is in a number of statutes and it is different in each one. Rather than placing it in statute the first time you are trying to regulate a new area, it would be wise to have workshops and hearings to have all the parties work with the Board. Then, if there is a consensus on what supervision means it can be handled.

CHAIR TOWNSEND:

Ms. Fisher, can you please explain on page 3, line 35, A.B. 385, cosmetic or chemotherapeutic substance, what are these terms?

MS. FISHER:

Cosmetic injections can be anything from Botox, collagen, or Restylane. Aestheticians are trained in the skin. They do a number of different procedures on the skin.

CHAIR TOWNSEND:

I am back to the term "inject", not the individual who does facials or aesthetics as defined in the aesthetician statute. Are we talking about injecting things? What besides Botox are they injecting?

MS. FISHER:

I am not familiar with what is injected other than the fillers and Restylane. It already is defined in statute what can and cannot be injected. We are not talking about cosmetologists and aestheticians injecting.

CHAIR TOWNSEND:

Mr. Lee, this must be here for a reason, do you know why?

MR. LEE:

Botox is a very dangerous substance and we believe it should only be injected by someone who is qualified to inject and be done under the supervision of a licensed physician.

CHAIR TOWNSEND:

Are people currently doing this without being licensed or under the supervision of a physician?

MR. LEE:

I have heard that but cannot present evidence to you.

CHAIR TOWNSEND:

Ms. Fisher, since Mr. Lee has recommended that we remove or amend the two sections regarding the laser surgery and intense pulsed light therapy, do you have problems with any other sections of the bill?

MS. FISHER:

We support the bill with the amendment. We support the effort to clarify what supervising physician actually means. That was a concern and we are pleased to see it will be defined more clearly in regulations.

CHAIR TOWNSEND:

I think Mr. Matheis made an excellent point that in the regulations since there are new players they can figure out what it should mean.

AMBER TSANG (The Skin Institute):

I am a managing partner of the Skin Institute. We have two clinics in southern Nevada. We support the intent of the bill. We agree public safety is our number one concern. We have been diligent in ensuring this happens. We want to protect clients from those who may practice without appropriate training and experience. We have created the Aesthetics Association of Southern Nevada. The association's goal is to establish and maintain guidelines by which all medical spas can follow.

DAVID WRIGHT (Son MedSpa):

My wife and I own Son MedSpa of Las Vegas. We have been in business in Las Vegas for over three years. We have served thousands of clients. We both support any bill or law that protects the client as well as the business owner and our employees. We believe in training and train our technicians which are certified. We are part of an organization that is nationwide with over 30 organizations performing these duties today. We are in the aesthetic side of the medicine and do not do laser surgery. We do laser cosmetic treatments on the skin. If we can help in further clarification of this bill we would be glad to work with you.

CHRISTY THOMAS, N.P. (The Skin Institute):

I support the intent of this bill but have concerns. I am a responsible nurse practitioner and a partner in an aesthetics business. Our concern is these procedures do need to be regulated and training standards need to be set. We would like to help set standards. We would like to bring up secondary market lasers which are not addressed in this bill. We acknowledge this is a problem and it does jeopardize the public. People can buy secondary market lasers off the Internet, eBay and other markets and have no training in their use.

TIFFANY OSBORN (Spa Manager, Radiance Medspa):

I support A.B. 385 with the proposed changes that Mr. Lee recommended. I feel this issue does require further discussion and study. All the good practicing medical spas in Nevada want what is best for the patients. We want to keep our prices competitive. Laser treatments for skin rejuvenation or hair removal are fairly simple treatments to perform, but the laser is a powerful piece of equipment. Training and certification does need to be in place. There is some economic impact that could affect the businesses. We have seen in other states where business was driven out of that state. In some states, they only let doctors perform the last treatments. We think the regulation is needed but not overregulation.

FRED L. HILLERBY (Nevada State Board of Nursing):

In section 5, page 3, lines 40 and 41, nurse practitioners in Nevada practice in collaboration with physicians, and not under the direct supervision. Most of you on this panel are aware, but I wanted to have it stated. Mr. Lee agrees with that.

JAMES WADHAMS (Nevada Dental Association):

I have spoken to Mr. Lee to make sure there is no confusion with this bill. There are certain areas of practice in dentistry that include injections that may fall under section 5. It is limited to NRS chapter 630. We want to make sure it does not create a complication in the scope of practice under the NRS 631.

