

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

**Seventy-Seventh Session
March 29, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 12:16 p.m. on Friday, March 29, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman Crescent Hardy
Assemblyman James W. Healey
Assemblyman William C. Horne
Assemblyman Pete Livermore

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)



GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Washoe County Assembly
District No. 27

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Neena Laxalt, representing Nevada Dental Hygienists' Association,
Nevada State Board of Veterinary Medical Examiners
Shari Peterson, Legislative Chair, Nevada Dental Hygienists' Association
Joanna Jacob, representing Nevada Dental Association
Robert Talley, Executive Director, Nevada Dental Association
Lancette VanGuilder, District XII Trustee, American Dental Hygienists'
Association
Nancy Dockery, Program Manager, Future Smiles, Las Vegas, Nevada
Annette Lincicome, Dental Program Manager, Huntridge Teen Clinic,
Las Vegas, Nevada
Ramundo Barba Martin, Private Citizen, Las Vegas, Nevada
Syd McKenzie, Private Citizen, Reno, Nevada
Scott Kipper, Commissioner of Insurance, Division of Insurance,
Department of Business and Industry
Adam Plain, Insurance Regulation Liaison, Division of Insurance,
Department of Business and Industry
Jon Hager, Executive Director, Silver State Health Insurance Exchange
James Wadhams, representing Nevada Independent Insurance Agents,
Nevada State Association of Health Underwriters, Nevada
Association of Insurance and Financial Advisors, and Anthem
Blue Cross and Blue Shield Insurance Company
John Griffin, representing Titlemax
Katie Grove, Vice President of Government Relations, TMX Finance,
Smyrna, Georgia
Keith Lee, representing Consumer Loans of America, Distilled Spirits
Council of the United States, and Board of Medical Examiners
Dan Wulz, Attorney, Legal Aid Center of Southern Nevada

Chris Ferrari, representing Dollar Loan Center
Scott Scherer, Counsel, Dollar Loan Center
Alfredo Alonso, representing Southern Wine and Spirits
Leif Reid, representing Southern Wine and Spirits
John Sande IV, representing Wirtz Beverage Nevada
Robert Ostrovsky, representing Employers Insurance Group
Judy Osgood, Senior Policy Analyst, Office of the Governor
Suzanne Connell, Private Citizen, Reno, Nevada
Judi D. Kennedy, Executive Director, Nevada State Board of Optometry
Michael Hillerby, representing Nevada State Board of Accountancy
Kim Frakes, Executive Director, Board of Examiners for Social Workers
Dana Whaley, General Manager, Carson City Toyota Scion
Ray Bacon, representing Nevada Manufacturers Association

Chairman Bobzien:

[The roll was called, and a quorum was present. Committee protocol was explained.] I will open the hearing on Assembly Bill 277.

Assembly Bill 277: Revises provisions governing dental hygienists. (BDR 54-788)

Assemblywoman Teresa Benitez-Thompson, Washoe County Assembly District No. 27:

Assembly Bill 277 was pursued by the Nevada Dental Hygienists' Association on behalf of the Nevada dental hygienists who hold a special endorsement to practice public health dental hygiene. The bill reinforces the intent that a board-approved public health dental hygienist may perform various duties without the approval or supervision of a dentist. [Read from prepared testimony ([Exhibit C](#)).]

An advisory opinion by the state board was rendered and is included in the supporting document in the Nevada Electronic Legislative Information System (NELIS) ([Exhibit D](#)).

Assembly Bill 277 reflects the interpretation rendered by the Board of Dental Examiners of Nevada on March 7, 2013. [Continued to read from prepared testimony ([Exhibit C](#)).]

I would like to thank the three organizations who worked together to come to a resolution on the interpretation of the regulations. It has been a long labor for the dental hygienists and those who hold the endorsement, the Nevada Dental

Association, and the Board of Dental Examiners to find a resolution. There is an amendment proposed to resolve a number of issues.

Chairman Bobzien:

Will the next presenters please go through the bill.

Neena Laxalt, representing Nevada Dental Hygienists' Association:

I will have Shari Peterson explain the amendment.

Shari Peterson, Legislative Chair, Nevada Dental Hygienists' Association:

In the original bill we tried to outline what we felt would be specific so that those who have a public health endorsement would be able to practice in a certain way. After we met with the Dental Association and the Board of Dental Examiners, it was suggested we seek an advisory opinion as to the interpretation of what was currently in regulation ([Exhibit D](#)). After that opinion was rendered, we offered an amendment ([Exhibit E](#)) that eliminated much of the language because we wanted it to mirror the advisory opinion from the Board of Dental Examiners. In working with the Dental Association, they offered a friendly amendment. It falls within the verbiage of the advisory opinion.

We wanted to add greater clarity for those dental hygienists who are working with a public health endorsement. We want those who are interested in gaining a public health endorsement and starting oral health dental hygiene programs to know how to do it and be assured that they are fully supported. As things evolved, there was a different interpretation. By putting this into statute, it will provide clarity.

Chairman Bobzien:

Can you summarize the opinion?

Shari Peterson:

It states that a dental hygienist who has been granted a public health endorsement can work without the supervision of a dentist or without the authorization of the patient's dentist of record. Currently we have an annual renewal of the endorsement. We feel it would be better to report that when we renew our licensure every two years. That is the only thing in the bill that is not in the advisory opinion. With the endorsement, when we renew our licensure, we would report the facilities where we would be practicing. This will allow us to have a universal public health endorsement. Currently, we have to have a public health endorsement for each facility where we work, and each one needs to be approved by the Board of Dental Examiners. If there is a program which

wants to be able to work in that capacity, they can seek approval from the Board.

Chairman Bobzien:

Are there any questions regarding this amendment? Seeing none, please begin, Ms. Jacob.

Joanna Jacob, representing Nevada Dental Association:

I have Dr. Robert Talley in Las Vegas to make opening remarks.

Robert Talley, Executive Director, Nevada Dental Association:

The Dental Association has worked with the Dental Hygienists' Association and the Board of Dental Examiners during the interim. We are in support of this bill as amended.

Joanna Jacob:

We have reviewed the advisory opinion and we amended the Dental Hygienists' Association proposed amendment to make one point clearer. Our amendment ([Exhibit F](#)) clarifies the point in the advisory opinion that says a program that employs only public health endorsed hygienists does not have to have a dental director. If that program should employ hygienists without the endorsement, then the dental director requirement does apply. Our real intent is to make sure that this advisory opinion goes into statute to make sure there is clarity going forward.

Chairman Bobzien:

Are there any questions?

Assemblywoman Carlton:

I understand when people want to put the *Nevada Administrative Code* (NAC) into statute sometimes, but that excludes lack of flexibility as the profession changes. It means if something arises during the interim, no changes can be made until the next legislative session. The Association said they wanted to make sure the language was codified but in your original version of the bill, you were trying to codify all of the NACs. I want to know why some are included and some are not. If we are going to codify the scope of practice—and we do that with most professions in the state—it must come back to the Legislature for changes. Why would we want to include some but not all? Was there bargaining about this issue?

Joanna Jacob:

There was not a bargaining chip. The original language that went to the Legislative Counsel Bureau (LCB) gave the intent of the original regulation.

What came out of LCB was anything that could possibly be affected by the changes. We wanted to make this as simple as possible and retain the original intent. We thought the simple language would be acceptable by all entities. Sometimes when you are merging you take laundry lists out of regulations if things happen in a period of time. We felt this was an overarching change and did not have to be subjected to including a laundry list of additional items.

Assemblywoman Carlton:

By eliminating this language and not putting it into statute, I have concerns that the Board could change some of these things through the NACs to significantly change the profession without coming to the Legislature. To codify parts of this, and not others, sends up a yellow flag about the true motive of how this language is being crafted.

Neena Laxalt:

The reason the bill was so expansive was that we were not sure we were going to get the advisory opinion in time. If the dental hygienists did not agree with the advisory opinion, we intended to codify the original intent of the first legislation and clarify it. The advisory opinion had the same intent as we proposed in the original legislation. Therefore, we agreed to drop the language and go forward with the licensing.

Chairman Bobzien:

Are there any questions? Seeing none, we will move to the proponents.

Lancette VanGuilder, District XII Trustee, American Dental Hygienists' Association:

I speak in favor of A.B. 277 with the friendly amendments. The American Dental Hygienists' Association is actively involved in the conversation regarding public health policies in the United States. The national association recognizes the unmet needs of groups such as low-income children, pregnant women, elderly, and people who are developmentally, physically, or mentally compromised. We advocate for oral health programs to prevent disease, promote health, and solve problems among these populations. The Association also advocates for community-based oral health programs, school-based dental sealant programs, and the use of licensed dental hygienists in community health programs. It is the opinion of the American Dental Hygienists' Association that oral health care should be a fundamental component of total health care and is the right of all people. Lack of access to oral health care is a critical issue in the United States, especially in Nevada. Licensed dental hygienists play a vital role in eliminating these disparities and assuring quality oral health care for all.

Nancy Dockery, Program Manager, Future Smiles, Las Vegas, Nevada:

We are a school-based nonprofit that provides preventive dental care. We are in favor of A.B. 277 and its amendments. We provide preventive care only for our most vulnerable, the low-income and uninsured. The public health dental hygiene endorsement has allowed the Future Smiles dental hygienists to provide services in a cost-effective manner and encourage access to care by being in the schools. I brought some testimonials to show how so many of our students and their families are affected positively by what we do. In clarifying the interpretation, the bill will encourage more licensed dental hygienists to work in public health and focus on those most in need.

Chairman Bobzien:

Are there any questions? [There were none.] Are there others in support?

