MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
April 5, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:33 a.m. on Thursday, April 5, 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 Maggie Carlton

COMMITTEE MEMBERS ABSENT:

Senator Michael A. Schneider (Excused)

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Lori Johnson, Committee Secretary
Scott Young, Committee Policy Analyst
Laura Adler, Committee Secretary

OTHERS PRESENT:

Keith L. Lee, State Contractors' Board
Gary E. Milliken, Associated General Contractors, Las Vegas Chapter
Robert Ostrovski, Employers Insurance
Jack Kim, Nevada Insurance
Chris Barrett, Independent Gaming Operators Coalition
Ricky Finseth, Nevada Association of Realtors
Ed Allison, Federation of Exchange Accommodators

Teresa Story-Turner, Nationwide Exchange Services
Dennis Helmick, Federation of Exchange Accommodators
Mendy K. Elliott, Director, Department of Business and Industry
Steven Kondrup, Acting Commissioner, Division of Financial Institutions, Department of Business and Industry
William R. Uffelman, Nevada Bankers Association
Jonathan Christianson, Asset Preservation, Incorporated
Sylvia Smith, President, Western Exchange Services Corporation
Rhonda Johnson, President, Nevada Escrow Association
Pete Isberg, President, National Payroll Reporting Consortium
Scott E. Bice, Commissioner, Division of Mortgage Lending, Department of Business and Industry
Mark Brewer, President, Anthony's Treehouse, Incorporated, dba Treehouse Mortgage
Tom Powell, Chairman, Nevada Mortgage Advisory Council

CHAIR TOWNSEND:
We will open the work session on Senate Bill (S.B.) 279.

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

CHAIR TOWNSEND:
We have a color mock-up of proposed amendments to the bill (Exhibit C). The first change is on page 2, section 1, subsection 5, line 8, to change $500 to $1,000. The change is handwritten on the proposed amendment, Exhibit C.

KEITH L. LEE (State Contractors' Board):
The State Contractors' Board has no problem with that change.

CHAIR TOWNSEND:
That was recommended by Senator Hardy and Senator Schneider because of the increased value of some things. Next is section 3, subsection 3, page 3. There is added language on page 4, line 22. Is that okay?

MR. LEE:
That is fine.

CHAIR TOWNSEND:
Are section 4, subsection 4, line 7 and section 6, subsection 3, line 35 all right?

MR. LEE:
I have no problem with them.

CHAIR TOWNSEND:
Page 6, section 7, subsection 2, line 4, shows "must" has been changed to "may." Did we change "must" to "may" for a particular reason?

GARY E. MILLIKEN (Associated General Contractors, Las Vegas Chapter):
I do not know why the Associated General Contractors made that change.

CHAIR TOWNSEND:
Mr. Keane, do you remember why?

WIL KEANE (Committee Counsel):
"It was what was requested."

CHAIR TOWNSEND:
Ms. Gregory or Mr. Young, if either of you have that in your notes, would you let me know?

Section 9, subsection 2, line 28, says a license must not exceed $900 biennially. So, are you moving it from an annual to a biennial?

MR. LEE:
Correct.

CHAIR TOWNSEND:
Line 31, section 10, subsection 1, states, each license issued under this chapter expires two years after the date. Then you move to the staggered biennial renewals. Have you looked at it in terms of your cash flow, and how that will impact it, Mr. Lee?

MR. LEE:
That is fine. We have no problem with that language. In fact, we have suggested that we go to biennial licensure.

CHAIR TOWNSEND:
They might want to consider that because it cuts their paperwork substantially. Usually, if they are larger, they can manage the cash flow issue. Smaller boards do not have that luxury.

Section 12, subsection 1, page 9; says "person." I believe a person includes licensees as well as non-licensees, as well as companies has committed an act, which constitutes a violation of this chapter or the regulations of the Board. It is followed by clarifying language to make sure you could appropriately handle a violator.

MR. LEE:
It expands the ability of the Board to actually go after the unlicensed contractor rather than just contacting the local district attorney advising that the person is unlicensed.

CHAIR TOWNSEND:
That broadens your ability to handle those who violate the provisions of that chapter. On line 38 is an order to take action on an act that constitutes a violation, at the person's cost. That broadens it as opposed to the applicant.

Continuing to paragraph (b) on line 42 regarding an administrative fine, what is your current maximum?

MR. LEE:
Our current maximum is $50,000. This clarifies what is already in law.

CHAIR TOWNSEND:
On page 10, subsection 3 of section 12, is that a protection of an individual who might have been wronged to be able to file action, and/or does that include you as a Board to be able to go after people?

MR. LEE:
I believe this gives us additional authority to go after someone, so we can take each individual offense and make them separate ones and then be able to

proceed as if each stood alone. This is the first I have seen this language, but I believe it expands our ability.

CHAIR TOWNSEND:
Exactly. In other words, you are not just limited to the fine or the revocation or the suspension of a license or denial. Under this, you are now allowed any other remedy, civil or criminal, authorized by the chapter. That expands your ability to go after those in violation.

MR. LEE:
I think so, too.

CHAIR TOWNSEND:
Going back to the "must," versus "may." That was at your Board's request, but without explanation.

Stay on page 10, line 11 of subsection 4. The remaining portions of that page change licensee or applicant to "person" which expands it to those not licensed by the Board. The same continues on page 11 to line 31, where it talks about in addition to the fee. The amounts are in line with the original component.

MR. LEE:
This is a payment into the "Residential Construction Recovery Fund."

CHAIR TOWNSEND:
It has not changed. It has gone from annual to biennial. On page 12, section 17, you are adding to paragraph (c) of subsection 2 "or the regulations of the Board." I think that is clarifying language allowing the Board to specifically deal with violators of regulations. That was probably implicit, but it needed to be stated explicitly.

Section 18 refers to section 10 regarding issued licenses.

MR. LEE:
Correct. That is transitory language to provide for going from a one-year renewal to a biennial renewal on licenses. I am sure Mr. Keane decided we needed it.

CHAIR TOWNSEND:
I am sure everyone received a copy of this letter from the Division of Industrial Relations to us from Mr. Bremner, in support of the long-standing association with the State Contractors' Board and S.B. 279 implementation (Exhibit D).

Committee, that letter, Exhibit D, is the proposed amendment on the State Contractors' Board's S.B. 279.

SENATOR HECK:
We spent some time discussing the provisions of section 4, subsection 2, paragraph (d), about the release of complaint data. After the last work session, the staff was directed to do further research. Mr. Keane looked at the Nevada Supreme Court case Ms. Grein cited. I do not want to speak for Mr. Keane, but he feels it is not relevant to this discussion to use that as a cite to support releasing the data. Likewise, Mr. Young looked at the other boards to see whether or not they release information regarding unadjudicated complaints. To the best of his knowledge, there are none that do so. That being the case, I do not think this issue has been sufficiently resolved to allow me to support the provision to section 4, subsection 2, paragraph (d) of releasing unadjudicated complaints to the general public.

CHAIR TOWNSEND:
Your point is taken. It is my intention to get through the new portions, and then go back to this discussion.

SENATOR CARLTON:
I have no problem with them sharing that information with me. We lived through the swimming pool hearings a few sessions ago, and how terrible they were. I understand it is in court right now, and I am uncomfortable with us putting a provision in this bill that would justify what the Board is doing while they are in litigation. If they were not in litigation, it would be a different story. After the litigation is resolved, then we can deal with it. That would be a better way.

CHAIR TOWNSEND:
You may remember, we had several people with concerns about that language. I would ask our counsel, Mr. Keane, to address how the State Bar of Nevada handles this.

WIL KEANE (Committee Counsel):

> As I had said before, of course, the Bar is covered by the judicial branch, not pursuant to these statutes. But, it's informative as to how they proceed. I spoke to counsel at the Bar, and they, evidently, have just changed their procedures, effective March, to be more open. But, even so, the process is as follows as a quick summary. When a complaint is received, the Bar staff looks into the complaint; determines if it's frivolous, determines if they have jurisdiction, and if it is either frivolous or there is no basis for it or there's no jurisdiction. The complaint is simply dismissed and no record is ever released to the public.
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> If the staff determines it should go forward beyond that, they open a grievance file. The grievance file is reviewed by a screening committee, and the screening committee makes one of three decisions. But, at any point after this, the information will eventually become public. The screening panel either decides that the charges should be gotten rid of and no further action should be taken, in which case the file is closed. At that point all the information becomes public.
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> The committee can decide that an infraction did occur, but it was not major. They issue a letter of reprimand. The file is closed and all the information becomes public or the committee decides that further proceedings are necessary. A formal proceeding is started, and at that point every thing becomes public as the formal hearings are held.

