# MINUTES OF THE
# SENATE COMMITTEE ON COMMERCE AND LABOR

## Seventy-fifth Session
## May 6, 2009

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:42 p.m. on Wednesday, May 6, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Warren B. Hardy II

**COMMITTEE MEMBERS ABSENT:**

Senator Mark E. Amodei (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Bernie Anderson, Assembly District No. 31
Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman Joseph (Joe) P. Hardy, Assembly District No. 20

**STAFF MEMBERS PRESENT:**

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Carol Allen, Committee Secretary

**OTHERS PRESENT:**

Vincent Jimno, Executive Director, State Board of Cosmetology
Kathey Ditzler, Board Member, State Board of Cosmetology
Doug Christensen, Owner, The Reno Academy
Ihsan A. Azzam, M.D., M.P.H. State Epidemiologist, Health Division, Department of Health and Human Services
Trevor Hayes, Diva Beauty
Robert A. Ostrovsky, Nevada Resort Association
Fred L. Hillerby, Renown Health; Nevada Association of Health Plans
Matthew L. Sharp, Nevada Justice Association
Lea Tauchen, Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry
Jon L. Sasser, Washoe Legal Services; Washoe County Senior Law Project
Bill Uffelman, President and CEO, Nevada Bankers Association
Karen D. Dennison, American Resort Development Association
Michael Brooks, Attorney; Board Member, United Trustees Association
Ron Peterson, Board Member, Nevada Land Title Association
Steve Kilgore, Deputy Director, Henderson Constables Office
Heather Anderson-Fintak, Nevada Legal Services
Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry

Chair Maggie Carlton opened the hearing with Assembly Bill (A.B.) 202.

**ASSEMBLY BILL 202 (1st Reprint)**: Makes various changes concerning the State Board of Cosmetology. (BDR 54-681)

Assemblyman Joseph (Joe) P. Hardy, Assembly District No. 20, sponsor of A.B. 202, solicited the Committee's support for his proposed amendment to A.B. 202 (Exhibit C). He said the bill was to allow students in rural areas to be trained as cosmetologists, nail technologists and aestheticians without traveling into the bigger cities for classes, and to improve their continuing education. He advised he is working with the State Board of Cosmetology on this bill, to bring all professional standards up to date.

Senator Hardy disclosed that his wife and daughter were licensed cosmetologists but it would not affect his position on the Committee.

Vincent Jimno, Executive Director, State Board of Cosmetology, spoke in favor of the bill, pointing out that when the law was enacted, some rural towns were too far away to participate in the apprentice programs, but now this legislation will solve that problem. He described another section of the bill addressing the practice of sugaring and threading, and the need for both to be licensed and regulated by the Board of Cosmetology. Mr. Jimno described sugaring as applying a hot, sticky paste to remove hair. He said threading is a depilatory, not related to acupuncture. Other changes in the bill included the term "manicurist" being changed to "nail technologist," increasing the instructional hours for an aesthetician and licensing qualification provisions. He added the Board wanted to emphasize proper sanitization procedures by requiring eight hours of continuing education for license renewals to be added back into the bill, via the proposed amendment.

Chair Carlton asked if he preferred the original language, from the first bill reprint, regarding the continuing education. Mr. Jimno said the language he wanted was what was delivered to the Committee today, through the proposed amendment. Chair Carlton said that was the language the Assembly chose not to include in the bill. He said there was confusion in the last working hours of the Assembly and they encouraged the Board to seek the language replacement from today's Senate Committee. Chair Carlton then asked if the language for the sanitization issue was different. He said the new language would allow licensees more flexibility on where and how to take the classes and require four of the eight hours of continuing education to be related to infection control.

