

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

**Seventy-Fifth Session  
March 13, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 12:34 p.m. on Friday, March 13, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Marcus Conklin, Chairman  
Assemblyman Kelvin Atkinson, Vice Chair  
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 Ocegüera  
Assemblyman James A. Settelmeyer

**COMMITTEE MEMBERS ABSENT:**

None

**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Andrew Diss, Committee Manager  
Earlene Miller, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Cynthia A. Jones, Administrator, Employment Security Division,  
Department of Employment, Training and Rehabilitation  
Steve Zuelke, Manager, Integrity Programs Section, Employment Security  
Division, Department of Employment, Training and Rehabilitation

**Chairman Conklin:**

[Roll called and there was a quorum.] We will begin with Assembly Bill 71.

**Assembly Bill 71:** Requires the Real Estate Division of the Department of Business and Industry to keep confidential certain records and information obtained in regulating the sale of subdivided land. (BDR 10-431)

**Dave Ziegler, Committee Policy Analyst:**

This bill requires the Real Estate Division of the Department of Business and Industry to keep confidential certain records and information obtained in regulating the sale of subdivided land.

[Read from work session document ([Exhibit C](#)).]

For consistency with other licensing statutes under the Department of Business and Industry (DBI), the applicable Division would: (1) use the word "may," (2) not make reference to social security numbers, and (3) not include the amendatory language at the bottom of the bill.

**Chairman Conklin:**

Are there any questions from the Committee? I think it might be best to use the word "may" instead of "shall" and take out paragraph 2 which refers to the social security number. The social security number does not appear anywhere else in DBI statutes, but there are other statutes that protect the social security numbers.

On lines 23 and 24, strike the amendment so the original language starts with the word "the." This opens issues that we probably do not want to open. It was the drafter's choice to insert it in the first place.

Are there any questions from the Committee?

**Assemblyman Atkinson:**

If we use "may," who is going to make the decision?

**Chairman Conklin:**

The Division would make the decision. In the other chapters of the *Nevada Revised Statutes* (NRS) concerning the DBI, the word "may" is used. We are trying to take out social security numbers, because they are protected in another chapter, and allow the Division the freedom to choose when it is acceptable to release the criminal and financial records. This way they can balance between the need of the public and the legal need of the Division, which is consistent with other chapters.

**Assemblyman Atkinson:**

I understand it, but I am not comfortable with making it on a case-by-case basis.

**Chairman Conklin:**

I think it would be on a case-by-case basis. If the need of the public outweighs the need to keep it confidential, then the Division would determine to release the information. If there is no public need to release the information and they feel it is important to keep it confidential, they can. That is the reason to use "may" instead of "shall."

**Assemblywoman Kirkpatrick:**

Does subsection 2 include the social security numbers?

**Chairman Conklin:**

We are adding the word "may," striking subsection 2 on social security numbers, and striking the amendment to section 2, subsection 2. All of the language about social security numbers will come out of the bill. The only thing in this bill would be lines 3 through 8 with the change of taking "shall" out and replacing it with "may."

**Assemblywoman Kirkpatrick:**

Are we going to have that authority as well? I want to be sure we are leaving ourselves the ability to ask questions.

**Chairman Conklin:**

By changing this to "may," if the Division determines that it is more important that we have the information, they could release it. That is why we are taking

social security numbers out. It provides some discretionary decision making and is consistent with all of the other DBI statutes on this subject.

**Assemblyman Anderson:**

What is available has become a major issue. I agree that we should be very careful to keep records open. I think you have struck a close enough accord on this bill.

**Chairman Conklin:**

We are addressing lines 1 through 8 which change "shall" to "may."

**Assemblywoman Buckley:**

Do we really need this bill? What are we trying to do?

**Chairman Conklin:**

This would make the language consistent with other Division chapters.

**Assemblywoman Buckley:**

Are those chapters silent?

**Dave Ziegler:**

Ann McDermott from the Real Estate Division said the intent of the bill was simply to make NRS Chapter 119, which is separate from the other real estate chapters, consistent with them. This will make it clear that the personal and criminal records are mandatorily or discretionally confidential. All of the statutes under the jurisdiction of DBI with one exception use the language "may keep confidential." There is one statute which is about appraisers that says "shall keep confidential."

