

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

**Seventy-Seventh Session
March 8, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:08 p.m. on Friday, March 8, 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:

Assemblyman Randy Kirner, Washoe County Assembly District No. 26

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Leslie Danihel, Committee Manager
Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Mendy Elliott, representing Chiropractic Physicians' Board of Nevada
Marsha Berkbigler, representing Chiropractic Physicians Board of Nevada
Benjamin Lurie, D.C., Vice President, Chiropractic Physicians' Board of Nevada
Louis Ling, Board Counsel, Chiropractic Physicians' Board of Nevada
Marlene Lockard, representing Nevada Chiropractic Association
Lawrence P. Matheis, Executive Director, Nevada State Medical Association
Kathleen Conaboy, representing Nevada Orthopaedic Society
Denise Selleck Davis, representing Nevada Osteopathic Medical Association
Veronica Sutherland, D.O., Family Medicine Physician, Reno, Nevada
Vanessa Spinazola, representing American Civil Liberties Union of Nevada
Bob Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
James Elste, Chief Cyber Strategist, Nevada Cyber Initiatives
Jack Mallory, representing Southern Nevada Building and Construction Trades Council
John Griffin, representing Sprint, Amazon.com, and Zappos.com
Randi Thompson, State Director, National Federation of Independent Business
Eric Spratley, representing Washoe County Sheriff's Office
Ray Bacon, representing Nevada Manufacturers Association

Chairman Bobzien:

I will open the hearing on Assembly Bill 73.

Assembly Bill 73: Revises provisions governing the practice of chiropractic.
(BDR 54-538)

Assemblyman Randy Kirner, Washoe County Assembly District No. 26:

I am presenting this bill on behalf of the Chiropractic Physicians' Board of Nevada.

Mendy Elliott, representing Chiropractic Physicians' Board of Nevada:

I would like to thank Assemblyman Kirner for carrying the bill.

Marsha Berkbigler, representing Chiropractic Physicians Board of Nevada:

The responsibility of the Board is to make sure there are regulations in effect that regulate the practice of chiropractic in the state and protect the patients. This is a clean-up bill. There is a proposed amendment ([Exhibit C](#)) in which we propose to remove, in section 1 on line 4, the words "with or."

In section 2, subsection 4, we are attempting to clean up our advertising and marketing statutes. They are cumbersome, and the language change will say chiropractors can use any form of advertising they want in a manner that will not deceive, defraud, or mislead the public.

In section 3 on page 5, line 10, we are taking out "of the Secretary of" and saying "from the chiropractic board." Some states do not have chiropractic board secretaries. This makes it clear that the information needs to come from the board in the state where you are licensed. Under subsection 4 of section 3, it requires that an applicant have his official school transcripts included. In section 4, we are instituting that chiropractors can take qualification tests and license renewals online. With a written test, the applicant can pass at 75 percent, but we would like to see online tests passed at 90 percent.

In section 5, we are adding some changes to temporary licenses. If there is a board meeting in the state, or chiropractors are coming into the state for any purpose and they are going to do chiropractic treatments, this would allow us to issue temporary licenses for ten days. In section 6, subsection 1, we are cleaning up language for chiropractor's assistants. Last session we passed some new regulations regarding chiropractor's assistants, and this will change language so that is done correctly. In section 6, we are updating our language to make sure, if a person is called out of the country for military duty and cannot do his hours of service to get his license renewed, that his license does not expire. This would be for both chiropractors and chiropractor's assistants.

In section 7, there is clean-up language about licenses that have been suspended and how a person restores a license. Under section 8, we are changing "suspended" license to "expired" license. If a person lets his license lapse, that is not a suspension. We are changing the fee rate for Board courses offered by a chiropractic school or college of education in continuing education.

We are increasing our fee from \$25 to \$50 to review each of those tests. They have to be reviewed by the Board and must meet the requirements in the state of Nevada.

We have controversy in section 10, which also has a proposed amendment ([Exhibit C](#)). Benjamin Lurie will walk you through section 10.

Benjamin Lurie, D.C., Vice President, Chiropractic Physicians' Board of Nevada:

I am a native Nevadan and I practice in Las Vegas ([Exhibit D](#)). Section 10 is being considered for amendment in that the scope of practice for chiropractic physicians is always changing. A chiropractor has to have a bachelor's degree and four years of chiropractic school. After that, there are diplomate programs. There are diplomates in radiology, neurology, orthopedics, nutrition, and rehabilitation. These are four-year courses that chiropractic physicians take to specialize in a field. One of those fields is chiropractic neurology. The leading institution for this program is the Carrick Institute of Graduate Studies in Florida. Diplomate of Neurology candidates enter an approximately 425-hour course regarding all of clinical neurology. I have provided you with a course outline ([Exhibit E](#)).

This is for the neurology program and does not include the additional 425 hours that a Diplomate of Neurology would have to complete the course and be certified in electromyography (EMG) testing. The qualifications to complete that course are governed and regulated by the Council on Chiropractic Education through an accredited university that is recognized by the U.S. Department of Education. There are three major programs for doctors of chiropractic in clinical neurology. All of them are accredited. I also provided the actual course outline for the certification for the EMG testing. Upon completion of the testing, all certified chiropractic neurologists have to take a proficiency examination and pass the national examination.

