

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

**Seventy-fourth Session  
February 14, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Wednesday, February 14, 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:**

Senator Dina Titus, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Gloria Gaillard-Powell, Committee Secretary  
Wil Keane, Committee Counsel  
Scott Young, Committee Policy Analyst  
Jeanine Wittenberg, Committee Secretary

**OTHERS PRESENT:**

Pamela Hogan, P.T., O.C.S., F.S.O.M., Chair, State Board of Physical Therapy  
Examiners  
Teresa McKee, Nevada Association of Realtors  
Gail J. Anderson, Administrator, Real Estate Commission, Real Estate Division,  
Department of Business and Industry  
Kathleen E. Delaney, Senior Deputy Attorney General, Bureau of Consumer  
Protection, Office of the Attorney General

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Sharon Jackson, Deputy Chief Investigator, Consumer Affairs Division,  
Department of Business and Industry  
Frank Siracusa, Chief, Division of Emergency Management, Department of  
Public Safety  
George A. Ross, Las Vegas Chamber of Commerce; Retail Association of  
Nevada  
Peter Krueger, Nevada Petroleum Marketers and Convenience Store Association

CHAIR TOWNSEND:

We will open the hearing on Senate Bill (S.B.) 22.

**SENATE BILL 22**: Authorizes the State Board of Physical Therapy Examiners to charge fees relating to the program of continuing education for physical therapist's assistants. (BDR 54-635)

PAMELA HOGAN (P.T., O.C.S., F.S.O.M., Chair, State Board of Physical Therapy Examiners):

This bill enables the State Board of Physical Therapy Examiners (SBPTE) to charge a fee to anyone submitting approval for continuing education. We license physical therapists and physical therapist's assistants (PTAs). Unfortunately, the fee for PTAs' courses was omitted from our last bill. We did not notice the omission when we reviewed the final bill draft. I have provided the Committee with a copy of my written testimony ([Exhibit C](#)).

SENATOR HECK:

I have no problem with this bill and including the PTAs' continuing education. During the last Legislative Session, when we reviewed your bill in subcommittee, I asked how the SBPTE would approve courses that are sponsored by the national association. I was dismayed to see that the regulations issued did not provide any exceptions for the national association. I think it is duplicative that the national association, responsible for setting the body of knowledge for physical therapy, has to submit to the State for approval of courses. The American Physical Therapy Association's (APTA) meeting in Boston this month will not have State approval. For the Nevadans that attend, they will have to incur an additional fee to have that course approved by the SBPTE. Why did the SBPTE not think that the APTA would not need to submit approval?

Ms. HOGAN:

The SBPTE did address that last year. Before we requested these fees, we did not approve every single course that was submitted by the APTA. We felt some courses were not relevant to the practice or business of physical therapy. The APTA did submit, with the appropriate fee, for the approval of pre-conference courses for the conference in Boston this month. The problem lies with several courses that are only one or two hours in length. Those are cost prohibitive for the APTA to submit for State approval. On the other hand, the SBPTE has the obligation to approve the course so that we ensure that our licensees are getting the required continuing education. We plan on reexamining this subject at our next board meeting.

SENATOR HECK:

I do not think that there is any other board that has a continuing education unit (CEU) process based upon the number of CEU hours per course and the associated fee. I would like the SBPTE to take into consideration the national association courses and not make it cost prohibitive for our licensees traveling to the gold-standard conference to have to jump through hoops to get approved CEU credit.

SENATOR CARLTON:

I would like to see the SBPTE develop basic course requirements as Senator Heck stated. Physical therapists are small businesses; breaking this down into individual units is costly for their business.

Ms. HOGAN:

I understand that, the SBPTE is a business as well. There is a lot of money involved for us to approve these courses. Some of the courses submitted for approval do not meet our criteria for CEUs.

SENATOR HECK:

I would agree, and am sure there are plenty of entities in the business of offering continuing medical education that is not part of the APTA or nationally recognized physical therapy groups. For those entities, I agree that every one of their classes should be approved through your process. I believe the APTA is responsible for setting the body of knowledge for your profession. Scrutinizing their CEU courses is taking it too far. They are the national experts on physical therapy.

Ms. HOGAN:

Senator Heck, I will report back to you on this after we address it at our board meeting in March.

CHAIR TOWNSEND:

Please go back to your board and advise them of the concerns of this Committee. First-House passage for bills is April 13. We will hold this bill until you report back to Senator Heck or Senator Carlton with the results of your board meeting.

