

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

**Seventy-Sixth Session
April 20, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:54 p.m. on Wednesday, April 20, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/76th2011/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 Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John Ocegüera (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Keith Lee, representing State Contractors' Board
George Lyford, Director of Investigations, State Contractors' Board
Jack Mallory, representing Southern Nevada Building and Construction
Trades Council
Joanna Jacob, representing Nevada Contractors Association
Brett Kandt, Special Deputy Attorney General, Executive Director,
Advisory Council for Prosecuting Attorneys, Office of the
Attorney General
K. Kevin Benson, Deputy Attorney General, Office of the
Attorney General
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO

Chair Atkinson:

[The roll was called. A quorum was present.] We will open the hearing on three bills. We will begin with Senate Bill 18.

Senate Bill 18: Revises provisions governing the State Contractors' Board.
(BDR 54-500)

Keith Lee, representing State Contractors' Board:

Margi Grein, Executive Officer of the State Contractors' Board, has submitted testimony ([Exhibit C](#)).

Senate Bill 18 proposes to amend *Nevada Revised Statutes* (NRS) 624.302 to add as a cause for disciplinary action in section 1, subsection 7, "Failure or refusal to comply with an order of the Board." It seems logical that, if the Board issues an order and you do not comply, there is a basis for disciplinary action. It has been challenged in recent years that there is no specific provision

to seek disciplinary action against a licensee if he fails to comply with an order of the Board. We are asking that this be added as an additional basis for potential disciplinary action.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Carlton:

We have seen this problem in other boards. What is the consequence for violation of this refusal?

Keith Lee:

It is provided in other provisions of Chapter 624 of NRS. They range from a letter of reprimand to suspension or revocation of a license. I think it would be a letter of reprimand or an administrative fine, or they would have to provide proof of compliance with the order that they failed to comply with previously.

Assemblyman Daly:

What is the typical penalty you give for someone working outside his scope or above his license?

Keith Lee:

I will defer that question to Mr. Lyford.

George Lyford, Director of Investigations, State Contractors' Board:

If we issue a citation for that type of violation, the fine could be anywhere from \$250 up to \$3,000. The hearing officer could fine up to \$10,000 at a Board disciplinary hearing.

Assemblyman Daly:

Do you issue a citation or put a letter of reprimand in their file?

George Lyford:

It depends on the facts and circumstances of each case. Generally there will be at least a citation issued. If it is in conjunction with some other, more serious violations, we would not go with a citation but we would have a formal disciplinary hearing, which would include all of the violations, not just operating out of scope.

Assemblyman Daly:

Do you think a citation would be issued if someone were over his limit and outside his scope?

George Lyford:

That would normally be the resolution unless there is something else, like a nonlicensed contractor involved or something along those lines. Each case is evaluated individually, but generally with those minor violations there would be a citation.

Assemblyman Daly:

Normally, it would be a citation, not a letter of reprimand.

George Lyford:

The contractor always has the ability to decline the citation, and at that point it automatically goes to a disciplinary hearing.

Assemblyman Daly:

How would it happen when a complaint is filed against a contractor who is working outside his scope, over his license limit, and it is not contested and no citation issued?

George Lyford:

I would think there would have to be a citation issued. If there are specific case facts, there may have been extenuating circumstances.

Chair Atkinson:

Are there any other questions from the Committee?

Assemblyman Ellison:

If there is a complaint, an investigator examines the situation and the fine is based on the violation. Is that correct?

George Lyford:

That is correct. We also have to meet the burden of proof of evidence to support the charge.

Chair Atkinson:

Are there any other questions or comments from the Committee? I see none. Is there anyone else to testify in favor of this bill?

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:

We fully support S.B. 18 and request its passage.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Daly:

Can you share some of your experiences with complaints you have made to the Contractors' Board? Have there been times when you have seen contractors working outside their scope, or over their licenses, when the Contractors' Board did not issue a citation and gave a letter of reprimand?

Jack Mallory:

I have not seen specific instances of that. One area where I have seen issues is with compliance, particularly outside business hours. That was addressed by our organization with the Contractors' Board directly, and we have been able to reach some meaningful resolution.

Assemblyman Daly:

If a contractor has received a reprimand from the Contractors' Board and he ignores it or refuses to comply, do you think a mandatory minimum penalty for that type of action would be warranted?

Jack Mallory:

I cannot speculate about what the mandatory minimum penalty should be. I think it would be fair to say that the people I represent would like to see something in statute to say that if you do a violation twice, it is a willful violation, and the penalty should be more severe.

