MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
April 11, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:05 a.m. on Wednesday, April 11, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Senator John J. Lee, Clark County Senatorial District No. 1

STAFF MEMBERS PRESENT:

Laura Adler, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Jeanine Wittenberg, Committee Secretary

OTHERS PRESENT:

Jean Irwin
Betty Hammond, M.S.W., C.R.C., Social Services Specialist, Office of Disability Services, Department of Health and Human Services
Ed Allison, Federation of Exchange Accommodators
Teresa Story-Turner, Federation of Exchange Accommodators
Mendy K. Elliott, Director, Department of Business and Industry
William R. Uffelman, Nevada Bankers Association

Robert L. Compan, Farmers Insurance
Mary Wherry, Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Karen Dennison, Lake at Las Vegas Joint Venture
Gail J. Anderson, Administrator, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Francisco V. Aguilar, Senior Counsel, Southwest Gas Corporation
Marilyn Brainard, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Pamela Scott, The Howard Hughes Corporation
Michael Trudell, Caughlin Ranch Homeowners Association
Shari O'Donnell, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Alfredo Alonso, Olympia Group, L.L.P.
John Griffin, Olympia Gaming, L.L.C. Managers

CHAIR TOWNSEND:
I will now open the hearing to Senate Bill (S.B.) 473. We have a mock-up amendment (Exhibit C, original is on file in the Research Library).

SENATE BILL 473: Makes various changes concerning the practice of interpreting and the practice of realtime captioning. (BDR 54-295)

SENATOR CARLTON:
On page 3, section 16, language was inserted for disciplinary action.

On page 7, line 16, we changed some language and made that more of an apprenticeship. Once someone completes the apprenticeship phase, they will have to determine whether they want to be a community interpreter or an educational interpreter. There are different demands for each type of interpreter.

CHAIR TOWNSEND:
Is there anyone who would like to provide any helpful testimony on the bill or Exhibit C?

JEAN IRWIN:
I am a teacher of the deaf. In the last work session we talked about language for the bill that would be commensurate with the federal Individuals with Disabilities Education Act (IDEA). I have some proposed amended language for page 4, line 40 (Exhibit D). This is actual language of the IDEA. I think that definition of an interpreter would help us be more consistent with federal law.

SENATOR CARLTON:
Mr. Chairman, we did not address this in the mock-up amendment. I was focused on providing the framework for the Office of Disability Services (ODS), Department of Health and Human Services, to establish basic regulations. If you recall the testimony in the previous hearing on this bill, there are current problems getting interpreters into the school districts. A lot of the interpreters cannot comply with some of the things that are now in place.

Does anyone know if Senator Cegavske has seen Exhibit C?

SCOTT YOUNG (Committee Policy Analyst):
I am not certain but will get one to her right now.

BETTY HAMMOND, M.S.W., C.R.C. (Social Services Specialist, Office of Disability Services, Department of Health and Human Services):
I do not believe that Senator Cegavske has seen it.

We are attempting to broaden, not narrow, the current law. I think that is the concern of Ms. Irwin.

MS. IRWIN:
That is incorrect. My concern is that it is not broad enough. In the particular case I referred to before, there was question as to whether the parent could even request the language of the federal law. When it finally was brought out in a federal case, they decided in favor of this side because federal law trumped Nevada law. I think it would be more efficient to have the federal law be commensurate with Nevada law.

SENATOR HARDY:
I appreciate and understand what you are saying. I do not have a problem trying to get the definition as correct as we can in statute. The reason we do things this way through regulation is because if we do not get it right in statute, we have to wait two years before we can correct it. We try to give the job to the State agency through regulation. That way if the regulation needs to be adjusted, it can be done immediately. I believe it is the intent of Senator Carlton to make sure this is broad enough to encompass everyone. The best way to do that is to put this into regulation by having the statute refer to the agency and provide them the ability to define. I do not think anyone objects to your goal.

MS. IRWIN:
That is understandable.

SENATOR HARDY:
Ms. Hammond, I assume the federal language would be something you would take into account when adopting regulation.

MS. HAMMOND:
We understand that. I have been an interpreter for over 20 years and am certified by a national certifying body. I have done tactile interpreting for blind people and oral interpreting for people who do not know sign. We want to broaden, not narrow, things. I think we are talking about the same thing with different words.

SENATOR HARDY:
What we have done just now is establish a significant legislative record that has some standing in the legal system. We have directed the ODS as to the legislative intent and this is the best way to accomplish the goal.

MS. IRWIN:
What happens if, with regulation, it ends up being the same situation again, making the request broadly for an English-based sign system, as we did, and then we are denied because it was too narrow?

SENATOR HARDY:
Then you can immediately go back to the regulatory process. If we erroneously put things into statute then it takes two years before we can fix the statute.

I was just told by the ODS they intend to adopt this language into regulation. If the language in Exhibit D turns out to be too narrow, then the ability to change it through regulation, not statute, is available.

CHAIR TOWNSEND:
I can assure you that if the language in Exhibit D were in statute, even though it is federal law, and there was litigation, the Nevada Supreme Court will interpret the following: the Committee specifically put this language in; therefore if language is not in the statute, they intended to leave it out.

