

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

**Seventy-Seventh Session  
May 1, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:31 p.m. on Wednesday, May 1, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman David P. Bobzien, Chairman  
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman  
Assemblywoman Irene Bustamante Adams  
Assemblyman Skip Daly  
Assemblywoman Olivia Diaz  
Assemblyman John Ellison  
Assemblyman Jason Frierson  
Assemblyman Tom Grady  
Assemblyman Ira Hansen  
Assemblyman Crescent Hardy  
Assemblyman James W. Healey  
Assemblyman Pete Livermore  
Assemblyman James Ohrenschall

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Maggie Carlton (excused)  
Assemblyman William C. Horne (excused)



**GUEST LEGISLATORS PRESENT:**

Senator Mark A. Hutchison, Clark County Senatorial District No. 6  
Senator Michael Roberson, Clark County Senatorial District No. 20

**STAFF MEMBERS PRESENT:**

Kelly Richard, Committee Policy Analyst  
Matt Mundy, Committee Counsel  
Leslie Danihel, Committee Manager  
Terry Horgan, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

James L. Wadhams, representing Anthem Blue Cross & Blue Shield/Denver, the Nevada State Association of Health Underwriters, the Nevada Association of Insurance and Financial Advisors, and the Nevada Independent Insurance Agents  
Jon M. Hager, Executive Director, Silver State Health Insurance Exchange  
Brian McAnallen, representing the Las Vegas Metro Chamber of Commerce  
Fred L. Hillerby, representing the Nevada Association of Health Plans  
Tray Abney, representing The Chamber of Reno-Sparks-Northern Nevada  
Barry Gold, representing AARP Nevada  
Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates  
Gail Tuzzolo, representing the Nevada State AFL-CIO  
Patrick Sanderson, representing the Nevada Alliance for Retired Americans  
William Wright, representing Chamber Insurance and Benefits, Las Vegas Metro Chamber of Commerce  
Samuel McMullen, representing the Las Vegas Metro Chamber of Commerce  
Dwight Mazzone, representing the Nevada State Association of Health Underwriters; Member, Consumer Assistance Advisory Committee, Silver State Health Insurance Exchange  
Chris Ferrari, representing the Nevada Dental Association  
Johnathan R. (JB) White, D.D.S., Private Citizen, Las Vegas, Nevada  
Helen Foley, representing Delta Dental Insurance Company  
David M. White, D.D.S., Private Citizen, Elko and Reno, Nevada  
Yolanda T. King, Director, Budget and Financial Planning, Clark County

**Chairman Bobzien:**

[Roll was taken. Committee protocol and procedures were explained.]

We will open the hearing on Senate Bill 352 (1st Reprint) and welcome Senator Hutchison to the Committee.

**Senate Bill 352 (1st Reprint): Revises provisions relating to the Silver State Health Insurance Exchange. (BDR 57-1057)**

**Senator Mark A. Hutchison, Clark County Senatorial District No. 6:**

During the last legislative session, the Legislature created the Silver State Health Insurance Exchange. This exchange will provide the means for the residents of Nevada, as well as certain employers, to purchase and sell health insurance. The exchange is governed by a board of directors consisting of seven members plus three nonvoting, ex officio members. Five members are appointed by the Governor and one each is appointed by the Majority Leader of the Senate and the Speaker of the Assembly. The ex officio members are appointed by the Director of the Department of Health and Human Services and by other departments.

Senate Bill 352 (1st Reprint) initially set out to expand the types of members on the board. We initially wanted to include those who had experience in the large health insurance market as well as experience with the industry in general. That effort was pared back in the Senate, and the bill now is a measure that removes the prohibition of any voting member on the board being affiliated with a health insurer. We are now in the stage where the exchange is being promoted and marketed, and we feel it is important that there be some board members who can help implement the exchange. It is no longer a matter of setting the exchange up, and we are not talking about regulations or regulatory needs. What we are talking about now is marketing and promotion. The bill will remove a current prohibition in the statutes that does not allow health insurance company members to sit on the board. Mr. Jim Wadhams will further develop the bill.

**James L. Wadhams, representing Anthem Blue Cross & Blue Shield/Denver, the Nevada State Association of Health Underwriters, the Nevada Association of Insurance and Financial Advisors, and the Nevada Independent Insurance Agents:**

Senator Hutchison did a great job of laying out the bill. I want to draw your attention to language on page 2, lines 7, 8, and 9. That is original language from the bill passed during the 2011 Session. At that time, the Legislature decided that at least one area of expertise that would be desirable on the board would be "Expertise in the individual or small employer health insurance

market." I know this Committee has had some presentations from Mr. Hager, the Executive Director of the exchange, but this is where this marketplace will go. Individuals and small employers can sign up.

On that same page 2, lines 32 through 37 almost contradict that language. Those lines read that you cannot be on the board if you have that expertise. We think the deletion of that conflict language would allow, at the discretion of the Governor, the Majority Leader of the Senate, or the Speaker of the Assembly, to consider appointing someone with the expertise mentioned in lines 8 and 9. There is nothing mandatory in the language, but the prohibition would be eliminated.

In the Senate, we heard some concerns that such an appointment might create conflicts of interest. That may be based upon a misunderstanding of what the exchange is. The exchange is not an insurance company; it is one more element created by the Affordable Care Act (ACA) for people to access a website and be able to find out whether they might be eligible for Medicaid, Medicare, or commercial insurance policies. The exchange is really a marketplace, and the commercial insurance companies that will participate will still be fully regulated by the state of Nevada's insurance commissioner.