Upon completing the national examination, as long as their state allows them and it is within their scope of practice to perform this type of testing, they are allowed to do it. There are currently eight states that allow chiropractic physicians to perform EMG testing, according to the American Association of Neuromuscular and Electrodiagnostic Medicine (AANEM). They also list the states that allow needle EMG by chiropractic physicians who are trained and have the requirements completed as well as the proficiency for needle sticks. Also listed on the AANEM website are other nonphysicians who can perform EMG testing, such as physical therapists. They have the same requirements and are able to perform EMG in 13 states. If a person is able to perform these tests at his state level, it is recognized and billable by insurance companies.

Most chiropractors in Nevada carry malpractice insurance. National Chiropractic Mutual Insurance Company (NCMIC) is the largest malpractice carrier of chiropractic physicians in the country. They state that as long as this is within the scope of practice for a doctor of chiropractic to perform, it is covered under the malpractice insurance. Doctors of chiropractic have some of the cheapest form of malpractice insurance in the country because the type of therapies we provide to patients is not invasive. A person can carry a policy for \$1 million to \$3 million for approximately \$2,900 per year. This is unlike medical doctors, who have routinely high premiums upward of \$100,000 per year depending on their specialty. In states where chiropractors are allowed to perform this type of examination, there have been no claims filed against chiropractors and there are no known pending claims. This is not a malpractice issue.

The Chiropractic Physicians' Board is a regulatory board. We have no other concerns than the safety of the public. We would allow doctors who are certified at a national level and have met the requirements of the Chiropractic Neurology Board to perform these tests. This is meant for a very specific group of people. It would apply to approximately five chiropractors in the state. The Board is only concerned with public safety. The justification for changing this lies in the qualifications of the doctor and the education that they have to complete. The AANEM qualifications for doing this testing involve the basic sciences, and they require only 200 proficiency sticks, whereas the American Board of Neurology that the Chiropractors' Board looks at is higher—300 proficiency and recorded sticks. We feel we meet the educational criteria. Professionals can take these outside courses and, through proficiency and examination, are able to perform this kind of testing.

Chairman Bobzien:

Are there any questions?

Assemblyman Horne:

Are physical therapists currently permitted to do these tests in Nevada?

Benjamin Lurie:

They are not.

Assemblyman Horne:

Why would a chiropractor need to draw blood?

Benjamin Lurie:

We look for the same things that medical doctors look for in complete blood panels. We look for thyroid problems, liver problems, and kidney function. A chiropractor who practices along the same lines, medically versus holistically,

in chiropractic would be able to do these examinations. Some doctors draw blood for allergen reasons. There are not many chiropractors who perform this type of examination. We can order blood examinations and blood testing from a laboratory. Doctors of chiropractic are looked at as primary care doctors in the state of Nevada, so patients come to us for all kinds of reasons, not just musculoskeletal reasons. Based upon the history and examination of a patient, if a doctor is trying to correlate a diagnosis, a blood test is a simple test to detect conditions.

Assemblyman Horne:

When I go to my doctor, it is usually a phlebotomist who does the blood draw. You are proposing that a doctor in a chiropractic office will do that. I was always of the opinion that chiropractors use records from a medical doctor. That information may already be available through the primary care physician.

Benjamin Lurie:

We do not have phlebotomists in our practices or blood facilities. Most of the time, it would have to be done by the doctor of chiropractic because it does not fit under the qualifications of a chiropractic assistant or anyone else's scope.

Assemblyman Horne:

The other offices send the patients out for blood work. Could a chiropractor do the same thing?

Benjamin Lurie:

Doctors who chose to do it themselves can, and those who do not send the patients to a laboratory. I send patients to a laboratory. A portion of the population does not seek traditional medical care for ailments. When we go through history with patients, I comanage my patients with medical doctors and obtain medical records. If a patient has an abnormal blood panel, we have a duty to refer them out to a medical doctor for evaluation or medication. Our practice comanages with many types of doctors. We also obtain hospital records when needed.

Assemblyman Daly:

I have a question in section 10. It says that you can take blood except for diagnostic purposes. What are the procedures for which you will need to pierce skin or take blood samples?

Marsha Berkgigler:

Chiropractic physicians can draw blood. The proposal here is not talking about that portion of the statutes. This is referring to diagnostic tests. We are trying to add language to the statute to allow chiropractors to insert needles, called a

"stick," for a specific diagnostic test described in the amendment. We are asking to expand the definition of the diagnostic test.

Assemblyman Daly:

Have there been problems receiving transcripts? Sometimes it delays things.

Marsha Berkgigler:

It is standard procedure that we get transcripts from the college. If the applicant brings them in, the team that does the investigations will still contact the college to make sure everything is the way the documents propose. The Board feels very strongly about patient protection. They are very diligent about background checks. We would do the investigation anyway, so we are trying to shorten the time it takes to do the investigation.

Assemblyman Daly:

That is not what it says. It says the transcripts have to be delivered to you from the college. Why are we changing it?

Marsha Berkgigler:

We already require this information from the school. The purpose of putting this language into the statute is so that if a person wants to set up a practice in the state of Nevada, just bringing his documentation to us is not enough. He can contact the school and have the documentation sent to us. We already require this, but we want to clarify it in the statutes.

Assemblywoman Carlton:

Would the chiropractic neurologist get the diplomate status through a program at a chiropractic school?

Benjamin Lurie:

It is through accreditation. The Carrick Institute of Graduate Studies is accredited by Life University, which is part of the Council on Chiropractic Education (CCE). The U.S. Department of Education recognizes the accreditation.

Assemblywoman Carlton:

Other universities provide it also.

Benjamin Lurie:

That is correct.

Assemblywoman Carlton:

Can a person also get the accreditation through an online program?

