

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

**Seventy-Seventh Session
March 27, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:33 p.m. on Wednesday, March 27, 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 Pat Hickey, Washoe County Assembly District No. 25
Assemblyman Paul Aizley, Clark County Assembly District No. 41
Assemblyman D. Paul Anderson, Clark County Assembly District No. 13

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Edrie LaVoie, Director, Human Services Department, Lyon County
Ray Fierro, Commissioner, Lyon County Board of Commissioners
Laura Kauf, Private Citizen, Dayton, Nevada
Kathleen Elliott, Private Citizen, Dayton, Nevada
Ernie Adler, Attorney, Kilpatrick, Johnston & Adler, Carson City, Nevada
Christy McGill, Executive Director, Healthy Communities Coalition of Lyon
and Storey Counties
Keith Lynam, Legislative Chairman, Nevada Association of Realtors
Brad Spires, representing Nevada Association of Realtors
Tonya Scarlette, Member, Nevada Association of Realtors
Gail Anderson, Administrator, Real Estate Division, Department of
Business and Industry
Regan Comis, representing State Contractors' Board
Guy Wells, Chairman, State Contractors' Board
Margi Grein, Executive Officer, State Contractors' Board
David Brown, Counsel, State Contractors' Board
Dan Hammack, Chief of Enforcement, State Contractors' Board
Jack Snyder, Criminal Investigator, State Contractors' Board
Josh Hicks, representing Southern Nevada Homebuilders Association
Jay Parmer, representing Builders Association of Northern Nevada
Greg Franklin, Assistant Director, Building Department, Clark County
David Espinosa, Executive Director, Nevada Cyber Initiatives
James Elste, Chief Cyber Strategist, Nevada Cyber Initiatives
John Griffin, representing Amazon.com and United Insurance Company of
America

Mark Wenzel, representing Nevada Justice Association

Jon Sasser, representing Legal Aid Center of Southern Nevada

Nick Vassiliadis, representing Capital Insurance Group

Thomas Scherff, Vice President, Claims and Special Market Development,
Capital Insurance Group

Robert Compan, representing Farmers Group, Inc.

Kelli Miller, Deputy Treasurer, Unclaimed Property, Office of the State
Treasurer

Annette James, Lead Actuary, Life and Health Section, Division of
Insurance, Department of Business and Industry

John Mangan, Regional Vice President, State Relations, American Council
of Life Insurers

Michael Hillerby, representing American Council of Life Insurers

Steve George, Chief of Staff, Office of the State Treasurer

Chairman Bobzien:

[Roll was called and a quorum was present.]

I will be turning this meeting over to Vice Chairwoman Kirkpatrick.

Vice Chairwoman Kirkpatrick:

We will open the hearing on Assembly Bill 228.

Assembly Bill 228: Authorizes certain providers of health care to provide voluntary health care service in this State in association with certain organizations. (BDR 54-245)

Assemblyman Tom Grady, Assembly District No. 38:

Assembly Bill 228 is an idea that I was approached with about a year ago after a health fair in the community of Silver Springs. I would like to make a couple of comments on the bill, and we have some people from the Silver Springs area who would like to comment on it. Then we will be happy to take questions and talk about the amendment ([Exhibit C](#)).

It has been my pleasure to work with the Healthy Communities Coalition of Lyon and Storey Counties for about a year to address the problem of medical staffing at the Silver Springs health fair.

First, let me briefly tell you about the health fair. In cooperation with the Lyon County School District, Healthy Communities Coalition takes over the Silver Stage High School in Silver Springs for a free local health fair weekend. Silver Springs is an underserved community about 40 miles east of Carson City. For the health fair they utilize both school gyms, the library, a number of

classrooms, the common area, the lunchroom, and other facilities at the school in order to provide health services to a number of citizens who have either little or no insurance. They cater to youth and senior citizens. This fair has been very successful. This is the only medical attention many of these people receive on a year-to-year basis. Dental seems to be a high priority, but many other services are provided.

With the help of the Health Communities Coalition, Executive Director Christy McGill, and former State Senator Ernie Adler, working pro bono, we proceeded to chart the course to assist these citizens. After drafting the bill with the assistance of the Legislative Counsel Bureau (LCB) Legal Division, we reached out to everyone who might have an interest in the bill. We sought help and guidance from Mike Willden, Director of the Department of Health and Human Services, and the medical lobbying community, including Keith Lee, Chris Ferrari, John Griffin, Fred and Michael Hillerby, Jeanette Belz, and Rocky Finseth. We had a perfect bill until many suggested some wordsmithing to make it an even better bill.

With your permission, I would like to go over this bill, as amended, and ask the Committee's support after hearing the remarks by some of the audience members. We have many people here in support. In the interest of time, I would like to ask them to stand rather than provide testimony in addition to the few who will be making remarks today.

[Numerous members of the audience stood.]

Vice Chairwoman Kirkpatrick:

Thank you for coming. The legislative purpose is for people to have a voice, so it is great when people can come out.

Assemblyman Grady:

At this time, I would like to ask those from the Silver Springs area who would like to testify to come up, before we get into the bill itself.

Edrie LaVoie, Director, Human Services Department, Lyon County:

I appear before you today to speak in favor of A.B. 228, which, if passed, could improve access to health care for uninsured and underinsured individuals. [Read from prepared testimony ([Exhibit D](#)).] For the past two years, the Healthy Communities Coalition has sponsored the Medical Outreach Response Event (MORE) in Lyon County. Despite this incredible effort to provide free access to health care, many needs are left untreated due to a lack of volunteer medical providers. [Continued to read from prepared testimony.]

Assembly Bill 228 would support this effort by allowing certain licensed health care professionals from other states to provide voluntary health care services in Nevada with certain restrictions. The passage of A.B. 228 will assist in expanding access to health care to individuals with limited resources, and I urge you to give this bill your favorable consideration.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There were none.]

Ray Fierro, Commissioner, Lyon County Board of Commissioners:

Our board supports this bill. It is something that is very important to our county. As you have probably heard many times, Lyon County has been the hardest hit county in our state. My particular district covers parts of Dayton, Stagecoach, and Silver Springs. It is probably the area that has had the hardest economic times. The people there do not have access to medical care, and this gives them the opportunity to receive medical services. We do not have public transportation, and many of these people do not have a job or enough money to put fuel into their vehicles to get into Carson City or Reno. I think this bill is very important to provide these services to the citizens of Lyon County.

I can tell you a personal story. I was talking to some of my friends who are older and well into their 60s. They have no unemployment benefits and no health insurance. I told them about the Medical Outreach Response Event we put on, and they decided to go to it. One of them was able to get three teeth extracted, and both were able to receive their immunizations. My friend was so impressed with that event, he said he is going to volunteer next year. We have some angels in our community who have put this event on for the last two years. I hope you will move forward on this bill as it is very valuable to our community.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There were none.]

Laura Kauf, Private Citizen, Dayton, Nevada:

I am one of the lucky ones. In 2012, during our first MORE, I was able to see the dentist because I had been having serious problems with my teeth. I have degenerative bone disorder, so my teeth were falling out. Because of MORE, I was able to get all of my teeth extracted and get dentures. It was all because of the wonderful volunteer dentists who were there. I was only one of the lucky ones. There were many people we had to turn away because we did not have enough dentists.

I was not employed at the time, but since then I have a job and full benefits. I live a healthier lifestyle now. If not for MORE, I do not know where my life would be at this time.

Because of all the wonderful state doctors, dentists, and nurses who have shown interest in volunteering their services here in Nevada, we can help many people put their lives back in order. This is not just something we want but something we desperately need.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There were none.]

Kathleen Elliott, Private Citizen, Dayton, Nevada:

I attended MORE in 2012. Unfortunately, my four-year-old was turned away. She had dental issues. She had suffered a fall that loosened her front teeth, and they started to rot and deteriorate. Every time she fell, she would bite her lip. It would be a blessing to be able to have more medical personnel come to help support MORE so people do not have to be turned away. I did see several other people being turned away. On a positive note, my children were able to get their immunizations. My son suffers from attention deficit hyperactivity disorder, and I am very much against medicating. We found out about places we could go and various options. We have since been able to check into those options, and I was able to find out information that I was unaware of to help me with medical issues.

I am mainly here because I do not want to see other people turned away if there are people who are willing to come to our state to help.

Vice Chairman Kirkpatrick:

Are there any questions? [There were none.]

Just so you know, you are the reason all of us are here. This is great that Assemblyman Grady has brought this for you.

Assemblyman Grady, do you have anyone else who wants to speak?

Assemblyman Grady:

As I mentioned earlier, we tried to limit the testimony in the interest of time and the number of bills we have today. I think you have the story we wanted to get across. Number one, this is helping people; number two, this can bring people in who can advise people where to go for further help. It is important to have not only the immediate medical attention but also the referrals to places that

take people. That is what is so important about this area. They are proud and want to be able to help themselves.

With that, you heard MORE mentioned a number of times. It is the acronym they have selected for the event each year. I had the pleasure of walking around the event for the majority of the day last year, and I was amazed at what they do there. I was not able to attend this year, but I understand over 320 people were helped in that one-day event. It is growing each year.

I would like to go over the bill and the proposed amendment ([Exhibit C](#)). The Legislative Counsel's Digest on page 2 reads, "Section 7 of this bill authorizes a provider of health care who is licensed or certified in this State or another state or territory of the United States to provide voluntary health care service in this State without charge to the patient if the service is provided in association with a sponsoring organization that is registered with the Health Division of the Department of Health and Human Services." That is what we tried to build on. [Continued to read from the Legislative Counsel's Digest.] It goes on to explain what we are trying to do. We have had a number of questions on how this is going to happen. Working with the fine people at LCB Legal Division, I have been advised that many of these questions I kept going back to them with will be covered under the regulations. It will be regulated.

We did have an amendment we would like to bring forward today ([Exhibit C](#)). In the amendment, we address page 3, section 7, subsection 2, paragraph (a), "The professional license or certificate of the provider of health care is, or has been, suspended or revoked pursuant to disciplinary proceedings in this State or in any other state or territory of the United States." This needs to be brought forward. Going down to line 27, it inserts paragraph (c): "The provider of health care has not actively practiced his or her profession consecutively for the immediate past three years." We included that because we wanted to make sure that anyone coming in here has the proper licenses and has been practicing. Retired persons or volunteers are covered under a completely separate statute that is not involved with what we are trying to do here.

Finally, on page 4, section 10, subsection 2, line 42 of the amendment, "For the purposes of sections 2 to 9, inclusive, of this act, the term includes: (a) A dental hygienist or dental assistant." We looked at the bill late and found out that where it listed nurses, nurse practitioners, and so forth, it left out the dental professions. This is one of the more popular venues at the health fair.

Assemblyman Ellison:

How do you operate your insurance liability?

Assemblyman Grady:

The doctors, nurses, and others have to show proof of liability insurance.

Assemblyman Ellison:

So it would not be on the county but on that individual?

Assemblyman Grady:

Correct.

Assemblyman Ohrenschall:

If someone is a resident of this state and is eligible for tribal health care, can he or she still receive this kind of health care if there is not the right specialist at the tribal clinic?

Assemblyman Grady:

This year, they have expanded the program to cover not only the Silver Springs area but also Storey and Mineral Counties. You must show proof of residence. I was told that, yes, it does cover that.

Assemblyman Hansen:

In section 11 of this bill, the insurance provision is now making it mandatory for liability coverage for practitioners. Did anybody from the insurance agencies review that? I wonder what the cost would be. If it is going to be mandatory for everybody in the state to have this, what is the cost going to be?

Assemblyman Grady:

Mr. Adler just joined us at the table, and he has the answer to that question.

Ernie Adler, Attorney, Kilpatrick, Johnston & Adler, Carson City, Nevada:

It really does not require that. If you purchase a policy and offer voluntary services, it requires that you be able to purchase a policy that covers voluntary services. If you choose not to do voluntary services, you do not need that coverage.

Assemblyman Hansen:

I was just worried.

Ernie Adler:

This is fairly confusing the first time you read it. It looks as if it requires every practitioner in Nevada to have insurance that covers voluntary service. Somewhere in the middle of the paragraph it states that the policy "must include coverage for a practitioner who provides voluntary health care." If the

practitioner does not provide voluntary care, he or she does not have to purchase voluntary care insurance. I know that is kind of confusing.

Assemblyman Hansen:

That clears it up.

Assemblywoman Carlton:

To expand upon Assemblyman Hansen's question, because liability insurance for some of these professionals is not mandated in this state, are you saying there is going to be a separate policy of coverage if they do volunteer service? If they do have liability, will they have to buy a rider? Why would their original liability insurance not cover whoever they treat?

Vice Chairwoman Kirkpatrick:

Let me ask our legal counsel to respond to that.

Matt Mundy, Committee Counsel:

I agree that it is not a mandate for every policy to include this kind of coverage. Should a practitioner or provider of health care desire to engage in the practice under this act, they would have to offer him or her coverage for the voluntary provision of services. It is not mandated across the board.

Assemblywoman Carlton:

Maybe I did not make it clear. That is the first part, but the second part of the question is, for a doctor, nurse, nurse practitioner, or dentist who has liability insurance currently, why would they need to buy a rider for voluntary service? Why would their current liability insurance not cover any people they are treating, whether it is voluntary or compensated?

Ernie Adler:

I know with our firm's malpractice insurance, we do voluntary services and just check a box. I do not know if it increases our premium or not. I do not think it does because most people, in any kind of profession, do voluntary work. I am not sure it would not be included.

Assemblywoman Carlton:

I just wanted to make sure the insurance is at the same level and caliber whether you are treating someone who is paying or someone who is not paying. I do not want to see any discrepancies. We have voluntary medical service in this state currently that is classified under the Good Samaritan Law. That has bothered me since the day we passed it. I do not want to see another bifurcation of this system and another level of care depending upon the ability to pay.

Vice Chairwoman Kirkpatrick:

Assemblyman Grady has someone else who might be able to answer.

Christy McGill, Executive Director, Healthy Communities Coalition of Lyon and Storey Counties:

Basically, the liability is for the sponsoring agent to do the general liability insurance. We check the individual practitioner's malpractice insurance. There is the general liability for the sponsoring and for the event itself, and then the malpractice insurance comes along with the individual practitioner.

Assemblywoman Carlton:

I did not read that in here at all.

Vice Chairwoman Kirkpatrick:

Maybe it is something that needs to be clarified.

Assemblywoman Carlton:

I was confused. Do I understand that if they do not have liability insurance, they will not be allowed to participate?

Christy McGill:

They must have malpractice insurance. The liability rests with the sponsoring entity.

Vice Chairwoman Kirkpatrick:

That is current law, correct?

Christy McGill:

Yes.

Vice Chairwoman Kirkpatrick:

Assemblywoman Carlton, do you have any other questions?

Assemblywoman Carlton:

I have questions on some other questions, but I will be happy to stand down and let other members ask questions and then follow up later.

Assemblyman Daly:

The U.S. Department of Health and Human Services can say an organization, which may be a national organization, can be a sponsoring organization. The sponsoring organization is going to work to provide health care services in a county, and doctors may come in from another state who do not have to be licensed here. Doctors in this state can volunteer. There are three different

steps, none of which are in Nevada at this point. The bill has a definition of the Health Division, which means the Department of Health and Human Services. Is that the state department or federal department?

Assemblyman Grady:

We are not talking federal: we are talking state.

Assemblyman Daly:

So it is the State Health Division?

Assemblyman Grady:

Yes.

Assemblyman Daly:

They are going to license the sponsoring organization within the state.

Assemblyman Grady:

Most of the work is going to fall on these sponsoring groups that have to put this together while working with the state.

Assemblyman Daly:

They have to be recognized by the state.

Assemblyman Grady:

Yes. When the licenses are sent in, it will show their area of practice, and that is what these people are looking for.

Assemblyman Daly:

Would the sponsoring organization be national, or is it just local?

Assemblyman Grady:

The sponsoring organization, in this case, would be the Healthy Communities Coalition, which is in Lyon and Storey Counties.