What Senator Hutchison said is the reason why this legislation originally identified the opportunity for the expertise to be added. We are in that phase now where it is going to be critical to reach out to the people, attract them to this website, and be able to get them to participate—especially those small employers that may have subsidies available. They, and the individuals, will be the primary beneficiaries of the exchange.

To summarize, I think part of the opposition has been based on a misunderstanding. The insurance commissioner will still be the full regulator, and this exchange will just be a segment of the marketplace where products will be offered subject to the insurance commissioner's regulation. The deletion of section 1, subsection 6, simply allows one of the three appointing authorities to consider an individual with insurance expertise.

As this Committee is well aware, *Nevada Revised Statutes* (NRS) 281A.400 in the Code of Ethical Standards includes a code of ethics for state employees that would preclude any issue conflict that might arise for anyone on the board, whether they are an insurance expert or a consumer advocate. That code would deal with the potential for conflict. With that, I appreciate your favorable consideration.

**Chairman Bobzien:**

Are there any questions from the Committee?

**Assemblyman Frierson:**

Reading the language in existing statute, it seems as though what is being proposed in this bill is attempting to correct a contradiction, but my reading of it does not see it as a contradiction. It seems to me that you can be someone with that level of expertise but not currently affiliated with a health insurer. You could have several years of experience in that area or be retired from working in that area. It does not seem to me that we are correcting a contradiction as much as expanding. I want to be sure I understand the intent—we are expanding it and not correcting a contradiction.

Is there a problem we are fixing here? Is there a lack of individuals who have the expertise necessary to provide a pool to pick from? Are we saying we think a person who is currently working in that industry would be best served to be a voting member?

**Jim Wadhams:**

You raised three important points. From a purely legal standpoint, reading those lines that are deleted, you are correct. Someone who has expertise, it might be dated; in fact, it could not be current. A recent retiree could potentially qualify to be in that pool. It is not an absolute preclusion, but in our state, that could very much limit that potential in the pool.

The second element is that we think there is a slight misperception. This board does not regulate insurance products or navigators. It is the vehicle through which those elements operate. There is another bill in your Assembly Ways and Means Committee right now that deals with the licensing of what are called navigators and insurance agents. It will put that in the hands of the insurance commissioner.

You also asked whether we are trying to correct a problem. I do not know that we are trying to correct a problem. There is currently one individual on that board who does have some insurance expertise, although I think she qualified because technically her experience is not with an insurance company. She is Leslie Ann Johnstone, Executive Director of the Health Services Coalition, who has been terrific on that board. We are just concerned that there be an opportunity for the Speaker, Governor, or Majority Leader, when she rotates off the board, to appoint someone else to come on. It is not a problem we have had; it is making sure that a pool is available to the selecting authorities.

**Assemblywoman Bustamante Adams:**

There are still going to be the same number of voting members?

**Jim Wadhams:**

That is correct.

**Assemblywoman Bustamante Adams:**

So, one would have the expertise. You do not think there would be a disadvantage for the person who does have the expertise within the insurance market? If I were another carrier, I would be jealous if Anthem got in.

**Jim Wadhams:**

Good competitors, almost by definition, tend to be competitive. That is a fair comment, but the point is the exchange is not regulating. It is not creating an advantage. It is the expertise concerning how to market, how to reach out and induce people to consider the various options, which would be more than insurance. They would include Medicare, Medicaid, and the subsidies. The current board would stay the same. This does not obligate any of the three appointing authorities to appoint an insurance expert; it merely says they have that option because the conflict is no longer there. I want to again reference NRS 281A.400, which precludes anyone on the board from making a decision that may personally advantage them or the business or entity for which they work.

I happen to be a member of AARP, which has an endorsed product from The Hartford insurance company. Because of that relationship, I might be precluded from being appointed as a consumer on this particular board. I think this language is too constraining, and we are trying to eliminate it so that the option is open. It is not a requirement; it would be an option.

**Assemblyman Ohrenschall:**

If S.B. 352 (R1) is passed into the NRS, when could we see some of these new members be appointed to the voting positions? How long do the terms of the current members last?

**Jim Wadhams:**

I have no idea what the current terms of appointment are. They are terms of several years in length and are staggered.

**Assemblyman Ohrenschall:**

Is the prohibition on voting members having affiliations with health insurers that we currently have in the NRS something most other state exchanges have for their exchange boards, or is that unique to Nevada?

**Jim Wadhams:**

Among the state-run exchanges, it is split. It is not universal in either direction. There are other states that specifically preclude a connection with a health insurer; however, Oregon and Utah do not. Again, the language in this bill is permissive, so it would be up to the discretion of any of the three appointing authorities.

**Chairman Bobzien:**

I believe our Legal Counsel can give you the answer to your first question, Mr. Ohrenschall.

**Matt Mundy, Committee Counsel:**

I believe the initial terms are for one year and any subsequent terms are for three years.

**Assemblyman Ohrenschall:**

Are the current seven voting members in their initial one-year terms? They have not been appointed to the subsequent three-year terms, is that correct?

**Matt Mundy:**

I am not sure if I know the current status of the individual members at this point.

**Jon M. Hager, Executive Director, Silver State Health Insurance Exchange:**

I am here to answer these questions, but before I begin, I do want to state that the board is neutral on this bill.

The initial terms are staggered, based on the bill from the last session. They were one-, two-, or three-year terms. The follow-up terms are three years in length. To continue on the board, either no appointment is made or the appointing authority has to make an appointment. A member can be reappointed to that same term. Two board member positions are expiring on June 30. I believe one is the Speaker of the Assembly's appointment and one is the Governor's appointment. The remaining positions last for between one and two years.