The point Senators Hardy and Carlton are trying to make is that when they go to the regulatory process and the ODS adopts regulation, the ODS must bring that to the Legislative Commission, which meets every six weeks in the interim, providing one more opportunity for a member of the public to either accept or reject the regulation. If the Legislative Commission rejects the regulation, the ODS can go back and fix that within the next 30 days. If this language were passed into law, it would be in statute for two years before any corrections could be made.

MS. IRWIN:
I appreciate the education. What amount of time will it be before this is placed into regulation?

CHAIR TOWNSEND:
The bill has an effective date of October 1, 2007. We could change that to make it effective on passage and approval. That way, the ODS could immediately start working on the regulations.

MS. HAMMOND:
We are changing the make-up without adding any new positions for our communication access council. We are going to have an educational interpreter, community interpreter and a communication access real-time translation (CART) provider on a subcommittee that will work on and

develop the regulations. We will have public meetings at that point and then the regulations will be crafted.

CHAIR TOWNSEND:
That is not what Ms. Irwin asked. Tell us exactly the process you will use to get to the end of the line on this regulation.

MS. HAMMOND:
Once it approved and passed, we will begin to select members to work on the subcommittee to develop regulation. I am not familiar with the regulatory process, so we will follow the meeting laws.

SENATOR CARLTON:
Are there limitations on who can be on the committee?

MS. HAMMOND:
No.

SENATOR CARLTON:
I would like to participate and be involved with the subcommittee.

MS. HAMMOND:
The three new positions need to be an educational interpreter so we can address the concerns of those, an interpreter and a CART provider. There will be feedback in that process but we have done it this way so that no money is attached to the bill. We can use our current communication access council, take some ex officio members of that and use the budget money set aside for them for travel and per diem costs then replace them with people that can be a working committee.

SENATOR CARLTON:
Within the ODS, will there be a working committee on regulations and will you have the different areas represented within that committee?

MS. HAMMOND:
Yes.

SENATOR CARLTON:
Please notify me of what is happening as this process moves forward.

MS. HAMMOND:
Yes. We will invite the public and not limit their comments.

CHAIR TOWNSEND:
From what I have calculated it will be August or September before the regulations will be adopted and authorized as permanent regulation. Ms. Irwin, does that provide you with a sense of timing?

MS. IRWIN:
Yes.

CHAIR TOWNSEND:
What we have identified is that the effective date should be moved to passage and approval.

MR. YOUNG:
Would that just be for purposes of section 52, subsection 1, paragraph (a) or would it be for the entire bill?

CHAIR TOWNSEND:
The important component is the regulation. Mr. Keane, will we then still leave the rest of the bill with October 1, 2008?

WIL KEANE (Committee Counsel):
> I would assume you would want to leave the rest of the bill at October 1, 2008 but if we are going to move the July 1 date to passage and approval, I would imagine you would want to do it for all of section 52, subsection 1 because the committee that is appointed pursuant to paragraph (b) is going to be working on the regulations.

CHAIR TOWNSEND:
Okay, point well taken. If there were a motion, it would reflect section 52 to be the effective date for all of subsection 1 for passage and approval. That would be the only change.

SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 473.

SENATOR SCHNEIDER SECONDED THE MOTION.

CHAIR TOWNSEND:
Before we take the vote I want to put something on the record. I was blessed with a godfather who happened to be the head of hearing and speech at the University of California, Los Angeles. He was my father's best friend and very influential in my life. He somewhat helped me understand the challenges faced by those who are hearing impaired. I can assure you that the people I have met over time, teachers and educators in this area, are individuals with characters substantially greater than mine. My best friend in college was a woman who studied to teach the deaf and blind. To this day, she probably is a person whose character is immeasurable. Those are the real heroes we do not see every day. I want to thank those that participated today because without you we would just go back to our lives and probably be unaware of what you are doing.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on S.B. 476. We have a new mock-up amendment (Exhibit E, original is on file in the Research Library). I had staff remove section 1 that referred to payroll services. We can take that issue up in the interim. Remaining in the bill is the portion that was brought to us for Qualified Intermediaries (QIs). Changes to the bill start on page 3, section 9.

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

ED ALLISON (Federation of Exchange Accommodators):
We appreciated working with the subcommittee and the changes are goals that were outlined to us by the subcommittee. It is particularly refreshing to work with an attitude where consumers were the number one concern and at the same time, the subcommittee recognized the

importance of exchanges in section 1031 of the U.S. *Internal Revenue Code*.

CHAIR TOWNSEND:
As I remember, we incorporated Mr. Finseth's three provisions. They were in a separate amendment yesterday and are now included in Exhibit E.

SENATOR HARDY:
I want to get a better understanding of section 9, paragraph 2 in Exhibit E. Does that mean that an investor cannot participate in the ownership of a QI company without qualifying as a licensee?

CHAIR TOWNSEND:
Is it the members or shareholders who hold 10 percent or more of the voting stock? Are those the ones that are affected?

