MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Fifth Session
May 6, 2009

The Committee on Commerce and Labor was called to order by Vice Chairman Kelvin Atkinson at 1:53 p.m. on Wednesday, May 6, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 5100 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chairman
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Oceguera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Terry John Care, Clark County Senatorial District No. 7
Senator Maggie Carlton, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Karen Fox, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Michael R. Kerr, Legislative Director, Uniform Law Commission, Chicago, Illinois
Michael Hillerby, Sparks, Nevada, representing The Association of Settlement Companies, Dallas, Texas
Robert Linderman, General Counsel, Freedom Financial Network, LLC, San Mateo, California
William P. Binzel, Senior Advisor and Counsel, National Foundation for Credit Counseling, Silver Spring, Maryland
Michele Johnson, President and CEO, Consumer Credit Counseling Service, Las Vegas, Nevada
Dan Wulz, Deputy Executive Director, Legal Aid Center, Las Vegas, Nevada
David Clark, Deputy Bar Counsel and General Counsel, State Bar of Nevada, Las Vegas, Nevada
Nick Vander Poel, Deputy Director, Nevada State Office of Energy, Carson City, Nevada
Joe Johnson, representing the Toiyabe Chapter of the Sierra Club, Reno, Nevada
Bill Gregory, representing, Southwest Gas Corporation, Las Vegas, Nevada
George E. Burns, Commissioner, Financial Institutions Division, Department of Business and Industry
Chris Ferrari, Reno, Nevada, representing American Estate and Trust, LC, Las Vegas, Nevada, and Alliance Trust Company, LLC, Reno, Nevada
Keith Lee, Reno, Nevada, representing Sutton Place Ltd, Boston, Massachusetts; the Board of Medical Examiners; and the State Contractors' Board

G. Barton Mowry, Attorney, Maupin, Cox, and LeGoy, Reno, Nevada
Rocky Finseth, Las Vegas, Nevada, representing Carrara Nevada, Reno, Nevada
Mechele Ray, Executive Director, Private Investigators Licensing Board, Office of the Attorney General
Tom Clark, Carson City, Nevada, representing Nevada Resident Agents Association, Reno, Nevada
Scott Scherer, representing Nevada Resident Agents Association, Carson City, Nevada
Carlene Gaydosh, CPA, NARCVA, CFFA, Kafoury, Armstrong and Company, Las Vegas, Nevada
Nicola Neilon, CPA, Partner, Casey, Neilon and Associates, LLC, Carson City, Nevada
Louis Ling, Executive Director, Board of Medical Examiners
Carl E. Heard, M.D., Chief Medical Officer, Nevada Health Centers, Inc., Carson City, Nevada
Elizabeth W. Neighbors, Ph.D., ABPP, Director, Board of Psychological Examiners
Nancy L. McLane, Director, Department of Social Service, Clark County, Las Vegas, Nevada
Rosalind Tuana, Executive Director, Board of Examiners for Social Workers
Michelle Caro, Ph.D., Nevada State Psychologist Association, Henderson, Nevada
Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General
Randall C. Robison, North Las Vegas, Nevada, representing State Board of Professional Engineers and Land Surveyors
Margi A. Grein, Executive Officer, State Contractors' Board
Fred L. Hillerby, Reno, Nevada, representing the State Board of Pharmacy
Viki A. Windfeldt, Executive Director, Nevada State Board of Accountancy

Vice Chairman Atkinson:
[Roll was called.] We will open the hearing on Senate Bill 355 (1st Reprint).

Senate Bill 355 (1st Reprint): Enacts the Uniform Debt-Management Services Act. (BDR 52-1279)

Senator Terry John Care, Clark County Senatorial District No. 7:
As well as other legislative members, I am also a Uniform Law Commissioner. The Uniform Law Commission (ULC) is an organization that is 117 years old and has approximately 300 active associate members, which includes state and

federal trial and appellate court judges, practitioners from all areas of practice, law school professors, members of legislatures, representatives of the various attorney generals offices and others. The idea behind the ULC is that when it comes to matters of commerce, what a great idea it would be if we knew that the rules of the game were the same in all 50 states. For example, the Uniform Commercial Code has rules to deal with sales, leases, and secure transactions, so that when you cross state lines everyone is aware that the rules are the same. In past legislative sessions we have had provisions to the Uniform Partnership Act, the Limited Partnership Act, and the Uniform Arbitration Act. Each state has their own ULC commissioners. In Nevada, that would include some members of the Legislature, such as Assemblyman Horne, Assemblyman Segerblom, Senator Amodei, and me. Our job is to take the Uniform Act to our jurisdictions and attempt to get the Legislature to enact that Uniform Act, so that ultimately we have the same rules in every jurisdiction.

Senate Bill 355 (1st Reprint) is the Uniform Debt-Management Services Act (the Act) which is included in a packet (Exhibit C) that was distributed to you today. Normally, there is a two-year process, where a study committee is created to determine if such an act is necessary. If the act is approved, a drafting committee is created and then a final draft is written, which sometimes can take up to two years to complete. These acts go through a very thorough process of intense writing and rewriting before they become acts. The writing process almost always includes an adviser from the American Bar Association (ABA) or whichever industry might be affected.

The Uniform Debt-Management Services Act was adopted in 2005, and as of last year it was enacted in four states. During the last five decades we have seen two types of services evolve for consumers who find themselves in debt. There is the traditional counseling for debtors with the aim of coming up with a plan so they can ultimately pay off the debts they owe without having to go through bankruptcy. There is another branch which is a consolidation and management service in which agreements are reached with various creditors and a consumer can pay off a portion of the debt they owe, which is quite different from the first service I mentioned. There have also been abuses and issues that have arisen over the past five decades with debt management services. There have been allegations that these companies were sometimes steering debtors away from bankruptcy when, in fact, it might have been more cost effective for them to go through bankruptcy and for creditors to have the protection of bankruptcy. There has always been the issue of whether entities that engage in these types of services should be allowed to make a profit when, in fact, they are dealing with a debtor who is trying to get rid of the debt.

In most cases, under many of the changes to the bankruptcy code that Congress adopted in 2005, Chapter 7 petitioners in total liquidation have to demonstrate to the court that they have attempted to consult with consumer debt counseling and management services along the way. That then puts a burden on the states to regulate the industries that provide those services, thus, the need for a Uniform Act.

There are three basic components to the Act: the registration of the services, the agreements between the debtor and the services, and the enforcement of those agreements. Even though we strive for uniformity, the Uniform Law Commission recognizes that sometimes states have peculiar issues that arise. That is why we are open to certain amendments that will make it easier in those states.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Michael R. Kerr, Legislative Director, Uniform Law Commission, Chicago, Illinois:
Our organization was formed in 1892, and we are not an interest group. Our reason for being is to work on statutes for consideration by the states as a nonprofit, and none of our members are compensated. In this context, we are not a bank, a creditor, or a consumer debt services company. We are, however, a group who come together on behalf of their appointing states to work on a complicated issue and create a comprehensive, carefully thought-out, legally viable mechanism that can help states that want to address these issues. We began working on this Act in 2002. We spent approximately three years developing it initially and finished it in 2005, when the Federal Deposit Insurance Reform Act came through and a new kind of debt services entity started taking the nation and airwaves by storm. These companies are called debt settlement companies, and you will hear later from some of their representatives.