**Assemblywoman Diaz:**

Referring to my colleague Mrs. Bustamante Adams' question, I have difficulty not seeing any type of conflict of interest. I was reading some of the opposition's information, and it states that the Department of Health and Human Services at the federal level said we should try to avoid this at all costs. If we embrace one person from one insurance carrier, I do not see how there

potentially might not be a conflict of interest. That person might influence how we do things in our state in that area. Could you shed some light on that?

**Jim Wadhams:**

We currently have an individual on the board with insurance expertise. As I mentioned, her expertise is in a private as opposed to a commercial insurance company, but that expertise has been very valuable in many of the decisions the board has made. I am not sure I understand the circumstances in which conflicts could occur, because the regulation of the activity of commercial insurance companies will continue to be in the hands of the state's insurance commissioner. This board does not have regulatory authority over that marketplace. The insurance commissioner would have that authority. This bill would allow someone with insurance expertise, like the existing member has, to contribute information in the board's deliberations that could be valuable, particularly in this phase of outreach to the communities. For instance, how do we do this in a way that induces people to take advantage of the opportunities?

I read some of the letters in opposition. They are thoughtful letters, but I can only say I think they are based upon a perception that this board has some regulatory control through which an advantage could be gained. The board does not have regulatory control.

**Senator Hutchison:**

I want to emphasize what Mr. Wadhams just said. This board does not have regulatory authority over issues the board would deal with. I would note that most boards contain experts and practitioners in their particular fields and those boards do have regulatory authority, for example, the Board of Medical Examiners, the Chiropractic Physicians' Board of Nevada, and the board for the Real Estate Division. There are usually professionals on those boards, and the reason we are able to trust those individuals as professionals not to engage in conflicts of interest is our ethics in government laws. Those laws preclude that. The Commission on Ethics was created for the very purpose that if someone is doing that, you lodge a complaint with the Commission on Ethics and they investigate it. I offer this information to you as another safeguard.

**Chairman Bobzien:**

Are there additional questions?

**Assemblywoman Bustamante Adams:**

Mr. Wadhams, in order to broaden the scope, because it would only allow one member on the board, could there be an advisory board with no voting privileges? This one person could still provide expertise. That would level the



playing field and could include providers that would be interested in sharing the marketing and research aspects.

**Jim Wadhams:**

If you look at page 2 of the bill, current law identifies five categories of expertise that presumably either the Speaker of the Assembly, the Governor, or the Majority Leader of the Senate would consider from a pool of nominees. The person appointed would have to have one of those categories of expertise. It is theoretically possible that those three appointing authorities could appoint five consumers. I think the intent of the original legislative enactment was that, through the dispersal of this appointing authority, those appointing authorities would try to identify that blend.

The direct answer to your question is, the way this has been developed, that board has created several advisory committees, including many insurance agents, many insurance company executives, and many sorts of consumer organizations. I have listened to Mr. Hager testify, and he talks about the number of meetings he and his staff have had to support, and that number is staggering. There is information, but the question is, if the Legislature saw fit to include this kind of expertise in the first place, it does not make sense to have this conflict provision that generally, but not exclusively, would preclude that participation at a decision-making level.

**Chairman Bobzien:**

Do we have additional questions? [There was no response.] It might be helpful, Committee, if we could ask Mr. Hager additional questions. Hearing the board's role now and putting it into the context of the evolution of the Silver State Health Insurance Exchange, its implementation, and the impending rollout, what is the work program now? We have been hearing that it will be marketing—getting the word out. In my experience, we call it evangelizing. Hearing specifically about the work program this board will be engaged in going forward might be beneficial for the Committee.

**Jon Hager:**

There are tentacles reaching out to all different aspects. There are many pieces to this program. Right now, we are working on our marketing and advertising campaign. We held a committee meeting to select navigators. Those navigators will start getting their training during the July-August period. They will be certified by the Division of Insurance. We will start our advertising this summer. You will see it really ramp up in October, when people can actually start enrolling. We have our new logo—Nevada Health Link.

We are working right now with the carriers on a weekly basis. There are multiple aspects to this that we have been discussing with the carriers, and now the meetings are more technical and one on one. Each carrier has an operational group, a technical group, and a plan group of some kind, so those three groups are meeting one on one with our vendors to make sure they have the information they need. Some five or six vendors have been participating in these sessions. We hope that continues and that they actually continue to participate in the exchange.

We will have a demo of our web portal on June 12 for our board and on June 13 and 14 for our exchange summit that will be in Reno and Las Vegas. We will have a final design review with the Centers for Medicare and Medicaid Services (CMS) and the Center for Consumer Information and Insurance Oversight the next week. An operational readiness review will be in the first week of September, and we roll out the program in October.

**Assemblyman Daly:**

I understand what you are saying about having expertise on the board, but it still has a lot to do with the insurance industry. When I read the purpose of the exchange at NRS 695I.210, it is to: "(a) Create and administer a state-based health insurance exchange; (b) Facilitate the purchase and sale of qualified health plans." Then you start talking about your marketing plan to tell people to come to the exchange and that these are the qualified insurance providers. When you look at the duties of the board at NRS 695I.370, subsection 2, paragraph (a), they also develop the regulations concerning what the exchange is going to look like and how the various purposes are facilitated. To me, too many of these items are like the insurance industry regulating itself concerning how it is going to make sales and advertise. It sounds way too close if we cannot find experts who are not in positions where they are going to be able to self-deal. If it were a legislative issue, we would be in real trouble for doing that.

