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

Seventy-Seventh Session
April 3, 2013

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:47 p.m. on Wednesday, April 3, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblyman Cresent Hardy (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Heidi Swank, Clark County Assembly District No. 16
Assemblywoman Ellen Spiegel, Clark County Assembly District No. 20

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:

Kyle Davis, Political Director, Nevada Conservation League and Education Fund
Peter Mulvihill, Chief, State Fire Marshall Division, Department of Public Safety
Kiki Corbin, Director, Grass Roots Action Network, Carson City, Nevada
Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates
Wendy Fenner, Private Citizen, Las Vegas, Nevada
Lea Tauchen, representing Retail Association of Nevada
Tim Shestek, Senior Director, American Chemistry Council
Jennifer Gibbons, representing Toy Industry Association
Jan Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders
Michael Harter, CEO and Senior Provost, Touro University Western Division, Henderson, Nevada
Nicole Cavenagh, Clinical Director, Center for Autism and Developmental Disabilities, Touro University Nevada, Henderson, Nevada
Ken MacAleese, President, Nevada Association for Behavior Analysis
Robert Ostrovsky, representing Nevada Association of Health Plans
Rusty McAllister, representing Professional Firefighters of Nevada and Las Vegas Firefighters Health and Welfare Trust Fund
Yvanna Cancela, representing Culinary Workers Union Local 226
Josh Griffin, representing Health Services Coalition
Adam Plain, Insurance Regulation Liaison, Nevada Division of Insurance, Department of Business and Industry
Jon Hager, Executive Director, Silver State Health Insurance Exchange
Bill McKean, representing Utilities, Inc., Tallahassee, Florida

John Williams, Director of Government Affairs, Utilities, Inc., Tallahassee, Florida
Steve Walker, representing Gold Country Water Company
Donald Lomoljo, Utilities Hearing Officer, Public Utilities Commission of Nevada
Shari Peterson, Legislative Chair, Nevada Dental Hygienists' Association
Joanne Wineinger, District Trustee, American Dental Assistant Association, Denton, Texas
Tracy Wale, President, Infection Control Solutions, Las Vegas, Nevada
Chris Ferrari, representing Nevada Dental Association
James Kinard, President, Board of Dental Examiners of Nevada
John Hunt, Legal Counsel, Board of Dental Examiners of Nevada
Fred Hillerby, representing Board of Dental Examiners of Nevada
Karen D. Dennison, representing American Resort Development Association
Stephany Madsen, Senior Vice President, American Resort Development Association, Orlando, Florida
Keith Stephenson, Director of State Governmental Affairs, American Resort Development Association, Orlando, Florida
Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry
Bill Gabrielli, Real Estate Sales Agent, Century 21 Aadvantage Gold, Reno, Nevada
Warren Hardy, representing La Paloma Funeral Services
James Mullikin, Managing Partner, Bunkers Mortuaries, Cemeteries, and Crematory, Las Vegas, Nevada
Tyson Smith, Funeral Director, Boulder City Family Mortuary, Boulder City, Nevada
Gerald Hitchcock, Funeral Director, Freitas Rupracht Funeral Home, Yerington, Nevada
Jim Smolenski, General Manager, FitzHenry's Funeral Home, Carson City, Nevada
Robert List, representing Palm Mortuaries, Las Vegas, Nevada
James Westrin, Commissioner, Division of Mortgage Lending, Department of Business and Industry
Charles Mohler, Member, Advisory Council on Mortgage Investments and Mortgage Lending
David Goodheart, representing Nevada Hospital Association
George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry

Chairman Bobzien:
[The roll was called, and a quorum was present.] We will begin the meeting today with a work session. We will begin with Assembly Bill 11.

Assembly Bill 11: Repeals the provision requiring insurers to report to the Division of Industrial Relations of the Department of Business and Industry certain claims relating to diseases of the heart or lung and occupational diseases that are infectious or relate to cancer. (BDR 53-351)

Kelly Richard, Committee Policy Analyst:
The bill was heard in Committee on February 6 and March 13, 2013. [Read from work session document (Exhibit C).] The amendment would unrepeal and then restrict the report.

Chairman Bobzien:
What is the pleasure of the Committee?

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 11.
>
> ASSEMBLYMAN DALY SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Carlton:
I have a concern on the amendment. Some peace officers are included in the heart and lung provisions, and I want to make sure when we use "police" instead of "peace" that we are reporting fully on the impacts of these diseases on the people who are suffering from them. We can have Legal look at it.

Chairman Bobzien:
I think that is the intent of the amendment. Is there further discussion? [There was none.]

> THE MOTION PASSED. (ASSEMBLYMAN HARDY WAS ABSENT FOR THE VOTE.)

Chairman Bobzien:
We will hear Assembly Bill 39.

Assembly Bill 39: Provides restrictions on the retail sale of certain products that are ephedrine and pseudoephedrine based. (BDR 54-218)

Kelly Richard, Committee Policy Analyst:
The bill was heard in Committee on March 13, 2013. [Read from work session document (Exhibit D).]

Chairman Bobzien:
What would the Committee like to do?

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 39.
>
> ASSEMBLYMAN DALY SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Ellison:
I reserve my right to change my vote on the floor.

> THE MOTION PASSED. (ASSEMBLYMAN HARDY WAS ABSENT FOR THE VOTE.)

Chairman Bobzien:
We will move to Assembly Bill 206.

Assembly Bill 206: Provides that volunteer members of a county search and rescue organization shall be deemed to be employees of the county at a specified wage for purposes of industrial insurance. (BDR 53-959)

Kelly Richard, Committee Policy Analyst:
The bill was heard in Committee on March 13, 2012. [Read from work session document (Exhibit E).]

Chairman Bobzien:
What does the Committee want to do on this measure?

> ASSEMBLYMAN DALY MOVED TO DO PASS ASSEMBLY BILL 206.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

> THE MOTION PASSED. (ASSEMBLYMAN HARDY WAS ABSENT FOR THE VOTE.)

We will hear our next bill.

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

Kelly Richard, Committee Policy Analyst:
This bill was heard in Committee on March 29, 2013. [Read from work session document (Exhibit F).]

Chairman Bobzien:
Is there a motion on this bill?

> ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 277.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

> THE MOTION PASSED. (ASSEMBLYMAN HARDY WAS ABSENT FOR THE VOTE.)

That concludes the work session. I will open the hearing on Assembly Bill 354.

Assembly Bill 354: Prohibits the use of certain chemicals in various consumer products. (BDR 52-789)

Assemblywoman Olivia Diaz, Clark County Assembly District No. 11:
Becoming a mother during the last legislative session changed my universe. When I spoke with Kyle Davis about this bill, I thought about my son and a lot of children who live in a community like the one I represent. This bill comes to the Committee today due to a concern about toxic chemicals that exist in many products that our families use every day, whether it be Bisphenol A (BPA) in our food containers or toxic flame retardants in our furniture. I was not aware of this information until I started reading more about it.

The bill does three things. It bans BPA in reusable food and beverage containers and food packaging that is intended or marketed for children. It bans the use of TRIS, which is a family of toxic flame retardants that include TDCPP (tris(1,3-dichloro-2-propyl) phosphate), TCEP (tris(2-chloroethyl phosphate), or TCPP (tris(2-chloro-1-methylethyl) phosphate) in children's products and residential furniture. The bill requires the Health Division to maintain the list of chemicals of high concern.

We want to ensure that any bottle, sippy cup, baby food in a plastic container, or any food that is for children is not packaged in a container that contains BPA because there is a body of research that indicates that this proves to be harmful over time to our children. I will walk through the bill.

Sections 2 through 9 of the bill provide definitions for the products in which we intend to ban the use of BPA. Section 10 establishes that certain products shall not contain BPA in order to be sold in the state. Section 11 provides that a manufacturer should not replace BPA with an equally harmful or more harmful chemical. Section 12 creates a petition process whereby chemicals that are equally or more harmful can be added to the list. Section 13 requires products that contain BPA be labeled. As a consumer, I want to know if the product I purchase contains BPA or not. As a parent, I should be informed. Section 14 requires that the manufacturer provide information on its website about the chemical identity of a substance that comes in contact with food.

Sections 16 through 22 provide definitions for the products in which we intend to ban the use of TRIS. Sections 23 and 24 establish that certain products shall not contain TRIS in an amount greater than 50 parts per million in order to be sold in the state and exempts resale of existing products. Section 26 provides a penalty for violation. Section 28 declares legislative intent to reduce exposure to harmful chemicals. Sections 29 through 35 provide definitions for the list of chemicals of high concern. Section 36 requires that the Health Division maintain a list of 50 to 100 chemicals of high concern and give guidance as to how the Division should make the determination as to whether a chemical ought to be included. Section 37 authorizes the Division to participate in an interstate clearinghouse in order to reduce the burden of creating the list.

The opposition will say that federal laws are adequate enough to control harmful chemicals. The truth is the Toxic Substances Control Act of 1976 is outdated and inadequate. There are over 80,000 toxic chemicals on the market. Of the 60,000 that were in existence prior to 1976, only 200 have ever been tested. The Toxic Substances Control Act requires the government to provide proof of actual harm rather than the company having to prove safety.

Opponents will say that BPA is safe and the concerns about it are unsubstantiated. As a concerned mother, I would not be bringing forth this legislation if I thought that way. There is clear evidence that BPA is a significant public health risk. Many companies have already recognized it and that is why we can already buy products marked "BPA free." We want our children to be protected like children in other states are under similar laws.

The third issue the opponents will cite is that fire incidents will go up without these chemicals and products. We are talking about the flame retardants that are used in a lot of furniture. The cushions on our couches are doused in flame retardant, and every time they are sat on, it comes out of the cushion and is emitted into the environment and the air we breathe. Evidence shows that the presence of toxic flame retardants does not make a household more safe.

Kyle Davis, Political Director, Nevada Conservation League and Education Fund: From our perspective, this is an important bill in terms of protecting human health. I want to start by talking about the Toxic Substances Control Act, which is the reason we are here (Exhibit G). You will hear from industry control groups that this is something that needs to be addressed at the federal level. The unfortunate thing is that the federal law is completely inadequate and has not been updated since 1976. The fact is that this law does not require that chemicals that are used in products be tested. The law allows for secrecy, so 20 percent of the chemicals are kept secret. Instead of requiring that these chemicals be proven safe before they are put into the products that we use every day, it puts the burden on government to show that there is actual harm before they are taken out of products. Only when there are actual human health impacts from these products may the products be taken off the shelf. The Environmental Protection Agency (EPA) tried to use the law's provision for asbestos, which is widely recognized as harmful, but they were not able to because of the restrictions that exist under the law. That is why states are stepping forward across the country.

This bill proposes a ban on BPA, which exists in 12 states and is currently being considered in 9 others. The toxic flame retardants, which I will refer to as TRIS, are banned in two states, and their ban is being considered in eight more. Two days ago, the Vermont Senate unanimously passed a bill to ban toxic flame retardants.

The listing requirement in the bill for chemicals of concern currently exists in three states and is being considered in eight more. This is happening now because we have a broken federal system that is not protecting public health.

We are going to hear testimony that there is not a problem with BPA. The fact that so many manufacturers are now offering BPA-free products shows that they see there is a concern. We want to make sure we extend the protections to all consumers. This is a hormone-disrupting chemical, which means it can mimic or block hormones and disrupt the body's normal functions. Numerous studies suggest that it can have health effects at extremely low exposure levels and is especially of concern for vulnerable populations, such as pregnant women, babies, and children. Bisphenol A is used in many consumer products.

