

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

**Seventy-Seventh Session
March 18, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:37 p.m. on Monday, March 18, 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 Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (excused)



GUEST LEGISLATORS PRESENT:

Assemblyman James Oscarson, Assembly District No. 36
Assemblyman Paul Aizley, Clark County Assembly District No. 41

STAFF MEMBERS PRESENT:

Paul V. Townsend, Legislative Auditor
Kelly Richard, Committee Policy Analyst
Leslie Danihel, Committee Manager
Linda Conaboy, Committee Secretary
Earlene Miller, Committee Secretary

OTHERS PRESENT:

Jeanette Belz, representing Property Casualty Insurers Association of America
Robert Compan, representing Farmers Insurance Group
Lisa Foster, representing American Family Insurance and Allstate Insurance
James Wadhams, representing American Insurance Association
Joseph Guild, representing State Farm Insurance
Adam Plain, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry
Neena Laxalt, representing Chartrand Legal Management, Inc.
Art Chartrand, Counsel, National Home Service Contract Association

Chairman Bobzien:

[The roll was called, and there was a quorum]. We will take things out of order beginning with Assembly Bill 179. We will ask Mr. Oscarson to come to the table.

Assembly Bill 179: Revises provisions governing audits of certain regulatory boards of this State. (BDR 17-770)

Assemblyman James Oscarson, Assembly District No. 36:

Thank you for the opportunity to present A.B. 179, which raises the cap from \$50,000 to \$75,000 allowing boards and commissions to file a balance sheet with the Legislative Auditor in lieu of hiring an outside accounting agency to perform an audit. Filing an audit by an outside agency can cost more than \$5,000. Performed every two years, it significantly reduces revenues to small boards and commissions. Money saved by the bill will be used more effectively

for the public and for licensees' educations and the overall operating costs of the entity.

I spoke with Paul Townsend, the Legislative Auditor, in preparation for drafting this legislation, and I have included his comments for your review ([Exhibit C](#)).

There are two changes to the current statute in the bill. The first is on page 2, line 8, changing the figure from \$50,000 to \$75,000 for a fiscal year. On page 2, line 16, the change would be from \$50,000 to \$75,000 also. Those are the only two changes in the bill.

Assemblyman Frierson:

What problem are we fixing?

Assemblyman Oscarson:

I am the president of a state licensing board, and I can tell you that the costs of audits are significant to smaller boards. There is no staff to do those kinds of accounting reports; consequently, you have to contract with an outside agency. The first time my board did this, it cost about \$16,000. If you do this every two years, and the board brings in about \$60,000 in revenue, that is a significant amount that could be used for other things, such as public education, continuing medical education, or other types of education. These are the reasons for the change: to save operating costs and to eliminate the need for an expensive audit.

Assemblyman Frierson:

How many more boards would be able to operate without this extra expense?

Assemblyman Oscarson:

Three additional boards will be able to do that. The information is attached to the letter from Mr. Townsend ([Exhibit C](#)).

Assemblyman Frierson:

You mentioned that this will be a transparent process for those who do not have to engage in this expensive audit process. Please describe the process they will have to go through as far as transparency.

Assemblyman Oscarson:

I would like to have Mr. Townsend discuss this.

**Paul Townsend, CPA, CIA, Legislative Auditor, Audit Division,
Legislative Counsel Bureau:**

In 2005, a new process was instituted regarding boards and commissions to help alleviate some of the audit burden. When the \$50,000 amount was first introduced, it paved the way for my office to develop a balance sheet, which is similar to the balance sheet statement of net assets you have seen in other audits.

We would develop a form, and along with documentation, such as a copy of the board's most recent bank statement, we could verify the amount of cash on hand. We would also require various supporting schedules that total revenues and expenditures. This would be done in lieu of an audit. It is self-reported information, but we do have verification through bank statements. It does not involve other parts of an audit, such as an evaluation of the board's internal controls and some of the other things required during a full-blown audit. For the smaller boards, it has proved to work fairly well over the last several years.

Chairman Bobzien:

Are there any questions?

Assemblywoman Carlton:

I discussed these items with the Assemblyman Oscarson earlier today. I was here in 2005 when we came up with this. The idea was to allow the smaller boards to use balance sheets because we realized this is a financial burden. The \$50,000 figure was won through hard-fought negotiations. If you look at the reports of some of the boards, even with a full audit, we have had some issues. Some are operating at a deficit. I think the \$50,000 is still a good number.