CHAIR TOWNSEND:

Is it your understanding that someone can call the Better Business Bureau and ask if there are complaints? They are not bound by the same rules as a regulatory agency. You can call them, and they are a disseminator of information regarding complaints, whether they have been adjudicated or found frivolous.

MR. LEE:

It is my understanding, but I have not verified or confirmed that. That is secondhand information to me.

CHAIR TOWNSEND:
I do not want anyone to think I know that for a fact. I believe it is the basic premise. It was Senator Carlton's concern, given the amount of challenges this industry faces, that there would be at least one place to call to find out if someone has had a number of complaints. The reason is we have tried to be consistent in how we deal with our boards. We had a substantial amount of discussion concerning the Board of Medical Examiners and the complaints against doctors during a rough time they were going through and whether, in fact, those should become public. It was the collective decision of this Committee and ultimately the Legislative Body, that the only things that could be released were adjudicated claims where there was some violation found such as a letter of reprimand, a suspension, or a revocation. I believe, Senator Heck, that is also the same as in your license practice act. Whether it is the will of the Committee, we will take this section, unless the Committee feels otherwise. The rest of this seems to meet the Committee's and sponsor's requests, as well as those impacted. We will hold section 4 for debate as soon as Senator Schneider returns.

On S.B. 279, we will hold section 4. We will hear S.B. 281, which is a workers' compensation bill.

SENATE BILL 281: Revises provisions governing industrial insurance. (BDR 53-1136)

ROBERT OSTROVSKI (Employers Insurance):
I have prepared an amendment to this bill (Exhibit E) in response to a number of individuals who had objections to various sections of this bill.

If you recall, this bill had three changes. The first change would have removed from the law the word "process" including the words "accept or deny a claim." This goes to the issue of penalties. After the testimony, I am proposing that section 1, page 2, line 31, leave the statute as it is, so it would read, "refuse to process a claim."

Further in section 1, page 4, line 6, there were some who had an issue with the change of status of putting the words "in this claim" in this statute, as opposed to having the penalties applied to the overall record of the insurer. In response, I am proposing the original first fine for a benefit penalty in this claim to vary from $3,000 to a maximum of $10,000. Right now, the law provides that

penalty would be $5,000 on the first claim. There was discussion about whether or not the $5,000, which could quickly become $13,250 on the second violation, was the appropriate number for varying offenses. My proposal is between $3,000 and $10,000 for the first violation would give the Division of Industrial Relations the ability to make some judgment about what penalties should be applied in these cases based upon amount of harm. Whether there was intent or it was accidental, they could take into consideration various aspects of the penalty in arriving at the dollar value. They would have more flexibility than just the $5,000.

I have talked to the Division of Insurance who, although they do not take a position on this bill, have indicated they could adopt regulations, and could apply this factor of $3,000 to $10,000 on the first violation; understanding the second violation could raise, in that claim, up to $37,500. There is substantial reason for an insurer to be sure claims are administered properly.

There were some concerns expressed relative to the addition on line 28, page 4 of the *Nevada Revised Statute* (NRS) 616C.370 restriction. As the law reads now, we do not have to pay the benefit penalty until an appeals officer rules. Under the change I am proposing, that penalty would not have to be paid until after judicial review, if such review is requested. We understand the review is expensive, but when you are subject to a $37,500 fine, we think it is only fair that we have the right to judicial review for the payments made. We have had considerable problems recovering those funds once they are paid out and the claimant is already receiving compensation benefits. There are penalties above and beyond normal levels of compensation for lost time or for medical payments. I gave those proposals to Mr. Thompson and have not heard from him relative to his position on them.

CHAIR TOWNSEND:
We will move on to S.B. 310, which is the Title 54 Board bill. There are two separate written amendments prepared by the Legislative Counsel Bureau, Research Division. One creates the Advisory Committee on Regulation of Providers of Health Care in Nevada (Exhibit F). The other raises the salary of all occupational and professional licensing boards from $80 a day to $150 a day (Exhibit G).

SENATE BILL 310: Makes various changes relating to professions and occupations. (BDR 54-131)

SENATOR CARLTON:
It is a good idea to adjust this as it has been a long time. I discussed your second piece of paper with Senator Heck, and have not had the opportunity to discuss it with Senator Washington. I found the wording in another bill, and decided why recreate the wheel. This is a good idea to have a group come together to sit on the proposed health committee including representation from both Houses' Commerce and Labor committees to really look at licensing issues as to how they affect people getting health care in this State. I was not sure where S.B. 281 was going, so I decided to tie it to S.B. 310 to address those issues as things move forward.

CHAIR TOWNSEND:
Senator Heck, you have the wonderful experience of serving on everything named here; do you have some thoughts on this?

SENATOR HECK:
Senator Carlton said it was a provision that came out of Senator Washington's bill, S.B. 221, which came out of the Legislative Committee on Health Care that met during the interim and looked at a lot of these issues. As this Committee is well aware, there are many entities looking at health professional licensing issues during the interim. Senate Bill 221 creates another commission or advisory group and carries with it a fiscal note. That has been reworded to make it a function of the Legislative Committee on Health Care during the next interim to carry out this same function without having a fiscal note attached to it.

SENATE BILL 221: Revises provisions relating to the development and implementation of health care policy in this State. (BDR 40-307)

Since that will be the direction of the Legislative Committee on Health Care during the next interim, I am not sure of the utility of having another entity that may be working in concert or going down another road. Then again, the thing I see of benefit in this provision, as it was originally put in S.B. 221, is there were representatives from each House's commerce committee which deals with the licensure issues. I am not sure what the work-around would be if it was done by the Legislative Committee on Health Care, but I am just being cognitive

of the cost of putting another committee together, and serving on it. I think Senator Washington was going down the right path in doing it without incurring a fiscal note.

SENATOR CARLTON:
One thought was this Committee could discuss making this a function under the Legislative Commission to allow them to establish this subcommittee within the Commission; that way in would be for the one interim. It would not take valuable time and staff away from the Legislative Committee on Health Care. Even if you do not serve on the Commission, you would still be allowed to put the pertinent parties on this subcommittee of the Commission. I like this provision and want to see it succeed.

CHAIR TOWNSEND:
I think the common ground is whether the original proposal was in S.B. 221 or whether it is a reworked version, the value to the public is having someone from this Committee who knows licensing as well as the other members who are going to be part of the Legislative Committee on Health Care.

Why not have the subcommittee on licensing, which is Senator Carlton and Senator Heck, meet with Senator Washington to figure out the right mechanism to put in this bill as well as the other bill coming forward and have them match up, then we can advance it. I think part of the disconnect, and Senator Heck is probably more sensitive to this since he sits on both, is the fact that the Legislative Committee on Health Care does not have, other than himself, the person who fully understands the whole complexity of licensing boards. It is not just a group of health care boards, but it includes everything else. There is value to having an additional person, so if you two can talk with Senator Washington, and we can match up the final decision in S.B. 310 as well as with S.B. 221.

SENATOR CARLTON:
That was my intention to mirror. I had not realized what they were working on as we were doing two different things at two different ends of the building. Whatever is out there, I want to be sure it succeeds.

CHAIR TOWNSEND:
Senator Heck, did you have a chance to talk to Senator Washington about the value of having someone from this committee on there as well?

SENATOR HECK:
Yes, I have. It was beneficial because I was able to serve on the Legislative Committee on Health Care, and became the point person on those issues. Senator Washington does recognize the value. That is why the original language presented by Senator Carlton was in S.B. 221, and it became an issue of will it fly if there is a fiscal note, and how can we do it without having a note on it.

CHAIR TOWNSEND:
If you would have that conversation with Senator Washington, I do not have a problem with the fiscal note, because we are going to get one anyway.

SENATOR CARLTON:
No. They are self-sustaining.

CHAIR TOWNSEND:
Good, so we do not have that problem. The only change we are recommending to the second proposed amendment is the increase from $80 to $150. I see no one has a problem with that. We will give Senator Carlton and Senator Heck an opportunity to meet with the Chair of the Legislative Committee on Health Care, to resolve the mechanism on how fast they want to do it, so we can avoid the fiscal note.

In front of us we have S.B. 403, which is Senator Washington's group health bill. There is a mock-up of the proposed changes in the bill (Exhibit H). The language change is that "the provisions of this subsection apply only for the purpose of requiring coverage to be offered to all such members, employees and dependents."

SENATE BILL 403: Revises provisions relating to group health insurance. (BDR 57-778)

JACK KIM (Nevada Insurance):
That is correct.