**Senator Hutchison:**

There is always a question concerning where to get the professional expertise to regulate an industry, no matter what it is, and that expertise is usually found within the profession being regulated. I spent six years on the Commission on Ethics prosecuting public employees and public officials who engaged in wrongful conduct by using their public offices to promote a private gain. That is unethical. It is illegal in this state, and if people engage in those kinds of practices, they are generally caught and made to pay a price—both politically and monetarily. The ethics in government laws are strong in this state, but even more relevant is Mr. Wadhams' initial point: we are at the point now

where we are not creating regulatory schemes; we are rolling out the product itself. We are marketing and selling the product.

**Assemblyman Daly:**

You just said you cannot use your position for self-gain, so I do not know how you sit on the exchange but also sell insurance on the exchange. It seems to me those things would have to be mutually exclusive. Find some expertise from someone who is not in the exchange, but I do not think you can be on the board, regulate it, and advertise to my company to buy it. I think you are going to have a problem.

**Senator Hutchison:**

If that is the standard, which it is not now in this state, then we cannot have any doctors on the Board of Medical Examiners, we cannot have any chiropractors on their board, or any real estate professionals on the real estate board. We do not currently employ that standard within the state. If we did, we would have to eliminate all professionals from any regulatory boards that regulate their professions. This is one step removed from that in that we are not now at the point where we are regulating the insurance exchange. We are actually implementing and rolling out the exchange.

**Jim Wadhams:**

To address Mr. Daly's questions, as you read the statute, what the board has been doing is developing regulations for its operation. This committee, independent of anything the exchange does, reviews all of Title 57—which is about 52 chapters of NRS—that regulate insurance companies, including unfair trade practices, agent licensing, and all sorts of things. The insurance commissioner is still expected to regulate that conduct, whether it is conducted by my insurance company on the exchange or by my insurance company off the exchange. There is a tendency, when you read that statute, to think that they are doing regulations, but the insurance commissioner still has to do that.

I think when the Legislature adopted this, they did not propose someone having expertise as a possibility for no reason. The advantage of having someone with insurance expertise on the board is what is being brought to the board right now with Ms. Johnstone's expertise and understanding of how the mechanism works. There may be a time when nobody with insurance expertise is seated on that board, but that would be a decision made by the appointing authorities.

**Chairman Bobzien:**

It is an interesting point and one we keep coming back to. I believe it would bear a little research into the legislative history as to why that language was included, basically saying that we recognize the need for expertise from this

industry sector being represented and yet we are going to place this prohibition. I do not have an answer to that. Maybe someone can pull the minutes of those meetings and see if there was any discussion about that. I am struggling to come up with the example, but I know I have come across this before where it is recognized that professional expertise should be present on a commission while allowing membership by someone who may have moved on to academia or retired or something like that. It would be an interesting research project to understand if there was legislative history and consideration of that point.

**Jim Wadhams:**

You have an excellent research staff. We will try to complement that and bring as much information as quickly as possible.

**Assemblyman Ohrenschall:**

Since the empaneling of the board of directors, do you know how many of the board members have had to abstain due to conflicts? If you have folks who are active in the industry and who abstain when they need to, I wonder if we might end up with directors having to abstain on a lot of votes.

**Jon Hager:**

I do not recall any board vote on which an exchange board member has had to abstain. There have been votes on which a board member has had to disclose a potential conflict, but not to the degree where the individual had to abstain from the vote. In the five advisory committees the board appointed, there were approximately 11 representatives of insurers who brought some 35 recommendations to the board for their approval.

**Chairman Bobzien:**

Are there further questions? Seeing none, we will take testimony in support of S.B. 352 (R1).

**Brian McAnallen, representing the Las Vegas Metro Chamber of Commerce:**

We are supportive of the amended language in the bill in front of you today. We think it is important to have the capability of that expertise on the Silver State Health Insurance Exchange, especially as the exchange moves into the marketing area and tries to engage as many uninsured as possible. It could be helpful to have that expertise available and we appreciate the attempt to try to make that a possibility.

**Fred L. Hillerby, representing the Nevada Association of Health Plans:**

I think Mr. Wadhams and Senator Hutchison explained the purpose of the bill very well. A lot of the early activities of the board, which did a great job, were decisions involving what essential benefits had to be offered by health plans.

That might have been an opportunity for a conflict; however that did not occur, and those essential benefits have now been established by the existing board, and the insurance companies that want to participate must meet those guidelines. I think it would be very difficult to influence people to do anything else but look at the plans that have met the qualifications that were established by the board. It is my understanding that the board is not going to be the facilitator. They are not going to be advising individual consumers or small business groups about which plan they ought to buy. They are just going to try to explain to them what is being offered and help them make a good decision. Although it certainly sounds like an opportunity for a conflict, I just do not believe it is going to exist in this circumstance.

**Tray Abney, representing The Chamber of Reno-Sparks-Northern Nevada:**

Me, too.

**Chairman Bobzien:**

Are there any questions for this panel? Seeing none, is there additional testimony on S.B. 352 (R1)? Is there any further testimony in favor? [There was none.] We will go now to opposition testimony.

**Barry Gold, representing AARP Nevada:**

[Mr. Gold read his letter in opposition to the bill ([Exhibit C](#)).]

Something mentioned today concerned why other boards contain people practicing in those professions. One of the differences is that, in a way, this board sells things to consumers. People are going to buy insurance. The Board of Chiropractors does not sell chiropractors. The doctors may offer chiropractic services, but the Silver State Health Insurance Exchange is going to sort of be in the business of selling insurance.

The language in subsection 6 says, "While serving on the Board, a voting member may not be in any way affiliated with a health insurer," and then it goes on to describe them. Maybe we could add "currently affiliated" or maybe just get rid of the word "affiliated" and say a voting member may not be "an employee of, or a consultant to, or member of the board of directors of a health insurer, [or] having an ownership interest." As Mr. Wadhams stated, just being affiliated could bar someone from serving. Even though AARP does not sell insurance, we have endorsed insurance products, and if that excluded me from being on the board, I would be okay with it.