Assemblyman Daly:

I understand it in this case, but it can be anybody? It can be a national organization or local organization.

Assemblyman Grady:

They would still have to go through the same set of rules that we have outlined here in the bill.

Assemblyman Daly:

They could bring in doctors from out of the state or within the state?

Assemblyman Grady:

That is the whole idea. We need more medical practitioners to come in. There are not enough here to fill the need. The idea is to bring in practitioners for this health fair to serve temporarily during that event.

Assemblyman Daly:

That is why I asked the question. We are talking about the State Health Division.

Assemblyman Grady:

Correct.

Assemblyman Daly:

The sponsoring organization can be national or local. They can bring in doctors from anywhere, as long as they are licensed.

Assemblyman Grady:

We hope they come in from all over the country.

Assemblywoman Carlton:

I will go to the end of what I believe is section 10, subsection 3, which refers to a person having "a current license or certificate to practice his or her respective discipline pursuant to the applicable provisions of law of another state or territory of the United States." We have other states that do not do background checks on some of their health care professionals. These professionals have never been fingerprinted. I wanted to make you aware of that in case you would like to address it. That is one of the reasons why we do not sign on to some of the interstate compacts on licensure. We do fingerprinting.

The second part of the question is, Will the sponsoring agency, in essence, be acting as a pseudo-regulatory board to make sure these people have all the documents they need to do this? Will you be running this through the physicians databank to make sure of the discipline? Will you be working with the medical board, and have them run the background checks on these medical professionals to make sure they are the people they say they are and are ready to give good care?

Assemblyman Grady:

I think the idea of each of those questions will be covered under the regulations that will be set up on how they are to operate. At least that was my interpretation working with the people from LCB Legal Division who said we needed to set up these regulations. It will be covered under the *Nevada Administrative Code*.

Assemblywoman Carlton:

I am good with that because I read the regulations. I need to know who is going to draft them. Will it be the medical board, dental board, or someone else? You are going to have multiple professionals coming into the state. Who is going to draft these regulations?

Assemblyman Grady:

I think we have had tremendous input from each one of those groups that you mentioned. I am hoping we will get together and work with the State Health Division to draft those with the help of LCB Legal Division, Mr. Adler, and whoever wants to be a player in the game. We will welcome them because our aim is to get good, competent health service there, and we do not want to put anyone at risk.

Assemblywoman Carlton:

That brings up the next issue, under section 8, subsection 2, paragraph (b), regarding the filing of the report of all the identifying information. Subsection 3 says, "Compliance with this section shall be deemed to be prima facie evidence"—we do not normally see those terms; I want to make sure I understand them—"that a sponsoring organization has exercised due care in selecting a provider of health care." That leads me back to the question of who is going to make sure. I hope, just because we submit a report, it does not mean we have exonerated ourselves from our due diligence in making sure the health care professionals we let in this state are good, qualified health care professionals.

Ernie Adler:

This bill was drafted after the Tennessee statute. It is very similar to the Tennessee statute that has been in place for quite a while. They have regulations to enforce it. I have not really discovered any instance where this has not worked extremely well. I think this is a very doable statute. We are not reinventing the wheel here. We are pretty much following the same type of statutes that other states have used to implement this type of program.

Assemblywoman Carlton:

I appreciate that, but I am trying to get to the answer of the question under compliance with the section and this prima facie evidence of the report and what this report does. It is a good bill, and I understand what you are trying to do. We have seen on television how they bring in the volunteer doctors, nurses, and such. There are big medical expos. I think it is wonderful. I am trying to understand how these components are going to fit together. Does this report exonerate them from any problems if something comes up later?

A person could be treated by somebody he or she should not have been treated by, or the medical professional could have practiced outside his or her scope. How do these things work together? I simply do not understand.

Vice Chairwoman Kirkpatrick:

Mr. Grady, there are couple things that probably need to be clarified, including section 11 dealing with insurance. I do not know for sure whether you must have medical malpractice insurance. I am sure we can clarify that. I understand Assemblywoman Carlton's concern. The best laid regulations do not always work out. How do people envision this working? I think we can clarify that.

Are there any other questions? [There were none.]

Assemblywoman Carlton, does that work for you?

Assemblywoman Carlton:

Yes, that is fine.

Vice Chairwoman Kirkpatrick:

Assemblyman Grady, if you would touch base with Assemblywoman Carlton, so we can get these issues addressed. I have asked our legal staff to clarify the insurance issue as well.

Assemblyman Grady:

Thank you, Madam Vice Chair.

Vice Chairwoman Kirkpatrick:

Is there anyone wanting to testify in support of A.B. 228? [There was no one.]

Is there anyone in opposition to A.B. 228? [There was no one.] I do not have anybody from the Board of Medical Examiners who is in opposition, but I have the Board's paper asking all its questions ([Exhibit E](#)). Is there anyone neutral on A.B. 228 who would like to speak? [There was no one.]

Assemblyman Grady, unless you want to come back, we can go ahead and clarify the issues. Nothing frustrates me more than somebody submitting a piece of paper with a bunch of questions and not coming to talk about it.

[Stan Brock of Remote Area Medical submitted prepared testimony in support of the measure ([Exhibit F](#)).]

With that, we will close the hearing on A.B. 228.

We have a video feed in Clark County that runs out at 3:30 p.m., and I see that Assembly Bill 334 has quite a few people signed in down in Las Vegas. I will open the hearing on A.B. 334.

Assembly Bill 334: Provides certain exemptions from provisions relating to contractors. (BDR 54-921)

Assemblyman James Healey, Clark County Assembly District No. 35:

I am here to present A.B. 334 for your consideration. This bill is intended to allow homeowners, property owners, and real estate professionals to hire subcontractors to perform certain work for their properties that do not require a contractor's license.

Under current law, the homeowner or the agent is deemed to be acting as a general contractor if more than two tradesmen are hired to perform that work. This results in an untenable situation where the homeowner or agent may become subject to an enforcement action by the State Contractors' Board hiring a painter to repaint a bedroom, a plumber to repair a leaky toilet, a landscaper to replace a pipe in an exterior sprinkler system. Given the condition of many properties, particularly in my district, which has the third-highest foreclosure numbers in the state, this can become a big problem for property owners who potentially have rental properties. For example, somebody will move out, and the homeowner or agent needs to hire somebody to prepare the home or property for the next tenant. To be clear for the Committee, we are talking about work that does not require a licensed contractor.

The bill proposes to remedy this conflict by providing that a homeowner or his or her agent does not fall within the definition of a general contractor if the work is being contracted for the maintenance or repair of a residence, as long as that work does not require a building permit.

I would like to take you through the changes in the bill, and then I have a couple of individuals who will help provide further clarification in the type of work and language we are speaking of.

Section 1, subsection 4 removes the provision that restricts a property owner from building or improving a residential structure on a property if the structure will be for sale or lease. The property owner, or his or her employee, would be allowed to make improvements without being considered a contractor so long as the work performed did not require a building permit.

A new subsection 11 is added to *Nevada Revised Statutes* (NRS) 624.031 to explicitly allow a licensed real estate professional or property manager, acting within the scope of his or her license, to assist a client in scheduling or performing repair or maintenance work on a property pursuant to a written agreement with the client.

This concludes the presentation. As I mentioned, I have some experts with me who will help answer any questions of the Committee in regard to this language. Brad Spires is here in Carson City, and Keith Lynam is in Las Vegas. I believe we are going to Mr. Lynam first.

Vice Chairwoman Kirkpatrick:

As a reminder for our Committee members, there is a delay from Las Vegas. When we say something, it takes 35 seconds for the witness in Las Vegas to hear it.

Mr. Lynam, please come forward.

Keith Lynam, Legislative Chairman, Nevada Association of Realtors:

I am here to speak on A.B. 334. I would like to thank Assemblyman Healey for introducing this bill. He did a wonderful job summarizing what we are hoping to do with this bill. I know there has been a lot of misinformation. Some people may have been alerted to something that is not quite right.

We are here to talk about the majority of transactions going on in the real estate market today. I think it is important to focus on these four things. We are here to talk about paint, carpet, landscaping, and sliding glass doors. We are not talking about hiring unlicensed contractors, performing permitted work, property managers being able to perform the work themselves, or health and safety issues. For decades, realtors and property managers have offered an important service to their clients. That service revolves around getting a house or property ready for sale or lease.

It is important to note that in 2011 the Contractors' Board began citing real estate agents and serving them with cease and desist orders. We have been working with the Contractors' Board for well over a year to try to come to some sort of reasonable expectations and a reasonable solution. We have been told

no every step of the way. We have presented multiple solutions to this issue, and we have been told no. There has never been an offer of any kind of point of negotiation. It is important to talk about paint, carpet, landscaping, and sliding glass doors. This is vital to getting our Nevada real estate market back on track and help homes that are in disrepair.

During our discussions, the Contractors' Board has informed us they will now begin enforcing a theory they call "stacking." If they objectively feel that an agent is spacing the work so as to avoid the NRS 624.215 provision, they will consider discipline against the agent. That is why we are here today. There is no way for a property manager to safely arrange for a newly vacant home to have carpet repairs done, paint two rooms, and have the sprinkler system turned on. Those three arrangements would be considered "stacking" by the Contractors' Board and would subject the agent to disciplinary measures.

We recognize and strongly support the expertise of a general contractor in arranging and managing the interrelated work of trades while performing work requiring a permit. We are not here talking about permitted work. Construction of new structures and major renovations and remodels require permits. Those have multiple trades that must work within the same project. This does nothing to impact that work. The object of A.B. 334 is to allow real estate licensees and homeowners to arrange nonpermitted work to be done without the need for a general contractor's license. This does not affect the handyman statute at all. Work under the handyman statute would still be arranged for less than \$1,000. Work by licensed tradesmen could be arranged with no number of trade limits or monetary limit. The only limitation would be whether permitted work is required. As soon as permitted work is known to be required by one of the trades, the law reverts back to existing statute.

This is a priority for the Nevada Association of Realtors. We need to get these properties back on the market and get this market moving. We need to prepare these homes properly for these tenants.

Assemblyman Daly:

Several people have talked to me about this bill, so I think I understand it. The first question is in section 1, subsection 4, where you have all that language struck out. It has a huge unintended consequence. Right now, at my house, I have a building permit from the City of Sparks to do some remodeling and various things. If that language goes in, I could no longer do it because it is permitted work. I am the primary owner, and I am going to do the work. I am not hiring anyone to do it, but that language would prohibit me from doing it. I think that is an unintended consequence on the way the bill is drafted. We need to fix that because that is not hitting at all of what you are looking for.

I will have additional questions later. That little part needs to be fixed. I do not believe it was your intention.

Keith Lynam:

That was certainly not our intent. If there is some drafting cleanup we need to do with the Legislative Counsel Bureau (LCB), we certainly can do that.

Vice Chairwoman Kirkpatrick:

Mr. Daly, we will make sure that is clarified with the Legal Division.

Assemblyman Ellison:

You said they have been issuing citations for stacking. Can you tell me how many of these property management people have been fined or held in violation?

Keith Lynam:

We do not have that number. We have asked, but we have not been told that number.

Assemblyman Ellison:

Is it 10 or 50, or do you have any idea?

Keith Lynam:

I am not trying to be evasive, but we do not know. They would not tell us. When we sat in the meeting, we specifically asked, and we were not told.

Vice Chairwoman Kirkpatrick:

Assemblyman Ellison, I am sure the Nevada State Contractors' Board will be here, so we can ask them directly.

Assemblyman Hardy:

I think it was said that you want to use a licensed contractor, am I correct? If that is the case, who provides the workers' compensation and liability insurance? Somebody can get hurt on a \$5 project as well as on a \$10,000 project. Who covers that, or where is that in this bill?

Keith Lynam:

That does not change. We would be hiring licensed contractors.

Vice Chairwoman Kirkpatrick:

For myself, I want to clarify why we need this. It sounds as if property managers are not being allowed to hire their own licensed workers without a general contractor. Is that correct? I feel that has not been made as clear as

it should. You are still hiring licensed workers. It is a huge remodel, 10 percent or more, where you generally hire a general contractor. I signed onto this bill with Assemblyman Healey because I did not think we were taking work away from general contractors. We were just trying to allow a quicker process so the licensed worker could come out. In my mind, it is no different than if you have to change out your hot water heater; you still have to get the permits and have a licensed plumber do it, but you do not need a general contractor. I am trying to make sure I was on the right page from the beginning.

Assemblyman Healey, do you want to let your witnesses here in Carson testify?

Assemblyman Healey:

Certainly.

Brad Spires, representing Nevada Association of Realtors:

I want to take a different tack on this and talk about what we, as real estate agents, really do when we list and sell a house.

Let us say we go for a prelisting. A good example would be Winhaven in Minden. Homes there are 20 to 24 years old, and if they still have a shake roof on it, one of the first things we do is talk to the owner of the home and tell him or her to have the roof replaced before we even start the listing process. The home is devalued because the roof is worn out. We will give the owner options as to roofing contractors we have used. When that is done, we will go out and begin the listing process. We will go through the disclosure documents with the owner of the home. When I started in this business 22 years ago, it was one page front and back. Now we are looking at 27 pages before the process can start. In those disclosure documents we might find some areas of concern. One issue that comes up in Douglas County is water damage. If there has been water damage, that will help us when we get the home in escrow and look to certain inspections.

We are in escrow with a property, and we are going to order inspections. That is not a home inspection alone. By and large, that is a well, water quality, and septic inspection. If there was water damage, we will order a mold and fungal inspection. Because we are next to the mountains and have radon, we will order a radon inspection. We will order a pest inspection and a home inspection. Each of those people who perform those inspections are licensed. It is not unusual to go out to the property on the day we have inspections planned and have five or six pickups there with all of the inspectors.

Those reports are compiled and given to whoever purchased that property. It is usually the buyer. The buyer's agent reviews the report and prepares

a response as to what items need to be repaired. For example, if the well needs a new pump, we go to the people in the well business and have them come out and fix the pump. If the house has mold, we hire a mold remediation company to come in and take care of the mold. The same goes for radon, et cetera. We have been coordinating with those individuals for years and do it under our "NRS 645" license.

The issue becomes more complex on the home inspection. By and large, home inspections are pretty straightforward and most items can be repaired by a handyman. Let us say the visqueen vapor barrier has been pulled back; a handyman can fix that. If the dryer vent has been disconnected and needs to be reconnected, a handyman can do that. For those items, we use the experience we have to bring the right people in to fix them. If the home inspection reveals there are significant areas of need, the home inspector will identify the requirement for further inspections. In other words, the licensed home inspector will say, I believe there is an issue with the heating, ventilation, and air conditioning (HVAC) system and recommend that a licensed contractor come out and do a further inspection. We then act upon the results of that further inspection.

We do this all the time and are pretty good at coordinating this. We provide options for people based on who we know are good in the business. If it comes down to something that requires a permit, we will provide them with regional contractors for that job. We try to make it easy. For consumers it is good because we are the single point of contact, and we do it very well. We do not want to lose the ability to be that single point of contact. When things get above our ability, we go to other professionals, and those professionals are ones whom we have dealt with and know are good. There are not many mold remediators or good microbiologists out there, so we know who they are.

Lastly, and most important, is we have reinspections. We meet with the inspector who identified the issue to see that the repairs are made correctly as identified by that particular inspector. We would like to continue to do that. We understand when a permit is required, and we will use those. We know the experts and their areas of expertise, and we use them on a daily basis.

[Chairman Bobzien reassumed the Chair.]

Chairman Bobzien:

Do we have any questions?

Assemblywoman Carlton:

It was more of a clarification. As a homeowner right now, if I decide to do some work on my house, I can bring in a licensed painter, landscaper, and someone to work on patio doors. However, if I own another home, and it happens to be vacant, and I am getting it ready for resale or to be occupied, I am not allowed to do that same work without hiring a general contractor. Am I understanding that correctly?

Keith Lynam:

Yes, you are correct.

