

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

**Seventy-Seventh Session
May 3, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:36 p.m. on Friday, May 3, 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. 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 David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
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 William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

James Westrin, Commissioner, Division of Mortgage Lending, Department
of Business and Industry
Rocky Finseth, representing Nevada Land Title Association
Laura Lychock, President, Clayton Mortgage and Investment
Andrea Glenn, Private Citizen, Las Vegas, Nevada
Russell Dalton, Chairman, Legislative Committee, Nevada Land
Title Association
James Wadhams, representing Asurion Insurance Services
Adam Plain, Insurance Regulation Liaison, Division of Insurance,
Department of Business and Industry

Chairman Bobzien:

[Roll was called.] We will open the hearing on Senate Bill 47 (1st Reprint).

Senate Bill 47 (1st Reprint): Makes various changes to provisions governing the regulation of the mortgage industry. (BDR 54-361)

James Westrin, Commissioner, Division of Mortgage Lending, Department of Business and Industry:

It is my pleasure to testify before you today on Senate Bill 47 (1st Reprint), which addresses four primary issues in the mortgage-related statutes that the Division of Mortgage Lending is responsible for implementing. I can go through the bill section by section if you would like, or I can explain the issues and the changes that are intended to address those issues.

Chairman Bobzien:

We can start with the issues and what you are trying to do with it. If we need to dive into the sections, we can do that.

James Westrin:

The first issue that S.B. 47 (R1) is addressing is the employment relationship between a mortgage broker or banker and a mortgage agent under this statute. The changes in the bill are intended to clarify that a mortgage agent is required to be an employee of the mortgage broker or mortgage banker. Currently, the statute does not define the term "employee," so S.B. 47 (R1), in section 1, defines "employee" as somebody who is under the control of the mortgage broker or mortgage banker and receives compensation that is reported for federal income tax purposes on an Internal Revenue Service Form W-2. The amendments go further to require that supervision, control, and written policies and procedures are in place setting forth that supervision and control of the mortgage agent by the mortgage broker.

Another change the bill makes is to clarify that compensation to a mortgage agent for mortgage agent activity must be paid directly to the mortgage agent from the mortgage broker or mortgage banker and not to a limited liability company or some other entity the mortgage agent has set up. It further goes on to state that a mortgage agent can only receive compensation for mortgage agent activity from his or her employing mortgage broker or mortgage banker.

The second issue this bill addresses is a nonprofit exemption. Currently under the statutes, an entity that is a nonprofit is exempt from licensing. The statute does not define "nonprofit." Currently under Nevada law, a company can obtain a nonprofit filing record from the Secretary of State indicating it is a nonprofit. That does not grant tax-exempt status. This bill would require that the nonprofit be a bona fide nonprofit, demonstrated by showing documentation of its 501(c)(3) status.

The third issue is allowing for the renewal of the license of a mortgage agent who is currently unemployed. One of the requirements to obtain a license is that a mortgage agent must be currently employed by or have an offer of employment from a mortgage broker or mortgage banker. At the time of renewal, he or she must meet all the requirements to get an initial license as a mortgage agent.

Because of the nature of the industry and the economy, there have been a number of mortgage agents who have wanted to remain in the business but, for a number of reasons, are unemployed. It may be because he or she took a leave of absence because of an illness or to care for a family member, or because his or her employer went out of business, or he or she was terminated because of downsizing. If that happens around the time of renewal, he or she would not be able to renew the license and would have to start the process all over again once employment as a mortgage agent was found. Under

the change here, we can renew that person, but put him or her in an approved inactive status in our database, as well as the nationwide mortgage licensing system database, so it is clear the person has a license but is currently inactive due to lack of employment.

The fourth issue is to amend *Nevada Revised Statutes* (NRS) Chapter 645F regarding the attorney exemption for providing loan modification activity and to limit that to an attorney who is licensed and authorized to practice in the state of Nevada and not primarily engaged in providing loan modification activity. Currently, there is no limitation as far as licensing in Nevada or providing that service. This amendment seeks to limit that.