When we first started the project we were looking at three issues: predatory lending, payday loans, and consumer debt counseling services. We quickly decided the payday loans would be better addressed on a state-by-state basis because they tend to be brick-and-mortar enterprises and the states were doing a good job dealing with payday lenders. It was clear to us that the federal government was going to have predatory lending standards because so much law is preempted with regard to federal chartered banks versus state chartered banks. It was also clear to us that many states had statutory regulation that dealt with consumer debt counseling and debt management services, but a lot of it was old and not very complete. So, we put together a project to address

nonprofit credit counseling and for-profit debt management. Midway through the project a new entity of debt settlement came up on our radar. Debt settlement companies, like debt management companies and credit counseling agencies, occupy space in between a consumer and their debtor. The philosophy of the Act is that all three kinds of entities should be making the same kind of application disclosures to a common state regulator; all having the same kind of insurance; and all having the same kinds of remedies available to consumers. If they hold trust funds, they should be subject to fiduciary duties. When they are doing an application for a consumer, they should disclose the pros and cons of that approach toward their debt management. There should be caps on fees that are reasonable and thought through with regard to how that particular industry works, and they should have a number of other protections.

The Uniform Act in 2005 covered all three kinds of companies and was adopted in four states. We experienced some very strong opposition from the debt settlement companies not only with the fee caps but also some implementation problems with the availability of insurance and surety bonds. So, we came back together in 2007 and spent three days going through the Act, line by line, and took a set of additional amendments, which became final in March 2008.

This is version two of the Act that we have brought before you today, which reflects our experience in the four states that adopted the Act initially and also our experience in the states that are currently considering it. The color-coded map in your packet (Exhibit C) is a situation summary of what the progress is of the regulation with this industry. The green states are considering the Uniform Act and the orange states are pending or have adopted a nonuniform version of an act. The yellow states are where the Uniform Act is supposed to be introduced later this year. Even setting aside the Uniform Act, you can see there is a lot of activity going on with the regulation of debt management services. Most of these states are trying to cover all three kinds of services in the same bill and the same structure. It is safe to say that in the orange states we are talking about debt management separately from debt settlement. I feel the reason we cover them all in one single statute is because we believe there should be a common regulator, a common set of regulations, and a common gauge to make sure that the people who are offering these services are complying with each states unfair and accepted trade practices statute, which this Act does not preempt or exclude. There are a number of companies that offer variations of all three of these services. There are debt management plan providers that offer partial debt settlement services on certain kinds of debt. There are credit counseling agencies that offer debt management plans, which are known also as debt consolidation, where you pay them one low monthly fee.

Talking about debt settlement, I am sure you have all heard the radio ads that say, "Do you have $10,000 or $12,000 in credit card debt? There is a secret program the credit card companies do not want you to know about. You have a right to settle your debt for pennies on the dollar." If you have not heard that ad, you have heard something very close to it. The problem with that ad is that it is leaving out a lot of information, such as: This plan may not be right for you; this plan may have fees that are higher than what you think they might be; and this plan might hurt your credit. The Uniform Act is not intended to say that debt settlement is not a viable option for consumers, because clearly it is.

The problem we have is there is no one gathering information about those companies currently operating in Nevada. They do not have to register, there is no disclosure of the kinds of forms that they are giving to consumers, there is no way to track their success rates or drop out rates for consumers that enroll, and there is no remedy for consumers in Nevada in terms of a Nevada-specific bond or insurance policy in case something terrible happens. This is the problem in a number of states. Every few weeks a state attorney general makes a statement against a debt settlement or debt management company for violations of existing laws, archaic laws, or state unfair trade practices acts. Those violations are when the horse is already out of the barn and a number of complaints have already piled up at the Better Business Bureau with regard to a particular company, and then the attorney general's office conducts an investigation.

We are proposing to screen the companies before they start offering services in Nevada. Our recommendation is that states should get a much more robust picture of what is going on. If a particular company has a negative track record, either in Nevada or elsewhere, they should be excluded. Currently the State of Nevada does not have the tools to do that. The Act was carefully drafted along with some preliminary amendments. We have also added clarifying changes in the Act to give the administrator of the program additional, clear and explicit regulatory powers regarding advertising and additional disclosures for agreements in Nevada. Ultimately, we think this model in our terminology will become the dominant model in the states. One of the things the ULC tries to do with the Uniform Act is minimize the impact of any non-uniform changes, because in a lot of cases these companies and consumers are across state lines. It is in the best interest of everyone to have a common framework to work from with regard to definitions and forms with remedies and administrative powers. It is also appropriate for some states to have specific localized changes and additional powers. I think we went through a very good list of those in the meeting yesterday.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Michael Hillerby, Sparks, Nevada, representing The Association of Settlement Companies, Dallas, Texas:
We are in full support of the bill.

Robert Linderman, General Counsel, Freedom Financial Network, LLC, San Mateo, California:
We are one of the largest debt settlement companies in the country. I am also a member of The Association of Settlement Companies (TASC), representing approximately 200 of the nation's leading practitioners in this area. I had the pleasure of testifying in favor of the bill before the Senate Committee, and I will reiterate my strong support for the passage of the bill today. Since the last hearing, certain objections have been voiced by both legal aid and members of the credit counseling community that I would like to bring to your attention. Yesterday, we met to address our differences and I believe we reached partial consensus on a number of very important issues including fee caps, consumer disclosures, and articulating the differences in our respective business models. Mr. Kerr will be working with legislative counsel in drafting amendments to reflect those agreements.

Vice Chairman Atkinson:
Is someone going to be drafting the amendment for the three items you just mentioned?

Robert Linderman:
I believe Mr. Yu is responsible for drafting the amendments.

Vice Chairman Atkinson:
We need to follow up with the Chairman to make sure we get those, because it will not do much good to talk about them if we do not have them for the Committee to consider. You may continue, but we need to get the amendments before we consider them for the bill.

Robert Linderman:
As Mr. Kerr alluded to earlier, there is a concern that debt settlement services may impinge on the unauthorized practice of law. Speaking as an attorney, I am confident that debt settlement does not do so. Debt settlement companies at no time engage in any analysis of a creditor's rights under a contract, nor do we perform an analysis of a debtor's defense. That settlement is more or less identical in all respects to a discussion between the debtor and the advisor, which could be an accountant, financial advisor, or even a family member,

about the size of their debt and the best way to pay it off. We disclaim in all of our literature, including the disclosures and the contracts, our ability to offer legal, tax, bankruptcy, or accounting advice. We do not appear or prepare information that assists the consumer when the consumer appears at a legal hearing of any sort. It is also worth noting in this context that debt settlement companies do not deal with secured debt in any form. We deal exclusively with unsecured debt such as credit card and medical obligations. Debt settlement companies provide none of the services that a licensed attorney would provide in the course of his or her representation of the consumer.

The second conceptual issue raised was whether as a matter of policy the State of Nevada should permit debt settlement to be offered by for-profit entities. Under current Internal Revenue Service (IRS) policy, debt settlement cannot be offered by nonprofits. The practical effect of that is, if you limit debt settlement activities to only organizations that are registered as nonprofits, you are denying consumers a valuable alternative to bankruptcy. Debt settlement has recently been recognized by the Federal Trade Commission as providing "real benefits to consumers." Completion rates for debt settlement companies are generally 55 percent compared to 20 to 25 percent for credit counseling companies, which is much higher than the 33 percent for Chapter 13 resolutions. Our resolutions are generally performed under a much more rapid time frame than the alternatives, 29 months versus 5 years or longer.