Assemblywoman Carlton:

That is where my concern lies, because if I am capable of handling it at one address, I am capable of handling it at another address, as long as I am hiring licensed workers. If I decide I want an agent or property manager to help me, I am also restricted. It is not just myself, but the person I want to hire to help me work through the system.

Keith Lynam:

Correct. Anytime there are more than two contractors.

Assemblyman Hansen:

What is the cap on how much work a handyman can do? Is it \$500 or \$1,000?

Assemblyman Healey:

It is \$1,000.

Chairman Bobzien:

Are there additional questions?

Assemblyman Hardy:

I would like to go back to section 1, subsection 4. I was conferring with our legal counsel. If I want to build my own home, which I did in 1988, that would disallow me from doing that in the future. We might need to correct that language.

Assemblyman Healey:

Yes, I think we agreed to take a look at that language. It sounds as if we have an unintended consequence there. Thank you for bringing that up.

Chairman Bobzien:

Are there additional questions? [There were none.] Do we have additional proponents signed in on the measure?

Tonya Scarlette, Member, Nevada Association of Realtors:

I prepare properties for rent. It is my job to review the property's condition as part of my services to my clients. During this review, I may need to take notes and advise my client of mostly cosmetic fixes that need to be done at the property that will increase the likelihood of getting it rented quickly. These fixes are generally paint, flooring, and landscaping. As a property manager, I will arrange for whatever needs to be done, and my client will give me a budget to work with.

Hypothetically, I may know of property managers that have arranged the three types of work without knowing that it was in violation of the law. When the Realtors Association spread the word that the Contractors' Board was pursuing these actions as violations of law, many property managers did pull back their services to their clients and advised them they needed to hire a general contractor to do this work. This was at a greater expense to the client. For my client, a general contractor has been difficult, if not impossible, to find for projects under \$2,500.

This bill is very important to the activities of the agents and property managers in providing a necessary service to our homeowners and clients. I urge your support of A.B. 334.

Chairman Bobzien:

Are there any questions for Ms. Scarlette? [There were none.] I will call others to the table in support.

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:

Subsection 11 is the part that specifically addresses real estate licensees and property managers in their activities under NRS Chapter 645. I do support subsection 11, with the exception of the wording on line 37, "or performing," because they would not perform this work.

A real estate licensee acts as an agent of an owner or client. He or she has a contractual relationship, a brokerage, or a property management agreement and an agency relationship with the client. In that capacity, and part of the contractual agency relationship, the licensee needs the ability to arrange for certain scheduling of repairs or maintenance on a property within the limitations being proposed and identified in the bill.

It has already been stated, and I echo, there is no question that an appropriately licensed contractor must be used to perform work that is required to be licensed. The issue is in assisting the client, perhaps, in getting bids and hiring

an appropriately licensed individual for the work to be done. The owner has certain exemptions, but the agent of the owner does not. This has come up as an issue, particularly in light of the asset management activity we addressed in the 2011 Legislative Session.

Chairman Bobzien:

Are there questions?

Assemblyman Hansen:

I have been in this field for about 33 years now, and dealing with homes, realtors, licensed contractors, plumbing, and whatnot, I believe the handyman side of this is abused. I can tell you from experience that handymen are always doing the plumbing and other work. I do not blame them because they are substantially lower in cost than a licensed contractor.

I am concerned that if you take the Contractors' Board's concern out of this matter, we will end up with even more unlicensed people doing what we agree are supposed to be handled by licensed contractors. That is a real concern. Everybody here says we should be using a licensed contractor, but the reality is that the same guy who does the painting is also doing the plumbing and double-checking the furnace, et cetera. He is doing things that are way out of his scope. One trick is paying the handyman up to that \$1,000 cap and then have him do another invoice for another part up to a \$1,000 cap. I would like to know if you have had experience with that and how you would address that in the absence of dragging the Contractors' Board into it.

Gail Anderson:

With this issue having arisen since last session in particular and the asset management bill, an opportunity has come up regarding the accountability of real estate licensees. I have been involved in several meetings with the Contractors' Board and representatives in the real estate industry, specifically realtors, and there has been an acknowledgement of practices that should not be occurring. I have assured all of the entities that if complaints are filed with the Real Estate Division against a licensee with substantiation of bad activity, they will be investigated and handled appropriately with potential disciplinary action. The discussion has brought up the issue of some inappropriate activity being done by real estate licensees. The intention is to do some promotion through our newsletter and position statements to licensees. It has been hard, because we have not found a clear line that we can issue on what can and cannot be done. That is what we are here to have addressed.

Assemblyman Hansen:

As a licensed contractor, if I intentionally and knowingly use an unlicensed contractor, I can have my license revoked. As part of this bill, would you be willing to support an amendment to say if the licensee acts in what is now a general contractor capacity, and he knowingly uses somebody who is not licensed to do tasks that require a licensee, that he or she could potentially have his or her license revoked?

Gail Anderson:

There is a range of discipline currently. That range of discipline includes fines, suspension, and revocation. That revocation could also include a property management permit as a separate permit. I would leave that to the Legislature if you want to specify a particular discipline, but that range of discipline currently exists in the law. It is the Real Estate Commission that is the adjudicatory body and determining body based upon the State's presentation of evidence.

Assemblyman Hansen:

I would appreciate that. If somebody wants to act in the capacity of a general contractor, he or she should have the same potential penalties that a general contractor misusing that authority would have.

Gail Anderson:

It is already in law that real estate licensees must be in compliance with other laws in the state. That would be added to the alleged violation. We would not have jurisdiction. The commission over the unlicensed contractor activity, the Contractors' Board, has that jurisdiction. The adherence to all state laws is under the Real Estate Division jurisdiction.

Chairman Bobzien:

Are there any additional questions? [There were none.] Do we have anyone else wishing to come to the table in support of A.B. 334? Seeing no one, we will move to opposition.

Regan Comis, representing State Contractors' Board:

We are here to voice our strong opposition to A.B. 334. With me today I have Guy Wells, Margi Grein, and David Brown. In Las Vegas, we have Dan Hammack and Jack Snyder. There are board members in the audience as well. With your permission, Mr. Chairman, may I ask that all questions be held until the completion of our presentation.

Chairman Bobzien:

That is fine.

Guy Wells, Chairman, State Contractors' Board:

We are vehemently opposed to A.B. 334. The State Contractors' Board has developed policies and procedures over many years. They have been time tested, and we continue to change them as necessary to protect the health, safety, and welfare of the public.

We have heard testimony today that if a realtor has a home, he or she will hire licensed contractors. We do not have a problem with licensed contractors doing the work. That is not why we are here today. As board members, we take our responsibility seriously to keep the public safe and protect the public at the highest level. Our contractors are qualified by their testing. We verify their history, how long they have done the trade, their testing, and background checks to be sure the contractor going into a citizen's home has a good moral compass. There are also live safety licenses, which are for electrical, plumbing, HVAC, and the like.

I do not know if I would be comfortable with having somebody come into my home and say, because there is not a permit required for this or that work, an unlicensed contractor has the ability to do the work. It is truly my belief as a board member that the negative, unintended consequences of A.B. 334 would be far-reaching if this bill passes.

Margi Grein, Executive Officer, State Contractors' Board:

I am here to express our strong opposition to A.B. 334. Of utmost and primary concern is the detrimental impact the bill will have on the public's health, safety, and welfare.

I would like to make it clear that this bill goes far beyond allowing realtors and property managers to hire contractors for minor maintenance and cosmetic upkeep projects. This bill will result in several unintended consequences, eliminate homeowner protections, and make it an acceptable standard to bypass contracting laws that have been in existence for decades.

Over the last few years, the board has validated a number of complaints against realtors and property managers for hiring unlicensed contractors, not pulling building permits, and acting in the capacity of a contractor, just to name a few. The violations we see extend beyond minor and cosmetic repairs, and our testimony today will offer specific examples of how health and public safety are jeopardized.

What I want to emphasize today are that protections will be lost for homeowners if this bill is signed into law.

To begin, many of the individuals likely to perform the work will not be licensed, which means they are likely not current on industry standards, will not carry workers' compensation, will not be bonded and insured, and will not have demonstrated their skills, expertise, and financial responsibility to act as a contractor. When this occurs, consumers will no longer have the investigative protections offered by the board, which means we are no longer able to go in and order the contractor to correct workmanship issues. A homeowner will no longer be eligible to receive financial recourse through the Residential Recovery Fund if they incur damages during the course of work being performed. Any future homeowner of that residence will have little documentation or information available as to the extent of the renovations that took place. They, too, will lose their protections because there is no licensed contractor to turn to. Those initiating these contracts and projects will be considered exempt under this bill, thus leaving no trail or evidence to investigate when workmanship issues arise years down the road. In the end, it is the prospective and current homeowners who will assume the liability and take on the greatest risk with no advance warning.

We have worked diligently over the years with the Legislature and numerous stakeholders to make sure our state's contracting and licensing laws are some of the best in the nation. We must not eliminate a homeowner's right to protection and recourse at the expense of making a process easier for one group of professionals.

David Brown, Counsel, State Contractors' Board:

As you can see, there is great consternation on the part of the board in regard to this bill. I believe it essentially arises from the enabling statute, which is NRS 624.005. It provides the board with its charge or mission statement. It states, "The Legislature declares that the provisions of this chapter relating to the discipline of licensees are intended to promote public confidence and trust in the competence and integrity of licensees and to protect the health, safety and welfare of the public."

Of utmost importance to the board is the protection of the health, safety, and welfare to the public. This board will take a strict view toward anything that would impinge upon that. That is the basis for our opposition today.

I want to cover some of the issues as I have read and analyzed the particular language of the bill. I will also add commentary on what information I have, as I have prosecuted cases over the last nine or so years on behalf of the board.

There are two primary changes. The first is the revision to subsection 4 of NRS 624.031. That section has all the exemptions to the licensing laws of this

state. Subsection 4 is the owner-builder exemption. As noted by Assemblyman Daly, that exemption is effectively gutted by this language. There is no right to build your own home.

There has been a fundamental notion in Nevada that if you own property, and you have the ambition and willingness, you can build your own abode. You have to live or intend to live in it and take upon yourself those risks. You may not necessarily have contractors watching out. There is a rebuttable presumption in that provision that if you sell within a year of completion, you have done it as a for-profit venture and not as an owner-builder with the intention of living in that residence. That has been a bright line distinction in this statute regarding exemptions.

The change in this statute deletes the intention to occupy, resulting in an expansion of who can actually do owner-builder work. As Assemblywoman Carlton noted, if you own multiple properties, you could do work on the one you live in as well as others you own and wish to lease out. If you simply own a residential structure, you may self-perform work on that. There is no limiting or defining language to residential structure. According to this change, it is my opinion that could allow for any owner of a 300-unit apartment complex to do his or her own repairs regardless of the fact that there are hundreds of individuals residing in the structure. If someone owns multiple high-rise condominium units—for instance, Veer Towers in Las Vegas—he or she can make his or her own repairs, even though that type of work would require a full B general contracting license since it exceeds three stories.

If the intent, as the bill proponents testified, is to touch upon or allow painting, carpeting, landscaping, and sliding doors, then this bill far exceeds those few items of work.

What the bill proponents seem to have adopted as the bright line, rather than residence or occupancy, is whether the work requires a building permit or not. We have gone to the various jurisdictions to look at what requires a building permit and what does not. The bottom line is that there is substantial, complicated, and sometimes dangerous work that does not require a building permit. I would like to cite a number of examples for you. This is the type of work that could be done by anyone who owns any residential structure, and it includes floor coverings, paneling, cabinetry, countertops, and molding finish work. I can tell you that we have had contractors fail to put an underlayment under brand-new, beautiful wood flooring, and humidity has impacted it. It is a \$30,000 repair. Additionally, these can be roofing work that requires chaining materials up to 64 to 100 square feet of sheathing.

Chairman Bobzien:

I think there is a consensus that there was a lot of willingness to put that provision back in. I appreciate the enumeration of the scenarios, but I think it is pretty clear that people are willing to work on that section. You can probably move ahead.

David Brown:

Because the delineating factor in the addition of subsection 11 is whether the work requires a permit or not, this is still pertinent to that. Construction defects usually start from the ground up or from the roof down. Where this type of roofing work can be undertaken, there is certainly a concern that there could be water intrusion. You can also replace doors and windows and have water and wind intrusion problems. Lift stations and septic tanks do not require permits. Many people will not know if a wall is fire-rated. Anytime you deal with water- and plumbing-related material, including tubs and toilets, you can have problems. These are high-frequency problems that come before the board: repair and replacement of fixed motors, transformers, current-carrying parts of switches, control devices, wiring for low-voltage devices and data links, and 100 linear feet of fence replacement at any height if it is the same location and materials. Somebody can have a 12-foot masonry wall and can self-perform. Grading under 50 cubic yards can be self-performed, but if it is just landscaping or trying to turn the sprinklers back on, you can create swells, and the next thing you know, your next door neighbor's home is being flooded after a heavy rain. Self-contained refrigeration systems containing 10 pounds or less of refrigerant is included in nonpermit work. Of course, there are disposal requirements for refrigerants and hazardous materials. It is a lengthy list of things that can be performed without a permit. That gives great concern to the board.

The board's analysis is if this is a for-profit venture, that person ought to follow the same rules that any other developer or homebuilder should follow—that is, to obtain proper licensed individuals. Right now, unlicensed activities are running rampant and harming hundreds, if not thousands, of homeowners. We see this in great increase before the board.

It was noted in section 11 that there is an ability to perform and not just assist in procuring subcontractors. This means a realtor or property manager can actually perform. That is unacceptable. Our concern is that it will be relationships of who knows who, and that person will be brought in. In the end, I think for the most part the \$1,000 handyman limit allows for these four items of concern for the realtors. [Submitted statement of opposition ([Exhibit G](#)).]

Chairman Bobzien:

I understand there was a video, but we do have a number of bills. If we could, maybe the video could be sent to the Committee members. I want to move on to questions.

Assemblywoman Kirkpatrick:

Our videoconferencing in Clark County goes away in 23 minutes. The realtors should try to work with the Contractors' Board because I think we can work things out. We do not need a bill for everything. We try to make people work together. It is frustrating that in a year, you could not come up with anything. You spent seven minutes on section 1, subsection 4, which everybody on this Committee agreed needs to be clarified. You basically read the whole code to us. Why could you not work with them to begin with? That would have resolved many issues. I have always sung your praises because you have always helped my constituents, whether it be bamboo flooring or pool issues. You have always done a great job. I do not understand the conflict with trying to help them move forward. I do not understand what it is that you do not want them to do.

David Brown:

First of all, my apologies. I felt it was additional information. I do not wish to defer, but I was not involved in any of the events subsequent to 2011. I did attempt to preface it by the legislative declaration in the enabling statute, which talks about the public's health, safety, and welfare. The board takes that very seriously and understands that the statutes were designed for that purpose. General contractors have an expertise. Again, the way I see it is, if it is those four items, I think that is resolved under the handyman statute. I am not sure of the necessity of this bill.

Assemblywoman Kirkpatrick:

I do not think I am the only one on the Committee who is lost on which four items we are talking about. The Committee and everyone who has testified has agreed that section 1, subsection 4 does need to be clarified and the stricken language needs to be put back in. I believe you alluded to the idea that on line 20 a building permit is probably too broad of language. Is that what you are saying? I do not mean to be frustrated, but we have people in Clark County who want to testify, and I do not know what we are trying to fix that you do not like.

David Brown:

I apologize. It is a bit technical in some of the differences.

Assemblywoman Kirkpatrick:

Our legal staff cannot help you if we do not know what you need. We are a citizen legislature, so we need layman's terms.

David Brown:

I am making reference to Mr. Lynam's testimony from the Nevada Association of Realtors.

Assemblywoman Kirkpatrick:

I do not mean to overstep my boundaries here. I need to be somewhere, but I do not want to leave without understanding what the issues are in the bill. Regardless of what Mr. Lynam said, can you please tell me what four issues you have? Mr. Lynam is done, so I want to know within this paper ([Exhibit G](#)) we are trying to read what we are trying to fix.