Benjamin Lurie:

Some of the courses are in a live seminar, and others are online. It is a combination of online and in classroom.

Assemblywoman Carlton:

You said there are approximately five people in the state who might be able to apply for this license. Can you tell me how many people in the country have completed something like this?

Benjamin Lurie:

The Carrick Institute of Graduate Studies was unable to give me the exact number of doctors of chiropractic who have been certified. Through the American Board of Neurology, there are approximately 600 licensed chiropractors registered and able to perform these examinations in nine states.

Assemblywoman Carlton:

I have concerns about piercing the skin. A lot of subcutaneous damage could be done. I did some online research and there was no information in the three articles I read about chiropractic neurology that mentioned piercing the skin. They talked about manipulation, physical therapy, and rehabilitation. This seems to be totally out of the scope of practice for chiropractors.

Assemblyman Ohrenschall:

Do homeopathic physicians have the authority to pierce the skin for diagnostic purposes?

Marsha Berkbigler:

If the homoeopathist were a medical doctor or an osteopathic doctor, he would be allowed to pierce the skin.

Assemblyman Ohrenschall:

In section 3, subsection 3, paragraph (f), it seems that for a person who practiced out of state the requirement has changed from providing records from the last state where he practiced to producing records from every state where he practiced. What is the rationale?

Benjamin Lurie:

Doctors of chiropractic can be licensed in multiple states. When they apply for a license in Nevada, we do a background check to look for past problems, disciplinary problems, revocation of licenses, and expiration of licenses. We use

the Federation of Chiropractic Licensing Boards' database, called the Chiropractic Information Network/Board Action Databank (CIN-BAD), to tap into all chiropractic boards in the United States anytime there is a disciplinary issue. We have had incidents where doctors of chiropractic have not been honest about all of the states where they were licensed. We may find discrepancies on CIN-BAD and will want to talk to the doctor about that.

Assemblywoman Kirkpatrick:

I sit on the regulation committee, and we have to have a full understanding of the purpose of the bill. This is more than a clean-up bill. What was the real issue?

Marsha Berkbigler:

The majority of this bill is trying to bring our scope of practice statutes into what we are doing when we investigate whether a doctor of chiropractic is qualified to work in Nevada under our regulations. We added the language regarding serving in the military for both the doctors of chiropractic and the chiropractic assistants. Section 10 is not clean-up.

Assemblywoman Kirkpatrick:

I need this explained in layman terms.

Benjamin Lurie:

The specific reason for section 10 comes down to the scope of practice. The scopes of practice in medicine, chiropractic, and physical therapy are ever changing. We are allowed to pierce the skin to draw blood. *Nevada Revised Statutes* (NRS) Chapter 634 provides the definition of chiropractic and what a chiropractor may do. The last words in that section are "all methods of diagnosis." As a board, we have concerns about what can be done safely in the scope of practice of a chiropractor. Invasive examinations have to be done by qualified, certified, proficient, and nationally certified practitioners. That is what this Board wants to make sure is done, so we do not have chiropractors taking weekend courses on how to do some kind of a test and then do it. We are set up for public safety. We want to build this into our regulations and strictly regulate who can do this.

You will hear testimony that this testing should be performed by physicians only. Unfortunately, that is not the case. There are technicians who are doing this procedure. Chiropractic doctors receive flyers from companies that will send technicians into a clinic to do EMG testing. We agree strongly with the AANEM that qualified doctors and qualified nonphysicians who have had the training be able to do this. As a regulatory board that oversees public safety, we want to be able to allow the doctors who have taken education beyond their

four years of chiropractic school and completed almost eight years of a neurology program, including piercing of the skin, we want only those doctors who are qualified nationally to perform this examination.

Assemblywoman Kirkpatrick:

How does treating a physical condition such as a thyroid problem play into chiropractic?

Benjamin Lurie:

There is limited understanding as to the education of a chiropractic physician. The first two years of chiropractic school are compared to the first two years of medical school. Medical doctors have the ability to branch into pharmacology and other things, while chiropractors branch into chiropractic adjustment, biomechanics, adjustments of the spine, and radiology. Most people are unaware that we receive approximately 250 more hours of clinical radiology than medical doctors do. There are core groups of patients who do not believe in traditional medicine. Chiropractors have looked after and treated patients successfully through chiropractic adjustments, rehabilitation, nutraceuticals, and diets and exercise. When a patient gets beyond that holistic healing, we refer them out for medications. That is when we comanage patients. Chiropractors carry malpractice insurance so they are covered if they do not catch something, do not refer something, or over treat something. There are groups of people who seek chiropractors based on the holistic side of treatment and because they do not believe in traditional medicine. It is our duty to say when there is nothing more we can do for a patient and refer him to a medical doctor. Some people get better, and others need medical intervention.

Assemblywoman Kirkpatrick:

Will medical insurance cover the blood work that is done in a chiropractic office?

Benjamin Lurie:

What is covered by insurance varies by plan. I believe most doctors send patients to laboratories. We verify if the tests are covered by insurance.

Assemblywoman Diaz:

Why is "revoked" being eliminated from the language in the statute?

Marsha Berkgigler:

This is referring to a chiropractor who has let his license expire and then decides to go back to work. If a license is revoked, there is more than paying a fee needed to renew the license. There is a huge testing program. We want to be

sure that it is not on a chiropractor's record that his license was suspended when he only let it expire.

Assemblywoman Diaz:

Is there a part of the statute that addresses when a license is revoked?