Debt settlement has been recognized and accepted by the creditor community. They have embraced the debt settlement model because we offer liquidity to them in a time where securitization vehicles have been denied. We also offer credibility. When we offer a settlement to a credit card company, on behalf of a consumer, there is knowledge on their part that we can deliver what we say we can, because we have been working with the consumer and the company. That is the underpinning of a professional partnership between debt settlement companies and the debtors they represent and the creditor community.

Consumers in the market should have the right to choose in a well-regulated industry, where we support a robust regulatory framework that offers transparent and complete disclosures.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblyman Christensen:
You were inferring that creditors are in favor of this legislation. Have you met with Mr. Uffelman or the Nevada Banking Association on this?

Michael Hillerby:
We have not. I am not aware if the banking industry has been involved or if they have taken any position on this.

Robert Linderman:
I did not mean to imply that the banking community is involved in supporting the Uniform Debt-Management Services Act one way or the other. We work very closely with the banking community since they are the primary holders of the obligations that we are settling. What I meant to imply was that, when we form professional partnerships with the creditor community, they come to understand and respect us while assisting the consumers in the resolution of their debt.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

William P. Binzel, Senior Advisor and Counsel, National Foundation for Credit Counseling, Silver Spring, Maryland:
We are a network of 106 member agencies, all of which are 501(c)(3) nonprofit agencies, and we operate in over 800 communities throughout the country. We are the largest and oldest network of traditional community-based credit counseling, financial education, and financial literacy providers. Being a nonprofit, we are regulated and scrutinized by the IRS and required to be focused on the provision of education and counseling. When the 1980s and 1990s gave way to massive consumer debts, we saw the uptick and the rise of a lot of fraudulent nonprofit companies operating throughout the country that were able to get 501(c)(3) status from the IRS. The most blatant example was AmeriDebt.

Vice Chairman Atkinson:
Since we do not have a lot of time today, could you please talk about the portions of the bill that you are opposed to so we can move forward?

William Binzel:
I have submitted a copy of the IRS code, section 501(q) (Exhibit D), which provides important consumer protections in regulating 501(c)(3) nonprofit credit counseling agencies. It is an unusual circumstance today that consumers have more protections when they deal with a nonprofit credit counseling agency than they have when dealing with a for-profit company or a debt settlement company. It is important to realize the biggest difference between a nonprofit and a for-profit is that a for-profit exists to sell a product and make a profit.

A debt settlement company is also a for-profit and has a very distinct business model:

- Advertise aggressively on television to promise to stop collection calls and settle debt quickly and easily for pennies on the dollar.
- Be secretive about fees.
- Have counselors working on commissions.
- Collect huge fees up front before providing any services.
- Provide little financial education or any other service.
- Require payments and collect a service charge from consumers but make no payments to the creditor on behalf of the consumer.
- Hold the consumer's money for many months until there is enough money in the account to offer a settlement to one creditor, and then repeat the process for each additional creditor.

What does the consumer get?

- Pay exorbitant fees and monthly payments.
- Little or no disclosure.
- Nothing in the way of professional services.
- Virtually no right or ability to cancel the contract.
- Debts get bigger as they amass interest and late charges.
- Subject to legal collection efforts, including litigation, judgment, and garnishment of wages.
- Credit history and credit score are thoroughly trashed.
- At the end of the process, a bill from the IRS for the amount of debt that was discharged.

There is a huge difference in the business model and the function of a nonprofit credit counseling agency and a debt settlement company. What has not been mentioned is the first legislative note in the Uniform Debt-Management Services Act which says, "The state must decide whether to permit for-profit entities to provide credit counseling services, debt management services or both." That point has been glossed over by this Act. The fundamental question is what does this Committee want counseling and debt management services in Nevada to be. Do you want it to be services provided by nonprofit entities that are providing counseling and education or do you want it to be the selling of a product to financially vulnerable consumers? This Act attempts to regulate, with a broad brush, nonprofit credit counseling and for-profit debt settlement activities which will only lead to consumer confusion. A consumer hearing an ad for an entity that is properly registered within the state is not going to understand whether they are dealing with a nonprofit credit counseling agency or a for-profit debt settlement company.

We feel the bill needs to be bifurcated if you are going to allow debt settlement and for-profit entities to do business. We understand that is a judgment call of the Committee, but request that it be done in a way that is separate and distinct from the regulation of nonprofit credit counseling entities since their business model is so dissimilar. It is very important for consumer protection and consumer understanding.

[Provided supporting documents (Exhibit E).]

Vice Chairman Atkinson:
Was this opposition presented in the Senate?

William Binzel:
I will let my colleague, Michele Johnson, from Consumer Credit Counseling Services of Southern Nevada, address that since she has been in contact with the Senate. I was not directly involved with the Senate consideration.

Vice Chairman Atkinson:
Since he is passing this to you, was this discussed during the Senate hearing?

Michele Johnson, President and CEO, Consumer Credit Counseling Service, Las Vegas, Nevada:
Yes, the information was discussed and shared prior to the hearing.

Vice Chairman Atkinson:
Was it discussed prior to their hearing or our hearing?

Michele Johnson:
It was discussed prior to their hearing.

Vice Chairman Atkinson:
Did you testify?

Michele Johnson:
I did testify.

Vice Chairman Atkinson:
Are there any questions from the Committee for Mr. Binzel?

William Binzel:
For the record Mr. Vice Chair, I am with the National Foundation for Credit Counseling, which is located in Silver Spring, Maryland. I was in Nevada on some other business and was asked to appear before you this afternoon.

Vice Chairman Atkinson:
We just wanted to make sure that the bill had been heard on the Senate side. Are there any questions from the Committee? [There were none.]

Michele Johnson:
We are a nonprofit credit counseling organization serving Nevada since 1972 through eight brick-and-mortar locations. We provide a variety of services including debt management, which is an orderly liquidation of the consumer's debt. We are also approved by the executive office of the U.S. Trustee Program to provide the required bankruptcy counseling and pre-discharge debtor education. That is a service with all oversight being federal. The state itself has no oversight of any services that are provided in regards to the bankruptcy reform from a couple of years ago. Debt settlement and debt management are two separate and distinct services. I agree wholeheartedly that debt settlement has to be regulated, consumers must have disclosure, and they must have their recourse.

[Read from written testimony (Exhibit F).]

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.] I am concerned that since this passed out of the Senate, 20-to-0, I wonder what points they did not get or if we are missing something. We will need to follow up on what those issues were.

Michele Johnson:
Senator Care sent an email that requested there be additional conversation, because information from a variety of sources had come forth after the hearing that he had not been aware of initially. I think that might have attributed to the vote in the Senate.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Dan Wulz, Deputy Executive Director, Legal Aid Center, Las Vegas, Nevada:
Fundamentally, there are two policy questions that the Committee needs to address. The first question is whether the Legislature wants to legitimize debt settlement businesses. Debt settlement services attempt to settle debts for less than the principal amount due. Negotiating to settle debts for less than the amount due, I believe, necessarily implies an evaluating of whether the debt is owed and calls for the exercise of legal judgment. That raises the issue of the unauthorized practice of law. I have attached two court decisions to my written testimony (Exhibit G), where a court in Ohio and a court in Georgia found that a

debt settlement service was engaged in the unauthorized practice of law. Mr. David Clark from the State Bar of Nevada is here today and will be testifying, so I will leave that issue to him. I think it is an important and fundamental issue that I wanted to raise for the Legislature to address.