Annette Lincicome, Dental Program Manager, Huntridge Teen Clinic, Las Vegas, Nevada:

Since its approval by the Nevada State Board of Dental Examiners in 2001, the public health dental hygiene endorsement has allowed dental hygienists to provide dental hygiene services in designated facilities without the supervision or authorization of a dentist. In October 2001, I began working as a public health endorsed dental hygienist at the Huntridge Teen Clinic. Since then, the language of the endorsement provided in NAC 631.210 has remained the same, but the interpretation has been questioned over the last couple of years.

The Huntridge Teen Clinic is a nonprofit 501(c)(3) organization dedicated to providing low-cost or free medical and dental care to adolescents age 12 to 18 who are uninsured, ineligible, or unable to obtain care elsewhere in Clark County. I provide all of the care to our patients at the clinic. A group of about 20 volunteer dentists from Clark County, and some from as far away as New Jersey and Georgia, as well as dental students from the University of Nevada, Las Vegas School of Dental Medicine, provide the restorative dentistry for our patients. Our patients are encouraged to pay \$20 each time they visit the clinic, but no patient is turned away for inability to pay. All significant funding for the dental program comes from grants and private donations solicited by our Executive Director, Steve Williams. An on-call dental assistant and I are the only paid employees of the dental program.

A couple of years ago, I was informed by the Nevada State Board of Dental Examiners that the Huntridge Teen Clinic was required to have a licensed dentist as its dental director. There is no funding in our limited budget to hire a dentist to be the director, especially since our original understanding of my position was that my endorsement allowed me to practice without supervision or authorization of a dentist while at the Huntridge Teen Clinic. In the advisory

opinion rendered on March 7, 2012, John Hunt, the Board of Dental Examiners' counsel, stated that we do not need a dentist as a dental director in keeping with the original intent of NAC 631.210. His opinion has breathed new life into the clinic.

For the past 11 years, I have often spoken to groups of dental hygienists about my opportunity to provide preventive care to literally thousands of teens who have no other access to dental care. I received a national award from the American Dental Hygienists' Association in 2006 for my work to provide care for at-risk teens. It has changed my life and I believe it has changed the lives of many of my patients as well. Hygienists are almost universally interested in becoming involved in a similar program. Beginning a new program was a daunting if not impossible task because of the uncertainty of the interpretation of legislation regarding public health dental hygienists. With the advent of A.B. 277, and its clarity on the dental hygiene public health endorsement, I believe more dental hygienists will be inspired to make the move into public health dental hygiene and help those without access to become healthier.

I would like to read a portion of a letter I received from a former patient in July 2010. Alex had just recently reached the age of 19 and was no longer eligible to receive the services of the clinic. His letter said, "Dear Annette, you have brightened my smile in more ways than one. Over the course of several years that I would go to dental cleanings, you saw me grow from losing my braces to going from a lowly freshman to a mighty senior, graduating high school, and even my very first year of community college. You were there as witness. I have so many things to thank you for that a simple letter with my thanks is not enough to fully repay or even account for the services you have provided me. The work that you have done for me and still continue to provide for the community at the Huntridge Teen Clinic has been fantastic. Thank you so much, Annette, for all that you have done. I will continue to appreciate it for the rest of my life. Sincerely, Alex." Thank you.

Chairman Bobzien:

We will move to the next presenter.

Ramundo Barba Martin, Private Citizen, Las Vegas, Nevada:

I went to the Huntridge Teen Clinic between ages 12 and 19. At first, because I had amelogenesis imperfecta, I thought they would tell me what everyone else did. But Annette gave me hope and fought for me. If she had not helped me, I do not know what would have happened to me. I cannot put into words how thankful I am to have found Huntridge Teen Clinic and I am especially thankful for hygienist Annette. Thanks to her hard work and her passion, she found treatment for me with three doctors. It would not have been possible without

her. She searched long and hard to find help for me. Huntridge Clinic and Annette truly changed my life. I believe it is important to have clinics that offer treatment to those who without them would not get any help at all. Thanks to the Huntridge Clinic and Annette, I have a smile on my face today.

Chairman Bobzien:

Are there any questions? Seeing none, is there any other support?

Syd McKenzie, Private Citizen, Reno, Nevada:

I have been a dental hygienist in Nevada since 1976. I am in full support of this bill. It will help clarify and keep consistent the dental hygienist endorsement for all dental hygienists in Nevada, and it will make it much simpler to do the work we need to do for people in need.

Chairman Bobzien:

Are there any questions? [There were none.] Is there anyone else in support? [There was no one.] Is there anyone in opposition? [There was no response.] Is there anyone to testify from a neutral position? [There was no response.] I will close the hearing on A.B. 277 and open the hearing on Assembly Bill 425.

Assembly Bill 425: Revises the Nevada Insurance Code. (BDR 57-1156)

Scott Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:

The Division has submitted two pieces of legislation this year ([Exhibit G](#)). This bill makes changes to and conforms with the *Nevada Revised Statutes* (NRS) to allow enforcement of the Affordable Care Act (ACA) that was signed by the President of the United States in 2010. Nevada is one of the states that has taken the lead in implementing the ACA as evidenced by the work of the Silver State Health Insurance Exchange (SSHX). We desire to amend the NRS to reflect the ACA and to provide the Division of Insurance greater and clearer regulatory oversight to provide additional protections for Nevada consumers.

I will walk through the provisions of the bill. Sections 1 through 26 establish a certification program for exchange enrollment facilitators. The facilitators will be operating under the titles of navigator, assister, or certified application counselor. They are required by federal law to perform the enrollment function and assist those who are seeking coverage on the health insurance exchange. The Division believes in two principles. These individuals who will be assisting Nevadans must be properly educated, and they must have a level of accountability in the case that they do not provide the services they are trained to do. This language mirrors the requirements for our producers, more commonly known as insurance agents or brokers. They have to go through a

significant amount of training and education as well as continuing education requirements. We have roughly 115,000 licensed producers, of whom roughly 20,000 are Nevadans. The remainders are nonresident producers.

Sections 27 through 51 address the individual health insurance market statutes and bring those into compliance with federal rules. Those permissible rating areas as mentioned in this section will now only include age, family composition, geographic area, and tobacco use. Age will be limited to a 3 to 1 ratio, and tobacco use will be limited to a 50 percent surcharge.

Sections 52 through 63 bring Nevada's large group health insurance market statutes into compliance with federal rules. Sections 64 through 87 do the same with small group health insurance. Sections 88 through 118 transfer the network adequacy provisions for health maintenance organizations from the State Board of Health to the Division of Insurance. We intend to also make sure that organizations operating as preferred provider organizations (PPO) maintain an adequate network of providers. This is a crucial piece in consolidating the network adequacy standards into one regulatory agency.

Section 119 lists all of the statutes that have become obsolete under the ACA, and we propose these be repealed.

Chairman Bobzien:

Are there any questions?

Assemblyman Hardy:

Could I get more depth in sections 21 and 22?

Scott Kipper:

This addresses nonresidents who wish to be exchange enrollment facilitators and to make sure they are treated similarly to our resident enrollment facilitators. Our passing requirement on the test is 80 percent. Many other states have lower requirements. We want to make sure these individuals are trained adequately to deal with our consumers and they are up to speed on Nevada statutes.

Assemblywoman Carlton:

It would be helpful for the Committee to know how you define the assisters and navigators and the level of education required for them. I have some concerns about developing some of these things in regulation. I think we should have some statutory outline. Could you also elaborate on what the fees might be?

Scott Kipper:

We charge a \$195 application fee for producers. This covers our costs to administer the program, including the tests. There will also be a background check and there will be a fee for that. We want to make sure that any individual dealing with Nevada consumers is who he says he is and does not have a nefarious background. There is a network of vendors who provide pre-licensing education. Their services vary in cost, but the total cost is about \$550 to complete the certification, which is similar to becoming an insurance agent or broker.

Assemblywoman Carlton:

Is that for the navigator and the assister?

Scott Kipper:

The program will certify an exchange enrollment facilitator. Once we provide that certification, that individual will go to the SSHX and be designated a navigator, an enrollment assister, or a certified application counselor. The difference between those positions is how they are compensated and how they can deal with consumers.

Assemblywoman Carlton:

Will the education levels be different?

Scott Kipper:

No, I think the education level will be similar or the same for all three.

Assemblyman Hardy:

In section 10, line 27, why are we requiring a completed fingerprint card?

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

The people who will be enrolling Nevadans on the SSHX have the potential to access possibly sensitive, personally identifiable information such as name, address, social security number, and income tax records. The fingerprint requirement is there to protect Nevada consumers and weed out any potential bad players in the field.

Assemblyman Hardy:

Why are we eliminating the role of the Nevada State Board of Health and making this the Commissioner's responsibility?

Scott Kipper:

Section 98 is the network adequacy provisions. We believe, since we are going to oversee the provisions inside and outside the exchange, and across the marketplace including PPOs and health maintenance organizations (HMO), it made the most sense for the Division of Insurance to manage the network adequacy provisions because of the broad oversight we have on the marketplace.

Assemblywoman Carlton:

What about the sections that are going to be repealed? Could we get an executive summary?

Scott Kipper:

This repeals many of the provisions that have become obsolete under the ACA. For example, we have a provision in statutes that provides for a Health Insurance Portability and Accountability Act (HIPAA) Board for people who lose eligibility for insurance. That is no longer necessary since individuals will be able to go to the SSHX for guaranteed issue. The protections are no longer needed. We would be glad to put together an executive summary of all the provisions to be repealed.

Assemblywoman Carlton:

I see some methodology for determining rates and want to make sure I understand where the safeguards are for rates, because that is very important to our constituents. Will medical discount plans still be viable in the state? If they are not, where can I find the citation to be repealed?

Scott Kipper:

Medical discount plans will still be available for consumers to purchase. We believe that the need for discount cards may not be as important because of the guaranteed availability of insurance. This will not affect the regulatory oversight of those, but it may address the diminishing need for them.

