

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

**Seventy-fourth Session
March 21, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:06 a.m. on Wednesday, March 21, 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

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:

Margi A. Grein, Executive Officer, State Contractors' Board
Keith L. Lee, State Contractors' Board
Jeanette K. Belz, Associated General Contractors, Nevada Chapter
George Lyford, Director of Investigations, State Contractors' Board
Fred L. Hillerby, Nevada Optometric Association
Lawrence P. Matheis, Nevada State Medical Association
Jack H. Kim, Sierra Health Services, Incorporated; Nevada Association of Health Plans
Lewis Musgrove, Chair, Task Force on Prostate Cancer, Health Division, Department of Health and Human Services

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Robert A. Ostrovsky, Employers Holdings, Incorporated

CHAIR TOWNSEND:

I will open the hearing on Senate Bill (S.B.) 279.

SENATE BILL 279: Provides express authority for the State Contractors' Board to collect and disseminate data and conduct investigations. (BDR 54-624)

MARGI A. GREIN (Executive Officer, State Contractors' Board):

The proposed amendment mock-up ([Exhibit C](#)) is exactly what we submitted to the Committee yesterday with our proposed amendment and we are satisfied as it is drafted.

SCOTT YOUNG (Committee Policy Analyst):

There was discussion yesterday regarding changing the amount on page 2, line 8 from \$500 to \$1,000. We left it at \$500, but I just wanted to specifically call it to everybody's attention in case there was a desire to change that portion.

CHAIR TOWNSEND:

I think there is concern from Senator Schneider and Senator Hardy. How does the State Contractors' Board feel about that?

MS. GREIN:

It is acceptable to change it to \$1,000.

CHAIR TOWNSEND:

Mr. Lee, since you represent the State Contractors' Board, did you catch anything?

KEITH L. LEE (State Contractors' Board):

I received a copy of the mock-up, [Exhibit C](#), last night and reviewed it. I have no problems with the amendment.

SENATOR CARLTON:

Yesterday my question about the peace officers and Police Officers' Standard and Training (POST) was answered to my satisfaction. They are category III peace officers and the support system will work where the POST-certified

officer will still be doing his job, but the compliance officer will not be required to upgrade. They will be working side by side.

MR. LEE:

Senator Carlton is correct. For the record, our POST-certified investigators do not carry a firearm and are POST certified primarily for the ability to write misdemeanor citations and to access the National Crime Information Center in their background investigation of applicants and licensees. I would like to add for the record that Ms. Belz is here, and she raised the concern yesterday regarding biennial licensees. How are we going to ensure our licensees have industrial-insurance coverage during the time their licenses are in effect? Ms. Belz indicated for the record that we have been in discussion with Mr. Bremner and his staff. We have made arrangements by which we can access his database. He will assist us so we can do random checks on licensees throughout the period of time and not just at the time of the initial licensure or renewal. We can then determine if they are carrying the appropriate industrial-insurance coverage.

CHAIR TOWNSEND:

That may be the most important thing you do with the change in this bill. Please contact Mr. Bremner and the State Contractors' Board and draft a letter to this Committee as soon as possible.

Ms. Belz, in regard to page 6, you and Mr. Milliken represent the two larger organizations that would be impacted. Have your members seen the change from amount of net worth, amount of current assets and amount of current liabilities? They need to be aware we are trying to have a better handle on those who apply for these licenses.

Jeanette K. Belz (Associated General Contractors, Nevada Chapter):

There is an under one-million dollars, over one-million dollars distinction that is made. On fewer than one million, you could run the information off of a QuickBooks file, and over a million dollars you get into formalized audit accounting. This was fine with us.

SENATOR HARDY:

I have comments and concerns with the bill. With regard to section 7, on the financial responsibility of an applicant; I just want to create a record that this is for purposes of this act only and not for

prequalification statutes. I don't want to see—an extension or an increase in the number of documents and so forth, that legitimate contractors have to provide in order to be prequalified. I will support this going into the financial responsibility of an applicant because then they can assume on prequalification that these things are in order. I don't want this to become part of our prequalification ordinances across the State. I want to create a record of legislative intent on that. I remain—extremely concerned about section 4, subsection 2.