CHAIR TOWNSEND:
We dealt with the issues proposed by the Division of Insurance to change a certified statement submitted to the Commissioner to the opinion of a qualified actuary, the rates charged by the guaranty association in subsection 3.

MR. KIM:
What the Division of Insurance testified yesterday, that they would want a copy of an actuarial memorandum filed with their Division. This is still the certification which is a bit different from what they are actually asking for in the memorandum. When we build regulations for the large groups, we often develop these actuarial memorandums so we know whether the rates are accurate and appropriate for this group. They want that filed with the Division.

CHAIR TOWNSEND:
Mr. Keane, I remember the term memorandum being used. Is that not a term of art we can put into statute?

MR. KEANE:
Yes. Last night I looked into the memorandum that they were discussing, is dealt with in the insurance division's regulations. And so, I went to the NRS sections in chapters 681B, particularly 681B.210, where this is the terminology they use. They use the terminology, "the opinion of a qualified actuary." And then their regulations based on that statute dealt with memorandums, and what were required in memorandums, which is also why I added the language of "the commissioner may by regulation may further define or enlarge the scope of the opinion", which I also copied from those sections in 681B.

CHAIR TOWNSEND:
That gives them the authority to be pretty tough if they want to be.

MR. KIM:
I think that addresses their concerns.

CHAIR TOWNSEND:
Under subsection 5, there was some concern about someone not being able to reenroll if they dropped out over a two-year period, when, in fact, we wanted to deal with it in a manner to get back in as soon as practicable. That wording gets you over the 2-year potential gap, if you happen to drop out and miss the enrollment period, if it included 12 months.

I believe subsection 6, was a suggestion the Chair made to make sure we did not create a workers' compensation problem. We have had to deal with that in a number of other sections, because you can define an employee any way you want to, and employment any way you want to. We have to make sure we do not infringe upon the responsibilities of those to have coverage for purposes of workers' compensation.

The five-year recommendation becomes a problem for the Independent Gaming Operators Coalition (IGO).

SENATOR CARLTON:
I understand we are trying to make sure people are reputable and do not do this to establish their own insurance schemes. Is there a way to include the people who exist now, who have existed for awhile, and then from now forward ask for that five-year stability? Anyone in existence as of July 1, 2007, can apply. We have set them up to fail by putting the five years in.

MR. KIM:
It was my suggestion to put in the five years to make it consistent with existing clauses under the bona fide association. You could put something in that says, unless the commissioner deems otherwise, that five-year period should not be waived.

CHAIR TOWNSEND:
I think Senator Carlton's point is important, because in the case of the members of the IGO, and I happen to represent a lot of those folks, our goal is to make sure they have an opportunity to get health care they currently do not have.

MR. KIM:
I had a discussion with a lobbyist who said what they want to do they could probably do under existing law. They have a number of employers who want to band as a group. That is similar to what we do with the Las Vegas Chamber of Commerce. They band as groups and each gets their own policy. Under the current law, they can already do that.

CHAIR TOWNSEND:
Mr. Siri made a compelling argument with regard to this particular bill. There are a number of avenues available to organize these groups. We have done it in the automobile industry, and construction has done it as well as chamber members.

Have you or your group analyzed the opportunity to organize under a different section of the law to provide this or, given the structure of the IGO, would you need this kind of option?

CHRIS BARRETT (Independent Gaming Operators Coalition):
The reason we are interested in that bill is a clause that says we have to be established for at least five years.

CHAIR TOWNSEND:
Under any other section of law?

MR. KIM:
That is my understanding.

CHAIR TOWNSEND:
Do you think that might be it?

MR. KIM:
I do not know. I would have to look at the statutes. I did not realize that was the holdup in the other sections for the IGO.

CHAIR TOWNSEND:
Why do we not do this? I think Senator Carlton has articulated something that is important. This Committee has worked more diligently in trying to find health care coverage for those that work, independent of their financial status, than any committee in this building. We have not yet found the silver bullet, but we are moving down the track. I would hate to process this with a five-year component and lose some of my folks who have been working in an industry for a long time that have not had coverage. It does not mean they will do it under this; it means they have the option. If you could check with Mr. Siri for us, and also check with staff. Senator Carlton's point is if they are in existence on the passage of the bill, they would qualify, but any one forward would have to meet the five-year requirement.

MR. KIM:
I have a suggestion to clear up the situation. We could say the IGO has been in existence for at least three years, and then change the requirement to five years in two more years. Another clause can say, in two years this changes to five years, so it becomes transitory.

CHAIR TOWNSEND:
I would like to get this bill processed today. Can you two find out how long the IGO has been in existence?

MR. BARRETT:
Yes, Senator, I sure will.

RICKY FINSETH (Nevada Association of Realtors):
We are comfortable with the changes.

CHAIR TOWNSEND:
We will wait for them to come back. The transitory language suggested by Mr. Kim meets the original goal of Senator Carlton.

SENATOR CARLTON:
The proposal would be either in existence as of January 1, 2007, or, if not, the five-year component.

MR. KEANE:
I understand. Definitely we can do that.

CHAIR TOWNSEND:
I will take a motion to amend and do pass S.B. 403 with the rainbow mock-up that would include the change on subsection 6, page 2 of the language at the bottom of the page regarding the five-year existence. I believe the term is that you would have to be in existence on January 1, 2007, or been in existence for five years. Is that your language?

SENATOR CARLTON:
Yes.

SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 403.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
Mr. Kim had a question regarding Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Mr. Keane.

MR. KEANE:

I believe Mr. Kim asked yesterday how this would work, because many of the people who would be involved in these associations with the independent contractors, he wanted to know whether COBRA would apply to them. The answer is, for what it's worth, that in the IRS regulations regarding COBRA, independent contractors under group health plans such as this are treated as employees for the purposes of the benefits, but they're not treated as employees for the purposes of determining if an organization meets the minimum size qualifications to have COBRA apply. So that, in other words, if there is a 20-employee limit, below that COBRA does not apply. Independent contractors do not count towards that 20-person limit, but they do count once you meet that limit and so COBRA applies. They do count as employees and have to be treated as such for purposes of the notice and other things.

CHAIR TOWNSEND:
Mr. Finseth and Ms. McKee, did you understand that explanation, because this would affect your members as they are, in essence, independent contractors? They are not going to qualify, because under a guaranteed association, you have to have a minimum of 20 employees. In this case, for the purposes of how the Internal Revenue Service (IRS) defines this for COBRA, they will not allow this particular provision to qualify, so your members cannot get COBRA if they drop out.

MR. FINSETH:
We will make it clear to the members that participate in the program.

CHAIR TOWNSEND:
We will now open the hearing on S.B. 412, Senator Heck's bill addressing board member selection process for the NRS Title 54 boards, which has to do with the adoption of a nurse licensure compact, pharmacy service and nurse instructor, etc. There is a color mockup available (Exhibit I, original is on file in the Research Library).

SENATE BILL 412: Makes various changes regarding health care. (BDR 54-540)

SENATOR HECK:
I had discussions with the parties present on the first hearing to address their concerns. Granted, their concerns were not fully addressed in the mock-up because it is a paradigm shift in the way we are, hopefully, going to start thinking about health care professional licensing. I want to remind the Committee the recommendations in this bill are not mine. They came from separate entities that met during the interim. They all came to the conclusion these are things that would help in getting health care professionals licensed in Nevada. Those entities are the Legislative Committee on Health Care; the Regent's Task Force on Health Sciences Center; the Governor's Commission on Medical Education, Research and Training, and Governor Gibbon's transition team on health care professionals.

In the mockup, section 1 dealt with how the boards' members would be appointed. There were concerns about the relations between professional associations and their nominating people to the board, and having the Governor be obligated by those nominations. That language is now changed so that it is permissive, and the Governor shall solicit nominees from one or more applicable professions in the association; and the Governor may appoint or not appoint. There should be some input from the applicable professional associations as to people that may be qualified to sit on the board.

The next major provision was from the original amendment. It is the ability for a private medical school to function as a clinic that is owned by other than licensees. There was no change.

SENATOR HECK:
The other major changes dealt with the licensing of physicians by endorsement. I met with Mr. Lee and General Clark to address those issues in more detail. We have changed the requirements saying that the board shall, except for good cause, license an individual that meets the requirements. We have added the provisions that they are actively engaged in the continuous practice of medicine in their specialty for the five years before making application. That provision will sunset in four years to allow time to evaluate the process to see if there are any issues. That same language from the NRS 630 would also go into the NRS 633, the osteopathic section of the bill.