Louis Ling, Board Counsel, Chiropractic Physicians' Board of Nevada:

We had the same confusion with using revoked, suspended, and expired. It was causing confusion for credentials. We are trying to get that language changed. There are other sections in the law that deal with revocations. The term "revoked" will now be saved as a status for disciplinary cases.

Assemblywoman Diaz:

Why is the fee being doubled for the board review of courses offered by a chiropractic school or college?

Benjamin Lurie:

Part of the reason for the change is that continuing education courses flood all types of professions. We have seen an inundation of as many as 100 to 200 applications for these courses per month. We have to go through each of those to be sure they meet the criteria for continuing education and they are actually educational and not about practice management. It is a tedious paper process.

Assemblyman Daly:

Are we authorizing online testing? Were you already doing it?

Benjamin Lurie:

We are trying to get more chiropractors in the state of Nevada. To make it easier to do that we are looking at online testing. Most of the chiropractic physicians' boards across the United States have gone to online testing. There are secure websites. We made a change about a year and a half ago to allow this Board to give a test every month. We used to give the test twice each year. It did not coincide with people graduating from chiropractic school. We are trying to follow most boards and make it easier for applicants to take these examinations. We feel that people who take the examination in person should pass with a score of 75 percent and those who take it online with a score of 90 percent. We have not allowed online testing until now. By allowing this language change, as a regulatory board we will put forth the provisions in the regulations as to the criteria we are seeking for the safety of the public and for examination purposes.

Assemblywoman Carlton:

How many states allow the practice of chiropractic neurology?

Benjamin Lurie:

The diplomate status of chiropractic neurology is accepted by all 50 states. The number of states that allow a doctor of chiropractic to perform EMG testing is nine.

Assemblywoman Carlton:

Do those states have regulatory boards that monitor chiropractic, or are they basic business and licensure states?

Benjamin Lurie:

I believe there are combinations of those.

Assemblywoman Carlton:

I would like to know which ones have the regulatory boards that would allow this so I can compare the practice acts.

Chairman Bobzien:

Are there any other questions for this panel? [There was no response.]
Are there others to testify in support of this bill?

Marlene Lockard, representing Nevada Chiropractic Association:

We support A.B. 73.

Chairman Bobzien:

Are there any questions? [There was no response.] Is there any other testimony in favor of the bill? [There was no response.] We will move to testimony in opposition to A.B. 73.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association:

Our concern is with section 10. The other parts of the bill are the subject matter of most licensing board bills. Section 10 does something unusual for a licensing board. It asks for an expansion of the scope of practice. It varies greatly from the way it was originally written, but the amendment does not make it much better. The amendment would allow EMGs to be performed by chiropractors. All medical doctors and osteopathic doctors could perform EMGs if they chose, but very few do. Neurologists and psychiatrists usually perform this test. Medical doctors and osteopathic doctors refer them for those tests because it is a highly risky test. A three-inch needle is put into the body to get the information. The risk is that you could penetrate an organ or create an emergency. This is a major change in policy.

I disagree that scopes of practice change all of the time. A lot does change; information changes, and new procedures replace old procedures. Those are done within the scope of practice. This makes a basic change to allow an invasive procedure be done by chiropractors. I agree with the statement that there have not been high costs for malpractice insurance for chiropractors because they have not done invasive procedures. That is why you need to think twice about whether that is a wise direction in which to move. While this is less than what the original language in the bill would do, I think the intent of the original language has to be understood to expand the use of invasive procedures. That is and should be worrisome. For those reasons, we oppose section 10 of A.B. 73. We have no issues with the other parts of the bill.

Kathleen Conaboy, representing Nevada Orthopaedic Society:

Dr. Lurie described chiropractic as a noninvasive practice of a certain type of medicine. As a matter of fact, chiropractic is defined as manual and manipulative therapy as an alternative to surgery and medications. However, what he is proposing in section 10 of A.B. 73 is indeed an invasive procedure. Dr. Lurie also mentioned the AANEM. I submitted an article from them ([Exhibit F](#)) and also the map to which Dr. Lurie referred regarding where chiropractors and physical therapists in the country are allowed to perform this kind of test ([Exhibit G](#)).

It is the position of the AANEM, a professional organization for medical doctors, that physicians who have comprehensive knowledge of neurological and musculoskeletal disorders, to assure accurate interpretation and diagnosis and provide quality care, must perform the EMG. They are not endorsing this type of tests in other states. They are simply putting on their website an analysis of the legal status of this kind of practice in other states. Their website further states that medical boards in some states may consider the performance of a procedure for which a physician knows he or she is not properly trained as grounds for discipline.

Referencing the kind of training that physicians have, Dr. Lurie mentioned four years of chiropractic school, which may or may not be equivalent to four years of medical school. After medical school, doctors in this state are required to go on to three years of residency in an accredited program. After residency for board certification, many physicians go into fellowship training. A fellowship and a residency will require a resident or fellow to work in a hospital setting for 50 to 90 hours per week. Dr. Lurie stated that the training for the chiropractic neurological certificate is an additional 400 hours, which is 10 weeks. I think the scope of training is significantly different. Because orthopedic surgeons work very closely with physiatrists, we feel very strongly that section 10 would

allow for a significant change in scope of practice, and we ask that you not support this amendment.