Of the three boards to which this would apply, I am concerned that two of them have not complied with the disciplinary reports required from the Legislature. One has not filed a report since 2011, while the other has not filed since 2012. I think those disciplinary reports are important to those of us who track the boards. If the disciplinary reports are not filed, I am not sure I would like to extend the opportunity to change their audit provisions. If they cannot follow one set of rules, I am not sure I want to give them permission to expand upon another set.

I understand the issue with the cost of the audit, but some can be done reasonably. I have concerns about these boards being granted those opportunities. If we are going to choose a criterion for using the balance sheet, maybe it should be on performance and compliance rather than a dollar amount.

Those are the concerns that I have when it comes to changing it to \$75,000. There could be a problem, and we would not know about it.

Assemblyman Oscarson:

I appreciate your concerns. I addressed some of them and made a phone call to that board, and I think there is some confusion on their part. I am hoping they will resolve that. I do not know much about the other board. Unfortunately, disciplinary action rules do not play into this; however, I understand what you are saying about transparency. A number of smaller boards have limited staff, as you know, and it would be beneficial to them to raise that limit set in 2005.

Assemblyman Ellison:

How many audits have been done since 2005?

Paul Townsend:

As Legislative Counsel Bureau (LCB) staff, let me say I am completely neutral on this bill.

There are about 35 boards that report to us via a balance sheet or an audit. Since 2005, there have been 6 boards that have used the balance sheet, with 29 reporting through audits performed by an accountant.

Assemblyman Ellison:

Is the number of boards that do not comply fairly low?

Paul Townsend:

The disciplinary actions are reported through the Director of the LCB. They are separate from the financial audits, so the reference to the disciplinary is separate from the audits received by my office.

Assemblyman Oscarson:

I believe the disciplinary reports that Assemblywoman Carlton was referring to were disciplinary reports on licensees, not on the financial information.

Assemblywoman Carlton:

Yes, we do have a disciplinary report that you can find on the web page. It is not in the Nevada Electronic Legislative Information System (NELIS). The report is not for financial reasons, but could be for scope of practice or other legal issues.

Chairman Bobzien:

Do we have additional questions for Assemblyman Oscarson? [There was no response]. We will hear from those in support of the bill. [There was no

response]. Is there anyone opposed? [There was no response.] Is there anyone neutral? Seeing none, we will close the hearing on A.B. 179. Mr. Oscarson, I encourage you to work with those who have concerns regarding the bill.

We will open the testimony on Assembly Bill 120. Welcome to Assemblyman Aizley.

Assembly Bill 120: Revises provisions governing information provided to insurance policyholders. (BDR 57-802)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:

I am here to talk about A.B. 120 and its amendments. My original idea has been watered down. Originally, I wanted to find out about everything the insurance company does to create a premium. That seems difficult to find out. In pursuit of transparency, since everyone wants politicians to be transparent, I now want insurance companies to be transparent. The use of credit scores is the issue that concerns me. There is supposed to be a correlation between a person's credit score and the premium the insurance company charges to insure your home, your car, or whatever else you insure. I will not challenge that because the preponderance of evidence from the insurance companies seems to show that there may be a correlation.

Originally, I was asking the insurance companies to say somewhere in their literature that they use a credit score. I wanted to know what the score was, and I wanted to know the range of the scores. That, too, seems to be not forthcoming. The amendment (Exhibit D) asks the insurance company to tell you whether it uses your credit score to determine an insurance score, which in turn determines your premium amount. That is all I am asking them to do now.

I have since discovered that there is a company in town that does that. They go even further and put a score on your policy. Again, what I am asking is that when you receive your annual statement, they let you know that they have used a credit score to determine your premium, if they do.

Chairman Bobzien:

A point of clarification. Insurance score and credit score are two different things. We are talking about the insurance score being used, is that correct?

Assemblyman Aizley:

We are talking about both scores. The company uses the credit score to determine the insurance score.

Chairman Bobzien:

Ultimately, though, we are looking for the disclosure that an insurance score was used that was based on a credit score.

Assemblyman Aizley:

That a credit score was used, not an insurance score.

Chairman Bobzien:

The amendment to A.B. 120 is available online. I believe we have questions from Committee members.

Assemblywoman Bustamante Adams:

Regarding the insurance score, is it the same as your credit score, as far as numbers go? I would like to have my insurance score on my statement so that I would know if there is anything I can do to improve my score. Is the score uniform among insurance carriers, or does each carrier use a different scoring system?