Assemblywoman Carlton:

My concern is that people will purchase the discount cards and think they are purchasing insurance, but they are not. Some of them are reputable and some are not. I think it will be confusing to people, and I cannot understand why we will still have medical discount plans in the state when we are incentivizing and pushing people toward having true quality health care.

Scott Kipper:

Your point is well made. The Division has a federal grant, as does the SSHX, to provide educational materials to the consumers. We can certainly include a provision that addresses medical discount plans.

Matt Mundy, Committee Counsel:

The parameters for the new rate requirements are in section 33. They include geographic area, age, and tobacco use. A couple of those have some specific ratios that are applied to the new rates, but those are encompassed in this section.

Assemblywoman Carlton:

I will continue to do a deeper investigation into the rates.

Chairman Bobzien:

Do we need a perspective from the Silver State Health Insurance Exchange?

Jon Hager, Executive Director, Silver State Health Insurance Exchange:

I want to provide our support for A.B. 425. This is a vitally important bill for us to get our navigator and assister program off the ground. The network adequacy piece is also very important to us. This bill helps us implement the exchange and helps us ensure that our regulatory partner, the Division of Insurance, can do what they need to make sure our consumer is protected.

Chairman Bobzien:

Are there any questions? Seeing none, are there others to testify in support? [There were none.] Is there anyone in opposition?

James Wadhams, representing Nevada Independent Insurance Agents, Nevada State Association of Health Underwriters, Nevada Association of Insurance and Financial Advisors, and Anthem Blue Cross and Blue Shield:

I support the tenor of the bill, but I represent insurance providers and have not had comments from them. I do not anticipate anything but some drafting comments, but because of the rules of this session, I am obligated to appear in opposition. I would ask the Chair if he would entertain any amendments should any come forth before the work session on the bill.

Chairman Bobzien:

We would need amendments early next week. Are there any questions for Mr. Wadhams? Seeing none, is there anyone else in opposition? [There was no one.] Is there anyone to testify from a neutral position? Seeing none, I will close the hearing on A.B. 425. I will open the hearing on Assembly Bill 430.

Assembly Bill 430: Revises provisions governing title loans. (BDR 52-974)

John Griffin, representing Titlemax:

I have provided a handout ([Exhibit H](#)) and a map that shows in which states the title loan industry operates ([Exhibit I](#)). I will turn the presentation over to Katie Grove.

Katie Grove, Vice President of Government Relations, TMX Finance, Smyrna, Georgia:

We are the nation's largest title lender. We serve over 400,000 customers from over 1,000 storefronts in 12 states. We have 36 storefronts in Nevada doing business under the name Titlemax. We focus exclusively on auto title lending as our primary business model. Our business model is to keep customers' payments low and give them a longer time to pay off their loan so they can be successful in paying off the loan. That leads to extremely low default rates. Only about 2 percent of our accounts go into default and we rarely repossess vehicles. In Nevada less than 1 percent of all of our accounts have been repossessed.

This bill is simple and corrects ambiguity in existing title lending code. It clarifies the standard necessary to validate a consumer's ability to repay a title loan, and it clarifies the time frame a lender may use to calculate a borrower's ability to repay a loan. We think this bill is necessary because the current statute is ambiguous and allows for an interpretation that a customer must prove an income sufficient to repay the entire amount of the loan at the end of 30 days. The statute requires the lender to offer an additional repayment period. Our company offers an interest-free repayment period of 210 days that should be considered and also permits six 30-day extensions. This entire time frame should be considered when we evaluate a customer's ability to repay a loan. The limited 30-day interpretation is not consumer friendly, and the requirement cuts off access to credit for a large segment of our borrowers. The interpretation would not permit TMX to continue with its existing operating model, which works. It is proof that customers have the ability to repay using the interpretation we have followed, which is consistent with A.B. 430.

A study conducted by the Federal Deposit Insurance Corporation (FDIC) last year found that in Las Vegas alone, 31.2 percent of households were "underbanked," which means they had access to traditional lending products, but also used alternative products like auto title loans to make ends meet. These are the customers who are negatively impacted by strict interpretation of existing language addressing the ability to repay. This bill would fix that. Existing code does not include any standards for lenders to use to determine a borrower's income-to-debt ratio and calculate ability to repay a loan. This bill

provides a method for verifying this without overly burdening the customer. This bill clarifies ambiguous language in existing statute that currently allows for an interpretation that to get an auto title loan, customers must have an income standard that is completely unrealistic and that effectively cuts off access to credit for a large segment of borrowers.

Chairman Bobzien:

Are there any questions?

Assemblyman Frierson:

Would this language relieve a licensee from having to verify anything that a person would put in an affidavit? Is there any check and balance to verify that they are not making up their information to get the money?

Katie Grove:

We would continue to use a worksheet. We worked with outside counsel to come up with a repayment worksheet that the customer completes and which includes his current expected income, obligations, and source of income. We also give the customer a repayment worksheet so he can see what his loan looks like from month to month, so he can be comfortable with his payment.

Assemblyman Hardy:

With this loan, the customer would have to qualify for a 120-day loan that you presently give, and then he gets the extra days of leniency to pay for it. If the customer is paying 10 or 15 percent for a loan for the first 120 days and he gets the next 120 days free, it brings the interest rate down by half.

Katie Grove:

According to Nevada law, the initial loan is 30 days, and they allow for six additional 30-day renewals. In addition to that, my company will have a seven-month repayment that is interest-free. I could provide you with a sample loan if that would be helpful.

Assemblyman Hardy:

To qualify for the 30-day loan, you have to go through the same process, so what is the issue?

John Griffin:

Interest is charged for the first six months, and Titlemax offers the interest-free extension repayment that the statute allows. The issue being addressed is a difference of interpretation. Currently the Financial Institutions Division (FID) has not adopted regulations, but the interpretation they adhere to is that the ability to repay means that the customer must have the ability to repay the

entire loan with fees within the first 30 days. That effectively restricts the amount that you can loan to the point that it is not worthwhile to loan. It effectively shuts down this type of a business model, which we think is extremely consumer friendly as justified by our numbers and default rates.

Assemblyman Horne:

Can you give us a real-world fact pattern on how the system works within the existing statute, FID's interpretation, and what you are trying to do with this bill?

John Griffin:

Consider a \$1,200 loan on a vehicle with a \$5,000 value. The FID's interpretation is that the customer must have the ability to repay the \$1,200 in the first 30 days. If the customer has \$5,000 in income and \$4,200 in expenses, he has only \$800 in disposable income. We could not give him a \$1,200 loan. We could give him a \$400 loan with interest and fees. The statute has protections that say we cannot issue a title loan in excess of the fair market value of the vehicle. That is a protection in itself, but FID's interpretation is such that the customer must have the ability to repay the entire loan in the first 30 days. You can only get one loan on a car title, and the Division squeezes it so much that a title loan is not an avenue to get funds.

Assemblyman Horne:

When do you decide that the person may need additional time to pay the loan?

Katie Grove:

We make that determination at the loan inception. The worksheet is included in the initial application package.

Assemblyman Horne:

By making that determination initially, the person does not need to make an additional request for the extension?

John Griffin:

The Titlemax loan is under the statutory framework that allows a 30-day loan with six 30-day extensions plus the grace period. We market that as a package. They know going into the loan that it is a 230-day loan, but under the framework, they can pay it off in 30 days or at any time with no prepayment penalties. The customer does not have to keep coming back to get extensions.

Assemblyman Ellison:

What is the highest loan you make and what is the standard fail rate?

Katie Grove:

We look at the value of the vehicle, and the company policy is that we will only loan up to \$5,000 or 80 percent of the value of the vehicle. Our default rate is 2 percent in Nevada. We repossess only 1 percent.

Assemblyman Grady:

When you give a loan, do you transfer the title into your name?

Katie Grove:

We file a lien on the free and clear title.

Assemblyman Grady:

When the money and fees are paid, can you return the title?

Katie Grove:

We release the lien immediately and return the title. There is no prepayment penalty, either. If the customer comes back before the end of 30 days, he can pay the loan in full without any interest.

Assemblyman Grady:

You do not actually transfer the title; the customer signs a form.

Katie Grove:

That is correct.

Assemblywoman Carlton:

I am confused, because it is not just one month of income that plays into paying off the loan. What is the argument about the one month? I thought future income was included.

John Griffin:

We share your confusion. We were here in 2005 and 2007 when this was discussed, and that provision was a simple yes or no. The statute says the title lender shall not issue a loan without regard to the customer's ability to repay. To us it is a yes or no question. Do we engage in underwriting and do we look at the customer's ability to repay? Yes. If you want to tell us how to do that, adopt a regulation or put more detail in the statute. We think we completely comply with the statute. The Financial Institutions Division does not have a regulation, although their interpretation is expressed to us in an audit, which says the ability to be paid must be made in the first 30 days. It is that interpretation with which we disagree. Hence the need for the bill, to explain further that it is a yes or a no question, do we engage in underwriting and we

do consider the customer's ability to pay over the term of the loan as presented to the customer under statute.

Assemblywoman Carlton:

If you look at *Nevada Revised Statutes* (NRS) 604A.450, it is very clear. It says current and expected income, obligations, and employment. I do not know how we could make it much clearer.

Chairman Bobzien:

Are there others in support?

Keith Lee, representing Consumer Loans of America:

We do business in Nevada under the name of Nevada Auto Title. We have 15 locations throughout the state; most are in the Las Vegas area. We have been in business since 1995. I agree with everything stated previously. Our default rate is less than 8 percent. The only recourse a lender has against a defaulting borrower is to repossess the car and sell it under the Uniform Commercial Code. That is seldom done. When we begin the underwriting process, we want to lend money to the borrower with the expectation that it will not go into default. We do not always lend the fair market value of the automobile. We look at what we think the borrower can repay. We look at the expected income and at a seven-month loan. There are no prepayment penalties, and they pay interest only to the date they pay the loan. We underwrite a loan to our criteria and expect that the loan will be repaid.

Chairman Bobzien:

Are there any questions? Seeing none, are there other proponents? [There were none.] We will move to opposition.

Dan Wulz, Attorney, Legal Aid Center of Southern Nevada:

I am appearing today as a concerned citizen and an attorney who has represented low-income consumers in cases involving payday loans and auto title loans governed by NRS Chapter 604A which concern the proposed legislation. I was also involved in the lengthy negotiations which led to NRS Chapter 604A in 2005 and as amended in 2007 when I worked with Speaker Barbara Buckley. I could not be more strongly opposed to this bill. There was some misinformation in the presentation that I think has led to misunderstanding by Committee members. There are two types of title loans, which I do not think was made clear to the Committee. The bill was negotiated that way with the title lenders in 2005. *Nevada Revised Statutes* 604A.445 says that the original term of a title loan may not exceed 30 days. It was negotiated to have that rollover for six additional periods. There is an entirely different kind of loan under NRS 604A.445 with an original term of 210 days.

That type of a loan requires that the loan be repaid in installments and amortized for the entire period. We are talking about two different kinds of title loans.

In my view, the proponents are here today to try to trump the regulations that are being proposed by the Financial Institutions Division. I have attached to my testimony, exhibits ([Exhibit J](#)) that FID has prepared as real-world examples of what the ability to repay means. It is true that for a 30-day loan, FID is interpreting an ability to repay within the first 30 days. For a 210-day loan, FID interprets the ability to pay within the entire 210 days. I would be completely opposed to judging an ability to repay a 30-day loan over a period that exceeds the 30 days. If they want it judged over a longer period, they can make a 210-day loan. The statute is very clear that is what the Legislature intended.

The second aspect of the bill is to change what was the Legislature's intent that the lender look at the borrower's income and expenses and judge an ability to repay on an objective basis. The bill would change the law to say that a simple affidavit from the customer would be conclusive on that point. I think that would be a huge mistake because these loans are typically triple-digit interest loans. People who enter into these transactions and are willing to pay the interest are desperate and will sign any piece of paper put in front of them to get the loan. I have a case pending where the lender put my client's rent on the application as zero, so the borrower's ability to repay was judged based on zero living expenses. I think we need to require that the lender demonstrate an objective ability to repay the loan.

Chairman Bobzien:

Are there any questions?

Assemblyman Frierson:

Can you give us an idea of how frequent the problem behavior occurs? What percentages of the lenders abuse it?

Dan Wulz:

I do not have any data on that. I could find studies that have been done on a nationwide basis to provide for the Committee.

Assemblyman Frierson:

We have had copies of complaints or cases while discussing many of the consumer protection bills we have seen in the last couple of sessions. Is this a case in principle, or do we have some cases where people have been victimized?

Dan Wulz:

I wish we had FID here to answer that question. I suspect the proponents are here because when they are being examined, FID is finding they are not judging a person's ability to repay correctly. This has led to FID proposing regulations like the ones attached to my testimony ([Exhibit J](#)). The proponents are here to try to avoid those regulations.

Chairman Bobzien:

We would like to hear from someone from the FID. Are there any additional questions?

Assemblywoman Diaz:

I question the language in section 2 of the bill about the affidavit. Does the language leave it open to create any kind of affidavit? Does it place all of the responsibility on the consumer versus the lender?

Dan Wulz:

I think you are correct. It places all of the responsibility for a representation of the ability to repay on the borrower. It appears to relieve the lender of any objective inquiry or verification. I think that is the intent of the proponents.

Assemblywoman Carlton:

When they include the customer's current and expected income, obligations, and employment, does that apply to both types of title loans? That seems very clear about what they are supposed to consider. Where does this fall through the cracks?

Dan Wulz:

The Division of Financial Institutions has proposed a regulation which they enforce. On a 30-day loan, the ability to repay is to be judged over 30 days. They exhibit that in my testimony ([Exhibit J](#)). On a 210-day loan, they judge the ability to repay over the entire 210 days as fully amortized.

Assemblywoman Carlton:

Now that I understand there are two types of title loans, I wish to return to my original question. I thought that NRS 604A.450 was very clear. It says what a licensee who makes title loans shall not do and it provides a list. Does this apply to both types of title loans? I do not see the delineation.

Dan Wulz:

The ability to repay in NRS 604A.450 is clear when it indicates that they need to include the customer's current and expected income, obligations, and employment. I look at that as an objective standard that the lender needs to

apply in judging an ability to repay. I believe that ability-to-repay requirement applies to both the 30-day loan in NRS 604A.445(1) and the 210-day loan in NRS 604A.445(3). Looking at the math, that is how FID interprets it as well.

Assemblywoman Carlton:

If it applies to both, and FID came out with a regulation that basically eliminates the expected income, it seems that we are setting a 30-day loan at a different standard than a 210-day loan, but this provision applies to both. Why would we let one loan have one standard and another loan have another? I believe, statutorily, these apply to both. It seems that we are setting up two sets of rules.

Dan Wulz:

I see your struggle. I go back to 2005, when we negotiated this with the title lenders. They wanted 30-day loans and were given six additional periods for the 30-day lenders. There were other lenders who did amortize loans for a longer period of time. So the two different camps had their two different loans. In NRS 604A.450, I think the Legislature said that there needs to be an ability to repay both types of loans. If there is a 30-day loan, the lender looks at the ability to repay over 30 days even if there are extensions, and if it is a 210-day loan, they consider the ability to repay over that period.

Assemblywoman Kirkpatrick:

I do not remember these regulations coming before the Legislative Commission and being finally adopted. What happened to the regulations you listed?

Dan Wulz:

These regulations have not been enacted and are pending approval. With my testimony, the notice of workshop includes only the cover sheet and the exhibits as proposed by the Commissioner ([Exhibit J](#)) which were relevant to this bill.

Assemblywoman Kirkpatrick:

Are there two different issues that we are trying to clarify because there are two different sections of the NRS being considered?

Dan Wulz:

I think these were originally proposed in 2010. My recollection is the Governor had a moratorium on regulations for a long time, and that is the reason for the delay from then until the notice of workshop dated September 21, 2012.

Assemblyman Ellison:

Why would a title lender loan more money to the consumer than he could afford to pay? Does the statute only allow the lender to go after the vehicle?

Dan Wulz:

The recourse is to repossess the vehicle and sell it. They do not make a loan anywhere near the fair market value of the vehicle in case there is a default. I had a client who borrowed about \$1,200 on a vehicle that was worth about \$8,000. It was a 30-day loan that was rolled over many times. It is usually risk free to the lender because they can repossess the car and get all of their interest and principal back.

Assemblyman Ellison:

They can only go against the vehicle, is that correct?

Dan Wulz:

That is correct.

Chairman Bobzien:

There is an amendment to be presented.

Chris Ferrari, representing Dollar Loan Center:

The amendment is to clear up an inequity that we brought to this Committee in the 2011 Session. I will present a few facts about loans under NRS 604A.480. This addresses short-term loans. The statutory interest rate that customers pay for a loan under this statute is less than half of what other short-term loan products offer. The loans offer more flexible payment terms, and all payments include interest and principal. The loans have a longer right of rescission, which is five days instead of one day for a typical short-term loan. A customer credit check is performed before the loan is extended. All consumer loan experience is reported to major credit reporting agencies. Dollar Loan Center participates in good faith with a counseling agency accredited by the Council on Accreditation of Services for Families and Children, and they are a member of the National Foundation for Credit Counseling. There are no origination fees on these loans and there are no prepayment penalties. Dollar Loan Center has been in Nevada since 1998 and employs more than 250 people with an annual payroll of over \$8 million. They lease 26 buildings throughout the state, and their employees receive full benefits, including a 401(k) with 50 percent match.

I would ask you to not look at the loan product and to remove any preconception of the loan, but to look at the fairness of the application of NRS 604A.480. My client is a lender under that statute and is barred from access to civil remedy. We brought this to the Committee's attention two years

ago and were told to test the issue in court. After that legislative session, the Legislative Counsel Bureau (LCB) issued an opinion that their interpretation of the existing language in NRS 604A.480 permitted our client to access civil remedy. The Division of Financial Institutions would not adhere to the LCB opinion based on a previous position they had taken on these types of loans. We are talking about fairness. If every other short-term lender has the ability to take civil recourse, it puts my client in an unfair competitive advantage that is protected by statute. If somebody knows the law, they can take a loan knowing that they will not have to pay it back and that my client has no access to civil remedy. We are asking for a level playing field and the ability to pursue civil remedy.

Scott Scherer, Counsel, Dollar Loan Center:

There was an LCB opinion issued at the end of the last session which deals only with NRS 604A.480(2)(f). They said that provision was designed to prevent the lender who had refinanced a loan from suing on the prior loan which may be in default. The language we are suggesting in the proposed amendment ([Exhibit K](#)) would make that clear. It would say where a prior loan has been refinanced, using the proceeds of a new deferred deposit loan or high-interest loan, we cannot commence any civil action or process of alternative dispute resolution on the prior loan. In the view of LCB, a defaulted loan meant the prior loan or any extension or repayment plan thereof. As Mr. Ferrari mentioned, FID had previously taken a contrary position and applied that to a different licensee, not our client, so they decided to stick with that position and continue to apply that without further direction from the Legislature.

Chairman Bobzien:

Are there any questions?

Assemblywoman Carlton:

What recourse do you have?

Scott Scherer:

We can refer them to a collection agency, but there is nothing else we can do on a NRS 604A.480 loan. We can offer repayment plans, but there is no other recourse under the FID interpretation.

Assemblywoman Carlton:

What is a civil action?

Scott Scherer:

It would be small claims court.

Assemblyman Horne:

There is also an opinion from the Attorney General that is different.

Scott Scherer:

My recollection was that the Attorney General said that to the extent the statute is ambiguous, they would defer to the interpretation of the FID, which is one of the rules of statutory construction, to defer to the agency charged with the authority to enforce the statute.

Assemblyman Horne:

I would like copies of both opinions distributed to the members for review.

Chris Ferrari:

I want to make sure the Committee understands that if a customer goes into default on his loan under NRS 604A.480, he goes through an extensive repayment process that is outlined clearly per the statutes under NRS 604A.475. It is an exhaustive process with the consumer prior to commencing any civil action. There is no recourse, and that is our plight.

Chairman Bobzien:

Our legal counsel has some information.

Matt Mundy, Committee Counsel:

Because this is not related to title loans, it is not germane to the original bill.

Scott Scherer:

This is the same chapter of NRS.

Chairman Bobzien:

It is not a chapter issue.

Matt Mundy:

The rule requires that it be specific to the title and not just the single subject, which is already more specific than what we are dealing with, which says relating to title loans. This does not even fit under the single subject.

Chairman Bobzien:

Seeing no additional testimony, I will close the hearing on A.B. 430 and will open the hearing on Assembly Bill 432.

Assembly Bill 432: Revises provisions governing intoxicating liquor. (BDR 32-980)

Alfredo Alonso, representing Southern Wine and Spirits:

We have had issues with gray market for many years. These are individuals who buy liquor through a third party outside of the normal process. It may be a large wedding that is cancelled and there is unused alcohol. The gray marketers tend to go in and buy large quantities. It is often the high-end wines and champagnes. The product ultimately comes back into the state, and we do not know if it is counterfeit or if the product is still good. Regardless, our consumers end up with that liquor and our clients get the complaints. We believe this is another attempt to fix that issue.

Leif Reid, representing Southern Wine and Spirits:

Dating back to 1999, Nevada has worked to develop one of the strongest protections against counterfeiting and gray marketeering in what we call the primary source law. It protects consumers by ensuring that the types of wines and other liquor products are delivered and sold in Nevada in the manner intended by the producers of those products. They are sold and delivered through commerce, and are maintained in a climate-controlled manner. The laws also protect the consumers against fraudulent and counterfeit goods. In 2003, the law was changed to close a loophole that allowed individuals or companies who bought up wines, had them imported into the United States, and then tried to sell them outside of the authorized distribution chain of those suppliers. The bill before you strengthens the protections which were put in place in 2003. They will clarify that those entities which are subsidiaries and affiliates of the makers of the wines and liquors are part of the designation process and ensure that the sales of the brands are authorized in Nevada. In section 1 of the bill, the language clarifies what a supplier is for the purposes of this provision. That identical language needs to be incorporated in *Nevada Revised Statutes* (NRS) 369.386.

Chairman Bobzien:

Are there any questions?

Assemblyman Grady:

How does the gray marketer sell his product?

Leif Reid:

These brands are often sold through suppliers. They are frequently out-of-state suppliers that offer them to a wholesale distributor and represent that they have the authority to sell the brands. Typically the sale is to a wholesale supplier,

because a retailer is already prohibited under law to buy something off the street.

Alfredo Alonso:

Often the person is one and the same. They can act as a supplier in another state and act as a wholesaler here. They may take unique pieces of the law, such as the transfer law that is in place for cases such as running out of a particular brand, like Jack Daniels, during the National Finals Rodeo. There is specific language that allows someone to bring that into the state. They will use that language to bring in their entire warehouse full of liquor. In most cases, those individuals have no right to bring in that liquor and have no agreement with the original suppliers. It is almost a wholesaler to wholesaler arrangement, but it is not always real.

Assemblyman Hansen:

If the wholesaler has a license and he receives products from this illegal activity, can he lose his wholesaler license?

Alfredo Alonso:

We discussed in another hearing that Nevada spends very little money on enforcement. We do a lot of our own policing. That is a good and bad thing because it is difficult to enforce if you do not have the manpower. That happens a lot. If they are using the transfer law, there is no way of knowing how much the individual is bringing in unless someone goes to the warehouse, which is difficult when there are only two investigators.

Leif Reid:

There are civil remedies allowed in both NRS Chapter 369 and Chapter 597 for violations of the law. Typically, the affected wholesaler who has the right to sell those products in the state is forced to go to court and seek private action against the entity that is illegally selling the liquor.

Chairman Bobzien:

Are there any questions? [There were none.]

Keith Lee, representing Distilled Spirits Council of the United States:

We support this bill. As big distributors who supply the major brands, we do it through the three-tier rule. We think this bill closes one of the small loopholes. It ensures brand integrity. When a customer buys a bottle of our product, he will know it is our product, it has quality control, and the tax has been paid to the State of Nevada.

Chairman Bobzien:

Are there any questions? [There were none.]

John Sande IV, representing Wirtz Beverage Nevada:

I support the comments of Mr. Lee and Mr. Alonso. We believe this will fix some loopholes in the system and make it better.

Chairman Bobzien:

Are there any questions?

Assemblyman Ellison:

I thought it was a felony to bring bootlegged alcohol from out of state.

Leif Reid:

I do not know how the laws are enforced since Prohibition. I am not aware of a federal statute that prohibits that. It is primarily state law. Our primary defense against counterfeiting and gray market distribution is the primary source law where the authorized importer is designated. If a person is making liquor himself and trying to pass it off as a name brand, there are fraud and other criminal laws that would apply.

Chairman Bobzien:

Our legal counsel can comment on that.

Matt Mundy, Committee Counsel:

It is a misdemeanor for any violation of NRS Chapter 369. If it is transported, which I think would include across state lines for the purpose of defrauding the state, including avoiding paying taxes, it would be a category D felony.

Chairman Bobzien:

Are there any questions? Seeing none, is there anyone else in support of this bill? [There was no response.] Is there anyone in opposition to A.B. 432? [There was no response.] Is there anyone to testify from a neutral position? Seeing none, we will close the hearing on A.B. 432. I will open the hearing on Assembly Bill 435.

Assembly Bill 435: Revises provisions governing insurance. (BDR 57-1171)

Scott Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:

[Submitted prepared testimony ([Exhibit L](#)).] This is a bill that will address a variety of topics related to insurance regulations. We have a proposed

amendment to address a couple of technical corrections ([Exhibit M](#)), and there will be a friendly amendment offered as well ([Exhibit N](#)). I will walk through the bill.

Section 1 of the bill makes a change to clarify the applicability of the assessment that the Division assesses insurers that is used to fund the Special Investigative Account. We provide the assessment, and the amount of the assessment is developed in conjunction with the Office of the Attorney General. Eighty-five percent of that assessment is forwarded to the Office of the Attorney General for prosecution of insurance fraud. The remaining 15 percent is retained at the Division for our portion of investigation of insurance fraud. The need for the clarification has resulted from a court case that was decided in 2012 and necessitated this language to clarify what was the legislative intent.

A lot of our bill addresses issues surrounding the Division's accreditations program. It is a peer review program developed by colleagues across the country to address certain financial shortfalls in the insurance industry and started about 20 years ago with a number of significant insolvencies. Action was taken to develop a body of statutes, regulations, policies, and procedures so every insurance division across the country was doing things essentially the same way. This program has proved to be very successful. You need to look no further than the most recent financial debacle starting in 2008. The insurance industry survived this much better than some of the financial instruments that are available.

[Read from prepared testimony ([Exhibit L](#)).]

Nevada is one of the top six states as far as the number of captives and the amount of captive work that is taking place in the country. Nevada is also one of the top five domiciled states for risk retention groups, and we are aggressively making sure that those risk retention groups do conform to our financial standards.

We have offered a friendly amendment related to section 25 ([Exhibit N](#)) as well as the technical amendment ([Exhibit M](#)), which Mr. Plain will explain.

Chairman Bobzien:

Are there any questions?

Assemblywoman Kirkpatrick:

Last session, we had some pretty big insurance bills, and we missed some pretty big issues that we are trying to clean up this time. I want to be sure that does not happen this session and that we do not merge insurance bills because

the issues are too important. On page 10, what other regulations adopted would be considered?

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

Those would be regulations adopted under federal laws.

Assemblywoman Kirkpatrick:

What model legislation did you use and why is that acceptable for Nevada?

Scott Kipper:

The issues around model legislation are key for us because it allows Nevada to be uniform with almost everyone else in the country for strong state-based regulations of insurance. It makes sure our companies get the best shake, and the best knowledge, as well as any company that wants to do business here. We believe it is important for uniformity to exist between states and regulatory entities. We spend a lot of time developing uniform acts across the country with our peers at the National Association of Insurance Commissioners. It is proven that we have a strong state-based regulatory framework. We strive to be as uniform as our colleagues across the country.

Assemblywoman Kirkpatrick:

That is what they told us last session, but I am not a fan of doing what everybody else does. I believe Nevada is special and we should do what is beneficial for Nevada. Are we sure we have not left anything out? It seems that every time we adopt a uniform procedure, we have some big unintended consequences. What are the checks and balances? In the first section of the bill it looks as if there is no longer an option to determine if the amount is \$500 for the annual assessment on insurers. It used to say that the fee must not exceed \$500, but now it says it is \$500. In the interim, we get the regulations and are told we have to adopt them because they are uniform.

Scott Kipper:

These standards are greatly debated by my colleagues across the country. Most if not all of the standards that we are talking about are financial in nature. Having a health insurance law here in oversight for a product that is being sold in Elko or Winnemucca does not necessarily play well in New York City, Washington, D.C., or Atlanta. We try to complete a balance for what is good for Nevada versus the financial standards we believe are essential for making sure our companies can compete and are seen as equals in other states. We strive for uniformity in our financial standards, but in other standards we like to make sure that we pass what is good for Nevada.

Chairman Bobzien:

Are there any questions?

Assemblyman Hansen:

What harm would happen in Nevada if we did not pass this?

Scott Kipper:

If we do not pass these accreditation standards, there is a danger that our companies will have a problem competing in other states. The accreditation standards that are adopted here tell other states that Nevada is doing the right things as far as making sure our companies are solvent, that our companies are following the standards in every other state. It gives those states great comfort that the companies domiciled in Nevada are doing the right thing. If our accreditation was not in place, we would have to examine our companies financially, but those examinations would not be seen as acceptable in other states. So other states would send in examiners to exam our companies and those procedures can be extremely expensive. It is to the benefit of our companies. Our industry would tell you it would be a competitive disadvantage for them if we were not accredited.

Assemblyman Hansen:

It is difficult for the small businessmen to understand the changes and reconfigure the company to all of these new standards. There is an expense and a time factor. If you do not comply, you can get in trouble.

Assemblywoman Kirkpatrick:

In the digest, lines 16 through 22, does this mean that people across the nation are working to not cover Medicare benefits?

Scott Kipper:

I think you may be reading more into this. We are saying that any benefits under parts I and D, if the company goes insolvent, they are not covered by the Nevada Life and Health Insurance Guaranty Association.

Assemblywoman Carlton:

Thank you, Commissioner, for bringing two bills this session. We have had them much thicker than this in the past. I appreciate these two bills because we have the new issues for the Affordable Care Act in one bill and the state issues in another, and all we have to do is mesh the two. I attended a National Association of Insurance Commissioners meeting and saw a lot of advocacy from Nevada and other states making sure, when they develop these uniform acts, that they would work for people, and everyone's opinions were taken into

consideration. I am concerned about these amounts; could you elaborate about them?

Scott Kipper:

There was a lawsuit that addressed the dollar amounts. The \$500 is the minimum amount that we are being assessed for companies that wrote zero premium in the state. It was our interpretation of current statute that if a company did not write any premium, they would still be subject to this assessment as part of the privilege of doing business in the state of Nevada. The court ruled otherwise. In our discussions with the Attorney General, there was some consideration whether we would appeal this or address it in statute to clarify that even if you are writing zero premium as a privilege to do business in the state of Nevada, a person would have to submit to the assessment at a minimum of \$500.

Assemblywoman Carlton:

Long-term care was an issue last session. Can you elaborate on that?

Scott Kipper:

Nevada has the privilege of serving as chair of our Senior Issues Task Force with the National Association of Insurance Commissioners, and that is where long-term care does fall. We spend a lot of time working on long-term care issues. Last session, the Legislature adopted legislation that allowed the state to opt into an interstate compact that would provide uniform review of products such as annuities, life insurance, and long-term care, among others, to make sure that it was more efficient and cost-effective to get those products to marketplace, but at no time compromising the standards that the Legislature has adopted in the development of these products. We opted out of some of the provisions of long-term care. We believe that the standards used by the interstate compact meet or exceed the standards for the state of Nevada. We would not bring this legislation if we felt that Nevadans would be put at a disadvantage.

[Assemblywoman Kirkpatrick assumed the Chair.]

Vice Chairwoman Kirkpatrick:

Are there any questions?

Scott Kipper:

Mr. Plain will walk through the amendment.

Adam Plain:

The technical amendment we brought forth has four corrections ([Exhibit M](#)). Amendment No. 1 would amend the bill in section 2, on page 4, at lines 20 through 26. In the model language on which the section was based, there was a two-part test for financial institutions' adequacy. It had to meet a solvency standard and it had to be acceptable to the Commissioner of Insurance. The way the language is drafted, it only has to meet that solvency standard. We want to add in the acceptability to the Commissioner of Insurance to give some additional oversight to that adequacy.

Amendment No. 2 is in section 4, on page 4, at lines 26 and 27. It discusses authority to examine an insurer. The bill as proposed uses the language "this State." We want to pare that down to "the Commissioner" to make it clear that while the state vests its authority in the office of the Commissioner, there is not vicarious authority through other state agencies which may or may not have an interest.

Vice Chairwoman Kirkpatrick:

Are there any questions on the first amendment? [There were none.] On the second, does it preclude us from having anybody within the state agency step in if we have a bad commissioner?

Scott Kipper:

The commissioner in Nevada reports to the Director of the Department of Business and Industry, who reports to the Governor. If there is a problem or inconsistency where a commissioner might overreach his authority, there are some checks and balances available.

Adam Plain:

Amendment No. 3 would amend section 6, page 8, at lines 7 through 15. The model language submitted had a three-part test concerning an exemption from a specific provision. The insurer had to conduct their business solely in the state of Nevada, not accept reinsurance of a certain amount, and have total written premiums of less than \$2 million. That threshold was accidentally omitted. We are proposing to reinsert that so only the specific small insurers intended to meet that exemption actually pass the test.

Vice Chairwoman Kirkpatrick:

Are there any questions? [There were none.]

Adam Plain:

Amendment No. 4 is in section 26, on page 27, at lines 4 through 8. It was a section that was accidentally included in drafting, and we are proposing to remove it.

Vice Chairwoman Kirkpatrick:

Are there any questions on the amendment? [There were none.]

Robert Ostrovsky, representing Employers Insurance Group:

I have submitted an amendment ([Exhibit N](#)). The amendment is in section 25. There is a requirement in law to give notice of 60 days to the Commissioner on affiliate transactions and amendments to affiliate transactions. We are proposing that it be 30 days. The Commissioner has agreed that that is well within the operating standard of the Division. These affiliate transactions are often reflections of the market environment. The Commissioner and the staff have been very cognizant of that fact and make quick action on rejecting any affiliate transaction they believe would violate this section of the law. It is not something that happens all of the time, but we think the 30 days is good.

We support this bill because it is important to have a strong regulatory body in the state to keep bad actors out. The end result is that bad actors cause unpaid claims that end up in the Guaranty Association, and all insurers in the state pay those. We have a system where the purchaser of insurance is always made whole at the expense of the good players in the industry.

[Chairman Bobzien reassumed the Chair.]

Chairman Bobzien:

Are there any questions? [There were none.]

James Wadhams, representing Nevada Independent Insurance Agents, Nevada State Association of Health Underwriters, Nevada Association of Insurance and Financial Advisors, and Anthem Blue Cross and Blue Shield:

Under the rules, I am appearing in opposition because I may discover drafting issues and will submit amendments.

Chairman Bobzien:

Are there any questions? [There were none.] Is there anyone wishing to speak in support? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone to testify from a neutral position? [There was no one.] I will close the hearing on [A.B. 435](#) and open the hearing on [Assembly Bill 349](#).

Assembly Bill 349: Revises provisions governing professions. (BDR 54-420)

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

During my freshman session, I was privileged to work with the Department of Defense and the Nevada National Guard on issues important to service members and their families. With their guidance, we were able to pass legislation regarding child custody for deployed members. This session I expressed an interest to look at what other priorities and challenges there are for this group. The legislation I chose was about removing licensure impediments. Many occupations require a state license, often with state specific conditions and processes, which can cause lengthy reemployment delays for military spouses moving between states. Because of these delays and the expense involved in relicensing, many spouses decided not to practice in their profession. I have submitted a handout about this topic ([Exhibit O](#)). This is a difficult financial and career choice of military members and their spouses which potentially impacts their desire to stay in the military. Governor Sandoval took an active role in addressing this barrier. Judy Osgood will explain the Governor's interest in trying to find a solution.

Judy Osgood, Senior Policy Analyst, Office of the Governor:

Thank you for allowing me to provide information about Governor Sandoval's Executive Order 2012-11 ([Exhibit P](#)). It was signed on May 4, 2012 to provide reciprocity for military spouses seeking licensure in Nevada. Under this executive order, every professional licensing board organized pursuant to the *Nevada Revised Statutes* (NRS) was ordered immediately to facilitate endorsement of a current license from another state so long as the requirements for licensure in that jurisdiction are substantially equivalent to the requirements in Nevada. Also, where possible, the boards will provide for a temporary provisional license, allowing a military spouse to practice, and expedite application procedures for a military spouse. The executive order also provides that in the case that statutory requirements prohibit any of the actions required by the executive order, the executive director or chairman of a professional licensing board was to inform the Governor by June 30, 2012, in writing of the suggested statutory changes that should be made to enable reciprocity for military spouse licensure and make that a reality.

In response to the executive order, the Governor's Office received notification from 31 licensing boards. The responses are summarized in a chart that is available ([Exhibit Q](#)). We made note of any barriers that were identified and passed this along to Assemblywoman Bustamante Adams. I am pleased to be here to state the Governor's support for this bill.

Chairman Bobzien:

Are there any questions?

Assemblyman Hansen:

Have there been any applications? Do you have an estimate of how many people will be licensed as a result of this order?

Judy Osgood:

I do not have that information, but I could get that for you.

Assemblywoman Bustamante Adams:

I have a specific example from one of the boards and their anticipation of what this legislation will do.

Keith Lee, representing the Board of Medical Examiners:

We have received no applications to date. This bill is far more inclusive than just military spouses. It includes an active member or veteran or the surviving spouse of a veteran of the armed forces. We anticipate that is a larger pool of potential applicants than envisioned by the executive order, and we wholeheartedly endorse it. We will suggest an amendment that we are also discussing with Assemblywoman Bustamante Adams and in a bill with Assemblyman Eisen and the Governor's Office to expand the concept of licensure by endorsement.

Chairman Bobzien:

Are there any questions? [There were none.]

Assemblywoman Bustamante Adams:

I will go through the bill. In section 1, subsection 1, starting on line 3, it outlines that a regulatory body may issue such a license by endorsement to an applicant if the applicant meets three provisions—that she holds a corresponding valid and unrestricted license; she is an active member or veteran, or the surviving spouse of a veteran; and the provisions of law governing her out-of-state license, as described in paragraph (a), are substantially equivalent to the applicable provisions of law in this state. The words "may" and "if" are permissive.

Section 1, subsection 2, starting on line 16, outlines what the applicant must do to be considered. It puts accountability on the applicant by requiring proof satisfactory to the regulatory body that the applicant satisfies the requirements of subsection 1, paragraphs (a) and (b); be a citizen of the United States; has not been disciplined or investigated by the corresponding regulatory authority of the previous state; and not been held civilly or criminally liable for malpractice.

Section 1, subsection 2, paragraph (b) indicates that an affidavit is also required to make sure the material is true and correct. Paragraph (c) states the applicant must submit any other information required by the regulatory body. If there are additional requirements that apply to only that profession, the regulatory body has the jurisdiction to set them.

Section 1, subsection 3 addresses the decisiveness that is needed to work with these individuals, because the length of time to get a response is one of the major barriers. When a person is relocating or is on deployment, time is critical. On line 36, it says a regulatory body shall provide, within 15 business days, a written notice to the applicant if any additional information is needed. On line 40, it says the regulatory body shall approve or deny the application no later than 45 days after receiving it. The regulatory body still holds the full discretion to approve or deny.

On page 3, subsection 4, a license by endorsement may be issued at a meeting of the body. Subsection 5 gives the regulatory body the discretion of granting a provisional license authorizing the applicant to practice his or her profession in accordance with regulations adopted by the regulatory body. It is permissive and gives the body flexibility but also addresses the need for decisiveness by the regulatory body.

I have an amendment to section 1, subsection 1, paragraph (b) to correct the omission of one group, which is spouses of active members of the armed forces ([Exhibit R](#)).

Chairman Bobzien:

Are there any questions?

Assemblyman Hansen:

Where would you apply this? If a person is active in the military, is he allowed to have an outside practice?

Assemblywoman Bustamante Adams:

We have a letter of support from Laurie Crehan, the State Liaison of the Department of Defense, who is the expert on military matters, but unfortunately she was unable to be here ([Exhibit S](#)).

Keith Lee, representing the Board of Medical Examiners:

I can only talk for the Board of Medical Examiners. We see that physicians, particularly those stationed at Nellis Air Force Base, are not required to be licensed in whatever jurisdiction they reside. Many of them want to be licensed because they want to stay in the state or want an additional licensure. We see

this as a way to get military physicians to stay in the state and as an opportunity to attract additional physicians. I do not know if they can have a private practice.

Chairman Bobzien:

Are there any questions?

Assemblyman Ellison:

What professions would be included in this?

Judy Osgood:

I would refer you to the chart ([Exhibit P](#)). The executive order and the bill would both address any profession that is licensed in the state of Nevada. It ranges from accountants to veterinarians and includes homeopathic professionals and dispensing opticians. I believe that will be the intent.

Assemblywoman Bustamante Adams:

It would include the Title 54 boards under NRS Chapter 622.

Assemblywoman Carlton:

What is the problem we are trying to fix? I know we need more health care professionals in the state. We already have procedures with a lot of the boards on licensing which have the criteria or credentialing encapsulated in the NRS. I have a concern about section 1, subsection 1, paragraph (c) allowing the regulatory body to determine if the laws of the other state or territory are substantially equivalent. We want more health care professionals, and we want to make sure they are well-qualified professionals. We had the dental wars in this building in 2001 to get more dentists into the state. I have a concern about allowing the boards to make that decision. They could set the bar so high that we may not be able to get someone here. Some of our boards tend to be exclusionary. I would not want to see reciprocity addressed because that means you have to take everyone. Why would we give these provisions to a subset of the health care population, veterans and spouses? We need health care professionals whether they are in the military or not.

Assemblywoman Bustamante Adams:

I would be open to any appropriate changes in language on line 12. We wanted to make sure there was flexibility and that we did not impose rigidity on the regulatory bodies, so they would be in opposition. I am open to figuring out how to make that work so the section is appropriate. For me, being a military spouse, my thought was to work on a specific task force on a national basis. There is another bill in the Senate, Senate Bill 324, which addresses the broader picture. I spoke with Assemblyman Eisen, who is a cosponsor of the Senate bill

and I think there is a way to vary the language. My bill is specific to a group, and the other bill is a bigger picture that discusses other professions.

Assemblywoman Carlton:

Did any of the boards cite particular barriers that we need to get past to allow people to come into the state?

Judy Osgood:

Barriers were identified by a number of the boards or commissions that responded to the call for information that was in the Governor's executive order. The barriers were primarily in their regulations. In some cases, they said they were working on making the changes to comply with some of the mandates in the executive order. In a couple of cases, there were statutory barriers, but most were regulatory.

Assemblywoman Carlton:

All regulations have to have a statutory authority behind them. If it is a regulatory problem, there is probably a statute behind it. Otherwise, the regulation is not well founded and should be reevaluated.

Assemblyman Frierson:

In section 1, is there a drafting issue, because it limits the regulatory body to consider only the three factors?

Matt Mundy, Committee Counsel:

We can certainly consider putting in "including without limitations" so the board could consider additional items if they chose for the actual approval. Similarly, it says the board can request additional information in the application, but that is not the same as the three requirements in section 1, subsection 1. We could do the same thing there.

Chairman Bobzien:

Are there any additional questions? Seeing none, is there additional testimony in support of A.B. 349?

Keith Lee:

We have proffered an amendment ([Exhibit T](#)) and have discussed it with the sponsor. It tracks Senate Bill 324, which includes provisions similar to what is in this bill. It is far more expansive as to being unlimited to the people who would be eligible for this expedited processing of licensure by endorsement. I expect the two bills will be melded together so there is consistency in language. Our amendment will insert new wording in section 1, subsection 2, paragraph (a), subparagraph (5) which reads, "If applicable to the profession,

the applicant is certified in a specialty recognized by the American Board of Medical Specialties." This comes from language we have been developing with the Office of the Governor, Assemblyman Eisen, Senator Hardy, and others interested in how we are processing S.B. 324 to expand the universe of those who become eligible and can apply for licensure by endorsement and to expedite that process. Everything we are talking about in A.B. 349 is being tracked similarly in S.B. 324.

Chairman Bobzien:

Are there any questions? Seeing none, we will proceed.

Neena Laxalt, representing Nevada State Board of Veterinary Medical Examiners:

We support A.B. 349. There are several veterinarians who work on military bases in Nevada. We do not have licensing by endorsement, but we have an expedited process. If we receive completed applications, we can normally get those licensed within 15 days, and for veterinarians who have to retest, we can often have those out within 30 days. [Submitted a letter of support from Debbie Machen ([Exhibit U](#)).]

Suzanne Connell, Private Citizen, Reno, Nevada:

I am a military spouse and I believe that spouses of living military members should be included in this bill. Many spouses of military members who move here as a permanent change of station, or relocate to Nevada and serve in active duty, reserves, or National Guard would benefit from this amended bill. A military spouse who has a professional license in another state would be able to work in Nevada right away with a license by endorsement. This bill would alleviate the financial stress associated with moving or transferring to another state as a military family. Please consider the amendment submitted by the Nevada Enlisted Association of the National Guard, United States ([Exhibit V](#)), which changes section 1, subsection 1, paragraph (b) to read, "The applicant is an active member or veteran of, or the surviving spouse, or current spouse of, the Armed Forces of the United States: and."

Chairman Bobzien:

Are there any questions? [There were none.]

Judi D. Kennedy, Executive Director, Nevada State Board of Optometry:

I am here to convey the support of the Nevada State Board of Optometry for this bill.

Chairman Bobzien:

Are there any questions? [There were none.]

Michael Hillerby, representing Nevada State Board of Accountancy:

We are pleased to offer our support for the bill.

Chairman Bobzien:

Are there any questions? Seeing none, are there others to testify in support of the bill? [There were none.] Is there any opposition? [There was none.] Is there anyone to testify from a neutral position?

Kim Frakes, Executive Director, Board of Examiners for Social Workers:

We do not oppose the bill and have not had a chance to bring the bill before the Board to officially endorse it. We ratified and endorsed the executive order and are willing to be supportive. If we were to issue a provisional license, it may require changes to our statutes under the NRS. I spoke with our Deputy Attorney General and if it goes through NRS Chapter 622, we would honor and support it.

Chairman Bobzien:

Are there any questions? [There were none.] Is there further testimony on the bill? [There was no response.] I will close the hearing on A.B. 349 and open the hearing on A.B. 339.

**Assembly Bill 339: Revises provisions governing compensation for overtime.
(BDR 53-968)**

Assemblyman Pete Livermore, Assembly District No. 40:

The intent of this bill is to amend the law regarding payment of overtime to employees who work ten-hour days. In our postindustrial economy, more and more workers are opting for work schedules other than traditional five-day, 40-hour work weeks. Perhaps the most popular is the 4-10 hour week consisting of four 10-hour days followed by a three-day weekend. Many workers find this schedule makes it easier to balance the demands of work and family, and for some, it reduces the time spent commuting and the money spent on gas. Many employers like the 4-10 schedules because it allows their business to remain open longer and increases productivity. There are benefits for the larger society, including decreased traffic congestion and improved air quality.

Unfortunately, many of our labor laws were written for another era. It was an era when the five-day, 40-hour week was the standard. Overtime law is one example. Although it allows for a 4-10 schedule, it does not adequately cover some situations. Our current law allows employers and employees to mutually agree upon a 4-10 schedule. If this kind of agreement exists, the employer must pay overtime for any hours worked beyond a normal 10-hour day or 40-hour week.

This bill addresses those cases in which an employee who usually works 4-10s is unable to work the entire 40 hours on a particular week for reasons beyond the employer's control. Under current law, the employer would have to pay the employee overtime for the time over eight hours he worked in a particular day during that week.

Section 1, subsection 1, paragraph (b), subparagraph (1) states, "If the employee does not work 40 hours in any scheduled week of work" because of a decision made by the employee for various reasons listed in the bill, the employer must pay the employee the regular wage rate for the hours the employee actually worked. In subparagraph (2) the bill adds language that if the employee does not work 40 hours in any scheduled week of work pursuant to this paragraph because of a decision made by the employer, the employer must pay the employee one and one-half times the employee's regular wage rate for any workday during that week of work in which the employee worked more than eight hours, or the employee's regular wage rate for the 40 hours that the employee was scheduled to work during that work week.

On page 3, line 9, it deletes the word "automobiles." I did not intend the bill to do that and will submit an amendment to restore the word.

The bill gives the employer the option to either pay the employee the regular rate for the entire 40-hour week or pay overtime for over eight hours of work in a particular day. The change will make the 4-10 schedule more flexible and more attractive for many businesses. I would also like to present a letter from Labor Commissioner Thoran Towler, which is now before you ([Exhibit W](#)).

Chairman Bobzien:

Are there any questions?

Assemblywoman Carlton:

What is the real problem and what are we trying to solve? It appears to be clearly laid out in the wage and hour law what the expectations are if a person works 4-10s, and we are changing those expectations. I see an issue, in that if it is on the employee's side of the equation, it is handled one way, and if it is on the employer's side of the equation, it is handled another. That could be subjective. It could be more confusing in the long run when you have subjective variables in a bill.

Assemblyman Livermore:

Dana Whaley regularly employs service personnel for four 10-hour days at the local Toyota dealership. Prior to employment, employees sign documents which say they are willing to work that schedule. He will explain his operation.

I spoke with Labor Commissioner Towler, and he understands these things are a problem and end up with the Labor Commission for negotiation. I do not know how you can cover it in one paragraph because it is an employer-employee relationship. The employee agrees to show up at work for a certain schedule, and when he does not return to work after lunch, the employer is stuck with the consequence. The employer did not create the situation, but he may allow the employee to make up the time. We believe the labor law needs to be changed in the *Nevada Revised Statutes* (NRS) to correct the issues with the nonstandard workday.

Dana Whaley, General Manager, Carson City Toyota Scion:

This all came about because we looked to increase our work force, and provide better service for our customers, by having our parts and service department open six days per week for ten hours per day. To answer the question about how you control that, most businesses are on time clocks or some type of recording to know what hours the employee is working. When we went to 4-10s, we found out that our 4-10 people were being paid overtime the way the law is written. I had employees coming in late or getting stuck at doctor appointments. What I read in the law is if they do not work the full 10 hours in a 10-hour day, I have to pay time and a half for anything they work over 8 hours. I could not believe what my office manager told me about this, so I called the Labor Commission to question them if that was how the law as written. They told me, yes. I asked why no one has done anything about this and they had no idea. That is when I met with Assemblyman Livermore. If an employer does not do this, it could be found in an audit and he could be fined. It really needs to be considered because it affects the employer and the employee.

Assemblyman Livermore:

Commissioner Towler stated in his letter that he supports this bill and efforts to fix the problem in the 4-10 law that is beneficial to all parties involved. If you have a better method to reach that, we are open to any amendment you would offer.

Assemblywoman Carlton:

To me, beneficial to all parties seems to be beneficial to the employer. It will change the employee's wages. A time clock tells when an employee is at work, but not why. The conditions proposed by the bill include natural disasters and inclement weather. These things could happen either way. There is nothing in the law that says you have to work an employee on a 4-10 schedule. You can go to 5-8s if you want. It seems to me that this benefits the employer. It does not benefit the employee in any way. An employee will have to fight to get this time, and it will be a "he said, she said" argument.

Assemblyman Livermore:

I do not agree, but I will accept any solution that you have for this. Today, you have an employer who is willing to hire people and increase his workforce to provide service to his customers. He has another dealership, but will not implement this plan unless there is a solution to this. It could create jobs. The negotiations are between the employer and the employee. The employer is willing to pay fair wages and benefits, but he has certain ways to operate his business. He feels it operates better on a 10-hour day than an 8-hour day. He understands that if he is responsible, he will pay the overtime. The employer should not be held responsible for something that was agreed upon.

Assemblyman Daly:

I agree with Assemblywoman Carlton. The language is in the law in two different places, in NRS Chapter 608 and NRS 338.020. It says that an employer has to pay overtime for over eight hours in a day unless, by mutual agreement, the employee works a 4-10 schedule for any week of work. If that language is ambiguous, we should fix it. You can have the ambiguity if you "want to," but if it is agreed upon, and a regulatory agency or the Labor Commissioner says there is a mutual agreement for workers to work 4-10s with the employer, and there was some fluctuation or a day got missed on a construction job, the employee still agrees to work the 4-10s and it does not revert back to overtime. The reason I say "want to" is that the previous Labor Commissioner's interpretation, and it seems to be perpetuated by the current Commissioner, was that if you missed even one minute in that seven-day period, it reverts back. I told the previous Labor Commissioner that I thought it was bad interpretation. To work to clarify it is fine. You could sign a collective bargaining agreement and that will fix your problem. Maybe our legal counsel has a suggestion on how to clarify that, or is it clear the way it is?

Matt Mundy, Committee Counsel:

There are two conditions to exempt you from the requirements. The first condition is that there is a mutual agreement, and the second is that the employee actually works a 40-hour week.

Dana Whaley:

We are not trying to take anything away from the employee. If the employee works his time, he should be paid for his time. If he works over the 40 hours, he should be paid time and a half. Our problem was that we had employees who were coming in late, so they worked less than 40 hours. The way the law is written, I had to pay them time and a half. That is what we are trying to fix. If they work less than 40 hours, they should be paid for the hours they work, not time and a half.

Assemblyman Grady:

There has to be some common sense in here. If there is nothing for the employee, the next day the employer could tell the employee he could only work enough hours to keep his time under 40 hours in the week. Then the employer would be losing. If the employee is late, he should make it up. I cannot believe we have to make the time clock the bible. Common sense has to prevail.

Dana Whaley:

I agree with you. That is not what the Labor Commission replied to us. The reply was that if we do not pay the 40 hours or pay time and a half if they do not work the 40 hours, any business could be fined. I agree with the need for common sense, but that is not how the law is written.

Assemblyman Livermore:

I would love to amend this legislation if anybody has a better idea. This is an established business with 85 to 100 employees who are paid standard wages and benefits, with 6 to 8 people working 4-10s. If he went to 5-8s, he may have to reduce the number of positions. This is about relations between a person who is willing to pay a wage and a person willing to work for the wage. There is an employee agreement form between the employer and the employee to work those hours, so there is nobody pushing people into working hours they are not willing to work ([Exhibit X](#)).

Chairman Bobzien:

I would encourage you, Assemblyman Livermore, to check with our legal counsel because there may be an opinion letter on file. I would think that this has certainly come up before and we may have a legal opinion that will clarify some of this.

Assemblyman Hardy:

In our construction industry, it happens almost monthly because we travel all over the state. If an employee works 4-10s so he can get home for the remaining portion of the week, and we have a day off due to inclement weather, the employee cannot make up the work and I still have to pay the overtime. That was a ruling from the Labor Commissioner. I am having the same situation in my industry and it needs to be fixed.

Assemblyman Daly:

I agree with Assemblymen Grady and Hardy; it needs to be clarified and fixed. On a construction job, if you miss a day, you have to be careful not to have people play games and switch from a 4-10 to a 5-8 schedule. If a person misses a day due to rain, he should not have to come off his 4-10 work week.

Chairman Bobzien:

Are there any questions? Seeing none, are there any additional supporters of this legislation wishing to go on record?

Ray Bacon, representing Nevada Manufacturers Association:

Nobody does payroll by hand anymore. It is so complex that everyone has a software package. As soon as we change this legislation, every one of the software companies is going to charge their clients to make the change. They will not get that done by July 1, 2013, so if there is a change, the effective date will need to be changed. The issue has been there for a long time and we do not have a good fix, because Nevada follows its own rules. Every time we make a change to this law, every business in Nevada that uses a payroll processing program will have to pay to make the change.

Chairman Bobzien:

Are you opposed to the bill, but with the offer of an amendment to move out the effective date to deal with any software implementation issues?

Ray Bacon:

I think that would be the minimum you would need to do.

Chairman Bobzien:

Are there any questions for Mr. Bacon? Seeing none, is there anyone else wishing to get on the record for A.B. 339? [There was no one.] I will close the hearing on A.B. 339. Is there anyone wishing to make public comment? [There was no one.] Are there any matters to come before the Committee? [There were none.]

The meeting is adjourned [at 3:56 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 29, 2013

Time of Meeting: 12:16 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 277	C	Assemblywoman Teresa Benitez-Thompson	Prepared Testimony
A.B. 277	D	Assemblywoman Teresa Benitez-Thompson	Opinion
A.B. 277	E	Shari Peterson	Proposed Amendment
A.B. 277	F	Joanna Jacob	Proposed Amendment
A.B. 425	G	Scott Kipper	Prepared Testimony
A.B. 430	H	John Griffin	Handout
A.B. 430	I	John Griffin	Map
A.B. 430	J	Dan Wulz	Prepared Testimony
A.B. 430	K	Scott Scherer	Conceptual Amendment
A.B. 435	L	Scott Kipper	Prepared Testimony
A.B. 435	M	Scott Kipper	Proposed Amendment
A.B. 435	N	Robert Ostovsky	Proposed Amendment
A.B. 349	O	Assemblywoman Irene Bustamante Adams	Handout
A.B. 349	P	Judy Osgood	Executive Order
A.B. 349	Q	Judy Osgood	Chart
A.B. 349	R	Assemblywoman Irene Bustamante Adams	Proposed Amendment
A.B. 349	S	Assemblywoman Irene Bustamante Adams	Handout
A.B. 349	T	Keith Lee	Proposed Amendment
A.B. 349	U	Neena Laxalt	Letter of Support
A.B. 349	V	Suzanne Connell	Handout
A.B. 339	W	Assemblyman Pete Livermore	Written Testimony
A.B. 339	X	Assemblyman Pete Livermore	Handout