Because they are represented on the advisory committees, insurers have been and are able to provide input. We heard that. They actively participate and attend the board meetings. They will continue to be involved as the exchange

moves forward, both through the exchange and the Division of Insurance. They should not be on the board. We have heard that there is no current problem and that there is someone on the board who has insurance expertise. Another thing mentioned is that we are going to need this experience during this phase of the outreach campaign. My suggestion is that board members have expertise in education and in community and consumer outreach. It seems to me that is the expertise that is really needed at this phase and that is currently in the language.

**Chairman Bobzien:**

Were AARP Nevada members' concerns represented to the Senate on this bill?

**Barry Gold:**

We did not weigh in on this bill in the Senate.

**Chairman Bobzien:**

Do we have any questions? [There were none.]

**Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates:**

[Ms. Cafferata presented written testimony in opposition to the bill ([Exhibit D](#)).]

I want to join the other people who have commended the staff of the Silver State Health Insurance Exchange for the great job they have done setting up the exchange. The insurance industry and their representatives have also done a fantastic job getting people to all those advisory committee meetings and board committee meetings throughout the past year. They were well represented on the five subcommittees. The commissioner of insurance has been an ex officio member and has provided a great deal of information on the process.

One of the main questions that has come up this afternoon concerns exactly what the conflict of interest is. I completely understand that the Division of Insurance regulates the insurance industry. I understand that the exchange is not in that business, but the U.S. Department of Health and Human Services, in their guidance, has said that representatives of insurance, by definition, have a conflict of interest.

To the question concerning how many states have adopted a policy that prohibits insurance companies from serving, there was a study done in 2012 that indicates 10 of the 13 states surveyed had this provision—that insurance company representatives, a direct affiliation, cannot serve on these boards and

commissions. We really have been a model for the country and one reason is that we had such strong consumer protections.

The conflict is because the Silver State Health Insurance Exchange is creating a marketplace for private companies to sell insurance to Nevadans. Under the ACA, in Nevada approximately 500,000 people are now going to be required by law to buy insurance. Some of them will qualify for Medicaid, but hundreds of thousands of Nevadans will be required by law to get health insurance. This marketplace should be created by people who do not have a direct financial interest in who comes in and buys insurance.

I cannot imagine that an insurance company would try to game the system, but when you think about the web portal that will be created, different policies can make different insurance products pop up on the first page. For those who know anything about search engine optimization, coming up in those first results is pretty critical. We want to make sure that it is a level playing field. If one private company is sitting on the board making the rule about what comes up, that may create an unfair advantage to that company. I am pretty sure this has been addressed, but we want to make sure it continues to be at the forefront of the priorities.

Something the insurance company folks have said is that the major policy decisions have been made and that now it is just about the marketplace and getting the word out. But one of the policies that has been adopted by the insurance exchange board is that all of these major decisions, because we are in an area that is completely new, are going to be revisited in two or three years. Yes, we have chosen the essential health benefits, and what is in that package determines the pricing for insurance products, but we are going to revisit that decision in the next two years, so the reason for the conflict policy still exists today.

There are several practical concerns. The way the bill is now written, it would allow all of the representatives—all seven board members—to be from the insurance companies or businesses. That is a great concern. We understand the wording is permissive, but it would be permitted. Yes, Nevada has conflict of interest laws, but really, when every decision you are making at the insurance exchange board has an impact on the marketing and purchase of insurance, how many times are insurance company representatives going to have to excuse themselves from voting? There have been meetings when it has been difficult to achieve a quorum. Are we just setting up a case where it is going to be extremely difficult for this board to do its business? For those reasons, we urge that you not vote for this bill.

**Gail Tuzzolo, representing the Nevada State AFL-CIO:**

We understand the work that has gone into building this exchange and planning for the future. As labor unions, we are still sorting out how this all affects our plans and what it means to our self-insured plans.

This legislation seems to be fixing a problem that does not exist. Therefore, I put us on record as being against it, but we are willing to look at it in two years if a problem develops.

**Patrick Sanderson, representing the Nevada Alliance for Retired Americans:**

I did testify in the Senate, and "me, too."

**Chairman Bobzien:**

Is there anyone else who wants to register further opposition testimony on this measure? [There was no response.] Is there any further neutral testimony? [There was no response.] Mr. Hager, did you have additional comments?

**Jon Hager:**

There is a federal regulation that precludes a majority of the voting representatives from having conflicts of interest, including representation by insurers. If this bill were to pass, the highest number of voting members we could have on the board representing the insurance industry would be three because there are seven voting members.

**Chairman Bobzien:**

Thank you for the clarification. We will close the hearing on S.B. 352 (R1) and open the hearing on Senate Bill 359 (1st Reprint).

**Senate Bill 359 (1st Reprint): Revises the duties of the Silver State Health Insurance Exchange. (BDR 57-906)**

**Senator Michael Roberson, Clark County Senatorial District No. 20:**

I want to extend my congratulations to Director Jon Hager, Board Chair Barbara Smith Campbell, and the entire board and staff for their achievement in creating this exchange in somewhat uncharted waters and in leading the nation in its implementation.