Assemblyman Hardy:

Maybe this bill does not go far enough. In my own business, there was an individual contractor who had a parallel name to our company who sent invoices under our name. Their license was revoked, and they continued to work for a couple of years. I wonder if there needs to be a tiered scale to deal with individuals who continue to work and violate the regulations.

George Lyford:

We would support any recommendations that the Committee may have and would work to include them.

[Chair Atkinson requested Assemblywoman Carlton to assume the Chair.]

Acting Chair Carlton:

Are there any other questions from the Committee?

Assemblyman Ellison:

Would the Board consider a minimum fine of \$1,000 after a finding of a violation?

George Lyford:

In the *Nevada Administrative Codes* (NAC) there are minimum and maximum fines for violations. It could be included as a minimum fine for a particular violation.

Acting Chair Carlton:

Are there any other questions pertaining to the addition of this one sentence to this bill? I see none. Is there anyone else in support of this bill? I see none. Is there anyone in opposition? I see none. Is there anyone to speak from a neutral position? I see none.

Keith Lee:

After hearing the concerns, we would be willing to work with the parties to come up with some language to increase the penalties for second and subsequent offenses.

Acting Chair Carlton:

I will close the hearing on S.B. 18 and open the hearing on Senate Bill 19.

Senate Bill 19: Requires an applicant for a contractor's license or a licensed contractor to notify the State Contractors' Board if the applicant or licensee is convicted of, or pleads guilty, guilty but mentally ill or nolo contendere to, certain crimes. (BDR 54-499)

Keith Lee, representing State Contractors' Board:

Margi Grein, Executive Officer of the State Contractors' Board has submitted testimony ([Exhibit D](#)).

This bill would require a contractor or an applicant for a contractor's license to inform the Contractors' Board of any conviction that he may incur, or any plea of guilty, guilty but mentally ill, or nolo contendere to any felony or crime involving moral turpitude in the state or any other jurisdiction. It applies to the current licensee and an applicant for a license. Failure to do so would result in another basis for disciplinary action under *Nevada Revised Statutes* (NRS) 624.3016. This has arisen in a couple instances in recent years where a licensed contractor, under pretense of giving a bid on a job in a home, was arrested for attempted sexual abuse. We think this is an additional protection that is important to the public. We have been working with the Nevada Contractors Association to develop an amendment ([Exhibit E](#)) which limits the look-back period. Under section 3 the look-back period is forever. The look-back which we have agreed to in the amendment is a 15-year look-back with the exception of sexual abuse, child abuse, and murder or voluntary manslaughter convictions, which would have a look-back forever.

Acting Chair Carlton:

I think we need to discuss moral turpitude. What is your definition?

Keith Lee:

I know "moral turpitude" appears more than 130 times throughout the NRS, not only in the Contractors' Board statute, but in every Title 54 board and commission. I do not know what it means. It is one of those phrases that we know it when we see it, but we cannot define it.

Acting Chair Carlton:

Are there any questions from the Committee?

Assemblyman Horne:

What is the current process of notifying the Board of convictions? Did the contractors have to report this prior to licensing? If this bill passes, will someone who received a category E felony in another jurisdiction and is on probation, have an obligation to contact the Board and inform it of that conviction?

Keith Lee:

The application for a contractor's license now requires a person to reveal any past convictions of this nature. We are proposing that there would be a 15-year look-back which is limited by the proposed amendment from the Nevada Contractors Association. It will also be prospective. We suspect that we are going to get more in the prospective nature than retrospective, because we are presuming that for the most part those people accurately and under oath answered their application that they did not have any felony convictions, or if they did, they revealed them. This is a reporting requirement, not a disciplinary measure. It does not necessarily result in discipline simply because they report that. It is information that we need to know in our role to protect the public. It may be something that is not considered to be serious to the Board and there would be no disciplinary action taken or limitations or restrictions placed on the license. It would be a look-back and a look-forward.

Assemblyman Horne:

A licensee licensed in 2000 had no felony convictions. In 2004 he was convicted of a felony. Did that licensee have a duty to report? With this bill, would that person have to contact the Board to inform them about the 2004 conviction?

Keith Lee:

There was no reporting requirement, to my understanding, after the license was issued for that person to inform the Board of a conviction. If this bill passes, that person licensed in 2000 would have to report the 2004 conviction.

Assemblyman Horne:

How will the Board notify all their licensees of this new reporting requirement?