MR. ALLISON:
That is correct. The previous owners of the failed Southwest Exchange, Incorporated had not been through the scrutiny that is proposed in this amendment to the bill.

SENATOR HARDY:
As I read it, you cannot be involved in ownership at any level unless you are a licensee. The difference between investor and owner is confusing. What if I wanted to be a 10 percent part owner in a QI, would I have to be licensed?

TERESA STORY-TURNER (Federation of Exchange Administrators):
As I understand this bill, yes.

CHAIR TOWNSEND:
If you own less than 10 percent, do you have to be licensed?

MS. STORY-TURNER:
No.

CHAIR TOWNSEND:
Where is that in the bill?

MS. STORY-TURNER:
Section 43, subsection 3, paragraph (a), subparagraph (3).

SENATOR HARDY:
That says you have to submit their names, residences and business addresses. That does not speak to the licensure issue.

MR. ALLISON:
It is my understanding that anyone with ownership of 10 percent or more has to go through the licensing process and a background check.

SENATOR HARDY:
I think that is appropriate, it is just not clear in the bill.

CHAIR TOWNSEND:
Senator Hardy is correct and if that is what you want, then we can debate that. If your intention is that owners of any percentage of the QI are to be licensed, that is not what is written in the bill. It also does not say that anyone with 10 percent or more must be licensed. We just want to know what you are trying to accomplish and I want to know what the Real Estate Division (RED), Department of Business and Industry thinks is important.

MR. ALLISON:
Our intent was anyone with 10 percent or more would have to go through the process of licensing and background checks.

CHAIR TOWNSEND:
If that is your intention, I think that is appropriate.

MENDY K. ELLIOTT (Director, Department of Business and Industry):
I concur with your assessment, Chair Townsend. Any owner of 10 percent or more has to go through the scrutiny of a background check.

WILLIAM R. UFFELMAN (Nevada Bankers Association):
I submitted some amendments the other day that I had discussed with Ms. Elliott. The amendments had to do with banks and financial institutions that have 1031 exchange companies as affiliates within the

institution. Those people have already gone through the background check process. We suggested that they register rather than be licensed, and I do not see any of that in here.

CHAIR TOWNSEND:
Mr. Keane, was that included in this amendment Exhibit E?

MR. KEANE:
It was not my understanding that was supposed to be included.

CHAIR TOWNSEND:
Ms. Elliott, is that a problem?

MS. ELLIOTT:
We already require the licensing and background check in order for them to be bankers. It would be duplicative.

CHAIR TOWNSEND:
To summarize, the Committee has two concerns. One is that all of those listed under section 43 who own 10 percent or more of the voting stock will be required to be licensed. Two is that those that are licensed under the Division of Financial Institutions (DFI), Department of Business and Industry, would not be required to be licensed because they are already licensed under another statute and have already had a background check and must register as an exchange facilitator.

MR. UFFELMAN:
On page 2, line 14 and line 25 of the proposed amendment, Exhibit E, affiliates and subsidiaries have been omitted. I thought those were to be added. That is how all of the pieces relate to financial institutions.

CHAIR TOWNSEND:
I understand that, but you cannot redefine financial institution just for this section. That is the problem; as I remember, we do not define it that way in the rest of the law.

MR. UFFELMAN:
It is, and that is why I suggested it.

CHAIR TOWNSEND:
Do you have the language for that?

MR. UFFELMAN:
I thought I provided it the other day.

SENATOR HECK:
Mr. Uffelman owes me because I took notes. After the word association it should say, "Or its affiliates, subsidiaries or holding companies."

CHAIR TOWNSEND:
The three issues the Committee is faced with is the inclusion of the language Senator Heck just provided for section 6. The 10 percent or more of ownership must require a license. Those that are licensed under DFI or anywhere else that a background check is required would register as a facilitator.

SENATOR HECK:
We had also discussed in subcommittee the consumer being provided a copy of the cover page for the insurance policy and the bond. Those are listed in here but the language is upon request. I would prefer to make sure that information is automatically given to the consumer. That is in section 15, subsection 3 and in section 49, subsection 3.

In the subcommittee meeting there was concern expressed about allowing the ability of a QI who is not licensed in Nevada to be able to close a deal in Nevada if it was started in another state. I did not see language to allow that in the amendment, Exhibit E. Was that an oversight?

MS. STORY-TURNER:
I believe Mr. Finseth asked for section 52 to be deleted and the bill would no longer require a title company or escrow agent to block the funding of a replacement property for exchange funds on a transaction that originates outside of the State of Nevada.

SENATOR HECK:
Does that meet the intent of a facilitator being able to close a deal in Nevada that did not originate in Nevada if they do not have a license, provided the deal started elsewhere?

MS. ELLIOTT:
That is also my understanding.

To answer one of your previous questions, it is the intent of the Department of Business and Industry to create a consumer bill of rights that would walk the consumer through what should happen and what to ask for in the process.

SENATOR HARDY:
We have Mr. Uffelman's amendment (Exhibit F).