As far as I have been able to tell, and I have to admit I didn't do an exhaustive research, —the State Contractors' Board is the only board that releases information relating to an alleged violation. I am just troubled by that. I know that is current practice and I am troubled by the current practice. I can't support this legislation with that language in there. In fact, my preference would be that we change it to specifically prohibit the dissemination of information based on allegations without a finding.

CHAIR TOWNSEND:

Ms. Grein, is there a public policy component to releasing complaints? To my knowledge, we do not do that with any other license category.

MS. GREIN:

The Board of Medical Examiners and the State Board of Nursing license the individuals. We license the entity. We are not providing information on an individual, but the business. The definition of public records is found in the *Nevada Revised Statute* 239.010. There are some exemptions. We only report the data and not the actual complaint information unless there is a disciplinary action. On pending complaints, we have provided you some examples of when a contractor has committed fraudulent acts. Consumers will call to find out if there are complaints against a particular contractor. If we cannot give the consumer the information regarding the contractor, I believe we are doing a terrible disservice to the public. I believe we are in compliance with the public-records law with what we are doing. We are not releasing the complaint, it is purely data.

SENATOR HARDY:

If these types of things are statutory, they can be used as a weapon against contractors. I understand the issue of wanting to release the information but if it is not substantiated, then the contractor has not been provided his due process. If somebody decides they want to go after a certain contractor, they just start filing complaints against them. This does happen. I am very concerned about the due process.

MS. GREIN:

I understand your concern. The Nevada Supreme Court case of *Donrey of Nevada v. Bradshaw* was clearly the balancing test the agency used for a case-by-case basis. It is used to determine whether the information is subject to disclosure. The case also stated the agency bears the burden of establishing a privilege based on confidentiality. When there is insufficient justification to maintain the confidentiality of the information, the balance must be struck in favor of public and open government. I believe the public's right to know this information before they hire a contractor exceeds the licensee's right for confidentiality. We state the outcome of the investigative findings. We also put on a disclaimer stating that is not the only information they should check. We encourage the consumer to check license information, references, the Better Business Bureau and other entities. We feel this service is needed for public protection.

SENATOR HARDY:

I think you are missing my point. If there are a lot of complaints, then there very well could be a problem. My point is that all things are not equal. This could be used as a weapon against certain contractors, if someone targets this contractor. If they are put on the Web page with the complaints, the damage is done to that contractor before any of this is adjudicated. I cannot support this portion of the bill. You will find me to be an ally regarding increasing the requirements to become a contractor. I have to be aware of statutory schemes that can become weapons against certain people.

The other question that I have relates to changing the word "licensee or applicant" to "person." I do not understand the reason for that change. We are really talking about licensees or applicants. Why do we need to use the word person?

MS. GREIN:

The purpose of the change is so we can issue administrative citations to unlicensed contractors, those who are contracting without a license.

SENATOR HARDY:

Is there a better word we can use than "person"? The word "person" is too broad of a term.

MS. GREIN:

Senator Hardy, the word does not change what is a violation and what is not. Our issue is that we want to add contracting without a license to the administrative citation.

CHAIR TOWNSEND:

We are going to take the changes one at a time. The current language says, "The Board is vested with all the functions and duties relating to administration of this chapter. The Board shall: Carry out a program of education for customers of contractors. Maintain and make known a telephone number... . And they want to add the areas of concern which say, "Collect and maintain records, reports and compilations of statistical data concerning investigations and complaints." Mr. Lee, based on this, are you saying you cannot do that now?

MR. LEE:

This clarifies actions already taken. I have supplied the Committee with documented information ([Exhibit D](#) original is on file in the Research Library). Please direct your attention to the last page. It is a draft of a proposed policy we would formalize and put in place with respect to what information would be disseminated. We follow this policy now but want to put it in writing.