Assemblyman Aizley:

Insurance companies use different formulas and say that their method of determining a score is proprietary. They do not share their methods with each other. No, there is not a uniform number that you get with each company.

Assemblywoman Kirkpatrick:

Last session, we talked about the insurance score. If the insurance company has a scoring mechanism, they will tell you.

Assemblyman Aizley:

Yes. They will let you know they are using a credit score to determine your premium.

Assemblywoman Kirkpatrick:

If they use a credit score, they must tell me, but otherwise it is not necessary. Is that correct?

Assemblyman Aizley:

During the time I have been attempting to work on this, I have been told repeatedly that these are things that the insurance company cannot do or will not do. I then went to the basics to try to determine how insurance companies compute insurance scores and how that translates into a premium. I would now like to know who is using credit scoring to determine the premium. The feedback I have received is that if I asked for the actual score and the range of the score and how I could improve my score, I would not receive support

from any insurance company. I might get some now from the company that tells me they do use credit scores and they would reveal it to me. However, I have not asked for that.

Chairman Bobzien:

To clarify, the amendment references insurance scores, not credit scores. Do we need to rework this, so it is clear that it is a credit score that we are talking about?

Assemblyman Aizley:

Yes. I do want to know that they are using a credit score to determine an insurance score that will then determine the premium.

Chairman Bobzien:

We need to refine this amendment further before accomplishing that goal. Do we have additional questions for Assemblyman Aizley? [There was no response.] We will ask for those in favor of the bill to testify. [There was no response.] Does anyone oppose the bill?

Jeanette Belz, representing Property Casualty Insurers Association of America:

Property Casualty Insurers Association of America represents 364 members who provide insurance in Nevada, writing about \$1.4 billion in premiums annually and comprising 37.6 percent of Nevada's property-casualty insurance market. We have been working with Assemblyman Aizley. We saw the amendment prior to today.

I was here when former Assemblywoman Barbara Buckley had a hand in creating several statutes concerning credit scoring. *Nevada Revised Statutes* (NRS) 686A.700, which is in section 1 of the bill, shows there is now a disclosure made to potential clients at the time of the application process. However, listed under the old subsection 2 of the bill, is language that satisfies that requirement. It says:

In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.

We currently have that in statute and feel that this is important because as you are deciding whether an insurance company is a good fit for you, knowing your credit report may or may not be used might be important to you.

Chairman Bobzien:

Looking at what you are referencing, it loosely says an insurer "may comply with the requirements of this subsection by providing the following statement."

Jeanette Belz:

That is right. This statement would meet that requirement. Usually, when language such as that is put into statute, it is used. However, that could be other disclosure language, but they have to disclose. That is the example of language that could be used. Usually, when you put suggestive language in statute, that is what people use.

Chairman Bobzien:

I have not always found that to be the case. Are there any questions?

Assemblyman Ellison:

There are three reporting agencies for credit scores. If you find a discrepancy and attempt to correct it, it takes time to do so. Does that not reflect on your scores, which could run up your costs?

Jeanette Belz:

You have gotten to another part of my testimony, which is that, in addition to this requirement, there is a separate notice that is provided to you if there is an adverse action. If there is some kind of adverse action, the insurance companies are required to report to you and to provide you with an adverse action notice. There is the potential for three notices to you. The use of an insurance score is just one component of a series of components that are used to judge your risk. There was a court decision, *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 127 S.Ct. 2201 (2007), where the court worried that sending notices on a certain scale would undercut the policy behind the notice requirements because there were so many of them.

Assemblyman Hansen:

If I discover that an insurance company is using my credit score to come up with my policy costs, I would like to know that, so I can improve it with the hope I might get a better policy price. Why is this such a big deal? This seems to be a reasonable request on the part of the consumer to determine how you will determine what you will charge for a policy.

Jeanette Belz:

That is the good part about Nevada. We are a very competitive market. There are companies in Nevada that do not use credit. If we disclose up front that credit may be used, and you feel that may be detrimental to you, you can find one of those other companies to see if it improves your premium. Most people

who shop look for a competitive price for services to meet their needs. We have members who use credit, and there are those who do not as part of their underwriting.

Assemblyman Hansen:

Is the concern, then, that your competitors might receive a competitive advantage if this became law? That others might know what the formula is that is used to determine your policy pricing?

Jeanette Belz:

I do not know that it is a competitive advantage. Insurance scores and how they are used is proprietary information. The Nevada Division of Insurance analyzes those scores and has been doing more of this. They are the ones the insurers must submit their insurance score methodology to.