David Brown:

I will do the best I can.

Assemblywoman Kirkpatrick:

It is a small bill.

David Brown:

Mr. Lynam testified that their concerns were with painting, carpeting, landscaping, and sliding doors. That is my reference to four issues. I believe that is resolved through the handyman statute as it is, and this is not necessary. My concern is with the revisions to subsection 4.

Assemblywoman Kirkpatrick:

We agreed to fix that.

David Brown:

Right. The building permit must be stricken because no owner can build his or her own home. I do not know if you are saying subsection 4 would revert back to its existing form, but that is what I believe it should be.

Assemblywoman Kirkpatrick:

The next section you had issues with is subsection 11. I believe Ms. Anderson is looking for some clarity so she can do her job. What portion within this do you not like so we can address those problems specifically?

David Brown:

This had first language regarding the building permit. That is not an effective line of demarcation because there is extremely technical work that can be performed without a permit. It would open things up for great abuse.

Assemblywoman Kirkpatrick:

You think the building permit is the problem?

David Brown:

This was reviewed before the board. This is what this legislative body is for. It can certainly give directive and fashion the laws as it sees fit, but the board does not believe it is an appropriate exemption. I am speaking about subsection 11 as a whole.

Assemblywoman Kirkpatrick:

What do you mean by an appropriate exemption? What word would go there instead?

David Brown:

Subsection 11 would be deleted in its entirety.

Assemblywoman Kirkpatrick:

Altogether?

David Brown:

That is correct. My testimony was that if the realtor groups are looking only to do painting, carpeting, landscaping, and sliding doors, I believe they can do that under the handyman statute.

Assemblywoman Kirkpatrick:

I have worked with Ms. Anderson for three sessions, and I think she does a fabulous job. She always tries to steer the people she is responsible for in the right direction. She was looking for clarity, and I understand it has been an ongoing problem, based on what she said. I have no reason not to believe anything she says because she has always been straightforward with me. You are telling me she can take back, within the regulation, that the intent of the original legislation is that they can do this under the handyman statute?

David Brown:

I believe that owners. . .

Assemblywoman Kirkpatrick:

Ms. Anderson specifically represents realtors and appraisers. Subsection 11 specifically talks about the people she represents. Within subsection 11, the real question may be whether a realtor is an owner, but otherwise a regular realtor cannot do it as a property manager. That is where the confusion is. I cannot be the only member of this Committee that does not get it. I am trying to understand why we would delete all of subsection 11, if she is asking for clarity, and we are trying to give her some.

David Brown:

I believe it is based upon the objective experience of the board and the board members, through their investigations, and the view they have on what individual owners as well as some realtors are doing. To create an exemption for realtors in any fashion will only fuel the problem. My testimony is that owners of properties are in a position, through the handyman statute, to bring in people to do some remedial work.

Assemblywoman Kirkpatrick:

I am asking because I do not know how to legislate what you just said. I do not know how to put the board's position in regulation, because we cannot do that. I want to be clear on the intent. I want to be clear that it is okay, if a realtor is the owner and property manager, he or she can do all of this work under the handyman statute.

David Brown:

If an owner wishes to have painting, landscaping . . .

Assemblywoman Kirkpatrick:

An owner including a realtor? That is what I am not getting from you. An owner meaning me, the owner, or an owner meaning the realtor who owns it?

David Brown:

An owner of the property, not a realtor.

Assemblywoman Kirkpatrick:

That is what I am trying to get at. That is what subsection 11 talks about. Ms. Anderson is expected to say that a real estate person cannot do anything but sell houses. How does it work today in an apartment complex where there is a property manager who says, People are moving out, and I have to paint and lay new carpet. Do they have to call in a general contractor for every single apartment? Is that currently how it works?

David Brown:

I do think that is a little bit of a gray area.

Assemblywoman Kirkpatrick:

That is why we are trying to clarify it in the law.

David Brown:

If they are asking for work to be done under \$1,000, it deals with the handyman not needing the license. It permits the public to reach out and utilize the handyman for services. Personally, I do not think it is a great idea if it is an apartment complex. A licensed contractor should probably be used.

Chairman Bobzien:

I have a lot of questions.

Assemblyman Livermore:

I think Assemblywoman Kirkpatrick has identified us all as a citizen legislature. I am not a contractor. I am a property owner. Do you mean if I owned a duplex or fourplex, I can do work in my own living unit, but I could not do the repairs in the duplex or fourplex I was renting? If you go to Lowe's and buy a washing machine, then you need an electrician to hook the cord up and a plumber to hook the hose up. I will put the washing machine in myself, and make it work. I do not know how anybody could have appealed to the board to recognize how somebody could accomplish a minor task or painted one or two rooms. I am frustrated sitting up here listening to this being overregulated.

David Brown:

I will try to be brief. I believe the delineating factor is and always has been set forth in the occupancy requirement. This means you take on the risk of doing that work. If you are for-profit maintaining residential structures to lease out to people, they have some right to a level of assurance of competency and safety. If you are going to make money off them, that is the bottom line. I do not believe I made that up. That has been in the statute for decades. It can be changed by this body, but that is what the law says now.

Assemblyman Livermore:

I appreciate that.

Assemblyman Daly:

I disagree with a few things you said. There has to be a way to fix this. I am familiar with what your statute says; I have dealt with it many times. We have some of this already in statute for public agencies to go directly to a specialty contractor without a general contractor in play. To get a general contractor to

oversee painting, carpeting, and fixing sliding doors does not seem relevant. I find it dumbfounding that you want to send people from a licensed contractor to a handyman. It seems disingenuous to me.

When we get to this, do not make it about a permit or anything else. Just say that in these circumstances, in these types of situations, this, this, and this can be done. Landscaping is a little different. It depends on what you are doing. If they could do those things without a general contractor, but just had to get a contractor for the landscaping, they would not be under the three-trade-provision.

I was shaking my head at some of the things you said. There is a way to do this, and we are going to find that way whether the board likes it or not.

David Brown:

Certainly, the way the bill is drafted, it goes way beyond those. We are responding to the bill as it is written. I do not have anything further.

Chairman Bobzien:

We have a line of questions at this point, so let us keep working through those.

Assemblywoman Carlton:

I was ambivalent about this bill when I first sat down with it, even though I tried to get a feel for it. Your opposition has convinced me that I really like this bill. I find it disingenuous of the board to push people to hire handymen rather than a licensed contractor. I try to tell my constituents to hire a licensed contractor rather than a handyman to get the right job done.

I believe the real estate agents are trying to do the right thing for their property, and the current or future owner of the property, by hiring licensed contractors. You can hire two, but you cannot hire three. I do not see a big difference between hiring two or three. What I see in this bill is that general contractors are being threatened with the fact that they may lose the opportunity to do some of this work. I think that is the basic issue in this. It is about competition and who is going to be able to do the job.

I believe there is a way to fix this bill. We can address it. We have had everything beat up from the beginning of section 1 all the way through to the end. I feel it is contrary to public safety and competency to turn around and say hire a handyman for \$1,000. I do not know if you have done work on a house lately, but my daughter purchased one last summer, and you cannot do a lot of painting, carpeting, or flooring for \$1,000. Maybe the issue is raising

the limit on handymen, but then we are back to inspiring our constituents to hire unlicensed people who do not carry workers' compensation.

Assemblyman Hansen:

Mr. Brown, I want to compliment you for what you said, because as a contractor I understand exactly what you are getting at. I think the responses here have been completely overblown. The idea that you are trying to push unlicensed contractors is nonsense. You are pointing out the ability to hire somebody for up to \$1,000 worth of work as a handyman. To try to clarify, what we want to do is give the realtors the opportunity to be able to bring in licensed contractors. There are some questions as to what they should be allowed to do in that respect.

I think what you presented is completely reasonable from a contractor perspective. It is not because I am trying to eliminate competition. No offense to the real estate people, but they use unlicensed people constantly. I would love to hear those who support this say that they will provide the last year's invoices they paid to licensed contractors who have been doing these things on their properties. As I understand it, they have the ability to do work up to \$1,000 without getting in trouble with the board. When they start going beyond that, you need to make sure licensed people are involved. You seem to be trying to protect that responsibility in the law now. I will do all I can to help amend this to work it out. I understand where you are coming from and want to thank you for doing it today.

Assemblyman Frierson:

I will pass.

Assemblyman Ellison:

I have been a contractor, I previously sat on the Contractors' Board, and I also have been in property management because we owned apartment complexes. To me there is so much read into this that is not true. I deal every day with the real estate people who hire people to do maintenance. That is what it is: maintenance. They fix cupboards, doors, handles, light switches, et cetera. But the problem is when they get outside of maintenance. It is now where they have built entire structures under their so-called handyman license.

I think this bill can be fixed. It is not the work of a rocket scientist. Apartment complexes usually have a maintenance man or facility. Most real estate people have two or three different handymen they keep on line.

Chairman Bobzien:

Do we have additional questions from the panel? [There was no response.] Okay, we will take it down to the Grant Sawyer State Office Building in Las Vegas.

Dan Hammack, Chief of Enforcement, State Contractors' Board:

I want to give you a perspective of what kinds of investigations we are seeing out there. The Contractors' Board has done numerous investigations related to real estate salesmen and property managers performing repairs and home renovations on residential properties without the benefit of licenses, skilled contractors, or permits. The real estate salesman normally has a priority of rehabbing the residence as quickly as possible in order to sell the property. The use of unlicensed and unskilled workers is a frequent occurrence, and permits are generally not acquired, thus not assuring the next buyer the repairs are completed in compliance with local building codes.

The renovations being completed or directed to be completed by real estate salesmen include full rewiring of residences, replumbing of the full residence, replacement of air conditioning units, and replacement of gas and electrical appliances, and replacing pool equipment. These repairs are not limited simply to carpet and paint installs to ensure the property is cosmetically appealing. The renovations raise serious concerns for the safety of the unsuspecting buyer and the potential for electrical fires, water heater explosions, and serious gas leaks that affect the health and safety of Nevada residents. These repairs are not being inspected for proper installation by building officials since no permits are being acquired. The real estate salesperson does not have a vested interest in ensuring licensed contractors are utilized or inspections are performed. Their interest is ensuring a quick sale and commission.

This past year the Nevada State Contractors' Board has investigated and recommended prosecution of realtors who have utilized unlicensed contractors for property renovations. The future owners of the property may not even be aware that these are being done with unlicensed contractors due to the fact they are out-of-state owners or bank-owned properties in foreclosures. The Nevada State Contractors' Board has also investigated cases where realtors were charging the owner for repairs and substantially marking up those repair invoices, which added a percentage for the profit, and essentially acting in the capacity of a general contractor or construction manager and making a profit on the repair.

We in the Board's investigation division believe the amendment in subsection 11 sets a dangerous precedent for other professions to request the exemption and

degrade the quality assurance of construction and repairs, which is a mission of the Contractor's Board to ensure customer safety.

With me, I have investigator Jack Snyder of our criminal division, and he would like to give you specific cases of our real estate investigation within this past year.

Chairman Bobzien:

We probably do not have a lot of time for cases. If we could be brief.

Jack Snyder, Criminal Investigator, State Contractors' Board:

I will narrow it down to a couple of scenarios. In one case, a realtor purchased properties at an auction of property liens and turned the properties for profit by completing all repairs with unlicensed contractors. The homes were completely rewired by unlicensed persons. No permits were pulled, and no inspections were done for safety. The homes were then sold to unsuspecting families.

Another case is where a realtor/broker paid unlicensed contractors to install a gas line to install two HVAC units at a flip house. The realtor/broker obtained advertising stickers with emergency phone numbers of a well-known, licensed HVAC company and placed them on the units to falsely claim licensed installation. This home is listed for sale.

In another scenario involving property managers, a large property manager company hired an unlicensed construction manager overseeing a multimillion-dollar property defects project. The unlicensed contractor used a cover license of a properly licensed company. The property manager failed to check beyond the proposal and, once identified by the Contractors' Board, criminal charges were processed. That shows that proper checking and experience is not found at the level of property managers and realtors. They do not have the training or experience.

Homeowners' associations (HOAs) do the same thing. An HOA president hired a maintenance man to perform work on common areas of a large senior citizen condominium property. Investigation revealed the maintenance man was performing electrical and building an office on the property. No permits were pulled and no licensed contractor was hired. The HOA president was criminally charged with acting in the capacity of a contractor. A subsequent investigation at the same site revealed that the same HOA president was advising all the elderly tenants that they had to use the maintenance man hired by the HOA to have remodel work done in their condominiums. Several tenants were milked out of tens of thousands of dollars while their condominiums were left in shambles. No building permits were pulled. The maintenance man was charged

with several felony fraud counts and eventually convicted. Restitution was awarded to the victims with investigation through the Contractors' Board.

Those are just a couple of several pages of case scenarios that I wanted to put forth.

Chairman Bobzien:

Thank you. Assemblyman Hardy, did you have a question?

Assemblyman Hardy:

I hope this is a wrap-up question. I am going to come back to Mr. Wells. Mr. Wells, I appreciate all you do, and I think the Contractors' Board does a great job. I think, from what I am hearing, the Real Estate Division wants to utilize contractors. With that, can your legal staff work with them to try to accomplish something that might help this bill work so we can move on? Is this a "no go" for the board completely?

Guy Wells:

At this point, as this bill is written, it is a "no go." If they are hiring licensed contractors, they do not need this. If they are hiring general contractors for remodel projects and bigger projects, they do not need this bill because they do not have a problem with us. Our problem is their not complying and then asking for an exemption on top of not being in compliance. Now they want to be exempt from the rules. We cannot protect the public. I am the last one to advocate using handymen. We want licensed contractors because we know they are qualified for the general public to use. I am not going to say every single one has a perfect record, but that is also why we are here: to make sure we have continued compliance with the contractors in the state of Nevada so the public has a continued benefit to using a licensed contractor. The way we see subsection 11 of the bill is that it is an overly broad exemption, which could be applied in a very bad way, and public protection would not be served.

Assemblyman Hardy:

I will restate my question another way. Can you have your legal counsel sit down and see if there is something that can work in a manner that protects the public, where you can do your job and they can do theirs?

Guy Wells:

If that is your charge and the Committee's charge to me and the Contractors' Board, then I will take that under advisement and do my level best.

Assemblyman Hardy:

That is only my charge at this point unless everybody nods their heads yes. [Various Committee members nodded.]

Chairman Bobzien:

We have that charge. Are there any final questions? [There were none.] Does anyone else wish to come to the table in opposition to the bill?

Josh Hicks, representing Southern Nevada Homebuilders Association:

We are in opposition to the bill as it stands. We have had discussions with the realtors, and there have been some very good questions today. We are happy to go back and work with the realtors and the Contractors' Board to find some kind of common ground that everybody can live with.

Jay Parmer, representing Builders Association of Northern Nevada:

We would join Mr. Hicks in asking to take another look at this bill. We have worked and communicated with the realtors. I understand their concerns, and we are happy to continue to work on the bill if that is the direction of the Committee.

Chairman Bobzien:

Thank you. Are there any questions? [There were none.] Is there anyone else wishing to come forward in opposition? [There was no one.] Is there anyone in the neutral position?

Greg Franklin, Assistant Director, Building Department, Clark County:

We also speak in opposition. I know it has been a long day, and you have heard the testimony. We simply want to lend our support to find those minor areas that can be addressed, but certainly the bill as written exceeds the authority that goes to that level of work. We want to ensure public safety. We hope you go forward with that process.

Chairman Bobzien:

I appreciate you getting that on the record. Is there anyone else wishing to testify in Las Vegas? [There was no one.] Is there anyone wishing to testify in the neutral position on the bill? [There was no one.] We do not always do this, but this was contentious enough that we would like to invite the bill sponsor back to the table for any final remarks.

Assemblyman Healey:

As it is clear, we do need this bill. I hope the Contractors' Board will come to the table with the rest of us in order to make this work. The intent of this bill is to make a process available. Remember, we are talking residential only because

there was a lot of talk from the Contractors' Board about apartments and high-rises, but that is not what this bill addresses. This bill addresses residential, which by definition is four or fewer units. That is what we are talking about here.