CHAIR TOWNSEND:

I am not sure we allow public dissemination of complaints. If someone has a legitimate complaint and it is followed through with disciplinary action, then I think in every one of our statutes concerning licensees it is public record. I do not think it is fair to release every complaint that happens against a person.

SENATOR HARDY:

I have additional concerns after seeing this. You have a category for valid resolve, and valid complaints unresolved. If the complaints are unresolved, how do we know they are valid? If a contractor settles something, it may have

nothing to do with guilt or innocence, and it will be reported as a problem. We have to protect, at all costs, the right of due process. I understand what the Nevada Supreme Court said but that is why we have a Legislature.

MR. LEE:

I understand your point. We are all trying to decide what is in the best interest of the public and those who are seeking the services of a contractor. We think it is better to err on the side of the consumer than on the side of the contractor. There is a narrow line we are all trying to walk.

CHAIR TOWNSEND:

Mr. Lee, are you licensed under the State Bar of Nevada? Are they allowed to disseminate any complaints against you unless they are adjudicated?

MR. LEE:

I cannot answer the question, I do not know.

CHAIR TOWNSEND:

My guess would be they do not. Do you know the answer Mr. Keane?

WIL KEANE (Committee Counsel):

I do not, but the Bar is covered by the Judicial Branch.

CHAIR TOWNSEND:

I do have concerns over that component.

SENATOR SCHNEIDER:

I also have concerns. We should give the Nevada Supreme Court decision to Brenda Erdoes Legislative Counsel, Legislative Counsel Bureau. We should see if other boards are doing this. I would feel more comfortable if we waited for a week.

CHAIR TOWNSEND:

Ms. Grein, would you send the citation and any information to Mr. Keane? We could ask staff if there is other information about licensees, individuals or companies.

MS. GREIN:

Yes, I will do that this afternoon.

SENATOR SCHNEIDER:

I do not have a problem with the rest of the amendment. Maybe the Nevada Supreme Court is absolutely right and we are off base. I would like our Legal Division to look at the amendment.

SENATOR CARLTON:

I hear the concerns voiced by Senator Hardy. If I were going to find a contractor to build a casita, or enclose a patio, I would call the Contractors' Board for references. I do not want to be in the position we had a few years ago with all the pool guys. People were left with holes in the ground and holes in their checkbooks. If the process is being abused, we need to find a way to address the abuser and still let the consumer have the information they need. We could be talking about big money. If the public is going to be smart enough to call the Contractors' Board to make sure they are getting a good contractor, I want them to receive all the information they can. If someone is abusing the system, we need to take a look at that person and see if there is a developing pattern. We will still be protecting the public, but we are keeping the system where it needs to be.

CHAIR TOWNSEND:

If the Contractors' Board receives a number of complaints about a single licensee and upon investigation there are no violations which can be enforced, do they call the licensee to discuss the situation?

MR. LEE:

I understand there is an allegation period from the time the complaint comes in to about 20 days. The contractor is advised of the complaint and asked to resolve the problem. In the allegation period, the complaint is not disseminated to the public. It is only disseminated to the public after the allegation period and if there is not a resolution between the contractor and the complainant.

GEORGE LYFORD (Director of Investigations, State Contractors' Board):

When we get complaints from one contractor regarding the same type of problem, we do call in the contractor and have a discussion. We let them know we are seeing a lot of complaints, and they are not responding to our requests. It often is the customer service person who was not forwarding the complaint to the contractor. We had this issue with a major company when the local personnel were not responsive. We then ordered the principals to come to our office to discuss the complaints.