You are on notice that a credit score may be used. If that is something you are uncomfortable with, you can shop.

Assemblywoman Carlton:

When you shop your insurance, you ask the company whether they use your credit score as a portion of the insurance score. Under current law, do they have to answer that question? I want to know when I call an insurance company if I will get an answer.

Jeanette Belz:

The way the statute reads now, an insurer may comply with the requirements by providing the following statement: "In connection with this application for insurance, we may review your credit." I do not know if you are applying for insurance or not.

Assemblywoman Carlton:

If I am calling to get a quote and they want to sell insurance to me, and they also want the commission, they are probably thinking that I am applying for insurance. What we are trying to get to is, when will they be required to give me the answer? I believe the problem today is that we are getting the answer too late in the process. I would like to know what my insurance score is, and I would like to know the components of it. But you will not share that with me. If people are smart enough to ask the question, and they are concerned enough—especially in today's market when many people's credit has been decimated—they need to look at how this will be applied. I think they will be asking that question.

Jeanette Belz:

Section 1 says: "The disclosure must be written or provided to an applicant in the same medium as the application." If you are applying verbally, as you stated, perhaps they are providing it at that point. I cannot tell you that.

Assemblywoman Carlton:

I think this is the question we are attempting to get an answer to. If you shop your insurance and get three quotes, each one is pulling your credit report, causing more "dings" on the credit report.

Robert Compan, representing Farmers Insurance Group:

Insurance-based credit scores are not credit scores. There are many factors used in determining a policy and its cost. This is not secret, but it is what makes it able for you to buy a competitive product. If we shared that information with other insurance companies, there would not be any competitiveness. My company and others who use credit scoring models may use different factors in their credit scoring. Credit scoring models could be based on how many times you open or close a credit account. If you are running credit, there are specific things that are already in state statute that you cannot do. There are 12 items in statute, including certain things we can and cannot do when rating a score.

Insurance-based credit scores are a small part of a policy when it comes to determining what the cost of the policy will be. If you ask an insurance company if they used your credit score, and they answer yes while coming in with a low bid, you will probably go with that company. Keep in mind that insurance-based credit scoring is just one factor when it comes to determining the price of a policy. Other factors could include driving records and age; however, when the insured looks at the policy and receives notices based on insurance-based credit scoring, he or she comes to believe that is the main focus.

We are willing to work with the bill's sponsor to see if we can come up with amicable language that would be acceptable to the insurance industry. The new language in the bill, according to what I am reading in the amendment, would have to be sent out at the time of each renewal. Insurance-based credit scores are a predictor of the possibility of the customer filing a claim. Last session when we looked at this, the Nevada Insurance Council did an independent study that stated the use of insurance-based credit scores benefit 70 percent of Nevada consumers.

Assemblywoman Kirkpatrick:

People want to know that they can access that information so they can improve their credit scores. Because of the large number of foreclosures and high unemployment, there are 16 states that are looking into this issue. People want to know how they can be sure that it is not one factor over another that determines their destiny. Does anything require you to disclose variables that go into the purchase of an insurance policy? We need to know how you can keep your competitive advantage and still provide some customer service.

Robert Compan:

Our website discusses the uses of credit scoring and how you can improve your score. I do not know where this factors into purchasing an insurance policy. You can shop and can find out through the Nevada Division of Insurance which companies use insurance-based credit scoring models.

Assemblywoman Kirkpatrick:

In the amendment, on page 2, line 10, it says: "notice that the insurance score of the policyholder was used when calculating the premium." Is this really the problem? I think insurance companies are different now. After the economic downturn the first things that people eliminated was their insurance. They no longer took advantage of smaller deductibles; they raised their deductibles. Is line 10 really where the problem is?

Robert Compan:

Yes, this is exactly what it is. Insurance companies are always evolving to be able to quickly respond to what is happening in today's economy. If foreclosures, for example, are a big issue driving FICO scores, that may be taken out of the equation. Every time we do a filing, we have to file with the Nevada Division of Insurance for approval. If we say this is not working and we are losing customers, we have to adjust accordingly. Yes, section 2 is where the rub would be.

Assemblywoman Bustamante Adams:

Ms. Belz, you said that in Nevada there are companies that use this and some that do not. Could you estimate the percentage of those that do not use this method in Nevada?

Jeanette Belz:

I cannot answer that question.