It is used in reusable bottles for adults as well as food containers, the insides of cans, dental sealants, and paper receipts. It is fairly widespread. We feel that it has been fairly clearly proven that BPA is a chemical of concern and that is why we are seeing a change in the marketplace. We want to make sure that we are protecting health for all and not just those who have the ability or knowledge to buy those specific products. [Submitted a handout on BPA (Exhibit H).]

The main thing about toxic flame retardants and TRIS is that they are unnecessary and they do not work. Last summer there was an expansive series in the *Chicago Tribune* that demonstrated how TRIS and similar chemicals do not make fires burn any more slowly in real situations. You end up with smoke from the fires that is more toxic than smoke normally is because of the presence of these chemicals.

The three TRIS chemicals we are looking at in this legislation includes TDCPP, which has been listed as a known carcinogen under California's Proposition 65. The Consumer Product Safety Commission has concluded that it increases cancer risk. There is also evidence that it disrupts hormones. Several in vitro studies have found that exposure to TDCPP causes deoxyribonucleic acid (DNA) mutations. Animal studies suggest that it is a neurotoxin, and in vitro studies have shown that it is toxic to developing brain cells. It has been recognized as a carcinogen by the World Health Organization. Most vulnerable to the toxic effects are children whose systems are still developing and the firefighters who breathe in these chemicals. This chemical was recognized as toxic back in the 1970s, when it was banned for use in children's pajamas, but it is still in use today in products such as couches and the mats that children sleep on at daycare.

The chemical TCEP increases cancer risk and is also linked to reproductive effects in neurotoxicity. The European Chemicals Agency refers to TCEP as a substance of very high concern. It is also listed in California as a known carcinogen. Animal studies have found that it causes tumors in the kidney and liver as well as damage to the learning center of the brain.

The chemical TCPP has been found in human breast milk, and a breakdown product has been detected in urine. It is a potential carcinogen, accumulates in the liver and kidneys, and may affect the developing nervous system of infants and children based on cellular and animal studies. It is structurally similar to the chemical compounds that have been identified as causing cancer, TCEP and TDCPP, or chlorinated TRIS.

On the Nevada Electronic Legislative Information System (NELIS) you have testimony from Andrew McGuire, executive director of the Trauma Foundation, San Francisco General Hospital, and Donald Lucas of Lawrence Berkeley National Laboratory that outlines more of the effects and risks that are associated with these chemicals (Exhibit I).

The last section of the bill is the provision that requires a list of chemicals of high concern. This is the cornerstone of any framework for protecting children from harmful chemicals in products. In section 36, it lays out a fairly rigorous scientific process in which a chemical would end up on this list. We are talking about things that have been known or are likely to harm the development of a fetus, cause cancer, result in genetic damage, cause reproductive harm, and damage the endocrine or hormone system; be persistent, bioaccumulative, and toxic; or be very persistent, and very bioaccumulative along with a few other criteria. We feel it is a high criteria to get on this list. Having a list is important because it puts manufacturers on notice that these chemicals are a concern to state agencies and gives the public information so we can determine whether this is something that we want to phase out of products. It also helps parents make safer consumer product decisions and raises awareness. It is also educational about understanding what is in the products we use.

There has been some pushback recently regarding whether BPA is harmful. There was a recent article about a study that declared it may not be a problem. The study has not been published, has not been peer reviewed, and was conducted by a scientist who has ties to the industry that makes these chemicals. There is also an assertion that the federal Food and Drug Administration (FDA) has declared that BPA is safe. That has never happened. They are continuing to evaluate it and their denial of a petition was not a final safety determination. It is misleading to say that it has been found to be safe. They have relied on a handful of studies because they are only using studies that adhere to good laboratory practices. That is not a standard as to how good or bad the science is, but has more to do with what happens in those laboratories. It focuses on care and feeding of lab animals, standards for facility maintenance, personnel requirements, and collection of data. It is very expensive to become certified under this program, and usually the only labs that are certified are industry labs. It does not guarantee the quality of research design, the skills of the technicians, the sensitivities used to determine the effect, and whether the scientific methods used are current.

The federal system is inadequate. You will hear a lot about how the EPA has the ability to regulate these chemicals. The problem is that it is after the fact. These chemicals are on the market, are being used, and are being touched by our children and family members. The only way to get them out of these

products is the government has to prove that these chemicals are 100 percent harmful. The companies do not have to show us that the products they are giving us are safe. That is why we bring this legislation today.

This is a bill that is important to our organization but also to me personally. I have two small children who go to day care and sleep on the mats and sit on the couches we buy. It is incumbent on us to protect public health as other states have done.

Chairman Bobzien:
Are there any questions?

Assemblywoman Carlton:
Could we clarify that there are some safe flame retardants and realistic uses for them?

Kyle Davis:
I would agree that there are other options. In this legislation, we seek to address these three chemicals about which we feel there is significant evidence that they are toxic. If there is a way for these products to be flame retardant and not toxic, I do not believe there is anything in the bill to prevent that from happening.

Assemblyman Hansen:
I do not want anything to be unsafe for anybody. I dealt with the asbestos issue, and it has been blown so totally out of proportion that it makes me highly suspicious. I am looking at an extensive list of agencies that have approved BPA, including the FDA in 2012, the European Food Safety Authority, the European Union, the Swiss Federal Office of Public Health, the French food safety authority, Dutch Food and Consumer Product Safety Authority, the Danish Environmental Protection Agency, German Federal Institute for Risk Assessment, Health Canada, Food Standards Australia New Zealand, and the Japanese National Institute of Advanced Industrial Science and Technology. Are all of these bad labs that did not meet the standards you insist they follow?

Kyle Davis:
In many of these cases, all of the studies are not being analyzed. They are only looking at the studies that meet good laboratory practices, which is not necessarily a filter that allows what is good science, but more how the lab is run. They are not looking at the entire picture. There are international organizations that in varying degrees have varying degrees of approval. The best answer is that, in our evaluation, we think the scientific evidence does weigh on the side that there is a problem.

Assemblyman Hansen:
Who says they are wrong?

Kyle Davis:
We should be trusting the balance of the science in terms of all of the studies that have been done. We should look to the other states that have taken these steps based upon the evidence presented to them. We should be looking at other organizations that have been working on these issues as well. We are more of a policy organization than a science organization. We would look at the studies we have shown and the studies that are outlined in the testimony.

Assemblyman Daly:
In sections 13 and 14 you talk about products that are made in the state. It seems to me that if it is to be effective, it needs to say "sold in the state" rather than "made." In section 36 regarding the list of chemicals, I agree with the list but do not understand the numbers.

Kyle Davis:
I agree with your comments on section 13. In terms of the list, it is to not make it a too unwieldy process for our state agency to administer. As far as the bottom number, we could change that.

Assemblyman Livermore:
I believe the parties listed on NELIS in opposition to the bill would have safety as their top priority. Why would they not have the same evidence as you?

Assemblywoman Diaz:
Based on what we have heard so far, the federal government has not done anything with these chemicals since 1976 and there are over 60,000 in existence. In order for the government to do anything, the burden of proof is placed on the chemicals doing extreme harm. They are not saying, prove to us that these are safe. They want direct proof that these are harmful chemicals. The burden of proof is not that the chemical is safe, but that it is doing a lot of harm. There may be some smaller studies, but they are not identified and do not have the money to keep up with the companies that provide information to the government that chemicals are not harmful. That is what motivates me to move forward and eradicate any doubt in my mind so I do not give my child anything harmful during his developmental stage.

Assemblyman Livermore:
I hope we are not overregulating and cause a shortage of products.

Kyle Davis:
A number of states have already taken these steps, and I am not aware of any shortages in those states. These agencies are not relying on the full data because of the limitations they have in place. There have been over 700 independent animal and laboratory studies that have found adverse health effects at low-dose exposures, which are equivalent to real-world human exposures. I will provide the information to the Committee with the source documentation.

Assemblywoman Kirkpatrick:
I have a concern with the definition of retailer. In section 21 on lines 23 through 32, who would be the retailer? I understand the reason for labeling. People want to know what they are digesting. Who is it meant to get? It seems contradictory. Most retailers get their products wholesale from somewhere. It looks as if we have cut that out. Why would governmental entities that sell those things not be subject as well? Who do we want the retailer to be? What happens with current inventory in wholesale places? In the retail world, you buy certain items at certain times of the year. Plastic is purchased in the fall or early summer when fuel prices are lower. What if the wholesaler has already purchased products for the next six to nine months? I do not see a provision that allows them to get rid of the inventory. What are the provisions to liquidate? If the product goes to thrift stores, the people you are trying to protect the most, the people who have less money, might purchase even more of the products. Where is the toxic ingredient content labeling for the products? We recycle a lot of plastic, so where do these ingredients fall?

Kyle Davis:
I think the definition of retailer in section 21, line 28 is written to specifically eliminate the manufacturer, which is addressed in section 19, so we keep the separation between manufacturer and retailer. If that is wrong, we can tighten the language. In terms of retailer, we are after the traditional retailer who sells this type of furniture. There is not much we can do about what happens to the inventory. It is a struggle because there is no way to get the products out of the market without making people buy new products. This is something that will work over time. In the immediate future, we will still have plenty of product in the market that does contain these chemicals.

Regarding the inventory, section 24, which is the prohibition on selling the products, goes into effect on July 1, 2015. I am hopeful that the time frame will give enough time for inventory to be cleared out and new inventory to be put into place.

Assemblywoman Kirkpatrick:
In 2007, we passed Assembly Bill No. 178 of the 74th Legislative Session to establish efficiency standards for lightbulbs sold in Nevada. We said the older bulbs had to stop being sold in the state within two years, which is more amenable than this. Since we adopted regulations, the federal government found that disposal of the bulbs actually created more harm than the lightbulb we were trying to get disposed. People stepped up to the plate and stopped selling that kind of light bulb. That bill had a lot more flexibility. This bill seems to stop us today without thinking it out. I want to wish no harm on any person, but I do not want to run into a similar situation. When we released the mercury into the landfill, the same group that proposed the use of those lightbulbs was opposing that we do any regulations. I do not see where this bill allows the state to make policy about the liquidation of the products.

Chairman Bobzien:
The issue with that bill was the intention to push action at the federal level. That is also applicable to this bill, although I agree the means by which we are doing it are dramatically different. The issue with the lightbulbs was not the mercury which will be dealt with, but because the standard that was eventually adopted at the federal level had some conflicting elements. Therefore, we are in a position to have to repeal. We are happy to do that because we caused action to happen at the federal level. It is the classic states-as-laboratories model. It is important to remember that was the intention of the bill at the time and it is where this is going.

Assemblywoman Diaz:
I believe if we separate BPA and TRIS, it may be easier to understand. I do not think the scope of the bill in terms of BPA is too big. We are saying that BPA in reusable food and beverage containers intended for marketing to children should not happen in our state. We are not talking about all plastic, nor are we banning BPA from everything. We are targeting the most vulnerable population. In terms of TRIS, it appears to be the most contentious of the chemicals. We can have some dialogue with the opposition about which chemicals could be adopted sooner than later. We are willing to look into having an unintended consequence and being too far reaching. The opposition did not come to me directly to address how we could work the bill. Twelve states have banned BPA, including the large West Coast states of Washington and California. There is currently a ban on TRIS in two states and it is being considered in eight other states. We are open to dialogue, but there is not a two-way dialogue.

Assemblywoman Kirkpatrick:
I agree and the lobbyists are not doing as good a job as they have in the past of going to bill sponsors to have the needed discussions. They need to see the bill

sponsors because that is how the process works. Where would I look on the packaging to see what chemicals are in the product?

Assemblywoman Diaz:
It says it on the product label. It will say "BPA free."