That was a broad-stroke explanation of the changes. I look forward to responding to any questions or thoughts you may have. [Submitted written testimony ([Exhibit C](#)).]

Chairman Bobzien:

Are there any questions?

Assemblywoman Kirkpatrick:

I want to be clear on section 11 when we talk about nonprofits. Is this to rein in the wide variety of groups out there that have been claiming they can provide assistance on mortgages?

James Westrin:

Absolutely. Right now, if they file with the Secretary of State and have status as a nonprofit, we want to ensure they are a bona fide 501(c)(3).

Chairman Bobzien:

Are there additional questions? [There were none.] Do we have anyone else wishing to speak in favor of S.B. 47 (R1)? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on S.B. 47 (R1) and open the hearing on Senate Bill 493 (1st Reprint).

Senate Bill 493 (1st Reprint): Revises provisions concerning real property transactions. (BDR 54-642)

Rocky Finseth, representing Nevada Land Title Association:

Joining me at the table is Laura Lychock. She is going to speak to you about sections 2 and 2.5 of Senate Bill 493 (1st Reprint). My client's interests are in section 3 of the bill, so Russell Dalton, who is chairman of the Legislative Committee of the Nevada Land Title Association, will be speaking to you about

that. The Nevada Land Title Association has an amendment they are bringing forth to create a new section 4 of Senate Bill 493 (1st Reprint) ([Exhibit D](#)).

Laura Lychock, President, Clayton Mortgage and Investment:

Andrea Glenn will join me. She is an investor, nominated to manage some of the properties that have gone into default. We have been in contact with Commissioner Westrin who just testified on another bill, along with a few of his staff.

In an attempt last session, Assembly Bill No. 77 of the 76th Session was an effort to get coverage for a 51 percent majority rule that is actually in existing law, *Nevada Revised Statutes* (NRS) 645B.340. When you are a beneficiary on a deed of trust, the 51 percent majority rules. In A.B. No. 77 of the 76th Session, language was not clarified as to how it was going to work once a foreclosure sale, deed in lieu, or something of that nature happened. We incorporated the clarification and our amendment did pass through the Senate.

Subsequently, we met with another title company representative, which resulted in an additional amendment ([Exhibit E](#)). It concerns disclosures regarding mailings, et cetera, required in order to notify owners what decision is being voted on.

Chairman Bobzien:

I am looking at the amendment ([Exhibit E](#)) right now. Committee members, do we have any questions at this point? [There were none.] We will go to the next portion of the testimony.

Andrea Glenn, Private Citizen, Las Vegas, Nevada:

Having been investors over many years, my husband and I have experienced great elation, and we have experienced great depression given the reference to the recession that has occurred. The effect for myself, my husband, and so very many of our friends has been devastating to retirement portfolios across the board. This is why I became directly involved with many of the loans in which we investors were abandoned by our original mortgage brokers who put these loans together. Since there was no longer a paycheck coming to them, they walked away. In the experiences that ensued, I became aware of the situation we are discussing today.

We were able get these amendments put forth to the Senate and hopefully approved by you as well today. A minority group of people can hold the majority investors hostage by refusing to vote without being paid exorbitant amounts of money above and beyond what they are entitled to have in these

multiple-investor first trust deeds. The intent of this legislation is to put a lid on that, as well as allow the title companies to have the peace of mind in knowing that every loophole we could find is closed. This is so we can do what is best for the simple majority of the voters over time.

Chairman Bobzien:

Do we have any questions?

Assemblywoman Carlton:

I am a little confused when you talk about minority and majority ownership. Could you give me an example of what you are talking about so I can try to understand it a little better?

Andrea Glenn:

In reference to the beginning of the language changes, it will require having a 51 percent or more majority vote. If a property goes into foreclosure or deed in lieu successfully, multiple investors have become owners of the property. When you have a situation where you do not have 100 percent of the investors voting, it becomes almost impossible to get a buyer to move forward to try to purchase the property. It becomes impossible for the title companies to have the peace of mind of knowing that an investor might come back with a legal action. We are here to provide the closure of that opportunity. If one or two investors out of 40, 50, or 60, which is the common number of investors in one loan, decide not to become involved in a limited liability corporation, or a business trust, they might say, well, I know the way the law currently stands. I can come back and demand more money from the other investors, thinking they want my vote, even though I put a whole lot less money in. This has been happening, and it is not a win-win situation for all parties involved. We are working here to provide that, if all of the investors have been notified by the mortgage managers of the sale in which they can choose to vote, as long as you have 51 percent or more of those investors, we can go ahead and sell this property to a buyer and get title insurance.

Assemblywoman Carlton:

When you say 51 percent, is that 51 percent of the property or 51 percent of the number of people who are invested? You have a dollar amount, you may have 15 or 16 shares, somebody may have 20 shares, and somebody else may have 2 shares. Are we talking shares or people?

Andrea Glenn:

It is based upon percentage ownership of each investor. As an example, if you have an investor who has 40 percent ownership, and you have several other investors with 1 percent ownership, as long as you get the 40 percent owner to

go forward and the other smaller ownerships to go forward in order to reach the objective of a 51 percent total of ownership, that is how it is determined.

Assemblywoman Carlton:

Was this never contemplated in any of the contracts that were drawn up on these investor agreements?

Andrea Glenn:

I am going to have Ms. Lychock help me with the answer to that question. This Great Recession created a circumstance that mortgage brokers had not anticipated ever happening. I will have her answer that question.

Laura Lychock:

On the contracts we typically would have our investors sign when they originally invested, it does talk about the majority and the 51 percent rule. This is why we are trying to make that rule go through all the way to the end of this process. The contracts do state, in very vague detail, provisions regarding the ownership of the property and that we will assist in getting the owners buyers and try to get the properties liquidated. What is happening, as Ms. Glenn stated, is that investors or owners either do not pay attention, do not want to respond to voting ballots, are deceased, have filed bankruptcy, or have moved and nobody can locate them. It has become an issue for us to be able to take the language that is existing in NRS 645B.340 all the way through this process so we can obtain buyers and get properties closed.

Chairman Bobzien:

Do we have additional questions?

Assemblyman Frierson:

This is obviously a complicated area that requires some level of expertise. I am curious about families. If there is a division in a family, and 49 percent attach sentimental value to it, are they just out of luck if the 51 percent decide to sell? That is my first question.

My second question is whether or not there is a contemplation of the 49 percent, or the minority owners, having the first right of purchase or some type of protection to give them a preference.

Laura Lychock:

I am not quite sure I understand the question, but I will try to answer it the best I can. If there is a 51 percent majority when the loan and deed of trust is originally made, that 51 percent carries through all the way. There is no provision for what you previously stated. If there is someone who owns

a 51 percent majority, and there is a 49 percent elsewhere, that 51 percent majority does carry the vote. That is the intent of the new language as well, in keeping with the existing law as the beneficial interests move toward ownership in only these deeds of trust. We are not talking about properties that people go into and purchase between family members. We are not talking about anything related to that but only about this law as it relates to first trust deed investing in our existing statutes.

Chairman Bobzien:

I think we might need clarification from our legal counsel.

Matt Mundy, Committee Counsel:

On page 3 of the bill, looking at the blue block of new language in the center, that provides that once the holders who consent to sell—that is, the majority—decide to take action to transfer, sell, or encumber the property, they will designate a representative who then signs the documents on behalf of those who do not consent.

Chairman Bobzien:

Are there additional questions? [There were none.] Is there anybody else wishing to testify in support of S.B. 493 (R1)?

Rocky Finseth:

Joining me at the table is Russell Dalton with the Nevada Land Title Association. Section 3 of the bill is the provisions that I am here representing on behalf of my client. With your indulgence, I will defer to Mr. Dalton. Then I would like to explain the proposed amendment we are bringing forth ([Exhibit D](#)).

Russell Dalton, Chairman, Legislative Committee, Nevada Land Title Association:

This portion of the bill, section 3, is being brought forward in order to fill a void in existing methods of releasing deeds of trust that have been paid or the lender cannot be located and to create a vehicle for releasing reconveyance from the record and clearing title where beneficiaries cannot be found. There are methods in place for reconveying deeds of trust that have been paid through a real estate transaction.

The only option right now that can be taken by the parties in order to clear their property is to either take a risk that nobody will come back and claim they are owed money, or file a court action that will take time and be very expensive for the party owning the property who is trying to clear ownership. This provides a reasonable method for that party to purchase a surety bond, file a record, and

submit it before a trustee under a deed of trust would then have the authority to mail notification to the beneficiaries and others in interest who might have a reason to object to the reconveyance. They will have the opportunity to come forward and object. If they did not, then the reconveyance could be put on record. The surety bond would then allow for a time frame after that for the parties to step forward, if they did not do so in the beginning and claim they were entitled to monies from their lien on the property that was released by the surety bond.

Everybody is protected in this method. The beneficiary has a way to come back, and the owner of the property has a method of moving forward without being held up by the party that cannot be found or will not execute a reconveyance.

Chairman Bobzien:

Do we have any questions?

Assemblyman Ohrenschall:

My question has to do with what might only be applicable in some of the smaller communities. On page 8 of the bill when you talk about a "diligent search," you list various factors. On page 8, lines 21 to 24, paragraph (b), "A search has been conducted of the telephone directory in the city where the beneficiary of record or trustee of record . . . maintained its last known address or place of business." It seems reasonable in the era I grew up in, but is a telephone directory published for each community in Nevada? Is there something that will still exist to be searchable in the upcoming years?

Russell Dalton:

It is just a portion of what is necessary. If it is available, it is done. The other items in that section would also be done as well. In the case of a small community, if there was not a published directory, paragraphs (a), (c), and (d) would be done in an attempt to find the party.

Assemblyman Frierson:

What is proposed in the bill makes sense, but I am wondering what is done. How does this compare to what is done in other states? Is there language from something that already exists somewhere, or did you come up with it?

Russell Dalton:

I believe this was something where we had a model from California. I cannot give you where it appears in California, but we took it and molded into something we thought would work in Nevada.

Assemblyman Frierson:

I am wondering how it is handled in other states. Are we going to be out on an island, or is California the only other state that deals with property this way?

Russell Dalton:

I do not know. We did not do enough research to be able to locate the other states and areas that did this.

Rocky Finseth:

I would be happy to do that research and get it back to Mr. Frierson.

Chairman Bobzien:

That would be great. Could you get that to the rest of the Committee as well? Do we have additional questions? [There were none.] Is there anyone else wishing to speak in favor of S.B. 493 (R1).

Rocky Finseth:

Could I talk about the amendment ([Exhibit D](#))?

Chairman Bobzien:

Yes.

Rocky Finseth:

The Nevada Land Title Association wanted to bring into the measure a new section 4 dealing with an amendment to NRS 111.180, which is a section of NRS that deals with the conveyance of property. The amendment that is brought forward is a concept called "bona fide purchaser." This means the purchaser of a piece of property is considered bona fide and the possessor of the property. As you will see in the amendment before you, it creates a new subsection 1 and takes the existing language in NRS 111.180 and creates a new subsection 2. We are proposing to make this section effective upon passage and approval.

Assemblywoman Carlton:

Mr. Finseth, this sounds very familiar to me. Did we have a discussion about this earlier in this session in another bill? Maybe it was last session that we talked about something like this. Can you help me remember that?

Rocky Finseth:

As usual, you have a keen mind. Earlier in the session, the Nevada Association of Realtors presented the prima facie foreclosure case. That was early on in the session. One of the recommendations coming out of that report was

consideration of beefing up the statutes pertaining to bona fide purchaser. That is where you would have heard the idea and concept discussed with the Committee.

Assemblywoman Carlton:

It did not actually end up in any other bills this session.

Rocky Finseth:

It was downstairs, but unfortunately it saw an untimely death in the Senate Committee on Judiciary.

Chairman Bobzien:

Mr. Finseth, what is the purpose of having this be effective upon passage but the rest of the bill having a different effective date?

Rocky Finseth:

If you want to make it effective upon passage and approval, that is fine. If you want to make it effective July 1, that is fine as well. There was no in-depth thinking of the effective date.

Chairman Bobzien:

We tend to want to be consistent with those applications. Do we have additional questions? Mr. Finseth, do we have anyone else wishing to testify in Las Vegas?

Rocky Finseth:

You cleared the house.

Chairman Bobzien:

Is there anyone wishing to testify in favor? [There was no one.] Is there anyone opposed? [There was no one.]

Assemblyman Frierson:

Since Mr. Finseth is still there, because it has been such an important issue, and we just threw it out there as a little amendment, I think it is important we get something on the record about why we are doing this. Mr. Finseth, you and I have talked about bona fide purchaser before. This is trying to address the notion that a home is foreclosed on, then sold to a new purchaser and something was wrong with the way the home was foreclosed; this protects the new purchaser who had no inkling of any wrongdoing. We know the home belongs to the new purchaser, and any claims about the inappropriate or improper foreclosure would be between the lender and original homeowner. Is that the situation we are trying to address with this language?

Rocky Finseth:

Mr. Frierson, you are correct. That is the underlying issue and underlying problem that has been set forth. As you know, we are an avid participant in the Attorney General's discussion on the changes that were needed from legislation from last session. This was one of the issues that we simply ran out of time to thoroughly discuss and vet.

Assemblyman Frierson:

Were those stakeholders part of the development of this language? I realize there were several moving parts at that time with adjustments to many of those different issues.

Rocky Finseth:

The stakeholders who were interested in discussing bona fide purchaser were at the table and in discussions with respect to this issue. The Office of the Attorney General was represented, and Nevada Legal Aid, Nevada Land Title Association, and some private attorneys were also part of those discussions.

Chairman Bobzien:

Are there any final questions? [There were none.] Is there anybody neutral? [There was no one.] We will close the hearing on S.B. 493 (R1). We will open the hearing on Senate Bill 496 (1st Reprint).

Senate Bill 496 (1st Reprint): Revises certain provisions governing portable electronics insurance. (BDR 57-1095)

James Wadhams, representing Asurion Insurance Services:

My client is a company called Asurion. They are a specialty insurance company that insures certain products that many of us carry in our purses or pockets called cell phones. The primary relationship is between a wireless company and the customer. The wireless company wants to keep us loyal to them. They have stores in which they sell phones, and in order to keep us from flipping the phones around, they offer what is called "portable electronics insurance." That is the insurance on these units. If I happen to drop this phone in the bathtub or kitchen sink and short it out, I can take it back to the store, and the insurance coverage will cover the replacement of the phone. The purpose of this is to keep me connected with, in my case, AT&T, but it could be Verizon, Sprint, or another entity like that.

This line of insurance is in a separate chapter created last session, and those of you who served on the Assembly Committee on Commerce and Labor during the 2011 Session may recall that bill. It is put into the insurance code because

the Insurance Commissioner is familiar with dealing with consumer problems. I think it has been fairly successfully regulated in that chapter.

What is the purpose of this bill? It is designed to do some technical changes to bring this more in line with the way this segment of the industry operates. If we can turn to section 1, the changes occur on page 3. The insurance is usually a brochure in the wireless provider's office. The brochures are what is referenced here. The written material, the advertising, does not have to be filed with the Insurance Commissioner. On page 3, subsection 3, we have cleared up that the insurer must file the policy form and certificate of coverage with the Insurance Commissioner not later than 15 days before the use of the form. The contracts have to be filed, but there is flexibility in changing the advertising material. We think that makes the advertising material, the brochures, consistent with the way the Insurance Commissioner regulates other lines of insurance.

Section 2 is all existing language until we get to page 4. It makes it clear that the insurer does not get the premium directly from the consumer. The consumer pays the wireless bill, and the insurance is an add-on charge to the wireless bill. It makes it clear that the insurance company is deemed to have received that premium when the premium is paid by the enrolled customer to the wireless provider. If I pay my bill, the insurance coverage continues. It is not a question to whether the insurance company itself gets the premium.

Section 3 has the last changes. As the Committee will note, we have stricken a couple of provisions. On lines 22 and 23 of page 4, when we first drafted this it said the terms and conditions could not be changed any more than once in a six-month period. In this industry, it moves very quickly, so we requested this be allowed to be changed on 30 days' notice. With your monthly billing, there could be a change, but you will be given 30 days' notice of that change.

The only other change is on page 5 on failure to pay the premium. This is connected with the payments to the provider. It brings that language into conformity with failing to pay the premium or "Ceases to have an active service with the vendor." This is incidental to owning the phone, which is incidental to keeping the service with the vendor.

This is the first reprint. There was some language we cleaned up in the first house in discussion with the Insurance Commissioner. I do not expect him to take a position on the bill, but I see Mr. Plain from the Insurance Commissioner's office is here.

Chairman Bobzien:

Are there any questions?

Assemblywoman Bustamante Adams:

Mr. Wadhams, I have a question on that section that deals with if there is a change in the terms and conditions of the policy on page 4. This is where it says they can change an issue once in a six-month period. You are changing it from six months' to 30 days' notice, correct?

James Wadhams:

Yes, it would be 30 days' notice. If you flip back to page 3, lines 21 to 24, the actual contract has to be filed with the Insurance Commissioner's office for approval before it can be used. It is highly unlikely that these things will change every 30 days, and they cannot be changed unless the Commissioner approves the change. As a practical matter, it may occur more frequently than once every six months.

Assemblywoman Bustamante Adams:

I agree six months is too long. I do not know if 30 days is a good amount. It is really short for me.

Chairman Bobzien:

We might get a clarification from our legal counsel.

Matt Mundy, Committee Counsel:

The current law requires a 30 days' notice for any change. However, they can only make one change every six months.

Assemblyman Horne:

With this change, it would allow for multiple changes. Does that create some unsteady ground for the consumer if you can have changes once every 30 days or every 60 days?

James Wadhams:

I think that is an excellent question. It begs what this kind of insurance is about. It is not your homeowners or auto insurance. It is a security so if I drop this in the bathtub, I can get it replaced. That is the security for the provider. The simple answer is that it could be done more frequently than every six months. As a practical matter, it will probably not happen more than once or twice a year anyway. They do not know how quickly that product may change or the brochure reprinted. It adds some additional flexibility. Again, I think the key is that you cannot change the contract without getting the approval of the Insurance Commissioner.

Assemblyman Horne:

What type of changes are we looking at? With the scenarios of dropping it in the pool, toilet, or something like that, when I purchase the contract in the beginning, maybe I had certain expectations of what my policy would be under those conditions. Under this bill, those expectations could be changed periodically. It could be a completely different animal from when I purchased my phone. Now, at the end of April 2013, it is not exactly the same policy that I initially purchased.

James Wadhams:

That is an excellent question. Again, it is critical to realize that these changes cannot occur without the prior approval of the Insurance Commissioner. I would also mention that we see ads on television all the time where the providers are competing for our attention. This is an incidental service. It is designed to keep you loyal to AT&T, Verizon, Sprint, or whoever you are with. I think the risk you point out is realistic, but that is why the Insurance Commissioner has control over the kinds of changes that can be made. I think it would contradict the competitive nature of this marketplace.

Assemblyman Horne:

On page 4, section 3, where you change the enrolled customer from 15 days to 10 days on the fraud or material misrepresentation, what was the rationale for that?

James Wadhams:

I think that was an edit designed to conform this to the fraud and misrepresentation cancellation in other insurance products. I am saying that at the risk of proving myself wrong. Let me do some research on that. I think you have caught me unprepared to answer that. I will get that answer and get it back to you.

Assemblyman Frierson:

I am thinking of this in a practical sense. I have a smartphone that probably costs around \$600 without a two-year contract. It would cost me about \$600 to replace it if I broke it, unless I have an insurance policy. When I bought the phone, I bought it with a \$9 a month insurance plan, and I have used it two or three times already. What you are saying is that it would not be smart to change the plan in a way the owner would not like. I do not think most of us read the notices we do get. Of course, most people do not drop their phone as much as I do, so it might get changed and they never know. Technically, I could buy a phone, get a \$9 a month insurance premium, and a month later they can say water damage is no longer covered.

James Wadhams:

That is an excellent observation. I think I have to encourage the Committee to understand that any change in that contract has to be approved by the Insurance Commissioner.

Assemblyman Frierson:

I understand that. I do not talk to the Insurance Commissioner. My wife says I have technology bad luck. We were at the beach, and I walked into the water with my phone in my pocket. However, it was okay because I made sure to get an insurance plan. The company can contact the Insurance Commissioner, and they can say they are all good with it, but nobody consulted the purchaser. I am concerned about the people who buy the policy and their expectations and how significant the changes could be that were probably part of why they entered into the contract in the first place.

James Wadhams:

I understand those questions. I think the point is that the consumer has to be notified of any changes. None of those changes can be made, even prior to notification, unless they are approved by the Insurance Commissioner. The Commissioner has to review these contracts to make sure they are fair and reasonable to the consumer. I think the nature of this whole marketing program is designed to keep me loyal to whoever the provider is.

Assemblyman Ohrenschall:

If a consumer gets a notice of one of these changes, whether it is every six months, or now if it becomes more frequent, and does not like it and wants to cut off the insurance policy, do they suffer a penalty for cutting it off before the end of their phone contract? Is there no penalty for dropping the insurance policy?

James Wadhams:

No, the phone can be purchased independently of the insurance contract. It is an additional item, and it is spelled out in the bill. It is collected by the cell phone service provider. I am looking for the section.

Chairman Bobzien:

Is it in section 2?

James Wadhams:

I think it is on page 3, section 2, line 31. It states, "Any charge to the customer for portable electronics . . . must be separately itemized on the customer's bill." You can cancel your insurance if you do not like the change

or decide you do not want the insurance anymore because you do not take your phone to the beach.

Chairman Bobzien:

The question was normally you are covered under a contract, and if you cancel early, if a change comes your way on the insurance and you say you do not want this, can you then be relieved of the plan because of the change?

Assemblyman Ohrenschall:

Without a hefty penalty. That is my question. If the consumer does not like one of the changes, can they break their insurance policy on the phone without a hefty penalty?

Chairman Bobzien:

So, you are Mr. Frierson, and you get a notice that says they are excluding beaches. I have to go over to another carrier now.

James Wadhams:

I think I understand Mr. Ohrenschall's question. I think the answer to that question is that these are 30-day policies. You are continuing your coverage on a month-to-month basis. If you decide you do not want it, you just do not pay that itemized charge or cancel the policy.

Assemblyman Ohrenschall:

On page 3, lines 14 and 15, with the deletion of that language, will there not be any certificate of coverage? Will there be something replacing that?

James Wadhams:

That is an excellent question. In discussions with the Insurance Commissioner, we made it clear that the advertising brochures will provide information, but they are not the certificate of coverage. If you drop down to line 20 on page 3, the insurer has to file the portable electronics policy form, including any certificate of coverage. We are making a distinction between what has to be filed as the actual contract versus what might be the brochure or flier that advertises it.

Assemblyman Ohrenschall:

So the consumers will not have to be looking around for some certificate to prove they have coverage in order to file a claim on the cell phone. It will all be up to the company?

James Wadhams:

It will be a matter of record with that company. They will be entered as certificate holders or participants in the certificate.

Chairman Bobzien:

I think Mr. Mundy has some clarification on the question from earlier.

Matt Mundy:

I am reading from *Nevada Revised Statutes* (NRS) 691D.310 regarding the cancellation by the consumer of the policy. It says the material provided to the consumer must "State that the enrolled customer may cancel his or her enrollment for coverage under the policy of portable electronics insurance at any time and, in the event of such cancellation," that for the person paying the premium for the coverage, the difference is returned to them.

Assemblyman Ohrenschall:

That covers it.

Assemblyman Ellison:

I basically had the same questions. We had to buy a new phone last week. I was under the impression when we bought the insurance that the insurance was the carrier and not a third party. Is that correct? That was my first question. I thought that if you bought it from Alltel, Verizon, or wherever, it is their insurance that goes with that phone. Say they did change it and it would not cover for water damage, and the consumer says, this is a \$500 phone, and if we are not going to get coverage, can we cancel our contract totally and go to a different carrier?

James Wadhams:

There are two answers to that. I was helped out by Legal for part of it. You can cancel the insurance portion of that at any time. If whatever that insurance program the provider is offering is irritating you, you can go to Verizon. I think you have that right to do that at any time. It is really a 30-day contract, and you can cancel at any time you want if you do not like the change or the coverage.

Assemblyman Ellison:

Are not most contracts a minimum of two years? If there were changes right after you purchase a phone and say you are not going to cover the phone for breakage, so you go somewhere else—can you break that two-year contract?

James Wadhams:

The primary business relationship we are talking about is the relationship with the service provider for the wireless. That is the primary business relationship, and that is the most expensive part of the business relationship. The purchase of the cell phone is typically done by contract so you get a discount on the price. Then you can add on the insurance if you are a bit careless with the phone. If I drop it, I do not have to spend another \$600 for another smartphone. I can take this in, and they will replace it or give me a refurbished one.

Chairman Bobzien:

Do we have anyone else wishing to speak in favor? [There was no one.] Is there anyone in opposition? [There was no one.] Mr. Plain, we have you signed in as neutral. You are not signed in to speak, but I think we want to ask you a couple questions. If you are seeing these changes in the filings in your office, could you give us a general sense of the trends you see in the changes of filings? What are the major points there seem to be variability on? Are we talking about the premiums changing or the coverages changing? What are they in response to? I realize you are not the industry, but the regulator. From your perspective, what are the sorts of things that are generally in play with these filings?

Adam Plain, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry:

I honestly do not have a good answer to that question. I do not see the rate filings on a regular basis. The Division would have to do some research and get back to the Committee. You can have a situation where Apple, one of the larger more popular brands, has their Apple Care product and excluded water damage in their Apple Care contract. They faced a class action lawsuit, and they lost. They had to cover water damage for certain circumstances. They went back and changed their Apple Care product to very specifically exclude water damage going forward. I think those are the types of changes we have seen. They are small tweaks to respond to varying conditions and the resulting premium changes that go along with that. Premiums are driven by coverages and not the other way around.

Chairman Bobzien:

Certainly in this phase, with such rapid development in technology where new issues arise, I think it might be beneficial if there could be some research done so we can get a sense of the trends that your office sees in that regard. I appreciate the Apple Care anecdote. That is a good one that comes to mind. Do we have any questions for Mr. Plain? [There were none.] Is there anyone neutral? [There was no one.] We will close the hearing on S.B. 496 (R1).

Do we have any public comment to come before our Committee today? Seeing none, are there any issues from Committee members? [There were none.]

The meeting is adjourned [at 2:40 p.m.].

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 3, 2013

Time of Meeting: 1:36 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 47 (R1)	C	James Westrin	Written Testimony
S.B. 493 (R1)	D	Rocky Finseth	Proposed Amendment
S.B. 493 (R1)	E	Laura Lychock	Proposed Amendment