Another issue we have seen is a contractor who starts committing fraud or embezzlement. We have numerous examples of licensed contractors with clean records and suddenly we will get complaints. We look at the complaint and it sets off the alarms for us. We contact the contractor. We schedule job-site inspections and start an investigation. We also schedule a summary suspension. The suspension is done at the next Contractors' Board meeting. The time period could be 30 to 45 days, depending on the timing. Up to the day we suspend the license, the contractor will be collecting the money but not doing their job. The homeowner calls the State Contractors' Board and all we can say is the case is open. If I can not tell a homeowner the contractor had a clean record but within the last ten weeks there have been ten open-case complaints, the homeowner will probably be defrauded and become a victim. I have had this happen numerous times over the last couple of years. The contractor will keep collecting money until the day we suspend their license.

CHAIR TOWNSEND:

My question was answered and this is different than what the bill said. The bill says you can report any complaint. You are talking about a specific process in which you have taken numerous complaints and then you open a docket. Then when someone calls you can say, this is a clean person but I have received five complaints in the last few days. That is substantially different than what the bill now states. You have given me information in order to make a better decision, but what Senator Hardy brought up was a blanket dissemination of complaints.

MR. LYFORD:

What I am talking about is the statistical number and not giving out the specific details of the complaint. I am saying there were 5, 10 or 15 open complaints today and I would not give out the details.

SENATOR HARDY:

The Contractors' Board has the job of protecting the public from unscrupulous or unqualified contractors. That should be done under the licensing process. As you pointed out, Mr. Lyford, some contractors can slip through the cracks. I am open and willing to work with you to find a way to deal with this situation. If the contractor is a menace to the community, then immediately cease and desist; make them stop so we can get to the bottom of the investigation. I am concerned about the way it is written. It creates a policy where we are finding and eliminating bad contractors on the backs of the consumers. We do not

know they are bad contractors until they have 15 complaints against them. Our focus needs to be on the other side. If we need to toughen the requirements for getting a contractor's license, I want to help you. I would be happy to meet with you and Mr. Lee to find a way to resolve this so we do not make this a weapon for people to use against contractors they do not like. Mr. Keane made me aware there are numerous other places where the term "person" is used to get at what you are trying to say. I fully support you. I will let my comments stand for legislative record and we will go ahead and use the word "person."

CHAIR TOWNSEND:

Senator Hardy has sent you in a direction that is extremely important, increasing the requirements for those who want to participate in our growing economy. We will have information at our next work session and will probably bring this up next week.

We will open the hearings on S.B. 280.

SENATE BILL 280: Revises provisions related to patients' bills. (BDR 54-303)

FRED L. HILLERBY (Nevada Optometric Association):

The mock-up ([Exhibit E](#)) is word for word what I proposed yesterday. Mr. Matheis has accomplished the same thing. I am fine with the amendment.

LAWRENCE P. MATHEIS (Nevada State Medical Association):

There have been extensive discussions in the Assembly about a similar bill, Assembly Bill (A.B.) 40. The approach of having it broken out separately as in Mr. Hillberby's proposal caused a lot of consternation for the Division of Insurance, Department of Business and Industry. It does not incorporate all the possible kinds of insurance and those that do not use administrators. This is an alternate way of moving one of the existing phrases and providing no additional cost to the patient for readability. The proposed amendment ([Exhibit F](#)) lists the proposed changes to S.B. 280. I am trying to find a way around so as not to list all the chapters and citations.

ASSEMBLY BILL 40: Establishes periods within which a provider of health care must provide a bill to a patient. (BDR 54-629)

CHAIR TOWNSEND:

Is that acceptable to you, Mr. Hillerby?

MR. HILLERBY:
Yes, it is terrific.

Chair Townsend:
Are there any further questions?

SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 280.

SENATOR HARDY SECONDED THE MOTION.

SENATOR CARLTON:

I still have a few concerns about hospitals not being included. I did have a number of people come to me yesterday and explain some of the other provisions that do apply to hospitals. I am willing to sit back and see what ends up happening, but I did get information on the number of complaints and how many were actually from hospitals. Three-quarters of them did come from hospitals. We are addressing part of the problem, but not the entire problem. We have not had time to really look at the hospital portion. There is the Patients' Bill of Rights and timely issues. I will support this with the caveat if we do not end up addressing the problems with the hospitals in the future, then we may have to look at this again.