MR. MATHEIS:

We do support the bill. The problems we had were taken care of by the Assembly and we have no problems with the current proposed amendments.

CHAIR TOWNSEND:

Mr. Keane analyzed this bill based on a bill that was processed that had drafting and legal concerns. We need to process this bill with the proposed amendments. I would like Mr. Keane to highlight those areas for the Committee. Please provide your handout to the Committee ([Exhibit E](#)). This has a direct conflict with S.B. 412.

SENATOR HECK:

I presented S.B. 412 yesterday and Assemblyman Mabey and I are sitting down to come up with language that will mirror each other. We have agreed to put it in both of our bills

CHAIR TOWNSEND:

If you could provide the changes for section 3, Mr. Keane, as they both need to conform to each other. There is also a two-thirds component that was in the bill. Apparently there was a misunderstanding when the term "special restricted" on page 8, line 23, was put in the bill. The Committee needs copies so when the draft amendment is done it can be added along with Mr. Lee's recommendation and the language Senator Heck will provide in working with the sponsor of the bill.

SCOTT SEIDENSTRICKA (Genesis Salon & Medical Spa):

I read a story in the *Reno Gazette Journal* that referenced this bill. It was referring to tattoo removal. I researched and found this bill was in the process. I had concerns with language in the bill. The medical spas that testified from southern Nevada are aware of this. Anyone can provide a laser treatment for a skin therapy. They need training and need to work under the supervision of a physician as the only requirements. The proposed bill covers anyone hired off the street as long as a physician is comfortable with the person. At Genesis

Salon & Medical Spa, we have a supervising physician, physician assistant and we have nurses. We have had over 3,000 clients since 2004 utilizing our spa. We feel comfortable with the level of expertise our staff provides. There is a difference in technology between laser and intense pulsed light. The intense pulsed light can blind a person if it is emitted to the eye. For an ophthalmologist to use intense pulsed light is confusing to me. That portion of the bill is confusing. The laser is obviously used for surgeries but I am not aware of any practice where intense pulsed light would be used on the eye.

CHAIR TOWNSEND:

We will close the hearing on A.B. 385 and open the hearing on A.B. 478.

ASSEMBLY BILL 478 (1st Reprint): Revises provisions governing loans and loan services. (BDR 52-394)

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):

Assembly Bill 478 deals with predatory loan practices. I have a PowerPoint presentation with handout (Exhibit F original is on file at the Research Library). The purpose of A.B. 478 is to close a loophole in the current high-interest loan bill that we passed last session, NRS 604A that is being exploited by high-interest lenders and to provide greater protections to our military. I think this Committee remembers quite well the discussion and the drafting of NRS 604A. It was drafted with input from installment, payday and title lenders. This chapter was created for all three. We have specific provisions for the type of industries for all three. It gave protection to customers of all three lenders and created uniform rules to give consumers protection and level playing fields for businesses offering these products. The measure has been largely successful, but we have some lenders who have chosen to evade the law. Under the NRS chapter 604A, we had three titles. Payday loans are where they take a check in exchange for the loan, title loans are involving car titles and short-term loans. The short-term loan is defined as a loan that offered an annual percentage rate (APR) of more than 40 percent and had a loan term of less than 1 year. Originally the bill had 18 months and this Committee changed it to 12 months. It would not have mattered what the term was, the lenders would change a loan for 18 months and 1 day. After the 2005 Session in a deliberate attempt to evade the law, some lenders rewrote their contracts to be a year and a day. The lenders require their customers to sign a one-year contract providing an interest-only monthly payment often with a balloon in the last month. They are continuing to charge late fees and post-judgment default fees.

Between last session and now, I have examples of loans from loan centers. This is an example from Handy Cash. Before July 2005, loan amount of \$200, interest rate is 714 percent and the loan period was 4 months with a total finance charge of \$344. After the new law, same loan amount, but the interest rate goes up to 813 percent, term of 1 year and the total finance charge is \$1,600.

Another example is from Budget Loans. The loan amount is \$403, interest rate of 521 percent but now the finance charge goes from \$80 to \$4,319 because the loan term is extended 1 year.

Another example is Lucky Credit. Before 2005, loan amount \$150 at 521 percent, 4-day loan pay, 1 payment with total finance charge of \$15, now \$500 at 456-percent interest with a total finance charge of \$2,400.