I think it comes down to the fact that there is not a lot of work for general contractors right now. As we have seen, they are starting to exercise the right to issue citations, and that is why this bill is needed. As the statute stands, they have the right to come after these real estate professionals and property owners if they are doing those four items and getting those repaired. It is important they have this opportunity to have this bill seen, and I appreciate the time and consideration given to this matter today.

Chairman Bobzien:

Thank you Assemblyman Healey. As I believe was made perfectly clear by Assemblywoman Kirkpatrick, there is a charge for the Contractors' Board to work with the proponents to see if we can get something worked out. Certainly others echoed that. With that, we will close the hearing on A.B. 334.

[The State Contractors' Board submitted a "Guide to Hiring Contractors" pamphlet ([Exhibit H](#)).]

We will open the hearing on Assembly Bill 385. Assemblyman Hickey, please come forward. This is a simple bill.

Assembly Bill 385: Establishes provisions relating to the deposit of data with a provider of information services. (BDR 52-808)

Assemblyman Pat Hickey, Washoe County Assembly District No. 25:

The technology and information services industry is one of the most powerful and emerging engines of prosperity. It is one of the greatest economic opportunities for Nevada. If Nevada can provide a welcoming business environment supported by good cyber legislation, we can attract information service providers to the state and, with them, the high-paying jobs and significant economic growth that comes along with them. Why would we not want the next Google or Facebook located here in Nevada? For instance, we wanted Apple here.

Legislating technology and cyberspace is not easy. It is a fine balance between the desire to promote the economic advantages and at the same time establish clear protections against the abuse of technology. As legislators, creating cyber legislation is one of the most important things we can do to foster the

development of this critical industry while protecting the interests of individual citizens and supporting the activities of law enforcement in the cyber domain.

Assembly Bill 385 is a bill that promotes the economic development of the information services industry in Nevada by providing a clear message that Nevada protects the business interests of information service providers and their customers.

To help explain this bill and the technology aspects, I have David Espinosa and James Elste with me today. Mr. Espinosa is the Executive Director of Nevada Cyber Initiatives. He has been an information technology professional for nearly 20 years. During his tenure in that industry, and working with information technology (IT), he has worked in every possible area of the IT field, including software and network engineering. Mr. Elste is the Chief Cyber Strategist for Nevada Cyber Initiatives. In the subject matter of cyber security, privacy, and IT management, he is an expert here in Nevada. I think this is important for us to know: he is the former Chief Information Security Officer for the State of Nevada. He knows from which he speaks. He was also the former Director of Information Security for International Game Technology (IGT) and currently serves as the Chair of the Privacy Committee for the Identity Ecosystem Steering Group of the National Strategy for Trusted Identities in Cyberspace.

David Espinosa, Executive Director, Nevada Cyber Initiatives:

I am testifying on behalf of Nevada Cyber Initiatives and not any current or previous employers I have been involved with. As Assemblyman Hickey has already mentioned, I have been a technology professional for the last two decades. In that time, I have seen that industry grow from a support industry focused on providing services to various portions of a business to a cornerstone and competitive advantage for small-, medium-, and large-scale businesses. Mr. Elste will speak to the technical underpinnings of A.B. 385, the rationale for the how and the why of the bill. I, however, would like to take a moment to speak to the final purpose of this bill and the advantages this legislation can provide for Nevada and Nevadans.

The three areas of my testimony include a brief overview of how the technology industry figures in today's business climate, the main thrust of A.B. 385, and examples of IT economic impact in two states and the potential here in Nevada.

It is difficult to find a single business today that does not have a website or rely on computers for critical daily functions. Most, if not all of us, rely on smartphones, laptops, and tablets to perform our daily duties. In all of those cases, the use of data centers for the purpose of information storage for

personal and professional application has transitioned from novel, innovative, and costly to a commonplace commoditized practice. The ubiquity of information has transformed our world in ways both large and small. In each of these cases, the unspoken expectation between the information consumers and the infrastructure specialists is that the servers and data will always be available. For many businesses, the availability of data and services at all times is a critical component for the very survival of their business. This is true for restaurants that order supplies via website, drycleaners that keep their books online, and most obviously, those currently forging the path of e-commerce.

Assembly Bill 385 is about jobs. It fosters a consistent, predictable business climate for those wishing to establish data centers in Nevada and those wishing to store their data in those same data centers. This bill codifies what has been a growing body of best practices in the relationship between information service providers, consumers, and state agencies. In providing consistency and predictability, A.B. 385 creates an incentive for data center providers to grow operations within our state. The establishment of more, and larger, data centers in Nevada brings about jobs in telecommunications, construction, server management, information security, and all related business sectors, including accounting, operations, and engineering.

By being the first in the nation to codify what has been commonly accepted practices, and providing that level of assurance and predictability, Nevada will have the competitive advantage in comparison to other states and nations. This would allow Nevada to capitalize on existing strengths and capabilities: first, world-class data network infrastructure access in both northern and southern Nevada via network pipelines, which run near Interstate 80 and Interstate 15; and second, positive business climate and an abundance of land suitable for data center construction.

For two examples of the impact provided by focusing on IT business climates, we could take a look at South Carolina and Texas. In recent years, South Carolina has taken specific and concerted steps to become the leader in insurance data storage. The insurance IT industry in the Columbia region of South Carolina now employs 15,000 professionals at an average salary of \$62,000, which is nearly twice that of the state's average. The industry now generates more than \$4.9 billion in annual sales with nearly \$6.7 billion in statewide economic impact. San Antonio has positioned itself as an alternative to Silicon Valley, focusing on information, security, and cyber business. San Antonio now employs nearly 16,000 professionals and boasts an IT economic impact of nearly \$10 billion for the state of Texas in 2010, with projected growth to \$15 billion by 2015.

I am not suggesting that passing A.B. 385 will have an immediate multibillion-dollar economic impact for our state. However, there is one unmistakable fact: A.B. 385 provides the basis for significant and sustainable positive economic impact. South Carolina focused on a narrow band of that industry and reaped the benefits. Texas has focused on security and services, and they too have reaped the benefits.

Assembly Bill 385 provides a consistent, predictable business climate that can host the world's data. It does so by ensuring that the very same protections we enjoy in the physical world, with respect to private property, apply in the digital world.

James Elste, Chief Cyber Strategist, Nevada Cyber Initiatives:

I am going to try to explain the rationale behind A.B. 385, including who benefits from the bill, and provide some examples of situations that illustrate the importance of the protections that are defined in this bill. Assembly Bill 385 is a simple but significant piece of cyber legislation, and Nevada has an opportunity to lead the nation with this bill. This bill accomplished three very important goals and is unique in that it serves the interests of three distinct groups: individual citizens, private industry—and not just the information services industry—and law enforcement.

The goals of this legislation include first establishing the legislative intent and recognizing that the information services industry is vitally important to the future economy of the state. Second, it provides the protection of data depositors who are not the subject of a legal action or investigation by ensuring they retain control to access of their data in a contract with the information services provider that is located within the state. Third, it defines certain terms, such as "information services" and "data," which are currently undefined in statute and are important in developing future cyber legislation.

In what I believe is a unique conversion of interests, A.B. 385 serves the interests of three distinct constituencies. First is the data depositors. These are individuals or companies who deposit data with an information service provider and who have interest in their digital property. That prompts them to seek out and do business with information services providers that are located in Nevada. The next constituency is the information services industry. These are organizations that would physically be located in Nevada and provide these information services. They will have their business interests protected and reinforced by protecting their customers, the data depositors, and ensuring the enforcement of legal action does not impair their noninfringing customers' access.

I want you to consider this for a minute in the context of online gaming, which is an information services industry that launched this session in Nevada and will have individuals depositing data, hopefully along with lots of money, with a service provider in Nevada. We do not want that service provider being taken down because of some kind of law enforcement action or other legal action that impairs their noninfringing casino participants.

The last constituency here is law enforcement. I can tell you that the interests of law enforcement in a digital environment are paramount. Assembly Bill 385 actually provides an incentive for law enforcement to develop more advanced capabilities to support the execution of legal action in a digital environment. More importantly, it provides jurisdiction for legal action by providing information services providers' location the jurisdiction where they can operate.

I would like to quickly provide you with three examples that illustrate the need for A.B. 385. First, I assume most of you parked in the parking garage today. Imagine for a moment that the parking garage is now operated by a parking garage service provider. You park your car in the garage for a fee and establish a contractual relationship with the parking garage service provider, and within that garage is parked a car that is implicated in a crime. The police arrive and impound all of the cars in the garage. Now your car has been impounded, and you have no idea whether you will have access to your property again, and you have no idea how you will recover your car. You actually have to file a lawsuit to recover your vehicle, and while you are filing your lawsuit, law enforcement realizes they have completed their investigation and no longer need your car. Instead of returning that car to you, they turn it over to a junkyard, and your car is destroyed. You are completely innocent of any crime. You are not the subject of the investigation and are completely uninvolved in any way, shape, or form in this, but you have suffered a rather significant consequence. Does anyone doubt this is bad for both the individual and the parking garage service provider?

Let me give you a real-world example. In the exhibits, you have a letter from Julie Samuels ([Exhibit I](#)). She is a staff attorney for the Electronic Frontier Foundation (EFF), and she both expresses their support for A.B. 385 and gives you some background on the case of Megaupload.com concerning an individual named Kyle Goodwin.

Last year, the government shut down Megaupload. It was one of the top 100 sites in the world. It had over 150 million users, including Kyle Goodwin. He had recently started a small business in Ohio where he was videotaping high school sports events. He had no illegal interaction and was basically using

Megaupload to store his files and taking advantage of the service to be able to share information with his colleagues.

On January 19, 2011, federal agents shut down Megaupload. They did this with no prior notice to Mr. Goodwin or any of the other customers. They seized the domains, froze the funds, and executed search warrants on released servers that housed the customers, including Mr. Goodwin's data. As a result, Mr. Goodwin has not been able to access his files. He has a right to his digital property, and despite the fact those files still exist on those servers, at this point it is unclear who has control of Mr. Goodwin's property. He has filed a lawsuit and has been pursuing that lawsuit for the better part of a year.

According to the government, it has released control of those servers and the data on them, but according to Megaupload, without access to their funds, they are unable to restart that service and return that data to him. It is very likely that the leasing company that owns those servers will be destroying Mr. Goodwin's data.

It is clear from this example that Mr. Goodwin is the rightful owner of that data, and he is not the subject of the investigation but was an innocent third party who was denied access to his property for over 14 months. In this case, which is still being litigated, an important precedent will be set.

The third example I have for you is a ripple effect. Everyone here uses IT in some way, shape, or form. We know IT is highly interconnected and interdependent. In 2009, the Federal Bureau of Investigation (FBI) seized a number of servers in Texas as part of a fraud investigation. Some of those servers housed the data on a website for a company called Liquid Motors. Liquid Motors provided inventory management and marketing services to the automobile industry. Although Liquid Motors was not the target of the investigation, the FBI took all of the company's servers and backup tapes, effectively shutting down the company. The impact to Liquid Motors customers, which included over 750 auto dealers across the country and their customers, was enormous. It damaged their businesses and damaged their customers and quickly placed Liquid Motors in a breach of contract situation. Once again, they were not the target of this investigation. They were an innocent third party that suffered significant damages, not to mention the downstream consequences to their customers and their customers' customers.

What we can recognize from these examples are two things. First, it is an unacceptable practice for any legal action to unnecessarily damage innocent third parties. Second, that the protections afforded to us in the form of due process and probable cause apply equally to our digital property: our data and

digital domain. These protections are well established in the Fourth and Fourteenth Amendments to the *United States Constitution* and in Article 1 of the *Nevada Constitution*, which basically says the right of the people to be secure in their houses, papers, and effects against unreasonable seizures and searches shall not be violated. Section 1 of the Fourteenth Amendment is even more clear. It states, "No more shall any state deprive any person of life, liberty, or property without due process of law."

Assembly Bill 385 applies these fundamental principles to data. It does not place any new constraints on law enforcement and does not create any new standards of any kind. It simply provides the assurance that, in Nevada, these practices will apply to the digital domain. By providing that assurance, we incentivize information services providers to locate in Nevada and for individuals and businesses around the world to seek out information services providers that are located in Nevada. I urge your support of this bill.

Chairman Bobzien:

We have a couple of questions.

Assemblyman Daly:

Thank you for the presentation. I want to make sure I understand. If I put data in "the cloud," or something, let us just say it is being stored in Texas. But that data center is shut down or seized, and I cannot get to it. Unless Texas has a similar law, they would not be able to release my data if the feds took it. If I understood your testimony correctly, with this law we are putting another piece of the puzzle in place to help Nevada be more competitive to attract that market, protect the consumers, and improve the economy.

I think from what you said, if your property is on the data center here in Nevada, and the feds come and shut it down, you can be in another state and say the data must be released. Can we really do all of that with the federal government? Is it really a protection?

James Elste:

That is a very interesting question. It deals with essentially two concepts. One is what is referred to as preemption, and federal law enforcement does have preemptive capabilities over state governments. The thing to understand about how this law may influence federal action is really important, because where federal law enforcement may have the authority to preempt state law, state law may, in fact, influence the creation of search warrants or warrants from a federal judicial official. Looking at the law on the books in Nevada with regard to how we want individuals' digital property rights protected could influence the

scope of the search warrant they issue and how the federal officials execute that search warrant in Nevada.

The second point, and I think it is hard to massage out of the language in the bill, but by establishing the requirement to protect noninfringing individual rights, we will actually provide an incentive for law enforcement to develop some rather sophisticated capabilities with these service providers in Nevada. My thought would be that federal law enforcement officials would take advantage of those more sophisticated capabilities, thus reducing the need to do things like gross seizures, which are varying effective measures from a cyber-investigatory prospective.

It is becoming rarer that they have to go in and seize a rack of servers. It hinges on whether or not you have sophisticated capabilities and a relationship with the service provider, which can say this is how to access the individual who is the subject of your investigation's data, and this is the way you do it without disrupting the other cotenants in that multitenant environment.

My hope would be that federal officials will look at what Nevada is doing and take it as an example of how to have more sophisticated law enforcement actions at a federal level; to have that law influence the creation of search warrants and the execution of federal law enforcement activities; and to have federal officials work closely with our law enforcement, because they have more sophisticated capabilities and better relationships with these service providers.

Assemblyman Daly:

This would be a piece of the puzzle. It may not solve everything, but it is a step in the right direction. I know most of these providers have confidentiality agreements. They are not going to give up that information to anybody without the warrant. Right now it is a sledgehammer they are using to get that information instead of asking for a particular piece of information. This will hopefully develop a larger infrastructure on how seizures or subpoenaing of such information would be done. Is that fair enough to say?

James Elste:

Yes, sir. This is one of the pieces in the cyber puzzle, and you have the pleasure of doing a lot more cyber legislation in the future. The interesting part is that by making sure we have that sophisticated capability, we avoid impacting the noninfringing individuals. We have what I refer to as a surgical technique as opposed to a blunt force technique. I think it is a piece of the puzzle and moves us in the right direction. It avoids impacting innocent individuals in the process.

Assemblywoman Bustamante Adams:

This state has a Technological Crime Advisory Board that is run by the Attorney General. Did you seek feedback from that group?

James Elste:

We did have the opportunity to speak to the Technological Crime Advisory Board in their last meeting. I presented a variety of bills that are in front of the Legislature to make sure they have an awareness of these cyber bills. It gave them an opportunity to provide us with some much valued input. Among those bills were Assembly Bill 181, which involves social media accounts and consumer reports; Assembly Bill 42, which is the Nevada Cyber Institute bill; and Assembly Bill 385, which is this bill and had not yet been released from the Legislative Counsel Bureau (LCB) process, so we shared the bill draft request information that was provided to LCB. We also highlighted Senate Bill 25, which is the Attorney General's bill establishing cyber law enforcement capability within the Office of the Attorney General.