Keith Lee:

That points out an important part of the amendment proposed by the Nevada Contractors Association. Under section 3 as it is written, we are requiring the reporting be made by July 31, 2011. That will not work, so the amendment extends the date to December 31, 2011. Our intention is to advertise it on our website and in our newsletters, informing all contractors by mail or email, if it should go into effect.

Acting Chair Carlton:

Are there any other questions from the Committee?

Assemblyman Goedhart:

Is the person who had a felony conviction in 2004 still eligible to keep his license, or does it preclude him from having a contractor's license?

Keith Lee:

I do not think a felony conviction would be an automatic basis for suspension or revocation.

George Lyford, Director of Investigations, State Contractors' Board:

Having a felony conviction does not preclude an individual from having a contractor's license. That issue would be brought up before the Board, which would make a determination based upon the facts and circumstances of that felony conviction.

Assemblyman Ohrenschall:

What if someone had been convicted of a felony and subsequently had been pardoned or had that record sealed? Would he still need to disclose the information?

Keith Lee:

I do not know. I would have to have staff answer that.

Acting Chair Carlton:

We will have staff answer that question for you. Are there any questions from the Committee?

Assemblyman Ellison:

Would the applications for renewal change?

George Lyford:

I would imagine the renewals would have to have some question to verify during that time period. Renewals are processed every two years, so we would have to have a question in the renewal that would ask what had occurred during the past two years.

Assemblyman Ellison:

You should also consider asking about mental illness.

Acting Chair Carlton:

Are there any questions from the Committee? I see none. I have some questions and concerns about the term "moral turpitude." I do not think the Contractors' Board should be the morality police for contractors. I respect that you want to protect the consumers from a contractor who may have a mark on his record. We have a unique state, and things that happen in Las Vegas would definitely not occur in a lot of small towns across the Midwest. Moral turpitude is an ambiguous term, and I have concerns about allowing a licensing board to pass judgment on a licensee on moral issues without a better definition of moral turpitude, especially with the retrospective aspect of this bill. I hope we can work out some of these concerns, because I would hate to see someone get caught in this through no fault of his own. This state does not have a Romeo and Juliet law. Therefore, we do have young couples who have their names end up in a sex offender registry, and I would hate to see that come back to haunt someone 15 years later when he or she is are trying to provide for their family. I think there is more work that needs to be done on this bill.

Keith Lee:

I will look into your concerns.

Acting Chair Carlton:

I would also like to know your fingerprinting process. Upon initial licensure, licensees are fingerprinted; are they then sent to the Federal Bureau of Investigation (FBI)?

George Lyford:

The fingerprints are sent to the Nevada repository and also to the FBI. We receive reports from Nevada and the FBI on initial licensure and when a respondent is having a disciplinary hearing.

Acting Chair Carlton:

Is there anyone else in support of the bill? I see none. Is there anyone in opposition to the bill? I see none. Is there anyone to speak from a neutral position?

Joanna Jacob, representing the Nevada Contractors Association:

We are neutral on this bill. We have been working with Keith Lee and the State Contractors' Board on trying to address some of the Committee's concerns on the broad language in this bill. I submitted an amendment that was introduced by Mr. Lee ([Exhibit E](#)). We proposed a 15-year look-back in an effort to balance the rights of people who had an outstanding conviction and may have been rehabilitated. We worked with Mr. Lee on extending the reporting period to allow for proper implementation of this program and adequate notice to Nevada's contractors.

Acting Chair Carlton:

Are there any questions from the Committee?

Assemblyman Hickey:

We have many people who come into our homes to provide services. I share some of Assemblywoman Carlton's concerns if the Contractors' Board has the expertise to do this analysis and whether it gums up the works. I understand the intent of this bill, and we want to protect our families. I wonder if we are reaching too far in this particular Board's capacity to be able to manage this for the stated intention.

Joanna Jacob:

When we looked at the bill, the broad terms were a primary concern for us. What we tried to do with the amendment is to provide some definition. I looked at existing Nevada statutes on what records could be expunged and the time period in which they could be expunged or a record sealed. The 15-year period is from existing Nevada statute. Existing law does not allow records related to a sexual offense or a crime against a child to be expunged. That is defined in statute. Our intent was to incorporate those statutes to provide some guidance and definition to this bill. We worked with Mr. Lee on some other exemptions. They have a public safety concern on reporting a murder conviction or voluntary manslaughter. That is also defined in statute, so that the Board could look to those definitions. I attempted to provide a workable standard for everybody.

Acting Chair Carlton:

Are there other questions from the Committee? I see none. A question was brought to my attention on your amendment. Some of your citations do not seem to match the discussion. Will you please work with Mr. Lee and staff to address the murder citation and voluntary manslaughter? Some of the NRS numbers I believe do not track as well as they should.