People who are desperate and borrow \$300 end up paying \$1,500 for the \$300 loan. Assembly Bill 478 closes this loophole. It deletes the language with regard to short-term loans and it applies to any lender charging more than 40 percent. We will not have games played with the years and the consumer protections we agreed to last session. We also made sure the initial loan term was defined. If we did not catch that, the lender would just have the initial loan term of a year and a day. We have tried to imagine every loophole and close it up to get these lenders who refuse to follow our law.

ASSEMBLYWOMAN BUCKLEY:

I would like to talk about the military because we have added some provisions to protect them. Please see the proposed amendment ([Exhibit G](#)). It is estimated nationally the predatory payday lending costs military families over \$80 million in abusive fees annually. All of the military installment lenders listed by the Department of Defense (DOD) in their report on predatory lending practices listed Nevada as their home state. We should be embarrassed by this state of affairs and move to change this statistic. Military leaders are coming to us and asking for our help in stamping out this threat to military families. How do predatory lending practices threaten military readiness? According to the DOD, members of the military are three times more likely to be a victim of abusive-lending practices. They are young, financially inexperienced and struggling to support their families with a steady income. They are honest, want to repay their loans, are easy to locate and risk being demoted from not being able to pay their debt. All of these examples make them a perfect target. Failure

to repay a high-interest loan makes a soldier a security risk and disqualifies him from combat deployment. The number of such revoked security clearances has increased 1,600 percent since 2000. We do have members here from our military to give a perspective in Nevada on this issue. The DOD report states the predatory lending harms troop morale; a soldier worried about paying back an unreasonable loan amount cannot focus on his mission.

This bill extends greater protection to our soldiers and their spouses. Lenders must honor any proclamation by a base commander that certain lending locations are off-limits to soldiers and their spouses. They may not garnish or threaten to garnish the member or spouse or threaten to contact the military chain of command. They must not commence or continue collection efforts against a deployed member of the military or their spouse.

The DOD, implementing the Talent-Nelson amendment to the John Warner National Defense Authorization Act of 2007, has stated there is a 13-percent hard interest rate cap on loans to the military; they just go to installment loans.

In Pennsylvania, one lender evaded closed end-loans to similar state language by making all loans open-ended. We can already predict how they are going to get around these DOD regulations. The second part of the regulation limits it to a loan for less than 91 days; we know what they are going to do. All military loans are going to be for 92 days. Congress requires all fees and single-premium insurance to be included in the interest calculations; the regulation does not include credit insurance premiums that are optionally paid. We will just see those added to the APR.

Assembly Bill 478 will complement the federal law with regard to the military. It will plug some of the gaps left by the federal regulations. The DOD may not yet appreciate the extent to which some unscrupulous lenders will go to evade regulation and prey on the gullibility of financially unsophisticated military men and women. Nevada knows from hard experience what needs to be done to craft regulations and laws that will be effective.

ASSEMBLYWOMAN BUCKLEY:

There is going to be significant opposition to this bill. You are going to hear, "We are not evading anything, last year's law was not meant to apply to us. We are installment lenders." That is not true. You will recall the discussion. There are payday, installment and title loans. You will also hear we are different. We

are offering a huge community service. People need us. We have a high default rate. We need to charge 700- or 900-percent interest. The only people they are getting this amount of interest on a long-term basis are people who are trying to pay. This is trapping people on a cycle of debt. A rate of 900 percent for a year and then a balloon payment of more than the amount of the loan are unconscionable amounts. The amendments are nothing other than trying to get out of the restrictions on the interest-rate protections. I urge this Committee to protect Nevadans who are falling prey to these companies, the elderly, single parents and our military.

ASSEMBLYWOMAN BUCKLEY:
They are in every part of the State.

SENATOR SCHNEIDER:
Do you think we need to change our usury law?

ASSEMBLYWOMAN BUCKLEY:
We have tried very hard in last Session and this Session to regulate the industry. There is a limit and the approach is carried forward in this bill. After the limit when someone cannot pay, you can charge prime plus 10 percent for a very short period of time and that is it. The person still has to pay back the entire principal and all the interest. That is a fair approach. If the lender finds some other way to continue to trap people in a cycle of debt, I have no doubt there will be an initiative petition on a usury law. That will be seen as the only alternative. We try to protect the businesses that are playing by the rules, lenders who follow our law and are furious they now have an unlevelled playing field.