Mr. Jimno said the logic behind the continuing education was to reach licensees who had been licensed for nearly 20 years without taking refresher classes of any kind. Chair Carlton agreed with the infection control portion, but not the other portions of the bill, saying she wanted to study the matter. She asked how many licensees would be renewing their license in the first two cycles. He said they had 22,000 licensees and they would all relicense according to birth dates, per a new law taking effect this year. In the first two years, the free classes will be about infectious diseases and could be taken over the Internet. Other classes may be sponsored by product manufacturers. He said this was a minimal amount of education designed for the industry to focus on health care,

infection, business practices and anything else that might improve their ability to survive in the marketplace.

Chair Carlton understood the reasons for sugaring to be regulated, saying if it is too hot, it can burn, but she said tweezers are used to remove splinters, hairs etc. and she did not see the reason for licensing threading. She said it did not look dangerous. Mr. Jimno said the technique pulls the hair and follicle from the skin, leaving a small opening, allowing for the transfer of disease from one person to another, if proper sanitization is not followed. Plus, he said, it is a depilatory process and a depilatory requires a license. Chair Carlton said her objection was to the continuing education.

Kathey Ditzler, Board Member, State Board of Cosmetology, was in support of the bill and in support of regulating sugaring and threading. She pointed out that hair shows teach product knowledge, not safety and sanitation in salons. She said Methicillin-resistant Staphylococcus aureus (MRSA) is the biggest staph infection problem today and many people in the industry do not even know what it is; they need the education.

Doug Christensen, Owner, The Reno Academy, said his cosmetology school was a Paul Mitchell partner school and he is in support of A.B. 202, as education was essential in their industry and 8 hours of continuing education in 2 years was a minimal requirement.

Ihsan A. Azzam, M.D., M.P.H. State Epidemiologist, Health Division, Department of Health and Human Services, spoke in favor of the bill. He advised threading can cause inflammation, pimples or open capillaries and spread infection. He said identification of any problem is important. He added that if the instrument used to remove the hair was not properly sterilized, healthy skin could be infected. He cautioned if the skin was irritated and improperly sanitized instruments were used, infection could be spread from one person to another. He repeated MRSA is becoming a very frequent community-acquired disease, spread from surface contamination, and it was important the technicians be able to identify it.

Trevor Hayes, Diva Beauty, said he was not opposed to the bill but wanted to offer a proposed amendment to A.B. 202 (Exhibit D). He represented Diva Beauty which planned to open shops in Nevada providing threading services. Mr. Hayes said threading has been done for thousands of years in India and the

Middle East. He explained the procedure is to wrap a thread around hair and pull it out. He cited a law enacted in 2003 in California, specifically excluding threading from cosmetology licensing, with a five-year sunset on the law. In 2008, they readdressed it and removed the sunset, keeping threading excluded from their licensing process. He said it was not invasive and a cosmetology license would not add to the skill or knowledge of threading as it is not presently taught in cosmetology school. He said he was submitting the amendment to A.B. 202 to correct what was currently written.

Chair Carlton closed the hearing on A.B. 202 and opened A.B. 470.

**ASSEMBLY BILL 470 (1st Reprint)**: Prohibits noncompete agreements with certain employees. (BDR 53-1021)

Assemblyman Bernie Anderson, Assembly District No. 31, read written testimony in support of A.B. 470 (Exhibit E). He concluded his testimony stating Nevada cannot afford to lose its valuable workforce due to noncompete agreements.

Chair Carlton asked if he was aware of the amendment provided to the Committee. Assemblyman Anderson said he was aware, but not in support of it. Chair Carlton said the argument made to her was the noncompete agreement increases the value of a business. Assemblyman Anderson agreed, if you were selling a business with a well-known name. He said we are talking about people not being able to sell their skills in their own community.

Chair Carlton said she was concerned about the shortage of health-care professionals in our State and how a noncompete clause in an employment contract could keep a valuable professional from practicing in Nevada. She said she understood protecting the sale of a business with a noncompete, but not a professional. Assemblyman Anderson compared the employee noncompete agreement to a degree of servitude.