Denise Selleck Davis, representing Nevada Osteopathic Medical Association:

The term EMG has often been used to mean the entire spectrum of electrodiagnostic tools, which evaluate nerve and muscle diseases. Strictly speaking, EMG refers only to the needle or surface electrode examination of bioelectric activity of muscles. I spoke with one of our neurologists who does this procedure in her office approximately 15 times per day. She is a double fellowshiped neurologist who works with movement disorders. She talked to me about the 3-inch or 75-millimeter needles that she injects into patients as many as 15 times in one muscle or nerve group in order to determine where there is damage. She told me that she had done a test that day and wanted to test a second plate of muscles. She said this test is particularly tricky if the patient is underweight or heavy because then you have to go much deeper. In this patient, she wanted to test a second layer of muscles, but she decided not to do the test on the second layer of muscles because it was directly over the chest cavity and she was concerned about puncturing a lung. Inflating a lung is a very serious situation and potentially life threatening. Our physicians are trained to deal with the emergencies that may occur.

The physician stated that some of the other dangers in this procedure include paralysis, the deadening of nerves, bleed-out, and infection. The biggest concern is patient safety. It is important that physicians are trained fully to do what the state certifies them to do. The Federation of State Medical Boards has stated that patient safety and public protection must be the primary objective when evaluating requests in scope of practice. They also noted that these are often contentious conversations and can be extremely difficult. We urge you to consider the patients, their needs, and the training of the physicians who wish to do this procedure.

Chairman Bobzien:

Are there any questions?

Assemblyman Horne:

Are only medical doctors doing the EMG testing in Nevada at this time? If other technicians do the procedure and they have the same training, what would be the harm in them doing it?

Larry Matheis:

The medical doctors and the doctors of osteopathy are the only people doing these tests in the state now. They can delegate it to a technician under supervision. I am not aware of any cases like that, but it can be done.

The physician would retain the full liability and accountability for the action and to make sure the person was properly trained.

Assemblyman Horne:

It sounds like you said both the doctors and the technicians under their supervision.

Larry Matheis:

Medical doctors and doctors of osteopathic medicine are allowed to do the tests. I do not know if they delegate it to technicians, but they could.

Kathleen Conaboy:

There is a good explanation of two levels of electrodiagnostic testing in my handout ([Exhibit F](#)). One is on nerve conduction studies, which consists of putting electrodes on the skin. The other is the electromyography, which pierces the skin with a needle. The recommendation of the AANEM is that a technician can do the noninvasive procedure under the doctor's direct supervision. After that, there may be a follow-up with the invasive EMG. This position paper states that only physicians should perform any portion of the examination that requires needle insertion. The same position is held by the American Medical Association, the American Academy of Neurology, the American Neurological Association, the U.S. Department of Veterans Affairs, and many state medical examining boards.

Larry Matheis:

I was referring to the use of the needle. I am not aware that it is being done, but it could be.

Assemblyman Hansen:

Earlier, it was stated that eight states allow this. Is that accurate and if it is, has it caused an increase in problems? Would there be a problem if we passed this law?

Kathleen Conaboy:

I also supplied an exhibit that shows who can do what in which states ([Exhibit G](#)). There are eight states where chiropractors are authorized to perform the needle EMG.

Assemblyman Hansen:

Do you have any evidence that there is a rise in problems related to this procedure? It seems there is a liability factor that insurance companies cover.

Kathleen Conaboy:

One of the challenges is not just in the performance of the test but also in the appropriate interpretation of the test. Without the appropriate clinical training of the physicians, a person might miss a diagnosis. Performing the invasive procedure is one element, but the other is how the test results are interpreted. I have no evidence that there have been problems and I will research it.

Chairman Bobzien:

Please provide evidence, because the testimony was severe, and we would like documentation.

Assemblywoman Diaz:

When would a chiropractor need to conduct an EMG or a nerve velocity test versus going to a neurologist?

Veronica Sutherland, D.O., Family Medicine Physician, Reno, Nevada:

We perform nerve conduction studies to determine if there is nerve damage, an issue with a nerve coming from its source, or a nerve operating a muscle that is controlling whether or not there is sensation. We use it to determine if there is a physical component that needs to be corrected, or if there is a neuromuscular abnormality that requires medication. I am an osteopath and do manipulation. From a chiropractic perspective, I would think they would want to use the testing to determine if there is a nerve abnormality coming from the spine that they can correct or address. Those tests encompass so many other diagnoses, so it is more than a particular nerve abnormality. I am concerned there would be things they would be missing. As a primary care physician, I have the legal authority to proceed with the testing, and I would never chose to do that because the complications are quite broad. The ability to interpret the test results is an even larger issue. If you perform a test, you need to know what you are going to do with the results. I am not certain that having the ability to perform that test gives us the need to do it, because what are we going to do with the results? I think it is outside my scope of practice, and I would refer to a neurologist or an orthopedic surgeon.

Chairman Bobzien:

The complaint would be the training required for interpretation, and beyond that, the existing scope and perspective related to the spine not being appropriate for what the possible conclusions one could draw from a test. The question is whether it is appropriate for this practice to do this.

Veronica Sutherland:

There are so many autoimmune disorders and neuromuscular disorders, such as multiple sclerosis and myasthenia gravis. Those are not disorders that can be

addressed through manipulative or manual medicine. We do use the EMG testing to diagnose those diseases, and it is concerning that might be missed. If a person is not trained to look for those diseases, possibly he should not be looking for them.

Chairman Bobzien:

Is there anyone else to testify in opposition to A.B. 73? [There was no response.] Is there anyone wishing to testify from a neutral position? [There was no response.] I will close the hearing on A.B. 73.

[A letter from the Office of the Attorney General was submitted ([Exhibit H](#)).]

[Vice Chairwoman Kirkpatrick assumed the chair.]