The other issue is whether to allow debt settlement services to exist as for-profit entities. According to my research, Hawaii, Arkansas, Wyoming, and New Mexico are the only states that currently allow these services to be engaged in by nonprofit entities.

If both of those questions are answered in the affirmative, then we will be working with the interested parties on details for additional consumer protections that we would like to see.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

David Clark, Deputy Bar Counsel and General Counsel, State Bar of Nevada, Las Vegas, Nevada:
I appear today as a neutral witness. My duty to the State Bar is to prosecute attorney misconduct and also to prosecute, on the civil side, the unauthorized practice of law. Whenever there are these measures we strive to give our concerns, answer questions, or provide information that the Community may have. Senate Bill 355 (1st Reprint) would, in my opinion, allow activities that would otherwise be the practice of law in Nevada. That does not make it a bad thing, only the unauthorized practice of law is prohibited.

Under the definition of the practice of law in Nevada, negotiating someone's claims and for them to rely upon your independent judgment as it affects their legal rights and obligations, in this case as to their debt, easily qualifies as activity that would otherwise be the practice of law. I say that, not that you cannot authorize it through the statute, in which case it would be perfectly fine, but to emphasize the importance of what you are allowing people to do and the importance of regulation of this type of activity. Normally only attorneys are allowed to engage in the practice of law, not so much that people think we want to keep all the business for ourselves, but that when it is done badly it wreaks such havoc. Therefore, only persons who are trained, qualified, and can demonstrate the skill of knowing the law should be allowed to engage in the practice of law, and they are regulated by the State Bar.

I understand it is a uniform law, and while I applaud uniform laws, as you go from state to state you do not find uniform populations of debtors and you do not find uniform enforcement resources. If the Committee and the Legislature

want to enact this measure, I want to emphasize to them to be very cognizant of the importance of regulation and consumer protection. That is the purpose behind the prohibition of the unauthorized practice of law.

Over the last three years, the State Bar has suspended or disbarred an attorney almost every 30 days. We have a great mechanism in place not only to regulate and monitor attorneys, but to ensure that they continue with their education, are properly trained, and properly vetted. They also go through a character and fitness screening. To give the Committee a sense of importance of the work that the debt negotiation companies would do, you are dealing with the fees they charge. Attorneys must always have a reasonable fee, and they cannot contract an unreasonable fee. These regulated persons must have trust accounts. In Nevada, all attorneys must have a trust account with a bank that agrees to notify the State Bar whenever there is an overdraft, because that is always a sign of a problem, either mismanagement or defalcation. We also require that attorneys maintain records of their trust accounts for seven years and provide them to us without a subpoena. We have specific enforcement measures, such as a temporary suspension of a lawyer. We can freeze their bank account, and we can have a court appointed attorney assume the practice of a lawyer. Each attorney pays into a State Bar client security fund annually for victims of theft. Clients who have had lawyers steal their money are allowed to make application where we can pay them back at least half of what was stolen. We have a fee distribution arbitration system and a system to provide for restitution.

My purpose today is to emphasize that this activity would be the unauthorized practice of law. I do not want the Committee to fail to grasp that this is a very important and serious activity that you are regulating. If you have bad actors in this, it can cause serious problems and wreak serious havoc on people.

[Proposed amendments from Kelly Tyler, United States Organizations for Bankruptcy Alternatives, were submitted (Exhibit H).]

Vice Chairman Atkinson:
Are there any questions from the Committee? [There are none.] We will close the hearing on S.B. 355 (R1), and we will open the hearing on Senate Bill 73 (1st Reprint).

Senate Bill 73 (1st Reprint): Revises provisions governing energy conservation and efficiency standards. (BDR 58-438)

Nick Vander Poel, Deputy Director, Nevada State Office of Energy, Carson City, Nevada:
We felt that section 3, which deals with green buildings, should be deleted. We were able to handle that internally, so we are offering an amendment that was submitted to the Committee staff (Exhibit I).

The second amendment deals with the American Recovery and Reinvestment Act (ARRA) funds that are coming to Nevada. As you are aware, Nevada is receiving a substantial amount of revenue and we have been in constant contact with the National Association of State Energy Offices (NASEO). They are proposing for best practices with this revenue to implement a revolving loan that can be used for various projects as well as energy efficiency and conservation. We are modeling the revolving loan from an existing loan that is actually in natural resources that has to deal with clean water. I have submitted a copy of the language (Exhibit I) to the Chairman and his staff. I also included a model we are using from the State of Texas called the "LoanSTAR Program."

Vice Chairman Atkinson:
Are there any questions from the Committee? Are you presenting the bill on your behalf or on behalf of a Senator?

Nick Vander Poel:
This bill is on behalf of the Office of Energy through the Office of the Governor.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Joe Johnson, representing the Toiyabe Chapter of the Sierra Club, Reno, Nevada:
We would like to be on record that we are in support of the bill, in particular the proposed revolving loan program amendment. We feel this is a very laudatory way of handling the ARRA funds.

Bill Gregory, representing Southwest Gas Corporation, Las Vegas, Nevada:
We support S.B. 73 (R1), specifically section 2.

[A proposed amendment from Karen Peterson, attorney for Pahrump Utility Company, Inc. was submitted (Exhibit J).]

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.] We will close the hearing on S.B. 73 (R1) and open the hearing on Senate Bill 310 (1st Reprint).

Senate Bill 310 (1st Reprint): Revises provisions governing the regulation of trust companies. (BDR 55-788)

George E. Burns, Commissioner, Financial Institutions Division, Department of Business and Industry:
Senate Bill 310 (1st Reprint) is intended to revise provisions governing the regulation of trust companies under *Nevada Revised Statutes* (NRS) Chapter 669. This bill is the result of coordinated efforts by the Financial Institutions Division (FID), participants in regulatory public workshops, and a task group of trust professionals and experts from Nevada and other parts of the country. The amendment being submitted today (Exhibit K) to S.B. 310 (R1) makes some legal and technical changes to provide consistency between the NRS Chapter 669 revisions and the proposed NRS Chapter 669A for family trust, under Senate Bill 365 (R1). The Financial Institutions Division believes the passage of these revisions to NRS Chapter 669A to increase the protections of the public interest regarding trust companies is essential, and we ask for your support in the passing of this bill and the amendment being introduced today.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Chris Ferrari, representing American Estate and Trust, LC, Las Vegas, Nevada, and Alliance Trust Company, LLC, Reno, Nevada:
We are in support of S.B. 310 (R1) as amended. As Commissioner Burns alluded to, many of us met with outside experts and have created legislation that we believe will protect Nevada's consumers and small businesses, to weed out bad actors, and foster healthy market place competition.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.] We will close the hearing on S.B. 310 (R1) and open the hearing on Senate Bill 365 (1st Reprint).