CHAIR TOWNSEND:

In previous testimony, the hospitals were covered under other sections of the law. Why are we not fixing that problem?

MR. MATHEIS:

The testimony came from Valerie Rosaline of the Governor's Office, Office for Consumer Health Assistance, and she had a fairly limited number of cases. Many of them did involve hospitalizations and treatment.

SENATOR HECK:

Mr. Matheis is correct. The provision states hospitals must bill in a "timely manner" without a specific timeframe. What came up in testimony is that it is difficult when someone has a protracted hospital stay as to when do you start and stop the clock. If a patient is admitted for a month, would procedures done on the first day need to be billed separately from procedures done on the thirtieth day? Professional services are delivered at time zero and you know

there is a definitive timeframe in which the service has been provided. That is one of the reasons the hospitals were not included in this bill.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

I will open the hearing on S.B. 227.

SENATE BILL 227: Clarifies provisions relating to the disciplinary powers of the Nevada State Funeral Board. (BDR 54-975)

SENATOR HECK:

This bill provides the Nevada State Funeral Board with the authority to enforce provisions that were incorporated into the *Nevada Revised Statute* 451.400 in the last Legislative Session regarding anatomical gifts. Last Session, not only the Anatomical Dissection Committee could receive the gifts, but they could also name a designee. They have since named a designee in southern Nevada and they have met some resistance in being able to obtain the gifts from the funeral homes. Previously, the Board was uncertain that this fell into their ability to enforce, since it was in a chapter outside of theirs. There was testimony and support with no opposition in the initial hearing.

SENATOR CARLTON MOVED TO DO PASS S.B. 227.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

I will open the hearing on S.B. 113.

SENATE BILL 113: Requires certain policies of health insurance and health care plans to provide coverage for annual screenings for prostate cancer in certain circumstances. (BDR 57-333)

SENATOR CARLTON:

There are still some concerns about the bill. I have the proposed mock-up ([Exhibit G](#)). There are some basic ill feelings regarding mandates. I will support this bill. I would like to hear from Mr. Kim.

JACK H. KIM (Sierra Health Services, Incorporated; Nevada Association of Health Plans):

I have not seen the draft of this bill until this morning. I indicated to Senator Carlton I still have issues with the bill. Our fundamental issue is with mandates. This bill states in section 2, subsection 1, the ages for the screening of men is 40 and 35 for high risk. In my mind, this contradicts subsections 2, where it talks about the various guidelines for men 50 and 45 for high risk. I think subsection 1 and 2 contradict each other. In subsection 3 where it defines what is high risk, at least in the State of Nevada, we have the same issue. This contradicts when the tests should be given in subsection 2. From a technical standpoint, this becomes problematic. We would not oppose this bill if you could leave the current guidelines.

LEWIS MUSGROVE (Chair, Task Force on Prostate Cancer, Health Division, Department of Health and Human Services):

I attended a meeting of the early-detection research network last week. I was the only patient advocate attending. A new worry came out called prostate-specific antigen (PSA) velocity. Velocity is the movement of the PSA level in a short time. I would like to read a recent study that has come out from John Hopkins University. It says PSA velocity, not a man's absolute PSA level, is a better indicator of prostate cancer risk. The findings suggested that screening should begin at age 40, not 50. There are those saying it is too late to establish PSA at age 50. The change in the number is more important than the number itself. The change in the number is the PSA velocity.

SENATOR CARLTON:

Do you think the American Cancer Society or other established societies will use the velocity as part of their screening guidelines?

MR. MUSGROVE:

I have the prostate cancer treating guidelines published by the National Comprehensive Cancer Network (NCCN) and American Cancer Society (ACS) version 5, September 2005.

SENATOR CARLTON:

If we take out the ages, it seems we would still be making sure people are taken care of because the guidelines will address the ages. Would you agree with that?

