

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-sixth Session
March 14, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 1:14 p.m. on Monday, March 14, 2011, 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 Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

COMMITTEE MEMBERS ABSENT:

Senator Allison Copening (Excused)

GUEST LEGISLATORS PRESENT:

Senator John J. Lee, Clark County Senatorial District No. 1

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Vicki Folster, Committee Secretary

OTHERS PRESENT:

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry

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Joanne Levy, Chairman, Nevada Association of REALTORS® Legislative
Committee
Gary Lenkeit, Ph.D., Board of Psychological Examiners

CHAIR SCHNEIDER:

Instead of holding a formal subcommittee hearing, I invite anyone concerned with energy bills, Senate Bill (S.B.) 59, S.B. 182 and S.B. 184, to meet tomorrow morning at 10 a.m. in my office to reach some consensus on the proposals for these bills.

SENATE BILL 59: Increases the cumulative capacity of net metering systems operating within the service area of an electric utility. (BDR 58-408)

SENATE BILL 182: Makes various changes concerning renewable energy systems. (BDR 58-286)

SENATE BILL 184: Requires the Public Utilities Commission of Nevada to establish the Renewable Energy Systems Development Program. (BDR 58-229)

Senator Parks' subcommittee is introducing Bill Draft Request (BDR) 53-168, relating to industrial insurance, which revises the definition of "independent contractor," and revises provisions relating to the posting of a notice identifying an employer's industrial insurer.

BILL DRAFT REQUEST 53-168: Amends definition of "independent contractor" for purposes of workers' compensation law. (Later introduced as Senate Bill 242.)

SENATOR PARKS MOVED TO INTRODUCE BDR 53-168.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

The next order of business is S.B. 202 which was referred to the Committee by Senator Lee. This bill deals with contact lenses and should be referred back to the Senate Committee on Government Affairs.

SENATE BILL 202: Revises provisions governing the sale of contact lenses.
(BDR 19-987)

SENATOR PARKS MOVED TO REREFER S.B. 202 TO THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

We are ready to hear S.B. 189.

SENATE BILL 189: Revises certain provisions governing real estate transactions.
(BDR 54-615)

SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):

I understand there are many good real estate licensees in Nevada. There are, however, some individuals who do not perform to the standards required of *Nevada Revised Statute* (NRS) chapter 645. Real estate licensees are responsible for following guidelines as set out in the Duties Owed by a Nevada Real Estate Licensee (Duties Owed) form which states, among other duties, that licensees shall use reasonable skill and care to seek a sale for a property. If a client signs a listing agreement to sell a property with the real estate licensee and the licensee fails to perform the duties outlined in the Duties Owed form, the client is not informed of what actions they may take to resolve the situation. There is no client recourse written into this form. Presently, the recourse would be to contact the agent first and the agent's broker second to complain. If the client is still dissatisfied for cause, the recourse is to file a complaint with the Real Estate Division, Department of Business and Industry (Division), or file a civil suit. Sometimes, time is too short. In a short-sale situation, time is very

important. There is no way to break a contract and hire someone else to complete the transaction.

In an instance where a client is still dissatisfied, an agent or broker will not offer to tell the client of other available options to file a complaint or to file a civil suit. Brokers have the power to reassign a client to another agent in their office or release a client from the listing agreement, but the broker has no motivation to let the listing go to another brokerage. I will venture that most brokers will use good judgment and try to satisfy their clients; however, some brokers do not. In cases where an agent or broker tries to hold the listing hostage, there should be another avenue other than the two noted. We have to protect the public, especially in this market.

My Senate district is one of the hardest-hit in the Country by foreclosures. I have submitted S.B. 189 to address some of the issues my constituents are encountering. Constituents in these situations are relying on the real estate agents and the Legislators to assist them with the challenges of the economic downturn as they try to keep their heads above water.

Section 1 of the bill allows the consumer to provide notice to the real estate agent to terminate the listing agreement for the agent's failure to perform the duties owed the client. Once the agent receives notice, the agent and his or her broker have three days to rectify the issues. If the client is still not satisfied and can document the claim, the consumer client is able to cancel the contract.

Section 2 of the bill requires the Division to create and distribute a Consumer Real Estate Bill of Rights ([Exhibit C](#)) to be given to the consumer by the real estate agent. The intent of the Duties Owed form is to outline the duties owed, within the brokerage agreement, describing what it means and what the consumer is able to do if the agent fails to perform those duties outlined by the broker. The listing agreement is very one-sided. It states what the client owes the brokerage, but does not address any actions required by the brokerage to the client. Today, we want to discuss a way to change this and give the seller additional rights.

Some work needs to be done to solve this problem. I have been working closely with the Real Estate Commission, Realtors and real estate agencies in Nevada. We are trying to develop additional rights for individuals who are mistreated by brokers.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

The Division has two comments on S.B. 189. I submitted two documents for informational purposes through Nevada Electronic Legislative Information System. One is the current law for duties owed by a Nevada real estate licensee, NRS 645.252, 254 and 257 ([Exhibit D](#)). The other document is the Duties Owed by a Nevada Real Estate Licensee form ([Exhibit E](#)). This Division form establishes, in writing, a clear relationship between the client and the agent.