Chairman Bobzien:
The market is already adjusting to the consumer concerns about this issue. How much movement is there and how much remaining concern do we have?

Kyle Davis:
There are a lot of products that advertise themselves as BPA free to the point that 90 percent of sippy cups do not contain BPA. That is not the case for food packaging, and there has been a recent pushback because of the argument that there is not any harm from BPA. If that is the case, if we do not deal with this issue, we are going to see that percentage go back down.

Chairman Bobzien:
Are there any other questions from the Committee?

Assemblyman Livermore:
Would this ban cover only products sold in the children's department of a store?

Assemblywoman Diaz:
We do not want BPA in anything that has to do with how our kids get fed or take their food. The most concern is about the TRIS; it is wider than children.

Assemblyman Livermore:
If a retailer has stock with BPA, how far does this go?

Assemblywoman Diaz:
It is clear on the BPA, but it gets more complex with the flame retardants. There are some manufacturers who are seeing that they need to do good by their consumers. For example, the manufacturer of the Boppy Pillow did not want to compromise the brand of their product and did not use these chemicals in their product. They are seeing that if they want their clientele to be happy, they will not use it.

Chairman Bobzien:
Are there others in support of the bill?

Peter Mulvihill, Chief, State Fire Marshall Division, Department of Public Safety:
As it relates to the fire retardant chemicals specified in this bill, I am speaking in support of the bill. Since the amount of the specified fire retardant chemical applied to clothing and furniture must be kept so low, as to not pose an acute toxicity hazard, it becomes no longer effective as a fire retardant. As there is no benefit to the use of the specified fire retardant chemicals, the risk associated with the long-term exposure to the chemicals should be avoided.

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

Kiki Corbin, Director, Grass Roots Action Network, Carson City, Nevada:
I am a certified naturopath and pastoral counselor. Grass Roots Action Network represents thousands of members of the many big nonprofits that are concerned with environmental issues. In the last 30 years, we have seen a new pattern of business emerge where corporations create products that contain chemicals that are injurious to our health, yet they do not have to take responsibility, which is shocking to me as a citizen and a holistic practitioner. If we just took in chemicals and they were excreted from the body easily, I would think it was not a problem. The reality is that many of these chemicals bio-accumulate, meaning that they are stored in the body and continue to increase in amounts over time. They also increase from generation to generation. There are many big factors in the environment today in food, air, and water that are converging. We are getting high amounts of all these different things, including chemicals.

The latest statistics on autism, which came out yesterday, indicate that 1 in 55 babies are being born on the autistic spectrum. Thirty years ago it was 1 in 10,000. The rate of cancer in children has also increased. Attention deficit hyperactivity disorder is now found in 12 percent of boys and 4.7 percent of girls. Obesity in children has doubled in the last 20 years. These are all diseases that are connected to research in chemicals. I visited the laboratory of a DNA and ribonucleic acid (RNA) researcher at Case Western Reserve School of Medicine, one of the most prestigious medical research facilities in this country. Dr. Jonatha Gott, PhD., is one of the top three DNA and RNA researchers in the world. I asked her how much of any one toxic chemical in a cell would make a difference in how that cell functions. She said that her research shows that only five parts per billion can disrupt cellular functioning. Most of us carry over 300 chemicals in every one of our cells. When a mother gives birth to a child, the child takes on, proportionally, 80 percent of her toxic load. My mother, for example, was exposed to DDT, and she passed her load onto me. I accumulated more chemicals and I gave 80 percent of my load proportionately to my children. My daughter got cancer in her early twenties. Bio-accumulation

is extremely important to all of our health and to our babies especially. The fetus and then the baby are the most vulnerable.

The numbers that the federal government uses as safe are nowhere close to the five parts per billion. All the research has been on single chemicals, not on 300 of them put together in the body. Thank you for your support of this bill.

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

Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates:
We have supported similar bills to this in other states because endocrine disruptors are harmful to men and women in their ability to have children. We support this bill.

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

Wendy Fenner, Private Citizen, Las Vegas, Nevada:
I am a civil engineer, and I used to work for a local government agency before I got extremely ill working in a building that misused chemicals which gave off volatile organic compounds. The damage to my liver, colon, and reproductive system were precursors to what affected my bronchial system. I have developed multiple chemical sensitivities to other toxins in the environment. I have difficulty walking into certain grocery stores and other retail places where merchandise has been imported from overseas and is giving off gases. I feel that we are here to be advocates for our children's health and safety. I support the passage of this bill.

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

Lea Tauchen, representing Retail Association of Nevada:
We believe that consumer product safety issues should be addressed federally so they are uniform national standards rather than a state-by-state patchwork approach, which makes it difficult for retailers and manufacturers to comply with various state-specific laws (Exhibit J). The market is already taking care of this issue. Many major retailers no longer sell children's food or drink packaging or containers containing BPA. We believe consumers have a choice, especially concerning that chemical. The January 1, 2014, deadline to ban BPA in reusable food and beverage packaging and in children's food packaging does not

allow enough time for manufacturers to comply and to identify alternatives. Additionally, this date would make it difficult for retailers to comply to sell through their existing inventory. Another concern is that alternatives may be cost-prohibitive and not practical. Regarding section 13 on page 3, we believe there should be an exemption for labeling products with packaging containing BPA and instances where there is not a feasible alternative to BPA.

In section 14, we believe that there should be criteria or further definition on the line that says "the chemical identity of any food contact substance or indirect food additive that is used in canned food" requires being reported by the manufacturer on their website. We would recommend that this reporting be limited to chemicals of high concern or other specific intentionally added chemicals. Regarding the flame retardant issue, we have a concern with the effective date. July 1, 2014, does not allow enough time for industry to identify products containing these chemicals and to find alternatives. We would seek the same two-year time period to complete that task.

On page 4 in section 18, subsection 1, the definition of products for use by children 12 years of age and under is extremely broad and wide ranging when you think of all the products that a 12-year-old may contact. We would like to see that definition narrowed to age 3 years and under. That would specifically capture baby and toddler products, which the proponents mentioned was their concern. In section 23, subsection 1, we are concerned that the flame retardant de minimis value of 50 parts per million by component is not a feasible testing limit. We believe that this should be increased to at least 100 parts per million by mass to create consistency with other states that have introduced similar bans.

Regarding the list of chemicals of high concern, we do not understand how this list is going to be used. We are worried that creating such a list may create unnecessary fear. It is also our understanding that the EPA provides similar information on their website, so it may be duplicative. In section 32, for consistency, we would like to see the definition narrowed to children 12 and under rather than 18 and under. By using different definitions it makes it hard to deal with compliance issues.

We do not oppose granting the state authority to utilize a chemical clearinghouse and encourage the use of findings from other states for additional chemicals, but we recommend that there be consistency amongst our state and other states that are doing this, especially in terms of uniformity for identifying products or reporting. We have made efforts to work with the bill's sponsor and were unable to do so.

Chairman Bobzien:
We will move to the next testifier.

Tim Shestek, Senior Director, American Chemistry Council:
Our member companies are the leading manufacturers of chemical products. We share the objectives of the bill sponsors in terms of ensuring the safety of our products. Safety is our top priority. We invest significant resources in product and environmental stewardship and share a common commitment to advancing the safe and secure management of our products. There are three points I would like to bring up in terms of the bill. Many of the issues that this bill seeks to address—reporting of information about chemicals, prioritization of chemicals, and regulations of chemicals—are being addressed under new and expanded regulatory programs at the EPA. The proposed use restrictions and labeling requirements on products containing BPA contradict the findings of many of the U.S. and international scientific regulatory bodies that have examined the weight of the evidence associated with this particular chemical.

I believe that there is an inaccurate presumption that the mere presence of any identified chemical in a product means that the product is somehow harmful. The U.S. EPA is currently implementing new reporting and risk assessment projects to further enhance the nation's chemical regulatory scheme. In February of this year, the EPA released information on more than 7,600 chemicals it had collected from our manufacturers, involving the use of chemicals and industrial, commercial, and consumer product applications. This information includes what manufacturers know about uses of chemicals in children's products.

All of this information is publicly available on the EPA's website. I have included on NELIS a background sheet that provides more information (Exhibit K). The EPA describes this reporting rule as the most comprehensive source of basic screening-level, exposure-related information on chemicals that is available. They are using that information to further assess chemicals and, last year, identified 83 work plan chemicals for review and assessment and regulation where warranted. In selecting this list of 83 chemicals, they looked at a number of factors, including chemicals used in children's products. In January 2013, the EPA released an initial work plans assessment for public review. Following a scientific peer review, it will be decided what, if any, restrictions or regulations are needed to manage the risk posed by chemicals that are used in various applications.

Last week, the EPA indicated that it will begin assessments on 23 commonly used chemicals with a focus on flame retardant chemicals specifically. They also announced that they identified 50 flame retardant chemicals that are

"unlikely to pose a risk to human health," yet according to section 24 of this bill, it would ban any flame retardant listed by the state of Nevada without conducting any sort of risk assessment or being informed by any risk assessment that is currently ongoing.

At a minimum, we would encourage Nevada to take a look at what is happening at the federal level and to leverage that information before embarking on a separate state-specific chemical management or reporting program. We believe that the bill unnecessarily imposes use restrictions and reporting requirements on products that contain BPA. Assemblyman Hansen mentioned earlier some of the regulatory bodies not only in the United States, but around the world, that concluded that BPA is safe as used. This bill would contradict the findings of those regulatory agencies.

We believe the bill is based on the inaccurate assumption that the mere presence of a chemical in a product means the product is somehow harmful and that children's products contain chemicals that pose a risk to Nevada's children.

For any chemical, natural or synthetic, the degree of toxicity and the potential for harm is dependent upon the dose and the exposure. Federal government agencies—U.S. EPA and even the Centers for Disease Control—readily acknowledge that the mere presence of a substance in the environment, in our bodies, or in products does not equate to harm. As drafted, we believe this bill will simply result in a list of chemicals present in certain children's products without any corresponding information for the public as to what that information means or, more importantly, what it does not mean. Not only do manufacturers have an inherent responsibility from a legal and a product stewardship standpoint to ensure that their products are safe, but there are more than a dozen federal laws on the books that regulate the safety of chemicals in commerce. Today you heard only about the shortcomings of the Toxic Substance Control Act (TSCA). I provided a list of other regulatory programs that are administered by the U.S. EPA, the Consumer Product Safety Commission, and the FDA to name just a few.

Prior to enacting any sort of new state-specific program, whether it is labeling, reporting, or use restrictions, we encourage Nevada to work with the industry and other stakeholders through the EPA process. While we support the intent of the bill, we cannot support it as currently drafted.

Jennifer Gibbons, representing Toy Industry Association:
The Toy Industry Association has around 600 members, both large and small, throughout North America. The safety of our products as well as the materials that are used in our products are a top priority for our industry. I have a

five-month-old son, so I understand the desire of the sponsor to protect children. The Toy Industry Association supports appropriate and strong children's safety and chemical regulations at the federal level. We support it at the federal level because having consistency amongst states is imperative for companies that are doing business in multiple states. Trying to comply with a patchwork of inconsistent state regulations is extremely costly and challenging for manufacturers. We do understand the frustration with the fact that TSCA reform at the federal level has been very slow moving. There is a TSCA reform bill that has been introduced in Congress. We understand there is an additional measure that is forthcoming this congressional session, and we support the modernization of the Toxic Substances Control Act. Legislation like A.B. 354 and other state-based chemical regulation efforts can be flawed because of a lack of appropriate in-state scientific resources and lack of a safety-based decision framework.