Senate Bill 359 (1st Reprint) clarifies that the exchange's primary marketing focus is, and should be, those individuals who are uninsured and underinsured, as well as those small businesses that do not currently provide health insurance for their employees. This is in keeping with the purpose of the Affordable Care Act (ACA). We have amended the original draft in the Senate, with Director Hager's concurrence, to remove some ambiguity and recognize that



much of the exchange's marketing activity is, and will continue to be, directed toward uninsured individuals. We appreciate the opportunity to have worked with Director Hager as we improve this bill. The full Senate passed S.B. 359 (R1) by a unanimous vote.

**Chairman Bobzien:**

Are there any questions for the bill's sponsor?

**Assemblyman Grady:**

Senator, what defines "To the extent feasible" on page 2, line 8?

**Senator Roberson:**

I believe it is the common understanding of those words, to the extent feasible. Director Hager, who proposed that language, can give you more specificity.

**Jon Hager, Executive Director, Silver State Health Insurance Exchange:**

We requested that language be added to the amendment. There is a section in our statute that requires us to help individuals and employers with the tax implications. There is a small business tax credit that is available for employers of fewer than 25 employees who offer coverage to their employees and subsidize a portion of that coverage. That tax credit is only if you are on the Small Business Health Options Programs (SHOP) exchange. Our concern was, if it did not say "to the extent feasible" and we had a message saying you could only get the credit if you were on the SHOP exchange—which is a true statement—we would be violating this provision of the law. We wanted to be sure we had an out.

Our goal has always been the uninsured—getting people insured. That is in our mission statement and in the statutes. This bill clarifies that a bit and makes sure everyone understands that is what our target is. The Board of Directors of the Silver State Health Insurance Exchange is in support of this bill.

**Chairman Bobzien:**

Are there additional questions? [There were none.]

**William Wright, representing Chamber Insurance and Benefits, Las Vegas Metro Chamber of Commerce:**

Chamber Insurance and Benefits is a wholly owned subsidiary of the Las Vegas Metro Chamber of Commerce. I am here today in support of S.B. 359 (R1). It has been the mission of the Las Vegas Metro Chamber of Commerce for the last 26 years to provide affordable health insurance coverage for small business members. We have more than 2,700 business members with 20,000 or more of their employees insured in the Chamber's health plan. We currently offer

ten different plan options to Chamber members to meet their health and wellness needs.

During the creation and implementation of the Silver State Health Insurance Exchange, there has been confusion and concern regarding the impact of the exchange on insurance companies, agents, and brokers who currently provide health insurance in Nevada. In an effort to eliminate that confusion and concern, we have worked with the leadership of the exchange, Mr. Hager and Ms. Smith Campbell, to offer a legislative solution that is intended to eliminate that confusion and also help the exchange with their mission to provide insurance to the 550,000 uninsured Nevadans. Recently Mr. Hager, my organization, and the Las Vegas Metro Chamber have been working cooperatively in an effort to educate the brokers and agents in southern Nevada. We have held a couple of meetings over the last three weeks with a significant number of those agents and brokers in attendance to help them understand the exchange and how it can best help those people who are uninsured in Nevada. We look forward to continuing that effort. I urge you to pass this important legislation to help the Silver State Health Insurance Exchange achieve their goal in providing health insurance to Nevada's uninsured population.

**Assemblyman Ellison:**

Is this for a lower-cost insurance or for very low-cost, subsidized insurance?

**William Wright:**

The exchange offers insurance that is subsidized as well as plans that would not necessarily be subsidized. Mr. Hager also referred to those businesses that are due to receive a tax credit based upon certain criteria they may qualify for. It is our goal to help Mr. Hager achieve his mission, which is to provide insurance for the uninsured in Nevada, recognizing that we did not agree to the language in the option he presented for the changed language and also recognizing that the tax credit is an important part of this.

**Samuel McMullen, representing the Las Vegas Metro Chamber of Commerce:**

I wanted to add some points of clarification. After the United States Supreme Court made its decision on the ACA, we discovered that many people had either delayed making decisions about health insurance or counted on an adverse decision as a reason not to get educated about the health insurance exchange and its positives. Consequently, Mr. Wright and others at the Chamber were getting a lot of phone calls wondering what impact there would be and what the Chamber thought about it. Out of that bubbled up a concern, probably based upon Mr. Wadhams' comments concerning competition in the insurance industry. It is a robust competition, but this exchange is a different thing. I believe some people were thinking that the exchange would be a direct

competitor for the people insured in their plans, when in fact, that is not the focus or intent. This is about the long-term goal the Chamber has had—to make sure there are fewer and fewer uninsured employees and uninsured individuals in the state of Nevada. We support the goals of the exchange, but we knew if we did not work to clarify this, that it would end up being a distraction and a bit confusing. This is a nice result for us, working closely with the exchange to get rid of this distracting issue and put the focus on uninsured individuals, uninsured employees of small businesses, and other qualifying businesses. This is functionally a clarification.

There will be advertising for the brand of the exchange, and they are going to be reaching out to all employers and educating them. This is not to put them in an untenable situation in which they cannot talk to someone who already has a policy insuring their employees. There will be some carryover and we want to clearly recognize that. It is to clarify this and allow the exchange to move on and do their marketing. The director of the exchange testified in the Senate that their goal is fewer uninsured bodies as fast as they can get there.

**Chairman Bobzien:**

Mr. Hager, you are in the support position on this bill. Did you want to provide some additional comments?

**Jon Hager:**

No, thank you. We are in support.

**Chairman Bobzien:**

Is there any additional testimony in support?

**Dwight Mazzone, representing the Nevada State Association of Health Underwriters; Member, Consumer Assistance Advisory Committee, Silver State Health Insurance Exchange:**

We are in support of this bill. I represent the agents. We need this type of clarification because people have been calling us since the bill was passed in March 2010, saying, "Where is my free health care?" We need clarification because there are people who are never going to get free health care if we do not have the openness this will create within our exchange.

