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

Seventy-Seventh Session
March 20, 2013

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:53 p.m. on Wednesday, March 20, 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 Cresent 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
Katie Wilson, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jack Mallory, representing International Union of Painters and Allied Trades District Council 15, and Southern Nevada Building and Construction Trades Council
Thoran Towler, Labor Commissioner, Office of the Labor Commissioner, Department of Business and Industry
John Sande IV, representing Addus HealthCare, Inc.
Robert Ostrovsky, representing Nevada Resort Association
Tray Abney, representing The Chamber
Lea Tauchen, representing Retail Association of Nevada
Bruce Arkell, representing Personal Care Association of Nevada
Danny L. Thompson, representing Nevada State AFL-CIO
Keith Uriarte, representing American Federation of State, County, and Municipal Employees Local 4041
Mayra Ocampo, representing Service Employees International Union Local 1107
Patrick T. Sanderson, representing Laborers' International Union Local 872
Andrew Rempfer, representing Nevada Justice Association
Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada, AFL-CIO
Joseph Cook, Member, International Union of Painters and Allied Trades
Terry Graves, representing Henderson Chamber of Commerce
Ray Bacon, representing Nevada Manufacturers Association
Randi Thompson, representing National Federation of Independent Business
Craig Madole, representing Associated General Contractors of America, Nevada Chapter

Chairman Bobzien:
[Roll was called, and protocol was explained.]

We will now open the hearing on Assembly Bill 185.

Assembly Bill 185: Revises provisions to increase the cooperation between the Labor Commissioner and the United States Department of Labor to promote compliance with labor laws of common concern. (BDR 53-795)

Jack Mallory, representing International Union of Painters and Allied Trades District Council 15:
The purpose of Assembly Bill 185 is to create an additional tool for the Labor Commissioner's Office which would allow him to enter into a formal agreement with the U.S. Department of Labor's Wage and Hour Division for the purpose of establishing a collaborative relationship which should promote compliance with labor laws of common concern.

There are currently 14 states that have entered into agreements with the federal government, including California, Connecticut, Colorado, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Missouri, Montana, Utah, and Washington State. While the terms of these agreements vary, for the most part they share a common goal of working together to address problems with wage and hour laws, including employee misclassification.

Current statute establishes a requirement that the Labor Commissioner cooperate with bureaus or departments of labor of the federal government and other states. There is also a provision in statute that allows the Labor Commissioner to enter into reciprocal agreements with other states for collection of claims for wages or commissions assigned to the Labor Commissioner, which is in *Nevada Revised Statutes* (NRS) 607.180. There is no existing provision that would allow him to do so with the U.S. Department of Labor.

We have submitted an amendment to the bill and would like to explain the purpose. The bill as drafted would for all intents and purposes require the Labor Commissioner to enter into a memorandum of understanding (MOU) with the Department of Labor; however, I believe that this should be more permissive. By making this change, it would give the Labor Commissioner greater ability to negotiate the terms of any agreement that he may enter into on behalf of the state instead of having them dictate it to him.

Section 1 of the bill amends NRS 607.120 to read as follows:

> The Labor Commissioner shall: 1. Cooperate with such bureaus or departments of labor of the Federal Government and other states as may be established; and 2. If possible, enter into a memorandum of understanding with the Wage and Hour Division of the United States Department of Labor to establish a collaborative relationship among the agencies of this State and those of the Federal Government for the purpose of promoting compliance with labor laws of common concern.

[Read proposed amendment (Exhibit C). Main change is to add "may" at the start of subsection 2.] It effectively makes it more permissive.

Chairman Bobzien:
Are there any questions?

Assemblyman Daly:
Is there a copy of an MOU from another state so we can have idea of what they contain?

Jack Mallory:
I do not have a copy with me today, but I would be happy to provide a copy to the Committee.

Assemblyman Daly:
I think it would be useful to see one.

Chairman Bobzien:
Are there any questions? [There were none.] Is there anyone else who is in support of A.B. 185? Seeing none, we will move to opposition.

Thoran Towler, Labor Commissioner, Office of the Labor Commissioner, Department of Business and Industry:
As the bill is written, I do not like the "shall." I have talked with Mr. Mallory about this and I think the proposed amendment corrects that problem. Historically we have worked with and I continue to work with the Department of Labor. We often give copresentations and work together if there is an employer that needs to be looked at. The director for Nevada Department of Labor and I have met and discussed entering into an MOU, but there has not been a need to yet. I am not against having language that would allow the Labor Commissioner to enter into an MOU with the Department of Labor, but I want to state for the record that I think it would

be beneficial to Nevada to have it as a "may." I have also not come across an opportunity that would be beneficial in Nevada.

Chairman Bobzien:
So existing statute already requires that you cooperate and with the amendment it makes it clear that it is permissive so that you have that negotiating hand that you "may" enter into an MOU, correct?

Thoran Towler:
The existing statute says that we will cooperate, which we already do. However, it does not require us to enter into an MOU. Assemblyman Daly had a great point; it may be helpful to look at MOUs from other states. A law requiring the Labor Commissioner's Office to cooperate with the federal government is one thing. Requiring us to enter into an MOU, and theoretically requiring us to do whatever the Department of Labor wants us to do, is where I have an issue.

Chairman Bobzien:
I am going to assume that you have not had the opportunity to look at the amendment, which is permissive when it comes to the MOU.

Thoran Towler:
I am sorry if I misunderstood your question. If the amendment, which Mr. Mallory has explained, is passed, I do not have a problem with the bill.

Chairman Bobzien:
I want to make clear that you are opposed to the bill but in support of the amendment, because it acknowledges the existing statute that says you "shall" cooperate, but it is permissive in regard to the MOU and says "may."

Thoran Towler:
That is correct. But to reiterate, I have not seen a need to enter into an MOU in my time.

Chairman Bobzien:
Are there any questions?

Assemblywoman Kirkpatrick:
Sometimes we put laws in place because they worked when one person was in charge. Maybe you are the good guy and are trying to work with others, but if you leave tomorrow we have to start all over. I appreciate that you are receptive to working with folks, but in the past I do not know that we have had the ability to have such a great working relationship.

Assemblyman Ohrenschall:
Do you have many anecdotes where the goals of your office and the Department of Labor have been at odds?

Thoran Towler:
I do not have anything against the Department of Labor, but they do target specific employers. They contact us and they will tell us who they are going after. We do not target specific employers. They will go after a demographic. This year, they are trying to look into drycleaners across the United States. We do not target any specific entity or line of work. We go after whoever we get complaints and claims on. I do not know if that is at odds, but I would be hesitant to get on board with the federal government and just go after a line of work or a classification of employers.

Chairman Bobzien:
Are there any questions? [There were none.] Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? Seeing none, we will close the hearing on A.B. 185.

We will now begin our work session and open with Assembly Bill 94.