I will now open the hearing on S.B. 69. I must disclose that my wife is a real estate licensee and broker.

**SENATE BILL 69**: Revises provisions related to real estate brokers, salesmen and qualified intermediaries. (BDR 54-457)

TERESA MCKEE (Nevada Association of Realtors):

Recently, there have been rapid changes to the real estate market and industry. As a result of those changes, new business models have appeared. We refer to the models as minimum services or alternative business models. You may be more aware of them as Help-U-Sell or Assist 2 Sell. These companies are known for offering the consumer menu-driven services. Currently, under Nevada law, real estate agents are not allowed to practice in that manner. There is a duty to present all offers. That duty is not something that can be waived under Nevada law. The consumer has demanded that these menu-driven companies be allowed to exist. They want to be able to choose the services they will pay a company to perform for them. This creates a few problems. In addition to the agent not being able to practice in that manner, there are uninformed consumers who do not know what services the agents are supposed to be providing to them. As a result, consumers are waiving a lot of things that they should not be waiving.

Another problem is it creates a hardship to the agent who remains in the transaction on the other side, because a lot of times the consumer will go to them and say "How do I fill out this contract?" "How do I pick a title company and do many of the things required in order to consummate a contract and close a deal?" This bill works in conjunction with recently adopted regulation by the Real Estate Commission (REC). The regulation provides for the legal operation of all business models that we have been able to identify might exist. It also

provides for fully informed consensual waiver of the duty to present all offers. That is the only duty we would allow to be waived. The other duties under *Nevada Revised Statutes* (NRS) 645.252 and 645.254 have to do with honesty, fair dealing, disclosures of material facts and disclosures required under Nevada law. Nothing else that we have seen in our discussions is any type of duty that could be waived except this duty to present all offers. In regulation we defined what presenting all offers is, so that it is clear what would be waived. In addition, this bill provides protections for the agent who does remain in the transaction to make it clear to the unrepresented consumer that there is not an agency relationship created just because of communication. There is a fine balancing point of providing advice to a consumer and just communicating to consummate the deal. We have some suggested changes to the bill. Recently adopted regulation needs to be checked for consistency in the NRS. A few things did not clarify the intent of what we meant to accomplish.

CHAIR TOWNSEND:

When were the regulations adopted with the REC?

GAIL J. ANDERSON (Administrator, Real Estate Commission, Real estate Division, Department of Business and Industry):

The REC adopted a temporary regulation last week concerning some of the definitions.

CHAIR TOWNSEND:

Ms. McKee, we want to make it clear that you do not get to pass a regulation and then come to this Committee and have the statute codified. You have to have the authority to adopt the regulation.

MS. MCKEE:

Part of the reason that happened is that in order for the regulations to make sense, we needed some definitions. Those definitions more properly should be set forth in statute.

CHAIR TOWNSEND:

Was new regulation a result of people operating outside of the NRS?

MS. MCKEE:

Yes. There are people operating outside of the law. One of the purposes of the regulation is to make clear that the duty to present all offers could not be

waived. There were many things that had to be defined in order to create an agency relationship. Certain alternative business model practitioners were denying that an agency relationship even existed. Therefore, they are saying that the NRS does not even apply to the situation. We want to ensure that anything a real estate agent does on behalf of any client does create an agency relationship under the NRS.

CHAIR TOWNSEND:

The issue you present causes concern to many of us who would worry that an individual providing those same services, even though your new definition says that no longer constitutes an agency relationship, is rife with an opportunity for litigation. Because if someone provides services, the average person can conclude that an agency relationship has been established. Was that discussed?

MS. MCKEE:

That is exactly our intent.

CHAIR TOWNSEND:

The essence of the bill is in section 3, subsection 3, paragraph (b).

MS. MCKEE:

That is the section that allows the waiver of the duty to present all offers made to or by the client. It does not negate the agency relationship. The one duty that the agent owes a client can be waived with fully informed written consent.

SENATOR CARLTON:

These are operating companies that are not recognized as real estate businesses. Is that correct?

MS. ANDERSON:

That is correct. In particular, they often offer limited or fee for service to sellers. For example, I only want my house listed in the Multiple Listing Service but want to accept the offers myself as the owner.

SENATOR CARLTON:

How do we make sure the consumer knows what their rights and protections are?

SENATOR SCHNEIDER:

I need to disclose that my brother-in-law is a broker and owns a company that offers limited real estate services.

