

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

**Seventy-Fifth Session
March 30, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:37 p.m. on Monday, March 30, 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 Chair
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27
Assemblyman John Carpenter, Assembly District No. 33
Assemblyman Tick Segerblom, Clark County Assembly District No. 9

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:

Wendy Oliver-Pyatt, MD, FAED, Co-Chair, Advocacy Committee,
Academy for Eating Disorders, Reno, Nevada
Lisa Black, PhD, RN, Private Citizen, Reno, Nevada
Cara Meidell, Private Citizen, Reno, Nevada
Lesley R. Dickson, MD, President, Nevada Psychiatric Association,
Las Vegas, Nevada
Elizabeth Overheu, Private Citizen, Las Vegas, Nevada
Cheryl Hug-English, Medical Director, Student Health Center,
University of Nevada, Reno, Reno, Nevada
Bryan Wachter, representing the Retail Association of Nevada,
Carson City, Nevada
Tray Abney, representing the Reno-Sparks Chamber of Commerce,
Reno, Nevada
Fred L. Hillerby, Reno, Nevada, representing the Nevada Association of
Health Plans, Las Vegas, Nevada:
Jack Kim, representing the Nevada Association of Health Plans,
Las Vegas, Nevada
Helen Foley, representing Nevadans for Affordable Health Care,
Las Vegas, Nevada
Rusty A. Tybo, Mayor, City of Wells, Nevada
Carolyn J. Cramer, General Counsel, State Board of Pharmacy, Reno,
Nevada
Raymond B. Bizal, Western Regional Manager, National Fire Protection
Association, Long Beach, California
James M. Wright, Chief, State Fire Marshal Division, Department of
Public Safety
Debra Simon, Private Citizen, Sparks, Nevada

Bill Bradley, representing the Nevada Justice Association,
Reno, Nevada
Robert A. Ostrovsky, representing the Nevada Resort Association, and
Sierra Health and Life Insurance Company, Las Vegas, Nevada
F. Paul Bland Jr., representing Public Justice, Washington, D.C.
Courtney Lee, representing the Legal Aid Center of Southern Nevada,
Las Vegas, Nevada
Jon L. Sasser, representing the Washoe County Senior Law Project,
Reno, Nevada
Robert L. Compan, representing Farmers Insurance Group,
Las Vegas, Nevada
Michael Geeser, representing AAA Nevada, Las Vegas, Nevada
Joseph Guild, representing State Farm Insurance Company,
Reno, Nevada
Samuel McMullen, representing the Las Vegas Chamber of Commerce,
Las Vegas, Nevada
Robert L. Crowell, Carson City, Nevada, representing LVI Global, LLC,
Las Vegas, Nevada

Vice Chairman Atkinson:

[Roll called.] We have five bills in front of us today. We will have Assemblywoman Leslie present her bill, Assembly Bill 365.

Assembly Bill 365: Requires health insurance policies to cover treatment for eating disorders. (BDR 57-510)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:

Assembly Bill 365 is one of those dreaded insurance mandate bills, but this is the first time that the topic of eating disorders has been presented. We have Nevada's premier expert, Dr. Wendy Oliver-Pyatt, and individuals who have been affected by eating disorders, both themselves and through loved ones, who will be testifying today. I know that all of us on the Committee can recite what the insurance companies will say: it is too expensive, and it will make health care costs rise, all of which is probably true.

I had known Dr. Oliver-Pyatt previously when she worked for Northern Nevada Mental Health Services. When she called me six months ago to inform me that insurance companies would not cover residential treatment for eating disorders, she also told me about a program in Reno that I was not aware existed. She invited me to come to the center and meet some of the patients in treatment. One of the women I met said that in the last year, her insurance company had paid out over \$100,000 for medical complications from her eating disorder, but

they refused to pay for the residential treatment facility, which was helping address this disorder.

People die from eating disorders. Our insurance companies are willing to pay for the medical problems that are associated with eating disorders but will not pay for treatment. That is the problem that this bill addresses. I think it is far cheaper and much more humane to pay for treatment, instead of waiting for the person's medical and mental health to deteriorate.

Vice Chairman Atkinson:

Would you like to take questions or have the witnesses speak first?

Wendy Oliver-Pyatt, MD, FAED, Co-Chair, Advocacy Committee, Academy For Eating Disorders, Reno, Nevada:

I am a board certified psychiatrist and also the advocacy chairperson for the Academy for Eating Disorders and a certified eating disorder specialist. My hope as I go through my presentation ([Exhibit C](#)) is to provide you information not only about the medical consequences of eating disorders but also the psychiatric comorbidity, the loss of work time, the quality of life, and the cost to the individuals with this disorder and their family members.

[Spoke from PowerPoint Presentation ([Exhibit C](#)).] [Proposed Amendment ([Exhibit D](#)).]

Vice Chairman Atkinson:

Are there any questions from the Committee members for the doctor? There are none.

Lisa Black, PhD, RN, Private Citizen, Reno, Nevada:

[Spoke from written testimony ([Exhibit E](#)).]

Vice Chairman Atkinson:

Are there any questions from the Committee members for the witness?

Cara Meidell, Private Citizen, Reno, Nevada:

My daughter was a patient of Dr. Oliver-Pyatt's last year but could not be here today since she is in college. My daughter is someone you would not think to have an eating disorder, since she was a straight-A student and very athletic. Although she was a size six, at one point she thought there was something wrong with her body. I would never have believed that an eating disorder was a mental disorder, until I saw this happen to my daughter.

When she was in the ninth grade, I noticed she was throwing her entire lunch away. When we met with a nutritionist she was not diagnosed with an eating disorder but was told that her eating is disorderly. A year later, we went back to a professional who was approved by our insurance company, with whom she was in treatment for two years. We did not see any progress. Because this disorder involves the whole family, my daughter knew that we were all watching over her shoulder to see what she was eating. She told us that she could not learn to eat intuitively in this environment, so we let her move to her grandmother's house where she was buying her own groceries and making her own meals. Unfortunately, that environment did not help either. Then we tried group therapy, medication from a psychiatrist, and consulting a nutritionist. She also saw a counselor who she had a great rapport with but felt that the counselor did not understand her eating disorder.

At this point, Katherine was playing her third year of varsity basketball. Her potassium level was so low, she was lethargic and not very alert. Because of this, the coach was not playing her. She was frustrated, wanted to play, and knew that all she had to do was eat three meals a day, but even this incentive did not help. She was taking a prescribed potassium tablet daily, but we eventually found out she was throwing it up every day. This is when the doctor told us that if she did not get her potassium level up, she would be in the hospital.

Another challenge that we noticed with Katherine was that she could not have access to money. If she had any money at all in her purse, she was at WalMart buying something to eat, and then throwing it up. I therefore had to take control over her money.

She finally hit rock bottom and said, "I want to get better," and we found out about Dr. Wendy Oliver-Pyatt, who I am eternally grateful to. Although Katherine was not on track to graduate, Dr. Oliver-Pyatt helped set up a program so she could graduate with honors. The best thing that Dr. Oliver-Pyatt said to Katherine was, "If you were afraid to get on an elevator, we could sit in my office and talk, cry, and laugh about it every day for a year and a half, but until you get on that elevator, you are not going to get better." This is when the doctor recommended that Katherine be admitted to a residential treatment program. We admitted her to a facility in Utah, three days after high school graduation, which cost our family \$60,000. This was a discounted cost, since our insurance would not cover residential treatment for eating disorders. Even though I will work for a year to be able to pay for that treatment, I am grateful that we were able to get our daughter the help she needed. She was discharged 60 days later and is now healthy again.