Robert A. Ostrovsky, Nevada Resort Association, said he originally testified against A.B. 470 in its original form in the Assembly. He said he then entered into negotiations with the Nevada Justice Association and Bill Bradley. He said they were concerned about restrictions on *Nevada Revised Statutes* (NRS) Title 54 licensees, and the professional engineers and certified public accountants working for the Resort Association. They all agreed to an

amendment to the bill, before confusion broke out. That amendment was provided to the Assembly, but when published in the Assembly, it was not the amendment they had agreed upon. He said the published amendment is the one that appears in the first reprint of the bill, which was passed out of the Assembly and appears today before this Committee. He said he still supports the amendment earlier agreed upon, which was an amendment to the first version of the bill. He does not support the first reprint. He added he has not had the opportunity to sit down with Assemblyman Anderson and try to work out any details.

Fred L. Hillerby, Renown Health; Nevada Association of Health Plans, said he was in agreement to the original bill, but over time, there was a breakdown in communication. His association asked that physicians be removed from NRS Title 54 because recruiting physicians is very expensive. He explained they are often recruited into existing practices where a noncompete agreement would be important. He offered an amendment to the original version of A.B. 470 (Exhibit F).

Chair Carlton said she was still concerned about health-care professionals selling their business, then deciding to stay in the state, and because of a clause in a contract, they cannot serve the citizens of the State. Mr. Hillerby pointed out the health professional may have come to Nevada only because he was offered a noncompete. He advised the reverse could happen if a professional without a noncompete took all of the employees with him when he leaves a practice. Chair Carlton agreed there were multiple levels to the problem. She gave the example of a documented case of unprofessional behavior in southern Nevada. Had there been a noncompete, the person reporting the unprofessional behavior probably would not have done so, due to retaliation. Mr. Hillerby agreed, but suggested it was still not necessary to prohibit noncompetes.

Matthew L. Sharp, Nevada Justice Association, said the idea is to protect employees without bargaining power. He also commented on Chair Carlton's concern for the value of a business being sold without a noncompete, advising this bill only applies to an employer-employee relationship.

Lea Tauchen, Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada, was neutral on A.B. 470 but said they were unclear if an employer brings in a nondegree employee and trains them in the business, can the employer protect himself with this bill?

Michael Tanchek, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry, wanted clarification. He said it looks like the bill will exempt any at-will employee from noncompete agreements. Vice Chair Schneider said that was the way he understood it as well. He said it covers a lot of people, like those in broadcasting, where a noncompete would be of great importance, who might not even be aware of the bill.

Vice Chair Schneider closed the hearing on A.B. 470 and opened A.B. 140.

**ASSEMBLY BILL 140 (1st Reprint)**: Makes various changes to provisions relating to foreclosures of real property. (BDR 2-228)

Assemblyman Marcus Conklin, Assembly District No. 37, said the bill comes from the legislative subcommittee studying mortgage lending and housing issues. He outlined the current housing crisis and how foreclosures were displacing many renters who often receive very little notice to vacate the premises from landlords or banks. Many complaints have been filed by renters who were given only a one-day notice to remove their belongings from a foreclosed house. Assemblyman Conklin reviewed the rights and duties of posting notices regarding foreclosure and sale, the responsibilities of landlords and purchasers of properties and the right of a renter to have a 60-day notice before eviction. He mentioned homeowner's associations were not a part of this bill.

Vice Chair Schneider asked, as a landlord, if he has to send something to his tenant in writing. Assemblyman Conklin answered only if his property goes into default or foreclosure.

Jon L. Sasser, Washoe Legal Services; Washoe County Senior Law Project, submitted written testimony in support of A.B. 140 (Exhibit G). He worked with the interim study subcommittee and the Assembly Committee on Commerce and Labor in developing the portions of the bill pertaining to tenant's rights in foreclosure proceedings. He said 60 percent of homes foreclosed in Nevada were either empty or tenant-occupied, with 5 of every 6 homes owned by out-of-state owners. Many banks were not even aware tenants were living in the houses. He said current law did not provide renters with much in the way of rights, therefore he was urging the Committee to pass A.B. 140.