MR. KEANE:
Thank you, Mr. Vice Chair. I have a comment on the last point on Mr. Uffelman's Exhibit F. Since we do not have a registration scheme anymore, it would seem that effectively what you are saying is that the financial institution would be able to register and then act as a licensee. Could we not provide in this that they would be deemed a licensee instead of having a registration scheme that is separate?

SENATOR HARDY:
I think that is the intent.

MR. UFFELMAN:
That was the intent so there was no confusion. I want to see them have to submit something outlining what they do for registration. Maybe a rule could be created outlining what the registrant must do.

MR. ALLISON:
That was the agreement we had. They need to explain what they would be doing in the registration process.

MS. STORY-TURNER:
Our concern, respective of the banks, was that if they have a QI business, we still want them to meet the competency and bonding requirements of the law.

CHAIR TOWNSEND:
Mr. Uffelman, is that a problem?

MR. UFFELMAN:
They are already bonded. We are just trying to avoid redundancy.

CHAIR TOWNSEND:
We do not disagree. We are looking at this from the point of the consumer. There has to be a confidence level in whichever route they use that the same standards are met.

MS. STORY-TURNER:
In section 42, subsection 3, paragraph (d), our recommended change was to have, "... who holds exchange funds received from the disposition .... ."

MR. KEANE:
This is the verbatim language they requested.

MR. ALLISON:
I agree with Ms. Story-Turner and Mr. Keane; we changed it in one section but not in section 42.

CHAIR TOWNSEND:
To summarize, under section 6 we will make the financial institution language consistent with the affiliates and subsidiaries. It would also require the particular entities to be registered and they would still have to meet all educational requirements. We will fix the technical change on page 15, line 7. We will require those that own 10 percent or more must be licensed. Clients of the firm will be notified of change of ownership or licensee. That would include an individual who no longer has a license or an individual who is acquiring ownership and has a license.

SENATOR HARDY:
I think Mr. Keane has some concerns.

MR. KEANE:
There is already a provision in section 39 that allows people licensed outside of the State to have a different method of applying for and obtaining a license that is less onerous than the regular licensing process. I suggest we have an abbreviated process for the banks. That may be nothing more than just sending proof of the various items required. Then they would be considered licensees so then all of the other provisions cover them. It is an alternative way to be licensed without going through all the steps.

CHAIR TOWNSEND:
Is that okay with the Committee? I take the silence as a yes.

MS. ELLIOTT:
Regarding the notification, I would like to see a time line in the bill or would you like us to write regulation?

CHAIR TOWNSEND:
The assumption is that when the individual is officially licensed that triggers the notification letter.

MS. ELLIOTT:
When we audit, we want to make sure the letters have been sent. Should it be seven days?

CHAIR TOWNSEND:
I am not sure we want to put that in the statute. I think you can do it in regulation.

MS. ELLIOTT:
We will make sure that is clear when we hold our workshops.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 476.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on S.B. 359.

Mr. Compan, do you have a proposed amendment?

SENATE BILL 359: Revises provisions governing claims made under policies of insurance for motor vehicles. (BDR 57-1135)

ROBERT L. COMPAN (Farmers Insurance):
The amendment (Exhibit G) was provided when the bill was originally heard.

This is a bill that will allow members of the insurance industry to receive medical information as already required by statute. The bill would enhance that statute and allows us time to investigate and determine liability issues should a course of civil action arise towards the end of a claim regarding the current statute.

SENATOR SCHNEIDER:
Does the change allow you additional time to evaluate the claim?

MR. COMPAN:
Yes. It protects our client's interest by asserting a certain amount of time to look at the claim so it does not have the potential of opening up the policy limits for a possibility of summary judgment after the current time line in the statute runs out.

SENATOR CARLTON:
I have a concern with the language in the amendment on page 2, lines 21 and 22. My concern is that we could be slowing people down that would like to file a claim.

MR. COMPAN:
This is only saying that you cannot commence a civil action within 90 days. Claims can be settled any time prior to the 90 days.

SENATOR CARLTON:
Right now a civil action could be started at any time. This is saying that you have to have the 90 days. In essence, we are denying a person the chance to commence a claim for 90 days.

MR. COMPAN:
When you boil it down, that is true. The fact still remains that an insurance company must protect the interest of their clients. In doing so, they need time to properly evaluate a claim. The intent of this is for the bad actors who are filing civil actions 10 days prior to the 2 year statute tolls on a bodily injury claim. If you fail to answer within 10 days after the statute tolls, then you have a duty to your customer. In Nevada, the financial responsibility limits are $15,000 per occurrence, $30,000 maximum per accident and $10,000 for physical damage. You are responsible to either pay the policy limit or, if you do not pay that within the statute tolling, you have to open up that policy. After the statute is done, you have to open it up to the venue of the courts to make their decision.

SENATOR CARLTON:
I understand what you are trying to do. I know there are people that do not behave within the spirit of the law. Whenever I see that someone has to wait in order to commence, that bothers me. It seems to me the underlying problem is people abusing the time frames.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 359.

SENATOR HARDY SECONDED THE MOTION.

CHAIR TOWNSEND:
Mr. Keane has brought up a point that has to do with the filing of lawsuits.