Assembly Bill 94: Revises provisions relating to the examinations for licensure as a professional engineer or professional land surveyor. (BDR 54-618)

Kelly Richard, Committee Policy Analyst:
The first bill we have on today's work session is Assembly Bill 94, which was heard on March 4, 2013. [Read from work session document (Exhibit D).]

Chairman Bobzien:
I will entertain a motion.

> ASSEMBLYWOMAN CARLTON MOVED TO DO PASS ASSEMBLY BILL 94.
>
> ASSEMBLYMAN GRADY SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ELLISON AND HANSEN WERE ABSENT FOR THE VOTE.)

We will now move to Assembly Bill 95.

Assembly Bill 95: Revises provisions governing prescription labels. (BDR 54-648)

Kelly Richard, Committee Policy Analyst:
Our next bill on today's work session is Assembly Bill 95, which was heard on March 4, 2013. [Read from work session document (Exhibit E).]

There was a two-part conceptual amendment submitted by Assemblywoman Spiegel, on the record, when the bill was heard. She submitted a revised amendment that is slightly modified; it is attached. [Continued to read from (Exhibit E).]

Chairman Bobzien:
I will entertain a motion.

> ASSEMBLYMAN HEALEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 95.
>
> ASSEMBLYMAN LIVERMORE SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ELLISON AND HANSEN WERE ABSENT FOR THE VOTE.)

We will now move to Assembly Bill 173.

Assembly Bill 173: Revises provisions governing rates which may be charged by certain electric utilities. (BDR 58-966)

Kelly Richard, Committee Policy Analyst:
Assembly Bill 173 was heard on March 11, 2013. [Read from work session document (Exhibit F).]

Chairman Bobzien:
Are there any questions on this measure?

Assemblyman Livermore:
Initially, I had questions about how the rates would be charged and offset, but after discussing the issue with NV Energy, I feel comfortable with the amendment. I plan on supporting this bill.

Chairman Bobzien:
I will entertain a motion.

> ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 173.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ELLISON AND HANSEN WERE ABSENT FOR THE VOTE.)

We will now move to Assembly Bill 181.

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

Kelly Richard, Committee Policy Analyst:
Our next bill on today's work session is Assembly Bill 181, which was heard on March 8, 2013. [Read from work session document (Exhibit G).]

Chairman Bobzien:
I will entertain a motion.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS ASSEMBLY BILL 181.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ELLISON AND HANSEN WERE ABSENT FOR THE VOTE.)

We will now move to Senate Bill 15.

Senate Bill 15: Authorizes certain public utilities to request a waiver from the requirement to submit a resource plan to the Public Utilities Commission of Nevada. (BDR 58-323)

Kelly Richard, Committee Policy Analyst:
Our next bill on today's work session is Senate Bill 15, which was heard on March 11, 2013. [Read from work session document (Exhibit H).]

Chairman Bobzien:
I will entertain a motion.

ASSEMBLYWOMAN CARLTON MOVED TO DO PASS SENATE BILL 15.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ELLISON AND HANSEN WERE ABSENT FOR THE VOTE.)

This concludes our work session for the day, and we will welcome our colleague Assemblyman Kirner, who will introduce Assembly Bill 193.

Assembly Bill 193: Revises provisions governing compensation, wages and hours. (BDR 53-1019)

Assemblyman Randy Kirner, Washoe County Assembly District No. 26:
This bill is related to labor provisions relating to payment for each hour of work. It is a work-related bill and has to do with wage rounding.

I want to draw your attention to subsection 2. Subsection 2 comes directly from federal code, which is the *Code of Federal Regulations* (C.F.R.), Title 29, Section 785.48. The object of the bill is to put into language in Nevada the same rules we use at the federal level. There is an amendment (Exhibit I). After speaking with some of the labor representatives, their arguments were persuasive in that this issue should be one that has both employee and employer responsibility. The amendment changes "employee" to "employer" in section 1, subsection 3, at line 17, and replaces the language in paragraphs (a) and (b) (Exhibit I). What we would like to do is strike a balance between the employers and the employees. After talking to union representatives we want to make sure that this is a shared responsibility between the employee and the employer.

Assemblyman Healey:
In my career, I manage employees and payroll, and have to ensure that employees are paid for time given to a company. However, particularly in the bigger industries, and I can speak for gaming, we have very big buildings, and in order to move employees around and get them out of stations and to the time clocks can be time-consuming. We allow for that, but oftentimes employees will be down early, or there will be a line which delays them from clocking out at their scheduled departure time. As a result, if they clock out four or five minutes past the time, currently we are required to pay them overtime for that period of time. That becomes a big issue. The only recourse the company has is to issue discipline to employees who fail to clock out on time. We, as an operator, hate that. It is time-consuming and frustrating to the employee and

to the employer. The simple change that you are proposing will stop all the unnecessary work, particularly when employees are not making the choice to clock out late; it is just logistics. This gives freedom to employees to make sure they are not being held accountable unjustly and provides that employers are not having to pay excessive amounts of overtime for five or ten minutes, which we currently are.

Assemblyman Kirner:
I would like to draw the Committee's attention to subsection 2, lines 10 and 11, where it is a problem if the employer fails to compensate the employee properly for all the time the employee actually worked. If he is working, or you compel him to work, you have to pay him.

Assemblywoman Carlton:
With respect to my colleague, I come from the other side; I was the one who had to clock in and clock out. It takes 15 minutes to walk from the parking garage and I have to be in uniform at the time clock. There are times when you do not get relieved on time and you are at your workstation. My apprehension with this bill would be, if I do not get relieved on time and I am still standing at my station, pouring coffee or collecting the last checks, that I would get to the time clock a few minutes late, and I would be denied my overtime even though I was working. If you are doing a change of shift in a coffee shop and you are relieving servers and readjusting stations, I would have concerns that this would allow the employer to not pay the employee. Is there something you can share with me that would give me a level of comfort that the employee would not be denied that time?

I also have a question on the "voluntary" portion of the bill. We have preshift meetings or mandatory meetings that are held on property that you have to attend. I want to make sure that we are not getting involved in those sorts of issues on the voluntary time.

Assemblyman Kirner:
In the amendment, we have taken out the word "voluntary" and have replaced it with, "Does not require, expect or encourage the employee to come in before his or her regular starting time," which I think will address the issue of voluntary. With regard to your first comment, Assemblywoman Carlton, obviously if you are not relieved, then you are still working and should be paid that time.

Part of the reason I brought this bill forward is because of the fluctuating enforcement from the U.S. Department of Labor and the Labor Commissioner.

They have irregularly ruled on issues over the past years. One of the former commissioners was asked what his policy was, to which he responded, "It depends on what kind of mood I am in." This is unacceptable in my mind. The purpose of this legislation is to duplicate the federal rules and guidelines, so we have a standard that we all can accept. I am not sure if that reassures you or not, but if you are working overtime, or are compelled, expected, or encouraged to work overtime, then you should be paid for that time.