SENATOR HECK:
In the examples that you gave about the extended loan contracts and increased financial charges, is there anything that prohibits the individual from paying off the loan before the expiration date of the contract?

ASSEMBLYWOMAN BUCKLEY:
Some do and some do not. They have prepayment penalties and other do not. Probably they can, but the problem is they are paying such high interest. If you borrow \$200 and you pay \$30 every 2 weeks, you are so busy paying interest you cannot pay down any of the principal.

SENATOR HECK:

I have a couple questions on section 16; the section that deals with the impact on the military. The use of these lenders by service members is a sorry statement on the level of support that we give our service members and the fact most of them wind up with families on public assistance and utilizing food stamps. It is not uncommon for base commanders to make proclamations that certain off-base premises are prohibited. In those cases, the problem falls on the service member and if they are caught frequenting that place; they are liable for discipline, not the business.

I noticed in section 16 there is no requirement that the base commander notice the entity that has been placed off-limits. If you are going to hold the lender accountable, they need to be notified that they have been placed on a prohibited list. What happens if the service member does not disclose they have gone into an establishment that has been designated off-limits, or they do not disclose they are a service member? We define military to include the reserve and the National Guard. It needs to be the reserve and the Guard while on active duty. Being a reservist, I do not think my 1 weekend a month and 2 weeks a year should give me the same protection that somebody who is on active duty 24 hours a day, 7 days a week, 365 days a year.

ASSEMBLYWOMAN BUCKLEY:

Captain Ryder could probably respond to these questions a little better than I can. They are issuing the proclamation to the store. Servicemen could hide their identity, but it is rare. The company is asking for proof of income, and the only income in most of these cases is their military income.

In section 16, we tried to make the differentiation between active duty and being in the Guard, but not on active duty. In paragraph 3, if a customer is a member of the military and is deployed, then the prohibition is on the collection activity. If they are not deployed, and they have the same income when they took the loan, you can still try and collect. I did work with Captain Ryder on this language.

JUDGE STEPHEN J. DAHL (Nevada Judges Association):

The Nevada Judges Association does not take a position on this bill. I have been informally polling the members of my Association to see the effects of the legislation from the last Session. The experience of the courts is what Assemblywoman Buckley said is correct. There are some companies, not all, but

some that immediately changed from less than a year to a year. That is what we are seeing in the courts as these companies are coming in and trying to enforce those judgments. The contracts the companies have made are so they no longer fall into the provisions of the existing statute. I am just confirming what the speaker testified to this morning is what is happening in the courts.

CHAIR TOWNSEND:
What cases do you handle?

JUDGE DAHL:
In justice court we handle small claims. These cases are either in small claims or they can file formal civil cases. I am seeing more formal civil filings to enforce the loan as opposed to bringing it into small claims. You will see figures that reflect the Las Vegas Justice Court where their formal civil filings are much greater than the small claims filing.

CHAIR TOWNSEND:
Are most of these cases being converted into a civil action?

JUDGE DAHL:
I do not know if most is accurate, but it is a lot of them. It is a growing trend. At least one-third of most our small claims cases are dealing with these loan cases. A growing percentage are filing formal civil cases using that method to get a default judgment which then goes on the debtor's record and into the credit agencies.

CHAIR TOWNSEND:
Perhaps we could have you ask your colleagues to keep a tab of all of this activity, including title loans, payday loans and installment loans.

JUDGE DAHL:
The administrative offices of the courts have attempted to keep the records and that is what is reflected on the chart. As I look at my staff, I think there might have been a miscommunication as to definition. I signed more defaults last week on payday loan cases than what is reflected on the chart in an entire year.

CHAIR TOWNSEND:
It is important for us to know.

JUDGE DAHL:

Personally for me, not as judge, it is not comfortable being the enforcement arm of some of these companies that are collecting 900-percent interest rates.

CAPTAIN W. SCOTT RYDER (Commanding Officer, Naval Air Station Fallon):

I have two pages of remarks ([Exhibit H](#)), most of what I will read. I will skip parts of it as Assemblywoman Buckley went over it extremely well.

I am speaking on behalf of military personnel in general. I am representing hundreds of thousands of military personnel that come to Nevada every year to train at Nellis Air Force Base, Hawthorne Army Weapons Depot and at the Naval Air Station Fallon.