Robert Compan:

I do not know the answer to that question.

Assemblywoman Bustamante Adams:

Instead of shopping around, is there a location where I could find a list of companies that do not use the credit scoring models?

Jeanette Belz:

I do not know the answer.

Lisa Foster, representing American Family Insurance and Allstate Insurance:

I agree with what my counterparts have said. My clients have concerns about this extra notice. They feel they are already required to give notice based on Nevada law and on federal law as well. They point out they already give two notices, and this is yet a third. When you call for a quote, I think that most of the companies are looking at that as an application, because they call you back and quote a rate based on the full information they have taken from you. In section 1, to many companies, the application may have been that conversation. Perhaps that language needs to be strengthened to make it more clear; however, I think there is already a lot of notice given when credit is being used in your credit-based insurance score.

James Wadhams, representing American Insurance Association:

The American Insurance Association is a trade association similar to others here, but it represents a broad range of property and casualty insurers. I have not spoken with Assemblyman Aizley; however, after listening to his testimony and reading his amendment, I am appearing in opposition because our current rules require that I could not appear in support of the bill with amendments. I think the amendment is close to being workable, and I offer to work with him to clarify that information as the Committee directs.

Assemblywoman Diaz:

Do insurance companies exercise the right of disclosing to the consumer what is impeding a customer from getting a good rate? How do I, as a consumer, know what I need to do to have a better rate?

Jeanette Belz:

It could be your driving record or the fact that there is a discount given. I think we are focused on credit today because it is the subject of this bill, but credit is only one of many factors used to underwrite your insurance.

Assemblywoman Diaz:

An insurance representative would share this information?

Robert Compan:

There are many factors that go into rating a policy. It goes through an actuarial database, where actuaries rate the policy and get it approved, and then it is implemented. To educate an agent as to what specifically caused this rate to be where it is would be insurmountable. That is where we encounter the competitive nature of the insurance products.

Chairman Bobzien:

Do we have others to testify in opposition to the bill? [There was no response]. Is anyone in the neutral position?

Joseph Guild, representing State Farm Insurance:

I would like to clarify that we are neutral on this bill because we do more than the bill requires in our declarations page, which State Farm Insurance considers to be a part of the insurance contract. We think that the notice to the insured is more than the bill requires.

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

We are in the neutral position on this bill. The Nevada Division of Insurance does not maintain on its website a disclosure regarding which insurers do and do not use credit-based information. The disclosure is required by law, but to go into anything further than that, currently under statute, is considered proprietary information. Consequently, we do not have a list. We do not have a specific number of insurers who use credit-based information in their insurance rating practices, but we would estimate it in the 90 to 95 percent range.

Regarding the question about an application, from a legal standpoint, the application for insurance is not considered an application until it is officially submitted. If you called an insurer and ask for a quote, it is just that, a quote and not an application until you have authorized them to submit it. If your credit information was checked, and there is a change in your premium as a result of that, when they come back to you with a policy, it is considered a new offer of insurance and you are not bound to accept it—you can walk away. The current disclosure has to be done when an application is made. If you simply call for a quote, that is not an application, although if someone asked them if they use credit-based information, and they say no, that is probably a violation of their license. It could be a violation of unfair trade practices. If you ask outright if your information is used, they should disclose yes, even though it is not required by law.

Assemblywoman Carlton:

If you had something on the Internet that said, yes, these companies use this, you are not telling me the components: you are simply disclosing to me that this is one of the things that may be a hurdle to me when it comes to purchasing insurance. You are not sharing any private information. This is why I am having a problem understanding why the Nevada Division of Insurance would consider this one component as proprietary. As a consumer, if I want to shop my insurance with someone who does not use it, I should not have to go through many phone calls to find five. I think as our state's regulatory division you should be helping consumers make some of these decisions. How do you define proprietary and how do we change that so we can share information with consumers?

Adam Plain:

Currently, proprietary information regarding insurance rates is defined in statute. Those are the guidelines the division operates under. To the extent that there may be some leeway within the definition of proprietary information, I would be happy to see what we can do to ameliorate your concerns.

Chairman Bobzien:

Are there additional questions for Mr. Plain? Seeing none, does anyone else wish to speak on A.B. 120? I see none. Mr. Aizley, do you have any closing remarks?

Assemblyman Aizley:

I want to thank all the people who testified for and against the bill. They have all been very helpful in discussing the issues. I do want to point out to Mr. Compton that if I get any more amicable, I will not have any bill at all.