Senate Bill 365 (1st Reprint): Establishes provisions relating to family trust companies. (BDR 55-395)

Keith Lee, Reno, Nevada, representing Sutton Place Ltd, Boston, Massachusetts; the Board of Medical Examiners; and the State Contractors' Board:
This bill purports to create a separate chapter under *Nevada Revised Statutes* (NRS) Chapter 669A that solely addresses family trust companies. A family trust company is an entity that is different from a retail trust company.

You just considered a bill, Senate Bill 364 (R1), that dealt with amendments to NRS Chapter 669 that regulates retail trust companies. A family trust company is an entity, generally a corporation or sometimes a limited liability company, that performs the duties of a trustee for solely a family trust company. A family trust company is formed for families with a tremendous amount of wealth which has been acquired over a long term. In order to provide continuity to the management of these trusts and to the administration of these family trusts, it makes more sense to have a formal entity, be it a corporation or a limited liability company, to administer the trust in the nature of a trustee. These family trust companies, many of which are organized in the State of Nevada, have a number of employees in Nevada and are providing services solely to the family trust for which they have been organized. They are not created to do business as a retail trust company. For a number of reasons, these trust companies like to remain anonymous. Oftentimes they have a business license and a name on the door, but beyond that, there is nothing else to identify them as an administrator of a large family trust.

Nevada Revised Statutes Chapter 669A defines a family trust company and keeps it separate and apart from a retail trust company, which is regulated under NRS Chapter 669. It also provides a limited licensing scheme and exempts family trust companies from licensure; however, there are instances in which certain family trust companies may seek or want a limited regulatory scheme by which they are licensed and regulated in the State of Nevada. Senate Bill 365 (1st Reprint) provides that limited regulatory scheme with an opt-in for licensure.

You have just heard testimony on S.B. 310 (R1) and an amendment that Mr. Burns has indicated provides some clean-up language and technical language. Should S.B. 364 and S.B. 365 (R1) be adopted, there must be some meshing of those bills so Mr. Yu and Mr. Ziegler will have the responsibility to make sure that everything matches. We have attempted to do that with the proposed amendment we have presented today.

George E. Burns, Commissioner, Financial Institutions Division, Department of Business and Industry:

The Financial Institutions Division (FID) wants to express its support and endorsement of S.B. 365 (R1). Currently, NRS Chapter 669 is an antiquated, inefficient, and ineffective statute for the regulation of trust companies from our point of view. Senate Bill 310 (1st Reprint) increases all of the regulatory oversight for retail trust companies, which are those companies that hold themselves out to the public. There is a high risk of regulatory oversight that needs to take place to protect the public. In the case of family trust companies being addressed as a separate statute in S.B. 365 (R1), the risk to the public is

very low. If a family trust company makes an error, the only people who are affected is the family that owns the company as opposed to a retail trust company, where consumers have access to the company. We fully support S.B. 310 (R1) and the enhancements to regulatory oversight for retail trust companies, as well as the separation of family trust companies under S.B. 365 (R1). It will make the FID's job more efficient and more effective in the allocation of our resources. Being able to focus those resources on where the actual risk to the public exists will increase tremendously with these two pieces of legislation.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Assemblyman Horne:
I am not familiar with these entities, but I would assume that some of the large family trusts, where some of the family members have an interest in it but are not involved in the everyday workings, could be harmed without knowing that harm is occurring until it is too late. Is that correct?

G. Barton Mowry, Attorney, Maupin, Cox and LeGoy, Reno, Nevada:
Generally the trusts that we are involved in are established by a common ancestor. Under Nevada law, a trust can exist up to 365 years. If you assume 30 years per generation, in theory it could go 10 to 12 generations with the same family wealth. It is a form of institutionalizing family ownership of wealth but also institutionalizing management of family-owned businesses. Generally, under those governing documents, each of the beneficiaries of a trust would be provided with periodic accountings, and they would be invited to meetings with the trustee, which is the family trust company. The family trusts usually have an office here and have at least one employee, if not more. Should they have a problem as they are watching the accountings or the failure to obtain an accounting, they do have redress by seeking a court review of the actions of the trustee. This particular legislation does not in any way affect their rights as a beneficiary. It only has an affect on whether or not the family trust company, which is managing only the family's wealth, would otherwise be required to be licensed as a retail trust company.

Vice Chairman Atkinson:
Does that answer your question, Mr. Horne?

Assemblyman Horne:
I envision tax liability exposures to beneficiaries. For example, if the Wal-Mart family trust has 50-plus beneficiaries, where everyone is not going to meetings,

those lesser beneficiaries may fall through the cracks of protections that we would have in place.

G. Barton Mowry:
Trusts are taxed under the IRS code when there is an actual distribution of cash or property to a particular beneficiary. There would be a tax liability if they receive a check, a deed, or title to other assets that would carry out the income of the trust.

Assemblyman Settelmeyer:
I disagree with the previous speaker. I think it affects more than just the people in the trust. When a trust includes land or large corporations, and those businesses go under, it affects the people who work in those businesses as well. I am trying to create a specific statute to have these family trusts set up in a separate chapter.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

George Burns:
We are establishing control standards for family trusts in S.B. 365 (R1) that do not currently exist in NRS Chapter 669. It is going to bring more oversight and more standards for family trusts to operate under. The type of large family trusts that you are talking about are going to fall into the category that are going to ask for licensure and then we will have additional regulation from the FID. Ninety-five percent of family trusts in Nevada are standard family trusts that you and I would open and would not require regulatory oversight from the FID. This is an enhancement to the oversight and standards for these family trusts such as the ones you are referring to.

Assemblyman Settelmeyer:
Would there be a monetary threshold within the bill for the size of the property? What type of threshold do you envision that would allow a small family trust to not fall into the category with the larger ones?

Keith Lee:
The difference between my family trust and what we are talking about in S.B. 365 (R1) is twofold. I have not formed a limited liability company or corporation to act on my behalf as the trustee of that, so I am not a family trust company. The other difference is the total value of the trust. There is no threshold on these kinds of companies because of the net worth of the company. There have been ongoing differences among practitioners in the area of trusts about whether a family trust company is subject to regulation under

the current provisions of NRS Chapter 669. There are many who say there are not and others that say they are not sure. We want to capture, as a separate chapter, family trust companies and provide the regulatory scheme that is available to them should they choose to take advantage and then give the oversight over any family trust companies to the FID, which they do not currently have.

Vice Chairman Atkinson:
Are there any questions from the Committee? We will close the hearing on S.B. 365 (R1) and open the hearing on Senate Bill 265 (1st Reprint).

Senate Bill 265 (1st Reprint): Revises provisions relating to the Private Investigator's Licensing Board. (BDR 54-1053)

Senator Maggie Carlton, Clark County Senatorial District No. 2:
There were some concerns from Senator David Parks about the Department of Motor Vehicles (DMV) which we neglected to address. I do not have a problem with those concerns, since it is up to the Private Investigators Licensing Board on how they would like to process those. If there is another amendment that may be proposed, I would not be in support of that. I want to be on record that I am adamantly opposed to the amendments that were circulated from Clark County.

Assemblyman Settelmeyer:
Are there any other amendments that you would accept?

Senator Carlton:
There is one that addresses the issue of DMV and another one that Mr. Clark is going to speak about. The Board is aware of these, and the issues were discussed. These were an oversight on my part, and I apologize for that.