Assemblywoman Bustamante Adams:

Did they provide any feedback?

Assemblyman Hickey:

We did receive a number of questions about the bill and attempted to answer them. One of the problems was that it did come out of drafting a little bit late. We would like to have given them more of an opportunity. Of course, something like this can only be done in conjunction with the Office of the Attorney General in that particular area that has oversight over these matters. We will continue to work with them and address their concerns if this bill goes forward.

Assemblywoman Bustamante Adams:

Can their questions and your responses be provided to the Committee, or are you still in the review process?

James Elste:

I would happy to provide the responses I provided to the Office of the Attorney General on their questions.

Assemblywoman Bustamante Adams:

We also have a large data deposit center in Las Vegas that the Governor cites repeatedly. Is there any feedback from them on what they feel about this bill?

James Elste:

I believe you are referring to Switch, which is a data center in southern Nevada and houses a number of different organizations, very sensitive information, IT equipment, et cetera. We have not had the opportunity to get feedback from them directly. We have reached out to a number of private sector organizations that are either information services providers as defined in this bill or otherwise would be impacted by this bill's scope. The feedback has been mostly positive. I think there is a little reticence to come forward and vocally support a bill. There is a little bit of a feeling that this is new territory for these particular companies, and they are very circumspect about how they attach themselves to particular legislation. I think this is something they support conceptually and believe the bill has merit. We have EFF support, and they are very thorough about examining laws across the country. They do statutes as well as litigation for situations that create problems in the cyber arena.

Regrettably, as Assemblyman Hickey mentioned, the bill did not come out of the drafting process until March 18, so we have been scrambling to enlist support based on the language that was produced in the bill.

Chairman Bobzien:

Do we have additional questions? [There were none.] Do we have anyone else wishing to testify in favor? Seeing none, do we have anyone in opposition? [There was no one.] I believe Mr. Griffin is coming to the table in the neutral position.

John Griffin, representing Amazon.com:

I will make this brief, reiterating Mr. Elste's comments that people are getting this late and digesting it. We have represented a number of different technological companies through the years. Amazon's official position is that they think they like the bill. We are happy to work with the sponsor and proponents and go through what the intent is.

I think this is something that, for the most part, large technological companies have not seen before. It does not mean it is good or bad. From these companies' standpoints it takes some time to figure out what they are dealing with. The only thing that causes me caution is that we have gone through some technological issues the last two or three sessions, and sometimes it scares companies to hear this new legislation for the first time in Nevada as being the strongest, best, or first. We have an encryption law currently in this state that most major technological companies think is the worst in the country. Sometimes doing it first and best does not necessarily endear yourselves to some of the large companies. I am not saying that is the case with this; I am saying that we are happy to work with the proponents and see where it goes.

Chairman Bobzien:

From this, are we taking plans to bring an Amazon data center and move beyond just fulfillment?

John Griffin:

As you know, Amazon is a very big company in the state of Nevada and currently has well over 6,000 employees, including the headquarters of Zappos.com in Las Vegas. As for their future plans, they will continue to support the state of Nevada in every way they can.

Chairman Bobzien:

Are there any questions for Mr. Griffin? [There were none.] Thank you, Assemblyman Hickey. It seems we should let this be digested a bit.

Assemblyman Hickey:

I would hope that you could advise us on how we could best percolate this bill. I think it is new and proactive. We would appreciate the Chairman's advice on how to make this bill good now or sometime in the future.

Chairman Bobzien:

I think what has to happen is that enough people on the ground, in the data center business, have to run this through their scenarios and get comfortable with it. We acknowledge it came in pretty late. I do like the idea that from this flows a series of protocols and maybe some industry standardization as to how you would set up markers and easily accessible systems for law enforcement in case a seizure must take place. They can say, "Hey, here are our open books. You need to go to this aisle and pull from these racks and stay away from these servers." It would help us a lot if they can get some comfort with that and have a few letters in support or some providers saying this is something they like.

Assemblyman Hickey:

That is good advice. Thank you.

Chairman Bobzien:

We will close the hearing on A.B. 385.

We will now open the hearing on Assembly Bill 326 and welcome Assemblyman Aizley to the table.

Assembly Bill 326: Revises provisions relating to arbitration. (BDR 52-803)

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

I appear before the Committee in support of Assembly Bill 326, which revises provisions relating to arbitration. This bill addresses the mandatory arbitration clauses that are standard in many agreements we consumers must agree to on a day-to-day basis. These standardized agreements are pervasive and are hardly ever disclosed to the consumer when purchasing a product or service, aside from the small print that might appear in the middle of a multipage contract. Some of the contracts you may have signed recently that bind you to mandatory arbitration with a service provider or retailer may include your cell phone service plan, checking account, acceptance of a job, computer software upgrades, and other contracts.

Mandatory arbitration clauses preclude you from suing a company or individual with whom you have contracted should the service or product purchased be damaged, faulty, or simply not delivered. The United States Public Interest Research Group (PIRG) summed up this situation best when it concluded:

Arbitration can be a fair and effective method of dispute resolution when parties voluntarily agree to arbitrate. Instead, corporations have created one-sided, take-it-or-leave-it contracts that burden consumers and deprive them of equal justice under the law.

Indeed, many consumer transactions these days require that you sign your rights away or be refused the product or service. The federal Consumer Financial Protection Bureau, created in 2009, is currently studying mandatory arbitration clauses to fully assess the extent that consumers are harmed by being forced into signing in order to gain access to products or services. The bureau has statutory authority to prohibit or impose mandatory arbitration by rule. However, given the federal government's speed at adopting new regulations, I wanted to try to provide some relief to consumers at the state level during this legislative session.

Assembly Bill 326 specifies that contracts, which require a consumer to submit to arbitration in the event of a dispute over the product or service, must include an affirmative agreement to that provision by the consumer. If the consumer does not specifically authorize that provision in the agreement, then the mandatory arbitration provision would be void. The bill would only apply to agreements entered into after October 1, 2013.

I believe you have copies of the bill, and there is an amendment for your consideration (Exhibit J). It is possible the amendment will be thrown out by the Legal Division because it may not apply directly to this particular section.

I urge you to support the protection measure, and I am willing to answer questions that you may have. If you would like, I can read the amendment too.

Chairman Bobzien:

We are having an issue with the amendment in the Nevada Electronic Legislative Information System (NELIS). Assemblyman Aizley, could you give us an introduction?

Assemblyman Aizley:

It says if the arbitrator screws up, the agreement is not in effect and will be withheld and disqualified if nothing has been said. Reading the amendment: "(i) shall vacate an award made before the objecting party became aware of such fact; or (ii) in the event an award has not been made, disqualify the arbitrator."

Chairman Bobzien:

Do we have any questions for Assemblyman Aizley?

Assemblywoman Carlton:

I had realized these were located in some contracts. As far as jobs go, is there an example that you know of?

Assemblyman Aizley:

I have not seen one of those directly.

Chairman Bobzien:

Are there additional questions? [There were none.] Mr. Aizley, do you have anyone in support of the bill?

Assemblyman Aizley:

Yes, there are people in support.

Chairman Bobzien:

Do they wish to testify today?

Assemblyman Aizley:

Yes.

Mark Wenzel, representing Nevada Justice Association:

I am here to testify in support of A.B. 326. This bill is a Nevada consumer protection bill. It affects nearly all Nevada citizens. This bill will allow consumers in the state of Nevada to make a more fully informed, meaningful decision as to whether to enter into contracts that contain mandatory arbitration

clauses. As Assemblyman Aizley mentioned to you moments ago, these types of mandatory arbitration clauses are contained in a host of different consumer-related contracts, including cell phone providers, landlord/tenant agreements, car leases, et cetera. They are not often prominently displayed and are sometimes buried within the fine print of an agreement, or what we call the "boilerplate provisions" of a contract.

One of the problems consumers run into with these types of clauses is that they are mandatory. Also, consumers frequently do not know about them because of where they are contained in the terms and conditions of a multipage document. Litigating these arbitration decisions can be time consuming, expensive, cumbersome, and inconvenient for Nevada consumers. Oftentimes, they say they will be subject to the laws of different states and arbitrated in a different state than where the contract was entered into.

We believe this bill addresses the ability for Nevada citizens to make meaningful and informed decisions. If they see an arbitration provision that is specifically delineated from the remainder of the contract, they can review that and specifically sign on to agree to arbitration, or they can choose not to. Right now, these provisions are often hidden in or not specifically delineated from the remainder of the contract.

Chairman Bobzien:

Do we have any questions?

Assemblyman Hansen:

I had a situation like the one you just described. I have many contracts, and one of them was with an insurance company. I ended up having an issue with them, and I had to arbitrate it in Bethesda, Maryland. Needless to say, it would have cost me more to go back there and try to fight it on their turf and terms.

As I recall, there was a provision in law where I made a request to them, through my lawyer, about a common law principle that said this is not reasonable. Is there anything in law that says there is already some level of consumer protection?

Mark Wenzel:

I would say to you, based on that circumstance, it would depend on what the clause sets forth. If the clause sets forth in ironclad language that this dispute, if any, between the consumer and whomever he or she entered into the contract with would be litigated in the state where the corporation has its principal place of business, then I would say you are probably stuck with that.

It sounds as if you got an attorney involved and were able to convince whomever you were dealing with that the terms and conditions of that arbitration provision were not enforceable, and somehow vague or ambiguous, and the dispute should be resolved here in the state of Nevada as opposed to Bethesda, Maryland.

The point you make is the one we are trying to make with this bill, and that is to let people make informed and meaningful decisions. You pointed this out quite accurately. Sometimes the dispute is not worth the expense. That does not mean your rights have not been violated or that your rights should not be fairly adjudicated in whatever forum you believe you have agreed to.

Assemblyman Ohrenschall:

I want to compliment Assemblyman Aizley for bringing this bill. I want to ask Mr. Wenzel how many clients he sees who have found they are forced into settling a dispute through arbitration when they did not realize it, and not only is the courthouse door closed but also the door to arbitration. Most people cannot arbitrate out of the state. Have you had many clients who have been in Assemblyman Hansen's situation?

Mark Wenzel:

Litigating commercial disputes like this is not my practice area. When this bill came up, I did quite a bit of research on it and talked to some of my colleagues who are more involved in commercial litigation settings. It happens very frequently, and more frequently now that these mandatory arbitration clauses are becoming more prevalent. To answer your question directly, it does not happen to me, but it is prevalent in the legal community. I hope that answers your question.

Assemblyman Ohrenschall:

It does.

Chairman Bobzien:

Are there additional questions? [There were none.]

Jon Sasser, representing Legal Aid Center of Southern Nevada:

I am here in support of A.B. 326. I have a couple of additional points that have not been made. In terms of blocking your access to the courthouse door, that courthouse door, in most of these small consumer matters, would be a trip to small claims court, which is a very inexpensive process that is set up to handle matters of less than \$750. Instead of having that usual avenue open to Nevada citizens, you are stuck with many more arbitration processes you might not

have any access to. Again, these are buried in contracts, and people do not know they are getting into them until they have a problem.

At the other end of the extreme, there is a United States Supreme Court case that said if you have an arbitration clause in your contract, that means you have agreed to that way of resolving the dispute. Therefore, you cannot use a class action mechanism to go after an illegal practice by a company that may steal a few hundred dollars from thousands of people. These arbitration clauses are now an absolute bar to those class action suits, so they continue to get away with it because it is worth no one's while to pursue them.

Our organization was involved with a bill two sessions ago that tried to take the law as far as it could back toward the consumer in this area. I do not know where the line is. There is some federal law here that preempts some of what you can and cannot do. We had a bill that covered right up to the line, and it was vetoed by the Governor at that time. It was overridden by the Assembly but not the Senate. We had national testimony that came to talk about these clauses and the difficulties there are. It also talked about the arbitrators and what small percentage of the cases they actually move for the consumer if you get in front of an arbitrator.

This is an area that we are very concerned about. There may be some limit to the ability to attack it from state law, however.

Chairman Bobzien:

Are there any questions for Mr. Sasser? [There were none.] Is there anyone else wishing to testify in favor of the bill? [There was no one.] Is there anyone in opposition to the bill? [There was no one.] Is there anyone in the neutral position? [There was no one.]

Assemblyman Aizley, we are waiting to hear from the Legal Division as to the germaneness of the amendment ([Exhibit J](#)). We will go forward from there. With that, we will close the hearing on A.B. 326.

We will open the hearing on Assembly Bill 322 and welcome Assemblyman Paul Anderson to the table.

Assembly Bill 322: Revises provisions concerning casualty insurance.
(BDR 57-1038)

Assemblyman D. Paul Anderson, Clark County Assembly District No. 13:

Assembly Bill 322 is an attempt to correct a discovery loophole that has been in statute, and it simply removes a single word from statute. In *Nevada Revised Statutes* (NRS) 690B.042, there is a term that says "private passenger car." The goal of this bill is to remove the term "private." In no other part of NRS is "private passenger car" defined; however, "passenger car" is defined. We are removing the word "private" and adding a reference to where "passenger car" is defined.

I will explain why this has become an issue. In my business we have eight vehicles that are used for our technicians. It is an information technology business, and we send people around all over Las Vegas and elsewhere to work on businesses. They are just passenger cars: small SUVs, Chevrolet Malibus, and others. However, because they are used for a commercial purpose, if my driver is involved in an accident, and a litigation proceeds, the term "private passenger car" changes the discovery rules because my vehicle was a private passenger car being used for a commercial purpose. This affects when there are medical records that need to be released. In statute it says that every 90 days each person's medical records may need to be released to each party's representatives.

Because of this disparity in the language, one party is complying with that component, and the other party does not have to comply with that component, or at least using the language as a loophole. Oftentimes, this potential litigation is sitting on the books for up to two years, running up to the statute of limitations, and all of a sudden a bomb is dropped with two years' worth of medical data released at that point, with only ten days to respond until that statute of limitations runs out.

It puts the party that is not able to gain this information in a bad situation, and it is not a fair situation. We have dubbed this the "open discovery statute" that allows for an equal opportunity for discovery of those medical records.

Again, we are removing the word "private" and leaving the term "passenger car" and referencing to the correct NRS statute that defines "passenger car." That is the summary of the bill, and I would be happy to take any questions. I believe we have some people who want to testify in support of the bill who can offer further details on the legal aspect of it.

[Submitted prepared testimony ([Exhibit K](#)).]

Chairman Bobzien:

Do we have any questions for Assemblyman Anderson?

Assemblyman Frierson:

We spoke about this earlier, and I appreciate you reaching out. Your explanation provided me with some clarity. Initially, I read it as "private" excluding taxicabs, and it sounds as if that is not what you are interested in addressing specifically, but more using a private vehicle for commercial purpose. Could you address what conversations you have had about the implications on taxicabs and that kind of situation?

Assemblyman Paul Anderson:

It is my understanding that this language would change it for them as well. I am not sure if that is the reason for this bill per se. It would include any vehicle being used in a commercial purpose. I would assume taxicabs, as long as they are defined as passenger cars, would be included in this statute.

Assemblyman Frierson:

I know the rules regarding taxicabs are different. There are some different statutes. To make one small change that might have some implication throughout NRS is a concern of mine if that was not necessarily what your intention was.

Assemblyman Paul Anderson:

The idea is that this statute applies to any accident and the release of medical records if there is litigation that ensues from that accident. Removing the word "private" would make it so everybody has the same discovery.

Assemblywoman Carlton:

After yesterday's taxicab marathon, we still have taxicabs on the brain. When I was looking at this, I was thinking the same thing as Assemblyman Frierson. We discussed the common carrier, carrying someone for a fee, and the different levels of liability. It was very complicated. I think when you see the term "private passenger car" it means your car, my car, the Chairman's car. There is a business passenger car, which you use for your business, and then there is the common carrier that charges a fee to move someone. I would be a little apprehensive. I do not know if you have had any discussions with anyone on that particular topic.