MS. MCKEE:

A concern we also addressed was how does the consumer know what duties are owed them. There are a number of things that the REC and the Real Estate Division (RED), Department of Business and Industry, do for regulation and procedure. The most important thing about the new regulations just passed is they allow the RED to create a form that outlines the duties owed to the consumer as outlined in NRS 645.252 and 645.254.

MS. ANDERSON:

Actually, this legislation is necessary to make happen what Ms. McKee just described. It cannot happen by regulation. The waiver can come only if S.B. 69 passes and allows the waiver with consent of presenting all offers. Right now a real estate licensee may only negotiate and discuss an offer with a licensee if the seller is represented by a licensee. Part of what the new business models want to see and address are that the seller often wants to directly negotiate with a buyer's licensee. Right now that is not allowed by law. The U.S. Department of Justice and the Federal Trade Commission have been very aggressive in looking at states they consider to prohibit limited-service brokerage options. A task force has been formed in Nevada to work on this and this bill is a result of those meetings ([Exhibit D](#)). As a result of the work of the task force the RED and the REC are in full support of this bill.

CHAIR TOWNSEND:

The waiver must be crafted in a comprehensive manner so the person signing will understand their rights and what they are waiving. It must not be just one more form of many to sign.

MS. ANDERSON:

This form will come into play early in the process when the actual duties-owed form is presented.

CHAIR TOWNSEND:

Have you considered having it printed bilingually?

Ms. ANDERSON:

The current form that this waiver will amend is not bilingual. We could take your suggestion to our legal counsel to look into that.

CHAIR TOWNSEND:

As demographics change in this State, you may want to take that into consideration. Do you have amended language for the bill?

Ms. MCKEE:

Yes. We have provided the Committee with our suggested amendments ([Exhibit E](#)).

CHAIR TOWNSEND:

Ms. Anderson, if we process this bill and you leave your regulation as-is, would you assure the Committee that members of professional associations for realtors and licensees, as well as members of this Committee, are notified if there are problems?

Ms. ANDERSON:

Yes.

SENATOR SCHNEIDER:

Realtors and businesses are advertising in Spanish-language publications. This is driving Spanish-speaking clientele to them. I have spoken to some who have advertised in these publications and they say that while some may be able to speak English fairly well, they cannot read it well enough to understand it. I think we need to keep that in mind and stay on top of it.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS S.B. 69.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR TOWNSEND:

I will now open the meeting to S.B. 18.



**SENATE BILL 18:** Authorizes the imposition of a fine for engaging in a certain deceptive trade practice. (BDR 52-587)

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

The bill before you today is a limited bill in the sense that it only addresses those organizations that were previously put under regulation by this Legislature. In order to do business in this State, they must register and post a security bond. If they do not, this bill provides a better mechanism to put them in violation and address it in a real-time, practical way. The current enforcement mechanism for the bulk of chapter 598 of the NRS requires affidavits and orders to show cause and hearings and investigations which are warranted in those cases because it is a consumer with a complaint that needs to be investigated and ultimately decided. We are addressing seven industries previously regulated by this Legislature as far back as 1987 up through 2001 when these various industries were recognized as being potentially problematic to consumers. This fine is only applicable to those who have chosen, either out of ignorance or willful disregard, not to register and post their security bond before conducting business. The heart of the bill is section 2 and section 4 which make deceptive trade clear. It also allows for the opportunity to issue a fine.

SENATOR CARLTON:

What is the registration fee?

MS. DELANEY:

The registration fee for any of those industries is \$25. There is an additional fee for the sellers of travel to place an additional \$100 towards a recovery fund. There is also a security requirement that varies depending on the industry.

SENATOR CARLTON:

Does that mean the first violation is cheaper than the registration, depending upon the business?

MS. DELANEY:

That is correct if you use the example of sellers of travel. Our belief is that the Legislative Counsel Bureau put together this fine structure because there is some precedent in chapter 598 of the NRS for the fine mechanism. The main goal of the fining mechanism is to put the business on notice in real time. The intent is not to make money.

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SHARON JACKSON (Deputy Chief Investigator, Consumer Affairs Division, Department of Business and Industry):

Being the head of the investigative unit, I want to reiterate that for our sellers of travel program, those fines are necessary. Because there are so many businesses that do not comply with the law, we would have immediate resolve which is desperately needed for our investigators to move forward.

CHAIR TOWNSEND:

I will now close the hearing on S.B. 18 and open the hearing on S.B. 82.