MR. KEANE:
The concern I have is that chapter 11 of the *Nevada Revised Statutes* (NRS) is the normal statute of limitations section that provides for the various statute of limitations. What we are doing here is specifically telling someone they cannot file during the 90 day period during which their 2-year statute of limitations may run out in the middle of those 90 days. As we are all aware, courts are very strict. If you do not file within the time limits in statute, you can lose your case no matter how meritorious. For us to take out the 60 days and simply say the claim must be filed immediately following the 90 day period raises the concern for me that it would be unclear to a court as to what immediately following means. Does it mean the very next day or a week later? That is why the Legal Division thought it was important to have a very specific time that the court could easily determine is the deadline. If the Committee wanted to change it to some shorter time period, that would be fine, but we would really like to have a specific date.

SENATOR SCHNEIDER:
Mr. Compan, did you have something in mind?

MR. COMPAN:
Anything would be fine, even if it was 30 days, as long as it is somewhere in statute. Basically, what this is doing is tolling the statute.

MR. KEANE:
Perhaps there is some confusion. Your investigatory period is the 90 days. You are allowed 90 days from the time this authorization is provided. The 60 days is simply the time that the statute would give the claimant to decide whether or not they are going to file after you have had your time to investigate the claim. The 30 days would also be fine, I do not know if the plaintiff's bar would have a comment on that. All that the Legal Division was concerned about is that there is a set time that the courts can easily figure out and have a day that is the deadline. If you file after that date, it is too late and if you file it before the date, you are okay.

MR. COMPAN:
If we left the 60 days in there, my concern is that it would toll the statute if it was filed immediately upon the 90 days. Would there be an extra 150 days that the claim would possibly be under investigation?

MR. KEANE:
Potentially, but that is if the claimant waited until the day before their two-year statute of limitations was up and they gave you the written authorization. Then they would not be able to file within their two years. You would have your 90 days and then they would have 60 days after that. Potentially, it could extend the period they could file for 150 days. You are already asking for a 90-day extension on the period they can file and that is the period you have to investigate. The question is how much time you want to give them after that. Do you want it to say that they have seven days or two days or anything specific that the court could look to? The question is what sort of time period is fair for the plaintiffs to be able to look at your investigation and make a decision about whether they want to file a case.

MR. COMPAN:
I would be okay with that. What we would do through the advice of Mr. Keane would be to remove the amendment on line 26, where it says, "The claim within 60 days immediately" and go ahead and change that to within 30 days. That would hopefully appease those in the trial bar.

CHAIR TOWNSEND:
We do not have to vote on this today. We will have to withdraw the motion and the second. I think the proposal was to change line 26, "civil action concerning the claim within 30 days immediately following the 90 day period."

SENATOR SCHNEIDER:
I withdraw my original motion on S.B. 359.

SENATOR HARDY:
I withdraw the second on S.B. 359.

CHAIR TOWNSEND:
We will hear this bill again tomorrow. I will now open the hearing on S.B. 474.

SENATE BILL 474: Limits the liability of a public agency that pays for the services of a personal assistant for a person with a disability. (BDR 54-600)

MARY WHERRY (Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):
Gross negligence was raised by the Nevada Trial Lawyers Association (NTLA) in previous testimony on this bill. They wanted that removed so the recipients were better protected. We would like to amend the NRS 629.091 so that we are held harmless the same way providers of health care are when determining skills competency.

SENATOR HARDY:
I do not know why we would remove gross negligence. All we are saying here is that a public agency that provides payment for a personal assistant is not liable for the misdeeds of the personal assistant.

MS. WHERRY:
I believe what the NTLA lobbyist was referring to was section 1, subsection 5, for the gross negligence of the provider of health care not the gross negligence for section 1, subsection 6.

CHAIR TOWNSEND:
I suggest if they have a concern with existing statutory language, they should take it up with the Senate Committee on Judiciary or the Assembly.

SENATOR HARDY MOVED TO DO PASS S.B. 474.

SENATOR HECK SECONDED THE MOTION.

SENATOR CARLTON:
To me section 1, subsection 6 reads that at the negligent level they would not pay. It would have to go up to gross negligence before they would have to pay.

SENATOR HARDY:
I think the issue is that the personal assistant is responsible and liable for their omissions. Not the person that is paying the bill.

CHAIR TOWNSEND:
Mr. Keane, why is this drafted this way?

MR. KEANE:
As the Committee has noted, it was drafted to parallel section 1, subsection 5. The idea is there would be no liability for the public agency as long as its actions did not amount to gross negligence, so that if the agency did commit gross negligence they would be liable. All this would relieve them from is if they just engaged in ordinary negligence, then this would protect them.

CHAIR TOWNSEND:
It is protecting the agency, not the personal assistant who provided the service.

MR. KEANE:
It is only protecting the public agency.

SENATOR HARDY:
Unless their actions were grossly negligent?

MR. KEANE:
Correct.

SENATOR HECK:
This says you cannot sue the State agency that paid for the personal care assistant unless they knowingly paid for a service from someone who is incompetent or unqualified to provide the service.