Chairman Bobzien:
I need to clarify. We did receive that letter, but we got it very late, so that is why it is not available online.

Assemblywoman Carlton:
Mr. Kirner, I understand where you are coming from, but when it happens in the real world, I have had to file a grievance to get my overtime. I was denied overtime. They told me it was my job to clock out. I had to fight for it. That is time and energy that you have to put into something. As we always say, we do not make the rules for the good employers; we make the rules for the bad employers.

Assemblyman Kirner:
My hope is that by adjusting subsection 3, paragraphs (a) and (b), it will send a message that if you have to be there, it is clear you should get paid.

Assemblyman Daly:
Looking at the amendment, I think that is who you talk to. That works very well when you do not punch the time clock. I have had those experiences in the construction industry many times. If you are compelled to be there, they always get paid, and we have had to fight for that, as Mrs. Carlton was saying.

My wife has to punch a time clock, so when I first read this I asked her what her company does. She said they use the seven-minute standard. If you go to eight minutes, you get paid for 15 minutes. They do not have the 5-, 10-, and 15-minute standards. The way I read this, you are talking about two and one-half minute increments. If you are under two and one-half minutes, you can round it down, but if it is more, you round it up to five minutes. The same thing happens with 5 minutes to 10 minutes and 10 minutes to 15 minutes. Were there regulations that were put into place on this? Some consistency would be good. When I had to punch a time clock many years ago, you had to punch in at the exact minute, or they had to pay a minute of overtime. This could add some clarification. I was curious if there was already state regulation.

Assemblyman Kirner:
I will let the Commissioner address that question.

Thoran Towler, Labor Commissioner, Office of the Labor Commissioner, Department of Business and Industry:
I know more about this than I ever wanted to. I would be happy to answer that. I will try to be brief on the history. Assemblyman Daly is correct, and I am glad he brought that up. There are many employers in Nevada who are still not complying with the law. In northern Nevada, as Assemblyman Kirner mentioned, there was inconsistent enforcement with this law. As it is now, the law says you must be paid for every hour worked. The applicable regulation says you must be paid for all time worked. That is pretty clear to me. In 2007, former Labor Commissioner Michael Tanchek tried to promulgate regulations to allow for time clock rounding to match the federal regulations. He went through the whole process, and the legal counsel for the Legislative Counsel Bureau (LCB) and the Office of the Attorney General representing the Office of the Labor Commissioner determined that law would have to be changed, and it would not be a change in regulation. As the law is now, you must be paid for all time worked and rounding is not allowed. Employers are still doing it.

Assemblyman Daly:
I want to confirm you are reading it the same way I was. We are talking about two and one-half minute increments rounded up or rounded down. In the example Mr. Healey gave, a person would have two and one-half minutes to clock out after work before going to five minutes. If he or she clocked out at three after, you have to round it up to five. Is that the way it reads?

Assemblyman Kirner:
In this case, as it says in subsection 2 of the bill:

> An employer may round the actual time the employee works to the nearest 5 minutes, or the nearest one-tenth or one-quarter of an hour, provided that such rounding will not result, over a period of time, in a failure to compensate the employee properly for all the time the employee has actually worked.

Assemblyman Healey:
I would like to clarify for the record, for my colleague Mrs. Carlton, I was not implying that at any point, if you are working in your position, that you will not be compensated. You should absolutely be compensated. These are when you are on your own time and getting a cup of coffee in the employee dining room because you made it down five minutes before the end of shift, and now it is seven minutes after the clock-out time, so you run over to punch out.

We as a company do follow the current law, which is for every minute you are over your clock-out time, we have to pay you overtime. In Mr. Daly's example, the three increments of time mentioned in the bill help employers, depending on how they pay. We pay by the quarter-hour. If you work six minutes held over in your station, you are going to get 15 minutes of overtime. If you were having that cup of coffee for six minutes, we are going to round it back to the clock-out time and not pay you that overtime.

Chairman Bobzien:
Do we have any additional questions for the bill sponsor or the Labor Commissioner?

Assemblyman Frierson:
In reading Assembly Bill 193, I had a concern about this creating a rigid structure and not allowing the kind of flexibility and practical application you would ordinarily find in a workplace. In my former job, I saw people due to get off work at 5 p.m., go to clock out, and there would be five people in front of them. By the time they clocked out, they were beyond the minutes. This would take away the flexibility to take into consideration those types of situations for a period of five minutes, or two and one-half minutes on the front and two and one-half on the back. We currently seem to have a situation where we can be flexible and practical about how we allow it. I am concerned about losing flexibility in real-life situations.

Assemblyman Kirner:
I understand what you are saying. My sense of this is that some of that flexibility is not working in favor of the employee. Sometimes it does and sometimes it does not. We have a lot of employers around the state. My sense is that having a standard is beneficial. It is not a new law that we are creating. It is a federal standard, so there is a lot of consistency to it. This is not a bad idea, and that is my take on it.

Assemblyman Frierson:
Currently, we have the flexibility to do this or not. Do we need this statutorily when employers can be more rigid, and the employees can decide if that is the kind of place they want to work or not? This is as opposed to all employers being required to be at the two-and-a-half-minute mark.

Assemblyman Kirner:
When we talk about employees deciding where they want to work, these days many employees do not get to choose when they want to work. They are glad to have a job. I am more concerned about the other side of that coin.

The other side of the coin is that some employers would treat somebody well and treat somebody else not as well. I think a standard is a good thing.

Assemblyman Healey:
For the Commissioner, I believe law currently states that we do not have the flexibility. A minute over is a minute over, and the company has to pay the overtime. In those situations where you have five people standing in front of you, and you punch out at 5:01 or 5:02, the company has to pay you the two minutes of overtime. Many companies are currently not following the procedure. By this change, this does now provide a little more flexibility, if I understand the current law.

Thoran Towler:
That is correct. Right now, there is no flexibility as I read the law. This allows flexibility if you read it under subsection 2, "An employer may round . . . ." There is no requirement that an employer has to round. The employers who are following the law can keep it the same way if this is passed. They can pay for every minute worked, which there are arguments for. There are employers who feel it is beneficial to them, and there are employees who feel it is beneficial for them to allow for rounding.

Chairman Bobzien:
Let us move to additional proponents on the measure.

John Sande IV, representing Addus HealthCare, Inc.:
A lot has been covered already, and I know the Commissioner can do a much more eloquent job than I can. I will briefly state a bit from the research that I have done. Wikipedia says:

> Rounding a numerical value means replacing it by another value that is approximately equal but has a shorter, simpler, or more explicit representation . . . Rounding is often done on purpose to obtain a value that is easier to write and handle than the original.

I think that is the reason why a number of employers have employed the wage rounding. It makes things simpler and provides flexibility. I believe Assemblyman Frierson hit a point that we want to be flexible and not have these strict standards. When you implement them in practice, as Mr. Healey has made known, it can be somewhat difficult, and it puts the employer and employee in a difficult position.