The other area dealt with nurse educators. The first was clinical nurse educators being able to function at the bachelor's level as opposed to having a master's degree. I remind the Committee this is permissive, it does not require any educational institution to adopt that, but what we did was to change the requirement from two years of experience to five years of experience, which is consistent with the State Board of Nursing's current internal policy in granting waivers. That sunsets in four years, so we can come back and reevaluate it to see what the impact has been.

I want to note there was a lot of concern expressed about using nurses with bachelor's degrees to teach clinical skills. I want to point out to the Committee that two of our neighboring states, Arizona and Oregon, actually do this very same thing. There have not been any difficulties in those two states. I would also point out those two states have a ratio of ten to one as opposed to our ratio of eight to one; so there are abilities to increase nurse educators.

I have deleted a provision within the bill regarding nursing education. That was the ability for them to use an instructor with a PharmD to teach pharmacology and for an attorney to teach medical ethics. That provision was brought to me and I inserted it. There were some issues the nurses had with that. I am glad to remove that one, since nobody testified in support of it.

SENATOR HECK:
The last major provision dealt with the adoption of the Nurse Licensure Compact of 2003 (Exhibit J). I pointed out in the original testimony that there are 20 states currently in the nurse compact. The Nursing Board expressed concerns about the potential for having nurses that have not undergone a criminal background check coming in, but not all states require it that are

members of the compact. While I appreciate that concern, I want to point this out to the Committee, that of the 20 states signatories to the compact, 13 do criminal background checks and 3 currently are pending the legislative authority in their own state legislative sessions. They are moving to do that once that authority is granted. Two states do state background checks only, not federal checks. But there are only 2 of the 20 states that do no criminal background checks whatsoever. Those are Virginia and Maine. I do not believe the lack of a criminal background check from those two states would significantly impact us joining the Nurse Licensure Compact. The Nursing Board also had a concern about the potential cost associated with joining the compact. I had conversations with the National Council of State Boards of Nursing. They are recipients of a federal grant, because the federal government is hoping to expand this program. This grant would allow them to give dollars to states to help offset the cost of adopting the compact, and that should also allay some of the concerns of the Nursing Board.

We also took some of the suggested amendments from the physician's assistants in addition to the ones we are already putting in the bill. One dealt with the ability for physician's assistants to provide care during a declared emergency or disaster without having to have the direct physician supervision they have to have while working in their office. Obviously, if there is a declared disaster or emergency, we want all hands on deck, and a competent physician's assistant should be able to provide care directly related to that disaster or emergency without having to worry about physician supervision.

SENATOR CARLTON:
Senator Heck, would you go over again who has background checks and who does not?

SENATOR HECK:
I will see that you get a copy.

SENATOR CARLTON:
I am opposed on the background issue.

CHAIR TOWNSEND:
We will hold S.B. 412 for now.

We will look at S.B. 477, the time-share sales agent bill.

SENATE BILL 477: Makes various changes relating to the licensing and regulation of time-share sales agents. (BDR 10-1327)

CHAIR TOWNSEND:
Ms. Anderson proposed an oral amendment to the portion of the bill regarding the fee schedule. Mr. Scott Scherer prepared an amendment in written form (Exhibit K). This is the fee schedule change, and the only change I see on this is you would add fees for each change of name, address or status.

SENATOR CARLTON:
They did not want a new term because a new fee would throw it into a two-thirds majority requirement.

SCOTT YOUNG (Committee Policy Analyst):
Mr. Chairman, Mr. Scherer had volunteered to prepare it, and I passed his out. After we received his, we received a similar one from Ms. Anderson. To avoid confusion, I did not pass hers out, but I checked and they are both the same, but it was originally her request. What you have is Mr. Scherer's, and that is the same as Ms. Anderson provided.

> SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 477.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR TOWNSEND:
Let us move into our actual hearing with S.B. 476.

SENATE BILL 476: Makes various changes concerning business practices. (BDR 54-1389)

CHAIR TOWNSEND:
As you may remember, this bill is the result of the issues in southern Nevada, as well as another issue brought to us by a member of the Nevada Tax Commission, Mr. Turner. The prime component of this bill was an area we did not deal with historically, because it never came up. I suggest we not address the payroll issue, but deal with qualified intermediaries (QI) in this bill, then go back to the payroll issue.

ED ALLISON (Federation of Exchange Accommodators):
As members of the Committee know, it has recently become painfully apparent that there exists the glaring lack of oversight and appropriate regulation governing companies that facilitate Deferred Exchanges, section 1.1031 of the Internal Revenue Code (1031 exchanges) in our State. We believe your proposed legislation, with perhaps additional amendments, is crafted to correct that situation without suffocating the industry. As you know, legislation itself cannot prevent crime. However, appropriate requirements will serve as a substantial deterrent, and these requirements range from extensive background checks, to increased bonding, to joint withdrawal authorization. Also, after discussions with subcommittee members, we have submitted proposed amendments to the Committee (Exhibit L).

TERESA STORY-TURNER (Nationwide Exchange Services):
I have been a southern Nevada resident since 1976. I live in Henderson and have been an exchange practitioner for over ten years. I am encouraged to see the work you have undertaken to improve consumer protection, but at the same time not suffocate our industry, and allow us to continue to thrive as a business.

CHAIR TOWNSEND:
Whatever this Committee processes regarding this issue, there is only so much we can do. I know that every one of us gets phone calls that you have to do something. You have to remember, we have 120-day jurisdiction in this State every two years, and we cannot run right out to somebody's office and grab your money for you. I do not want anybody to misunderstand what we are going to be able to do.

MS. STORY-TURNER:
I completely agree. At the same time, looking to consumer protection is first and foremost important while maintaining the business ability as a QI to serve the exchange clients who are looking to facilitate these 1031 exchanges.

CHAIR TOWNSEND:
We understand the issue. We want to have everybody who is here on that issue to be able to provide their concerns, particularly with regard to your amendments.

MR. ALLISON:
The best way to approach this is for Dennis Helmick to go through the handout (Exhibit M, original is on file in the Research Library), mention the current laws and regulations applicable and the proposed changes in brevity, and then take any questions you have from there.

DENNIS HELMICK (Federation Exchange Accommodators):
There is no auditing standard under current legislation. The proposed legislation would have state audits provided by the Division of Financial Institutions, Department of Business and Industry. No civil or criminal background check is currently required. The proposed law really expands this requirement to include all money movers. What happened in the case we are here about, is there was no vetting of the proposed owners of the new building, so the proposed statute requires that the new owners of the business also go through this process. The current law has no designated manager for the office of the exchange operations. We are proposing there would be an exchange facilitator operational officer who would meet experience and educational requirements.

Currently, State law requires a $50,000 surety bond. The surety bond does not provide protection for consumers, a fidelity bond does, and that is why we are recommending in the proposed legislation there be a $1 million fidelity bond. There would also be a $250,000 errors and omissions insurance. We would like a requirement in the insurance policies that there would be prenotification of a cancellation or withdrawal of coverage notified to the Department ahead of time with a 30-day notice of cancellation, so the public would be put on notice, and the regulators would be put on notice of a lapse of insurance coverage. That was also the problem in the Southwest Exchange case.

The current law, in a different section which we want to put into the exchange facilitator statute, has provision for joint withdrawal of funds. We want this placed directly into the law so it is explicit. There would be a requirement that the qualified intermediary customer would have to sign a withdrawal notice specifying the date, the amount and the payee of any funds moved for the exchange. We think this is critical.

MR. HELMICK:
We still view as critical that there be an understanding differentiated between what a surety bond provides and what a fidelity bond provides. Therefore, we are recommending that section 15, subsection 1 be amended to provide for fidelity insurance bond coverage of $1 million. There is another provision in S.B. 476, section 15, subsection 6, which discusses verifying insurance coverage upon a request. We want to make it clear. The Department would verify insurance upon a request from an exchange customer, which would be the initiator of the request. Similarly, we have been in insurance markets where this insurance in not available in a commercially feasible manner. So, we provided the Division with the ability to make alternate arrangements, if required.