Financial stress is a real concern these days within the military. The financial environment our military personnel today find themselves is different than it was in the past. This issue has received attention at the highest levels of the DOD and all the services. Admiral Len Hering who is the Commander of Navy Region Southwest took the time and put out the effort to assign people like me as part of a task force of naval officers and personnel responsible for looking into these situations. Financial health is a military readiness issue. It impacts our soldiers, sailors, airmen and marines personally but is also affecting the military's ability to respond when called upon. Incurring high amounts of debt affects military personnel even more than civilians. The military considers debt ratios of its service members as one factor in assessing troop readiness for deployment. Excessive debt prevents deployment of service personnel which increases the frequency of length of deployment for those who are able to deploy. Excessive debt can also cause security clearances to be revoked. In the Navy between 2000 and 2005, the sailors who lost their clearances went from 124 to 1,999.

The Navy has developed a three-pronged approach. The first is we have heightened our efforts dramatically to educate our people. Secondly, we are looking for alternatives for our people to use instead of these short-term loans or high-interest rate loans. Thirdly, our approach is working through legislation. Protection must be part of the solution. Last year, Congress passed the Armed Forces Appropriations bill with the Talent-Nelson amendment designed to protect financial health of our men and women in uniform. This amendment will go into effect June 1. This bill will protect service members from lending practices that are high-cost, deceptive or in some cases outright fraudulent. It is hopeful that all states will consider providing additional support and

enforcement mechanisms to the federal regulations. Section 6 complements the federal regulation and makes the Talent-Nelson amendment part of the NRS. Section 16 covers the military members and their dependents which includes provisions that require lenders to honor negotiated repayment plans, allows base commanders to put certain businesses off limits and prevents garnishment of service members' pay or going directly to a service member's chain of command. The DOD and the Navy endorse A.B. 478.

CAPTAIN RYDER:

It was asked how prevalent payday lending organizations and storefronts are in this area. In Fallon, a population of 8,600, there are 12 payday lender storefronts. In Fernley and Fallon, the total comes to 17 storefronts.

In regard to Senator Heck's question regarding the authority of commanding officers of military installations to place storefronts off limits, I am required per military regulation to seek concurrence from the Armed Forces Disciplinary Control Board. I would be required to write a letter regarding a loan organization that was not treating my sailors correctly. The Board would try to determine if the organization is doing something against the law. It would be almost impossible for me to place a storefront off-limits to military people outside the gates of Naval Air Station Fallon because they are typically operating within the law.

ASSEMBLYWOMAN BUCKLEY:

By making violations of the Talent-Nelson law, we then kick in NRS 604A.900 that we adopted last Session. It provides if a licensee is willfully violating our law, the loan is void. We have a \$50,000 administrative penalty available. Under NRS 604A.930, anyone harmed may sue for actual and consequential damages, punitive damages and also there is a statutory penalty of \$1,000 for certain violations. Our penalty section is very tough.

SENATOR SCHNEIDER:

Maybe, if we could educate the people and make them credit union members, we could give those short-term loans or a revolving line of credit. Maybe we could do something with the banking industry to have them more into this business where it is not so abusive. We have good controls over our banks, and they are ethical.

CHAIR TOWNSEND:

What percentage of these loans do you think are military?

CAPTAIN RYDER:

I do not have a sense of it. I suspect fairly low because of the aspects and discipline that military people have a desire to repay their loans.

JUDGE FIDEL SALCEDO (Senior Justice of the Peace, Washoe County):

I am in support of A.B. 478. For the past several years, we have seen an increase in the high-interest loans in our courts. Two years ago we felt the bill would take control and help the consumers get out of the debt mill. That did not work because of this loophole. I have a number of cases with me today showing what happened to these people. Assemblywoman Buckley touched on some of the cases. I would like to point out that on a \$200 loan, a person has to pay \$20 every 7 days for 1 year and then the final payment is \$223.90. That is the type of cases we are seeing.

CHAIR TOWNSEND:

I think you have done a good job in laying out what we are seeing. Does the consumer know the interest rate when they apply?

JUDGE SALCEDO:

It shows the annual percentage rate, the finance charge, the amount financed and the total of payments.

CHAIR TOWNSEND:

Do they know the penalties?