MR. MUSGROVE:

No. That is why I am trying to prove my point. The NCCN used to collaborate with the ACS in putting out guidelines. In 2005, they changed their guidelines to read age 40 for screening. The ACS did not go along with the change, so the NCCN has published their own guidelines. There is some confusion, as Mr. Kim pointed out. The ACS has been slow to move. The current thinking is: ages 40 and 35. The high-risk exception talks about African-American heritage.

CHAIR TOWNSEND:

The concept of the bill is to provide coverage for annual screening for prostate cancer. How does an issuer know if the screening is covered?

MR. MUSGROVE:

We substitute the guidelines of the ACS with the NCCN guidelines. That will solve the problem.

CHAIR TOWNSEND:

It does not solve the problem at all. You still have three different sets of things, and the definition of high risk.

SENATOR HECK:

I certainly appreciate the passion Mr. Musgrove has brought to this issue and the efforts of Senator Carlton in trying to find a compromise. I have continued concerns as well. Some of my concerns have already been stated by Mr. Kim. I think this is a solution in search of a problem. In my personal practice, every insurance company covers tests that are ordered and deemed medically necessary. For the number of times I have ordered a PSA test on anyone, regardless of the age, I have never had an insurance company refuse to pay. If I ordered the test for a 21- or a 75- year-old, it is paid because it has been ordered by a physician and covered because it is deemed to be medically necessary. All health care providers hate having their practice dictated to them in statute. This is one of the things this bill does. It causes more confusion because of two conflicting potential standards in an age category that does not fit one of the standards already listed in statutes. I have concerns with the

over-50 provider and service mandates already in the state of Nevada. If a mandate is that important to be included, then we should provide it for those that the State insures as well.

CHAIR TOWNSEND:

We are going to take a couple of days to try to figure out if there is a way to clarify section 2 in a manner allowing a legitimate debate. I will close the hearing on S.B. 113.

I will open the hearing on S.B. 119. The changes on the bill are on page 2, lines 11 and 12 and 23 and 24. It moves the ability to close a claim if someone had not used more than \$300 and wants to move it to \$1,000 inside of a year.

SENATE BILL 119: Makes various changes to provisions relating to benefits for certain workers with injuries. (BDR 53-257)

ROBERT A. OSTROVSKY (Employers Holdings, Incorporated):

That is a quick summary of the bill. The last time this bill was in a work session, Senator Heck requested additional time to have an opportunity to speak to some of the opponents of the bill.

SENATOR HECK:

Their main issue revolves around the concept of the already existing language and not the change in the amount. I offered them options but they are apposed to the entire concept of the bill. Since the increase from \$300 to \$1,000 is keeping track with the medical consumer price index during that timeframe, I think it is reasonable to go ahead and move the bill.

SENATOR HARDY MOVED TO DO PASS S.B. 119.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR TOWNSEND:
I will open the hearing on A.B. 32.

ASSEMBLY BILL 32: Revises provisions related to court reporters. (BDR 54-571)

SENATOR CARLTON:
I am fine with this bill after having obtained the opinion of the judicial personnel.

SENATOR CARLTON MOVED TO DO PASS A.B. 32.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now recess at 9:19 a.m.

I will now reconvene the meeting at 10:35 a.m. Discussions are now open on S.B. 181.

SENATE BILL 181: Revises provisions governing certain construction contracts.
(BDR 54-270)

SENATOR HARDY:
I appreciated the opportunity to talk with the parties in my office. We have an agreement in principle. We are trying to find a way to provide proportional liability to contractors on these jobs. We have agreed to remove the retention portion of the bill. We are now working on crafting language. It will take us a few days to finalize the bill.

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CHAIR TOWNSEND:

I had time to speak with representatives of the Contractors' Board concerning the issues that were brought up here today. They understand the concerns and will get back to us with language that will allow them to go ahead and disseminate information that is important to the public. This will still afford the licensee a modicum of due process. I think there is a balance that can be met.

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CHAIR TOWNSEND:

The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 10:38 a.m.

RESPECTFULLY SUBMITTED:

Gloria Gaillard-Powell,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____