Even though Dr. Oliver-Pyatt was not a network provider with our insurance company, St. Mary's HealthFirst, they eventually covered our visits for Katherine to see Dr. Oliver-Pyatt, but only after Katherine's primary care physician wrote a letter to the medical director of the insurance company, indicating that Katherine needed to see a specialist. The specialist who was part of the insurance network was not able to provide the treatment that Dr. Oliver-Pyatt was able to. During the appeal process, we went through every avenue we possibly could to have the insurance company help with the cost of the residential program. We even took the matter to an attorney, but learned that the insurance policy is written so tight there was nothing legally we could do since the insurance company does not cover residential treatment for eating disorders.

I am still happy, because my daughter is doing great. She did not get better by herself, but with lots of help. She is one of my heroes.

Vice Chairman Atkinson:

Are there any questions from the Committee members for the witness?

Assemblyman Goedhart:

What an amazing story of hope. I am glad she is doing better. Does someone need psychological counseling because this is a mental illness?

Cara Meidell:

That is correct. As soon as Katherine saw Dr. Oliver-Pyatt, she had hope again and said, "This lady gets it." The various professionals who we tried to work with previously did not work together well. The entire team at the residential facility was having daily meetings.

Assemblyman Goedhart:

At the end of the day, it seemed like it was more of a psychological assessment.

Cara Meidell:

Definitely.

Vice Chairman Atkinson:

Are there any questions from the Committee members for the witness? There are none.

Lisa Black:

Research shows that eating disorders have a biological basis. It is important for the Committee to understand this disorder is not something people choose.

Vice Chairman Atkinson:

Are there any questions from the Committee? There are none.

Lesley R. Dickson, MD, President, Nevada Psychiatric Association, Las Vegas, Nevada:

We support A.B. 365. [Provided a letter of support ([Exhibit F](#)).]

Vice Chairman Atkinson:

Are there any questions from the Committee members? There are none.

Elizabeth Overheu, Private Citizen, Las Vegas, Nevada:

I am here today to testify in support of A.B. 365, which requires health insurance policies to cover treatment of individuals with eating disorders. Not only do I have friends who have eating disorders, but I, too, have faced an eating disorder in my life. I suffered from bulimia nervosa for over five years which began in high school. Tortured by what I looked like, I felt that the way to relieve my pain was by bingeing and purging. Due to this disease, everything suffered, from my personal to my professional life. I could not stay focused in high school and barely graduated, only to go on to college and drop out after two semesters. Because of the disorder I endured, I have scars on my hands from shoving my fingers in my mouth, have problems with my gums and teeth, and I may not become pregnant. Fortunately, I was lucky that I had two very supportive and loving parents who were able to help me during that difficult time, because they were able to afford the cost of my treatment.

I went through 60 days of in-patient as well as out-patient treatment and received help from doctors, nurses, counselors, and other patients. The treatment center saved my life and without the help of everyone who participated in my recovery, I might not be here today. They showed me that life was worth living, I am not alone, and it is OK to ask for help. Today, after nine years, I am a senior at the University of Nevada, Las Vegas. I will continue my education after graduation, hopefully in the field of psychology. My insurance company was not going to cover the cost of treatment, so my parents had to take care of the financial burden of the treatment. Other patients who I met while in treatment were also not covered by their insurance company, but were lucky enough to be financially stable at the time to afford treatment. I wanted the Committee to see that I am one of the lucky ones, as an example of what can happen if treatment is available for people with eating disorders. It is a mental issue and needs to be addressed and taken care of.

Vice Chairman Atkinson:

We appreciate your testimony and are proud of you for continuing your education.

Cheryl Hug-English, Medical Director, Student Health Center, University of Nevada, Reno, Reno, Nevada:

[Spoke from written testimony ([Exhibit G](#)).]

I applaud the courage of the people who have given their personal testimonies today. I have experienced all of the issues they have brought forward about the difficulties in getting patients into care because of insurance benefits being denied.

Vice Chairman Atkinson:

Are there any questions from the Committee members for the professor? Is there anyone in Carson City who would like to testify in favor of A.B. 365? Is there anyone in opposition of A.B. 365?

Bryan Wachter, representing the Retail Association of Nevada, Carson City, Nevada:

On behalf of our 1,500 small businesses that are operating in the State of Nevada, we want to make sure that you realize when insurance companies are mandated, the cost gets passed along to employers and then to those employees. It does not affect our larger business members or any organizations that are covered under the Employee Retirement Income Security Act (ERISA) statutes. It only affects the small businesses that pass on 20 percent to 50 percent of the cost to their employees, which drives up the cost of health care. Our normal opposition to mandated insurance stands with this bill as well.

Vice Chairman Atkinson:

Are there any questions from the Committee members for Mr. Wachter?

Tray Abney, representing Reno-Sparks Chamber of Commerce, Reno, Nevada:

In the interest of time, I will echo what Mr. Wachter said.

Vice Chairman Atkinson:

Are there any questions from the Committee members for the witness? There are none.

Fred L. Hillerby, Reno, Nevada, representing the Nevada Association of Health Plans, Las Vegas, Nevada:

We too must speak against this bill. Today was the first time we saw the amendment to A.B. 365, which appears to propose a different appeal process than Speaker Buckley put in the statutes several years ago that we follow both in terms of a regular appeal and an emergency appeal. It also seems to be contrary to what the normal course of business is. It says the only one who

can determine the medical necessity at an appropriate level is the person providing the care to the patient. That kind of language does not allow for oversight. It was clear to me, while listening to Dr. Oliver-Pyatt and others, that it seems like there are a limited number of providers that are qualified to provide the care that patients are looking for. They had indicated there was only one residential facility in Northern Nevada that was qualified. Also, in early testimony it was determined that many of the providers themselves were not qualified to handle this disorder. We are concerned about the availability of the types of providers that this bill seems to contemplate.

We would like to have the opportunity for our individual clients to review the proposed amendments so we can be more informed on what the potential impact would be. Our concern, as always, is if we add anything more, to small businesses, it will create a larger number of uninsured and increase the number of unemployed workers.

Vice Chairman Atkinson:

You will have time to work with the sponsor since we will probably not be moving the bill today. Are there any questions from the Committee members for Mr. Hillerby? There are none.

**Jack Kim, representing the Nevada Association of Health Plans,
Las Vegas, Nevada:**

I think there has been a change in what we are being asked to cover. You have to remember, the contracts we have with employers and individuals are to cover their medical care. We have primarily focused on covering medical care only. The definition of what is considered medical care is being expanded to cover mental health care. I am not saying that is wrong, but it is something that I do not think health plans have covered in the past. It is interesting to listen to the witnesses asking us to cover more mental health care. Our concern is not just this one bill, but the totality of all the bills and the impact on employers. I was at a meeting recently with a legislator, who had contacted the Division of Insurance (DOI), who informed her that the number of individuals who are covered by our plans has dropped to 25 percent of the population. When I started this process 12 years ago, we covered approximately a third of the population. We have seen the number of people we are covering and the impact of these bills' diminish. These bills are impacting fewer people. There is some equity that has to be looked at.

Assemblyman Settlemeyer:

I would appreciate getting the written documentation regarding the testimony on 25 percent of the population not being covered.

Jack Kim:

That comment was made by an Assemblywoman who had spoken with the DOI. I can follow up with DOI and get back to you.

Vice Chairman Atkinson:

Are there any questions from the Committee members?

Helen Foley, representing Nevadans for Affordable Health Care, Las Vegas, Nevada:

We share many of the concerns that were presented by Mr. Kim and Mr. Hillerby. We are the ones who have those fully insured policies and want to make sure that those remain affordable.

Vice Chairman Atkinson:

Are there any questions from the Committee members for Ms. Foley? There are none. Is there anyone in the audience who would like to speak in opposition to A.B. 365? Is there anyone else who would like to speak in neutral? There are none.