I support everything the Labor Commissioner has testified to. I wanted to voice my support for this bill.

Chairman Bobzien:
Let us hear from the rest of the panel and see if we have questions.

Robert Ostrovsky, representing Nevada Resort Association:
I would like to rise in support of the bill and the proposed amendment. You have heard a lot of discussion already. As I understand it, the federal standard also asks for a balancing test. Basically, it says if I am a federal examiner coming to look at your records of payroll, I am going to make sure you have not used this test or are rounding in only one way. My example is that in a larger hotel facility, when housekeeping got off work, we would literally have hundreds of people lined up waiting to punch out. We would allow people to punch out early. We would start punching out five minutes to the hour so everyone could be punched out by five minutes after the hour. You did not get punished for punching out early, nor did you get rewarded for punching out late. You were subject to the reality of these very large workplaces trying to get everyone punched out in some organized fashion. We even brought our housekeeping employees early to change clothes so they would be prepared and ready to stand at the clock.

It is different in the situation Assemblywoman Carlton discussed earlier. When you are providing a service to a customer, you are providing something for your employer, and you should be paid for that. In my opinion, there is no such thing as voluntary time. If you are required to come in before shift for a meeting or required to stay late for any reason, you are on the clock. By the time you leave the workstation to get there, there is a clock difference.

Let me give you one more example. As a matter of fairness, if you are a small employer and use a timesheet, and you sign it at 8:00 and out at 4:00 or 5:00, you are permitted under law to pay from that timesheet. That is a disadvantage to large employers who use electronic payroll systems because there is no way you can get all those people past that clock at one minute around 5:00 p.m. I understand you can ask the Labor Commissioner whether he is going to use the balancing test to make sure employers are not favoring one way over the other. If you are punching out early and leave at 4:58, do you get docked for two minutes? The purpose is that you are not going to get docked two minutes worth of pay, nor are you going to get overtime on the other side for punching out at 5:02. There has to be a balance that says I am not taking advantage of my employees.

Based on that, and based on the fact that this has been a continuing problem, employers do not know what the right way is. The statute is unclear to most employers, and they violate the law by accident. I would like to see that fixed. I think this does that by following the Fair Labor Standards Act. I support this and would be happy to answer any questions.

Tray Abney, representing The Chamber:
I want to thank Assemblyman Kirner for bringing this bill forward, and I want to thank Assemblyman Healey for telling his experience and explaining how this would work. You hear the words stability and consistency come out of my mouth a lot on various bills and issues. We support this and think it provides that consistency, and it is not up to somebody's mood to enforce these regulations.

Chairman Bobzien:
Do we have questions from the Committee? [There were none.] Does the Labor Commissioner have additional comments to provide on A.B. 193?

Thoran Towler:
I do not usually testify in support of bills. As a regulator, my job is to apply the law regardless of what my personal preference may be. However, this bill has the potential to benefit both employers and employees. It is no surprise that there have been countless employers who have requested time clock rounding. In northern Nevada, there was simply not uniform enforcement in the past. It is my interpretation of current law that time clock rounding is not allowed, as I explained earlier. If this bill passes, employers can utilize industry-standard time clock rounding machines and software. In addition to the employers that have come to me, I have had employees contact me regarding the issue of time clock rounding.

I will briefly share two scenarios that were told to me by employees. One employee called me and gave the following scenario. His employer only offered vacation and sick leave benefits to employees who work 40 hours a week. This employee, under the approval of his supervisor, left work a couple of minutes early every day so he could catch the city bus to make it home quickly. Because I enforce time clock rounding now, this employee no longer worked 40 hours a week. The employee called me and told me he now had two options: he could wait for the next bus and get home at 8 p.m. every night instead of 6 p.m., or he could lose his sick leave and vacation benefits. He made clear to me that his kids were going to suffer either way.

The second scenario happened when an employee called me and said she drops her children off at daycare every morning as soon as the doors open. She then

races to work and is sometimes one or two minutes late. She told me her supervisor has no problems with her coming in one or two minutes late because she is a very good employee. Her employer, which is a national company, had a policy that if an employee is late to work, the employee receives a demerit point. After five points in a period of time, the employee is terminated. This is another scenario where if time clock rounding is allowed, the employee would not be listed as late for being one or two minutes late.

As this is written, and as the federal law is written, if you do a search on Westlaw or LexisNexis under the federal cases that interpret this, it has to balance out for employees and employers evenly. It cannot be a situation that we are talking about where the employee is asked to stay three minutes late every day and then gets docked those three minutes over and over again. That would open the employer to lawsuits. The best scenario is when the employee can come into work two minutes late and then leave two minutes late, which is reality. Those are my thoughts.

Chairman Bobzien:
Are there questions for Mr. Towler? [There were none.]

Lea Tauchen, representing Retail Association of Nevada:
We are in support, and I want to offer a "me too" on the record. We would echo the comments of those before us.

Bruce Arkell, representing Personal Care Association of Nevada:
The Personal Care Association of Nevada is in support of this. Currently, most of their companies are dealing with paper timesheets, so it is not a big deal. However, they are shifting more to an electronic system, and this will become an issue with them as the shift occurs. As a consequence, they support this. They are also tagged to GPS units, so they know where they are.

Chairman Bobzien:
That is a different bill.

Bruce Arkell:
I know it is. This is important for them as they shift to electronic timekeeping.

Chairman Bobzien:
Are there any questions? [There were none.] We will move to opposition.

Danny L. Thompson, representing Nevada State AFL-CIO:
In Nevada, there are currently 120 separate labor organizations that are affiliated with me. By example, Mr. Mallory probably has 30 contracts in his

organization. If you pass this law, you will, in effect, nullify all of those contracts because state law supersedes that contract, and there are provisions within these contracts. They are all over the board. All of these start-stop times have been negotiated, and this bill will open up a can of worms. We are opposed to this bill for that reason.

Assemblywoman Bustamante Adams:
I understand this from that standpoint, but if that was not in place, what would you say would be a proposed solution for the issue? Obviously it is an issue.

Danny Thompson:
For me, I do not know if there is a solution. Like I said, there are thousands of contracts that would be impacted by this change. They are all different. Some are five minutes, some are one minute, some are 15 minutes, some are seven minutes, and so on. They are all different. If you pass this, these contracts will be what the state law says, because most of those contracts contain a provision that says state law supersedes this contract. I do not know what the fix is, but I can tell you that we are adamantly opposed to this bill as it is written.

Assemblyman Healey:
I have a question on all of these negotiated start and stop times. You mentioned that the state law would supersede those. According to what the Labor Commissioner testified to, the current state law says that any minute over has to be paid as overtime. How does that affect your current contracts?

Danny Thompson:
It affects the current contracts because they may have agreed to a contract where if you work a minute, you get 15 minutes of pay. They are all different. I know there is one that if you work one minute, you get a 15-minute increment of pay. This law would say you get one minute, five minutes, of whatever the rounding period is. This is a huge can of worms for us. I do not know the solution to it.