**Chairman Conklin:**

I will entertain a motion.

ASSEMBLYWOMAN MCCLAIN MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 71.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will consider Assembly Bill 141.

**Assembly Bill 141**: Establishes a recovery fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers. (BDR 54-229)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 141 establishes a recovery fund for persons harmed by the actions of licensed mortgage agents, bankers, or brokers, similar to the existing fund for real estate licensees.

[Read from work session document ([Exhibit D](#)).]

We received information from the Fiscal Analysis Division which is included in your binder. We have the information on the balance in the reserve fund going back to 2004 and forward in the budgets through 2011. Also in your packet is a letter received on the day of the hearing from the Commissioner of the Division of Mortgage Lending.

**Chairman Conklin:**

Are there any questions from the Committee?

**Assemblyman Settlemeyer:**

There was a question about the percentage not being defined. Do we have an answer?

**Assemblywoman Gansert:**

It is in section 4, lines 20 and 21.

**Chairman Conklin:**

It appears the Commissioner has the authority to adopt regulations on that matter. Mrs. Gansert, you requested the financial information. Are you comfortable with that response?

**Assemblywoman Gansert:**

Is there something that is typical as far as a percentage of fees for something like this?

**Chairman Conklin:**

This is not the only recovery trust fund.

**Dave Ziegler:**

I do not know how they have capitalized the other funds.

**Assemblywoman Gansert:**

I am concerned that there is not a cap on the amount of the percentage.

**Chairman Conklin:**

Because it is the Commissioner's fund and he writes the rules, I do not think he would be overly aggressive in keeping the fund solvent. We may need a floor.

**Assemblywoman Gansert:**

I would like an estimate of the fees.

**Assemblywoman Buckley:**

I sponsored a residential contractor recovery fund, and I am very pleased with how it has worked. We established a minimum per claim which I think was \$35,000. We assessed a fee for the fund and worked it out with the contractors, and they supported it. When we had a good year and no one was making claims, we capped it, and the contractors' board stopped assessing the fee. It was modified over the years based on experience and worked well.

The Commissioner in his comments suggested a bond. The problem with a bond is the reason we went to the recovery fund model. We have a mobile home recovery fund. A company, which had a \$5,000 bond, went out of business and there were 100 claimants. Each of them received 37 cents except for the lawyer. There was an interpleader action where they deposited the money in the court, and the person defrauded was sued because the bond was not enough. You need to watch the administrative and legal costs. In some cases it works. In residential recovery funds, it is not the best model.

If you want to address what you would do if there was not enough money, you could do that now by adding something to the bill like a per claim cap. I was not on the interim committee, and you may have already discussed this in greater detail.

**Assemblywoman Gansert:**

I was not on the interim committee, so I do not know the boundaries that existed on other types of funds and how they worked.

**Chairman Conklin:**

The proposal the interim committee studied was to create a fund similar to the Real Estate Division's fund. I am guessing the language in this bill is remarkably similar to the recovery fund in the real estate chapter.

**Assemblywoman Kirkpatrick:**

The other part of the discussion during the interim committee was that by the time the bill got through the regulation process, we would have a better idea of what types of things had happened concerning all of the foreclosures. It was escalating at the time we were in the committee, but now we have a better idea

of the real problems. The bill goes before the Legislative Commission twice, so we felt there was great legislative oversight to see what happens. The need will eventually go away, but it could come back. There will be a point at which the money stabilizes, and it can be readdressed. We would like to be able to give individuals who need to move frequently the resources to move to another place.

**Chairman Conklin:**

Are there additional questions from the Committee? I will entertain a motion on the bill.

ASSEMBLYWOMAN BUCKLEY MOVED TO DO PASS  
ASSEMBLY BILL 141.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

Is there any discussion?

**Assemblyman Arberry:**

Will you let the record reflect that I will not be voting on this measure.

**Chairman Conklin:**

THE MOTION PASSED. (ASSEMBLYMAN ARBERRY DID NOT  
VOTE.)