Joanna Jacob:

I would be happy to do so.

Acting Chair Carlton:

Seeing no other questions from the Committee, I will close the hearing on S.B. 19 and open the hearing on Senate Bill 58.

Senate Bill 58: Makes various changes relating to an employer who knowingly misrepresents or conceals a material fact relating to a person's eligibility for industrial insurance benefits. (BDR 53-287)

Brett Kandt, Special Deputy Attorney General, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General:

I am here today to provide testimony on behalf of the Attorney General, Catherine Cortez Masto, in support of Senate Bill 58 ([Exhibit F](#)). The Workers' Compensation Fraud Control Unit within the Office of the Attorney General is the state entity responsible under *Nevada Revised Statutes* (NRS) 228.420 for investigating and prosecuting fraud in Nevada's industrial insurance system. Typically, the unit prosecutes cases where the employer has misclassified employees, misstated payroll, or failed to maintain coverage. This bill would improve the ability of our unit to prevent fraud and protect Nevada's workers by making it a crime for an employer to knowingly misrepresent or conceal a material fact concerning an employee's eligibility for industrial insurance benefits.

K. Kevin Benson, Deputy Attorney General, Office of the Attorney General:

Our Workers' Compensation Fraud Unit investigates situations where the employer has misclassified an employee or misrepresented the duties of the employee's job at the time the employee was injured. That is not a crime under Nevada law. It is a crime for an employee to make material misrepresentations concerning his eligibility for workers' compensation benefits. This bill intends to make a level playing field between both the employer and the employee. As an example, there was the case of an employee working for a landscaping firm. In the course of his employment, he punctured his eye on a broken tree limb and lost his eye. The employer misrepresented his status as an employee and said he was an independent contractor.

Senate Bill 58 makes it a crime for an employer to knowingly misrepresent or conceal a material fact regarding an employee's eligibility for benefits. Section 1 of the bill makes it a felony if the amount of the benefits involved is more than \$250. If it is less, it is a misdemeanor. Section 7 of the bill authorizes the Workers' Compensation Fraud Unit of the Attorney General's Office to recover costs that are incurred in the prosecution investigation. Section 2 extends immunity to a person who reports information about a misrepresentation to the Workers' Compensation Fraud Unit. The existing law provides immunity for people who report information to the unit regarding other violations. This extends the law to cover the violation in section 1. The remainder of the bill makes similar changes to the existing law to cover the change that is made in section 1. The unit has procedures concerning reporting, notification, and sharing information. This provides for section 1 to be covered under those provisions. Most of the sections make these provisions consistent with what is in existing law. The enactment of this bill will put employees and employers on equal footing because what is currently a crime for an employee is not a crime for the employer. This will protect Nevada workers who have a legitimate claim when their employers are making knowing misrepresentations or concealing material facts regarding employees' eligibility for benefits.

Acting Chair Carlton:

Are there any questions from the Committee?

Assemblyman Daly:

There is more to this than you mentioned. A typical fraud is to pay a rating on an office worker instead of a construction worker. Will this cover a wage and hour violation where they do not show the proper wage rate or the correct number of hours?

Brett Kandt:

We typically see underreporting the number of employees on the payroll, no coverage, making the employee pay the insurance, asking the employee not to receive proper medical care for an on-the-job injury, concealing employee information, misclassification, or kickbacks. The employer may refer the employee to a medical facility and receive compensation from the facility. Those are the types of fraud that would be covered under this sanction.

Assemblyman Daly:

I have seen situations where the employer tells the employee not to report the injury to workers' compensation and to use his private insurance. Will it cover that?

Brett Kandt:

I believe that would be covered if it is a knowing misrepresentation.

Assemblyman Ellison:

What if an employer sends his employee to a doctor instead of making a workers' compensation claim? Is that a violation? What about the employee who is injured on his own time and comes to work to make a workers' compensation claim?

Brett Kandt:

Nevada law already provides that an employee who makes material misrepresentation can face a criminal sanction. We are now addressing the other side of the equation. The scope of this proposal would address any knowing misrepresentation or concealment of a material fact regarding an employee's eligibility. If the employee is eligible under the law for coverage, any knowing misrepresentation or concealment that the employer makes, in an effort to obstruct or avoid the employee receiving a benefit to which he is entitled under Nevada law, would be covered. Knowingly is a high standard, not a strict liability standard.