SENATOR HARDY:
My motion stands.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on S.B. 436.

SENATE BILL 436: Makes various changes to the provisions governing common-interest communities. (BDR 10-234)

CHAIR TOWNSEND:
We have a mock-up amendment (Exhibit H, original is on file in the Research Library).

Section 0.5 is Senator Schneider's amendment regarding the issue brought up by Senator Heck regarding motorcycles.

Senator Lee's amendment is on page 4, line 3.

Pamela Scott's ancillary audit language is on page 8, lines 1 through 10. Ms. Dennison, that is language that will affect Lake Las Vegas because you are still in development.

KAREN DENNISON (Lake at Las Vegas Joint Venture):
Correct. We will not turn over control of the master association for some time.

SENATOR SCHNEIDER:
On page 8, line 9 of Exhibit H, who registers reserve study specialists?

CHAIR TOWNSEND:
That is a change throughout the statute.

GAIL J. ANDERSON (Administrator, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
When the Commission for Common-Interest Communities (CCIC), Real Estate Division, Department of Business and Industry, was adopting regulations after the last Legislative Session it became obvious there were a limited number of individuals who performed reserve studies. The CCIC has requested to change this to a registration and remove some of the qualifications.

SENATOR SCHNEIDER:
Does the RED license them?

MS. ANDERSON:
It is a registration with the RED.

CHAIR TOWNSEND:
Section 17 provides the definition of how they will handle the reserve specialists and the qualifications.

Ms. Dennison's amendment on reserve studies is on page 12, lines 7 through 16, in Exhibit H. That is so they cannot arbitrarily increase the fees. Fee increases must be a result of the findings of the reserve study. This narrows what they are allowed to do and I think that is appropriate.

The next change is in section 10. This was requested by Ms. Jacobson of Southwest Gas Corporation.

CHAIR TOWNSEND:
Does the language in section 10 meet your needs?

FRANCISCO V. AGUILAR (Senior Counsel, Southwest Gas Corporation):
The language does meet our needs.

SENATOR HECK:
In section 10, subsection 1, the phrase "motor vehicles on" was the issue we talked about removing. Putting that phrase in means they will not regulate motor vehicles, but they will be able to regulate everything else. I received a document (Exhibit I) from the Sparks Police Department where there are examples of municipal codes that address those issues. In my opinion, if the roads are left open then it should be municipal codes that address those issues.

CHAIR TOWNSEND:
Ms. Brainard, did you provide us with Exhibit I?

MARILYN BRAINARD (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
Yes. Those were the municipal codes I was informed of that were pertinent to the issue.

CHAIR TOWNSEND:
The City of Sparks has put into municipal code issues regarding sports in streets and street games. This has nothing to do with homeowners associations (HOA). Ms. Brainard, have those things been left out of the document of the HOA where you live?

MS. BRAINARD:
Our HOA honors the municipal codes.

SENATOR SCHNEIDER:
I cannot believe what the City of Sparks has done here with these municipal codes. A kid not being able to play sports on the sidewalk or out in the street is shocking to me.

The City of Las Vegas has informed me that they are going to begin controlling the city streets and sidewalks.

CHAIR TOWNSEND:
That was Senator Heck's point. This is a municipal issue.

Senator Heck, is it your intention that you would like to remove the "motor vehicle on" language?

SENATOR HECK:
Yes.

CHAIR TOWNSEND:
How would that change section 10, subsection 2, paragraph (a)?

SENATOR HECK:
I do not believe it does because that just applies to issues associated with parking on rights of way that were already in ordinance or were a condition of the subdivisions approval.

CHAIR TOWNSEND:
What about section 10, subsection 2, paragraph (b), was there discussion on inoperable?

SENATOR HECK:
That language is fine.

CHAIR TOWNSEND:
The recommendation would be to remove "motor vehicles on" from section 10, subsection 1.

SENATOR CARLTON:
I am trying to understand how the language in section 10, subsection 2, paragraph (a) will work with the removal of "motor vehicles on."

SENATOR HARDY:
I think that section 10, subsection 2, paragraph (a) is problematic if you have "motor vehicles on" in there. This speaks to things that they could not regulate.

CHAIR TOWNSEND:
On page 15, line 30 in Exhibit H, where it says "except as otherwise provided" should not be in this section, it should be in section 3. Is that correct Mr. Keane?

MR. KEANE:
It should be in section 10, subsection 3.

CHAIR TOWNSEND:
Section 15 is Senator Heck's amended language.

Senator Lee, do you have any comments?

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):
In section 1, we did go over the 30 day notification. Page 3, line 19 in Exhibit H is also part of an amendment that I brought forth.

What if someone who is on the executive board votes on fines and opposes fines and then it is discovered that they are not current on dues

or fines, would that negate any of the fining or action taken by the HOA executive board?

CHAIR TOWNSEND:
Those sitting in judgment of others should not be sitting in judgment if they in fact have violated the law they are judging. Mr. Keane, do you understand the issue? Could we use the language, "Any vote taken as a result of someone's violation of this section is null and void"?

MR. KEANE:
Yes.