Bill Uffelman, President and CEO, Nevada Bankers Association, said he felt the bill was as good as it was going to get, barring the amendment that the Real Estate Division, Department of Business and Industry and Nevada Bar Association want to add, declaring time-shares are exempt.

Karen D. Dennison, American Resort Development Association, submitted a proposed amendment to A.B. 140 (Exhibit H). She requested clarification on the definition of a "single-family residence." She said section 7, subsection 8, of the bill defines "single-family residence" as a structure that is comprised of not more than 4 units. Her concern was the definition could include time-share units, which are vacation ownership and fractional ownership projects. Her proposed amendment is the same language as the foreclosure mediation bill, A.B. 149, which was adopted as amended and passed.

**ASSEMBLY BILL 149**: Revises provisions governing foreclosures on property. (BDR 9-824)

Ms. Dennison said she was looking for clarification in the nonjudicial foreclosure sections, sections 7 and section 6.7, the notice provisions of A.B. 140, that they would not be applicable to time-share foreclosures. She pointed out time-shares were under the jurisdiction of the Real Estate Division and they would not allow a blanket encumbrance on a time-share project; therefore, individual time-share owners would not be affected by foreclosure unless they themselves were in default. She repeated, she is looking for an amendment stating the term "single-family residence" does not include any time-share or other property regulated under NRS 119A. With that, she and her association support the bill.

Michael Brooks, Attorney; Board Member, United Trustees Association, submitted a proposed amendment to A.B. 140 (Exhibit I). He informed the Committee that he represented trustees on a regular basis and that he was an instructor for the Foreclosure Trustee Certification Course that is given twice a year by the United Trustees Association. He indicated he was very familiar with the foreclosure process, had reviewed the statute and was presenting language that would be workable for trustees.

Mr. Brooks offered insight into the foreclosure trustee process. He defined foreclosure as a three-step process: (1) service and recordation of notice of default; (2) after 3 months default in payment, the notice of trustee's sale is

recorded, posted and served; then (3) the foreclosure auction. He explained it was an efficient process with the lender's cost ranging from $2,500 to $4,000 per foreclosure. He said one of the principles the United Trustees Association believes is important, is maintaining the cost-efficiency of the foreclosure process. He said given the number of foreclosures being done, it is important to foster a vigorous growth in the mortgage market for Nevada, when the economy does turn around.

Mr. Brooks voiced four primary concerns in regard to the statute. He said section 6.7, subsection 1, paragraph (a) of A.B. 140, requires the notice of default and the notice of trustee's sale be posted on the property the same day the notices are recorded. He noted NRS 107.080 listed no time requirement for the recordation of the notice of trustee's sale; it just requires recordation prior to the trustee's sale. His proposed amendment would require the notices of default and trustee's sale be recorded 20 days prior to the sale, and the posting on the property be within 5 days of that recording. He advised this would provide sufficient notice to the occupants of the premises about the pending sale.

He said section 6.7, subsection 1, paragraph (b), of A.B. 140 included a requirement that the contract for trustee's sale include contact information for the trustee, who is authorized to provide information regarding the foreclosure status of the property. Mr. Brooks was concerned the financial privacy rights of a borrower could be compromised. He suggested eliminating the phrase "who is authorized to provide information" and adding the notice of trustee's sale shall provide "the contact information of the trustee or the person conducting the foreclosure" sale.

Still addressing section 6.7 of A.B. 140, Mr. Brooks pointed out subsection 2, barring the removal of the notice of default and notice of trustee's sale from the property. He said the United Trustees Association was not opposed to the provision, but once the notices were posted, they did not want the obligation of making sure the notices remained on the property for the required time period. He said occupants of foreclosed properties often take the notices down and neither the occupants nor the United Trustees Association should be penalized.

Mr. Brooks revealed his last concern was in subsection 3 of section 6.7 of the bill, the provision that requires a separate notice be served upon the occupant at the same time as the posting of the notice of trustee's sale. He advised

foreclosure trustees are not lawyers, do not know how long it takes to do a post foreclosure and should not provide occupants with counsel.