Skip to the change in section 42. This is fundamentally a critical concept that has to go into State law. That is, the regulation of the intermediary industry should be a function of where the exchange starts and from where the money is generated. By that, I mean a qualified intermediary whose transaction starts in Nevada should be regulated under this act. We are also suggesting that if an exchange starts in another state, therefore the money started in another state, this registration and licensing law would not apply to such a QI. The reason is simple; ours is a national business, and we have no way of knowing where our client will identify potential property throughout the United States. If the exchange does not start in Nevada, we have no reason to believe the client would be buying in Nevada. The current IRS regulations do not allow a qualified intermediary to be switched in midstream. This is one of the things we have asked the IRS for clarification. If, in fact, we do not have this kind of limitation, so the exchange starting in Nevada is regulated by Nevada, there will be a chilling effect on the purchase of property in Nevada, because out-of-state QIs, such as my company, will be caught in a vise. If our client identifies a property in Nevada and we retroactively get pulled into your licensing statute, we will say to the client that we cannot close their transaction, we are not licensed in your state. Whereas, if the exchange starts in Nevada, we know exactly how it

is going to go because we know where the exchange started. That is a critical concept we want to make sure gets into the act.

Similarly, in the present law there was no requirement that new owners be vetted and pass background checks. In the Southwest Exchange case, that would have made a large difference.

SENATOR HECK:
What section is that in?

MR. HELMICK:
The change of ownership is section 43, paragraph 2. In section 49, we are talking about changing the language to be consistent with fidelity insurance. It is not a substantive change; it is more of a consistency change.

With regard to section 51 of S.B. 476, we think it is critical to also add to the protection we are looking to put into the law, a requirement to allow a qualified trust, not just a qualified escrow. Currently, this is in the criminal part of the statute. The reason for adding a qualified trust is we want to expand the protections available. An escrow mechanism is primarily in a title insurance mode, where a qualified trust will allow a bank or a depository to act in that capacity. Those protections are already built into the IRS 1031 regulations. We want to be sure the State law comports to the protections in the IRS regulations and allow qualified trusts.

SENATOR HECK:
I appreciate the efforts of those who came up with this language. They addressed all ten recommendations that came out of the subcommittee. In the bill it says "upon request the QI will provide evidence of the insurance policy and bond." It was the recommendation of the subcommittee that it is automatically given to every client regardless of whether or not they requested. We found in some of the cases people who are not very savvy in this area. The first time they use this, they may not know to request the documentation, therefore the recommendation of the subcommittee is that be provided to ensure the individual those items were in force.

MR. ALLISON:
One thing we talked to Director Elliott about is we think it is essential a consumer bill of rights be issued by the Department. Whether that would be

sufficient to cover your concern, I am not sure, but should go a long way to that end.

SENATOR HECK:
Originally it was thought a copy of the binder would be given to each entity that came to that QI. That is in section 15. I still have a question regarding the insurance versus the bond. You referred to it as the fidelity insurance policy. I saw there is a provision in the bill for the $250,000 errors and omissions policy, which is a separate entity the subcommittee endorsed having. We kept going back and forth over the question of a fidelity bond versus a surety bond. That would be the $1 million an occurrence bond. I want to make sure that what is represented in the bill is a $1 million an occurrence fidelity bond.

MR. HELMICK:
Yes, that is correct. That is what we are proposing, and that is what we are recommending in the amendment. It would be a per occurrence.

SENATOR HECK:
Do you have a mock-up of the amendments? Do you have amendments over and above what we received?

MR. HELMICK:
Other people will testify about other amendments, but this is at the back of the tabbed handout.

MR. ALLISON:
The amendment is under proposed amendments in the later part of the material presented, Exhibit M.

SENATOR HECK:
In section 49, subsection 1, we are doing cleanup on some of that language where is says, "less than $1 million executed." They need to post a bond "in the amount of not less than $1 million" as a surety. How does that reflect on it being a $1 million an occurrence fidelity bond?

MR. ALLISON:
We are recommending the language be changed to maintain a fidelity bond of $1 million.

SENATOR HECK:
As soon as I see that change, then my question will be resolved. If it is there, that is fine; I just do not have it in front of me.

CHAIR TOWNSEND:
We already talked about an occurrence and the difference between a surety and a fidelity bond, because they are substantially different. What was the conclusion?

SENATOR HECK:
Being a neophyte to those terms, I would let the experts explain that.

CHAIR TOWNSEND:
I want to make sure it gets on the record so we can have a legitimate discussion on this.

MS. STORY-TURNER:
It has been explained to us by the Federation of Exchange Accommodators' (FEA) insurance broker company that a surety bond is for the completion of a project, whereas a fidelity bond coverage covers theft; that is the consumer protection of the funds. That is the distinction.

SENATOR HECK:
As it was given to me in a nutshell, a surety bond is for the State to come against the entity, whereas the fidelity bond is the protection for the consumer. That is why we are changing it to fidelity bond.

MS. STORY-TURNER:
Absolutely.

CHAIR TOWNSEND:
I want to make sure there is no misunderstanding, because if you read press accounts, they tend to leave the term out and just use bond. Consumers who are reading or listening to press accounts do not understand. They do not understand what the State can do, and what the individual can do.

MR. ALLISON:
You are absolutely correct. There is total misunderstanding with people. This might be helpful; this is from insurance people:

> I am writing to explain the difference between fidelity bonding, also commonly referred to as crime insurance and surety bonding. In summary, fidelity bonds are insurance policies which cover losses due to embezzlement and fraud; while surety bonds are financial guarantees, vehicles generally triggered by insolvency events.

What both Senator Heck and Senator Townsend said is correct.

CHAIR TOWNSEND:
Senator Heck, did I understand you to say that we are still talking about "an occurrence"?

SENATOR HECK:
That is correct.

MR. HELMICK:
That is the insurance we now have currently available through our association. That is how the program is tailored.

CHAIR TOWNSEND:
One of the most important pieces of testimony we received was that the clients of one of the companies in question were not notified that there was a change in ownership and that is apparently not required in the law now.

MR. HELMICK:
I believe we are recommending the change in section 43, paragraph 2 of the proposed amendments.

CHAIR TOWNSEND:
It is the change in the handout, Exhibit M, as a proposed amendment to the bill.

MR. HELMICK:
Yes, it is, Sir.

MS. STORY-TURNER:
Presently, under the law for QI registration as it is now, there was no mechanism in place to notify the general public and the employees of a change in ownership. With the recommendation of a prelicensing prior to the finalization of the sale of a QI business, that would look to cure it. At least now, the general public moving forward would know with whom they are doing business. I think that is common sense and necessary.

CHAIR TOWNSEND:
Senator Heck, do you have any other recommendations from the subcommittee? Did you review these recommended changes?

SENATOR HECK:
Yes, I have. Again, they are all consistent with the recommendations from the subcommittee. After the bill was initially printed, I had the opportunity to meet the witnesses and discussed some of the things lacking which are now reflected in the suggested changes.

MENDY K. ELLIOTT (Director, Department of Business and Industry):
There was a reference to a bill of rights and you are correct, there is some lack of knowledge. The FEA wants to make sure we create a document within the regulations that will actually be given to someone, will talk about the $1 million, talk about who is a QI, what should you be asking for, what are the qualifications, what should this transaction look like, what should they be doing with the money, what should your expectations be and more importantly, walk them through a bill of rights. That is something they have agreed to assist myself and Commissioner Kondrup in creating and facilitating.

The other challenge we have is a concern about the 45 days in licensing. As we go through getting the backgrounds checks done, I would love to turn it around in 45 days. From a customer standpoint, we should turn it around in 45 days, but that is not the reality. I would like to have some latitude there.

STEVEN KONDRUP (Acting Commissioner, Division of Financial Institutions, Department of Business and Industry):
My Division will do everything it possibly can to enforce and regulate this industry. Providing the necessary information is returned from the Federal Bureau of Investigation, then we would probably be able to comply with the 45-day requirement with the additional staff I have asked for in my fiscal note. The examination staff and the staff we put together to comply with this would be a specialized part of the Division of Financial Institutions, because this type of entity is not currently something we normally examine and regulate on a day-to-day basis.

SENATOR HECK:
Mr. Kondrup, do you have suggested language on how you would like that provision to read about the 45 days?

MR. KONDRUP:
I do not have it now, but I can get it to you later today.

CHAIR TOWNSEND:
Do you know approximately how many would be required to be licensed under this?

MR. KONDRUP:
I have been told there are 52 entities registered with the Real Estate Division. However, there are those individuals in the industry that have not met the requirements for registration.

CHAIR TOWNSEND:
Since there are 52 known entities, upon this bill being passed and signed into law, ask them to attend a workshop. It is important for those who are there to know how to comply, answer their questions, have them understand exactly how you are going to process, what it is going to take, what your thoughts are on the issue and prepare for different types of questions depending on the type of business they have. A line of communication as we start this is important. It would also be important to them to know who you are, that you are serious about this legislation. After that, they cannot complain that they did not know about something. If they do not show up, that is their business, but you afforded them the opportunity to have a dialogue with the Division.