Assemblyman Ellison:

If the employee is satisfied with the treatment for a minor injury, is that a problem, or does it still have to be addressed as a workers' compensation claim? When the employer wants to pay for the medical care and not have a claim filed, can you address the issue?

Brett Kandt:

Our unit is concerned with fraud. Most employers play by the rules and do everything they can to cooperate to ensure their employees receive the coverage they are entitled to under the system. We are talking only about a small fraction of employers who are seeking to skirt the rules and deny their employees the legitimate benefits to which they are entitled under Nevada law. That is the class of employer that we are looking at. I do not know how our unit would handle an isolated incident, as you described, where an employer wants to be sure an employee gets the needed medical care up front and the employee considers that to be acceptable. The system is concerned with up-front care and any long-term care that may result.

Acting Chair Carlton:

Are there any other questions from the Committee?

Assemblyman Goedhart:

The workers' compensation insurance demands that even if it is a minor incident, it is claimed through workers' compensation because there are two different factors that affect your modified experience ratings. There is the frequency and the severity. If you have a zero lost-time job injury, they usually do not hold that against you, but they want to know the frequency of occurrences. They want to know about every claim no matter how small it may be.

Acting Chair Carlton:

Are there any other questions from the Committee? I see none. Did I understand you correctly that the fines and penalties in this bill track with what would happen to the employee if he had broken the rules?

Brett Kandt:

Yes. I believe the fines and the penalties are commensurate for employee misrepresentation and employer misrepresentation. If it is a benefit of less than \$250, it is a misdemeanor, which is punishable with up to six months in prison and up to a \$1,000 fine. If it is more than \$250, it is a category D felony and punishable with one to four years imprisonment and up to a \$5,000 fine.

Acting Chair Carlton:

If you had a licensee guilty of a category D felony, would you relay that information to the appropriate licensing boards so they would be aware of how that licensee was behaving with their employees?

Brett Kandt:

I will get that information for you.

Acting Chair Carlton:

That would be helpful because we have had communication problems in the past. If there is an issue with a licensee, we would like the Board to be aware of it. Are there others to testify in support of the bill?

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:

We support this bill in its entirety. Not only is this a worker protection issue and worker equity issue, it is also a fair competition issue. When a contractor's company intentionally misclassifies its employees, such as an ironworker being classified as an administrative assistant, it is doing so for a cost benefit. There is a substantial difference in the modification factor between the two classifications. It is all based on payroll dollars. There are unscrupulous individuals who try to take advantage of the situation for financial benefit.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

We support this bill. Employees came under the fraud provisions in 1993, and people have been subject to prosecution. For the employers, that did not happen. As a member of the Advisory Council to the Division of Industrial Relations (DIR), I want to give some examples. Approximately four years ago a person in California developed a machine that complied with California's Environmental Protection Agency to remove the gas from aerosol cans. He went to Minden and had five undocumented workers working in an overseas shipping container where they were removing gas from aerosol cans using a spike. These cans are sometimes flammable, and one of the cans sparked and ignited inside the container. It killed one worker, and those others who lived sustained massive injuries. One individual had a \$1 million claim. Every other employer in the State of Nevada paid for that incident. Unfortunately, the law is written for the bad people. I do not see this as going after a good contractor who is trying to do the right thing and take care of his employees.

Another function of the DIR Board is that we have to write off the bad debt that the state cannot collect on these fines. Every good employer in the state has to pay every time we have to write off one of these debts. I think it is a very important that the law has changed to say that a business cannot go out of business one day and open another business with fines owed, because it has happened.

Acting Chair Carlton:

Are there any questions from the Committee?

Assemblyman Hardy:

Do you think this bill goes far enough?

Danny Thompson:

When the fraud statute for employees was initiated, people were prosecuted. I think anything you can do to minimize those risks for everyone in today's economy would be a step in the right direction.

Acting Chair Carlton:

Are there any questions from the Committee? I see none. Is there anyone else to speak in support of S.B. 58? I see none. Is there anyone to speak in opposition to the bill? I see none. Is there anyone to speak from a neutral position? I see none. I will close the hearing on S.B. 58.

[Chair Atkinson assumed the Chair.]

Chair Atkinson:

Is there any public comment? [There was none.] Is there any other business to come before the Committee? [There was none.]

The meeting is adjourned [at 2:57 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 20, 2011

Time of Meeting: 1:54 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 18	C	Keith Lee	Testimony
S.B. 19	D	Keith Lee	Testimony
S.B. 19	E	Keith Lee	Proposed Amendment
S.B. 58	F	Brett Kandt	Letter of Support