Finally, I do not understand why the transparency is not there. Most of us have an insurance policy and want to renew it, but it is a problem to get information from our own insurance companies. I would still like to know which companies use credit scores.

Chairman Bobzien:

Thank you Mr. Aizley. We will close the hearing on A.B. 120. [Assemblywoman Kirkpatrick assumed the Chair.]

Vice Chairwoman Kirkpatrick:

We will now open the hearing on Assembly Bill 213, and we will recognize Assemblyman Bobzien.

Assembly Bill 213: Revises provisions governing the issuance of a certificate of registration to a provider of a service contract. (BDR 57-759)

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

Thank you for the opportunity to present A.B. 213. The National Home Service Contract Association approached me because of a problem with *Nevada Revised Statutes* (NRS) 690C.170. During the last session, the Legislature removed a provision within that section that significantly limits any new service contract providers from entering the market in Nevada. Under current law, a service contract provider must purchase a contractual liability insurance policy or maintain or be a subsidiary of a company that maintains a net worth or stockholder's equity of at least \$100 million.

Assembly Bill 213 seeks to reinstate the language that was removed during the last session to allow service contract providers to meet the requirements for obtaining a certificate of registration by depositing a security deposit and maintaining sufficient reserve as an alternative to the net worth requirement explained in this section.

Subsection 2 of section 1 allows a service contract provider to meet the criteria for issuance of a certificate of registration by maintaining a reserve account containing at least 40 percent of the gross consideration received by the provider for any unexpired service contracts, less any claims paid on those unexpired service contracts, and by depositing with the Commissioner of Insurance security in the amount of \$25,000 or 5 percent of the gross consideration received by the provider for any unexpired service contracts, less any claims paid on those contracts, whichever is greater.

I have copresenters here who know this industry much better than I do. They will be happy to answer questions.

Neena Laxalt, representing Chartrand Legal Management, Inc.:

This language that we are asking to be reinstated is standard language in at least 17 other states. I will let my client, Art Chartrand, answer your questions.

Art Chartrand, Counsel, National Home Service Contract Association:

We are attempting to reinstate what was in the law previously and what is in the law in many other states. Your law is in response to a law that I drafted and wrote in 1994-1995 and which was adopted by the National Association of Insurance Commissioners (NAIC). It simply states that the NAIC wanted to register service contract providers. There was a desire to have some minimal financial insurance when these companies came in. A net worth of \$100 million was an option, but not everybody can qualify for that. At the

NAIC, we wanted to be responsive to small, new companies, so we provided the reserve and bond option. I have been attempting to work with your insurance division for five years. If they want a higher bond, we are more than willing to talk to them. Two years ago, they removed the entire provision—no new companies can come into Nevada now. We want to get back to where we started.

Assemblywoman Carlton:

Can someone pinpoint when that was removed? As I remember, during our meetings that section did not give us any pause.

Art Chartrand:

We did not know anything about the change, although we try to monitor these situations. I have documentation of conversations with the Nevada Division of Insurance asking them if they wanted to change the reserve formula and the bond requirement. They said, no, they were not interested and might take it up next year. We were surprised to find out about this. I assure you, had I known about it, I would have been here, saying no. No other state does this. It is anti-business, and it is not good regulation.

Assemblywoman Carlton:

To your knowledge, when that language was removed, were there problems or concerns that you had been working on with the Insurance Division?

Art Chartrand:

That was always a struggle for us, trying to understand what problem they were trying to cure. The fact is, in this industry, there have only been at most ten insolvencies. They were all out-of-state companies and had nothing to do with Nevada; some simply went out of business. There is nothing you can do in Nevada to control some of these out-of-state companies anyway. They said they wanted to increase the security. We asked to what level, and we have not gotten a solid proposal.

Assemblywoman Carlton:

There have been numerous discussions about this. What progress has there been recently?

Art Chartrand:

I have been waiting for a proposal for five years. We are willing to talk about a bond increase, but I do not think that will reach the objective. There has never been a home service contract company in Nevada that has become insolvent. We sell home service contracts: we do not sell insurance. Your law makes that clear. I have never fully understood the problem they are trying to

solve. They said this was because of something that happened in New York in 1999. I think they are referring to something that happened in about 1985 with an electronics store named Crazy Eddie in New York. It had nothing to do with your law. I am proud to say that Nevada's law is based on a law I wrote in 1994 when I was at the NAIC.