Assemblywoman Bustamante Adams:
When those contracts are being negotiated, they should negotiate their rounding, correct? That would probably be a possible solution.

Danny Thompson:
In any given week, there are contracts being negotiated. To fix this, for us, it would potentially take five years. Each contract does not all start and stop at the same time. This week, I am sure there is someone in Nevada negotiating a current contract.

Assemblyman Grady:
You are telling us that your people are signing contracts in violation of federal law. Why do they not follow federal law so there would not be a problem?

Danny Thompson:
I do not necessarily know if they are in violation of federal law. I know it is time worked on both ends of the clock. When I checked today and asked how they deal with overtime and when it begins, it was all over the place. Most of those contracts have a provision that says if state law impacts this, then state law supersedes that. Some of them may be in violation. Generally, it is in excess of the time. I know of a contract where if you work one minute over, you get 15 minutes' pay. Assemblyman Healey gave that example. There are some contracts that say if you work five minutes, you get 30 minutes' pay. It is all over the place. At the very minimum, if you work a minute over, you will get paid for that minute. Many of these contracts have been negotiated in excess of that. This would change all of those back to whatever this bill ends up being.

Chairman Bobzien:
Are there additional questions for Mr. Thompson? [There were none.]

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:
We too are opposed to this measure. We do appreciate the consideration and thought Mr. Kirner has put into this. There is a major international retailer that in the last seven years has settled a billion dollars' worth of wage and hour violations. Those violations would not have existed if this law was applied across all of the areas where they were performing work. To put this into perspective, I have employees who work under my direction in my administrative office. They punch in in the morning, punch out at lunch, punch back in after lunch, and punch out at the end of the day. Applying the rounding principle, theoretically, I could round five minutes for each of those individual time clock incidents, and that could be as much as 20 minutes a day. If you multiply that by five days a week for 52 weeks a year—granted, my people do not work 52 weeks—that is 5,200 minutes a year, which computes out to 86 and 2/3 hours that an individual worker could be suffering as a loss.

Chairman Bobzien:
Are there questions for Mr. Mallory? [There were none.]

Keith Uriarte, representing American Federation of State, County, and Municipal Employees Local 4041:

The confusion and questions that initially arose from the Committee when Assemblyman Kirner presented this bill to you was that you could almost picture yourselves as employers because of the confusion of what is work time. I have some examples of ways in which these issues could be addressed. I will address the specific ones you heard from the Labor Commissioner and a number of people supporting this bill. You can adjust people's hours. If a person is missing a bus by two minutes, that person's hours could be changed. I am hearing policies that a person's start time could be five minutes sooner so he or she can leave five minutes earlier. It is not an issue of some law that is out there. It is the policies they can address.

The bill with the amendment does not mirror the federal regulation. The federal regulation on rounding practices is 29 C.F.R. § 785.48(b), and it reads:

> It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that employees are fully compensated for all time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

The period of time is a pay period. In my experience in California—and there are some governmental entities that have attempted this—it was a bookkeeping nightmare. It is something they also had much confusion about how to apply. They thought that employees would be working some time or not working some time and there would be some average. The employees take it as if they do not have to be paid. Perhaps the Labor Commissioner is looking for additional work, because I can assure you that he would have lots of work with the enforcement of this rounding.

I would say that there are other ways to address the issues that you heard today with regard to the rationale of changing this. That is by companies actually changing their policies or getting additional time clocks. If a person is waiting in line, that is time worked. If something happened like the ceiling falling while they were waiting in line, that is compensable time and would be workers' compensation. If an employer is that concerned about those few minutes, they should invest in a couple of time clocks. With today's

technology, it does not take that amount of time to be able to go through with time clocks.

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

Mayra Ocampo, representing Service Employees International Union Local 1107:
I am not going to belabor the point, but we are against A.B. 193. We believe that time records have been there to prove legitimacy of claims, and changing them for any reason would distort employees' actual work time. I am a "me too" to my colleague's comments.

Chairman Bobzien:
Are there any questions? [There were none.]

Patrick T. Sanderson, representing Laborers' International Union Local 872:
I am talking to you as a labor person and as an employee who has worked in every type of job that there is. If you close one loophole, you open another one. Common sense tells you that if you work for a boss who treats you right and takes care of you, you will take care of him. I have never worked on a job in my life where I did not come in 30 minutes early. I may not have started work, but I was there ready to go. If they needed me, I would work. At the end of the day, I wrote down my starting time and quitting time, and I knew what I had coming. When an employer takes care of you and pays you what you work, you work for him that way.

Every person does not file a claim. You have to file a claim with the Labor Commissioner to get back wages if your employer will not pay you. You are only as good as that employer and his intentions. I think the employer would be hurt much worse on this, or most employers would, than the working men and women.

I think this is a very bad idea. What is the way you get around it? I do not think we have that many problems around here, and when there is a problem of someone getting abused, he or she takes it to the Labor Commissioner, but this is not the way that you do it. I have worked on time clocks where there are around 1,000 employees. If you do not get checked in on time, you do not get paid, and if you do and come out late, then you have overtime coming. If you have a good employer, he or she takes care of you and pays you what you have coming. This is a common sense issue and things work out. This is not a good idea.

Chairman Bobzien:
Are there any questions? [There were none.] Is there anyone else wishing to register opposition to the bill? Is there anyone in Las Vegas?

Andrew Rempfer, representing Nevada Justice Association:
We stand in opposition to this bill for many of the reasons that have already been stated, including the fact that there is a proliferation of time clocks that can be used to accurately and adequately register time. Furthermore, the employees are already encouraged to accurately report their own time. The idea that rounding is necessary now, when you have the electronic tools necessary to capture accurate time, is outdated. Rounding is a tool from a bygone era that is no longer needed.

The comments of Assemblywoman Carlton were well taken in the sense that nowadays you have large casinos with such large spaces to walk to and get to throughout the day. However, there are time clocks throughout those casinos where the employees could quickly clock in and clock out. What is more, the state already prohibits those employees from not being paid for actual time worked. I think this is legislation in search of a problem where there is not one.

The current legislation does not mirror Fair Labor Standards Act regulation, which has been discussed. I also have a concern about subsection 3, the wording initially discussed any employee who voluntarily comes in before his or her regular work session. In light of the changes and the use of section 2, which is presumably to address walking time when no work is being performed, there is no need for subsection 3 because nearly all employers in the state already have rules that prohibit those employees from clocking in for work within a designated time frame; for example, before or after their scheduled shift.

With all the concerns that have already been stated, it is my position that this is legislation that is outdated from a bygone era where rounding was necessary at times when you could not accurately and adequately capture time electronically. It would encourage employers to take off that extra time.