I know a number of divisions have done that with some tough situations. It was important to the public to be in the room, to have the dialogue, ask questions and get answers. I have attended many of those workshops, and found them to be helpful to the public who get a lot of good information that, otherwise, they would not be able to get. We learn more in a group, hearing other questions we might not have considered.

CHAIR TOWNSEND:
Ms. Elliott and Mr. Kondrup, have you seen Mr. Uffelman's proposed amendments?

MR. KONDRUP:
I have, and I have no objection to his amendments.

CHAIR TOWNSEND:
I am not sure about the last proposed amendment about "in lieu of a license."

WILLIAM R. UFFELMAN (Nevada Bankers Association):
Back in February, when we had the workshop, as the subcommittee scrutinized the industry, I mentioned I had a couple of members who had exchange services. Two, I am aware of, are Nevada Security Bank in Reno, and Washington Mutual Group who is here today. The banks have affiliates that cover those institutions and are subject to scrutiny by the various regulators who regulate them as appropriate to their licensure. The people who work there have gone through the criminal background checks, fingerprinting and the other activities.

The two amendments on page 3, lines 21 and 33 (Exhibit N) are recognition that the business organizations such as a bank, a savings and loan or a savings bank trust company, have these holding companies, affiliates and subsidiaries in their structure. Depending on how the bank is structured, you get all of these pieces. I was trying to get the pieces of the puzzle in the bill. The language I offered as a new section that says, in lieu of a license issued, for want of a better term, is a registration. The people within the bank and within the bank regulatory authority have done the things inherent in the license, so I provided a parallel that they would be registered so the State knows they are there in the State and offering the service. I arbitrarily picked the $200 fee because that is what it is on page 7 for all the people who are licensees with respect to the initial license and renewal of the license. These entities have already been

investigated. The State Charter Bank, Nevada Security Bank, the holding company and all its activities, are under the purview of Mr. Kondrup and his division. Washington Mutual Bank, its regulatory body and the Federal Deposit Insurance Corporation (FDIC), are under the regulatory purview. All the things going on in that bank structure were already regulated before the State took this vision with respect to the unregulated community. I respectfully offer this amendment to that end.

MR. KONDRUP:
In regard to the registration, the individuals, I concur with Mr. Uffelman's statement that in the holding companies, they have already been investigated in regard to their banking activities either by the Federal Reserve, the FDIC and the Division of Financial Institutions if they are a State chartered institution with us. I would agree with the submitted amendments.

MR. HELMICK:
As long as the other provisions of the act apply dealing with the way the funds are handled, I have no problem with this.

JONATHAN CHRISTIANSON (Asset Preservation, Incorporated):
Asset Preservation, Incorporated, is a subsidiary of Stewart Title Company and an intermediary with a national scope. We are based in California, but do business in every state. Some of our transactions have a base in Nevada with a long relationship. Before regulations were adopted under 1031 exchanges, we gave training classes.

Our concern in looking at the bill, S.B. 476, is precisely that it may be adopted more broadly. We want to make sure its provisions would not unnecessarily hamper the way we go about our business or change it. Its focus is on consumer protection and we all support that.

My comments are specific. I have made reference to section numbers and the suggested changes (Exhibit O). Some of the changes already echo comments made. There is a definition of financial institutions used throughout the statutes. It requires, as part of the definition, that the institution be doing business in Nevada. We wonder if that is necessary. As consideration, we would advocate a change to broaden that definition so we would not run afoul of the statute, if we were using a depository that was not currently doing business in Nevada.

The act does not apply to services rendered by an attorney in the performance of his duties as an attorney at law. An attorney cannot act as a qualified intermediary; in some sense you could call that the practice of law. We think that if the services provided by the attorney can be provided by a non-attorney, it should be subject to the licensing act.

MR. CHRISTIANSON:
In regard to Mr. Uffelman's comments; a concern is a level playing field in the State. We would be concerned about banks, who are some of our biggest competitors. In the qualified intermediary business there are apples and oranges. Companies like us with a long history and a strong corporate parent. The debacle that happened in the south would be less likely to happen where you have a bank parent or a title company parent that has been doing business for 100 years, has the required reserves and is going to be there the day after a mistake is made when there is a problem. Many of us as the corporate parent will offer a direct letter of assurance with unlimited liability as our company does. Keep in mind the level playing field idea to the extent banks might be carved out and not subject to the rules applicable to all other participants in this market place.

I think, for the first time, the act provides a clear statement that each licensee is a fiduciary of all money or property or other considerations and instruments received by the licensee. I think it is important, if you are going to elevate the standard of care we have, that we be precise in what that duty runs to. My suggested change says that we are a fiduciary with regard to all of those things with respect to instruments received by the licensee from a client in a tax-deferred exchange, other than any fee collected by such licensee for services rendered to the client. We are saying as to the principal, as to what we receive, we are entrusted with that, and we should be a fiduciary with regard to the management of those funds.

CHAIR TOWNSEND:
We have another bill that might say you should not do that because it would be an unconscionable act if you charge more than your neighbor did.

MR. CHRISTIANSON:
We have some concern in section 15, paragraph 7, page 6. If an insurer, or in the case of a deposit, the Division, wishes to make payment without awaiting action by a court, the amount of the policy or deposit must be reduced to the

extent of any payment made. We do not feel strongly about this, but the idea that a division, in case of a deposit, might step out ahead of a claim and decide to make payment without a meaningful opportunity on the part of the qualified intermediary to defend itself, presents a problem. A claim is not narrowly defined. It does not necessarily mean someone has lost money. It may be a disagreement over something or at least the loss of their exchange funds. The thought would be that if you continue that, there should be something built into the bill to give an opportunity to be heard; some sort of protection for the intermediary.

CHAIR TOWNSEND:
Do you think it is not clearly defined as to the intermediary's due process?

MR. CHRISTIANSON:
There are clear descriptions of those rights in the case of revocation of license, but not with regard to this sort of power to pay a claim that may be asserted by a client.

CHAIR TOWNSEND:
We spent a little time with the term claim, because we do workers' compensation as well. We are sensitive to those differentiations.

MR. CHRISTIANSON:
Section 18 on page 6 provides any money deposited in escrow to be delivered upon the close of escrow must be kept separate from money belonging to the licensee, and must be deposited in a financial institution that is federally insured or insured by a private insurer, unless another financial institution has been designated in writing in the instructions for the escrow. Our thought is that we can revise the language to say, unless another financial institution or investment meeting the fiduciary standard to which the licensee is subject, has been designated in instructions for the escrow or in any similar agreement, including without limitation, a written exchange agreement between the licensee and the client. You have already commented on the scope of the term financial institution; we think it should be broadened. But should the parties be free to contract? Given there is a fiduciary standard that will be enforced by courts in Nevada, is it necessary to so limit? A consumer-oriented provision that would enable them, and some of our clients are quite sophisticated and some are not, to agree or would cause us to use a certain type of investment that may not meet your definition.

I want to amplify on the topic of what happens when you have an exchange that originates outside of Nevada. Our understanding is the same, that the IRS has not answered the question of whether or not an exchange client can designate a separate or different qualified intermediary and cause a transfer of those funds during an exchange. To do so creates a potential problem. No one knows if that wrecks the exchange or not. We deal with people who, on the forty-fifth day, are trying to decide what they are going to identify. Are they going to be identifying a Nevada property if they are working with someone who is not licensed in Nevada and tells them so, which may hamper closing there?

CHAIR TOWNSEND:
You may have to do a little research on this, and we certainly will. You commented about the IRS not having ruled on whether you can switch intermediaries in the middle of a transaction; is there no case law on that yet?

MR. CHRISTIANSON:
There is none.

MR. HELMICK:
We specifically asked the IRS for a clarification of the regulations, if it would allow, in such a case as Southwest Exchange or a bankruptcy of a QI, a switch of the QI in mid-exchange. They said it is not allowed, and they refused to give us any kind of relief in that regard. Our present understanding is you cannot switch a QI in mid-exchange regardless of what happened to you. That is why we are concerned about the law that only affects exchanges that start in Nevada.

MR. CHRISTIANSON:
That is not to say a qualified intermediary would never agree to such an arrangement, but if they do, they will protectively require the client to acknowledge that fact and hold them harmless.

CHAIR TOWNSEND:
Senator Heck, concerning the issue of the nonresident exchange client, did you debate that? What was the result of that discussion?

SENATOR HECK:
We did to a limited degree. As I recall, it was the recommendation to allow exactly what the exchange facilitators have recommended. It is all related to where the transaction begins.