Dr. Wendy Oliver-Pyatt:

I want to make it very clear that I have absolutely no association with the Center for Hope of the Sierras, although it was discussed as if I was currently associated. I established the program, but I have no connection to the Center for Hope of the Sierras at this time. Also, I would like the Committee to know that there is a program in Las Vegas that was recently started called Center for Change which offers intensive out-patient and partial hospitalization treatment. Finally, with the proposed amendment ([Exhibit D](#)), there is an appeal process which requires that the physicians or health care providers understand eating disorders.

Vice Chairman Atkinson:

We will close the hearing on A.B. 365, and I will turn the meeting over to the Chairman at this time.

Chairman Conklin:

We will open the hearing on Assembly Bill 370.

Assembly Bill 370: Makes various changes to provisions governing pharmacies.
(BDR 54-1014)

Assemblyman John Carpenter, Assembly District No. 33:

[Spoke from written testimony ([Exhibit H](#)).]

The Mayor and City Manager from the City of Wells will provide you with more details of the necessity of having a telepharmacy in Wells. Carolyn Cramer, the attorney for the Pharmacy Board, will then introduce the amendment.

Chairman Conklin:

Are there any questions?

Assemblyman Anderson:

Usually someone who has a regular prescription can get their medications by mail. Is this service specifically for someone who has a new prescription that has not been filled before?

Assemblyman Carpenter:

I think this would apply to a new prescription or an ongoing prescription because if the person had been getting a medication for a long time and the doctor prescribes another medication, the patient needs a consultation with the pharmacist. The videoconferencing would enable them to have a consultation and get advice.

Assemblyman Anderson:

Would that then be followed up with the physician who made the initial recommendation? It would be helpful if I knew how Wells handles this challenge now.

Assemblyman Carpenter:

Mayor Tybo would be able to explain that.

Rusty A. Tybo, Mayor, City of Wells, Nevada:

We had a long-term pharmacist, who owned a supermarket, but has now retired and sold the supermarket. The new proprietors of the supermarket do not wish to have a pharmacy, because of the difficulty of recruiting a pharmacist. Since we have a large population of senior citizens in Wells, they now have to travel up to 100 miles not only for specialized medical care but to get their prescriptions filled. It is also very challenging to drive a long distance after work to pick up their prescriptions. It is also a financial burden for the travel costs of those who have below-moderate incomes. We have a certified pharmacist in Spring Creek who attempted to use a courier service to bring medications to Wells and then distribute them. It was not financially feasible for him to do this; plus there were some questions about the legal aspects of the courier

transporting certain drugs. After the pharmacist and the City Manager did some research, we determined the telepharmacy system that is being used in North Dakota would work in Wells and other rural areas of Nevada.

[Letter from Rusty A. Tybo ([Exhibit I](#)).]

Chairman Conklin:

Do you have anything to add, Assemblyman Carpenter, before I turn it over to the State Board of Pharmacy?

Assemblyman Carpenter:

Not at this time.

Carolyn J. Cramer, General Counsel, State Board of Pharmacy, Reno, Nevada:

We are offering a friendly amendment ([Exhibit J](#)) asking that the bill be restricted to areas of less than 2,000 residents. We are offering this amendment because we do not want to lose the few rural full-service, stand-alone pharmacies to telepharmacy. We look to the telepharmacy as an opportunity to give patients another level of service that they presently do not have. As Assemblyman Anderson said, they would be able to have a mail-order pharmacy that would still be in place but also offer face-to-face contact provided by an audio-video link. This would apply to Wells and other rural areas where the criteria is established. The Board of Pharmacy is presently looking at this as an opportunity to augment the health care that we already have and give more flexibility to have the financial ability to support a rural pharmacy. It is expensive but will allow them for some care.

Chairman Conklin:

How did you arrive at the population of 2,000? Is that a consistency standard in statute?

Carolyn Cramer:

I inquired of our inspectors to see if we presently have any rural retail pharmacies in service areas that have 2,000 people. I did not want to lose pharmacies in rural communities but wanted to make sure we were augmenting the services that we presently have in place.

Assemblyman Anderson:

I would imagine Assemblyman Carpenter's area, Mountain City, and other areas that have a population of less than 2,000 that might benefit from such a program, would be precluded specifically. Do you have a list of populations of rural cities?

Carolyn Cramer:

I did not look at a specific list. I just inquired of the places where I knew we already had retail pharmacies that I did not want to lose. I did not look at it from a standpoint of other rural areas that would be able to potentially participate. There are retail mail order pharmacies that are still available and offer the same level of service.

Chairman Conklin:

Are there any additional questions from the Committee?

Assemblywoman Gansert:

How do you define service area?

Carolyn Cramer:

The reason I put service area instead of cities is because cities and towns are defined by statute, and I am hoping we might be able to flush that out in the rule making. I do not know what the level of service is. Some people gravitate toward a pharmacy that does their insurance, some go where it is easier for them to pick up a prescription, and others go where they are most comfortable processing their mail order.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Assemblyman Carpenter:

Wells still has a physician who would be able to continue to take care of the community by faxing a prescription to Spring Creek. This will have to go through a regulation process, and hopefully at that time some of Assemblyman Anderson's questions can be answered. This will not be complete until the Board of Pharmacy determines what the regulations would be.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone wishing to testify in support of A.B. 370?

Bryan Wachter, representing the Retail Association of Nevada, Carson City, Nevada:

We want to go on record in support of this concept and this bill. We feel that providing the same level and access of health care to the rural communities as to some of our more populated communities works better for everybody. We look forward to working with the Board of Pharmacy during the regulation period.

Chairman Conklin:

Do you know of other states that have passed this with good experience?

Bryan Wachter:

All of our members like the access that telepharmacy provides. North Dakota has been the shining example of how well the system works.

Chairman Conklin:

I know that Montana has a newer, similar system. Have they also had success?

Bryan Wachter:

I do not have any details on Montana.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else who would like to get on the record in support of A.B. 370? Is there anyone in opposition? Is there anyone wanting to go on record in the neutral position? We will close the hearing on A.B. 370.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 370.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY, GOEDHART,
AND HORNE WERE ABSENT FOR THE VOTE.)

Assemblyman Carpenter, after I get the amendment and approve it, we will provide you with documentation so you can present this on the floor. I would like the Committee to turn your attention to the work session document for Assembly Bill 90.

[Assembly Bill 90](#): Revises certain provisions concerning the investigation and prosecution of deceptive trade practices. (BDR 52-269)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document including proposed amendment.
([Exhibit K](#)).]

Chairman Conklin:

This is one of the early bills we heard in the first part of the session. Assemblyman Anderson, Assemblywoman Kirkpatrick, and myself had concerns about section 10 of the bill, which is the provision changing the definition of

telecommunications. I have spoken with the Attorney General's Office, and they are in agreement to take that out. They would like to retain section 1 of the bill, which allows them to provide and receive confidential information from other Attorney General's offices across the nation when they are investigating deceptive trade practice claims. Are there any questions from the Committee?

Assemblywoman Kirkpatrick:

I want to go on record that the definition of telecommunications is in compliance with the Federal Communications Commission (FCC). In the first section, the Attorney General should be able to exchange information across state lines.

Chairman Conklin:

Are there any questions from the Committee?

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 90.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY, GOEDHART,
AND HORNE WERE ABSENT FOR THE VOTE.)

We will now open the hearing on Assembly Bill 266.

[Assembly Bill 266](#): Prohibits the sale of novelty lighters. (BDR 52-569)

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

This bill prohibits the sale or distribution of novelty lighters. It also provides a comprehensive definition of novelty lighters. The PowerPoint presentation ([Exhibit L](#)) will show examples of novelty lighters that look like cartoon characters and toys you would get in a McDonald's Happy Meal. They are cute, little, but deadly. I was unable to get a sample of a very dangerous lighter that looks like a small camera. When you hold it up to your face like a camera it can start your hair on fire. Most novelty lighters are made to look like small toys that children are tempted to play with even if they have been taught playing with lighters is dangerous. Many of them have lights, visual effects, and sounds, making them even more attractive to children.