One of our key concerns with this bill is that while it outlines a process for the creation of a list of chemicals of high concern, it does not give any appropriate context or corresponding information. It simply puts together a list which may be confusing or even misleading to the public. [Read from prepared testimony (Exhibit L).] It was brought up that other states have created such lists. Washington State has created such a list but clearly points out that the presence of a chemical in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards. They also say that the data should not be used to determine the safety of an individual product. I hope the Committee will keep those things in mind as they look at the provision to create the list of chemicals of high concern.

We urge you to consider the unintended consequences of the provisions proposed in this legislation and to refrain from passing state-specific chemical regulation programs.

Chairman Bobzien:
Are there any questions?

Assemblywoman Carlton:
To Mr. Shestek, it is my understanding that the American Chemistry Council is a trade association made up of chemical manufacturers. Is that correct?

Tim Shestek:
That is correct. We have about 150 member companies.

Assemblywoman Carlton:
It started out as the Chemical Manufacturers' Association.

Tim Shestek:
That is correct.

Assemblywoman Carlton:
I am curious about the Responsible Care Program that was implemented awhile back and how it has worked. I had heard concerns that it was a preemptive program in dealing with chemicals in different products. How has it evolved?

Tim Shestek:
The Responsible Care Program is a requirement of our member companies. It is a product stewardship code of responsibility in terms of how products and processes are managed at our plant level. It deals with worker safety, process safety, and also plant security safety. We have made substantial improvements since the Responsible Care Code was first implemented, especially in terms of the security aspects. After 9/11, our industry has invested several millions of dollars in order to improve plant security. It is a requirement of our member companies, and I think it is an interesting point to bring forth in that if you are a member company, you have to adhere to certain practices in terms of product stewardship, environmental stewardship, and plant security in order to continue membership in our organization. I think it would be considered a gold standard of industry association practices.

Assemblywoman Carlton:
The correspondence I received was that it was basically used to avoid regulation at certain levels and to make sure whatever regulation or legislation that was passed stayed at the federal level, so the political action committee that is controlled by the Chemistry Council can have effect at the federal level. Is that correct?

Tim Shestek:
I agree that our industry would prefer a uniform set of regulatory standards that are implemented at the federal level. We are active in advocating for Congress to modernize TSCA so consumers can have additional confidence in the nation's regulatory system. I am not sure I am following your question about our political action committee in relation to this particular issue.

Assemblywoman Carlton:
The assumption I have drawn from the correspondence I received, and the little bit of research that I have been able to do, is that we keep hearing we want this at the federal level because the Council is a player at the federal level.

Chairman Bobzien:
Are there other questions?

Assemblyman Ohrenschall:
Does the manufacturer have to submit the product to the EPA, or does the EPA decide they want to test a product?

Tim Shestek:
There is a process in place for new chemicals that are intended to be placed on the market. We have a fact sheet we would be happy to provide the Committee. Between 1979 and 2010 almost 37,000 premanufacture notices were filed with the U.S. EPA in terms of intent to market a new chemical. There is a process by which new chemicals are reviewed. It is a seven-step process. The EPA scrutinizes data, looks at computer modeling, looks at chemical structure of similar chemicals, can ask for additional information, and looks at potential exposure information. Then they can either limit the use of the chemicals in terms of specific applications or green-light the chemical for use in the marketplace. I will provide more detailed information in terms of new chemicals that come out in the marketplace and the process the U.S. EPA follows (Exhibit M).

Assemblyman Ohrenschall:
If there is a chemical that the EPA feels is a danger, they cannot allow that product to be produced, correct?

Tim Shestek:
In terms of new chemicals on the marketplace, that is correct. They are also implementing their work plan chemical program under the current authority they have under TSCA. I alluded to it earlier in terms of the 83 identified chemicals that they are doing further investigation on and coming back with recommendations or use restrictions after the scientific investigations have been conducted.

Assemblyman Ohrenschall:
So, it would only be if the new chemical is being proposed to be used in a product? It would not be for chemicals in existing products?

Tim Shestek:
The premarket notification requirement does apply to new chemicals. The work plan assessments and the expanded authority is looking at existing chemicals in commerce.

Assemblyman Ohrenschall:
Under the current EPA program, is the burden of proof on the manufacturer to prove that it is chemical free in terms of anything that could harm the public, or is it on the EPA to prove there is a potential problem?

Tim Shestek:
If I understand TSCA, the standard by which chemicals are evaluated is an unreasonable risk standard. I do not think you can identify chemicals in black and white columns as being safe or unsafe. It is one of the issues we have. When you look at chemicals, you have to look at their potential hazard traits, how they are used, and at what level of exposure does an individual or the environment become at risk. When you look at all of those, then you can come up with a necessary risk assessment to determine whether or not that chemical poses an unreasonable risk.

Assemblyman Ohrenschall:
I want to feel that I can have faith in the federal level.

Assemblywoman Kirkpatrick:
How are Washington and California doing this? Would you not have been part of the discussions in those states?

Tim Shestek:
We are involved with California's two-prong approach. They have done some things legislatively and are currently in the process of developing regulations that would evaluate and identify chemicals in consumer products. Based on that evaluation, they will take some sort of regulatory action or none at all. They are still in the implementation phase of that regulation.

Assemblywoman Kirkpatrick:
I understood that in California it takes effect in July of 2013. Are they not through their process yet?

Tim Shestek:
That is correct. The California Legislature in 2008 passed two pieces of legislation granting authority to California's Department of Toxic Substances Control to develop regulations to prioritize and identify chemicals that are used in consumer products. Then, based on a scientific evaluation of those chemicals and how they are used, it will make some sort of determination if there is any regulation that might be needed. Those regulations have not yet been promulgated. We anticipate they will be finalized later this year, perhaps October.

Assemblywoman Kirkpatrick:
What about Washington State?

Jennifer Gibbons:
This bill goes beyond the BPA ban in either Washington or California.

Assemblywoman Kirkpatrick:
It seems that all of the states that have moved in this direction are from the East Coast. But the other states are specific to BPA and certain items. I believe Washington, according to the National Conference of State Legislatures, also includes the beverage and food containers and it does not specify for babies. How are they implementing theirs?

Jennifer Gibbons:
That is the limited knowledge I have because it does not relate to products made by our members.

Assemblywoman Kirkpatrick:
Ms. Tauchen, when you sell products, people do things regionally for transportation issues. Are Washington and California part of your regional destination for the West Coast?

Lea Tauchen:
I can get you an answer.

Assemblywoman Kirkpatrick:
Many of the products probably come from outside of the United States. We have four major logistics hubs where we receive imports, including Oregon, which would serve Washington; California, which usually serves Nevada and Utah; and Colorado and New Jersey. I wonder if, regionally, states are working in that direction and if there is an easier way to do this. From my perspective, one entity does not produce five different products, because it is not feasible and there is a cost associated. I am trying to understand regionally which direction it works and if it is as big of an issue as we are making.

I think the time frame is way too short. I would not know how you could replace some of the inventory that fast. For example, there is a big effort for food to be trans-fat free. Then you pump the product full of sodium so it has good taste. The bigger issue is that you have to be able to replace it and have a trace of it in. Sometimes you cannot have the ability to remove it 100 percent. That is why, on the chemical side, I am wondering if there are traces or there are allowances for a portion of the removed item to remain in the product? Starbucks thought it was great to have everything trans-fat free and less than

500 calories, but there was nothing to replace it and they had nothing to sell for pastry. So they changed to saying within 0.5 percent of trans-fat free is probably acceptable. Is that type of flexibility in this bill, or is it all or nothing? I think there is probably more discussion than we have time for today.

Tim Shestek:
Washington, California, and most of the states of which I am aware have limited restrictions on BPA products to polycarbonate plastic in empty baby bottles or reusable spill-proof cups. This bill has greatly expanded into the food packaging market. For instance, BPA is used in the epoxy resins of canned foods to prevent the can from contaminating the food. That is why we do not have any botulism reports. Epoxy resins have been used for about 50 years. I know you received letters from the Can Manufacturers Institute and others (Exhibit N). I cannot speak specifically to the level of the epoxy resins that might contain BPA. The FDA has recently issued an abandonment finding because manufacturers are not manufacturing polycarbonate baby bottles or sippy cups anymore. I do not know if there are readily available alternatives for the epoxy resins that are used in canned foods. As the bill is drafted, it talks about products that are marketed or intended for children. In the past the food industry has had some concerns about how you determine what is marketed for children. One point we raised with the Can Manufacturers Institute is the expansive nature of this bill.

Chairman Bobzien:
We have some additional questions.

Assemblywoman Bustamante Adams:
If there was a regional consistency and it was limited in scope based on California and Washington, then would there be more appetite from your industry?

Tim Shestek:
I was trying to clarify that the legislative restrictions on BPA-contained products that were enacted in California and Washington pertain only to polycarbonate baby bottles and reusable cups, not canned foods and the epoxy resins restricted by this bill.

Assemblywoman Bustamante Adams:
I will take that as a "yes" if it were more limited in scope. Is there a difference between what is considered toxic in a single dose versus repeated exposure to BPA over a period of time?

Tim Shestek:
According to the Can Manufacturers Institute, a person would have to eat more than 500 pounds of canned food and beverages per day for his entire lifetime to exceed the safe exposure level of BPA that is set by the U.S. FDA and European Food Safety Authority.

Assemblywoman Bustamante Adams:
There is no regional approach at this time. If I were a retailer, I would be very concerned that we are not having discussions, because from a business perspective, consistency is important. I know the energy industry has gotten their act together and started having regional approaches. Is there a regional approach at all?

Jennifer Gibbons:
I am not aware of any manufacturers who only sell regionally. That would cause issues with consistency and be very challenging, which is the key reason that we continue to advocate that changes should be made at the federal level.

Assemblyman Livermore:
Do you represent the Can Manufacturers Institute?

Tim Shestek:
No.

Chairman Bobzien:
Are there any final questions for the panel? Seeing none, is there additional opposition testimony? [There was none.] I will close the hearing on A.B. 354 and open the hearing on Assembly Bill 369.

Assembly Bill 369: Revises provisions relating to coverage for autism spectrum disorders in certain policies of health insurance and health care plans. (BDR 57-819)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:
On May 29, 2009, the Governor signed Assembly Bill No. 162 of the 75th Session. That was a monumental moment for the Legislature and for Nevada's children. Prior to that most children in Nevada could not get insurance for the treatment of autism. When that billed passed, Nevada was the eleventh state in the Union to pass insurance reform mandating that children with autism would receive insurance coverage.

My experience with autism started in 2007 during the interim after my first session. Former Speaker Barbara Buckley appointed me to the State Autism

Task Force and that is where I learned about the different treatments that could make such a difference in these children's lives. I saw nonverbal children who did not communicate, but the therapies helped them become productive kids who could function in school in normal classrooms. They could go on to do well in high school and attend trade school or college. That is why I introduced the bill in 2009. I had a lot of help that session from this Committee, including Assemblyman Marcus Conklin, then-Speaker Barbara Buckley, and then-Senator Maggie Carlton. In the end the Governor signed the bill. It has made a huge difference in kids' lives.

Since then, I have been approached by people in the autism community about some problems with the bill. There are issues about services where the kids' needs are not being covered. The current bill is an effort to try to correct these problems and to ensure if we are going to do it, we are going to do it right.

Assembly Bill 369 revises the coverage limitation for applied behavior analysis (ABA). The maximum benefit established by Assembly Bill No. 162 of the 75th Session was set at $36,000 per year. The proposed new maximum benefit does not use a dollar amount, but sets it at a maximum of 30 hours of weekly treatment unless a treatment plan for a child prescribes additional hours. The hours subject to this maximum can only be provided by certain behavioral professionals, and a family can only be charged one copayment per day for their behavioral treatment sessions. The bill prohibits an insurer from denying coverage for treatment on the basis that the treatment is educational in nature.