Based upon testimony on the previous bill, I am one of those people who will not be allowed to serve on the board of the exchange. That is okay because I serve on an advisory committee, and we provide a lot of input to the Board of Directors of the Silver State Health Insurance Exchange. Please, pass this bill.

**Chairman Bobzien:**

Is there any additional testimony in support? Seeing none, is there any testimony in opposition? Seeing none, do we have any neutral testimony? [There was no response.] We will close the hearing on S.B. 359 (R1) and open up the hearing on Senate Bill 497.

**Senate Bill 497: Revises provisions relating to dental care. (BDR 57-1096)**

**Chris Ferrari, representing the Nevada Dental Association:**

I represent more than 800 dentists statewide. We are in support of this bill. Senate Bill 497 addresses dental insurance plans. A dental insurance plan provides what are known as covered services to the insured that typically include cleanings, fillings, root canals, crowns, et cetera. These services are outlined in the dental plan to be clear to both the patient and the dentist. Some dental insurance plans have added language to their contracts that sets fee caps on dental services that are not covered in the plan and which they pay no portion of, limiting patient access and the dentist's ability to provide those services. The National Conference of Insurance Legislators (NCOIL) developed model language to ban this practice, and that language has been adopted by 30 states across the country. Senate Bill 497 mirrors that language. The Nevada Dental Association worked during the interim with interested parties, including insurance carriers, the culinary union, and the insurance commissioner, to explain the issue. Those parties have indicated that the NCOIL language was acceptable.

Section 1 prevents insurance plans from capping fees on services they do not cover. Section 3 requires a dentist to charge the same fees for covered services to patients, even when an insurance reimbursement is not available to patients who exceed that plan limit within a calendar year, affording all Nevadans with dental insurance a significant financial benefit. Senate Bill 497 passed unanimously out of the Senate with no committee or floor opposition. Now, I would like to introduce Dr. JB White who will provide a brief overview of how this bill will positively impact his patients.

**Johnathan R. (JB) White, D.D.S., Private Citizen, Las Vegas, Nevada:**

I have been practicing dentistry in Las Vegas for the past six years. I am here in support of S.B. 497. Having practiced my entire professional career in Las Vegas, I understand the day-to-day realities of practicing dentistry in Nevada. This bill has become of particular importance to me personally, because without it, my ability to explore the best options of treatment is impacted. This can take the course of treatment out of the hands of the two parties at the center of the decision—the patient and me.

My patients expect and deserve a higher level of experience, service, personal attention, and procedure. Certain procedures can be accomplished in a number of different ways, and only after a well-explored conversation, taking into consideration many factors, can the proper treatment plan be determined. In many cases, the ideal treatment course is not covered under the patient's insurance plan; however, the insurance plan has still capped the fee I can charge at a rate that is often below my hard cost, rendering me unable to provide the treatment. In almost all cases, the patient desires the course of treatment and wants to pay for the service but is legally prohibited from doing so. Treating others comes from a place of compassion and integrity. The outcome of care will greatly impact the quality of life and self-esteem of the individual receiving it. Our goal is to keep these decisions between the patient and the dentist, and S.B. 497 will help preserve this relationship.

**Chairman Bobzien:**

Do we have any questions for the panel?

**Assemblyman Ellison:**

I read this bill and to me, it looks as though you are trying to stay in business and cover your costs if the insurance does not cover them.

**Chris Ferrari:**

That is exactly what we are trying to do with this bill. There are services that are covered within that policy and there are many services that are not covered, for example, tooth whitening or implants. There is an artificially low fee cap set on some of those services, as Dr. White indicated, rendering him unable to offer them to the patients. A lot of times, the fee caps are so low they are below the hard cost of the service, which results in a frustrating position for the patient who wants the treatment and the doctor who would like to provide it without having that hindrance in the middle disallowing it.

[Chairman Bobzien and Vice Chairwoman Kirkpatrick left the hearing. Assemblyman Frierson became Acting Chairman.]

**Acting Chairman Frierson:**

Are there any other questions from the Committee?

**Assemblyman Daly:**

So, you enter into a contract with an insurance provider and you agree, for the prompt payment in that contract, to give discounts for certain services. You are saying that there are services that the contract does not cover but that have been included in the contract at a discounted rate. You mentioned tooth whitening, orthodontia, and various things that have very low caps. You want

to say that if it is not a service you provide, you cannot put a dollar limit or restriction in the policy, is that one part of it?

Then the other side of it is, say there is a \$2,000-a-year threshold and that is the extent of the patient's dental service coverage. Let us assume I am at \$2,500. I am outside of the \$2,000 that the dentist will be reimbursed for. For that \$500 difference, you are saying that the dentist cannot charge higher than the rate he contracted for to that patient. As I see this, there are limits on both sides.

**Chris Ferrari:**

That is correct.

**Assemblywoman Diaz:**

Is there a cap for services? Does one dentist charge one fee for crowns and another dentist charge a different one? I am thinking more of the consumer protection aspect and that not all dentists can assume they are not limited by what the insurers are capping, but where is the ceiling for the consumers? If we do away with the caps that the insurance plans provide, where is the consumer protection side? If we remove the caps, does everyone charge one fee for each procedure? Is there a way that is controlled?

**Chris Ferrari:**

This bill does not have an impact on individual dental offices. There may be a variation depending upon which dentist you see. The point of this legislation is to disallow the practice of capping a fee for a service that is not encompassed within a policy. To Mr. Daly's point, what the bill does on the consumer side is, if an individual has a policy that contains, for instance \$1,000 worth of coverage for a year and they require an additional procedure that would bump them up to needing \$2,000 of work, the dentist is now mandated by statute to extend that covered rate to the patient for that additional service. Previously, patients would defer that work into the next year when their insurance would kick in again.