Vice Chairwoman Kirkpatrick:

I will open the hearing on Assembly Bill 181.

Assembly Bill 181: Makes various changes to provisions governing employment practices. (BDR 53-48)

Assemblyman David P. Bobzien, representing Washoe County Assembly District No. 24:

I am here to present Assembly Bill 181. I would like to open my testimony by providing members of the Committee with background information on this measure and answer the question of why we need it. The use of online social networks is on the rise. Overall growth in the number of users of social media is steady across all demographic cross-sections—ethnicity, gender, educational attainment, and age. The Pew Research Center reported last June that over one-half of American adults age 65 and older are online, and one-third of them are using social networking sites. The same report indicated that 67 percent of all Internet users are using Facebook, while 16 percent of Internet users are using Twitter. As the use of social media has become more pervasive, employers have begun investigating their employees' and prospective employees' social media accounts. According to an April 2012 survey from CareerBuilder, a leading website for job postings, 37 percent of companies are using social networking sites to research job applicants.

At its essence, A.B. 181 provides an individual with the explicit right to keep his or her personal online information private from a potential or current employer. I submitted an exhibit ([Exhibit I](#)) that provides background information on this issue. The article, "State Leaders Work to Protect the Privacy of Employees' and Students' Social Media Accounts," was published by the Council of State Governments (CSG) in April 2012. It recounts the experiences of job applicants

and employees who were forced to provide their log-in information for social media and other websites. The article also discusses what other states have done to address the privacy of employees' and applicants' online information.

The CSG article highlights three main problems with this type of access being requested by employers. It undermines the expectation that communications between individuals are confidential. When an employer requests access to a social media account, not only is he gaining access to the messages and posts of the applicant or employee, but the personal information of that individual's contacts is compromised.

Many social media sites, including Facebook, require in their terms of service that user names and passwords are not to be shared. If a person reads the small print in the agreements with almost all of the social media sites, that is a standard agreement. The use of another person's social media accounts may create unintended liabilities. Should the employer see evidence of criminal activity, or that the job applicant is part of a protected class, the employer could be open to certain legal obligations.

For these reasons and others, states are beginning to take notice and are enacting legislation to protect employees and job applicants from being required to surrender information regarding online accounts. In August 2012, the Governor of Illinois signed into law new protections for job applicants and employees aimed at keeping personal information out of the hands of employers. Illinois employers are now prohibited from requesting or requiring that an applicant provide passwords to social networking sites in order to be considered for employment. According to the National Conference of State Legislatures, at least 29 states are considering legislation in 2013 to address the privacy of social media accounts.

I would like to go through the bill and talk about the key provisions. Section 2 of A.B. 181 makes it unlawful for an employer to require an employee or applicant to disclose a user name, password, or any other information that provides access to a social media account. It also prohibits an employer from discharging, disciplining, or discriminating against an employee or prospective employee who refuses to disclose this information. A social media account is defined as an electronic service or account, or electronic content, including videos, photographs, blogs, podcasts, instant or text messages, email programs or services, online services, or Internet website profiles.

Section 2, subsection 2 expressly allows an employer to require disclosure of such an account for the purpose of accessing the employer's own internal

computer or information system. This is when an employee, as part of his job, does social media work on behalf of the employer.

Assembly Bill 181 also protects employees and applicants from being required to provide a credit report for the purposes of hiring, promotion, reassignment, or retention under most circumstances. There are exceptions to this. The exceptions include if the employer is required or authorized, pursuant to state or federal law, to use a consumer report for that purpose; if the employer reasonably believes that the employee or potential employee has engaged in a specific activity which may constitute a violation of state or federal law; or if the information contained in the report is reasonably related to the position for which the employee or applicant is being evaluated.

The information in the report shall be deemed to be reasonably related to such an evaluation if the duties of the position involve the care, custody, and handling of or responsibility for money, financial accounts, corporate credit or debit cards, or other assets; access to trade secrets or other proprietary or confidential information; managerial or supervisory responsibility; and the direct exercise of law enforcement authority as an employee of a state or local law enforcement agency.

It also includes the care, custody, and handling of or responsibility for the personal information, as already defined in statute, of another person; access to the personal financial information of another person; employment with a financial institution that is chartered under federal or state law; or employment with a licensed gambling establishment. For all those employees, an employer can ask for credit reports.

Vice Chairwoman Kirkpatrick:
Are there any questions?

Assemblyman Hardy:

How will this affect an employer who supplies the computers and phones to employees?

Assemblyman Bobzien:

Company computer-use policies are allowed. We in the Assembly have recently adopted some guidelines about staff use of social media. It does not restrict a company from contemplating the use of their company resources during a workday. That is not a part of this bill.

Assemblyman Hardy:

Is the employer monitoring the computers a violation?

Assemblyman Bobzien:

No. When I look at hiring people, I will absolutely scan the social media and their digital presence. The public-facing side of someone's social media is absolutely fair game. This is contemplating asking an employee for their log-in information so they can get behind the public wall. That is a violation of most terms of service and a fundamental violation of privacy.

Assemblyman Daly:

Employers usually have a policy on the use of company equipment. An employee may be using their personal devices inappropriately on company time or using the company computer. You can take action against them for that, but you cannot ask them for their log-in information because they were using it on your computer.

Assemblyman Livermore:

Does this impact expense accounts, attendance records, or other internal properties of an employer?

Assemblyman Bobzien:

No. We are talking about internal computer systems; those credentials are the property of the employer.