Assembly Bill 369 also delineates certain medical procedures and treatments that will be covered for individuals with autism spectrum disorders. Different treatments are successful for different children. This bill ensures that medical professionals can prescribe from the full array of available treatment options. Lastly, A.B. 369 provides that if federal law expressly authorizes more favorable coverage than what is included in this bill, a health plan or insurance policy must include such coverage. Behavior treatment for children with autism has been proven to work. For some children, the impacts are dramatic. These outcomes are documented in medical and academic journals and in the lives of many of our constituents who have been fortunate enough to receive treatment. Health plans, insurance companies, government, and society as a whole benefit by avoiding or reducing the long-term cost of medical care, special education, and social services.

The families of children with autism benefit by receiving needed relief in circumstances that can range from challenging to unbearable. Nevada's citizens with autism benefit through reduced negative behaviors, improved social

interaction and personal relationships, and a greater ability to become productive, taxpaying citizens.

[Vice Chairwoman Kirkpatrick assumed the Chair.]

Vice Chairwoman Kirkpatrick:
Are there any questions? [There were none.]

Jan Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders:
I am a member of the Nevada Commission on Autism Spectrum Disorders, a member of the Federal Interagency Autism Coordinating Committee (IACC) [(Exhibit O) and (Exhibit P)], and a parent of a young adult with autism.

The Affordable Care Act (ACA) required all states to establish a set of ten essential health benefits, one of which is mental health and substance abuse disorder services, including behavioral health treatment. Congress specifically included this language to address autism therapies, such as applied behavior analysis. The Silver State Health Insurance Exchange has already recognized this and determined it will include the autism mandate from the 2009 legislation.

For children with autism spectrum disorders, habilitative treatment is critical and would be part of therapeutic care and applied behavior analysis programs. The ACA requires states to define and include habilitative services to be covered as of 2014. The ACA also eliminated all dollar caps.

We are grateful that Nevada legislators supported insurance coverage for autism and passed the insurance mandate in 2009. We believed and I am sure many of you, as legislators voting for Assembly Bill No. 162 of the 75th Session, also believed that it would provide for all coverage and services defined in the bill. I have provided a copy of Assembly Bill No. 162 of the 75th Session enacted into law. It defined habilitative and rehabilitative care to mean counseling, guidance and professional services, and treatment programs, including, without limitation, ABA, that are necessary to develop, maintain, and restore to the maximum extent practicable the functioning of a person. It also listed prescription care, psychiatric care, psychological care, and therapeutic care. Therapeutic care means services provided by licensed or certified speech pathologists, occupational therapists, and physical therapists. It also defined a treatment plan. These items were listed in Assembly Bill No. 162 of the 75th Session, so why would we list them if they were not to be covered? They are not being covered.

I was one of the advocates who was in the room with the insurance providers during the negotiations to pass the bill, and it was the intent of the bill to include all the defined items. The promise of this coverage to the families not to be kept is an injustice we hope to resolve with A.B. 369.

Assembly Bill 369 ensures children will receive the coverage promised in Assembly Bill No. 162 of the 75th Session and adds coverage for other parent-cited critically needed services, such as an initial medical evaluation recommended by the American Academy of Pediatrics. Recent large-scale studies confirm a higher prevalence rate of medical comorbidities in children with autism spectrum disorder (ASD) than typical children; examples include gastrointestinal problems, respiratory infections, seizures, and allergies. Because children with ASD often are not able to communicate, these medical conditions go undetected and untreated. Undetected medical conditions cause behaviors, and studies even indicate that an elevated mortality risk for individuals with ASD appears to be related to the presence of these medical conditions. Children with ASD are five times more likely to have eating problems and nutritional problems, so the need for nutritionists or dietitians is critical.

Because ACA removed the dollar caps, we were advised by the Division of Insurance to get ahead of this and define the ABA cap. We have done so by determining a maximum weekly treatment hours cap, in lieu of the dollar cap, in A.B. 369. Assembly Bill No. 162 of the 75th Session established a $36,000 cap for ABA treatment. At the time the bill was written we believed it would and should support research levels of treatment. I have included a history of rates paid for ABA treatment in Nevada with examples of annual dollar amounts for 30 hours per week.

A recent letter written to Secretary of Health and Human Services Kathleen Sebelius (Exhibit Q) from the Federal Interagency Autism Coordinating Committee defined levels of ABA treatment, supported by research indicating that children need at least 25 hours a week of comprehensive intervention. The letter also cited Cochrane analysis reviews of delivering 20 to 40 hours per week of intensive behavioral treatment, which found that on average the children receiving the treatment had IQs 11 points higher and exhibited 20 more daily living skills compared with children who did not. The letter further referenced the fact that the words "behavioral health treatment" within the essential health benefits (EHB) were added by amendment in both the House and the Senate to ensure that the EHB covered behavioral intervention for individuals on the autism spectrum.

In A.B. 369 we are supporting recommended levels of ABA treatment when we define a maximum of 30 hours per week of ABA treatment with recommended levels of supervision—recognizing treatment is individualized and decreases as children progress. Children under the age of 8 will typically utilize 1,500 hours a year; children ages 8 to 12 will use 671 hours per year; and children 13 to 21 will use 401 hours per year.

The Centers for Disease Control's most recent funded study indicates autism now affects 1 in 50 school-age children. When we were here last session the prevalence rate was 1 in 88. Ninety percent of the children with autism who do not receive treatment will need some type of lifelong support. The price tag to provide lifetime care for one untreated low-functioning person with autism can run as high as $6 million. Current out-of-state placements cost at least $500 per day. Nevada Medicaid is and has paid up to $15,000 a month for out-of-state residential placements for individuals with autism. Nevada must require insurance companies to do their part. The fiscal impact of autism is too large a burden for Nevada taxpayers and families to carry alone.

An actuarial cost study done for Nevada in March 2009 estimated the annual mandate claim cost per covered person and premium increase would be less than 1 percent, or an annual increase of $22.90. I have included a current actuarial study done for Alaska (Exhibit R) which I believe is high compared to Nevada. Alaska has no cap on the ABA and includes an array of services and treatments in line with our bill for comparison.

Blue Cross and Blue Shield of Minnesota have covered an unlimited benefit for ASD since 2001. After six years, the premium impact on the commercial market resulting from unlimited coverage for ASD was $0.83 per member per month (PMPM). This fact is included in "The Fiscal Impact of Autism Insurance Reform" (Exhibit S). It also cites claims from five additional states with an average $0.15 PMPM.

Research has proven that children with autism who receive ABA make life-altering improvements, and 47 percent reach normal functioning levels, demonstrate an increase in IQ points, attend regular education classes, and become independent adults. Most recent research indicates optimal outcomes include children who had autism at a young age and no longer demonstrate any significant autistic impairments.

With hope, I ask this committee to support critical insurance coverage for individuals with ASD for treatments and therapies identified in a treatment plan at dosages which support evidence-based research levels of treatment and outcomes that impact a child's life. When I was in the audience, my daughter called me and I

could not answer the phone. I texted her and she texted back and said she wanted to say she loved me because she did not get to say that last night. I want all of our kids to have the chance to reach that functioning level so they can tell their mom that.

Chairman Bobzien:
We will move to the next speaker.

Michael Harter, CEO and Senior Provost, Touro University Western Division, Henderson, Nevada:
Touro University Nevada is speaking today in favor of A.B. 369. We are a private not-for-profit institution of higher education with academic and clinical programs in medicine, the only occupational therapy training in the state, the only physician assistant study program in the state, physical therapy, education, and nursing. [Read from prepared testimony (Exhibit T).]

The vast majority of children with autism spectrum disorders in this state are not accessing those additional services for a number of reasons. One of the reasons is that families cannot afford to be paying out-of-pocket for therapies. Another factor is there is not a sufficient number of therapists to serve this population of children even if the families had the money to pay. We conclude that one of the reasons there are not enough therapists in the state is that there are not funding resources for them. Many of the therapists we are training at Touro and in the university system are going elsewhere to practice because there are sources of revenue for them. By adding those services to the array of services already available, practitioners will be motivated to stay in Nevada to practice and perhaps it will make it easier for us to recruit qualified therapists to the state.

Nicole Cavenagh, Clinical Director, Center for Autism and Developmental Disabilities, Touro University Nevada, Henderson, Nevada:
I am happy to be here in favor of A.B. 369. I want to echo Dr. Harter's appreciation for the work that was done in 2009. It has made an immense difference in the lives of the children with whom I work and their families. When we talk about ASD we are talking about very complex disorders that affect communication, socialization, and behavior. There is a true range or spectrum of severity of symptomology. Because these are such complex disorders and the symptoms can manifest quite differently in each child, there is a lot of variability in terms of functioning. Research indicates a comprehensive multidisciplinary treatment plan and treatment team are most effective in improving an individual's level of functioning. [Read from prepared testimony (Exhibit U).]

I provided two case examples of children who have received a comprehensive treatment package and the progress they have made. It is astounding. For example, a nonverbal 9-year-old child at age 12 is able to order his own food in a restaurant and provide necessary emergency information. We are talking about basic independent living skills that this young man did not possess when he was first diagnosed. The progress he has made while being able to receive the combination of therapies that research indicates are most effective in treating these diagnoses has made a world of difference for him, and his family, as well as his future independent living skills.

[Continued to read from prepared testimony (Exhibit U).]

Chairman Bobzien:
Are there any questions?

Assemblyman Daly:
How much does an hour of therapy cost?

Jan Crandy:
The therapy is delivered by different levels of professionals. The average rate paid by the state autism program, which currently funds 137 children, for therapists at the board certified behavior analyst level is $166 per hour. The high rate for the paraprofessionals, who are the behavior interventionists, is $20 per hour. The amount across the state and what insurance is billing for that level ranges between $25 and $42 for the ABA people. The speech therapy and occupational therapists run between $90 and $125 per hour. I have submitted a handout from National Health Statistics Reports (Exhibit V).

Nicole Cavenagh:
There is a lot of variability in terms of the frequency and intensity of intervention for each child. It depends on the level of the severity of their symptoms and the goals we are working toward. I believe that $90 is at the low rate of cash pay rates for speech and language therapy and occupational therapy. It is a significant barrier to access to care.

Many of the children in our center have had therapy funded by private donations.

Jan Crandy:
We believed that Assembly Bill No. 162 of the 75th Session would cover speech and occupational therapy because it was listed in the bill as a covered item.

Assemblyman Daly:
Does the ACA require this coverage?

Jan Crandy:
I believe the ACA may have some relief for us.

Nicole Cavenagh:
Research on early intervention, which is for children three years old and under, indicates that for children with a diagnosed ASD, 30 to 40 hours per week is optimal. The hours of intervention tend to decrease as the children make progress.

Assemblyman Daly:
It is a difficult math problem. I know the kids need the care, and I understand the false economy of not treating them.

Nicole Cavenagh:
In our center, we have not had a child reach the $36,000 cap. The unused portion could be utilized for speech and language therapy, occupational therapy, et cetera, because they are not exhausting the cap.

Jan Crandy:
In the bill, the cap was only on the ABA. It is typically the children ages eight and under who will access that 30-hour level, and then it decreases. Most of the research is for ages six and under for the optimal outcome.

Assemblyman Hansen:
Is there a danger that we are going to price these policies so high that nobody can afford them or the insurance companies will quit providing coverage to people in Nevada?

Michael Harter:
In other states that have adopted insurance coverage for autism, the amount of money per year that is added to a policy is minimal spread across the entire population. The amounts I have seen have been $4 to $12 per year. That does not seem to be onerous.