Neena Laxalt:

One of the concerns from the Nevada Division of Insurance is the \$25,000 minimum. I met with them last week, and we discussed page 2, lines 16 through 19. There were two parts where we discussed a compromise; one was on the \$25,000 security amount, and the other was the 5 percent. I left a message with the Commissioner. I said we had offered to move that \$25,000 to \$50,000. However, we heard nothing back.

Vice Chairwoman Kirkpatrick:

You are saying that in the 2011 session, those sections were deleted from an omnibus bill, Assembly Bill No. 74 of the 76th Session. I do not remember the discussion, but I remember the bills then were large and complicated. Why does the Insurance Commissioner not support this?

Neena Laxalt:

I agree with your analysis. Please keep in mind that the provision we are asking to be reinserted was in our statutes for 12 years. There were some companies that were becoming insolvent, but none of them were home service contract providers. In fact, they were large companies, and removing the language would not have addressed the problem. The current businesses in Nevada are grandfathered in under these statutes, but it will put up big obstacles to other companies who want to come here on the small business level.

Vice Chairwoman Kirkpatrick:

Are there other questions? [There was no response]. Is there anyone in support of the bill?

James Wadhams, representing American Insurance Association:

If the Committee chooses to process this alternative, we will support that. The language that deleted the language that A.B. 213 seeks to add was in the original bill, although it was so deep in the multiple pages that it was not noticed.

Vice Chairwoman Kirkpatrick:

Are there additional questions? [There was no response]. Is anyone else in support of A.B. 213? [There was no response]. Is anyone in the neutral position?

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

The Nevada Division of Insurance is neutral on this bill. I have provided written testimony on the background of the bill ([Exhibit E](#)). The statute in question, NRS Chapter 690C, was originally enacted in 1999 on Assembly Bill No. 673 of the 70th Session. The bill sponsor was presenting it on behalf of the service contract industry, and he did make reference to the insolvency of the Crazy Eddie electronics store chain in the New York area. Committee minutes indicate it was a desire to get ahead of any collateral issues that might arise from that fiasco. The language remained virtually unchanged before 2011; there were some minor modifications to the chapter, but nothing concerning this topic.

In the interim between 2009 and 2011 sessions, Division received notice of five insolvencies for service contract providers. We were not aware if there were more out there. Typically, service contract providers are not regulated like insurers, so we do not receive notice through the NAIC. Often, we receive notice of an insolvency through a bankruptcy court proceeding or a consumer complaint. One of those five insolvencies was directly related to the language in question. The insolvent company had posted a statutorily minimum \$25,000 bond with the State. As a result of the bankruptcy proceedings, the State surrendered that bond to the bankruptcy court for the benefit of Nevada consumers and walked away from the proceedings.

In 2011, the Division sponsored Assembly Bill No. 74 of the 76th Session, which proposed to remove that statutory bond requirement or possibility. That bill was heard six times last session, and it was noticed during at least one of our public meetings for the Commissioner's Property Casualty Advisory Committee. The language was called out in then Insurance Commissioner Barrett's testimony regarding the bill, and a slide was dedicated to it in the PowerPoint slide show presented to the Assembly and Senate committees who heard the bill.

One of the reasons we have gone that route is that the bonding requirement is a statutory minimum of \$25,000 or a mathematical calculation based on the amount of business a company writes as opposed to the number of claims it pays. After analyzing it, the Division saw that the mathematical calculation appeared to be flawed. My testimony has a worksheet showing various premium and claims levels. Using the mathematical calculation as presented in the language, you can see that every one of them reverts to the statutory minimum. The Division is technically neutral on this bill, although we have not had a chance to speak with Assemblyman Bobzien, the bill's sponsor.

Assemblywoman Carlton:

Where was this in A.B. No. 74 of the 76th Session?

Adam Plain:

I do not have the section number, but I can get that to you.

Vice Chairwoman Kirkpatrick:

It is in section 55, as confirmed by our Legal Division.

Assemblywoman Carlton:

I would like to review that. I will also pull the minutes. Was there information provided about what problem occurred that was the impetus for this change?

Adam Plain:

I do not think there was a specific triggering event. The insolvency of the company, between 2009 and 2011, that paid the minimum deposit, coupled with my review of the language in the statute, revealed that any company that wanted to rely on that deposit was reverting to the statutory minimum. The calculation was not working.

Assemblywoman Carlton:

The calculation that was in effect for 12 years was a problem? I am confused. We heard from one group that there was no insolvency, and now we are hearing that there were. I think we need to get documentation to determine what happened. Since the Division is remaining neutral, providing information to the Committee would be helpful.