Novelty lighters disguise their intended use as a lighter and are considered toys by children, like a small microphone or cell phone. According to the Consumer Product Safety Commission, children under five years old playing with lighters cause more than 5,000 residential fires per year, resulting in

approximately 150 deaths and more than 1,000 injuries. Novelty lighters have become such a concern that beginning January 1, 2008, the United States Fire Administration's National Fire Incident Reporting System began collecting information specifically about novelty and toy lighters. We will have that data available later this year. Novelty lighters are responsible for injuries, deaths, and accidents across the nation. Mistaking lighters for toys has proven to be deadly.

On September 25, 2005, a 15-month-old and his two-year-old brother in Arkansas died after setting fire to an apartment with a motorcycle-shaped lighter. A child, who was in a grocery store in Maine with his mother buying sandwiches, thought a lighter was a flashlight. A six-year-old picked up a miniature baseball bat and flicked the switch, singeing his eyebrows and hair and burning part of his face. In Oregon, a child died and another was permanently brain-damaged after a six-year-old playing with a lighter, looking like a toy dolphin, started a fire. In North Carolina, a six year-old boy sustained second degree burns after playing with a lighter that looked like a cell phone.

Young children are not the only ones fooled by novelty lighters. A Michigan woman wanted to give her four-year-old a treat for cleaning her room. She accidentally bought a novelty lighter she thought was a toy Dalmatian dog. When the mother saw a flash, she realized it was a lighter. The fire marshal in Wisconsin was making a purchase at the local improvement store when his 12-year-old daughter bought a tape measure. When she clicked the button on the tape measure, a flame came out. Fortunately, she was not injured. A woman in South Carolina thought she was buying a novelty lighter, when it was in fact a gun, and shot herself in the hand.

Novelty lighters are largely imported from China and are often manufactured without child resistant mechanisms as required by federal law. If you notice, when you light your barbecue, it almost takes two hands as there is a safety switch on it. The United States is now the target for toy lighters because Europe's Consumer Protection Commission banned the sale of novelty lighters in 2007. Nevada was one of several states involved in a recall of lighters shaped like cars, grenades, elephants, alligators, motorcycles, guns, and telephones because they did not have child resistant mechanisms.

I can think of no good reason why lighters should be manufactured to look like toys. Children can pick one up to play with, and no one knows it is dangerous until the damage is done. In the gaming industry, slot machines go through a vetting process to ensure they will not resemble games that will attract children, such as Mario Brothers, Scooby-Doo, et cetera. This issue is considered so serious that 18 other states and numerous other local jurisdictions have passed

or introduced legislation and regulation banning the sale and distribution of novelty lighters. It is not enough to warn children of the danger of these lighters. Legislation is necessary to protect children from the serious consequences of these lighters' unintended misuse.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Settlemeyer:

Have you thought about the concept of placing an age limit on lighter sales?

Assemblyman Ocegura:

I do not know if that would work because they are easily mistaken for a toy. You may pick up this 99 cent item and not know that you have just bought your child something that shoots out a flame. I think an outright ban is the way to go.

Assemblywoman Kirkpatrick:

I support this bill. Do you think that everyone who stocks these will be able to get them sold in the next six months?

Assemblyman Ocegura:

It is only a six-month period from the end of the session. I would like to not see them on the shelves.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Anderson:

Why did we not go for October?

Assemblyman Ocegura:

We were giving everyone a chance to get rid of them.

Chairman Conklin:

Assemblyman Anderson, did you want to offer an amendment to make someone liable for anything that they sell up to January 1? Are there any other questions from the Committee?

Raymond B. Bizal, Western Regional Manager, National Fire Protection Association, Long Beach, California:

[Spoke from written testimony ([Exhibit M](#)).]

It is not just children who have a problem with these. It is adults as well. We know of a legislative aide who lit his eyebrow on fire when he was playing with a lighter that looked like a camera. I believe that 21 states have introduced legislation and 5 have passed legislation for this issue. There are examples all over the country of fires that have started and injuries that have occurred with novelty lighters.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Anderson:

Would the language on page 2, subsection 5, preclude having a device that has a laser light indicating the direction of the flame?

Raymond Bizal:

Are you looking at line 13 on page 2?

Assemblyman Anderson:

Yes.

Raymond Bizal:

I believe it means when you remove the devices that make the lighter ignite a flame or remove the container for the lighter fluid.

Assemblyman Anderson:

On page 2, line 9, it says, "Plays musical notes, has flashing lights or has other similar entertaining features...."

Raymond Bizal:

A barbecue lighter that has a spotlight on it to see into your barbecue would not be for entertainment value. I do not think that would be a part of this.

Chairman Conklin:

Are there any questions from the Committee?

James M. Wright, Chief, State Fire Marshal Division, Department of Public Safety:

I am here to support this bill and echo what has already been presented. I, too, have brought a bag full of novelty lighters. One of the lighters I was inspecting almost lit my shirt on fire. Lighters are not toys. This is a very positive and proactive fire prevention act that we can move forward on.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else who would like to be on the record in support of A.B. 266? Is there anyone in opposition? Is there anyone wishing to be on record in the neutral position on A.B. 266? We will close the hearing on A.B. 266.

ASSEMBLYMAN ANDERSON MOVED TO DO PASS
ASSEMBLY BILL 266.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY, GOEDHART,
AND HORNE WERE ABSENT FOR THE VOTE. ASSEMBLYMEN
CHRISTENSEN, SETTELMAYER AND GANSERT VOTED NO.)

Chairman Conklin:

We will open the hearing on Assembly Bill 470.

[Assembly Bill 470](#): Prohibits noncompete agreements for persons who hold a professional license. (BDR 53-1021)

Assemblyman Bernie Anderson, Washoe County Assembly District No. 31:
[Spoke from written testimony ([Exhibit N](#)).]

Chairman Conklin:

This is an interesting subject. We are prohibiting a business' right to protect experience under which it operates, and yet the bill also has a dampening effect on wages. The longer a person is in a position, the more they learn, but the less pay they necessarily get. The only way to capitalize on the knowledge that they have is to go elsewhere. It is an interesting question.

Assemblyman Settelmeyer:

Has any other state gone to this level of saying that professionals not be allowed to compete?

Assemblyman Anderson:

Delaware and Texas have limitations on noncompete agreements for physicians. Illinois and Maine have limitations for television broadcasters, and Massachusetts prohibits noncompete agreements for both physicians and broadcasters. California and Colorado have very broad laws on this. The courts in Nevada have become increasingly restrictive in terms of distance and length of time to secure employment.

Assemblyman Settlemeyer:

What are your thoughts on an amendment to address time and distance so we can have input on what we consider to be reasonable in those two aspects, rather than flat bar all of them?

Assemblyman Anderson:

We live in a state where you can fire anybody, anytime. I do not think we will be able to take away the issue of firing at will. I am concerned about the time factor. I am not concerned as much with the distance factor if it is reasonable. For example, living in Reno and driving to Carson City is not an unreasonable distance. Driving from Reno to Sacramento is a long way. I do not want a business to lose its customer base, but I think it is wrong to have everyone sign a noncompete clause. I think that if we do not do something about it, the courts are going to do something for us.

Chairman Conklin:

I know the courts have diminished the effectiveness of noncompete agreements. When you draft an agreement now, you are capped at a year. There is not statute for that, but the courts have clearly ruled across the nation that anything longer than a year limits so restrictively a person's ability to apply their trade that they have declared those unenforceable. Corporate companies have begun to scale back the time frame but add additional protections and nondisclosure items. Is there any other state that has limits set in statute?