Assemblyman Hansen:
That seems reasonable. Anytime you are changing from $36,000 to unlimited, somebody somewhere is going to pick up the tab. We do not want to chase an industry out of the state.

Jan Crandy:
The actuary for Nevada for 2009 indicated less than a 1 percent annual increase in premium per year. The Alaska actuarial cost is no cap and it includes the array of services.

Assemblyman Livermore:
Would you be able to cover everybody with insurance, or would you need new professionals to be employed?

Jan Crandy:
We are working on that, and I will tell you it has been a barrier to access. We have another bill to address that issue, but we have to have the coverage so people will come to Nevada to provide this service.

Assemblyman Livermore:
Will the professionals be fully scheduled and you will have to find others?

Nicole Cavenagh:
That is absolutely accurate. Like many health care fields in Nevada, there are not enough clinicians specializing in this area. One of the ways we are able to attract additional clinicians to our state is by having opportunities for them to be paid for what they do.

Assemblywoman Carlton:
What we do in the Legislature makes profound differences in families' lives. The concerns about huge increases in insurance premiums that we heard about in 2009 did not happen. Regarding the fiscal notes we have with this bill, we are seeing minimal changes and cannot tell if it will have an impact on our employee group at all. We can make a significant difference in these families' lives. We have done a good job and we will have questions about how this will fit with the ACA. I have concerns about the providers. If it were not for organizations like Touro, we will not be able to get these kids into the programs.

Jan Crandy:
I think we need to fix the certification process and make it possible for people to be certified faster. At the interventionist level, the state autism program has 400 of those individuals employed, but only people who are billing insurance have to be certified and licensed in our state. The state program has more than enough interventionists and providers at all different staffing positions. It is when we start to bill insurance, there is no incentive for individuals outside of working for companies to become certified because it is cost-prohibitive. We are trying to address that in another bill. The providers need to do more training to grow more high-level therapists. I know Touro is doing that and

there are quarterly trainings in the south. There are board certified behavior analyst programs at both the University of Nevada, Las Vegas and University of Nevada, Reno.

Nicole Cavenagh:
We are home-growing some of these clinicians. We have also had success recruiting from out of state. It is one of our goals to increase the supply of providers in the state. We have out-of-state therapists who have moved here specifically to work in our facility in this field and increase the access to care for children in Nevada. In addition to home-growing clinicians, and educating and retaining clinicians here, we have to also look outside of our state. I think the regulation of clinicians in our state legitimizes professions and is attractive to people to come here to do the work. A license or certification from the state legitimizes them as a professional.

Assemblyman Daly:
On page 5 in section 1, subsection 11, paragraphs (j) and (k), the term "medically appropriate" is used instead of "medically necessary." In my regular job, I am a trustee on a trust fund and we administer a health plan. The language is unfamiliar to me. What happens when you change to "medically appropriate"?

Nicole Cavenagh:
It is also unfamiliar to me. "Medically necessary" is the industry standard.

Jan Crandy:
I do not believe we gave that language to the Legislative Counsel Bureau. We are happy with the language "medically necessary." We do care about the language for the treatment plan and approve of the language in A.B. 369.

Assemblyman Daly:
So we will go with "medically necessary."

Chairman Bobzien:
We will check that with our legal counsel. Is there anyone to testify in support of this bill?

Ken MacAleese, President, Nevada Association for Behavior Analysis:
We support the passage of A.B. 369 with amendment. Assembly Bill No. 162 of the 75th Session was important in terms of its health benefits, but it may be worthwhile to consider the long-term gains Nevada will experience economically as the result of the continued support of the changes forwarded by A.B. 369. Multiple studies have demonstrated that short-term investment in treatment of

children with autism pays off in the long term and decreases the financial burden to our systems of education and care. We will save money and kids will get what they need.

One of the key features that is supported by our organization is the language regarding 30 hours of therapy per week. This subsection is heralded, as it allows for behavioral medical providers to determine the best course of treatment for the individual child with autism and allows sufficient room to provide optimal therapeutic dose when considered necessary. Assembly Bill No. 162 of the 75th Session listed financial caps, which in some circumstances limited children from receiving medically necessary treatments and restricted young children from receiving the optimal treatment dosages identified in the scientific literature as producing the best possible outcomes. Dr. Cavenagh stated that the children at Touro University have not exhausted their benefit, but it is not the case across the state. Children are being restricted from receiving medically necessary treatments. Assembly Bill 369 alters the dollar cap limits by including language specifying a maximum of 30 hours per week of ABA treatment unless the treatment plan requires more. We view this as a compromise, as much of existing scientific literature supports modular hourly doses for young children at upwards of 40 hours per week. The language in this bill allows for optimal treatment.

The language in section 1, subsection 7, on page 3, lines 20 to 24, needs to be considered for amendment. It is related to the insurer charging a single daily copay. As worded, it appears that the current legislation is supporting all insurance companies to charge a daily copay. It is important to consider that many health plans do not charge a copayment for each treatment session for a number of reasons. [Read from prepared testimony (Exhibit W).]

We have to keep an eye on the fact that this might not be the best move in every situation. [Continued to read from prepared testimony (Exhibit W).]

Chairman Bobzien:
Are there any questions? Seeing none, we will move to opposition.

Robert Ostrovsky, representing Nevada Association of Health Plans:
We originally objected to the bill four years ago, but the insurance industry and the autism people came to the table with a compromise that we all supported, which was the $36,000 cap on ABA treatments. Those people now think that some things they thought were going to be covered by that agreement were not. That is an issue that arose around speech and occupational therapy. Those are not being paid for under our plans. They will be paid for under our plans on January 1, 2014, because of the Affordable Care Act. That problem

will solve itself through federal regulation. This is another mandate bill which will affect small business. Most individuals will be driven to the exchange. I do not think there will be a big market for individual policies. Small employers are going to purchase insurance through the Small Business Health Options Programs (SHOP) exchanges, which was set aside for another year by the federal government as of yesterday. I believe the SHOP exchange in this state will go forward despite the federal government's issues.

We met with the sponsors of the bill yesterday. This bill as drafted is vastly different than the bill described in the testimony. In section 1, subsection 1, language is stricken which makes this no longer a children's autistic health bill. It now covers all people and vastly expands the numbers to many other people. We oppose that change. This talks about treatment plans every 12 months. The standard now is a treatment plan no later than every 90 days. We discussed changing that to perhaps something less than 90 days. These treatment plans change quickly and they should to determine appropriate services.

In section 1, subsection 6, regarding treatment that "is educational in nature," we had this discussion four years ago. Our interpretation of that is that under this bill, the Clark County School District or the Washoe County School District can bill the health insurance company for the educational cost of these children in schools that are now borne by the school districts under federal mandates. We think that is an enormously large number and is inappropriate. We think insurance covers medical issues and we are more than willing to define those. We object to the bill saying we will pay for education things. With regard to the 30 hours, I think there has already been some questioning about the cost in Nevada.

In section 1, subsection 8, it has effective dates for policies delivered on or after July 1, 2013. That is a real problem for us. We have organized our policies and submitted them, and are submitting them, to the health insurance exchange and therefore to the Department of Health and Human Services to get approval to go to the exchange. Those things are already in progress for products which will be available October 1, 2013, through the exchange and effective January 1, 2014. We believe this date is unworkable under the current federal system of the ACA. We think these changes clearly cannot affect policies until January 1, 2015.

In section 6, in a list of things that we will pay for, is full-time care in a residential setting that specializes in care for persons with ASD. No such facility exists in the state of Nevada. We could be billed for the lifetime cost of institutionalizing a person with ASD, which I do not think the proponents think

is a good idea. There is no limitation in this bill on our payments for residential care, which we think can be enormously expensive. The list has added music therapy. There was testimony last session that the purpose of licensing musical therapists was not to get payment from insurance companies, but here we are listing those people who swore that would never happen. We are not opposed to speech therapy or occupational therapy and we are more than willing to talk about doing those things. We heard testimony that lifetime care in one of these facilities could be up to $6 million. That kind of language has to come out of this bill.

We have a number of other issues in this bill and will continue to meet with the proponents. I think the bill does a lot of things that the proponents did not request. There is a lot of work to do to bring it into reasonable balance between what we can pay and what the autistic community needs. We will continue to work with the proponents.

Rusty McAllister, representing Professional Firefighters of Nevada and Las Vegas Firefighters Health and Welfare Trust Fund:

I am at the opposite end of the spectrum from Mr. Ostrovsky, who represents some of the largest employers and the largest health insurance company in the state. I am probably representing close to the smallest health insurance company in the state. I am the chairman of a small self-insured health insurance trust fund. It is a collectively bargained health insurance trust fund that provides health insurance for approximately 2,500 people, including active members, retirees, and dependents.

This is at least the fifth mandate bill that has been introduced this session. We have concerns with all of these mandates, because every one increases our costs. We are fighting to keep our heads above water. We are trying to keep our plan alive to provide insurance for our people. There was testimony that the costs from the 2009 bill only raised rates less than 1 percent and that was only $22.90. That does not fit with me. My plan is so much different than theirs that they talk about with their actuarial costs. I do not have the ability to raise my premiums because we are a collectively bargained plan. If my employer does not agree to negotiate health care benefits with me, I do not get that. Every mandate that you put on us, I have to either decrease a benefit or pass the cost to my members. That means you are mandating a pay cut for my members. We have not had a pay raise in over four years, and a pay cut has a huge impact for us. I cannot recover my costs in any other way than cutting other benefits.

We understand the need for these benefits, but there is an impact on this. I have a fiduciary responsibility to the 2,500 people I represent. We cannot fix

everything for everybody. To provide a well-rounded plan of health care benefits, we have to pick and choose. This will make the choice for us if this mandate is passed. We are willing to meet with the proponents of the bill, but as currently written, this is one more nail in our coffin. It will be another nail to drive us out of the health insurance business.

Yvanna Cancela, representing Culinary Workers Union Local 226:
We represent about 55,000 gaming employees on the Las Vegas Strip. This kind of financial burden on our plan would affect the lives of lots of families in Las Vegas. I cannot stress enough the trade-off that it would make with other forms of care that we currently provide. We struggle to make sure we are efficient and keep our costs as low as possible so that we can provide the best care. This kind of unfunded mandate forces us into a very difficult situation and ultimately can result in worse care for our people. I think the key is to allow us to provide case management and manage our plans as we see fit to provide the best care. While we are willing to help fix this bill, as it is, it could damage the lives of many people.

Josh Griffin, representing Health Services Coalition:
The comments that have been made accurately reflect the concerns of the Health Services Coalition and the members that compose it. This is a hard issue. We are facing some uncertain times as it relates to health care. There are some estimates of cost increases in the next 12 months of 30 to 35 percent. Those costs will be borne by some combination of employers, plans, and ratepayers. We are struggling on both sides to manage that. The legislators are trying to make sure that benefits exist for their constituents and that the companies we represent are providing care.

We know how to manage our cases. We have a lot of members and their families. We work hard to manage their costs and their care. It was pointed out that there are currently five bills that deal with some form of a mandate. I believe in all of those instances, including this one, members of the Health Services Coalition provide those services. Sometimes the mandates are to expand, cover, and mandate parity. All those costs get passed on. We have to both manage the costs and deliver the care. We are happy to work with the proponents on what they are trying to achieve, but as it stands the costs are nearly impossible on top of everything we are facing in the next 12 months as the ACA becomes more clear and fully implemented.

Chairman Bobzien:
Are there any questions?