Chairman Bobzien:
Are there any questions? [There were none.] Is there anyone else in opposition? [There was no one.] Is there anyone wishing to come forward in the neutral position? [There was no one.] We will close the hearing on A.B. 193. We will open the hearing on Assembly Bill 186 and welcome Mr. Mallory back up to the table.

Assembly Bill 186: Revises provisions relating to compensation. (BDR 53-796)

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

Thank you for the opportunity to present Assembly Bill 186 today. What it proposes to do is effectively two different things. In sections 3 and 5 of the bill, it establishes a new requirement that employers must provide a standard notice to new employees that contains specific information regarding their employment. There should be a copy of the notice. I brought copies with me today (Exhibit J). This is just a draft because the bill establishes other requirements. Effectively, it is a single page, front and back, that would have specific information related to an employee's employment, including rate and method of compensation, overtime provisions if applicable, regular payday, and contact information for the employer and contact information for the employer's workers' compensation carrier.

Under current law, there is a requirement that employers have to put up an abstract of *Nevada Revised Statutes* (NRS) Chapter 608, which is commonly referred to as the "labor law poster." There are industries, and I come from one, where you do not work in a place or in the proximity of where that poster is being placed. I have been in the construction industry for nearly 20 years, and I have never been on a job site where there was a labor law poster. For an employer to have to put a labor law poster on every single job site, it does not make sense. In addition, on many jobs I never even went to the employer's office. I would report to the job site, do my paperwork at the job site, and go to work. I did not know where many of the offices were. I knew my wages, my overtime provisions, my pay date, and the workers' compensation information because I had been provided some of that information by my employer, and I worked under a collective bargaining agreement that explained those provisions.

I cannot speak directly about what nonunion construction employers do with this situation. In speaking with Mr. Hardy a couple of weeks ago, I believe he indicated he does something similar to this with his employees, but I do not know if that is the standard in every case. I do know there are several employers we discovered that have not done this. As a consequence, those workers were not educated as to their rights, and the employers failed to pay their employees overtime and, in some instances, failed to pay their employees minimum wage.

One of these employers, Walldesign, was sued by multiple employees and established a class for the purpose of a class action civil lawsuit; the class was believed to include as many as 300 people. This is a company that during the

most recent building boom had as many as 1,500 employees in three separate locations: California, southern Nevada, and Arizona. The workers were working from sunup to sundown and as often as seven days a week. There are several employers who have adopted this as a regular business practice partly because of the lack of knowledge of what the law is and the fact that increased competition is driving them to do so. In the written document I have brought today, the last page includes six individual lawsuits that all achieved class action status where employees had filed civil suits against their employers for wage and hour violation under the Fair Labor Standards Act and under state wage and hour law (Exhibit K).

One of these companies was Monster Painting. Once they saw the writing on the wall and knew their potential liability, they filed for bankruptcy. They shut their doors and have subsequently reopened under a different name but at the same location. This goes to the second part of the bill. If you have workers who have an outstanding wage complaint or wage claim, and they are legitimately owed money, and you have a company that does that, they shut their doors. They have no assets and bankrupted the organization. Those workers have no resource to be made whole from, which is the other part in the bill. If you will allow me to, I would like to go through the bill itself.

Chairman Bobzien:
Yes, please.

Jack Mallory:
Section 1 of A.B. 186 creates an exception for where money collected by the Labor Commissioner is supposed to be deposited. In discussion with the Labor Commissioner on this, I believe it was our intent that this Wage Claim Restitution Account would be funded from a different area, but the bill was drafted this way: "Except as otherwise provided in section 4 of this act, all money collected by the Labor Commissioner . . . must be deposited in the State General Fund."

Section 2 of the bill states, "Chapter 608 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act." Section 3 adds, "The Labor Commissioner shall: (a) Prescribe by regulation the forms on which an employer may provide the notice required by subsection 2 of NRS 608.013 and obtain the acknowledgment required by subsection 3 of NRS 608.013." This effectively requires that the Labor Commissioner create the form and determine the language that needs to be prescribed in the form. It also puts a provision in subsection 2 that an employer cannot be penalized for errors in non-English portions or versions "of any notice provided on a form prescribed by the Labor Commissioner."

Section 4 establishes the Wage Claim Restitution Account, and the purpose of the fund is to create an avenue where workers who have a valid claim but no source of funding available to make them whole can be made whole. The way the bill is drafted, 25 percent of administrative penalties that are imposed by the Labor Commissioner pursuant to NRS 608.195 and 608.290 would be delivered to the State Treasurer for deposit in the credit of the account for this fund. The money in the fund can only be used "to provide restitution to an employee who is underpaid by an employer in violation of the provisions of NRS 608.017, 608.100 or 608.250 when no other source of restitution is available." An employee who is underpaid by an employer in violation of those provisions" may make a claim against the Account, and the Labor Commissioner may approve such a claim in accordance with regulations adopted by the Labor Commissioner." The rest of that section deals with how the money is disbursed and what happens with interest.

Section 5 deals more with the specifics of what is potentially contained in the notice to the employee. Subsection 1 is amending NRS 608.013 to add this to statute. Subsection 2 effectively states what is required to be in the notice, including:

> (a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission or otherwise;
> (b) For any employee eligible for overtime compensation pursuant to NRS 608.018, the regular hourly rate of pay and the overtime rate of pay . . ."

[Continued to read from the bill.] In subsection 4 and subsection 5, the employer must:

> Maintain a copy of each notice provided pursuant to subsection 2 and the original or a signed and dated copy of the acknowledgment required by subsection 3 for a period of not less than 3 years after the date the employer obtained the acknowledgment.

As shown, the notice (Exhibit J) is a single page, front and back. It can be maintained in an employee's personnel file. Section 6 relates to who is responsible for enforcing it. Section 7 refers to the effective dates. I would be happy to answer any questions.

Chairman Bobzien:
Do we have any questions from the Committee?

Assemblyman Ohrenschall:
Have you represented members who have had a dispute like this, and then the company sought bankruptcy protection or was insolvent and not able to make the employees whole? Do you know any members in this category who might benefit from this legislation?

Jack Mallory:
It has not been my experience where that has been the case. We have had situations where employers did go out of business and there were no funds available, but we were able to pursue restitution for them, primarily from NRS 608.150, which is the provision in statute that effectively says that the prime contractor is responsible for the debts for labor of the subcontractor in the event the subcontractor becomes insolvent. I think I am summarizing that a little wrong, but that is essentially what it is.

Assemblyman Grady:
In your testimony, you referred to six firms that are part of the reason why you needed this bill. Were those six firms in Nevada?

Jack Mallory:
Yes, in fact they were. I can forward you a copy of the cases if you would like. They are filed in district court in southern Nevada.

Assemblyman Grady:
Have you discussed this with the Labor Commissioner?

Jack Mallory:
I have discussed this with the Labor Commissioner. I have discussed it with representatives of business and representatives of other labor organizations. I wanted to try to get as much feedback from as many people as I could.

Assemblyman Hardy:
Is this just for public works-type projects under the Labor Commissioner? Can this be expanded to the entire work field?