In section 2 of S.B. 189, the Division supports clear communication and disclosure regarding what a licensee is required to do for a client when acting as an agent in a real estate transaction. Section 2 proposes to set forth a more detailed explanation of what the client, and all parties to the transaction, can expect and should not expect. This disclosure will provide better and clearer communication between the licensee and the prospective client. The licensee will discuss in more detail what the agent is going to do. It will let the client know what to do and what can be done if the agent has failed to perform in those duties.

In the past six months, the Division has brought complaints to hearing before the Real Estate Commission regarding licensees who are not performing these duties and responsibilities. In fact, there have been several complaints. The licensee is required to review thoroughly, point by point, with the prospective client what will be done to find property or market property, in the form of good, clear information.

In section 1 of the bill, we have concerns about the cancellation dispute becoming the jurisdiction of the Division. The Division's investigative caseload continues to grow and the investigative staff continues to decrease. Outside of this form, the Division has not had involvement over contractual disputes pertaining to commission payments related to the agency relationship. Those have been handled as civil contractual disputes.

I am pleased to work with Senator Lee on S.B. 189. I support the intention of the bill, but have concerns about the logistics in section 1.

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JOANNE LEVY (Chairman, Nevada Association of REALTORS® Legislative Committee):

I have been a real estate licensee for 34 years and a broker for 32 years. The Nevada Association of REALTORS® opposes S.B. 189. This bill proposes to allow the unilateral termination of a brokerage contract upon subjective terms. Brokerage contracts are signed between a client and the broker upon commencement of representation. It is not a contract between the agent and the client. I have provided my written testimony for your consideration ([Exhibit F](#)).

SENATOR LEE:

I am willing to meet and work with these good people. The concern I have is not unrelated to the real estate transaction of selling a home, but with a short sale. For instance, a bank may authorize a short sale, and the seller will hire an agent who may not market it correctly or does not perform as agreed. Time becomes the enemy. This becomes cumbersome in instances of short sales and may jeopardize the seller's credit.

CHAIR SCHNEIDER:

I understand the process for short sales and the need for a Realtor who understands short-sale processing. Proper Realtors are needed. The big delays, however, seem to come from the banks. They will tell the seller they need to be behind in payments for three months before a short sale can take place. The seller has to ruin their credit before the bank will do a short sale, and it may take another six to nine months after that before action is taken. Personally, with my constituents, the problem lies with the banks, and the Realtors do not get paid until they close the transaction.

SENATOR LEE:

I will follow up with that. In some situations, individuals may hire agents who purport to be short-sale experts, and then later find out the agents are not. The learning curve may be too long to have these "experts" working for you. I agree concerning the banks. Many times banks appear to work with the seller, but then end up issuing foreclosures.

CHAIR SCHNEIDER:

We will close the hearing on S.B. 189. The next bill, Assembly Bill (A.B.) 33, is now open for discussion.

ASSEMBLY BILL 33: Revises provisions governing the Board of Psychological Examiners. (BDR 54-504)

GARY LENKEIT, PH.D. (Board of Psychological Examiners):

Assembly Bill 33 is designed to assist the Board of Psychological Examiners in pursuing complaints against individuals practicing psychology without a license. Currently, there is no mechanism for pursuing individuals who violate NRS 641.390, and A.B. 33 will correct that oversight.

CHAIR SCHNEIDER:

We will hold A.B. 33 for the work session and take it under advisement.

SENATOR PARKS:

Are the violations and administrative fines consistent with other citations that are issued by other medical boards?

DR. LENKEIT:

I believe they are, but I am not certain. This came up because we have had some individuals practicing psychology without a license, and pursuit of this by our Board has been difficult. Our deputy attorney general suggested adding this language in order to assist in pursuing these types of complaints.

SENATOR SETTELMAYER:

Is it fairly common that a fine is issued and the individual then has 30 days to request a review? Or is it more common to have a situation where a fine is issued with a hearing date set to refute it; something in the affirmative rather than in the negative? Is that the standard way we do it?

DR. LENKEIT:

The only time we have had any type of fine for anyone as a psychologist is when there is a complaint and a fine. That only occurs after a hearing. I believe it would be the same for this bill.

SENATOR SETTELMAYER:

If I interpret this correctly, it reads "to appeal the citation." Does this mean the assessment of the fine occurs after the citation?

DR. LENKEIT:

Yes.

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CHAIR SCHNEIDER:

Mr. Nichols, do you know if these amounts are normal?

MATT NICHOLS (Counsel):

"Mr. Chair, I would be happy to look at the NRS and get back to you with a list of the different citations and administrative fines that can be imposed. I could have this by Wednesday."

CHAIR SCHNEIDER:

Mr. Nichols will get back to the Committee by Wednesday, March 16, 2011, with that information.

There being no further business of the Senate Committee on Commerce, Labor and Energy, we are adjourned at 1:41 p.m.

RESPECTFULLY SUBMITTED:

Vicki Folster,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Senator Lee	Consumer Real Estate Bill of Rights
S.B. 189	D	Gail Anderson	Statutory References
S.B. 189	E	Gail Anderson	Duties Owed by a Nevada Real Estate Licensee form
S.B. 189	F	Joanne Levy	Written Testimony