Assemblywoman Carlton:
I respectfully disagree with you. I have always viewed unions as fighting for their families and wanting to give their families what they need. It has always been health care. It has been the stronghold for culinary workers, firefighters, and others. The way I had health care when I was working in the hotel was because I had a good union. They provided the things that I needed for myself and my children to keep us healthy. I understand there is a cost to do this. There is also a cost to not do it. The cost will be to the families that you represent who will have to pay for this benefit out of their pockets if you do not cover it. This is a substantial amount of money from a working person's budget.

I have fiscal notes which say the impacts are minimal, 1 percent, negligible, and do not seem to be a significant impact. Most of those are from the parties who testified against this bill in 2009. I want to work with you on this and I am sure the sponsor wants to work with you. My priority in this is to make sure the families in this state who have autistic children can get treatment for those children. I hope you are not asking to be exempt from this. Some things are not applicable to the Employee Retirement Income Security Act, but I am not sure what the changes are. I believe those plans will not have to deal with this, but as we move forward, we have to keep those families in mind and how they will deal with a child with autism sitting at their kitchen table.

Chairman Bobzien:
Are there any further questions? Seeing none, is there any other opposition? [There was none.] Is there any neutral testimony?

Adam Plain, Insurance Regulation Liaison, Nevada Division of Insurance, Department of Business and Industry:
I have submitted written testimony (Exhibit X). The key item in the testimony is an excerpt from a letter I sent to the Senate Committee on Commerce, Labor, and Energy when dealing with a similar issue. The Division of Insurance is viewing this from a viewpoint that has not yet been addressed. That is with the ACA implementation and the potential associated costs to the state of Nevada. One of the impacts of the ACA is the implementation of premium tax credits to individuals of certain income thresholds. In order to prevent or give disincentives to states from increasing their mandated coverage exorbitantly in the presence of those tax credits, the federal government has issued regulations stating that new or increased mandates that cause increased costs to individuals receiving the tax credit must have those marginal costs defrayed by the state.

In that light, we are looking at three specific items in this bill as items of potential interest to the Committee. The first is in section 1, subsection 1, on page 2, lines 3 and 4, which eliminates the language "an option of." Currently, in Nevada's individual insurance market, autism is optional. It must be offered as a rider, but no individual insured is required to purchase it. The elimination of this coverage would make autism mandatory in the individual market. It must be included with every policy sold. That is a new mandate from the federal government's viewpoint. If that new mandate causes premiums to rise in the individual market, the state of Nevada would be on the hook for the marginal increase in those premium costs.

Additionally, in section 1, subsection 1, on lines 6 and 7, the adolescent provision to the mandate would be removed, making it a lifetime benefit. That is most likely going to be viewed as an expansion of the current mandate by the federal government. If that has incremental costs, it would be charged back to the state.

The third issue is in section 1, subsection 2, on lines 10 and 11, and removes the $36,000 per year cap for applied behavior analysis. The federal government has informed us that if the value of the benefit increases above a $36,000 equivalency, it is an expansion of the mandate and the state would be required to defray the cost.

Section 1, subsection 7 talks about replacing the $36,000 per year with 30 hours. Our actuaries have not had a chance to review whether 30 hours is actuarially equivalent to $36,000 per year. It is a very complicated calculation because of the usage patterns and the multitiered nature of the benefit. As an item of consideration, if 30 hours is not actuarially equivalent and is considered a greater benefit, then Nevada would be required to defray the cost of the additional treatment level.

We brought this information so the Committee could make a well-informed decision on a policy basis as to what the potential impacts, intended and unintended, would be. I have met with the proponents of the bill, Assemblyman Ohrenschall, and the insurance industry. Under the ACA—because autism is mandated in the small group market, upon which our essential health benefits will be based—technically it will be a mandate in the individual market January 1, 2014, regardless of whether we change the language in the bill or the statute. The $36,000 per year benefit cap is also part of what is now considered our essential health benefits. It is now the new minimum-maximum that any health plan will offer. Under the ACA, annual dollar lifetime limits go away. If that $36,000 is not treated on a usage basis, it

will become an unlimited benefit. If an insurer chooses to address it on a usage basis like hours or visits, it has to be at least equivalent to $36,000 per year.

Jon Hager, Executive Director, Silver State Health Insurance Exchange:
The Exchange Board has similar concerns. The first concern is the implementation date. We are about to start receiving plans to be certified for January 1, 2014. Those plans would all be received at about the time the session ends. A January 1, 2015, start date would be easier. The other concern is the state mandate issue. We are building the exchange so if the state creates a mandate, we can technically operate the funding. The issue, of course, is getting the funding from the state. We did not provide a fiscal note because we do not know what it is going to cost. Based on his information, Dr. Harter said $4 to $12. Currently premiums are approximately $300 per month. If you consider 0.1 percent of that premium, it is $3.60 per year and is under the low limit provided by Dr. Harter.

Based on our population for calendar year 2015, we would expect the cost of the advanced premium tax credit that would be funded by the state to be $500,000 per year. We need to be careful when we consider this bill that if the cost is about $4 per month, it would create a cost to the state of about $500,000 per year. We are setting up the exchange so we can administer the mechanics of it and make sure the individuals on the exchange are charged the appropriate amount and the money is sent to the carriers appropriately. Under the ACA, any state mandate will add cost to the state. We will provide a fiscal note.

Chairman Bobzien:
Are there any questions?

Assemblywoman Carlton:
Mr. Plain, are you going to figure how the cap would equate to visits or hours?

Adam Plain:
The Division is not in the process of developing a number to be used to replace the $36,000 current limit. In the absence of that $36,000 change being codified, any insurance plan wishing to be approved for sale in the state after January 1, 2014, will still have to prove that the number they use is actuarially equivalent to at least the $36,000.

Assemblywoman Carlton:
Will the habilitative care go into effect in January 2014 under the ACA?

Adam Plain:
That is our understanding. Habilitative care is currently not covered by any plan in Nevada that was given to us as a benchmark option. That was deemed a deficiency by the federal government. We requested the habilitative care be offered at parity with rehabilitative care starting January 1, 2014. Our benchmark plan offers a 60-combined-visit limit for rehabilitative care. We expect that same 60-visit limit to be offered for habilitative care.

Assemblywoman Carlton:
I will follow up with any other questions with Mr. Plain.

Chairman Bobzien:
Are there any other questions? Seeing none, I will close the hearing on A.B. 369 and encourage Assemblyman Ohrenschall to work with the parties.

[The meeting was recessed at 5 p.m.]

[The meeting resumed at 6:32 p.m.]

Chairman Bobzien:
I will open the hearing on Assembly Bill 436.

Assembly Bill 436: Revises provisions governing the regulation of public utilities which furnish, for compensation, any water for municipal, industrial or domestic purposes. (BDR 58-1196)

Assemblywoman Heidi Swank, Clark County Assembly District No. 16:
Assembly Bill 436 creates enabling legislation for the Public Utilities Commission of Nevada (PUCN) to be able to set rates for water utilities that appropriately account for the effects of existing water conservation policies and allow replacement of aging infrastructure. The need for this bill arose because the PUCN is under statutory mandate to require the water utilities it regulates to encourage water conservation by their customers. Currently, the PUCN regulates approximately 30 water utilities that range in size between 25 and 5,000 customers. Historically, rates for these water utilities were based on a flat-rate structure. This was changed to usage-based rates and more recently to tier-rate structures to encourage water conservation. These water utilities are also required to adopt PUCN-approved plans to further encourage water conservation by their customers.

There is a tension between the goals of water conservation and the tools currently available to the PUCN in setting rates. This bill will provide the PUCN with rate setting flexibility to encourage water utilities to actively promote water

conservation, allow water utilities to have a real opportunity to earn a fair return on their investment, reduce the capital investment necessary to develop additional water sources, and allow water utilities to maintain and upgrade their infrastructure on an ongoing basis so customers do not face a spike in service costs or disruptions. By providing the PUCN with these tools, A.B. 436 will help to ensure that Nevada's water customers have a reliable and safe source of water at predictable rates.

Other members of the panel will provide a brief overview of the reasoning behind this bill and how the tools requested will work in practice. They will also present some amendments to the bill language that were developed in consultation with representatives of the PUCN.

Bill McKean, representing Utilities, Inc., Tallahassee, Florida:
I am here with John Williams, who is with the company, Utilities, Inc., that owns and operates four water utilities in Nevada. In 2010, the PUCN started to address repression, or dropping water usage, for small water companies. The method for the companies to try to recover those rates under traditional rate making, is to present a rate case, which is expensive. The PUCN was trying to address this issue through rulemaking, and that ended in July 2012 when PUCN Chairman Alaina Burtenshaw said she wanted to make sure the Legislature authorizes the PUCN to adopt these tools. We then began to pursue this on behalf of Utilities, Inc. and other utilities in the state. We met with PUCN representatives to try to make the language acceptable. We have also discussed this with the Bureau of Consumer Protection, and they are not opposed to the bill with the proposed amendment. They had some concerns with the original language, but as amended, they do not oppose the bill.

John Williams, Director of Government Affairs, Utilities, Inc., Tallahassee, Florida:
We are here to support A.B. 436. [Read from prepared text (Exhibit Y).] Utilities, Inc. is an investor in utilities that owns operations in 15 states. We have four companies regulated by the PUCN in Nevada. We currently serve more than 12,000 customers, or 36,000 people, and have assets in the state worth more than $89 million. We have been encouraging the PUCN to adopt industry best practices that are in place in some of the other states, primarily to reduce the cost of regulation, encourage a more streamlined regulatory process, and save money in the long run.

The particular legislation that is being recommended here is to allow for a repression adjustment to recognize anticipated water conservation that would be made in the context of a rate case or conservation program approval process. A second method of addressing repression of consumption would be

an after-the-fact water revenue adjustment mechanism that we suggest be considered by the Commission. It would be one or the other of those two practices. The third proposal recommends that the Commission allow utilities to earn a return on investment that is made between full rate cases that would encourage infrastructure investment and replacement of aging infrastructure. The PUCN would be allowed to place limits in terms of the amount and to have reconciliation procedures to protect the ratepayers. Similar programs have been implemented in ten other states and have been very successful. It has encouraged the replacement of infrastructure by a significant margin, and we think it would be appropriate in Nevada.

Bill McKean:
We have amendments to the bill as drafted which are attached to the testimony submitted by Mr. Williams (Exhibit Y). There were a few things that were concerning to the PUCN. As drafted, the bill allowed the PUCN to automatically adopt the repression adjustment in setting rates. The Commission and we agree that they should adopt regulations before they do that. That has a safety valve effect. There are some details here that need to be worked out about what the repression adjustment should be and how it should work in a rate case. In our amendment in section 2, subsection 1, our amended language would require regulations before any of these tools could be implemented. These tools need to go through the regulatory process, which will allow the Commission to develop the details and the Legislature to give final approval under *Nevada Revised Statutes* (NRS) Chapter 233B.

In trying to draft language for a revenue adjustment mechanism, the Legislative Counsel Bureau (LCB) used language that was borrowed from the electric industry, which we wanted to avoid. We are looking for a revenue adjustment mechanism that would apply to water utilities. We developed language in section 2, subsection 1, that better reflects a revenue adjustment mechanism.

In section 2, subsection 3, we have described what we think is the appropriate surcharge mechanism, which occurs between rate cases. In drafting, LCB used some surcharge language but it is not what we had in mind. This surcharge would be something that would be for approved infrastructure as part of an integrated resource plan. In that section, you can see the reference to NRS 704.661, which is the resource planning requirements. We wanted to organize the concepts to first require regulations and then to track the three tools so we make sure the Legislature approved the Commission's going forward with these practices.

Chairman Bobzien:
Are there any questions?

Assemblywoman Kirkpatrick:
What is repression assessment?