JUDGE SALCEDO:

It is on the applications. It talks about defaults and the delinquent payments. When you are desperate and need a few dollars, it makes no difference what is on the form. I have one that is 7,300 percent on a \$250 loan. It is a one-day loan. The person has defaulted and now they are subject to the 7,300-percent interest rate until it is collected. That is the problem and what is going on. An individual borrowed \$800 and paid back \$950 already and has been sued for \$1,675.78. There are many examples. This is a debt mill and these people are never going to get out of debt with what is happening today.

The time the courts are spending on these types of cases has created a lot of additional work. We need to make sure these people are complying with NRS 604A. They are circumventing by what they are trying to do. We as judges have to stop their circumventing and declare them unconscionable. The NRS 604A was created to stop it and it did not; A.B. 478 will hopefully stop it.

CHAIR TOWNSEND:

What do people tell you that is happening in their lives that has kept them from repaying the loan?

JUDGE SALCEDO:

Generally, they do not appear. The majority of these cases are won by default judgment. We never see the defendants in small claims court. The few that do come do not tell us why they had to borrow money, but the abuse that is being forced on them. You hear stories they have been paying, being called and harassed. They demand more than what I can afford to give. This is unconscionable and shocks my mind.

CHAIR TOWNSEND:

It is important for the Committee to understand what is going on in the courts. We do not deal with money or the judicial issues, but we do hear about crowded courts and the need for appeals courts. We need to understand how much of this ends up in your court, and we need to get an arm around it.

KATHLEEN DELANEY (Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):

I will reserve my testimony until next Thursday and will respond to the arguments we might hear at that time.

BARRY GOLD (AARP Nevada):

At the end of 2005, industry analysts reported between 23,000 and 25,000 payday loan outlets in the United States. By comparison, McDonald's has only about 14,000 locations in the United States.

WILLIAM R. UFFELMAN (Nevada Bankers Association):

In response to Senator Schneider's question, there are currently seven branches of member banks in Fallon and three in Fernley. I heard that someone else was opening another one in Fallon. There are banks in the community that are available. At the national level, the bank regulators are trying to figure out a

way to offer a small loan product that will fill the need for these people. The credit unions have also taken a look at this. Sometimes there is a notion that they do not want to go on post and get a loan, wanting to keep their personal life separate from the military life. I do have a proposed amendment to the bill that I offered to Assemblywoman Buckley in the Assembly. It did fall off in the final version.

CHAIR TOWNSEND:

Assemblywoman Buckley handed out a proposed amendment with technical changes she wanted to offer, and we will respect those as we continue to process this bill.

How many of your member banks provide services to the military?

MR. UFFELMAN:

They bank with them and have products with them. An individual enters the military, opens an account and it may be the account they use for the rest of their career.

ROBERT A. OSTROVSKY (Nevada Lenders Association):

The Nevada Lenders Association is made up of Lucky Credit, Advanced Credit, New Star Management, Budget Loans, Loan Depot and Keystone Financial. Also present today are people from Dollar Loan Center, Gentry Finance, Pioneer Loan, Rapid Cash and Koster Loans.

We were unprepared today and appreciate the opportunity to have a second chance. The 675 lenders have been in the marketplace since 1959. The payday lending institutions arrived much later. We think we have a different solution to the same problem and will be giving you an industry overview with our role in the marketplace and proposed changes to the statute. We think it addresses most, if not all, of the concerns raised.

We support all of the changes as proposed by Assemblywoman Buckley and requested by the military institutions. We will help support all those changes in any way necessary.

TERRY K. GRAVES (Koster Financial):

We too will make our full presentation next Thursday. We fully support the military provisions. We pledge to work with Assemblywoman Buckley on

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making some corrections to the statutes. We do have some problems with the bill and will be bringing them forward next week.

KEITH L. LEE (Consumer Loans of America):

We have worked with Assemblywoman Buckley during the interim on this bill. We support the bill as presented with the amendments that have been discussed and submitted.

CHERYL BLOMSTROM (Nevada Consumer Financial Association):

I have with me today, Markus Holling, who represents United Finance to explain their concerns. We as well have one issue left with the bill; otherwise we have been working with Assemblywoman Buckley for the past year.

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Chair Townsend:

The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 10:56 a.m.

RESPECTFULLY SUBMITTED:

Gloria Gaillard-Powell,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____