MR. CHRISTIANSON:
That presents another interesting ambiguity. None of these exchanges are simple. We may deal with a client who sells two or three properties as part of one exchange, and those properties are not necessarily in the same state. Keep that in mind as you draft.

CHAIR TOWNSEND:
You are a sophisticated company, how tough is it for you to qualify in Nevada?

MR. CHRISTIANSON:
Not tough at all. We would already meet these things. As was pointed out in the case of a bank, we are a subsidiary of a large institution. We are subject to external audits by four accounting firms. Our parent company also audits us. We have two audits a year that are disruptive, and now there is going to be a third. Our concern is the patchwork created across the country would lead to more of the same.

CHAIR TOWNSEND:
The interesting thing, as you know, is this was set up initially by the federal government through the IRS, and yet they have ignored this and left it up to the states. I do not think that is fair to an industry that was created by congressional fiat. That works in the context of federalism for more of commerce; however, there are things that require a federal response because of the liquidity of certain things such as banks and insurance, of which the federal government has kept control. When you are talking about property in multiple states with taxes, including federal tax implications, you would think they would have a better handle on this.

MR. CHRISTIANSON:
We would much prefer this be done one time, and the regulation be imposed by the federal government.

CHAIR TOWNSEND:
This is not a burgeoning industry; this is a large industry that has been around for a while. This is not an industry where just extremely sophisticated, high net-worth individuals participate; this is something where the average citizen who has built up a little something is trying to protect their assets.

MR. ALLISON:
We have no problem with what has been presented.

MS. ELLIOTT:
I would concur. I have not had a chance to review chapter 692A of the NRS under which exchange facilitators would fall. I want to make sure we incorporate appropriate language as it relates to that statute and the regulations into this bill. We need to make sure they have the appropriate licenses. I need to do some investigation to ensure everyone is on the same playing field.

CHAIR TOWNSEND:
Mr. Christianson, I would recommend you exchange contact information with the director for a direct dialogue to move this issue forward.

MS. ELLIOTT:
As follow up, I am not opposed to dealing with the title companies, it is appropriate. I want to make sure we have appropriate language in the bill.

CHAIR TOWNSEND:
We do not want to overreact. At the same time we do not want to leave a loophole so big that every criminal will want to walk through it.

SYLVIA SMITH (President, Western Exchange Services Corporation):
My company is a subsidiary of Western Title Company. I agree with the Committee and all the work the Federation of Exchange Accommodators has done. We do not have any concerns with the fidelity bond or the errors and omissions requirement. In fact, I testified earlier that we agreed. Section 12, paragraph (c) of subsection 1, S.B. 476, lists the requirements to be a licensee. Being a smaller company, we would request paragraph (c) be amended to read, "a person who has been actively conducting the business of an exchange facilitator or equivalent experience as approved by the Division."

In the northern Nevada market, our choices are slimmer than for a national QI. We would like to have that ability as a smaller company. We had an instance last fall where a person unexpectedly left our employment to start his own company. We would have been scrambling to meet these requirements. Generally, we would put someone in that position who has a lot of escrow background and the training to move them into the qualified intermediary. We have counsel, not on staff, we have contracted certified public accountants, and we would have a difficult time operating without having the ability to at least offer the equivalent experience for approval by the Division.

CHAIR TOWNSEND:
Did you discuss this with the Division?

MS. SMITH:
Only briefly by phone this week. I believe they are not opposed, but you should hear from them. This is federal model legislation, and we are looking at it as more of a State level because this is where we are.

CHAIR TOWNSEND:
We will process something, and I will help where I can, and we will want input from our subcommittee.

RHONDA JOHNSON (President, Nevada Escrow Association):
The concern we have is the portion that requires escrow companies to verify the qualified intermediaries are, in fact, licensed in Nevada. Especially, if the bill is changed for exchanges that start outside of Nevada, we would not be able to verify that. Many times we are not aware of who is the exchange company until close to closing, which could hurt the consumer. This puts us in a policing position. We propose to amend section 52, S.B. 476, under NRS 692A.265 to read that escrow agents are not required to verify that qualified intermediaries are licensed in Nevada.

CHAIR TOWNSEND:
The language currently states that the title insurer, title agent or escrow officer shall not handle an escrow, settlement or closing in which a qualified intermediary is involved, unless he first verifies that the qualified intermediary is registered. You have to do that now.

MS. JOHNSON:
Right. We have to do that now. If it changes where they do not have to be licensed in the State, if the exchange starts outside of the State, we would not be able to verify that.

MS. STORY-TURNER:
We already covered this issue in the recommended changes. It ties in with section 42 concerning a qualified intermediary who holds exchange funds received from the disposition of relinquished property, which relinquished property is located outside the State. That will fit their concern with regard to when you are at the table and closing your transaction. Then it is incumbent upon the escrow officer to verify the registration of the QI. We talked earlier that if the money originates in Nevada, that is where they will be able to see their registered QIs. When you are funding a replacement property transaction, and this transaction is generated outside Nevada, this will provide the exemption and not put them in the policing category.

PETE ISBERG (President, National Payroll Reporting Consortium):
The National Payroll Reporting Consortium is an association of the largest payroll companies in the nation through which one-third of the private sector workforce taxes are administered. About 1.5 million employers nationwide use a payroll service company. We have been doing this for over 30 years without incident. We understand there was a recent incident in Nevada and have not had an opportunity to investigate and would like to do so.

My comments are in respect to section 1 of S.B. 476 relating to the regulation of payroll service companies. I would like to provide some history on this because it has come up in several other states. The pattern has been when a small payroll service company goes out of business or absconds with funds, the legislature gets involved asking what should be done. We have some experience dealing with states.

To give you background on the industry, there are roughly 3,300 registered reporting agents, payroll service companies, that handle taxes on behalf of employers that are registered with the IRS. They are already subject to regulation from the IRS. There are four revenue procedures cited in my paper (Exhibit P) that advise payroll companies how to proceed, how to act, what they can say and disclosures, etc. In terms of problems in this industry there is roughly one annually. Over the last 10 years there have been 14, 15 counting

Nevada's situation, which we have not yet investigated. Once a year one of these 3,300 companies has a problem in which a handful of companies are affected, money is lost, and people ask what should be done. My overall view of this is that this is not an industry in need of regulation. Nationally, the money loss due to fraud is one penny per $1,000 handled by a payroll service company, which is a fairly tight ship as far as intermediaries go. As far as I know, every time this has happened the perpetrators have been caught, prosecuted and convicted. They spend time in prison and make restitution. It is already a crime to steal. These people already have significant incentives not to engage in this sort of behavior.

MR. ISBERG:
We have already talked to legislators in California, New York, Minnesota, Alabama and Maine, all of which decided, upon carefully looking at the industry, that it was not appropriate to introduce new regulation of this industry. Only Maine enacted something that looks like comprehensive regulation of the industry. They spent the next two years after they passed that bill passing additional legislation to water it down and make it weaker to make it easier for people to stay in the business. The essential issue is, if you are regulating payroll service companies, you are going to create standards that some people are not going to be able to meet. Some of the payroll service companies in the business today are going to be driven out of business. The Maine legislators heard from a lot of those people. As a result of that, the regulation that exists in Maine appears to have no protection; there is no substance to it.

There are two paths you can go down when you are looking at this industry in how to address the safety of client funds. One, in a practical sense, is irrevocable. Once you make the decision to go down that path, it is hard to back up and go down the second path, and that is regulation. What you are doing is taking responsibility for the issue when government is not in the best position to take responsibility.

What we are suggesting is nothing be enacted in Nevada. There is an active project we are working on with U.S. Senator Snowe's staff, the small business subcommittee in Washington, D.C., and the IRS. We have already asked the IRS to introduce new regulations to require payroll service companies to provide new disclosure to their clients. The last page of the handout, Exhibit P, contains the proposed regulation we have asked the IRS to implement. We are saying in

light of that it is unnecessary and, probably, more harmful than good, for Nevada to take responsibility for this issue.

CHAIR TOWNSEND:
You can imagine the individuals involved when they found out that even though they paid the payroll service, the tax responsibility for their employees was not paid, and suddenly they were on the hook for it. It was a shock and it was a big number.

MR. ISBERG:
The good news is this issue is essentially already resolved; the problem is people do not know it yet. There is new technology available from the IRS called Electronic Federal Tax Payment System (EFTPS). People use that to make their federal tax payments. That system is available on the Internet and it is a secure system. Any employer can go online to directly look at their account on the day after a tax payment is due, and see that is was or was not made. Only the business should know how much tax deposit should have been made. They are the only ones in a position to verify that what they expected to happen is there. The problem is nobody knows that EFTPS gave them that capability; hence we went to the IRS asking that they require all payroll companies to insert this disclosure saying, dear client, you remain responsible for these taxes, and secondly, there is an easy way for you to verify these taxes have been paid for you.