**SENATE BILL 82**: Provides that price gouging during an emergency constitutes a deceptive trade practice (BDR 52-31)

SENATOR DINA TITUS (Clark County Senatorial District No. 7):

Thank you for allowing me to introduce this bill to your Committee. I have provided a copy of my written testimony ([Exhibit F](#)).

I have also provided the Committee a list of all states and their existing laws and regulations on price gouging ([Exhibit G](#), original is on file in the Research Library).

I urge you to favorably consider this bill.

SENATOR HARDY:

Under the definition of state of emergency it reads, "the President of the United States declares a state of emergency in this State or in any other state." As I read that, if there is a state of emergency in Florida, that could impact this bill. Should that language be tightened?

SENATOR TITUS:

Yes. I believe it should apply in surrounding states.

SENATOR HARDY:

Are you aware of a standard for determining the additional costs of providing goods and services to businesses in those circumstances? You indicated that one of the things you had to account for is the potential increase in providing the services to the business. Is there any national standard or mechanism to determine what that is?

SENATOR TITUS:

I have reviewed many of the Federal Trade Commission reports on this. I do not think there is a standard formula and it is a debate among economists. I think that is why you leave it to the state governments to make that determination instead of doing it at the national level. That provides discretion for the courts and the Office of the Attorney General.

SENATOR CARLTON:

When I originally read the bill, I thought we were including all states. I go back to when Hurricane Katrina occurred and there were people in Las Vegas who could not get back home. What if they were staying in a hotel, the hotel knew they could not get back home and gouged them on their room rate?

SENATOR TITUS:

The way this bill is written, they could do that. If you narrow that definition to say surrounding states, that would put some limitation on the concern that you raise.

SENATOR CARLTON:

Without this legislation, is there somewhere now for a person to file a complaint?

SENATOR TITUS:

Not in Nevada.

SENATOR HECK:

I agree with Senator Hardy for the need to narrow the scope. If you look at the year 2006, there were 56 presidential disaster declarations in every month of that year. It appears that if you allow disasters throughout the country, that will provide unbearable pressure on the market in Nevada in trying to adapt.

CHAIR TOWNSEND:

On page 2, line 6, the term, "unconscionable price immediately before or during a state of emergency," how is the State going to respond to the term "before?" How do we define that so the consumer and State agency know what "before" is?

SENATOR TITUS:

It would go back to when the incident occurred. That would be immediately before the state of emergency was declared.

CHAIR TOWNSEND:

How was 25 percent determined?

SENATOR TITUS:

That seemed to be the common figure in the review of other states' statutes.

CHAIR TOWNSEND:

I question page 2, line 40, the legislative authority only exists when we are here during a Legislative Session. Why would the Legislature declare a state of emergency?

SENATOR TITUS:

*Nevada Revised Statute* 414.070 gives the Legislature the authority if they are called into a special Legislative Session.

I just want to remind the Committee that 30 other states have this legislation in place and we should enact it to protect the citizens of the State of Nevada.

SENATOR SCHNEIDER:

When Hurricane Katrina hit, the big oil derricks were knocked out for a few weeks and the price of gas escalated, even in Nevada. Our oil does not come from the Gulf Coast. Perhaps, this Committee needs to look at those types of things and adjust the bill accordingly.

SENATOR TITUS:

I agree with that.

MS. DELANEY:

I support this bill. The Bureau of Consumer Protection (BCP), Office of the Attorney General, hears these complaints often. We have heard these complaints as far back as the tragedy of September 11, 2001 (9/11). In Nevada, we have unscrupulous merchants that take advantage of a perception that there is some shortage or reason for a supply-and-demand issue. They then raise prices on essential goods and services. Outright merchant deception for profit at the expense of individual consumers is something entirely different.

Contrary to what I think detractors say in anticipation of what might be said here today, these price gouging laws do not put a cap on what merchants may charge for goods and services. They simply recognize that individual consumers are vulnerable to unscrupulous merchants that take advantage of a perception in our marketplace. We see this bill as trying to remove the incentive for some merchants to take advantage of a disaster by profiting at the expense of consumers.

One of the best things I see in the bill is that it defines unconscionable on an objective standard. The BCP would like to see language expanded on the definition of state of emergency to include not just states of emergency declared by our Governor or national states of emergency declared by the President of the United States, but also by governors in surrounding states. It is possible for something to happen in California and the perception here would be that there is some problem in the marketplace. Our oil does come from California and there could be a perception of a problem, even if the disaster is not enough for the President to declare an emergency, but is certainly enough for the governor of California to call an emergency and certainly enough for these unscrupulous merchants to take advantage of it in Nevada. We want the Committee to be aware that while the bill as drafted would address things such as 9/11, Hurricane Katrina and events that would occur here, it would not address something that may happen in a surrounding state.