**Johnathan White:**

For the most part, we have a set fee schedule, what we call a UCR—usual, customary, and reasonable. Each year, we submit those to the insurance company and that is the fee schedule we abide by for someone who comes in with no dental insurance, so there is a fee set. How insurance companies set fees is they usually take your UCR, knock off 30 percent to 40 percent, and that becomes the capped fee for insurance.

To follow up with Mr. Daly's question, there are covered services and noncovered services. To be completely clear, we are only talking about the noncovered services, which are typically specialty types of services. When the insurance sets the fee artificially low, a lot of times the patient wants to pay me for the service. I want that patient to have the service, it is the service that would be best for that individual, it is the service I would do for friends and family, but I am unable to offer the service.

**Assemblywoman Diaz:**

You are saying that we are seeking relief from noncovered services that the insurance currently caps?

**Johnathan White:**

We are only talking about noncovered services. Currently, dental insurance caps all services, depending on the contract the dentist signed with the insurance company. Currently, everything is capped. Once a patient has maxed out his benefit, we still will abide by all the capped fees if it would have been a covered service.

**Assemblywoman Diaz:**

Could you give an example using an actual scenario?

**Johnathan White:**

Let us take a crown, which typically is \$1,000 and the insurance discounts it to \$800. You run out of benefit at \$1,000 but you need ten crowns. Once your benefit is up, you still only have to pay that. The insurance will not pay their 50 percent once you have maxed out your benefit. Even though the patient would be paying out of pocket, we still have to stick to that fee schedule. Once you have maxed out your benefit, the fee for crowns would not bump up to \$1,000, which would be my typical fee schedule.

Let us now take a specialty service like a dental implant that the policy does not cover at all. Currently, insurance would cap that very low. The problem in this scenario lies in new technology and the surface coating on the implant and the type of implant. Some implants are extremely expensive for me to purchase; some are cheaper for me to purchase. Sometimes, based on the scenario with that patient, I need to have a better type of implant—an implant with a certain coating that is a lot more expensive. I cannot offer that implant to that patient. What I would like to be able to do is have a conversation and explain why that individual needs this particular implant. It does cost a little more. I could do the other implant but you are going to take a risk. I would feel safer about doing the procedure with the one, but it costs \$200 more. I just need to pass that cost on to you so I can do the service. Currently, I am not able to do that.

**Assemblywoman Diaz:**

That makes more sense to me now. Ultimately, the decision is in the hands of the patient?

**Johnathan White:**

Yes, absolutely.

**Acting Chairman Frierson:**

Does that satisfy you, Ms. Diaz? [Ms. Diaz indicated yes.] Are there any other questions from the Committee? Mr. Ferrari, how many other states have adopted this legislation?

**Chris Ferrari:**

Thirty states have adopted similar language.

**Acting Chairman Frierson:**

Are there any other questions from the Committee? Seeing none, I will ask others here today who wish to provide testimony in support to come forward.

**Helen Foley, representing Delta Dental Insurance Company:**

[Ms. Foley provided a letter in support of S.B. 497 ([Exhibit E](#)).]

Delta Dental Insurance Company is a dental health insurer that is in a majority of the states. Delta Dental agrees with the NCOIL model legislation and strongly supports the legislation here in Nevada.

**Acting Chairman Frierson:**

Are there any questions for Ms. Foley? [There were none.]

**David M. White, D.D.S., Private Citizen, Elko and Reno, Nevada:**

I operate dental offices in Reno and in Elko and want to go on record in support of this legislation.

**Acting Chairman Frierson:**

Are there any questions for Dr. White?

**Assemblyman Ellison:**

I want to give recognition to the Nevada Dental Association, whose members donated many hours of free and reduced-price dentistry for those who either could not make the cap or could not afford it. How many were there?



**David White:**

I cannot give an accurate number of hours, but I can tell you that last calendar year, in northern Nevada alone, we did over \$600,000 of free dentistry. That free dentistry was through programs set up by dentists who work pro bono. Most dentists volunteering with these programs receive no reimbursement whatsoever.

**Acting Chairman Frierson:**

Are there further questions for Dr. White? [There was no response.] Is there anyone else here who wishes to offer testimony in support of S.B. 497? Is there anyone who wishes to offer testimony in opposition? Is there anyone who wishes to offer testimony in the neutral position to S.B. 497?

**Yolanda T. King, Director, Budget and Financial Planning, Clark County:**

We are in a neutral position on the bill. We want to make sure that the patients are informed up front and know what the extra costs will be. I believe that concern was answered, according to the responses received to Ms. Diaz's questions.

**Acting Chairman Frierson:**

Are there any questions from the Committee? Seeing none and seeing no one else who wishes to offer testimony, I am going to close the hearing on S.B. 497.

Is there any public comment? Seeing none, we are adjourned [at 2:57 p.m.].

RESPECTFULLY SUBMITTED:

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Terry Horgan  
Committee Secretary

APPROVED BY:

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Assemblyman David P. Bobzien, Chairman

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

**EXHIBITS**

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

**Date: May 1, 2013**

**Time of Meeting: 1:31 p.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 352 (R1)	C	Barry Gold, representing AARP Nevada	Letter in opposition
S.B. 352 (R1)	D	Elisa Cafferata, representing NV Advocates for Planned Parenthood Affiliates	Letter in opposition
S.B. 497	E	Helen Foley, representing Delta Dental Insurance Company	Letter in support