Rocky Finseth, Las Vegas, Nevada, representing Carrara Nevada, Reno, Nevada:
I would like to introduce you to Mechele Ray, the Executive Director of the Private Investigators Licensing Board (PILB) who has a few comments and can walk you through the bill.

Mechele Ray, Executive Director, Private Investigators Licensing Board, Office of the Attorney General:
[Read from prepared testimony (Exhibit L).] After the work session at the Senate Committee hearing we met with all the agencies involved in this bill, and we amended S.B. 265 (R1) to which there was no opposition presented.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Rocky Finseth:
As Senator Carlton has noted, Mr. Clark has an amendment and the PILB has no objections to that. Senator Parks had asked us to discuss concerns that were brought forward in the Senate Committee. My understanding is that there were some conversations between the Legislative Counsel Bureau and Mr. Groover that I believe are near conclusion.

Vice Chairman Atkinson:
At this point, does the Senator want to accept Mr. Clark's amendment?

Rocky Finseth:
She was acceptable and amenable to Mr. Groover's concern that was brought up in the Senate.

Vice Chairman Atkinson:
But would you like to see it?

Rocky Finseth:
We have seen it, and you also have a copy (Exhibit M).

Tom Clark, Carson City, Nevada, representing Nevada Resident Agents Association, Reno, Nevada:
We proposed an amendment on the Senate side as Senator Carlton had mentioned. Mr. Scherer will present that brief amendment.

Scott Scherer, representing Nevada Resident Agents Association, Carson City, Nevada:
The proposed amendment before you (Exhibit M) will provide an exception to the applicability of this chapter to any commercial registered agent that is obtaining copies of or examining or tracking information for public records. Registered agents may search the Secretary of State's records for information about companies and look for information with regard to fictitious firm name filings or property ownership in the county clerks' offices. There is a very broad definition of a private investigator in *Nevada Revised Statues* (NRS) Chapter 648. You will see that our amendment addresses NRS 648.018, which is the applicability with a very lengthy list of exceptions because of the breadth of the definition. We are simply asking that, when we are researching public records only, we also be included in that list of exceptions.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblyman Settelmeyer:
Where is the citation for the definition of the private investigator?

Scott Scherer:
It is NRS 648.012.

Vice Chairman Atkinson:
Are there any other questions from the Committee? [There were none.]

[A letter and proposed amendment was submitted by Sharon Uithoven, Executive Director, Nevada Society of Certified Public Accountants, (Exhibit N).]

Carlene Gaydosh, CPA, NARCVA, CFFA, Kafoury, Armstrong and Company, Las Vegas, Nevada:
In this proposed amendment (Exhibit N) we would like to see that certified public accountants (CPAs) are included as exempt from having to seek a private investigators license. As noted before, the definition of private investigators can be interpreted as being quite broad and traditionally public accountants do provide forensic accounting services. We want to make sure that our services do not fall into the purview of the Private Investigators Board, since we are already regulated by the Nevada State Board of Accountancy.

Vice Chairman Atkinson:
Have you shared your concerns with the Senate?

Carlene Gaydosh:
Yes, we have.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Nicola Neilon, CPA, Partner, Casey, Neilon and Associates, LLC, Carson City, Nevada:
I originally signed in as neutral to the bill. However, following Ms. Gaydosh's lead, I would like to change that to being opposed to the bill.

Vice Chairman Atkinson:
Have you and Ms. Gaydosh shared your concerns with the Senate during their hearing?

Nicola Neilon:
Yes, and I would like to echo Ms. Gaydosh's sentiments that we already perform services that would cause us to fall under this definition. We are not looking to be private investigators but just to perform our duties as CPAs. There is already an exception in the bill for attorneys-at-law in performing their duties, and we would like similar considerations for CPAs.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Rocky Finseth:
I was at the Senate hearing and these concerns were not raised on the Senate side. This is the first that we are hearing about them.

Vice Chairman Atkinson:
Are there any questions from the Committee? We will close the hearing on S.B. 265 (R1) and open the hearing on Senate Bill 364 (1st Reprint).

Senate Bill 364 (1st Reprint): Revises provisions relating to professional licensing boards and professional licenses. (BDR 54-220)

Senator Maggie Carlton, Clark County Senatorial District No. 2:
One of the changes to the bill is under section 1. A proposal had come from an interim subcommittee that I was privileged to chair where a number of smaller boards had made the request that some of the larger boards are allowed to have their own private counsel and they wanted to know how they could do that also. In the past, when you had a private counsel, you had to come to our body and get permission. Since that conversation, we realized there were difficulties in doing that, so the Attorney General's Office came up with the language that is before you in section 1. It is a protective measure to assure that a board has the right person and it does not impact individuals at the Attorney General's Office who are going to have to do this. If those boards decide they want to hire private counsel, there is a mechanism for them to do so.

Since this provision has been put in the bill, I have had a number of concerns about private counsel for boards in general. I am apprehensive about private counsel for boards who want to do this because they put the state at risk. There have been issues in the past about some of the private counsels, as was relayed to the Senate Committee by the Attorney General's Office. When problems arose with the Medical Board, it was the Attorney General's Office that took the lead and took care of the problem. It was not the counsel for the Medical Board that did it. I have had instances with other boards when counsel for a board does not act in a responsible manner towards the state. There have

been questions asked about who they are really representing. I think that most of them, in their due diligence, are truly trying to protect the state. I believe there is a conflict at times when the person you are working for is the board, and we know how some of those issues can change, especially when we dealt with the hepatitis C crisis in southern Nevada.

I believe this is good, moderate, in-between language. These attorneys do impact the state, and, if they do not behave appropriately, the state Tort Claims Fund could be at risk and I think it is something that needs to be addressed. Unfortunately, with the short time left, I do not believe that anything can be resolved this session, but I would hope that this Committee and other committees take a long, hard look at private counsel for the boards in the future.

The other provisions in the bill came from the subcommittee I was asked to chair. You will notice some basic credentialing language that I have used in dealing with other professions. I know there are concerns from individuals of other boards that will be impacted. They believe we will be lowering the standard and allowing professionals into the state that they believe should not be allowed in the state. I do not see it that way. I have always proposed that if someone is doing this job in another state, and we have reviewed their record and they have met all the qualifications, why should we not allow them to come and treat Nevadans, especially when we have a hard time keeping professionals in our state?

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblyman Settelmeyer:
I do not see where "certain circumstances" is defined in the bill.

Senator Carlton:
We felt that if physicians and physician assistants (PAs) are going to be doing this through telecommunication, we want to make sure they can serve the rural areas. We also have to balance it with having a physician in southern Nevada being able to efficiently supervise 15 PAs in a 20-mile radius.

Assemblyman Settelmeyer:
I appreciate your comments about the attorney issues.

Louis Ling, Executive Director, Board of Medical Examiners:
Section 11 addresses if a doctor could supervise a physician assistant remotely. This bill now allows that a doctor can do that through telecommunications,

which is going to allow a doctor to extend into more rural areas where they otherwise would not be able to do so. I understand that it has been done and works quite well.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblywoman Kirkpatrick:
If a PA needs a doctor's signature for a prescription, would that fall within this purview? How is it going to be determined? Will it be selective, based on the board, or do you wait until a complaint comes?