Adam Plain:

The confusion revolves around the fact that NRS Chapter 690C regulates all service contract providers. We have heard from the home service contract provider industry, which is a subset of those regulated under NRS Chapter 690C. Without knowing firsthand what their industry experience has been like, we are not able to discriminate on our regulatory processes under NRS Chapter 690C based on whether a company is a home service contract provider or some other provider. It is the same story told two different ways, which is probably why you are confused.

Assemblywoman Carlton:

Perhaps that is something we need to address if they are different industries and have different challenges.

Vice Chairwoman Kirkpatrick:

Those are unintended consequences. When we were having the discussion, we heard that nationally everyone was going this direction. We need to address the bigger issue, which is how do we separate the industry within the industry to make sure they can continue to do business.

Adam Plain:

If I may address Assemblywoman Carlton's question about the fiscal note. In reviewing the committee meeting minutes from the 1999 legislative session, when the bill was introduced, at that time the Division had requested three positions related to the regulation and enforcement of this section of the law. It is my understanding that only one position was granted. We have been operating off one of the three requested positions since then. That has allowed us to do some minimal regulation under the law. We have not been able to conduct the extensive regulation we would like to ensure the solvency of the industry, for example, a regular examination schedule.

Assemblywoman Carlton:

In 1999, you requested three people, but at that time you were not an enterprise fund. You currently are now. I am a little confused by a fiscal note when it is an enterprise fund sort of scheme. I was around when you did that too. There is the fact that you had been doing it with one person and are now asking for three. During the two years you did not do this, did you get rid of the one person, or did he or she do something else?

Adam Plain:

The one employee we have had related to service contract providers has stayed with the Division because there are still registration of service contract providers and receipt of information from service contract providers that needs to be completed. I hear what you are saying. The answer to your asked, or unasked, question is the Division has submitted a flat budget for this fiscal cycle.

Assemblywoman Carlton:

Would you explain to us the enterprise portion of this? It was my understanding that no General Fund dollars were going to be requested to do the job that we asked you to do. The industry was willing to support the divisions, yet here we have a fiscal note asking for General Fund dollars to do the work that the legislation would ask you to do.

Adam Plain:

I am not a fiscal note guru. My understanding is that because we are an enterprise fund, that money would not come from the General Fund. If it is not in the Governor's recommended budget for this position, it would have to come

out of our agency's operating reserves. Commissioner Scott Kipper and Deputy Commissioner Todd Rich would be able to answer that question for you after the meeting is over.

Assemblywoman Carlton:

I look forward to that explanation. Thank you for answering our questions to the best of your ability.

Assemblyman Daly:

I am trying to follow this. We took out the threshold during the last legislative session, in 2011, in this Committee. The companies who are still doing this do not meet the new requirement. They are grandfathered in, from what I understand. Has anybody new applied to do business under higher threshold? If nobody has, then we are not going to get people in at that higher level. There are six companies that are smaller and regional or are in two or three states but not nationwide. When those go out of business, we are not going to have any service contracts in Nevada if we do not make a change from the standard at the higher level. If no one has come in, and we lose the six we have, will we not have this business in Nevada?

Adam Plain:

Currently, the Division licenses approximately 170 service contract providers under NRS Chapter 690C, and those are service contract providers from all lines of business that would be subject to that regulation. It could be service contract providers, major electronics service contract providers, home service contracts, et cetera. We do not differentiate too much in the entities under that chapter. In the interim since A.B. No. 74 of the 76th Session passed in 2011, we have had 17 service contract providers admitted to the State to do new business. I do not know to what extent those are home service contracts versus other service contracts.

Vice Chairwoman Kirkpatrick:

Are there any other questions? [There were none.] I am sure we are not done asking questions.

Is there anybody else wanting to testify in neutral? [There was no response.]

Is there anybody wanting to testify in opposition? [There was no response.]

With that we are going to close the hearing on A.B. 213.

The meeting is adjourned [at 3:18 p.m.].

RESPECTFULLY SUBMITTED:

Linda Conaboy
Recording Secretary

RESPECTFULLY SUBMITTED:

Julie Kellen
Transcribing Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 18, 2013

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 179	C	Assemblyman James Oscarson	Financial Information
A.B. 120	D	Assemblyman Paul Aizley	Proposed Amendment
A.B. 213	E	Adam Plain	Prepared Testimony