Assemblyman Livermore:

Is this going to prohibit the ability to continue to monitor expenses?

Assemblyman Bobzien:

Are you talking about a corporate credit card and any log-in information the employee has for the corporate credit card?

Assemblyman Livermore:

I am talking about verifying a credit card expense where there is contradicting information. For an employer who has methods to control his profits and the expense of his employees, this may be a complication.

Vice Chairwoman Kirkpatrick:

To clarify this, section 2, line 7 specifically talks about the social media account. Section 2, subsection 2 addresses the password for the social media account. Section 2, subsection 3 defines the social media account. I think that people are reading more into this when they read section 4. It talks about the consumer report, financial accounts, and corporate credit or debit cards. On line 21 on page 3, what are you trying to do there, because the word social media is no longer there.

Assemblyman Bobzien:

This is about requesting credit reports. An employer could not ask an employee or prospective employee for a credit report unless there is a reason on the list of exemptions. If an employee has a corporate credit card, they can be asked for a personal credit report. There would be a small group of people who would be protected by this. There are so many instances in the business world where there is financial risk. There is risk for records, privacy, and security. In those cases, an employer could still ask for credit reports.

Vice Chairwoman Kirkpatrick:

There was a situation in Clark County where people's credit reports, which were run for jobs, were lying around and people were dispersing them throughout the company. Is that where you got the issue to be sure credit reports are protected?

Assemblyman Bobzien:

It is a model legislation not connected to a specific instance. If a person were applying for a job that does not have any of the exempted responsibilities, why would he have to provide a credit report?

Assemblyman Ellison:

I know of an incident where an employee was going to use the company computer to obtain personal information about another employee to try to get him fired so he could get the position. It has to work both ways to protect employees and employers from violating that trust.

Assemblyman Bobzien:

This bill does not preclude acceptable use policies for computers in a business environment.

Assemblyman Ellison:

I want to make sure that is on the record.

Assemblyman Livermore:

I understand you are trying to create fairness with this, but I want to make sure that it is fair to the employer too and that he has a legitimate right to manage his business.

Assemblyman Bobzien:

I am not trying to impinge on the rights of an employer. If the issues become criminal matters and law enforcement needs to have access, that will happen. This is about arbitrarily asking for an employee's password. From a network security standpoint, people are generally not aware that they sign and accept

the terms of service for using a social network site. The individual is precluded from sharing the information. The employer, by asking for the information, is putting him in the difficult position of breaking a contract. This does not impede criminal investigations.

Vice Chairwoman Kirkpatrick:

Are there any other questions? [There was no response.] Are there others in support of A.B. 181?

Vanessa Spinazola, representing American Civil Liberties Union of Nevada:

We support this bill because of the social media protections and because it increases privacy and the narrowing of employer credit checks. It ensures a more even playing field for all Nevadans. The things we say and do online leave behind an ever-growing trail of personal information, but we should not have to choose between new technology and keeping our personal information private. Protections for online privacy are justified and necessary, and A.B. 181 seeks to enact those protections. It is an invasion of privacy for private employers to insist on looking into an employee's private Facebook pages as a condition of employment or consideration in an application process. People are entitled to their private lives. You would not want your employer opening up your postal mail. That is one analogy. The same standards of privacy that we expect offline, as we interact with people physically, we would expect in the technology context.

Using credit histories to screen job applicants can disproportionately burden black and Latino communities. Their credit scores tend to be 5 to 35 percent lower than credit scores for white applicants. The U.S. Equal Employment Opportunity Commission has sued at least two companies for reasons related to credit score requests. It is concerned that the employer credit checks might be discriminatory under civil rights laws. Employers need to show that the use of credit checks is job related and consistent with business necessity. That is the essential law, and A.B. 181 narrows and puts into law what those related circumstances are. Otherwise, credit checks may be used to conduct civil rights violations.

Bob Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We endorse A.B. 181 with the understanding that section 4, subsection 3, paragraph (d) has legislative intent of covering both civilian and commissioned law enforcement personnel.

Vice Chairwoman Kirkpatrick:

Assemblyman Bobzien, are you in agreement with that?

[Assemblyman Bobzien gave a nonverbal thumbs-up.]

James Elste, Chief Cyber Strategist, Nevada Cyber Initiatives:

We are a group that represents technology professionals, entrepreneurs, and organizations based in Nevada that are interested in seeing Nevada advance its cyber legislative agenda. I am here to testify in support of A.B. 181 as a subject matter expert in cyber security, privacy, and identity management. I am the former chief information security officer for the State of Nevada and the former director of information security for International Game Technology. I am currently the chair of the privacy committee for the Identity Ecosystem, which was established last year by the National Strategy for Trusted Identities in Cyberspace, a strategy produced by the White House in 2011.

The first area of this bill I would like to focus on is requiring social media accounts as part of the hiring process. That is fundamentally contrary to accepted employment practices. The second thing is the use of digital credentials and the increasing use of a person's social media credential for transactions beyond that site. Anyone who has been a hiring manager has been trained not to ask certain questions during the hiring process. You are not allowed to ask an individual's age, religious affiliation, sexual orientation, or medical conditions. That information is provided in their profile in the social media site. It is a very bad business practice because it sets the business up for a discrimination lawsuit. If there is an adverse hiring event as the result of that information, they are subject to that sort of lawsuit. Assembly Bill 181 provides sound business guidance to employers to not engage in this practice.