Louis Ling:
Physician assistants already have the right to write prescriptions on their own. They are not completely independent practitioners. They do have to be supervised by a physician, but that does not include the writing of prescriptions. If a physician is supervising a PA across town, that supervision presently includes visiting the site where the PA is to review medical charts and other things. Using telecommunications will allow the physician to use a video link instead of having to travel to see the PA.

Assemblywoman Kirkpatrick:
Is it going to apply in urban counties as well as the rural ones?

Louis Ling:
There is no limitation as to who and where.

Senator Carlton:
It is difficult to discern that because even within Clark County you have urban and rural areas, so if you try to do a population cap, then we would be limiting these opportunities for Mesquite and places that are further away. We have very remote areas in Clark County that are actually further away from the urban core than Nye County and Pahrump are. This is to make sure there is correct supervision through telecommunication.

Assemblyman Goedhart:
I think one of the reasons that we see so many PAs and nurse practitioners now is because of the critical situation of reimbursement payments through Medicaid and Medicare. My wife, who is a nurse practitioner, makes less than what a prevailing wage is for digging ditches. There is a reason why we do not have as many medical doctors as we used to.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Carl E. Heard, M.D., Chief Medical Officer, Nevada Health Centers, Inc., Carson City, Nevada:
I am currently supervising a physician assistant in Amargosa, and I am very glad to see this come forward. I believe this will open up an opportunity to significantly improve the supervision of PAs by physicians because it will give us real-time ability to consult with them. It will also encourage the new trend of adopting electronic medical records. Physician assistants have full prescriptive authority within our state, including a Drug Enforcement Administration (DEA) number, so it is not about getting an immediate prescription but is about being able to consult. Right now the time and cost of travel to supervise PAs limits our ability to be effective in that supervision. This opens up the opportunity to be there, via telecommunication, any time they are seeing patients.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Elizabeth W. Neighbors, Ph.D., ABPP, Director, Board of Psychological Examiners:
[Read from prepared testimony (Exhibit O).]

They also assist us with being able to ascertain equivalency for non-improved programs. This is not exclusionary. It is expeditious, and we entertain applications from all applicants under these guidelines. The second amendment adds to the requirement that the individual coming into the state has completed a written examination of Nevada jurisprudence, which is an abbreviated version and addresses Nevada law and ethics requirements according to statute. We feel it is important to be clear so that prior to initiating a practice, everyone understands the laws within this state they need to know to practice. The reference in section 16, subsection 2, to the registries and the American Board of Professional Psychology is permissive and allows us to access those records in order to quickly move along the licensing process for psychologists.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Nancy L. McLane, Director, Department of Social Service, Clark County, Las Vegas, Nevada:
I am here in support of S.B. 364 (R1), specifically section 18, with the amendment that has been submitted by the Nevada Chapter of the National Association of Social Workers. We also request in addition to that amendment

that parity be included for Nevada residents. At Clark County Social Service we currently have 64 licensed social workers on staff, and whenever we have a vacancy, we have a very difficult time finding an adequate candidate pool to fill those positions. We find ourselves raiding our community partners for staff which is to the detriment of our mutual clients. We believe that this bill will greatly increase our ability to recruit qualified staff and allow us to continue to serve all of the clients that are served by human service agencies in Clark County.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Rosalind Tuana, Executive Director, Board of Examiners for Social Workers:
Reference was made to amendments from the National Association of Social Workers (NASW). We support those amendments in concept and would agree with comments made by the previous speaker. We are primarily interested in making sure, as the psychology board does, that this is the minimum standard for education and the exam. I have put this in writing (Exhibit P), which is in your packet. We need the parity within the state, and we need to make sure that we have the appropriate ability to license people from across the United States who meet the minimum qualifications.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Michelle Caro, Ph.D., Nevada State Psychologist Association, Henderson, Nevada:
The Nevada State Psychologist Association recognizes very clearly that with the mental and behavioral health crisis in our state, it is critical that the state licensing laws for psychology have mechanisms in place to allow a psychologist with the proper education, training, and experience, and who is licensed elsewhere, to move to Nevada and begin working as quickly as possible. Our national training bodies, The American Psychological Association, The Association of State and Provincial Psychology Boards, and The National Register have been working on licensure mobility issues for some time now. It is clear that there is a 50-state patchwork system of licensing laws in our profession.

Senate Bill 364 (1st Reprint) provides us with an opportunity to enhance our licensing law in Nevada by formally aligning it with national initiatives to maximize licensure mobility. We have been very appreciative of the opportunity to work closely with our licensing board members to craft the amendment language that Dr. Neighbors presented. We believe that our amendment

language is still in keeping with the spirit of S.B. 364 (R1), which serves to minimize obstacles to licensure for the professional psychologist moving to Nevada. This bill simultaneously maintains adherence to our national training standards in psychology, namely a strong doctoral education, sufficient supervised practical training experience, and of course adherence to ethical and professional standards.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.] Is there anyone wishing to testify in opposition to S.B. 364 (R1)?

Keith Lee, Reno, Nevada, representing the Board of Medical Examiners and the State Contractors' Board:
On behalf of the state Board of Medical Examiners and the State Contractors' Board, we respectfully disagree with section 1 but are in full support of the balance of the bill. Indeed, during the hepatitis C crisis in Las Vegas, the Board of Medical Examiners, which has two full-time counselors as employees, went to the Attorney General's Office. As soon as we heard about the hepatitis C crisis, we began working on preparing subpoenas to be served on the doctors at the clinic involved. As things evolved, we ended up seeking a court order suspending two of the physicians from practicing medicine. Our lawyers are experts in disciplinary and licensing matters and are not particularly expert in litigation, so we went to the best lawyer in our law firm, which was the Deputy Attorney General, to litigate that matter. It was not that the lawyers for the Board of Medical Examiners had refused to carry out the responsibilities, it was simply the division of labor.

We agree with section 1, as originally proposed, but the amendment that was added creates a problem for us. Recommendation 20 that came from the Interim Health Care Committee exceeded its authority and jurisdiction. It says "all professional licensing boards," and I respectfully suggest that the charge of that Committee, as well as its jurisdiction, was only over medical professional licensing boards which are defined in *Nevada Revised Statutes* Chapters 630 through 641C, with the exception of the board of veterinary examiners, which is not included. If that recommendation is adopted, it should be restricted only to those health care professional licensing boards that are listed in section 4. Eleven of the 21 boards now have the authority to employ counsel. So, that authority is already present. The Medical Examiners, Nursing, and Pharmacy Boards are empowered by statute now to employ legal counsel who are full-time employees of the boards. Other boards, like the Contractors' Board, which I represent, do not employ full-time counsel but employ contract counsel. I would suggest that, under NRS 284.173, which currently exists, any professional licensing board in the State of Nevada has the ability, subject to

certain terms and conditions, to contract with any consultant including, without limitation, legal counsel and accountants. *Nevada Revised Statutes* 284.173 sets the criteria that the Attorney General has the ability and the authority to approve the form of the contract of any such consultant, and the contract must be approved by the Board of Examiners of the state.

I might also refer you to Chapter 0300 of the 25th Edition of the *State Administrative Manual* entitled "Cooperative Agreements and Contracts," which reiterates and adds on detail to the authority granted in NRS 284.173. I think it is particularly important to know that in Chapter 0300 of the *State Administrative Manual,* no contract with an outside consultant can last more than two years without having to come back to the Board of Examiners for approval.