We will move to Assembly Bill 84.

[Assembly Bill 84](#): Revises provisions governing unemployment compensation.  
(BDR 53-546)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 84 was introduced by this Committee on behalf of the Employment Security Division and was heard on February 13, 2009.

[Read from work session document ([Exhibit E](#)).]

There was a concern on the day of the hearing that there are limits on the amount that can be withheld in garnishment, and this bill makes reference to those limits. The bill gives the person subject to the garnishment the chance to appeal.

**Chairman Conklin:**

Several of the amendments in the handout came in after the hearing, but were in response to some of the Committee's questions. There were concerns about garnishments and questions about having a statute separate from those that appear in Chapter 31 of NRS. It is my understanding from Legal that this was taken from the current garnishment statutes, placed here, and modified to give the unemployment division [Employment Security Division] the flexibility they need to reduce their costs in garnishing. However, as to the reference that Mr. Ziegler made to NRS 31.295 which appears on page 3 of the bill, that is the section in which a person is notified that their income is going to be withheld, and of their rights and the limitations of the withholding. It may be useful if the same reference appeared on page 6 or 7. This is the statute that breaks down what the Administrator is able to do and clearly delineates that he can only garnish within the limitations of NRS 31.295.

Are there any questions or concerns from the Committee?

**Assemblywoman Gansert:**

I think most of the amendments make sense. It is hard to piece this together because we do not have a mock-up.

**Chairman Conklin:**

I am willing to get this made into a mock-up to include the limitations of the Administrator.

**Assemblyman Anderson:**

It would be helpful, but I do not think it is necessary. We want to make sure this reflects the rights of the parties in garnishments and that they are clearly delineated.

**Assemblywoman Buckley:**

Is there any court action?

**Chairman Conklin:**

There is no court action, to garnish. Ms. Jones, will you please come to the witness table?

**Cynthia A. Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation:**

I have brought with me Mr. Steve Zuelke, who is able to answer that question. It involves a civil judgment process before wages can be garnished. We get the judgment in place first.

**Steve Zuelke, Manager, Integrity Programs Section, Employment Security Division, Department of Employment, Training and Rehabilitation:**

Prior to filing any civil wage garnishment, the individual is afforded multiple opportunities to make restitution, including administrative hearings and administrative appeals. We file a civil judgment against the individual at which point they are afforded the opportunity to protest the amounts due as well as their liability. Only upon successful entry of the civil judgment would we move forward with any type of wage garnishment action.

**Assemblywoman Buckley:**

Is that contained in Chapter 612 of NRS, or is that just practice?

**Steve Zuelke:**

That is referenced in NRS 612.365 which is a statute that was adopted by the Legislature to give us authority, consistent with our contributions unit, to obtain civil action against any individual who owes tax money or un-restored benefits.

**Assemblywoman Buckley:**

One of the things the court process does in situations involving people who have multiple garnishments is put the garnishments in-line, so whatever garnishment is obtained first is exhausted, and then the next one begins. Would this process change that? It is odd seeing it out of Chapter 31 of NRS. Under that chapter, the garnishments are paid in order.

**Cynthia A. Jones:**

The amendment which the Chairman offered will help to define the order of the payments. The language we have is contrary to what is in Chapter 31 of NRS and provides us the opportunity, for administrative ease, to establish these garnishments consistent with those utilized in the child support system.

**Steve Zuelke:**

The drafter of the original bill cloned it from Chapter 31A of NRS, the child support garnishment statute. We struck any reference to precedence as it pertained to order of garnishment. We do not anticipate having any specific precedent for collection of monies outstanding as it pertains to overpaid unemployment insurance fraud.

**Chairman Conklin:**

Are there any additional questions from the Committee? There are none. There still may be some concerns. Staff will have this mocked-up with the Division's amendments and include the reference that the Administrator must comply with NRS 31.295 where ever the drafter deems appropriate. We will wait for a mock-up on this bill.

We will move to Assembly Bill 53.

**Assembly Bill 53**: Revises provisions governing operators of body shops and garages. (BDR 52-446)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 53 was heard on February 16, 2009, and was sponsored by this Committee on behalf of the Nevada Auto Theft and Insurance Fraud Task Force. [Read from work session document ([Exhibit F](#)).]