Assemblyman Anderson:

I do not have an answer. They have outlawed it in several states. I know Nevada law revolves around two cases.

Assemblyman Goedhart:

I appreciate your bringing this forth. Living in rural Nevada, my wife noticed there was a shortage of medical providers, so she went back to school to get her master's in nursing so she could be a rural doctor. After a couple of years serving in a rural clinic, she went to work in Pahrump. After five years there, the clinic was taken over by another physician. He told her that if she did not sign a noncompete agreement, she would be fired. She had already built a strong customer base, and the agreement precluded her from practicing medicine within a 30-mile radius for two years. This precluded her from all of Pahrump which is where all of her patients are. I advised her not to sign the noncompete, and to date she has not been fired but feels this is held over her head. The same physician purchased another practice where an obstetrician was required to also sign a noncompete agreement. Because of the poor relationship with the new owner, he quit and was not allowed back in the clinic

and was therefore restricted from having access to his patients' records. There are real-life situations that your bill will hopefully address.

Debra Simon, Private Citizen, Sparks, Nevada:
[Spoke from written testimony ([Exhibit O](#)).]

I worked for Renown Health for 13 years before I was required to sign a noncompete agreement which applied not just to me, but to others in the department as well. The way the policy was applied was very inconsistent. When it was determined that someone had left the organization, moved to Las Vegas, and gained employment with a competitor, the noncompete agreements resurfaced and became a condition of employment. I am aware of several situations in which people had accepted positions, moved, quit their jobs, sold their homes, took their children out of school, and moved to our community, only to find out, after they started, that they were required to sign a noncompete agreement for employment.

The noncompete agreement that I was bound to specified 75 miles from the Reno city limits. On the insurance product side, the distance clause was for the entire state of Nevada and 100 miles from the border. I knew that I was not going to be able to work in this community, and I was in a dilemma after being discharged. I had contacted a recruiter and shared with him the noncompete agreement that I was bound to. He was very surprised, since he had worked with a number of health care providers across the United States and is very familiar with noncompete agreements. He had never seen anything that was this prohibitive of being able to secure employment. If you worked for a national insurance company and your territory was the western region, you would not be able to pursue that job, because Nevada would be out of the question. It is very broad in scope and duration, and I would ask you to take that into consideration.

This area is not a metropolitan city. Our ability to work in our field is very limited. I am a single mom. I have no other family in this community, and my son was in the middle of his senior year of high school. I planned to live here for a long time and also invested in the Nevada prepaid college tuition program. I wrote to my previous employer and told them my situation. They responded by letting me know that the agreement still stands but to let them know when I get another job. My field of expertise would be in direct competition with their facility so I told them I had no problems with the confidentiality policy, trade secrets, or customer lists and would honor and abide by that policy. After they would not reconsider the agreement, I contacted an attorney who was able to litigate on my behalf. I also spoke with an employment law attorney earlier who

was helpful, but advised me to fight this would take at least two years and would cost me \$10,000 to \$20,000 up front.

A lot of people do not have disposable cash to fight in order to get a job. I was frustrated, wondering if I was going to lose my home, go on unemployment, and take my son out of his senior year of school. Do I leave my son here while I look for a job in California and Washington? I am asking you to take into consideration, as employers are laying off employees who have signed a noncompete, what are they to do? I think there needs to be a mechanism and way to make it fair for the employer, who should be protected. But who is looking out for the workforce?

On the way here today I took a call regarding a nephrologist who left his private practice in a group setting and went to work for another health-based employer with a noncompete agreement similar to mine. They have parted ways, and now the nephrologist will not be able to work in northern Nevada. Do we want our physicians and licensed professionals leaving this community? I ask you to support and pass A.B. 470 with modifications for unlicensed professionals like myself. There has to be a way to protect the rights of everyone.

Chairman Conklin:

Most of the Committee has had experience with noncompetes. It is a matter of finding the right balance to protect our workforce, people, and businesses that make an investment.

Assemblyman Anderson:

I appreciate my constituent coming forward to testify and am glad that she found employment, which I was concerned about when we first spoke. I hope the Committee would also take into consideration that nonprofessionals should not feel they have to stay bound to contracts. Given the nature of these uncertain economic times, it is very important to find a common place so people can feel secure in their employment, and yet work in the best interest of the employer so he knows that his investment is of value.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

I have had experience with noncompetes relative to physicians, and I know the cost of staffing a hospital emergency room is very high. I have found over the years that noncompetes have become more limited. The distance radius is smaller, and the time frame is shorter. There is a problem when you have expansive noncompetes.

Assembly Anderson:

I am sure Ms. Simon can tell you that the agreement she was bound to was a two-year contract which is a relatively long time to wait.

Debra Simon:

I would agree with Assemblyman Anderson. There are a number of nonprofessional individuals who have left our community because of this issue. By the time you take it to court, the two-year time frame is over. The employer has the opportunity to use the leverage of Nevada being an at-will state: let you go without cause and then hold you to a noncompete clause for two years. When the clause is so broad in scope and duration, it feels almost impossible to fight.

Chairman Conklin:

Are there any questions from the Committee? There are none. Is there anyone else at this time wanting to get on the record in support of A.B. 470?

Bill Bradley, representing the Nevada Justice Association, Reno, Nevada:

We also support A.B. 470. I think Ms. Simon is to be commended for pointing out that the employers can seek any sort of noncompete clause they want. An employee has a choice of quitting and going somewhere else or staying and fighting it. Ms. Simon is one of the few people that are willing to stand up and fight it, and she very clearly pointed out how difficult it is. Most people pack up their bags and think there is no alternative, despite the fact the agreement was written very broadly. The only area in which noncompete clauses exist in California is in the sale or dissolution of corporations, partnerships, and limited liability companies. They are very strictly drafted to give the employee the benefit of the doubt.

[Assemblyman Ocegüera assumed the Chair.]

Assemblyman Ocegüera:

Are there any questions for Mr. Bradley? There are none. Are there any others in favor of the bill? Are there any opposed to the bill?

Robert A. Ostrovsky, representing the Nevada Resort Association, and Sierra Health and Life Insurance Company, Las Vegas, Nevada:

Our issue concerns people who have professional licenses, like certified public accountants (CPA), engineers, or physicians who are not really performing that kind of work. For example, a CPA is sometimes a chief financial officer of a company and is not working as a CPA, or a physician is not working as a physician, or a nurse is not working as a nurse, but in a management position in a company. Those situations increase our ability to have noncompetes. I think

we need to look at the scope and duration of all of those. It sounds like there are people signing noncompete agreements who are not associated with an employment contract, where if you have a certain length of service and are terminated, they get lump sum payments, et cetera. We would like an opportunity to meet with Assemblyman Anderson to make this a better piece of legislation that would resolve our issues and give the protections that he is seeking.

Assemblyman Ocegüera:

Are there any questions for Mr. Ostrovsky? There are none. Is there anyone wishing to testify against the bill? Is there anyone in the neutral position? We will close A.B. 470. We will now open the hearing for Assembly Bill 381.

Assembly Bill 381: Revises various provisions relating to arbitration.
(BDR 52-931)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

Right now when you get a credit card bill or buy a car there is always small print on your contract that indicates the process of arbitration if you have a dispute. When you go to a lawyer and try to sue, it turns out that you had signed over your rights and you have to arbitrate it. At this point you did not know you needed to arbitrate, you did not know the rules of the arbitration, and you do not know who the arbitrator will be. This bill will address all of those issues by making it clear in very bold language what the arbitration rules are and providing information on who the arbitrators are. Currently there are panels of arbitrators who, 99 percent of the time, rule in favor of the company you have the dispute with.