SENATOR LEE:
Thank you.

CHAIR TOWNSEND:
We will discuss Mr. Gresh's proposed amendment under tab A in Exhibit H. If you look at section 6, that is the mandatory meeting provision. In that provision they are trying to clear up the fact that you do not want HOAs that meet quarterly to meet on the first day of the quarter and then on the last day of the next quarter. This could create a six-month gap between meetings

Mr. Keane, the issue here would be you would have to put in that they have to meet at least once a quarter but no later than every 100 days. That would eliminate the potential for the six-month lapse in time. That would be a change to section 6, subsection 1 but also must be followed through into subsection 6 of the same section.

The second change is in section 6, subsection 3, lines 34 and 35. This language is about mailing a notice of the meeting. Since a homeowner cannot attend an executive meeting, why would you expend the money to notify them of a meeting they cannot attend?

In section 8, subsection 1, paragraph (b), subparagraph (2), we would recommend the change from 5 years to 2 years because major maintenance repairs to common areas, roads, etc. have been escalating by 20 to 40 percent a year.

We also have Ms. Scott's proposed amendment under tab C of Exhibit H.

SENATOR HECK:
In looking at that language and the addition of the term recorded document, I am wondering what we are trying to catch there. Are covenants, conditions and restrictions (CC&Rs) recorded documents? In essence what you are allowing them to do is what we just took out; to be able to put it into the CC&Rs and have it carried because it would be a recorded document. I think it comes back to the idea of you are not regulating parking unless it is part of the municipal code or it was a part of the permitting process for the planned subdivision approval.

PAMELA SCOTT (The Howard Hughes Corporation):
I think the only reason to add the recorded document was because yes, some of the HOAs have it in their recorded documents about enforcing parking on the narrower public streets. That was just to bring in the issue of their recorded documents. It was not to address the language taken out in the first section.

CHAIR TOWNSEND:
With that we will not use "recorded documents" or subsection 3 of Ms. Scott's proposed amendment under tab C of Exhibit H.

SENATOR HECK:
I agree.

MICHAEL TRUDELL (Caughlin Ranch Homeowners Association):
On page 13, line 11, I do not want to see a future confrontation in court where someone might use that language and not abide by section 5, subsection 3.

CHAIR TOWNSEND:
The goal of the new language is to define the term adequately funded, which is something you could litigate for ad infinitum. The goal was to put into statute a definition, in this case, that the reserve should be deemed funded if the amount of reserve is equal to or greater than the amount specified in the funding plan. Why would we not just end it there?

SHARI O'DONNELL (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
I agree with ending it there because of section 8, subsection 1, paragraph (b), subparagraph (2). I think the five years was originally put in there because reserve studies are required by law to be updated every five years. If we move that to two years, we now have, in essence, put the executive board in harm's way because they will typically go through a full update of the reserves with a reserve study specialist every five years.

CHAIR TOWNSEND:
Since they have to be done every five years, is the reserve study only good for five years?

MS. O'DONNELL:
No, they are simply updated so that if work has been performed or maintenance has been deferred that is reflected in the reserve study.

MR. TRUDELL:
The reserve study plans are to project what the major components are over a 30 year period, and it is updated every 5 years.

SENATOR HECK:
Certainly we are not going to think that an HOA is going to have enough reserves to cover their plan for 30 years. I think when they are updating it every five years, they are only planning for five years.

CHAIR TOWNSEND:
I understand your concern but I think we will just leave it at five years.

Senator Titus's proposal is one that this Committee dealt with in terms of the language that allows you to not be precluded from putting energy-saving devices on your home. I spoke to Senator Titus and I can assure you that there is not anyone that manufactures a solar device that would meet any HOA's requirement that is five percent or less. We have done our studies and they do not exist. Mr. Young did an excellent analysis of this so that we have actual numbers. Due to the restraints of staff time, I would like to move the bill without this in it, have the

members of this Committee look at what language could be used and bring back an additional amendment. We can then take that to Senator Titus to try to find a resolution.

SENATOR HARDY:
In section 2, the question remains for persons who may pay their assessment dues in advance and are then fined. As I read this, the fine could be taken from the assessment dues paid.

CHAIR TOWNSEND:
I do not read it that way. If they indicate specifically how the money is to be applied, then the HOA could not apply the funds to fines.

SENATOR SCHNEIDER:
I have received many calls from people who had their HOA apply their money towards fines even though they sent the money in to be applied to their monthly assessment dues.

CHAIR TOWNSEND:
That is against the law.

SENATOR HARDY:
This language gives more flexibility to the current law. I always have a concern with the assessment dues and foreclosure proceedings. For the record, the public should be aware that if they are going to send in their assessment dues in a lump sum at the beginning of the year, make sure there are written instructions for what the money is to be applied.

SENATOR SCHNEIDER:
I have a concern regarding rolling shutters on buildings. There is no clarification for them. The shutters are permitted by some HOAs but not others. We need to make a statement on the issue this year.

CHAIR TOWNSEND:
I thought we dealt with that issue.