Mr. Brooks emphasized the most important aspect of A.B. 140 was posting notices on the property to give occupants sufficient notice of default and trustee's sale. He said he processes 75 to 100 post-foreclosure evictions per month and offered his expertise to the Committee.

Chair Carlton said the interim study subcommittee worked on this bill for a year and he should have shared his concerns with them. She said he was knowledgeable, but quite late. Mr. Brooks said he became involved as soon as he became aware of the bill. He urged the Committee to take his comments seriously.

Ron Peterson, Board Member, Nevada Land Title Association, said they agree with the testimony of Mr. Brooks and the United Trustees Association in wanting to put forward the best bill possible. He said the Nevada Land Title Association ensures clear title. In foreclosure situations, they work with the trustees to issue a trustee's sale guarantee. He said they have been involved with A.B. 140 since its beginning, and they also have concerns. They want to be sure there is nothing left in the foreclosure procedure that will cloud title to the property and prevent them from ensuring it.

Mr. Peterson cited the bill's provision for any property being operated as a licensed health-care facility. If the property is so used, they would like the county recorder to note such a facility in county records so that when Nevada Land Title Association issues a title policy, they can notify the trustee to provide the special notices A.B. 140 requires for health-care facilities. Vice Chair Schneider suggested Mr. Peterson and Mr. Brooks work with Rocky Finseth to amend the bill.

Steve Kilgore, Deputy Director, Henderson Constables Office, spoke in support of the bill. He said there were three things his office wanted to see in A.B. 140: (1) physical notices posted on houses, (2) reasonable time limits in place for processing, and (3) the notices be posted only by sheriffs or constables. He said per state law, sheriffs and constables were the only people who could do evictions and the posting process is a weighty responsibility that needs to be done correctly. He added they were trusted guardians of due process,

requesting an amendment be put into the bill. Vice Chair Schneider said he would get a copy of the amendment to Assemblyman Conklin.

Heather Anderson-Fintak, Nevada Legal Services, said she represents tenants with the U.S. Department of Housing and Urban Development (HUD) Section 8 Rental Voucher Program. She said banks were serving the three-day eviction notices prior to the recording of the trustee's deed of sale, but the housing authority was not allowing people to vacate until the deed of sale had been recorded. She noted the lag time in the county recorder's office can take up to three weeks. She approved of the bill's provision allowing tenants 60 days from the time of service, notifying them of a new property owner, until any other action can be taken. She stressed the importance of giving tenants as much notice as possible.

Vice Chair Schneider closed the hearing on A.B. 140 and opened the hearing on A.B. 141.

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

Assemblyman Conklin submitted a proposed amendment to A.B. 141 (Exhibit J) saying it addresses the reserve level concerns of the mortgage lending commissioner and the federal government. He noted the bill creates a mortgage education, research and recovery fund, to protect consumers when their rights have been violated by a mortgage broker or agent. He advised the Federal Safe Act requires Nevada to provide either bonding or a recovery fund, in order to remain in control of the State's mortgage lending program; noncompliance would transfer control to HUD. Assembly Bill 141 will provide the required compliance. The amendment to the bill will allow the mortgage lending commissioner to assess fees for funding the recovery fund, as needed.

Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry, said his Department was in support, if the amendment, which he has not seen, is as discussed previously with Assemblyman Conklin. Assemblyman Conklin quickly read the amendment for Commissioner Waltuch. Commissioner Waltuch said he was in agreement. Mr. Uffelman expressed his support for A.B. 141 as well.

Vice Chair Schneider closed the hearing on A.B. 141.

There being no further business, the meeting of the Senate Committee on Commerce and Labor was adjourned at 3:58 p.m.

RESPECTFULLY SUBMITTED:

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Carol Allen,
Committee Secretary

APPROVED BY:

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Senator Maggie Carlton, Chair

DATE:_____