F. Paul Bland, Jr., representing Public Justice, Washington, D.C.:

I have developed a specialty in learning how to challenge mandatory arbitration clauses when they are misdrafted by a company. While generally these are enforceable as a matter of federal law, there are exceptions when companies cheat or overreach in various ways. I have handled cases in several state Supreme Courts and approximately five Federal Courts of Appeals. Arbitration clauses exist everywhere in the United States, including when you get a credit card, or buy a car or computer. There are between three and four times as many employees in America who are subject to a mandatory arbitration clause as there are members of a union. Ninety-five percent of nursing homes have mandatory arbitration clauses before you can get a loved one admitted. I recently saw an arbitration clause in an organ donor transplant contract and in pet boarding contracts.

There are a lot of abuses in them. One of the problems occurs when you have a contract with a credit card company and they write the contract and choose the arbitrator. As a result, the arbitration firms who are competing for that business have a tendency to set up their system in a way that favors the credit card company. There is evidence that when an arbitrator rules against the company, the arbitrator will be blackballed and not be able to work in that field again. There are examples of these in the written testimony I have provided ([Exhibit P](#)).

Another problem is not only are arbitrators chosen by one side, but what they decide is unreviewable. A judge of the Seventh Circuit said, if an arbitrator makes a wacky ruling as a matter of law, it is not reviewable. The Third Circuit said if an arbitrator makes a ruling that has a glaring error of law, it is not reviewable. In the case of major league baseball player Steve Garvey, the United States Supreme Court said if an arbitrator makes silly fact-finding, it is not reviewable. So when an arbitrator makes a ruling, that is basically it. One out of 1,000 cases is appealable to court. So the arbitrators chosen by a company make the rulings. In general it is not transparent. There are a lot of limits on what state legislatures can do that are set out by federal law. A lot of state legislators want to ban all arbitration clauses in credit card and nursing home contracts. You are not allowed to do that because the Federal Arbitration Act (FAA) has been found to preempt many state laws.

This bill has cleverly been crafted to find everything that a state can do to deal with the abuses of mandatory arbitration clauses. The most important section in the bill is the disclosure provisions. Currently, in almost every state of the country except for California and Washington, D.C., it is impossible to find out how an arbitrator ruled in a past case. If you have a dispute with a company in California, their disclosure rule makes it possible to look at the website of the arbitration firm and find out: if an arbitrator has ever handled cases with the company you have a dispute with, what the consumer asked for, if they won or lost, who the arbitrator was, and what the fees were.

Of the 34,000 cases that the National Arbitration Forum (NAF) handled in two years, over 90 percent were funneled to approximately 24 arbitrators. It was found that one of the arbitrators who handled 1,500 cases between MBNA Bank, a credit card company, and individuals ruled for MBNA Bank in almost every one of his cases and gave them exactly what they wanted. In one instance he handled 65 cases in a day and ruled for MBNA Bank in every case. If he was an arbitrator in a case involving a Nevada citizen, we would not be able to find that out because there are no disclosures in Nevada. If someone calls me and asks about an arbitrator in California, I can find out information about him, but if they are inquiring about another state we cannot find out

anything. If an arbitrator ever rules against MBNA Bank, then they are blackballed. As a citizen of Nevada you would like to know about the arbitrator.

The bill also deals with employment cases. A woman from Texas was employed by a company who sent her to Iraq. While in Iraq, she was drugged and sexually assaulted by several of her coworkers. The company had a mandatory arbitration clause. It was possible to review California data to find out that out of the many cases involving her employer and other employees, the company won 85 percent of them. We were also able to ascertain the name of the arbitrators who won those cases. If you are the woman who was abused and going to court, this would be valuable information to know. This is the kind of disclosure information that is available to California and Washington, D.C., residents and what the residents of Nevada should have.

Nevada already bans arbitration clauses in health insurance contracts and auto insurance contracts. While you cannot ban arbitration clauses in nursing homes or with credit card companies, there is an exception with the insurance industry. It is based on the relationship of the McCarran-Ferguson Act and the Federal Arbitration Act in that the McCarran-Ferguson Act reverse preempts the Federal Arbitration Act. There are over 20 states that have banned arbitration clauses in either some or all types of insurance. In Nevada you have banned them in employment and health insurance but not in other lines.

I represented someone who had a disability insurance contract, but it turned out the disability insurer never covers anybody because they have an arbitration clause. Whenever the case goes to arbitration they give you a list of five names, and every single one of the five possible arbitrators is someone who works for the insurance industry, and they never lose. They are basically writing disability insurance policies and have a blank check because there is no serious oversight. Similarly, life insurance and other types of insurance are not covered by the law in this state.

One of the provisions of this bill says a company that does arbitrations should not be able to have a financial interest in the companies for which they are arbitrating cases. There have been some instances where private arbitration companies have invested millions of dollars in a business and then are doing all the arbitrations for the business. To have an arbitrator who has millions of dollars of stock in a company also deciding disputes against the company would be crazy. This bill would solve that problem.

Arbitration contracts differ depending on the type of industry. Cell phone companies, banks, and credit card companies tend to forward the arbitration fees because all they are interested in is banning class action suits; they do not

want to have any other provisions that may cause the clause to be struck down. Fees for arbitration could be up to \$400 per hour, so for arbitration with other types of companies such as nursing homes, the fees could be up to \$20,000 or more. These would be the upfront fees that the patient or family would have to pay for the arbitrator to hear the case at the outset. This bill requires significant disclosure of the fees for arbitration and also requires disclosure of what people had to pay in the past. It also says that the Attorney General will come in and act if the arbitration firms are charging significant fees to people who have incomes below 300 percent of the poverty line. This bill provides a line of protection against the type of abuse that is present.

There are several bills pending in Congress which would deal with this issue on a broader basis, and there are a lot of limits on what a state can do, but states can do some things. There are a lot of extremely unfair abusive practices going on that no consumer or employment lawyer can deal with. This bill will be an important step in addressing that and creating a more fair system.

Assemblyman Ocegüera:

Are there any questions from the Committee?

**Courtney Lee, representing the Legal Aid Center of Southern Nevada,
Las Vegas, Nevada:**

I am an attorney with the Legal Aid Center of Southern Nevada where we have represented low income consumers in cases involving predispute binding mandatory arbitration clauses in consumer contracts, which is the subject of the proposed legislation. The Legal Aid Center wholly supports and endorses the testimony of Mr. Paul Bland from Public Justice. It is the view of the Legal Aid Center that predispute binding mandatory arbitration clauses in consumer contracts constitute the largest single threat to the due process protections which evolved over centuries in our civil justice system. None of the rights in our rules of civil procedure and our rules of evidence are guaranteed in arbitration. While arbitration is largely governed by federal law, there are few actions that states may take.

Assembly Bill 381 is based upon a model law prepared by the National Consumer Law Center (NCLC). The NCLC has researched and analyzed the extent to which a state can go in protecting its citizens from being forced into a private system of dispute resolution and in regulating the arbitral organizations themselves. While only a small number of issues are covered, the proposed legislation at least states what a state may do. Assembly Bill 381 will help ensure that a minimum number of consumer disputes are forced into

arbitration without the consumer's consent and will help regulate arbitral organizations so that a biased system is less likely.

The legislation is necessary as virtually every Nevada consumer is affected by it, due to the ubiquitous, predispute binding mandatory arbitration clauses in credit card agreements, banking agreements, cell phone contracts, and now even housing and vehicle purchase contracts. Whether we know it or not and whether we like it or not, virtually all of us are being forced into a private dispute resolution system in the event a dispute develops with a corporation or other business entity with which we do business. Nevada's consumers deserve the greatest protection that the state can afford them. The Legal Aid Center enthusiastically supports A.B. 381.

Chairman Conklin:

Are there any questions from the Committee for Ms. Lee? There are none.

Bill Bradley, representing the Nevada Justice Association, Reno, Nevada:

We wholeheartedly support this bill. The points have been made so we are not going to be redundant.