Our concern is that section 1, as amended, will affect existing boards. If we can exempt existing boards, we would be comfortable with the bill. Existing boards under contract basis or employee basis would be affected by this, and, while we work closely with the Attorney General's Office, we feel that with all the other criteria that are set forth for standards those attorneys must meet, we do not need the provisions as amended in section 1.

Vice Chairman Atkinson:
Are there any questions from the Committee?

Assemblywoman Kirkpatrick:
I need some clarity on what you are opposed to in the 8 lines of section 1.

Keith Lee:
As the bill was originally written, it is subject to the approval of the Attorney General, and then the Attorney General can establish performance standards. Our counsel, with respect to both of the boards I represent, is an intricate and complex area. The Contractors Board has one board meeting a month and a number of disciplinary matters a month that are conducted by counsel. The employee counsel of the Board of Medical Examiners deals daily with disciplinary and licensing issues. We do not want an attorney general that may decide that what we have been doing for a number of years, which we think is serving the state very well, is not what he would like us to do. In the case of the two boards that I represent, the legal counsel who have been on board for a number of years understand the conditions. We do not think it is in the best interest of the citizens that my two boards serve to have deputy attorney generals that must be trained when they cycle through every year.

Assemblywoman Kirkpatrick:
Are you talking about section 1, lines 1 through 6? Mr. Chairman, do you mind if Keith Munro answers my question?

Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General:
I think Mr. Lee might have it a little bit wrong here. Section 1 in this bill was an amendment we offered in the Senate and was intended to be prospective in nature, so concerns by Mr. Lee that this is intended to be retrospective and would affect his board are wholly unfounded. If it was intended to affect his board, we would have gone into his chapter and tried to delete that.

Vice Chairman Atkinson:
Are you going to be speaking in favor or against this bill?

Keith Munro:
I came when he referenced…

Vice Chairman Atkinson:
That was not my question. Are you going to be testifying in favor or against this bill?

Keith Munro:
Neutral.

Vice Chairman Atkinson:
Then you should have waited until we called up testimony for those in the neutral position.

Keith Munroe:
I am happy to return to the audience.

Vice Chairman Atkinson:
Assemblywoman Kirkpatrick, I am going to let Mr. Lee finish, and then when we have further questions for Mr. Munro, we will have him come up.

Keith Lee:
I accept Mr. Munro's representation of the intent of his amendment, but respectfully, I do not read it to be prospective. I read it to be effective as of the date of the passage of this bill. While it may or not apply, depending upon ones interpretation of it to present employees or counsel, I think there is still that question. If it is intended to be prospective in nature and applied to those boards that do not currently have either employee counsel or

contract counsel, then neither the Board of Medical Examiners nor the Contractors' Board have a problem with that. I do not read it that way. I would defer to Mr. Ziegler or Mr. Yu if I am not reading that correctly.

Dan Yu, Committee Counsel:
I would agree with Mr. Lee on this topic. I do not think that the way the language is currently drafted in this bill is meant to be interpreted as being prospective only in operation. There is no indication in the bill that it would only operate prospectively. I think the confusion is based on the effective date of this bill which is July 1, 2009. That means any person who is currently employed or offering services as an attorney to one of the regulatory boards would be subjected to the provisions of this section 1 as it is currently drafted.

Keith Lee:
On behalf of the two boards I represent, I offered an amendment in the Senate, that was rejected, that said the language in section 1 is prospective in nature and applies only to those boards that do not currently have contract counsel or employee counsel.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Randall C. Robison, North Las Vegas, Nevada, representing State Board of Professional Engineers and Land Surveyors:
Our comments are specifically confined to section 1. We have the same reading as Mr. Lee and the same interpretation as Committee Counsel in terms of section 1. That is what brings our opposition to this bill.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.] Is there anyone else who would like to testify in opposition to S.B. 364 (R1)?

Margi A. Grein, Executive Officer, State Contractors' Board:
Mr. Lee has addressed our concerns, and I am here to answer any questions the Committee may have.

Vice Chairman Atkinson:
Are there any questions from the Committee? Is there anyone who would like to testify in the neutral position?

Fred L. Hillerby, Reno, Nevada, representing the State Board of Pharmacy:
We are neutral on the bill, but we are concerned about section 1. We were party to an amendment that you have been given (Exhibit Q), which basically

deletes the provision of section 1. The State Board of Pharmacy has specific legislative authority to hire counsel, which they do. Their general counsel is not contract attorneys.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Viki A. Windfeldt, Executive Director, Nevada State Board of Accountancy:
We are neutral to the body of the bill with the exception of section 1 where we oppose the language as written. We are in favor in the language that has been proposed before you to delete that section. We currently have the authority to hire outside legal counsel and we currently contract with them, which is approved through the Attorney General's Office. We believe in the continuity that we have established through that firm for the past 30 years, so we disagree with the other comments that were made about the hiring of outside legal counsel.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.]

Assemblywoman Kirkpatrick:
My intent was not to get Mr. Munro in trouble. I will ask him my question outside of the meeting. I asked Mr. Lee the same question three times about only eight lines of the bill, and I never got the answer. I apologize for the misunderstanding. I still do not have my answer, but I will get with our Legal staff.

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.] Is there anyone else who would like to testify on S.B. 364 (R1)?

Senator Carlton:
Section 1 was language that was proposed to us by the Attorney General's Office, which I and my Committee were very comfortable with. I believe that it addresses the concerns we had with the issues that were brought forth to us, and I stand firmly behind the language in section 1 as being good public policy.

[Written testimony with proposed amendments was submitted by Mark Nichols, Executive Director of National Association of Social Workers, Nevada Chapter (Exhibit R).]

Vice Chairman Atkinson:
Are there any questions from the Committee? [There were none.] We will close the hearing on S.B. 364 (R1).

[Meeting adjourned 4:24 p.m.]

RESPECTFULLY SUBMITTED:

Karen Fox
Committee Secretary

Cheryl Williams
Editing Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 6, 2009 **Time of Meeting: 1:53 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 355 (R1)	C	Senator Terry Care	Informational packet
S.B. 355 (R1)	D	William Binzel	Tax Code document
S.B. 355 (R1)	E	William Binzel	Supporting documents
S.B. 355 (R1)	F	Michele Johnson	Written testimony
S.B. 355 (R1)	G	Dan Wulz	Written testimony
S.B. 355 (R1)	H	Kelly Tyler	Proposed amendments
S.B. 73 (R1)	I	Nick Vander Poel	Letter, proposed amendments and supporting documents
S.B. 73 (R1)	J	Karen Peterson	Proposed amendment
S.B. 310 (R1)	K	George Burns	Proposed amendment
S.B. 265 (R1)	L	Mechele Ray	Written testimony
S.B. 265 (R1)	M	Rocky Finseth	Proposed amendment
S.B. 265 (R1)	N	Sharon Uithoven	Letter and proposed amendments
S.B. 364 (R1)	O	Elizabeth Neighbors	Written testimony
S.B. 364 (R1)	P	Rosalind Tuana	Letter, including proposed amendments and supporting documents
S.B. 364 (R1)	Q	Fred Hillerby	Proposed amendments
S.B. 364 (R1)	R	Mark Nichols	Letter and proposed amendments