CHAIR TOWNSEND:
One of the issues was the business owners, a professional business, did not have one of their people checking on it.

We will close the hearing on S.B. 476 and go to mortgage lending, S.B. 546.

SENATE BILL 546: Revises provisions relating to mortgage lending. (BDR 54-1412)

SCOTT E. BICE (Commissioner, Division of Mortgage Lending, Department of Business and Industry):
This is the Division of Mortgage Lending's bill. We regulate three types of licensees; the NRS 645A regulates stand-alone escrow agencies and agents. The NRS 645B covers mortgage brokers and their agents and the NRS 645E regulates mortgage bankers. The general purpose of this bill is to provide for

greater consistency in regulation over those licensees, as well as to enhance some consumer protection initiatives.

Under the NRS 645A, the proposed changes were establishing some fiduciary requirements for loan servicing of escrow agencies. We are expanding the criteria for the issuance of a license. We are increasing the bonding amounts for the escrow agencies. We are requesting that title companies and escrow companies report escrows opened by unlicensed entities. I have discussed the provisions of the NRS 692A for the title escrow people with the commissioner of insurance and the staff, and they support the unlicensed aspect. However, with regard to this bill, they did not like the language that would require information to be prescribed by this Division. For the record, the Division of Insurance, Department of Business and Industry requested us to write the language on page 53, section 72. We are requesting prohibiting the NRS 645A licenses from also holding a NRS 645B license, a mortgage broker license, because of possible collusion and having too much control over the process. We are expanding criminal penalties for violation of laws relating to trust accounts.

We now move on to the broker chapters 645B and 645E. We are requesting disgorgement of profits in administrative actions so the restitution of that money can go back to the harmed consumer. We are requesting for it to be illegal to coerce an appraiser to value a property at a certain value. We are making violation of the NRS 598 or the NRS 107, deeds of trust any violations of federal law grounds for disciplinary action. We are requiring brokers, mortgage brokers and mortgage bankers to report any fraudulent activity to the Division. We are attempting to clarify the exemption provisions under chapters 645B and 645E. Important to this agency and our budget account and reserve balances, we are requesting a change in the language of our fees to charge up to that amount. That has been addressed every quarter at the Interim Finance Committee with regard to our reserve balance. Of course, the intent would be to lower the fees to licensees. We are requesting to go to a biennial examination, if it meets certain guidelines. These guidelines would be a rating of one or two, no complaints that have resulted in actions, no worsening of financial condition. However, examinations would be on an annual basis if a mortgage broker has escrow accounts, trust accounts and services loans. We are changing the requirements for broker advertising that we have to approve all advertising to "only in the first year." We are requesting licensure of mortgage bankers and mortgage agents in chapter 645E and along with the licensure, we are suggesting all agents who are licensed need to have up-front education, testing

and continuing education. The current law states ten hours of continuing education. We are requesting to set up an education section to provide for greater consistency of the education and the increased requirements. For changes to chapter 80, we are requesting to remove the ability for an unlicensed company to arrange a one-time or occasional residential loan.

MR. UFFELMAN:
In S.B. 546, on page 36 regarding the NRS 645E.150 and on page 15, beginning section 23, line 13 of NRS 645B.015, is the language in the statute relative to these areas of the mortgage brokers and mortgage bankers. The banks have traditionally been exempt from that language and we have been working on the exemption language on Assembly Bill (A.B.) 375 having to do with some of the issues relating to folks harmed by mortgage activities. That language in the NRS 645E.150 was adopted into the bill, yesterday, with Mr. Bice's concurrence. He and I have since spoken and would need to fine-tune the language a little. I want to get before the notion that the affiliate subsidiaries and holding companies of the bank are included in that category of the exemption that already exists in State law from separate licensure for them, because they are already in the mix. Whatever we do to the NRS 645E.150, we should do the same thing to the NRS 645B.015.

ASSEMBLY BILL 375: Revises certain provisions governing mortgages. (BDR 54-393)

VICE CHAIR HARDY:
Have you seen that?

MR. BICE:
Yes, sir. What Mr. Uffelman and I discussed was with regard to the exemption. We concur that the people Mr. Uffelman represents are not the issue or the problem. We want to make sure that our exemption language specifically called for having the information that those entities are, in fact, regulated by another entity. It is important for us for consumer complaints to get them to the right place.

VICE CHAIR HARDY:
You agree conceptually, but we might need to wordsmith.

MARK BREWER (President, Anthony's Treehouse, Incorporated, dba Treehouse Mortgage):
I am a certified mortgage planning specialist. I have a lot of talking points on these issues. I am speaking from the perspective of how it impacts my business and other mortgage brokers and bankers that have a staff of fewer than ten.

As the regulations currently stand without amendment, I have estimated it costs $3,000 a year for my company. I do approximately 50 to 100 loans a year depending on the amount of business, where the market stands, etc. I am a mortgage broker, not a mortgage bank. My job as a mortgage broker is to facilitate loans between the consumer and the lender or investor. Mortgage bankers are essentially the same, however they use money provided through warehouse lines and sometimes their own private money and the documents are drawn in their name. The documents are not drawn in my name at all.

In section 7 it says a person may not be licensed as an escrow officer, agency or principle officer, director, owner, employee or trustee of an escrow company. If you hold an active license under the NRS 645 or the NRS 645B, it does not address those under the NRS 645E. What that does is remove the opportunity for a mortgage banker or mortgage broker to hold any kind of interest, partial or wholly, in an independent escrow company. The advantage to a mortgage broker or banker being able to do that is to facilitate a smooth transaction for the consumers and at a lesser cost. Yes, there is an opportunity for fraud, but those are all dealt with under the current act as set up, and under the NRS 598.

Additionally, when they talk about deceitful and dishonest fraudulent practices throughout this pending legislation it is reiterating the NRS 598 and is creating more law than necessary. What appears is the position of a commissioner wishing to be more of an administrative hearing than have some type of criminal act being dealt on the point of allowing the Attorney General to do the job; where the commissioner does not necessarily have to hold a juris doctor degree. In areas where they talk about pleas of nolo contendere, it usurps issues of due process when we are dealing with bad guys doing bad things. As stated, you can legislate and legislate, but it still will not prevent bad guys from doing bad things.

Section 11 deals with escrow companies and/or title/escrow companies being the police officers for this legislation. In other words, they are now going to be required to verify licensees. We have all sorts of licenses available at this point

in time to verify. The contractors board has something similar; you go online, you make a phone call, "is Mark Brewer with Treehouse Mortgage a licensed lender or broker under statute?" The answer will be, yes. The consumer currently has a variety of different protections available.

CHAIR TOWNSEND:
Mr. Bice, there were hearings yesterday in the other house. How much of that is duplicative of what is in this bill?

MR. BICE:
To the best of remembering all those bills discussed yesterday, I do not believe there are many duplicative areas.

MR. BREWER:
There are many duplicates throughout this bill primarily when it refers to broker or banker.

TOM POWELL (Chairman, Nevada Mortgage Advisory Council):
We worked with Commissioner Bice and the Division of Mortgage Lending as well as with various members of the industry, in general support of S.B. 546. In most cases, it is a cleanup bill or things we have been issuing, such as with the escrow officers over the last 24 to 36 months on how we can actually enforce the licensing requirements already in place to make sure we get a stopgap of how we can say people are actually licensed. We have been working on the education piece the last several years and I am pleased to see that in the bill. We also have support from the mortgage bankers and the mortgage brokers groups saying this is good legislation to see somebody actually have to get education prior to becoming a licensed loan officer. At present, to become a licensed agent you have to have a few dollars in the pocket and not be a felon and have a sponsor that is a broker or a banker. The applicant can practice for a year and then have to get ten hours of education. We specifically like that there is pre-education and there is a test established by the update.

CHAIR TOWNSEND:
Mr. Powell, have you had a chance to review the changes Mr. Brewer has asked for?

MR. POWELL:
I have not.

CHAIR TOWNSEND:
We are trying to bridge the gap between the regulatory body and the industry, and they may have some insight for each other.

MR. BICE:
At this point, since you want to continue this till Monday, I would suggest I will review the comments from everyone and be prepared to deal with all those issues.

CHAIR TOWNSEND:
There being no further business before this Senate Committee on Commerce and Labor, the meeting is adjourned at 10:31 a.m.

RESPECTFULLY SUBMITTED:

_____
Laura Adler,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____