Assemblyman Paul Anderson:

I would appreciate any legal clarification on that. I was not there for that discussion, and I am not familiar with the three different tiers.

Chairman Bobzien:

Mr. Mundy, would you like to weigh in?

Matt Mundy, Committee Counsel:

I will read the definition from NRS 482.087, which is for the term "passenger car." It means "a motor vehicle designed for carrying 10 persons or less, except a motorcycle or motor-driven cycle." That term would capture taxicab to the extent it is not carrying more than 10 people.

Assemblyman Livermore:

We all purchase liability insurance for our motor vehicles. Does this change the classification of that? Would we pay a lesser or greater amount?

Assemblyman Paul Anderson:

I am not qualified to answer that. I would certainly have to defer to somebody who has qualifications on that side of it. I am sure there is somebody in the room who can answer that.

Assemblyman Livermore:

I would not want to cause unintended consequences.

Chairman Bobzien:

Do we have any further questions for Assemblyman Anderson? [There were none.] Let us bring up the proponents of the bill.

Nick Vassiliadis, representing Capital Insurance Group:

Assemblyman Anderson did a good job walking through the bill, so I am going to turn it over to our client, Thomas Scherff from Capital Insurance Group.

Thomas Scherff, Vice President, Claims and Special Market Development, Capital Insurance Group:

One of our companies is called Nevada Capital Insurance Company, which is domiciled here in Nevada. We have been writing insurance in Nevada for 20 years, both property and casualty. *Nevada Revised Statutes* Chapter 690B has a clear purpose to share information. It simply says the insurance company must provide specific information to the claimant and his or her attorney about their limits of coverage and any other potential coverage issue, so they know exactly what they can potentially recover. In exchange for that, the claimant and his or her attorney are asked to provide medical information to the insurance company and the consumer to allow them to better evaluate the exposure and handle the case more quickly.

The endgame of the whole sharing of information is to bring the case to resolution more quickly, fairly, and efficiently to keep it from going into litigation and into a discovery process. Litigation takes time from the Nevada courts and adds additional costs from the injured party's perspective as well as the

insurance consumer's perspective. We have been trying to get this information from the claimants' attorneys for a long time. We eventually approached the Division of Insurance and asked them to give us some assistance because it is a regulatory matter. Of course, they control the industry and the obligations to notify the other side of their limits and coverage issues.

The Division of Insurance is fully supportive of this. They have taken on the role of writing a letter to the claimant's attorney requesting they comply with NRS Chapter 690. However, they have concerns it applies only to the privately owned vehicle rather than the commercial vehicle. They are more than willing to work with us in terms of that, but they feel the law needs clarification. That is all we are trying to do. We are trying to get the law clarified. This exchange of information, which works between private passenger vehicles, should certainly be able to work with a commercial vehicle. All we are exchanging is information. There is no change of legal liability or legal duties owed. If we can get information, we can evaluate a case more quickly, more fairly, and more efficiently to get it resolved prior to litigation. I think it is in the best interests of the injured party, the insurance consumer, and the state of Nevada in the sense that we keep a lot of this out of the courts.

A "private passenger car" is a passenger car whether it is driven in a commercial environment or in a personal environment. The protections of the law would help both sides. They would get information and we would get information that would help resolve the case more quickly.

Chairman Bobzien:

Are there any questions for Mr. Scherff? [There were none.]

Robert Compan, representing Farmers Group, Inc.:

Recently, I became aware of the legislation while going through bill tracking. It seems to have struck a nerve. I remember back in 2007, we were trying to strengthen this statute with Senate Bill No. 359 of the 74th Session. It passed through the Senate but never made it out of the Assembly. We are finding the conceptual language of the statute is great, but it has no teeth in it. After 90 days, as required by statute, we ask for medical report, and the plaintiff's attorney is asking for limits of liability, so we in good faith do that. Unfortunately, since 1997, we are seeing cases where we are not getting the medical reports other than maybe an emergency room bill. The accident we looked at had perhaps \$250 worth of damage, and after two years—10 days prior to the statute of limitation—we will get a 450-page demand package asking for our policy of limits in excess of whatever they are. If we do not act within that 10 days, we are responsible for opening up our policy limits to our insurers. In that case, we could be culpable for bad faith of the first party.

I commend what the proponents of the bill are trying to do, because we have a large commercial book, but unfortunately, the way the statute still reads, I believe there is some leeway with the Division of Insurance, but they can only go so far. If you have to appeal to the court to get information to which you are entitled by the statute, I do not think that is the intent of the original law. This is a good statute, but it is not working because it has no teeth in it. We may be revisiting this issue in two years asking you for some reconsideration.

Chairman Bobzien:

Are there any questions for Mr. Compan?

Assemblywoman Carlton:

I was beginning to wonder if this was déjà vu or if we actually had this discussion a few years ago. I knew it was when I was in the Senate. I am having a hard time blending the issue you talked about, regarding the medical records, with the purpose behind this amendment. It is just a description of a car. I am not sure if you or someone else at the table can help me with this.

You heard us say earlier that if taxicabs are included, we have another discussion to have. I do remember the teeth issue in the statute. We had a long conversation about that.

It seems to me that redefining something will not ultimately address the issue of sharing the medical records. When you get into the discovery phase, I do not know how that blends either.

Robert Compan:

I am not going to say that every attorney is doing this. Some attorneys are very competent. When you ask for the medical records within 90 days, this would afford it on commercial accidents as well. By Nevada statute, we are mandated to set reserves, and when setting reserves, we have to show we have enough money in our bank account to satisfy our customers' exposure to bodily injury claims should they be involved in an accident. If we have a commercial driver get in an accident with \$150 worth of damage and in two years you get medical records because you have been asking for them every 90 days with no response, then there is an issue. I agree with the teeth issue, and we will have to do that. There are some attorneys who will, every 90 days, be providing you with that information whether they are medical imaging tests, treatments with a chiropractor, or whatever.

It also allows the insurance company to properly investigate the claim. If there is minor damage, they may want to hire an expert to take a look at the engineering aspect of that accident and what kind of impact it caused or could

have caused to a body. It will work in certain cases. I am just saying there are some actors out there who are not properly abiding by the rules of the law.

Assemblywoman Carlton:

My concern is still changing the definition of the car. How does this play into the whole scenario? I do not seem to understand that.

Thomas Scherff:

Everything that was just said is correct. I am not going to disagree with anything. It does not solve the complete problem, but it does not mean that every step you take has to solve every issue out there. What this does is open up better communication to get information both from the insurance company to the claimant and from the claimant to the insurance company. This is information that must be turned over as part of the lawsuit anyway. Why would we not want to encourage that sort of open communication? We do it in a personal auto perspective, so what is the difference in a commercial auto perspective?

We are not talking about legal duties but about exchanging information, namely, the medical information being given from the claimant to the insurance company and/or the consumer. I think that would work toward a greater, quicker, and fairer resolution of claims.

Assemblywoman Carlton:

With private auto, commercial, common carriers, et cetera, there are some very bright lines there, and when we start crossing them, I think it would be best if we rereferred this bill to the Assembly Committee on Judiciary.

Thomas Scherff:

I will accept any recommendations you have.

Chairman Bobzien:

Are there any additional questions? [There were none.] Is there anyone else wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone ambivalent? [There was no one.] We will close the hearing on A.B. 322.

We will open the hearing on Assembly Bill 226. We welcome Assemblywoman Bustamante Adams to the table.

Assembly Bill 226: Enacts provisions governing certain policies of insurance, annuities and retained asset accounts. (BDR 57-588)

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

I appreciate the opportunity to present A.B. 226. Last year, I was approached to work with the Office of the State Treasurer, the insurance industry, and the Nevada Division of Insurance on a bill regarding unclaimed life insurance. I accepted the challenge because I am very eager to learn, and it was also personal to me. In 2009, my little brother died in a tragic accident, and I was the one who was left to help my parents deal with the paperwork associated with someone's death. During the process, I learned that my brother, even though he was young, had taken out a life insurance policy, and my daughters were the beneficiaries. It was unexpected, but I was grateful to learn that he had thought about us in that way.

This scenario is not unusual. There are many families and individuals who do not know they are listed as a beneficiary on these life insurance policies. That is what this bill is about. There are tools that the industry uses to help find and pay these individuals the money that is rightly due to them. This bill allows an instrument such as the Death Master File, which you will learn about today, to help find these individuals.

As I mentioned, several stakeholders collaborated in order to come up with this bill. I appreciate working with them over the last five to six months. We are going to give you an overview of what unclaimed property means in Nevada. We will then give the technical portions of the bill. There is an individual who represents the industry. After working for several months, out of the many issues we looked at, there was just one issue we could not come to a compromise on. I was disappointed, but the industry will have to come in under opposition on that one point. I am hoping to have you give direction on how we can possibly resolve it.

With that, I will turn it over to Kelli Miller, who is the Deputy Treasurer of Unclaimed Property for Nevada.

Kelli Miller, Deputy Treasurer, Unclaimed Property, Office of the State Treasurer:

The Uniform Disposition of Unclaimed Property Act was created as a consumer protection uniform act for the purpose of safeguarding the property of the rightful owner, or of his or her heirs, and to provide a means for reuniting lost owners with their property. [Read from prepared testimony ([Exhibit L](#)).]

In a 1965 ruling on unclaimed property, *Texas v. New Jersey*, 379 U.S. 674 (1965), the U.S. Supreme Court determined that the company that holds the property is considered the "debtor" and the owner is the "creditor." Therefore, safeguarding unclaimed property is a matter of protecting the

owner's, not the debtor's rights. [Continued to read from prepared testimony ([Exhibit L](#)).]

Nationwide, approximately \$600 million have been sent to unclaimed property programs from insurance companies. [Continued to read from prepared testimony ([Exhibit L](#)).] We stand in support of this legislation, which protects the financial rights of Nevadans and their families.

Assemblywoman Bustamante Adams:

To give you an overview of what unclaimed property means in Nevada, last session I found some money that was unclaimed property. It was a nice gift. The money is out there, and it is returned to the rightful owner.

Next, Annette James will explain the consumer protection part of this and then go through the sections of the bill. There are very technical definitions.

Annette James, Lead Actuary, Life and Health Section, Division of Insurance, Department of Business and Industry:

The Division of Insurance thanks Assemblywoman Bustamante Adams, the Office of the State Treasurer, and industry representatives for their time, effort, and input in this process. The Division takes a neutral position on the bill.

Our role in this process has been to provide technical assistance and ensure that A.B. 226 strikes a healthy balance between providing consumer protections without significantly disrupting the market and allowing the Division to adapt its regulatory mandate to this area.

Under current law, the responsibility for initiating a death benefit claim is solely the responsibility of the consumer. The insurer's responsibility begins when the beneficiary presents a claim to the insurer. If an individual does not know about the life insurance policy, he or she will not know to present a claim to the insurance company, and the benefit may not be paid. Assembly Bill 226 will require the insurer to take affirmative steps to determine if a death has occurred based on available records, to ascertain if a death benefit is due on a policy held by the decedent, and to require insurers to make a good-faith effort to locate the beneficiary of record and provide the applicable claim forms.

Now I will present the sections of the bill relating to insurance. For purposes of this presentation, I will be using the mock-up version that was posted ([Exhibit M](#)). In the interest of time, rather than going through the details of each section, I propose to focus on the substantive areas, specifically the areas of disagreement.

Sections 3 to 6 define terms that are either not currently defined in statute or have particular meanings as they relate to issues addressed in this bill.

A new section is proposed to be added following section 6 to define the scope of this bill to include individual policies as well as group policies, certain annuity contracts, and retained asset accounts.

Section 7 requires that insurers request sufficient information from their insureds so that it will be easier for insurers to locate potential beneficiaries. In drafting the language of section 7, we believed that the specific information requested might be more appropriately set out in regulation to adapt more readily as circumstances change.

Section 8 requires life insurance companies to compare names on the Death Master File (DMF) against its life insurance policies, annuities, and retained asset accounts to identify potential matches on a semiannual basis. The language has been changed to ensure that this comparison includes all policies that are in force at the time that the insured died. We have added the phrase "in force at the time of the insured's death" to limit the scope of the insurer's responsibilities to only those policies under which a death benefit may be due.

I want to point out that this is the provision that Assemblywoman Bustamante Adams referred to as the area of disagreement by industry representatives. I would like to present an example that will illustrate what the bill is trying to do in this provision.

Let us suppose that an insured, named Ivan, bought a term life insurance policy with a face value of \$5,000, which would be paid to Ivan's beneficiary upon his death. Ivan lists his wife, Beth, as his beneficiary. He is paying a premium every month. If Ivan fails to pay a premium for any reason, the policy will eventually lapse. Ivan did not tell Beth about the policy, and he died on January 1, 2014. Beth never filed a claim for the policy's benefit, and since the insurance policy did not receive the premium for this policy, the policy will eventually lapse. However, because Ivan's policy was in force at the time of his death, when the insurance company finally does the search on the DMF and finds that Ivan did die, Beth will be paid her death benefit of \$5,000.

This bill ensures that even though the policy lapsed after Ivan's death because of nonpayment, because it was in force at the time of his death, his wife, Beth, would still get the benefit to which she was due.

I wanted to specifically explain that provision since it is the area of controversy.

Moving on, after identifying a potential match through a DMF search, the insurer will have 90 days to make a reasonable effort to confirm the death and determine whether death benefits are due in accordance with the applicable policy or contract. If benefits are due, an insurer would be required to make a reasonable effort to locate each beneficiary and provide each beneficiary with the appropriate claim forms and instructions that detail the procedure for making a claim.

Assemblywoman Bustamante Adams:

That concludes our presentation.

Chairman Bobzien:

We have some questions we would like to ask.

Assemblywoman Bustamante Adams:

I would like to state that we have here Alexia Emmermann, who is the Insurance Counsel for the Division.

Assemblywoman Carlton:

I think it is important for us to understand that the item of controversy is the policy in effect on the date of death. Do people lose this because they did not pay the premium and did not know it existed, and then it does not go to the rightful beneficiary? Do I understand that correctly?

Annette James:

There are a couple ways to answer this. First of all, the benefit is due upon the triggering event, which in the case of a life insurance policy is death. When the death occurs, that is what triggers the payments of the proceeds of the death benefit.

I would leave it to the life insurance representatives to articulate their concerns because they can probably do it better than I can. To answer your question, no, the benefit is due upon the triggering event. If the policy is in force at the time of death, a benefit is due. That is the obligation of the insurer, and that is not diminished because of something that happens after death.

Assemblywoman Carlton:

Because this is controversial, I suppose there may have been some differences in opinion on this issue in the past amongst the industry, the Division, and beneficiaries? Am I reading that correctly?

Assemblywoman Bustamante Adams:

From my involvement in the past five to six months, that was my takeaway. As I said, we could not resolve that one issue. The industry is represented today, and they were involved through the entire process. I could not get to a compromise. I am looking for help. You will be able to hear their perspective and perhaps help me to make sure Nevadans are protected and the industry feels they are not overburdened, although I am not sure if that is the right word. It will be good to hear what they think the issue is.

Chairman Bobzien:

Do we have additional questions from the Committee? [There was no response.] I have one. In the amendment ([Exhibit M](#)), there is a process for the Insurance Commissioner exempting companies from complying in the new section 10. Are you contemplating a full hearing process for that to go forward? Does the Insurance Commissioner make the decision? The new language states, "The Commissioner may issue an order. "

Annette James:

That provision is intended to give the Commissioner discretion with regard to insurance companies that believe these provisions would be too onerous an imposition.

Chairman Bobzien:

How is that discretion exercised? Is there a hearing process?

Annette James:

That would be through the normal, regulatory process.

Chairman Bobzien:

I want to know if there will be some discussion about the Commissioner and what that will look like.

Annette James:

The intention here is that regulations will be promulgated in order to clarify the process.

Chairman Bobzien:

Good. Do we have additional questions?