SENATOR SCHNEIDER:
We did but now the some HOAs are saying you cannot put them on condominiums or town homes. I think if people want to install them for purposes of energy efficiency or security, they should be allowed.

CHAIR TOWNSEND:
Could the Commissioners for Common-Interest Communities tell us how you are dealing with rolling shutters?

MS. O'DONNELL:
The law currently reads they can be placed on a condominium, and in some cases, a town home unit. The concern would be that the HOA would be indemnified against any damage that would cause water intrusion. If exterior water intrusion occurred, the HOA is responsible for the maintenance of the exterior of the building. If water damage occurred to the inside of the unit, that would be an issue.

SENATOR SCHNEIDER:
I do not think that is a problem because they are installed by a licensed, insured contractor. It is the unit owner's choice to have them installed and I do not think we should eliminate choice. I do not have a problem putting something into the statute that indemnifies the HOA. Perhaps Mr. Keane could provide some language for that.

MR. KEANE:
My understanding of the issue is that technically the outside of the windows is part of the HOA and not part of the unit and in those cases the HOA would be indemnified by the unit owner. Is that how we want to do the indemnification?

SENATOR SCHNEIDER:
Yes.

MS. BRAINARD:
My concern is can you really put that restriction on the unit owner who chooses to install the shutters? How would you enforce if the installing owner sells and a problem with the shutters arises after that?

SENATOR SCHNEIDER:
If a new owner purchased the unit, I think the indemnification would stay with the unit. Mr. Keane, could you help us with that?

MR. KEANE:
We could do it however you would like. We could have it run with the unit or it could be an obligation of the person even after they left. Although that does raise the issue of how you ever collect from someone who no longer lives there.

SENATOR SCHNEIDER:
I would suggest keeping it with the unit.

MS. BRAINARD:
I would request that if this language is inserted, shutters should be subject to the architectural review committee (ARC) of the development or complex. I do not believe, aesthetically, that we want to see a large high-rise structure with multi-colored shutters.

SENATOR SCHNEIDER:
I am afraid that the ARC would sit on something like that.

CHAIR TOWNSEND:
I thought the law has a 30-day right of action by an ARC.

MS. DENNISON:
Usually that is set in the ARC guidelines. Current law does provide for the compatibility of the architectural character of the community with respect to shutters.

SENATOR SCHNEIDER:
I understand that but they are saying shutters are not compatible.

CHAIR TOWNSEND:
I am going to leave this to the four Senators from the south. I do not have this problem in the north and people know better than to call me about their rolling shutters. We need to continue with the other items for this bill.

SENATOR SCHNEIDER:
We need to address the owner of a rental unit being fined for something the tenant has done. I would say it is the owner's responsibility to have their address on file with the HOA to be notified if there has been a problem with the tenant.

CHAIR TOWNSEND:
That is not in current law?

MR. TRUDELL:
There is a requirement that you have a hearing before a fine is issued. The language says the "person" must pay the fine. I do not know if there was a reason for using the word "person." We always assess the owner and notify them of the violation. We also make the owner come to the hearing and not the tenant because the owner has the contractual obligation with their tenant and not the HOA.

CHAIR TOWNSEND:
The issue would be that the law says "person." Should it say the unit's "owner"?

SENATOR SCHNEIDER:
I think the unit owner should be notified before the fine for the violation is assessed.

CHAIR TOWNSEND:
We should just add that the unit owner and the occupant will be notified.

MS. BRAINARD:
You could add that the notice would be sent to the owner of the unit and the physical address of the unit.

SENATOR SCHNEIDER:
That would be fine.

Another thing that needs to be addressed is the violation of someone such as a pizza delivery person.

CHAIR TOWNSEND:
We have to be realistic. People have to be able to live their lives and have a pizza or newspaper delivered without having to be responsible for the delivery person's driving habits. That is just crazy.

MS. O'DONNELL:
In section 1, subsection 7, I think this is an operational issue in the way declarant assessments are billed. We need to make some provision for the fact that declarant assessments are typically billed later due to the delay in the HOA records being updated

MS. BRAINARD:
The CCIC has not had an opportunity to discuss this.

CHAIR TOWNSEND:
If we do not do this correctly, there is another body that will take care of it. If we sit here and deal with every issue of everything you people think up we will never fix some of the major problems. I appreciate what you do but there is a cut-off point.

SENATOR SCHNEIDER:
There is another bill coming from the Assembly where we can address some of these things. We also need to address the radar gun issue.

CHAIR TOWNSEND:
I agree. We will have a clean copy of the changes made today for tomorrow morning's meeting.

ALFREDO ALONSO (Olympia Group LLP):
I apologize for the tardiness of our proposed amendment (Exhibit J). This was a last-minute concern of our client.

CHAIR TOWNSEND:
You may want to edit this again. Some of the things I am seeing in the proposed amendment may not be received very well by others.

JOHN GRIFFIN (Olympia Gaming, LLC Managers):
It is our desire you never see that again.

CHAIR TOWNSEND:
There being no further business before this Committee, the meeting is now adjourned at 11:01 a.m.

RESPECTFULLY SUBMITTED:

Jeanine Wittenberg,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: