

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

**Seventy-Seventh Session
February 20, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:37 p.m. on Wednesday, February 20, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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 Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (excused)



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Sylvia Smith, President, Nevada Land Title Association, Reno, Nevada
Rocky Finseth, representing Nevada Land Title Association
Jenny Welch Reese, representing Nevada Association of Realtors
James L. Wadhams, representing Service Contract Industry Council and
Motor Vehicle Ancillary Products Association
Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern
Nevada, Las Vegas, Nevada
Adam Plain, Insurance Regulation Liaison, Division of Insurance,
Department of Business and Industry

Chairman Bobzien:

[Meeting was called to order. Roll was called and protocol was explained.] We will now open the hearing on Assembly Bill 83, and we would like to welcome our colleague Mrs. Bustamante Adams to the table.

Assembly Bill 83: Revises provisions governing certain disbursements of money from escrow accounts. (BDR 54-686)

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42:

Assembly Bill 83 is a clean-up bill from last session. It deals with a concept called "good funds." [Read from prepared text ([Exhibit C](#)).] I would ask that you refer to the presentation I have provided ([Exhibit D](#)). [Continued to read from prepared text ([Exhibit C](#)).]

Sylvia Smith, President, Nevada Land Title Association, Reno, Nevada:

I would like to thank Assemblywoman Bustamante Adams for carrying A.B. 83 for the Association and explaining to you, in laymen's terms, why this bill is necessary. [Read from prepared text ([Exhibit E](#)).]

Chairman Bobzien:

Are there any questions from the Committee?

Assemblyman Hansen:

Will removing "which is payable in the state" from the bill make it more difficult for individuals with an out-of-state bank to cash a check, or is this strictly in regard to transactions between financial institutions?

Sylvia Smith:

The changes we are requesting strictly refer to escrow companies under *Nevada Revised Statutes* (NRS) Chapter 645A and title agencies under NRS Chapter 692A. I do not think it would have any effect on individuals.

Assemblyman Grady:

If I take the wordage "authorized to do business" literally, you are saying that Bank of America, which is located in Phoenix, Arizona, is not authorized to do business in Nevada. I find that, as an ex-banker, troubling. We accept checks from banks all over the country that do not necessarily have a charter in Nevada, yet they do business in the state. I would like you to clarify your definition of "authorized to do business."

Sylvia Smith:

It was the Association's intent when this bill was presented that if a bank was "authorized to do business" in Nevada—which Bank of America would be, even though they are based in Arizona—it would allow us to accept a cashier's check from a local branch.

Assemblyman Grady:

My point is that Bank of America is already authorized to do business in Nevada. That was the whole idea of branch banking. By what you are proposing, we are getting away from branch banking.

Assemblywoman Bustamante Adams:

That is not the intent. The problem was that there needed to be clarity so that the title company would be able to allow the home buyer to close that day. The lack of clarification in the statute causes a delay. Our intent was to allow the funds, even though the bank may be a national branch that only has an affiliate in Nevada, to be available to close that same day.

Assemblyman Livermore:

When you close escrow, either the loan company or the buyer gives you a certified check. This means that money was available in the escrow account that day, regardless of where the bank was located in the United States. That

money was guaranteed by the usage of the phrase "certified check." Am I correct in my understanding that, in the cases you are referring to, the money may not be made available for a day or two until after the regional bank is authorized to transfer the money?

Sylvia Smith:

When the "good funds" law passed in 2009, we set out to clarify what could be considered as "good funds." If you look in A.B. 83, section 2, subsection 2, it lists per NRS 692A.255 what can be considered "good funds." Cash, wire transfer, cashier's check, or certified check would be considered "good funds." The bill was originally passed with the language "which is payable in this State and which is drawn from a financial institution located in this State," and we are trying to amend that to show that they are "authorized to do business in this State." As you can see from the examples, we know Bank of America is authorized to do business in the state, but under the bill a cashier's check would not be payable in Nevada. The change would clarify that if they are authorized to do business, we can accept the check as "good funds."

Assemblywoman Bustamante Adams:

To answer Mr. Livermore, yes, that is the issue that the title companies are running against. They are not able to have a same-day transaction and this is the solution we are bringing forward.

Assemblyman Daly:

All of the ways you can accept money are listed in section 1, subsection 2. You can do a same-day transaction if you take cash because you know it is there. With electronic transfer, confirm, click, and the money is there. In paragraph (c), with a cashier's check or a certified check, you are not actually able to get cash, but it is virtually the same, so you are able to deposit it and close the deal. Paragraph (e) says, "Any other form that permits conversion of the deposit to cash on the same day the deposit is made." Doesn't paragraph (e) already allow you to accept a check, as in the situation from the presentation? Or does the lack of clarity on paragraph (c) require clarification on paragraph (e) to allow you to accept the funds like cash by removing the restrictive words?

Sylvia Smith:

Yes, that is exactly what we are trying to do. Even under paragraph (e), honestly, we could take someone's personal check and take it to their bank and have it converted to a cashier's check, but it would come out exactly the same if we took it to Bank of America or Wells Fargo. We are just trying to clarify that, yes, we have taken it to a local bank authorized to do business in Nevada,

and even though the check may say "Phoenix," we may consider it "good funds."

Assemblyman Daly:

Basically, the words to be taken out are unnecessary restrictions, and as long as you are able to confirm that the check you are receiving is viable, it should be treated like cash.

Sylvia Smith:

Yes, that is correct.

Assemblyman Ellison:

I purchased two houses recently and had a very difficult time closing deals because of the waiting periods. I hope this bill will help with that confusion.

Sylvia Smith:

There are so many different scenarios with fund transfers, and the intent of this bill is to clarify what can be accepted. Some companies do have internal policies that may differ. Our company, for instance, has a trust account at Wells Fargo. If you were to attempt to make a deposit into our trust account, we would not accept it. There are many reasons behind that, but mainly we have to be concerned that once the money is in our trust account, you cannot take it back. The intent of the bill is just to clarify and to make these transactions very simple.

Assemblywoman Bustamante Adams:

I believe the Association of Realtors will also come forward in support of the bill. Hopefully that answers your question.

Assemblywoman Diaz:

I am curious as to what the current delay is on closing escrow for a property.

Sylvia Smith:

It depends on where the cashier's check is drawn. If someone brought in a check that was purchased in Utah, we would put a hold on those funds. I believe the banking regulations on that would be a minimum of three working days. Sometimes it can be up to ten working days depending on which region that cashier's check may have been drawn from.

Assemblywoman Diaz:

So if we move forward with this language and we allow for the escrow to close immediately, does that pose any risk of possibly losing funds? I want to make sure there is no risk of taking a cashier's check and it not being legitimate.

Sylvia Smith:

Each company has internal policies to protect the funds. Because there is currently a huge amount of fraud with cashier's checks, we have an internal policy that any out-of-state cashier's check will have a hold put on it regardless. This will not change that at all. All this will do is allow us to accept a cashier's check from a local bank once we have confirmed that they have issued the cashier's check.

Assemblywoman Kirkpatrick:

I think we need a little history on this issue. If the bill was passed in 2009 and we are just now addressing it in 2013, you must have seen something happen that made it more of a problem. Maybe transactions slowed down or something else triggered the concern? Is there a reason that this could not have been done through regulation to clarify that process?

Rocky Finseth, representing Nevada Land Title Association:

As Assemblywoman Bustamante Adams has explained, the bill was brought forth in 2009. There was some tweaking with the bill in 2011, and those tweaks were caused by how the law was implemented between 2009 and 2011. We brought forward this proposal because between 2011 and 2013 we have seen some additional needs to tweak it. I do not want to leave you with the impression that nothing was done with the law in 2011. There was a minor amendment made in 2011.

Assemblywoman Kirkpatrick:

We always ask a lot of questions on the smallest bills. Line 10 on page 2, in paragraph (c), says that it must be drawn from a specific bank within the state. So unless you are a state-chartered bank and you are located in the state, it would exempt other folks; is that what I am hearing? Is this bill exempting some of the larger corporations that do a lot of business within our state?

Sylvia Smith:

What we are trying to do is bring them in. The issue we have now is the larger banks. Under the current language of the bill we would be able to accept a cashier's check from Nevada State Bank, but if it were a Bank of America cashier's check, we cannot technically accept it even though it was purchased at the local branch. We are trying to bring clarity so that we can bring those larger banks in. Any actual cashier's check that is coming in from an out-of-state bank is going to currently have a hold.

Assemblywoman Kirkpatrick:

I do not disagree. If I remember correctly, in 2009, we were working to make the bigger banks come to our state. Maybe that is why we intended the

language to be the way it was. But I do know that in NRS Chapter 659 there is a definition for banks that do business within our state, so I feel more comfortable with it. So based on line 10 of page 2 of the bill, we are allowed to take cashier's checks or certified checks from a smaller bank that is chartered in Nevada and is physically housed here, corporate-wise. So this now would encompass the larger banks that are not necessarily located in our state.

Rocky Finseth:

That is the intent.

Assemblywoman Kirkpatrick:

To Mr. Hansen's point, would this law apply if someone was not going through a title company but through a personal transaction? Or does it only apply when someone is using a title company or with the use of a loan?

Rocky Finseth:

The changes are dealing with escrow companies and with title companies. Those are the two areas where we were trying effect an impact.

Assemblywoman Kirkpatrick:

I feel more comfortable now.

Chairman Bobzien:

Are there any questions? [There were none.] Is there anyone else in favor of Assembly Bill 83?

Jenny Welch Reese, representing Nevada Association of Realtors:

The Nevada Association of Realtors would like to express their support for A.B. 83. This bill helps realtors close transactions in a timely manner.

Chairman Bobzien:

Are there any questions for the Realtors Association? [There were none.] Is there anyone in opposition of Assembly Bill 83? [There was no one.] Is there anyone in the neutral position? Seeing none, we will close the hearing on Assembly Bill 83. Now we will move to Assembly Bill 88.

Assembly Bill 88: Revises provisions governing service contracts. (BDR 57-755)

James L. Wadhams, representing Service Contract Industry Council and Motor Vehicle Ancillary Products Association:

Oftentimes bills will only present a small portion of the relevant statutes, which can be confusing. With the permission of the Chairman I would like to give background and history on the context of this bill. I was fortunate enough to

serve as Governor Mike O'Callaghan's Insurance Commissioner. In those days service contracts and warranties were not regulated in any way by the state. By 1999, the Legislature considered it was time to put some type of regulation on these products, and a bill was adopted in 1999. I do not think the bill has been amended much since then.

I would also like to explain the difference between a warranty and a service contract. Warranties are issued by either the manufacturer or the seller of a product. Under the Uniform Commercial Code warranties are obligations of sellers. Warranties are also federally regulated under the Magnuson-Moss Warranty Act. Warranties are typically limited to a certain period of time. For example, you have a warranty on your television for 90 days. These types of warranties are not regulated by Nevada statute. What are regulated are extended warranties. These are warranties that can be purchased to go beyond the time period of the original warranty. Extended warranties have been regulated since 1999 by the Insurance Commissioner.

Service contracts have existed since the first plumber said to someone, "If you have me come every six months, you would not have to spend so much money to have me clean out your drain once a year." Service contracts are an outgrowth of those arrangements. The difference between a service contract and a warranty is that a service contract is required to be in agreement based upon the delivery of service. Extended warranties and service contracts were historically not regulated as insurance because there was no third party making a guarantee. It was simply a provider of service offering to guarantee his service or an extended warranty saying the product will continue to work as it is supposed to.

There are really two major purposes in this bill. The first part is to allow certain benefits to be added to contracts that might be sold. It is permissive and makes it clear that if a service provider or an extended warranty company seeks to add additional benefits that are within the scope of what they can do, those contracts have to be filed with and approved by the Insurance Commissioner. The second major part is a correction to a drafting error in the last legislative session regarding the qualification of insurance companies. Large service contract companies can qualify by themselves. Medium- or small-sized service contract companies have to prove to the Insurance Commissioner that they have an insurance company backing them up. These small- to medium-sized service contract companies would have to file a contractual liability insurance policy issued by a licensed and regulated insurance company to back up the performance obligation of the service contract provider. In 2011, a phrase was added to say that an insurance company could not issue that contract if it was

affiliated with the service contract provider. This is the language we are trying to correct.

We have discussed the bill and the proposal with the Insurance Commissioner, and understand he has an amendment to change the sequence of the drafting slightly, but we believe he is in support of this bill otherwise. We have also been made aware of comments by a gentleman from Clark County that generally reflects an opinion that these products can be abused. We respect that opinion, but observe that under the statute, into which the bill would go, that there is an Unfair Trade Practice Act and there is regulatory oversight which have been in place for the last 14 years.

Mr. Chairman, with your permission, I think I can give a section-by-section summary that may be helpful to the Committee.

Chairman Bobzien:

I think there are enough pieces here that it would be helpful for you to walk us through the bill.

Jim Wadhams:

Section 1 is simply a statement from the Legislative Counsel Bureau (LCB) that identifies where the language is going to be inserted. Section 2 gives a definition of "incidental costs." This is the identification of what I will refer to as "potential additional benefits" that a service contract or extended contract company can add into those contracts to benefit the consumer. Section 2, subsection 2, gives the example of "a charge for a rental vehicle." If I have purchased an alarm system that suggests it will deter theft, and the car is stolen, the service contract company that installed that alarm could provide, under this provision, reimbursement for the expense of a rental car while my car is recovered. It adds benefits that can be included in the contract, but they are not mandatory.

Section 3 gives a definition of "road hazard." It identifies circumstances or items on the road that may cause damages. Section 4 clarifies the definition of "vehicle protection product" to include certain additional products and the benefits that can be provided. It also is intended to distinguish them from fuel additives. Fuel additives are poured into your gas tank with the intention of making your engine run smoother. That is a separate sort of product line from what we are discussing in this bill. Section 5 is a provision related to fixed benefit contracts. For example, if the total value of a service contract is \$4,000, subsection 1 and subsection 2 of section 5 give an alternative way of dealing with multiple losses under that contract. You may apportion them on a percentage base, where a portion of everything is covered within the benefit

that is available on that contract, or there could be a fixed amount and decided by the consumer.

Section 6 is LCB language to make sure that the chapter will be conformed if this bill is processed. Section 7 adds additional benefits to service contracts that can be included. These additions are not mandatory but are permissive. They would have to be filed in a contract form with the Insurance Commissioner. If approved, under the rules applying to those contracts, they could be offered as well.

Section 8 is the piece I was referring to earlier that corrects the 2011 language. I would like the Committee to pay specific attention to lines 22 and 23 on page 4. You can see what is proposed to be crossed out: "not an affiliate of the provider." The effect of the language is to say that a legal, fully licensed insurance company in the state of Nevada could be disqualified from issuing these policies. This is a critical point, and we have discussed this with the Insurance Commissioner's office. He has indicated if we license and regulate the service contract providers, we can make sure that the insurance company itself has enough money to stand behind its promise. Our proposal is that this qualifying language be removed, and the primary function of whether they are licensed, registered, or otherwise approved be the criteria under which that contract can be used. To clarify, I was referring to subsection 1, paragraph (a). Paragraph (b) may look a little odd but if you read it carefully, you will see it is existing language. It is a provision that would allow a very large company to qualify directly. The statute clarifies on line 29 that a "very large" company would have to have at least \$100 million in net-worth equity. Paragraph (a) is the more normal qualification for the small- to medium-sized companies that have to confirm they have an insurance policy.

The last major change is in subsection 2. The Insurance Commissioner requested that we make sure that the licensed insurance company be financially stronger than just the bare minimum to get that license. If you look at page 5, lines 3 and 4, it says, "Maintain a surplus as to policyholders and paid-in capital of at least \$15,000,000." The minimum qualification to get a license is \$1.5 million, so this would require it to be a larger insurance company that is more financially stable. That is the purpose of the language in section 8, subsection 2.

Chairman Bobzien:

Are there any questions?

Assemblyman Hansen:

On section 8, the intention is to increase the net-worth requirement from \$1.5 million to \$15 million?

Jim Wadhams:

In general the answer is yes. The Insurance Commissioner's concern was that they did not want a fairly new insurance company to be the one that files the policy for a service contract holder. That does not mean that a smaller company cannot do business, but in order to be the provider of insurance to a service contract company, they have to be a stronger insurance company. We have no objection to that.

Assemblyman Hansen:

Are there any insurance companies currently providing these service contracts in Nevada that would no longer be able to do so due to this new requirement?

Jim Wadhams:

No, I do not think that will happen. In law, if a license was obtained under an existing set of circumstances, the Legislature cannot change the criteria for holding that license. In fact, what happened after 2009, when the language was changed, the Commissioner, correctly, did not impose any changes retroactively on existing licensees, but it did apply to any new applicants. This bill would not put anyone out of business who is currently doing business, but it does set a standard for new applicants.

Assemblywoman Carlton:

From looking through the *Nevada Revised Statutes* (NRS), I remember the 1999 date for most of this. What is the overwhelming issue that says we would need to change something within these service contracts? I do not think I have had one constituent come to me about service contracts and these different items. Why are we doing this?

Jim Wadhams:

There is a demand in the marketplace for these types of products. They are not purchased by everyone, but there are those who do purchase them. The purpose is to simply increase the options available in the marketplace should a buyer choose that. As you may have noticed, if you read NRS Chapter 690C, that no person may be required to purchase a service contract as a condition of the sale of any other goods or services. It is strictly an independent consumer choice, but it does increase the options of what can be offered.

Assemblywoman Carlton:

What is the ultimate goal behind these definitions? For example, under "incidental costs" we have the deductible for your insurance, charges for a rental car, and even sales tax. It seems as though we are incorporating these into a service contract as a sales technique to get people down to the bottom line on the car. I wonder how much this has to do with it? I do not think you normally see things like the sales tax, registration, or inspection fees included in a service contract, because you only pay for them once.

Jim Wadhams:

If there is an installed product like a radio or GPS that is stolen, this makes it clear that the provider of that contract can reimburse you for the sales tax on the product, not just for the replacement of the product itself. It makes it clear that these sorts of costs can be offered to be covered. So if a product is stolen because an alarm system that was guaranteed failed, the sales tax for the radio or GPS can be reimbursed.

Assemblywoman Carlton:

So under current service contracts, if my new radio or GPS was stolen from my car, the dealer or whoever has been selling these service contracts has not been covering those items? If this is not added in the contract, they will not be covered in the future?

Jim Wadhams:

I do not believe that is correct. Maybe I am not hearing the question correctly. The dealer simply sells the car and has no further obligation.

Assemblywoman Carlton:

Let me correct myself. I did not mean the dealer, but the person who sells the service contract.

Jim Wadhams:

The service contract is going to be blended in with an insurance contract. When you register your vehicle, you have to prove when you have liability insurance. Most people buy that from an insurance agent who also sells casualty insurance, which would cover most of the expenses of losses. On the other hand, if you buy service contracts that have coverage for certain products that are added to that, it can supplement and enhance the recovery of all the losses. It is an optional program that can be purchased or rejected by the consumer.

Assemblyman Hansen:

You mentioned you have a service contract for your air conditioner. As a plumber, do I fall under the category of a service provider that would need to be licensed and regulated? Or is this strictly for automobile dealers? I am confused as to who a service provider technically is.

Jim Wadhams:

A service provider can be anyone who is going to provide a service and then goes beyond the simple guarantee of the service. That language is in NRS Chapter 690C, and it specifically excludes a contractor who simply agrees to go out and do maintenance.

Assemblyman Hansen:

So this will not apply to all contractors.

Jim Wadhams:

No, it will not.

Assemblyman Ohrenschall:

I have a question related to the alarm system provision in section 4. Say I have a LoJack system on my car, and my car is stolen, and then recovered. If there is damage to the car, is LoJack responsible for repairing the damage?

Jim Wadhams:

It would depend on what kind of coverage LoJack offers. It is not mandatory for the consumer to buy the service contract, and the service contract company does not have to offer it. It is permissive language that allows companies to file an appropriate contract with the Insurance Commissioner and then offer it as a discretionary purchase. The terms that are within that contract would depend on each contract.

Assemblyman Ohrenschall:

If I wanted to purchase a product like this from LoJack, this would allow them to offer something more comprehensive than just locating the car.

Jim Wadhams:

That is the intent—to expand the benefits that can be included in a service contract. They are not mandatory but permissive.

Assemblywoman Bustamante Adams:

From previous experience with insurance, I know it is preferable to have language that is consistent with other states. Is the definition for "incidental costs" the same as what has been enacted in other states?

Jim Wadhams:

Yes. The two trade associations I represent are national trade associations, and while I cannot give you the specific states that use this language precisely, they are attempting to have this legislated in every state. If you would like me to find out how many states have adopted this language, or other variations of the bill, I would be happy to provide that to the Committee.

Assemblywoman Kirkpatrick:

First, is there anything that will protect the consumer from receiving warranty expiration phone calls? Also, service contracts have not been revisited since 2007 within our statutes. We discussed other aspects of NRS Chapter 690C in 2011, but would this new definition apply throughout the entire chapter? Lastly, I would like to know where NRS 690C.220 would not apply to this.

Jim Wadhams:

Consumers should put themselves on the National Do Not Call Registry. There is nothing we can do with this bill that would preclude vendors from making offers. Regulating these contracts affords the consumer the opportunity to have a state agency dedicated to reviewing these types of the contracts for fairness and whether there is some level of ability to perform. This ensures that the consumer gets at least what had been promised.

The last question you raised about NRS 690C.220 is not in the bill but in the statute that the bill amends. *Nevada Revised Statutes* 690C.220 states, "No person may require the purchase of a service contract as a condition for the approval of a loan or the purchasing of goods." So while an offer of a service contract can be made, it cannot be tied together.

Assemblywoman Kirkpatrick:

Thank you for the clarification. Also, NRS 690C.230 states, "Receipt or written evidence of service contract required; copy of service contract required to be furnished to holder within reasonable time." I just want to make sure that we are clear about what it means to change this definition, and I am sure the Insurance Commissioner is going to help regulate some of that.

Jim Wadhams:

There is a mandatory delivery period but there is also a "free look, full refund" period provided for in the existing chapter. As I said at the very beginning of my testimony, sometimes when we look at these bills without viewing the full chapter we miss the context of the bill. This is a voluntary purchase which cannot be tied in; there is a "free look, full refund" period and a mandatory delivery of the contract period. The "free look, full refund" period does not begin until the contract is delivered. There is no system that is perfect, but we

think this system will be helpful in providing protections to the consumer. It will also allow for more variations of these products to be offered.

Assemblywoman Diaz:

If this bill passes, do all of the service contracts have to be in alignment with what we are setting forth in the bill?

Jim Wadhams:

There are two answers to that question. One is that no service contract can be sold that does not conform to the statute. But that is not the same answer as not every service contract will be identical. One service contract company may have the same benefits that are available if the statute does not pass. Another, if the statute does pass, may add some of the additional benefits outlined in the bill. Either way, they both have to conform to the law, which means they also have to be approved by Insurance Commissioner.

Assemblywoman Diaz:

Ultimately the consumer is responsible for reading the fine print of what is covered under a specific service contract, correct?

Jim Wadhams:

Yes, but what this system does, and has done since 1999, is provide a state agency that consumers can call to receive help.

Chairman Bobzien:

Are there any additional questions? [There were none.] Is there anyone else who would like to testify in favor of this bill? [There was no one.] We will now go to the opposition.

**Dan Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada,
Las Vegas, Nevada:**

I have been working on my concerns regarding the proposed legislation for years. [Submitted written testimony ([Exhibit F](#)).] This issue was last discussed in 2009 in Senate Bill No. 118 of the 75th Legislative Session. In 2006, then Assembly Majority Leader Buckley obtained a letter from the Insurance Commissioner, which was based on an opinion from the Attorney General of Nevada. Those are attached as exhibits to my testimony ([Exhibit F](#)).

The proposed legislation, mainly in sections 3, 4, and 7, attempts to reclassify something which has been found to be insurance into the chapter on service contracts, thereby no longer classifying and regulating it as insurance. Chapter 690C of NRS deals with service contracts or "goods," defined as tangible personal property and "which have an operational or structural failure

as a result of a defect in materials, workmanship or normal wear and tear." On the other hand, the proposed legislation deals with, among other things, a "product for marking body parts" and a "product to etch a window." These are services that fit neither the concept of a service contract nor its definition in NRS 690C.080. Moreover, these services historically have been coupled with an insurance component and have been found to be insurance by the Attorney General of Nevada and the Insurance Commissioner.

To that extent, I submit that those portions of the bill are wolves in sheep's clothing. Why would they not want window etch or road hazard coverage to be insurance? First, to avoid regulation as insurance with the consumer protections inherent therein. Second, to avoid the point that those "products" are worthless, or worth very little, due to the operation of other insurance clauses in auto insurance policies. Third, to avoid being held accountable in any meaningful way for selling a virtually worthless product, because if it is not insurance, then the Federal Arbitration Act applies, and they can immunize themselves from class actions and other contractual limitations on consumer rights and remedies.

I would like to point out that Mr. Wadhams stated at the beginning of his testimony that he had two purposes. One purpose, as seen in section 2 and section 5, was to make explicit certain benefits that could be added, noting that they would be permissive. I would submit that is not needed. They can do that now by asking the Insurance Commissioner in a regulation to allow them to do this if they had a concern about it. The other purpose, seen in section 8, was to correct a drafting error. The other parts of the bill that I have concerns with were not touched upon as part of his purposes.

The proposed legislation attempts to reclassify actual real products as services like "vehicle protection products" and then regulate them under the umbrella of service contracts. Or does it? The drafting of the bill makes that ambiguous. In section 3 and section 4 they defined "road hazards" and "vehicle protection products," but then they do not include those in the definition of a service contract in section 7. It is really unclear whether any of NRS Chapter 690C would apply to those products listed in section 3 and section 4. If it does, it is contrary to intuition and common sense, and they have not demonstrated a need to do so whatsoever.

To the extent the proposed legislation deals with an actual product—namely an alarm system, a steering lock, a pedal lock, an ignition lock, an emergency shut-off switch for the fuel system or ignition system, and any electronic radio or satellite tracking device, as noted in section 4—has anyone demonstrated the need for this legislation? Whenever the Legal Aid Center of Southern Nevada

asks for legislation, we are asked "Why do we need this bill?" or "What is the problem that needs to be solved and how does this bill solve that problem?" I am not aware that that has been done here. Moreover, is your local custom stereo store, which may also sell and install a car alarm system, going to be told it is now regulated under and must comply with NRS Chapter 690C? I am not sure, by the way this bill is written, and I am not here speak for the local stereo installation store. The proposed legislation is written to define and include in NRS Chapter 690C the vehicle products as defined.

Lastly, I would like to summarize the nine points I made in my written testimony [Read written testimony ([Exhibit F](#))].

Chairman Bobzien:

Are there any questions?

Assemblyman Frierson:

I have been struggling with this question, and I did not want to ask it with the hope that some of the answers would become more obvious. What I did not hear in the original presentation was the overwhelming need for this change. It sounds like you are saying, Mr. Wulz, that there is nothing necessarily missing or problematic that would need to be fixed.

Dan Wulz:

That was certainly my point with respect to the actual products that are in the bill, such as a car alarm system. I am not aware of anyone complaining about buying a car alarm system or any of the other products listed in the bill. The other thing that concerns me is the things that are not products, such as the product for marking body parts and the product to etch a window. Again, my concern is that this bill attempts to suggest that those are not considered insurance when they have been held to be insurance.

Chairman Bobzien:

Are there any additional questions? Seeing none, and no others in opposition, we will move to the neutral position.

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

I am here to testify as neutral, as a matter of policy, on this bill. I do have a minor technical amendment to propose should the body decide to move the bill forward. [Read from prepared testimony ([Exhibit G](#)). Also submitted an amendment ([Exhibit H](#)).]

The bill as proposed would require us to take a nonadmitted insurer and hold them to financial solvency requirements that we are barred from holding them to under federal law. Our proposed amendment would clarify that if they are a nonadmitted insurer operating under NRS Chapter 685A that they would be allowed, regardless of the financial solvency requirements.

Chairman Bobzien:

Are there any questions? I see none. Mr. Wadhams, we would ask you to respond to questions that were raised during Mr. Wulz's testimony.

Jim Wadhams:

I would appreciate the opportunity to respond in writing. Many of the comments that were made are specifically addressed in the existing statute on consumer protections. In fact, it does not avoid the insurance consumer protections that are specifically identified in NRS 686A.310 and in NRS 690C.120. I will respond to each of the points, in writing, with references to the existing protections on cancellation, consumer protections, and the like. I want to be very clear, I did demonstrate an overwhelming need for correction of the discrimination against licensed insurance companies, which are otherwise qualified to do business, from being precluded to offer the contractual liability insurance policies as part of the qualification of the service contract company. I think there are certain constitutional implications to that that may need to be addressed. I do think that is critically important.

As to the opportunity for the consumer to be offered expanded benefits, I am not sure that is a question we could empirically document, but I would appreciate the opportunity to address that in writing to the Committee.

Chairman Bobzien:

We would appreciate that. Please include some overall analysis of scenarios by which, if this bill were not to pass, what the conditions presented to companies and consumers would be.

Are there any additional questions from the Committee? [There were none.] Do we have any members of the public wishing to provide a comment? Seeing none do, we have any comments from the Committee members? [There were none.] Meeting is adjourned [at 3:03 p.m.].

RESPECTFULLY SUBMITTED:

Katie Wilson
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 20, 2013

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 83	C	Irene Bustamante Adams	Prepared Testimony
A.B. 83	D	Irene Bustamante Adams	Presentation
A.B. 83	E	Sylvia Smith	Prepared Testimony
A.B. 88	F	Dan Wulz	Prepared Testimony
A.B. 88	G	Adam Plain	Prepared Testimony
A.B. 88	H	Adam Plain	Proposed Amendment