Chairman Conklin:

Are there any questions from the Committee for Mr. Bradley?

Jon L. Sasser, representing the Washoe County Senior Law Project, Reno, Nevada:

I am testifying on behalf of Mr. Nielson who could not be here this afternoon. Mr. Nielson and his office see a number of senior clients who come in with two situations. One is when some receive a notice of arbitration from a company they are having a dispute with. This bill would be beneficial for low income clients in the areas of learning the fees they may have to pay, disclosure of the cost to them, and learning about the arbitrator up-front so they could make the most intelligent choice as to which arbitrator to choose.

People also come to the Senior Law Project post arbitration. This bill would limit situations that arise out of insurance disputes, as we would now be able to forbid arbitration clauses in types of insurance disputes that we do not now cover. If there is a possible challenge to arbitration, the information regarding the bias of the arbitrator would be very helpful. The Senior Law Project is in full support of this bill.

Chairman Conklin:

Are there any questions from the Committee? Is there anyone wanting to get on record for A.B. 381? Is there anyone in opposition of A.B. 381?

Robert L. Compan, representing Farmers Insurance Group, Las Vegas, Nevada:

We are opposed to A.B. 381 for several reasons. It is a broad, outlining bill that throws property and casualty insurers into the mix of the bill regarding arbitration matters. If you notice in Mr. Bland's written testimony on page 14, regarding the Nevada code which already bans mandatory arbitration clauses in motor vehicle insurance contract under *Nevada Revised Statutes* (NRS) 690B.017, it does not preclude that. It does preclude it from binding arbitration, so if an insured is asked to go into arbitration and either we or the client does not agree with the arbitration matters, they can go to a jury trial of their own.

The arbitration system in Nevada works here. If you are going to take away the arbitration system on auto claims, you are going to clog up the system. Right now my company, Farmers Insurance Group, is the largest insurer in the state of Nevada. We currently have 150 pretrial cases that are going to go into arbitration. If we were to take the arbitration clause out of our contracts, they would go straight to a jury trial and clog up the district court systems. I feel they are talking about credit cards and arbitration companies, and that is not how the auto business works. Most of the arbitrators are plaintiff attorneys. I think a better way to address this is to amend the law to preclude plaintiff attorneys and insurance defense attorneys from being arbitrators on matters that represent insurance.

Chairman Conklin:

The dispute is not necessarily whether arbitration works or not. Everybody agrees it works. The question is who does it work for? That is one of the underlying issues in respect to this bill. We have to be very careful when we say that it works. The questions is, does it work in a manner that is fair and just for everybody?

Robert Compan:

It is a system that was put in place by the district court to arbitrate matters, and I have not seen anything, other than this report today, to the contrary that it is not a functioning way of arbitrating matters prior to a precourt judgment.

Chairman Conklin:

I would respectfully argue that. How would anybody know since they have no other alternative? It is again a question of who does it work for? I am not arguing for or against the bill. I am just pointing it out.

Robert Compan:

What I would like to point out is under the auto portion, property and casualty insurers, if the arbitration does not work, it is not binding. They can go to trial *de novo*, and they can go to a jury trial and have a jury of their peers look at the arbitration results. I am only talking to the property and casualty side of it, not to the credit card companies and what Mr. Bland spoke about earlier. I am speaking only about what my industry sees.

Chairman Conklin:

Are you requesting a portion be removed for auto insurers?

Robert Compan:

I would like to work with the Committee on it.

Chairman Conklin:

Are there any questions from the Committee?

Michael Geeser, representing AAA Nevada, Las Vegas, Nevada:

I want to be on record that we oppose the bill. The proponents have stated if the contracts are misdrafted or abusive, it is wrong, and we agree. If an arbitrator has a financial interest in one of the parties before them, we think that is wrong too. If arbitrators are handpicked or blackballed because of the way they ruled, that is wrong, and those wrongs should be made right. But that is not what this bill says. Section 20 of the bill makes unenforceable a consumer contract of insurance that mandates arbitration when in fact arbitration can be an avenue of faster and cheaper justice sought for the consumer. To categorize arbitration as being bad every time, all the time, for the consumer is a misstatement of fact. For that reason we oppose the bill, but parts of this bill include wrongs that I think should be made right. The portion of the bill that says arbitration should be unenforceable is not the right course of action.

Chairman Conklin:

Are there any questions from the Committee? There are none.

Joseph Guild, representing State Farm Insurance Company, Reno, Nevada:

It is true that the Federal Arbitration Act has been enacted, but what the Committee did not hear was that the United States Supreme Court has interpreted the Act to cover all situations in which there is an interstate commerce situation. The Supreme Court has also said insurance is an interstate commerce situation. The notion that the McCarran-Ferguson Act obviates the Supreme Court's decision in this area, I think is a little bit disingenuous, because the implication that the Federal Arbitration Act (FAA) structures on the cases it interprets is not correct. The Supreme Court has said that any attempt by the

states to limit arbitration is preempted by the FAA, including those areas where they have attempted to do so for insurance. The fact that a Nevada case has not been tested, if there is such a provision in our statute, still does not preclude the notion that Congress has preempted this area fairly broadly.

If you were to pass this, the mandatory arbitration statutes and the rules that have been promulgated by the Supreme Court would be in conflict. The legislature has already spoken many years ago and has said that arbitration is a good public policy for the State of Nevada. I was one of the first arbitrators certified under that provision of our statutes. I have arbitrated several cases including cases in which automobile insurance was part of the case. Every case in Nevada counties with a population of 100,000 or more, where the case in controversy is \$50,000 or less, must be arbitrated in our system. I think our system works, and I think arbitration is a good thing.

Chairman Conklin:

Are there any questions from the Committee?

Samuel McMullen, representing the Las Vegas Chamber of Commerce, Las Vegas, Nevada:

We have always believed arbitration was a good thing, and it added an element of alternative dispute resolution that was cost effective and over time reduced the cost of doing business by not subjecting every claim or contention to litigation. Consequently, this bill caused some concern when we first saw it. After reading through it, we feel there are a number of provisions that are good and actually make sense, especially those relating to the reporting of the ethics issues relating to doing business with people that appear before the arbitration organizations. The issues of consumer arbitration and outlawing it other than as federal law provides for it, and other issues that would restrict consumer arbitrations, are the concerns for us. I think what has been presented is a decision by the Legislature about whether or not arbitration is good at all. I thought that Mr. Bland from Public Justice did a good job presenting the abuses. I would echo that if there are abuses, we would be willing to be sure that the statute is better since arbitration statutes have not been around that long and are a work in progress. Generally declaring it against public policy or outlawing it is not the policy decision that Nevada needs to make.

Tray Abney, representing the Reno-Sparks Chamber of Commerce, Reno, Nevada:

I echo the concerns of Mr. McMullen and Mr. Geeser and hope we can find areas that we agree on in this bill.

Chairman Conklin:

Are there any questions from the Committee? Is there anyone who would like to get on record in opposition to this bill? Is there anyone in the neutral position on A.B. 381?

Bill Bradley:

There is no intent whatsoever in this bill to affect the mandatory arbitration program. This bill addresses those little provisions that are inserted in the third page of a contract that say if any dispute arises you have to go to arbitration. The court-annexed arbitration system, on the other hand, was passed by this Legislature. The Justice Association strongly supported it and helped draft the language. There is no clause in any Farmers Insurance or AAA insurance policy that mandates that people go to arbitration. The arbitration system that these gentlemen have confused is the arbitration system that says if a magistrate determines your case is under \$50,000, you will go into an arbitration program. That has nothing to do with this bill that we are considering now, and the bill would have absolutely no affect on that arbitration program that we also feel works. I could talk about the abuses, but I do not want to waste the Committee's time today.