Assemblyman Ohrenschall:

I have a quick technical question. I believe the witness from the Treasurer's Office testified that the bill's model legislation is supported by the National Conference of Insurance Legislators (NCOIL) and also by the

National Association of Unclaimed Property Administrators. Prior to that we were in sync with uniform act. Will we still be in sync with the uniform act? Are other states adopting this model legislation as well?

Kelli Miller:

Yes, it is still in sync with it. Eleven states have proposed the legislation. Some have passed, and only one has declined to accept it. The real reason this started was because of audits of insurance companies. The audits found that they were not making the DMF search. They did not know that the owner had passed. That is how the unclaimed property programs across the United States came together to figure out how we can make this a unified method in which we can receive the funds in a timely fashion and give them back to the families.

Assemblyman Ohrenschall:

Thank you.

Assemblywoman Bustamante Adams:

To answer that, there is model legislation, but you have to adapt it to your state. What works in Kentucky may not work for Nevada. That is the pain point here. It is model legislation, and see what works for Nevada. There was that one point of disagreement, and you will be able to hear that so we can decide what is best.

Annette James:

If I may, I realized I did not fully answer Assemblywoman Carlton. I would like to do so. I believe Assemblywoman Carlton asked what exactly the disagreement was with the industry. My understanding, and of course they can correct it when they come up to the table, is that instead of looking at policies in force at the time of the insured's death, they would like to match up policies that are in force at the time of the search. That is the point of disagreement.

Assemblywoman Carlton:

If they would like to match them up at the point of the search, and the search is after a premium has been skipped and the policy has lapsed, that beneficiary has missed his or her opportunity. Would that be an appropriate understanding of that?

Annette James:

That would be correct. That is our concern.

Assemblywoman Bustamante Adams:

Since the person for the industry is here, would it be okay to go to the opposition portion? That is your discretion?

Chairman Bobzien:

Do you anticipate anyone else coming up in support?

Assemblywoman Bustamante Adams:

No, I do not.

Chairman Bobzien:

We will move to the opposition.

Assemblywoman Bustamante Adams:

Industry has been involved in the discussions, and we really appreciate it. They have been an integral part every step of the way. It was painful to not come together. I told them it is not the end.

Chairman Bobzien:

Gentlemen, it is not the end, but we are getting close to the end of the hearing.

John Mangan, Regional Vice President, State Relations, American Council of Life Insurers:

I believe, based on prior testimony, we may be able to suggest a way forward that can solve the issues at hand, now that I understand a little better what the issue was.

I want to introduce our group, which is the American Council of Life Insurers. We represent 300 companies that do business nationally, and most of which do business in Nevada. I want to point out quickly that we currently have a set of laws that requires us to receive a claim before we pay the benefit. When we receive a valid claim, we pay that claim. If, through all of our diligent efforts, we cannot find the beneficiaries of that policy, then our obligation is to turn over those funds to the state as an escheat. As the State Treasurer's representative accurately pointed out, that is exactly what we are doing. We have been living under those laws for many years, and we have been very successful. We have more than 650,000 life policies in Nevada, and in 2011 alone, we paid \$2 billion in life insurance benefits. The system does work.

We acknowledge that with the change in data collection and technology, there are new and better ways to try to find people. One of those ways is through our own more sophisticated databases and through federal databases like DMF, which is a Social Security database.

The problems with lost policies are mostly related to policies sold in the 1940s, 1950s, and 1960s and in rural areas. This is when people went door-to-door to sell policies. There were no electronic records or social security numbers

collected. In fact, social security numbers were not really collected until the 1980s. We have a lot of paper files. Our companies' contracts that we will be searching under this bill go back 10, 20, 30, or even 50 years or more. Those records may not be in an electronic form.

Working with Assemblywoman Bustamante Adams and with the National Conference of Insurance Legislators (NCOIL), we helped craft the model law into a workable approach for us to do a better job of finding people we cannot find through the matching of our database against their database. We agreed with all the stakeholders at the beginning to come forward in support of this legislation as long as we could reflect the NCOIL model, either in large part or in functional part. We are virtually there. We only have the one issue that Ms. James mentioned. The reason we have a problem with it is not because of what she just explained; it is because we think the language is ambiguous. We got wind of this two days ago because this amendment was just presented to us then. We have not had time to digest it. Our concern is that it is not clear and might be overly broad.

In answer to Assemblywoman Carlton's question earlier, if someone is insured under one of our policies, and he or she dies while insured, we are going to pay that claim. If we do not know where the insureds are, we are going to try to find them. If we do not know who they are, or if they died, we are going to do the data match under this bill, and we will do that twice a year with all of our in-force contracts and try to find that match. If we find it, we will pay it.

Our concern with the language is that it might take us into an area where all lapsed policies would need to be searched, and policies lapse for different reasons. Some people stop paying just because they stop paying. For some people, we lose their address, and it may have been lapsed for many years. To try to distinguish that one case is very difficult. That does not mean we are not going to try. We think there is a way to do that through normal, regulatory means.

To solve this problem, we would like to suggest that we make a small technical amendment to section 8, subsection 1 of the proposed amendment ([Exhibit M](#)) and go back to the model language, which I think the stakeholders were in support of from the beginning. We would then pledge to work with the Division of Insurance to address the very specific issue they have raised. We think we are already taking care of those people. We could do that in a regulatory manner as opposed to the legislation.

The amendment we propose is very simple. This is a change to the amendment that has been presented to the Committee. It would simply change the phrase

"in force at the time of the insured's death." Again, our match is a data match of about a million records in Nevada. We are not sure which insured is being referred to there. We would say, "in force at the time the comparison is performed." That would solve our problem, and we would be in support of the bill. I think we could also solve the Division's concern by walking through those examples and showing that we have taken care of those people. That is our proposal, and if you have any questions, I would be happy to respond.

Assemblyman Daly:

If you go to that language you were just talking about, versus insured at the time of death, which should be the standard versus the time you made the match. There is a gap in there. You do it once every six months, so if a person dies one day after you did the match, and you do not do it again for six months, that is basically a year. He was insured when he died, but two months after that the insurance policy lapses. I do not know if that solves the problem. There is a six-month gap, the way I see it.

John Mangan:

One thing that I think helps solve this issue is that the definition of the insured is somebody who is covered under one of our policies. If the person is covered at the time of death, we are going to pay the benefit. Perhaps we do not know about the death yet, so that is the whole purpose of the match. It is to figure out if somebody has died and we do not know about it because the beneficiaries did not know to submit a claim. The match could tell us that there is somebody in our portfolio who died while insured. If we find that, we will pay the benefit.

If someone is on a cusp, and he or she had a lapsed policy in the last three or five years, and we find, through the Insurance Commissioner's Office or through the beneficiary, that the person did die while insured, and the policy lapsed just because we could not find them, then we will deal with that and pay the claim.

From a regulatory standpoint, we are going to take care of those claimants, and the bill requires us to do that. Anyone who is insured, as defined, is going to be subject to the search, and when we match the names, we will go after them and help them file a claim.

Michael Hillerby, representing American Council of Life Insurers:

If I understand Assemblyman Daly's question, for most of the people who die and are eligible for a benefit, their family would make a claim in the normal process, and they would be paid. We do not wait for that DMF. Those are people we have never gotten a claim on, so they are the ones who fell through the cracks. As Mr. Mangan said, it could be because the family did not know

about the policy for whatever reason. If they have not made a normal claim, every six months we would be checking that DMF to actively go out and find them. It is not a matter of only every six months we would be paying claims.

Assemblywoman Carlton:

I think I heard the answer I was looking for. When you said we will deal with it and pay, I need to clarify that phrase in between. I will give you the same example. Let us say that a person dies, the policy lapses, and you find out about it months later. If the policy was in effect on the date of death, you will pay the claim.

John Mangan:

If the policy is in effect when the person died, if the claim vested while they were covered, we will pay that claim. If we do not know about it yet, which the case could be, and if the Commissioner gets wind of it, or if a beneficiary comes to them and says, "My mother's policy lapsed, and she died, and I am worried she will lose her benefit," then all they need to do is bring it to the company's attention and show the person was insured. We will verify that, and if that date of death was while they were insured, they will get that benefit.

Assemblywoman Carlton:

Since this bill also impacts annuities and retained asset accounts, is the discussion we are having going to have an impact on those provisions also? Is there any controversy there we need to be aware of?

John Mangan:

I do not think there is any different treatment. If we have lost track of someone's account, the match will find that person who died, and that account money will go to heirs or estate. The same goes for an annuity. The match is going to help us get the benefits to the beneficiary.

We may fail in finding that beneficiary, in which case we will turn the money over to the State Treasurer just as we always have. This is a more proactive way to speed up that process and stimulate the claims to find the people who have lost their policies and reunite them with the benefits or turn it over to the State.

Assemblywoman Carlton:

That money does go to the State Treasurer. Do we have any idea how much money we are talking about that you have turned back to the State?

John Mangan:

In conversations with Ms. Miller, I think she mentioned there were thousands of policies in number. The average face amount of those policies was fairly small. If I recall, it was in the nature of \$1,000 to \$2,000. That verified to us that these are most likely older policies. We only sell \$15,000 and above. The average policy in Nevada is about \$100,000. Most likely, those are older and were lost because of the lack of a social security number.

Yes, they have been able to reunite people with lots of money. One thousand dollars is still a lot of money to an individual. They have done a great job. That is why we have enjoyed working with them. We really wanted to see Assemblywoman Bustamante Adams' desire to make this happen. We would like to be in support of the bill, if we could just reflect the model language in that one section and work with the Division of Insurance to resolve any concerns they have.

Assemblyman Daly:

I think this will be my last question. When you have the electronic list, the matches are easy enough to make off this DMF. But say you have a policy on paper, and not electronic; it has been lapsed for five years, and you find somebody died just last week, but you do not owe anything because it was not in force at the time. How do you go back and check the paper files? Is that a problem we are trying to fix here? Can you scan the papers to make electronic files?

John Mangan:

It is a very good question. As a result of this bill, our companies will, over the next year, convert many files to searchable electronic form. A scan does not do it. They will have to convert it and go in and modify their systems. They need to subscribe and pay money for the federal DMF database. When they do the match, it is not always perfect. Sometimes "John" will come out as "Jack" or initials will be missing. They then will have to go in and make a personal investigation to match it up. There is some work involved. Our companies are actively doing that. Over the last three years, because of the exposure on this issue, our large companies have gone back and manually checked all those paper records and microfiche, and that is one reason the Treasurer has seen some large amounts of money coming into unclaimed property. That has been a good success story.

Chairman Bobzien:

Are there any final questions for the panel? [There were none.] Mr. Griffin, I believe you have some varying testimony.

John Griffin, representing United Insurance Company of America:

I echo the comments of the other people sitting with me here. Our biggest concern is that this is not necessarily a better way of going about it but a different way. It actually puts a larger affirmative duty on the insurance company to actively go update and search than was ever in existence at the time the insurance company entered into the life insurance policy with the insured.

Therefore, it is my client's position that under Nevada law, an insurance policy is a contract. To the extent of this law, if it is applied retroactively to policies in current effect, my client's position is that it violates the *United States Constitution*, and the *Nevada Constitution* in Article 1, Section 15, as an unlawful impairment of an existing contract. My client is completely fine with implementing this new system and overhauling how they go about doing things if it is on a go-forward basis. If this passes, the law must apply prospectively to all policies, annuities, et cetera executed in this state and issued and entered after the effective date of the act, so we can revise all the processes going forward to accommodate the new procedures in the new law.

The only other comment I have to make is that you hear about uniform acts and model legislation. I am not sure this is model legislation as most people would understand it. It has been in 11 states, and in most of those 11 states, it does not look model. It looks different in almost all states. In one state, Kentucky, the courts overruled the act for being an unlawful impairment of contract. The primary sponsor of the bill in Alabama recognized the problems with retroactivity and has now sponsored an amendment to fix the retroactivity provision, which is our concern. The other two states are in the process of amending or litigation scenarios in regard to retroactivity.

Our position is that this is fine and a great concept, but let us make sure it applies prospectively.

Assemblywoman Carlton:

I really want to understand this. When you say going forward, do you mean any new insurance policy or any new claim that is issued? If I have to go back and redo my policy to make sure my family gets their benefits, I want to make sure I understand what you are referring to when you say going forward.

John Griffin:

My response to that would be all insurance policies issued or written after the effective date of this act. No, it would not apply to your example you have in effect. We have a whole different set of procedures and staffing.

Assemblywoman Carlton:

You and I can always have an off-line discussion. You realize your proposal basically guts the protections that are put in this bill for those of us who have policies for ourselves, our children, and grandchildren.

John Griffin:

My only response would be that this is not lessening any protections or weakening anything. It is changing how it goes about. It does not mean it is better or worse, just different.

Assemblywoman Carlton:

It means there will be two levels of the way these policies are dealt with concerning the DMF. We will have old policies and new policies. If the policy is lapsed, how would your company answer that question? Would they deny the claim if the policy had lapsed after the death but they did not realize it?

John Griffin:

No, we would not deny the claim. We are under contract under law. We currently do everything we can to get the proper beneficiaries their benefits. We are not fixing a problem; we are changing a process with this bill.

Assemblywoman Carlton:

Another bifurcated system. We would be treating one set of customers one way and another set another way. I think that would cause more confusion for the industry than less confusion. You and I can debate this.

Chairman Bobzien:

To that, I think our legal counsel can look into this and dig around a little bit to make sure the Committee is more comfortable with these issues. Do we have any additional questions for Mr. Griffin? [There were none.] Is there anyone else in opposition? [There was no one.] Is there anyone in the neutral position?

Steve George, Chief of Staff, Office of the State Treasurer:

I came up here neutral because I want to end on a good note, giving thanks to Assemblywoman Bustamante Adams on this bill. I want to say the reason this came about was because a lot of insurance companies were in lawsuits because they had been doing exactly what Assemblywoman Carlton had been saying.

We have reached several settlements with companies, and there are more settlements coming because they were not necessarily doing the due diligence to find the rightful owners or heirs. That is where this came from. The state treasurers across the country are on this as well as unclaimed property administrators and NCOIL. I want to remind everyone about that. It did not come because there was not a problem. It came because there was a problem.

On a good note, meeting with Assemblywoman Bustamante Adams, I want to applaud her for the way she went about this bill. She got all the players in the room together several months ago. We met several times and went back and forth on different issues. I want to applaud her for her work on doing it that way. It is nice to all be at the table trying to talk about it. The insurance industry has been a great player in this. They have sat with us in every one of these meetings and talked about it. I am sure some good solutions will come out of this.

Chairman Bobzien:

Are there any questions for Mr. George? [There were none.] Assemblywoman Bustamante Adams, do you want share some brief comments to bring us home?

Assemblywoman Bustamante Adams:

I want to tell the Committee members that this is not about paying the benefit. The plain point is when do you make the match? Is it when the person dies or when you find out the person is dead? That is where the in-force issue comes in. I look forward to having a little bit more time to resolve it. We are very close. It was that one issue we could not resolve. I appreciate any suggestions and instructions. Not being from this field of expertise, I had to learn in layman's terms so I could understand it. I would still like to work with the industry to work out that one issue so we can continue to make sure Nevada has great policy.

Chairman Bobzien:

It sounds as if the opponents are willing to work as well. We will close the hearing on A.B. 226.

The meeting is adjourned [at 5:48 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 27, 2013

Time of Meeting: 1:33 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 228	C	Assemblyman Tom Grady	Proposed Amendment
A.B. 228	D	Edrie LaVoie	Prepared Testimony
A.B. 228	E	State Board of Medical Examiners	Comments
A.B. 228	F	Stan Brock	Written Testimony
A.B. 334	G	David Brown	Statement of Opposition
A.B. 334	H	Nevada State Contractors Board	Guide to Hiring Contractors
A.B. 385	I	Julie Samuels	Letter
A.B. 326	J	Assemblyman Paul Aizley	Proposed Amendment
A.B. 322	K	Assemblyman Paul Anderson	Prepared Testimony
A.B. 226	L	Kelli Miller	Prepared Testimony
A.B. 226	M	Assemblywoman Bustamante Adams	Proposed Amendment