Jack Mallory:
This bill proposes that this requirement be met by every employer for every new employee. It does not consider exempting specific industries or people who are covered by a collective bargaining agreement, as has been done in other states. My idea in pursuing this was that it should be universal, and that it spurs a discussion with interested parties as to where it could be made more appropriate.

Assemblyman Hardy:
I am supposed to post every one of my employees' salaries, even though they might be on a different basis. Is that how this reads?

Jack Mallory:
No, that is not the case. What this requires you to do, as an employer, is if you hire people, you have to give them a piece of paper that says what they are being paid or rates they are being paid. It also includes their payday and any overtime provisions that are applicable. They are supposed to sign a copy you retain, and they receive a copy of it. It goes into their employment personnel file and is not something that is made public.

Chairman Bobzien:
Are there additional questions for Mr. Mallory? [There were none.] We will call for anyone in favor to come forward at this time.

Danny L. Thompson, representing Nevada State AFL-CIO:
We are in support of this bill.

Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada, AFL-CIO:
We are in favor of this legislation.

Chairman Bobzien:
Is there anyone else in Carson City wishing to put some support on the record? [There was no one.] We will go now to Las Vegas.

Joseph Cook, Member, International Union of Painters and Allied Trades:
I am in support of this bill. I have been the victim of wage and hour violations, but because of our union stewards, these violations were fought, and other workers and I were successful in receiving restitution of wages.

In the summer of 2011, I started work at Commercial Glassworks on a prevailing wage project at Hollywood Aquatic Center in Las Vegas. I was asked to work temporarily on this job but it turned into over a month. As we continued to work on this project, we asked about our wages since they were not reflective and required prevailing wage as a skilled worker. At some point the company asked us to sign a form that stated we were given a $5,500 loan, and a portion of our wages was to pay back this loan that did not exist. Businesses have used this or similar tactics to circumvent the law of paying a prevailing wage on a particular job. After some time, other workers and I realized that the company was going to continue paying us this way and

not follow the law. We communicated and provided information to our union stewards, and they started the investigation into these practices.

We need this law because there are unscrupulous businesses that will take advantage of workers and do everything in their power to circumvent the laws and workers' rights. I am here to urge the Committee to pass A.B. 186 to protect workers' rights in Nevada.

Chairman Bobzien:
Do we have any questions for Mr. Cook? [There were none.] We will go now to opposition here in Carson City.

Thoran Towler, Labor Commissioner, Office of the Labor Commissioner, Department of Business and Industry:
I am trying to follow the rules of the Committee as I understand them. I am not against the bill. There are two parts of this bill.

Chairman Bobzien:
So this is going to be neutral testimony?

Thoran Towler:
No, it is opposition because I believe a change will need to be made.

Chairman Bobzien:
Okay, that is fair.

Thoran Towler:
There are two parts of the bill. There is the restitution account, and there is the form that is required. The restitution account is something that I think would be the greatest thing for employees in Nevada. It is something I have tried to reach out to different individuals to try to get established. Mr. Mallory agreed to help with that, and he brought it forward. I really appreciate that.

The reality is that the office in 2012 brought in $2.3 million in unpaid wages and $500,000 in wage penalties. Those all go to the employees. That $500,000 in 2012 went to the employee claimants. I think that is fair. What is not fair is the hundred or so employees who come to my office every year, file a claim, and prevail on the claim, but when we try to collect it, the business is closed down, and the employer is long gone. That is not fair.

What I intended when I talked with Mr. Mallory was to divert 25 percent of those penalties that are already going to the employees to a restitution fund

for the employees who have no other recourse available. That is what I really hope get accomplished no matter what else happens this session.

I can tell you that my employees do not care much about any legislation except for this bill. Everyone has said to me, hey, there is this guy, and we know the business is closed down, and the employer is in Mexico. We are never going to get restitution. How is that bill coming? Is that something that will get passed? It is heartbreaking. If you follow the news, there was a chain of Domino's Pizza shops in rural Nevada, and it was under Jazz Pizza. They closed down and did not pay their employees the last two paychecks. I received 17 claims. We have looked into it and contacted Domino's Corporate and tried to find some kind of resource to pay these employees their last two paychecks. It all started around December. Some of the employees talked to me personally and said, you are going to be the difference as to whether my kids have Christmas or not. We were not able to get the money. There were many different reasons, and one of the reasons is that there was an Internal Revenue Service (IRS) lien on the employers for $300,000. We were not going to be able to supersede that. The bank had taken over all of the assets.

Everything else aside, arguments could be made on the form and whether it is beneficial to me and my office, but I do not see a downside in this restitution account. It is not costing anybody anything. The claimants who receive the wage claim penalties from my office are not expecting it anyway. I have had employees call me and say, I filed a claim for $500, and you sent me a check for $1,000, and I am really scared. They are getting restitution penalties, which they deserve, but it is not fair to the others who are getting nothing from my office.

If you look at this bill, section 4 refers to the administrative penalties collected by the Labor Commissioner under NRS 608.195 and 608.290. I believe the appropriate section would be NRS 608.040. That is why I am in opposition to the bill.

Chairman Bobzien:
You will hopefully be working with Mr. Mallory on that issue. Are there any questions for the Labor Commissioner before we go to the rest of the opposition? [There were none.]

Robert Ostrovsky, representing Nevada Resort Association:
With regard to the restitution account, we do not have a problem with that. I agree with the Labor Commissioner; the statutory cites are probably wrong.

I think NRS 608.195 talks about misdemeanor penalties. I think the Labor Commissioner's proposed amendment is appropriate.

I serve as a trustee on a number of labor management boards, and we have issues with collecting trust dollars from those same kinds of employers, the ones who go bankrupt or seem to leave the state and the workers high and dry. That is a continuing problem under the bankruptcy law. Anything we can do to try to make claimants whole is a good idea.

My concerns are with the remaining portions of this bill. I call it the one-size-fits-all answer. It applies to every employer, and if you look at the definitions of employer, you can get down to homeowner if you hire domestic help or somebody to mow the lawn. We have a one-size-fits-all solution of getting this particular document out. These documents do not reflect the reality of various employers' situations. Many employers, and I represent big employers, usually give out lots of paperwork when an employee is hired. You get handbooks, references to your collective bargaining agreement if you are covered by one, and so on. All of these things are covered in the collective bargaining agreements. I have a feeling that small employers are going to have significant problems trying to do this. I would be opposed to any requirement of one-size-fits-all forms.

If you want to pursue this, you can talk about records that have to be kept, and what employees have to be told, but not prescribe the exact method by which you want to do that. I will give you an example of where the difficulties run, even for large employers. If you have temporary "bounce" employees in the entertainment field or "banquet" employees in the catering field, you have people coming and going out of your facility. When you think of an employee, you think of someone who is hired and is there for 20 years. I have people there for three hours, and they are employees as much as the person who has been there 30 years. They are treated and handled completely differently from what I would call a "regular" employee. I think this proposed bill does not address those kinds of issues. Again, the fact that it is one-size-fits-all does not work.