More important to recognize is the implication for social media as a widely used digital credential online. Today, through exercises like the open identification, your social media account can be used for transactions on a variety of sites. On sites that accept things like Facebook Connect, they use the credential for whatever transactions a person is engaged in on other sites. That is completely outside of the Facebook environment. Google ID is another example. These identities in cyberspace are being used to support transactions for banking, health care, and retail transactions. It is not simply a matter of accessing an individual's social media account; you are actually compromising a credential they use for a variety of transactions.

We all know rule number one in using your computer is that you do not share your password. As Assemblyman Bobzien pointed out, the terms of service for most of these sites prohibit the user from sharing the password. It is consistent with security best practices not to share that account information.

We have not discussed another component. In many cases, a social media account uses a pseudonym or an anonymous identifier for an individual. These reasons include free speech and sometimes because the person is a victim of domestic abuse, cyber stalking, or cyber bullying. When you request and are granted access to an account, you are potentially disclosing the individual's pseudonym and exposing them to risk. This is a question of individual privacy. It is not an entitlement of a prospective employer to have unfettered access to an individual's private information.

Assembly Bill 181 does an excellent job in moving us in the right direction to provide clear guidance to employers on what is an appropriate business practice, while supporting the trustworthiness of digital credentials and protecting individual privacy. I urge your support of this bill.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There was no response.] We have a group of students from Montessori Visions Academy in Henderson, Nevada. I would like to explain to the kids what we are doing here today. This applies to the students for the long term. Assemblyman Bobzien is trying to make it law that people do not have to give up their password so an employer can see your private information. The people speaking are in support of the bill. Sometimes people are in opposition, and some are in a neutral position. If Assemblyman Bobzien is successful, the bill will go to the Senate and start all over, and eventually it can get to the Governor and become a law.

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

We are in full support of this bill. We do not believe it interferes with an employer's ability to prescreen employees based on the public side of what they put on the Internet. The critical part of this is the consumer report aspect. I have numbers of people in my industry who have been out of work for a long time. They maxed out credit cards, were not able to pay bills, lost homes, and lost cars. If that credit report is used to determine whether an employer is going to hire somebody, it is about money. The ability for an employer to use something like that as a screening tool is not right or fair. I understand the need for exemptions for sensitive and security-related positions. For people coming out of the recession, for their bad times to be used against them, it is inappropriate and in bad taste.

John Griffin, representing Sprint, Amazon.com, and Zappos.com:

We are here on behalf of a number of our tech companies, most notably Sprint, Amazon.com, and Zappos.com. We are in support of the bill. We have discussed this with the sponsor. Assemblyman Bobzien's testimony set forth

clearly the distinction between a personal account and a business-related account. In the tech sphere, there is a lot of encouragement for employees to create new accounts to generate more social media buzz. It is impossible to define in statute a personal social media account in a way that so easily identifies this as black and this as white, especially considering the evolving nature of social media and the nature of Twitter accounts, handles, or Facebook accounts. If my employer encouraged me to create a Facebook account, it would not be a personal social media account, but it may be in my name. Assemblyman Bobzien made the legislative intent clear, and we want to make sure it is the intent going forth.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There was no response.]

Randi Thompson, State Director, National Federation of Independent Business:

I am cautiously supportive of this bill. I represent employers. It seems that every day an employer has more difficulty getting information about employees. The stipulations included in this bill are good. It covers the key areas that employers need in order to hire people and get access to this information. Considering what many employees have gone through financially, I can see why credit reports are an issue for so many people. The way the bill is written, it gives employers enough opportunity for the people in key positions to get the information they need.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There was no response.]

Eric Spratley, representing Washoe County Sheriff's Office:

Law enforcement throughout the state uses social media and consumer reports as two of many spokes in the wheel of a background investigation for a potential candidate. Assemblyman Bobzien did a great job of presenting this bill and its intent. It will provide protections to the people of Nevada without stifling our ability to perform background checks on future law enforcement officers. It seems to be good public policy, so I support A.B. 181.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There was no response.] Is there anyone else to testify in support of this bill? [There was no response.] Is there any opposition? [There was no response.] Is there anyone to testify from a neutral position?

Ray Bacon, representing Nevada Manufacturers Association

There is one detail I want to get on the record. In my 22 years of running this association our biggest crimes have been payroll embezzlements, so we want to make sure that everyone understands in section 4, subsection 3, paragraphs (a) and (f), that payroll processing people would definitely be included. That is one of the easiest places for fraud and abuse to occur.

Vice Chairwoman Kirkpatrick:

Assemblyman Bobzien will clarify the legislative intent on that. Are there any questions? [There was no response.]

Assemblyman Bobzien:

I want to acknowledge that if I am talking about money, I am talking about payroll. That was the intention.

Vice Chairwoman Kirkpatrick:

I want the students present today to follow this bill or any other bill all the way through the session. The Nevada Assembly has a website that is easy to use. It includes an educational part for your grade level. You can follow this bill and email Assemblyman Bobzien to tell him what you think he is doing right or wrong, or ask him what happened.

I will close the hearing on A.B. 181. Is there any public comment? [There was none.]

The meeting is adjourned [at 3:12 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 8, 2013

Time of Meeting: 1:08 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 73	C	Marsha Berkbigler	Proposed Amendment
A.B. 73	D	Benjamin Lurie	Letter
A.B. 73	E	Marsha Berkbigler	List of course work
A.B. 73	F	Kathleen Conaboy	Article
A.B. 73	G	Kathleen Conaboy	Map
A.B. 73	H	Office of the Attorney General	Letter
A.B. 181	I	Assemblyman David Bobzien	Fact Sheet