SENATOR HARDY:

Relative to section 1, subsection 4, where does the burden of proof lie?

MS. DELANEY:

The burden to show the deceptive trade is always on the state government to begin the prima facie case.

SENATOR HECK:

We need to be very careful when discussing commodities traded in the global market where any disruption in the global supply chain is going to cause a spike in prices. The vast majority of our oil does not come from the Gulf Coast, it comes from Canada. I think there needs to be more definition on how we apply declarations of disaster to commodities.

MS. DELANEY:

This bill is not about regulating prices, it is about how a disaster that occurs somewhere else may be perceived by the public in our State, and a merchant recognizes that perception and profits from it.

CHAIR TOWNSEND:

On page 2, line 6 reads, "unconscionable price immediately before or during a state of emergency." How would you interpret "immediately before?"

MS. DELANEY:

There would have to be an event with profiteering. It may not coincide with when the state of emergency is declared, it may precede that. The event is the trigger for "immediately before."

Chair Townsend:

There are many instances in surrounding states where an emergency could occur and a declaration is made by the governor. That is the declaration, the event may have occurred a few days before that. Let us assume that it happened to be three days. This weekend there is a rare event happening in Las Vegas. It is fair to assume that since that event draws a unique crowd and is a onetime event, the room prices in Las Vegas will escalate above 25 percent because of the event. How is that dealt with in the bill?

MS. DELANEY:

I need to disclose that I was previously employed as in-house counsel for Mirage Resorts for nine years.

Based upon your example, the bill as drafted would not cover that because your example discussed a governor declaring a state of emergency in a surrounding state. There is no way a case for price gouging could be made because the profiteering must be related to a disaster.

CHAIR TOWNSEND:

In section 1, subsection 4, "a price is not an unconscionable price if the increase in the price is attributable to an increase in the costs incurred in connection with the rental, lease or sale of the consumer good or service or national or international market trends." We do not know how long you personally will be around to interpret this bill as you say. Not all people who attend events are rational. I am concerned that suddenly we will have a lot of

irrational people filing under this law bogging down the BCP on the fact they think they were gouged on a room rate while a special event was in Las Vegas. I can read the bill, but I think there is a law of unintended consequences that this Committee sees on a regular basis. I can tell you the first thing asked if this bill goes to the Senate Floor is what is the fiscal impact? The members of the Interim Finance Committee will not be happy to see you in the interim coming and asking for additional funding for staff necessary to handle your additional complaint load as a result of this bill.

MS. DELANEY:

I appreciate that different minds can interpret bills differently. The key to the language you just referred to is that you still have to be looking at that good or service. The BCP would be supportive of tightening the language as to what commodities are intended to be covered by this bill. Perhaps we can look at other states' regulations to find language that can better define what you are hoping to accomplish.

SENATOR SCHNEIDER:

This coming weekend in Las Vegas is an example of supply and demand. It is a consumer's choice to attend these events. If we had a chemical spill on the freeway and we had to evacuate homes in Green Valley, then that would be the case where you would look at price gouging. People would be forced into lodging for multiple days because they were not allowed back into their homes. That would be an emergency with price gouging, a necessity and not a choice.

MS. DELANEY:

That is a potential example but it would still require some declared state of emergency either by our Governor, or outside of the state by someone else.

SENATOR HARDY:

This bill needs some additional work, because as Senator Townsend points out, the public may perceive this bill differently and demand more of your office.

CHAIR TOWNSEND:

The Committee is trying to address the problem and not sweep in the whole world while we are trying to do it. We will discuss this bill further in subcommittee next week.

FRANK SIRACUSA (Chief, Division of Emergency Management, Department of Public Safety):

I am not here either to support or oppose this bill. I would like to provide you with some of my own experiences in dealing with price gouging and institutional knowledge on the declaration process. I have been a professional emergency manager for more than 36 years. I have been in Nevada for 16 years at the Division of Emergency Management, Department of Public Safety, 11 years as the Chief. I also spent 20 years as an emergency manager in New Jersey at both the county and state level. I have been involved in numerous presidential and state emergency declarations. The most common price gouging is done by the smaller mom- and pop-type businesses. Several of my counterparts in other states, particularly Florida, have experienced price gouging with commodities such as water, medical supplies and other things. Nevada has no statistics on price gouging. During my tenure, we have experienced eight presidential declarations and several State declarations. I would be happy to provide the Committee with institutional knowledge on the subject, should you need it.

CHAIR TOWNSEND:

Thank you for taking the time to offer your assistance.

GEORGE A. ROSS (Las Vegas Chamber of Commerce; Retail Association of Nevada):

We are opposed to this bill's concept as currently drafted. I do not believe this bill is as narrowly drawn as Ms. Delaney has led you to believe. I believe this bill to be a price-control bill.

SENATOR CARLTON:

I did not look at this bill as a price-control bill. I look at it as a consumer bill. As I read the bill, it is not saying that they may only charge up to a certain price. It is saying that if the consumer feels they have been wronged, they have an avenue for recourse.

MR. ROSS:

I understand what you are saying but, in reality, every business has to be in a situation where they can defend against a consumer who would lodge such a complaint.



SENATOR SCHNEIDER:

I think this bill is just stating that we are looking at a specific time period of 30 days in an extraordinary event. This is for a short-term event, not protracted price control for many years.

SENATOR HARDY:

I think what Mr. Ross is addressing is a very legitimate economic principle that could result from a short-term price control.

MR. ROSS:

I believe this to be a price-control bill. The oil industry was involved in extensive litigation as to how they initially implemented emergency price controls from 1973 until 1981. I believe this entire bill to be a litigator's dream. I fear with this bill that, as a State, we will be denied essential supply. It would require additional staff and expertise to implement this bill.

PETER KRUEGER (Nevada Petroleum Marketers and Convenience Store Association):

We are a trade association, representing mostly family owned, wholesalers and retailers in Nevada. I would agree with what Mr. Ross stated regarding market forces. We have concerns with this bill. In the last four years, the State of Hawaii instigated and tried to manipulate the market through regulation. All this accomplished was to drive an already exacerbated price higher. They continue to have the highest fuel prices in the United States. This bill only addresses retailers in the State. There is no acknowledgement in the bill that would permit a reasonable profit margin as a cost. Unlike many commodities, fuel at the retail level spikes sometimes hourly and it would be very difficult to investigate alleged price gouging in this scenario. There is no formula to calculate the 25 percent for different areas of the State.

SENATOR SCHNEIDER:

Pork bellies are a commodity too. It has been referred here that oil is a commodity and is traded on the markets and the prices can adjust daily or hourly. So are pork bellies, beef, corn and wheat. McDonald's Corporation does not adjust the price of a hamburger or french fries every day because of market price adjustments. A big storm just went through the Midwest and plenty of cattle and pigs froze to death. The price of pork bellies is on the rise right now but the price on menus are not being adjusted upward. That blip on the screen has not hit restaurants yet. What I am saying is that it looks to me, in a free

market where there is competition, the prices would not be as volatile as they are. This bill comes to us because our constituents have requested it. When I fill my car with gas, my constituents see me and since 9/11 there has been a lot of complaining that they feel they are being gouged. They are not complaining about the cost of a hamburger even though beef prices are up. This bill is the result of a perception of monopoly pricing.

CHAIR TOWNSEND:

It would be important for the subcommittee and the members who have a concern with this bill to address all of the issues presented today. We have to do two things; try to narrow and define things that allow the bill to address the issues and be respectful to the Office of the Attorney General and the BCP in terms of their ability to handle the workload in case there is a rash of complaints. I urge interested parties to meet with the subcommittee next week. I think we can find some resolution to the issues brought up today.

SENATOR CARLTON MOVED TO DO PASS S.B. 18.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR HARDY MOVED TO INTRODUCE BDR 54-552.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR HECK:

The subcommittee met on February 12 to address the issue of qualified intermediaries and payroll service providers. I have provided the Committee with a list of measures we would like to pursue ([Exhibit H](#)).

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CHAIR TOWNSEND:

When you discussed this, did you get into the different values of fiduciary versus surety bonds? Those are two critical differences.

SENATOR SCHNEIDER:

In [Exhibit H](#), we have included a \$1 million per-occurrence fidelity bond and \$250,000 in errors and omissions insurance. In a lot of exchanges, there is a lot more money than \$1 million. What was discussed was that potentially part of the fee to do an exchange would be higher insurance.

CHAIR TOWNSEND:

There being no further business before the Committee this morning, the meeting is now adjourned at 10:26 a.m.

RESPECTFULLY SUBMITTED:

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Jeanine Wittenberg,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

DATE: \_\_\_\_\_