You heard the Labor Commissioner testify that he does collect wage claims. They do it aggressively, so there are laws out there to help employees who are taken advantage of by their employers. We support the Labor Commissioner's efforts to do that. I think it is in our best interest as good employers to see that bad employers are removed from the marketplace.

Again, when you get to the details, it talks about the time of hire in this bill, and I do not know what that is. I do not know if it is when you commit

to an employee the first day he or she comes to work and to orientation. I need a better definition. When you talk about telling an employee what the rate of pay is, that is pretty simple. Telling him or her what the overtime rate is sometimes is not as simple. Overtime rates might change. We think of one and a half times as overtime, but there is holiday pay and all sorts of other circumstances in which the overtime rate may change from what we are used to. Perhaps we ought to say you are subject to the overtime provisions of the statute. If you pay one and a half times the minimum wage, you are not covered by the overtime statutes. That is not what the form asks. The form asks what the overtime is. I spent a lot of time with the stagehands union, and we had show rates, hourly rates, and so on. Your rate is not easy to define and it changes based on what work you are performing during the workday. It is more complicated than just putting a number on a form.

Finally, the statute requires us to post notices as well as the labor posters. Under NRS 616A.400, it tells you the form of the notice, and NRS 616A.490 talks about the requirements of posting a notice relative to your rights under the Industrial Insurance Act. It tells people how to file a claim, where to file a claim, and who the claims administrators of an insurance company are because they change. We do post those notices. I understand the problem that Mr. Mallory spoke to, that the home office poster may not be the poster at the work site because the work site may not be near the home office. I am not sure how to solve that problem. All I can suggest is that I would be happy to work with Mr. Mallory and talk about some of these issues to see if there is any resolution to these that would be workable for everyone.

Chairman Bobzien:
Do we have any questions? [There were none.] I appreciate your willingness to work with Mr. Mallory to see if we can work through some of this.

Tray Abney, representing The Chamber:
I think Mr. Ostrovsky did a great job of outlining some of the issues we have in this bill. I would like to echo his comments. I do want to thank Mr. Mallory, as he approached us several weeks ago on this bill. We appreciate his outreach, and we would like to work with him on some of these concerns.

Lea Tauchen, representing Retail Association of Nevada:
We are also testifying in opposition. We have concerns remaining about this bill as well. Our members believe this is an unnecessary addition to law. As already mentioned, employers are already required to post labor laws and notices under existing law, which we believe has worked well to this point.

More specifically, a concern we have is section 5, subsection 2, paragraph (j), which is the provision allowing the notice to include any other information the Labor Commissioner may prescribe. We think that is very general and broad, and that concerns us.

We would also like the ability to send these notices out electronically with the use of electronic signatures. That is something we would be happy to work with Mr. Mallory to address.

Terry Graves, representing Henderson Chamber of Commerce:
I would reflect Mr. Ostrovsky's and Mr. Abney's comments. I would like to say that we appreciate Mr. Mallory's efforts to discuss this bill with us as he did.

Ray Bacon, representing Nevada Manufacturers Association:
We had discussion with Mr. Mallory on this early on. At that time, our discussions went along the line that it would not be a prescribed form, because in many cases the employer's data is going to be electronically held, and creating another piece of paper for the sake of creating another piece of paper in today's modern world of electronics probably does not make any sense. We continue to hold that position. We were surprised that it did not get fixed before the final draft got released.

The other thing that Mr. Mallory and I discussed is that he is talking about this as a one-time form. The first time your insurance carrier or anything else changes, that piece of paper is worthless. Consequently, it is never going to be current once you get past the first few weeks of employment. That means it has limited value.

Chairman Bobzien:
I think that is a good point we can have a discussion about as well as the appropriate delivery options.

Assemblyman Ellison:
Mr. Bacon, if an employer is hiring somebody under casual labor through the unemployment office and then brings him in to do something else at a higher rate, are you going to follow them around, trying to fill something out? How are you going to handle this?

Ray Bacon:
The advantage of the manufacturing world is that we do not do a lot of that. Also, in my discussion with Mr. Mallory, this was a one-time form. If you have casual labor where people are coming in for different functions and different rates, it is always going to be wrong. That is my problem. We are looking

to have a consistent, accurate database, and a definition of a one-time form says it will not fit that definition of an accurate report.

Randi Thompson, representing National Federation of Independent Business:
Ditto. I also want to thank Mr. Mallory because he has reached out to the business community, which is nice. A little bit to Mr. Ellison's point, having been a restaurant owner, I know restaurants often hire somebody at a wage for wait staff, and then he or she will move to bartending or cooking in the back. The wage rates change, so having one form really does not fit all.

Right now, most employers have to provide documentation within two weeks of hiring, and most of that information is on that documentation. They also have to do quarterly payroll reports that go to the state for payroll tax. Many of the forms are already in place and being used. I appreciate the opportunity to work with Mr. Mallory, but at this point, we see this as mandating redundant paperwork.

Craig Madole, representing Associated General Contractors of America, Nevada Chapter:
I think Ms. Thompson stole my testimony, so ditto to what she had to say, and we would be happy to work with Mr. Mallory as well.

Chairman Bobzien:
Is there anyone else wishing to record some constructive opposition to the measure? [There was no one.] Is there anyone neutral on the bill? [There was no one.] We do not normally do this, but Mr. Mallory, would you like to put a few words on the record to tie up the loose ends and set the course?

Jack Mallory:
Thank you for the opportunity to present this bill. I have appreciated the kind and thoughtful remarks from the people in the business community. I would request the opportunity to have a working group, possibly with the assistance of one of the members of the Committee, so we can sit down and more formally go through this and come up with a resolution that incorporates what we are trying to achieve, which is making sure workers know what they are supposed to be getting and not creating a burden for employers that is unreasonable.

Chairman Bobzien:
I think this is the perfect example of some problems we are trying to sort out, but there are some very real implementation issues that people have put on the record. We will talk about how we can structure this so we can move forward with this measure. We will close the hearing on A.B. 186.

The meeting is adjourned [at 3:41 p.m.].

RESPECTFULLY SUBMITTED:

_____
Katie Wilson
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 20, 2013 **Time of Meeting: 1:53 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 185	C	Jack Mallory	Proposed Amendment
A.B. 94	D	Kelly Richard	Work Session Document
A.B. 95	E	Kelly Richard	Work Session Document
A.B. 173	F	Kelly Richard	Work Session Document
A.B. 181	G	Kelly Richard	Work Session Document
S.B. 15	H	Kelly Richard	Work Session Document
A.B. 193	I	Assemblyman Kirner	Proposed Amendment
A.B. 186	J	Jack Mallory	Notice to Employee
A.B. 186	K	Jack Mallory	Written Testimony