Chairman Conklin:

Are there any questions from the Committee? Assemblyman Segerblom, it sounds like the only issue is to clarify what provision is being opposed. If at all possible maybe you could meet with Mr. Bradley, Mr. Compan, Mr. Geeser, and Mr. McMullen, and work something out. If that is possible can you get back to me?

Assemblyman Segerblom:

Yes.

Chairman Conklin:

We will close the hearing at this time on A.B. 381. There are five bills to discuss in the work session. We will take a short recess for other Committee members to return.

We will bring the Committee back to order.

[Assembly Bill 151](#): Makes various changes concerning mortgage lending.
(BDR 54-567)

Dave Ziegler, Committee Policy Analyst:

[Spoke from written testimony ([Exhibit Q](#)).]

Chairman Conklin:

Last session we asked the Financial Institutions Division (FID) and the Mortgage Lending Division (MLD) to put some of these things in place, but unfortunately their attempt resulted in not having any regulation at all. We are now going back to articulate what we want. The only provision that needed editing was on page 2 of the mock-up, where Assemblywoman Gansert raised the question about being Department of Housing and Urban Development (HUD) certified. The way the bill is written now you either have to be HUD certified or meet a few other criteria which show that this is your core business. Not everyone who counsels is necessarily HUD certified, but they are still considered experts in their field.

Are there any questions or comments from the Committee?

Assemblyman Anderson:

Is the mock-up the amendment?

Chairman Conklin:

Yes, the mock-up is the amended version. Page 1 has the 10-point font so it is clearly legible. And starting on page 2, line 30 is where it addresses the type of people who typically are authorized to write the disclosures.

ASSEMBLYMAN OCEGUERA MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 151.

ASSEMBLYWOMAN MCCLAIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, ARBERRY,
BUCKLEY, GANSERT, AND HORNE WERE ABSENT FOR THE
VOTE.)

Assembly Bill 152: Makes various changes concerning mortgage lending and related professions. (BDR 54-787)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document including proposed amendment ([Exhibit R](#)).]

Chairman Conklin:

Mr. Yu, based on your reading of the Attorney General's opinion, have we clarified that the Nevada Mortgage Lending Division has jurisdiction over all of these people who conduct mortgage lending activities now?

Dan Yu, Committee Counsel:

Yes, that is established in the provisions of this bill as it is currently drafted.

Chairman Conklin:

Are there any questions from the Committee on A.B. 152? We are clarifying that we intended for a foreclosure consultant to be anyone helping to modify a loan in order for somebody to avoid foreclosure. Are there any questions from the Committee?

Assemblyman Anderson:

We dealt with this issue this morning in Judiciary in Assembly Bill 452. I do not believe there is going to be a conflict, but I would ask the Chairman to look at A.B. 452 to make sure it does not conflict with what you are about to do.

Chairman Conklin:

This entire bill is in *Nevada Revised Statutes* (NRS) Chapter 645 and your bill is in NRS Chapters 107 and 108.

Assemblyman Anderson:

I think we are OK, but both of these bills run the risk of questions relative to that procedurally.

Chairman Conklin:

Does that bill attempt to deal with loan modification consultants?

Assemblyman Anderson:

I do not believe it does. I want you to be aware of a potential conflict that could be coming forward.

Chairman Conklin:

I think there are going to be more conflicts because that bill is also in direct conflict with the Speaker's Assembly Bill 149 and Assembly Bill 140. I asked Mr. Ziegler to create a chart of the bill that you are holding along with the bills that we have, to see where the crossover is and make sure we do not miss anything. I think it is important that you and I share that information.

Assemblyman Ocegueda:

All of the policy bills, whether they are in conflict or not, still need to pass out of Committee. If we hold on to them too long, they will not be passed out of Committee and will die.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 152.

ASSEMBLYWOMAN MCCLAIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ARBERRY, BUCKLEY,
AND HORNE WERE ABSENT FOR THE VOTE.)

Assembly Bill 314: Makes various changes to provisions governing the practice
of dentistry. (BDR 54-878)

Dave Ziegler, Committee Policy Analyst:

[Spoke from work session document including proposed amendment
([Exhibit S](#)).]

Chairman Conklin:

Mr. Crowell, I want to get it on record that it is my understanding that you and the people from the school met with the Board of Dental Examiners of Nevada and this was compromise, agreed-to language. Is that right?

Robert L. Crowell, representing LVI Global, LLC, Carson City, Nevada:

We are bringing you a compromise that has been agreed upon by the Board of Dental Examiners of Nevada. Mr. Hillerby has authorized me to state that, on behalf of the Board of Dental Examiners of Nevada, we are in support and urge your consideration of this bill.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

Is the supervisor required to get the limited license, or the person who was coming into town for the education?

Robert Crowell:

The student has to bring in their own patient from their own jurisdiction and be licensed in that jurisdiction. The Nevada Board of Dental Examiners' suggestion was instead of licensing the student who is coming in, the licensing would be attached to the supervising instructor of a live patient, so they would actually get the permit. If you do live patient education in Nevada, the person who is supervising must have a limited license issued by the Board of Dental Examiners of Nevada, which is renewed every year. The supervisor is required to submit certain reports similar to what a regular licensed dentist would provide.

Assemblywoman Gansert:

I thought the supervising dentist would already be living in Nevada and have a dental license. Do they bring dentists from out-of-state to do this kind of work?

Robert Crowell:

These folks are instructors who come from all parts of the world. This bill we are bringing to you for consideration would indicate that in order to be an instructor, the dentist would have to be a graduate of an American Dental Association (ADA) accredited dental school.

Chairman Conklin:

Are there any questions from the Committee?

Assemblyman Ocegüera:

Subsequent to the last meeting we had regarding this bill, I heard some comments that this might not be absolutely agreed upon by every one of the Nevada Board of Dental Examiners' members. I certainly trust you and will take you at your word, but I want to reserve my right, on the floor, to hear from the rest of the Nevada Board of Dental Examiners.

Chairman Conklin:

If this is something that we agree to move on today, should somebody hear otherwise, would they please let the Chair know? I am more than happy to hold this for awhile. It does not have to be reported. Are there any questions or concerns?

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 314.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ARBERRY, BUCKLEY,
AND HORNE WERE ABSENT FOR THE VOTE. ASSEMBLYMAN
OCEGUERA RESERVED THE RIGHT TO CHANGE HIS VOTE ON
THE FLOOR.)

Chairman Conklin:

We will discuss Assembly Bill 513 and Assembly Bill 258 at a later date. Is there any other public comment?

[The meeting was adjourned at 4:58.]

RESPECTFULLY SUBMITTED:

Karen Fox
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 30, 2009

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 365	C	Wendy Oliver-Pyatt, MD, FAED	PowerPoint Presentation
AB 365	D	Wendy Oliver-Pyatt, MD, FAED	Proposed Amendment
AB 365	E	Lisa Black, PhD, RN	Written Testimony
AB 365	F	Lesley R. Dickson, MD	Letter
AB 365	G	Cheryl Hug-English	Written Testimony
AB 370	H	Assemblyman John Carpenter	Written Testimony
AB 370	I	Rusty A. Tybo	Letter
AB 370	J	Carolyn J. Cramer	Proposed Amendment
AB 90	K	Dave Ziegler	Work session document including proposed amendment
AB 266	L	Assemblyman John Ocegura	PowerPoint Presentation
AB 266	M	Raymond Bizal	Letter
AB 470	N	Assemblyman Bernie Anderson	Written Testimony
AB 470	O	Debra Simon	Written Testimony
AB 381	P	F. Paul Bland, Jr.	Written Testimony
AB 151	Q	Dave Ziegler	Work session document including proposed amendment
AB 152	R	Dave Ziegler	Work session document including proposed amendment
AB 314	S	Dave Ziegler	Work session document including proposed amendment