**Chairman Conklin:**

I am comfortable with the amendments provided by Mr. Geeser. We might consider an additional amendment which has some de minimis exemption. The overriding concern with the bill is determining what is considered to be a tip? There may be a case in which a tip may also be a kickback and may be used aggressively to alter the course of ordinary, best business practice. Are there any questions from the Committee?

**Assemblyman Settlemeyer:**

Are you suggesting an amendment to create a de minimis amount?

**Chairman Conklin:**

I think that if we are going to move this bill, the best way would be to include Mr. Geeser's amendment with something like you see at the end of the second amendment which indicates the exclusions of meals and promotional items. There is probably better legal language, so we will leave that to a drafter.

**Assemblyman Settlemeyer:**

I think we would have to include an amount on that.

**Chairman Conklin:**

Therein lies the difficulty with any and all statutes that include "ordinary course of business." The question becomes what is reasonable? And how can you put a dollar amount in statute, or do you assume certain activities are not tips? Tips in this case would most likely refer to money.

**Assemblywoman Buckley:**

This bill says you cannot tow a car, and I do not think we want a body shop or garage not being able to tow cars.

**Assemblywoman Gansert:**

I like the intent of this bill and think we need to refine the language. We want it to preclude gifts and gratuities and make sure the intent is not about small items, but valuable amounts.

**Assemblywoman Kirkpatrick:**

Does this say that a constituent can file a complaint with the Consumer Affairs Division based on something they were forced to do? Is that how it is going to be enforced?

**Chairman Conklin:**

This is under Chapter 597 of *Nevada Revised Statutes*.

**Assemblywoman Kirkpatrick:**

I understand that. Does the consumer file a complaint because someone overcharged them?

**Chairman Conklin:**

It could be the consumer, the insurance company, the garage, or the towing operator who feels the practice violated the law.

Are there any questions from the Committee?

**Assemblyman Goedhart:**

I could see it being a complaint generated, for example, from a tow truck driver who was told by his employer to "direct all of the cars towed to a certain body shop because they are going to give us a financial incentive and we will split it." Then the driver gets disgruntled because he feels the split is unfair, and he files a complaint.

**Assemblywoman Kirkpatrick:**

I want to be sure how it works and how it is enforced.

**Assemblyman Atkinson:**

Maybe we should change Mr. Geeser's amendment in the first sentence of paragraph 2 to read "another tow car" instead of "a tow car."

**Assemblywoman Gansert:**

Could we add, "in addition to the rates normally charged?" A person told me their car was towed to a dealership when it needed to go to a body shop; they were charged a \$70 storage fee and \$177 to get it towed across town. This affects the cost to individuals and also affects insurance rates.

**Chairman Conklin:**

We could add in paragraph 2, "other than a fee contracted for in the normal course of business."

**Assemblywoman Gansert:**

That sounds good. They could get their normal rates but not the rest of it.

**Assemblyman Arberry:**

Nevada is a tip state. It sounds like an owner cannot pay a gratuity to the person who is towing their vehicle. I do not know how you could enforce this.

**Chairman Conklin:**

This says the tip cannot come from the body shop to the tow company or from the tow company to the body shop as a mechanism to steer customers, who have no idea about the tip. The consumer has been left out of this mechanism.

**Assemblyman Goedhart:**

What would prevent a body shop from increasing what they pay for a tow to circumvent the gratuity?

**Chairman Conklin:**

We will continue to work on A.B 53. Is there any other business to come before the Committee?

The meeting is adjourned [at 1:32 p.m.]

RESPECTFULLY SUBMITTED:

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Earlene Miller  
Committee Secretary

APPROVED BY:

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Assemblyman Marcus Conklin, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** March 13, 2009

**Time of Meeting:** 12:34 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 71	C	Dave Ziegler	Work Session Document
A.B.141	D	Dave Ziegler	Work Session Document
A.B. 84	E	Dave Ziegler	Work Session Document
A.B. 53	F	Dave Ziegler	Work Session Document