Bill McKean:
Section 2, subsection 1 is the repression adjustment in our mock-up. That is to recover amounts in a rate making proceeding to anticipate the effects of decreased consumption in the future as the result of either implementing a plan for water conservation or charging the variable rates.

Assemblywoman Kirkpatrick:
Is it cost recovery?

John Williams:
In the current rate design, the Commission encourages a much lower fixed charge and puts an additional portion of the revenue requirement in the gallon charge with tiered rates, so the more you use, the higher the rates get. With what we have seen, the customers do cut back and frequently they do not go up to the higher tiers. If the Commission authorized us a revenue requirement of $1 million, we would only get about $900,000 because customers have reduced consumption intentionally. It was the right intent, but it does not make the company whole. This would fix that problem.

Assemblywoman Kirkpatrick:
So that would be a balanced steady amount. Who is affected by this measure?

Bill McKean:
This does not affect any municipal water purveyors. It only affects regulated public utilities, of which there are 27 regulated by the PUCN. The largest of those is approximately 4,000 customers. Most of those average about 500 customers, and there are many that are much smaller.

Chairman Bobzien:
Are there additional questions?

Assemblywoman Carlton:
When you do this infrastructure work through this decoupling plan, will you be able to put resources in the ground and recoup the costs from the public utilities afterwards? There will be a prudency component built in, and we have problems with that sometimes. We want to make sure that we are not putting more in the ground than needed and asking the ratepayers to pay for it.

Bill McKean:
The reference to the surcharge is in section 2, subsection 3. That has to go through NRS 704.661, which is the resource planning process. There will need to be a prudency determination before we embark on any infrastructure improvement. In the same planning process, the recovery mechanism would be approved. Currently, the utility companies have to put the investment in the ground, and these are small companies. There was a company that had to fix a problem with arsenic, drill a new well, and then file a rate case to get recovery for the investment. That can add a year to the recovery process, which ultimately increases the cost for everybody. The idea is to use a surcharge that will gradually increase the rates as opposed to large jumps in rates. There will be a prudency determination first, then the infrastructure, and then the recovery. The idea is to mitigate some of the large increases in rates. The Commission will adopt regulations before any of this takes effect.

Assemblyman Livermore:
My experience with water companies has been in Carson City. Typically you do a business model that calculates the cost, equates that to capital improvement, have a public hearing, and establish the rates. I have no problem with the tiered rates, which is a conservation mode. Do you have a lot of connection fees? In some cases utility companies have built their model on connection fees.

Bill McKean:
It varies case by case. Any connection fees are intended to replace the cost of growth. That is so if there are new customers, the costs are not shifted to existing ratepayers. It does not help with fixing systems which are deficient, such as a developer in Elko who put in two-inch main in the service territory in the 1970s. Those are the kinds of projects we are considering, and connection charges do not help with that.

Assemblyman Livermore:
Who pays to acquire new water?

Bill McKean:
Fortunately for the Utilities, Inc. customers, water rights are not an issue. The issue is infrastructure, such as the cost of storage tanks, proper-size mains, and fundamental components of the system.

Assemblyman Daly:
What is decoupling and what is a tiered rate system? Do I understand that you tried to have people conserve water and because they did, the rates were not enough to cover the costs? What you intend to do through regulation is develop a conservation plan, anticipate how much water is going to be

conserved, and how much infrastructure is going to be needed to maintain that, and then set a rate based on those anticipations so the rates can be smoother. It may be a higher rate than you need, but it is enough to anticipate the lost revenue from conservation and infrastructure improvements. The oversight from the PUCN will deter overbuilding and if there is excess revenue it will correspond to lower rates for the people in the district. Is that what you are trying to do?

Bill McKean:
In a nutshell, that is correct. These are additional tools to give the Commission some flexibility. There are two different ideas here—the tiered rates and the infrastructure improvement, which is not necessarily related to tiered rates and consumption. The Commission was also struggling to figure out how we could replace some of the aging infrastructure. This idea of an infrastructure charge that could occur after an improvement is determined to be prudent and outside a rate case, to save the costs of going through a rate case, is part of the bill as well.

We are not proposing specifically a decoupling mechanism. The tools the Commission has now are limited to a historical test. They have to look at a 12-month period and look at the water that was sold in that period and design rates for the future designed on those factors. If a company sold 100 gallons of water, the simplest way to recover that money is to charge every customer a flat rate. To encourage conservation, we are going to put 50 gallons into a base charge and spread the other 50 gallons into a commodity charge. Water costs are not incurred that way. The only difference is the electric cost, which is not the big cost for a water company; it is building the tanks and maintaining the infrastructure. When the commodity rates go into effect and it results in only 80 gallons being used, it immediately places the water company in an underearning situation. The only tool to fix that is to go into another rate case. That rate case is expensive and uses monies that could be used for investments. This will give the Commission some flexibility to try to avoid those perpetual rate case cycles.

Assemblyman Grady:
Why does the PUCN have a large fiscal note on this bill?

Chairman Bobzien:
We will hear from them. There is another proposed amendment from the Pahrump Utility Company, Inc. (Exhibit Z), which we will have staff explain. We will continue with testimony from proponents.

Steve Walker, representing Gold Country Water Company:
Gold Country Water Company is a small water company located southwest of Winnemucca which has 400 connections and about 1,000 customers. It is the poster child of why this bill is necessary. The company borrowed money to install meters. The system did not have any meters and they billed on a flat rate. The expectation when you do that is the consumption will be reduced by 20 percent. That is what happened. Because of the operations in the PUCN, they could not recapture the cost of the meters because they lost 20 percent of their revenue. The same thing happened at the Truckee Meadows Water Authority when they put in 44,000 meters and lost 20 percent of their revenue. This bill would fix that and they could capture it. Basically, you have a situation now where no good deed goes unpunished. You conserve water, but you cannot capture the cost of conserving the water and that is why we support this bill.

Chairman Bobzien:
Are there any questions? Seeing none, is there anyone else to provide support testimony? [There was no one.] We will move to opposition. Seeing none, we will move to neutral testimony and welcome the PUCN.

Donald Lomoljo, Utilities Hearing Officer, Public Utilities Commission of Nevada:
The Commission is neutral on this bill. What I can say is that, as Mr. McKean stated, the Commission has in past proceedings looked at and been supportive of developing similar tools that are proposed in the amended language in A.B. 436. We worked with Utilities, Inc. to develop this language into something that the Commission could accept. We are appreciative of Utilities, Inc. involving us in that process and seeking our input. Regarding the other amendment from Pahrump Utility Company, we are neutral on that.

Chairman Bobzien:
Are there any questions?

Assemblywoman Bustamante Adams:
Could you explain decoupling?

Donald Lomoljo:
What is referred to as decoupling appears in section 2, subsection 2 of the amendment from Utilities, Inc. It is the ability of a utility to recover from its customers revenue that is not based on the quantity of the product that they are providing. If they are providing water, their revenue is not tied to the amount of water they provide to that customer. The Commission would separate, based on the revenue required by the utility to recover its expenses, to recover its authorized return. They would have those rates in place for a

period of time. At a later time, the Commission would look at what they actually recovered versus what they were authorized to recover. If there was a shortfall it would be rolled into rates. If there was an over-recovery, that would be credited back to the customers.

Assemblywoman Kirkpatrick:
The fiscal notes are based on putting regulations together. Where is the safety net when we talk about this cost recovery? What is the rate protection for the consumer? Is there a specific dollar amount? Sometimes the intent of the Committee gets lost in regulations. Is there a standard formula?

Donald Lomoljo:
The fiscal note that was submitted by the Commission related to the original language that was developed by LCB. I think the majority of that will go away with the amended language submitted by Utilities, Inc. Regarding safeguards, our concern with the original language is that most of the safeguards had been removed. We went back in and suggested that in the first two subsections of section 2, the request for those tools come in through a general rate case filing so the Commission would be looking at the full picture of the utility to evaluate the requests. In subsection 3, we inserted a requirement that the utility make that request for an infrastructure surcharge within the context of the resource plan filing of a similar process. There would be a thorough, up-front review. Percentage limits are present in other states that have similar tools, and I am sure they will be presented to the Commission for their consideration when they develop rules on these mechanisms.

Assemblyman Ellison:
Where does the money on the fiscal note come from?

Donald Lomoljo:
The money required by a revised fiscal note would cover the Commission's rulemaking process. It would come from existing funds within the agency. There would not be any increase to the assessment that the Commission charges to its regulated utilities for our operations.

Assemblyman Grady:
We will need the revised fiscal note to us as soon as possible.

Donald Lomoljo:
I will do that in the morning.

Chairman Bobzien:
If this has to go to the Assembly Committee on Ways and Means, it has to be moved early next week. Are there any other questions? [There were none.] We will hear the explanation of the Pahrump amendment.

Matt Mundy, Committee Counsel:
The amendment presented by Utilities, Inc. (Exhibit Z) addresses regulations to specify criteria considered in a general rate case which is in NRS 704.110(3), and the Pahrump amendments add to that a reference to NRS 704.110(1), which appears to be an application to make changes in a schedule relating to the discontinuance, modification, or restriction of service. Other than that, they are substantively identical.

Chairman Bobzien:
I will close the hearing on A.B. 436 and open the hearing on Assembly Bill 324.

Assembly Bill 324: Revises provisions relating to dental assistants. (BDR 54-938)

Assemblywoman Maggie Carlton, Clark County Assembly District No. 14:
During the interim, I became aware of concerns about dental assistants. I brought this bill for public safety and patient protection. Anyone can become a dental assistant with no education or experience. This bill creates another level of care. No one will lose their jobs, and there will be plenty of time for people to upgrade their skills and become qualified to be a dental assistant. We are not trying to take away anyone's job. We want the dental assistants to be respected for the job they do and the public to be protected. This is a board issue, and boards are self-sustaining and charge fees to cover their costs.

Chairman Bobzien:
Are there any questions?

Assemblyman Frierson:
Did you use dental assistant and dental hygienist interchangeably?

Assemblywoman Carlton:
Dental assistants are totally different from dental hygienists. This will create a new level of the registered dental assistant.

Assemblyman Frierson:
My dental assistant only hands tools to the dentist or hygienist.

Assemblywoman Carlton:
The scope that is in the *Nevada Administrative Code* is surprising as to what dental assistants are allowed to do, and they are not regulated in this state. Dentists have a voluntary option to provide a list of their dental assistants and forward it to the State Board of Dental Examiners every two years with their license renewals. That is not mandatory, so we do not know how many dental assistants are practicing in the state and they are taking their guidance from the dentist who trains them. They may not know the limits of what they are supposed to do. This bill also addresses that issue. I believe we should know who is working as a dental assistant, and I have always been concerned about background checks and fingerprinting. I have concerns about dental assistants not having that done now. We ask all of the other health care professionals in the state to do that.

Assemblyman Livermore:
My dental assistant only hooks the bib around my neck. I trust my dentist as a professional to make sure his staff are responsible. I am concerned about overregulating, adding new burdens and new costs. If the assistants get more education, they will demand increased wages. I can see that appointments will be canceled because a licensed person is not available. I see this as causing a lot of trouble.

Assemblywoman Carlton:
You are lucky you have a reliable dentist, but we do not need to go far to see the incidents that arose in Oklahoma that put patients in danger of infection. It is the whole state we are considering. I have always felt that if a person is going to be a professional in this state, I want to be sure that you are who you say you are and that a thorough background check is done. I do not see it as an overregulation or burden. I see it purely as making sure the person who is treating you is well qualified to do it and has true regulatory oversight. Regulatory oversight does not have to be a burden.

Assemblyman Livermore:
Will the people working in the industry be grandfathered in, or will they be out of work?

Assemblywoman Carlton:
I would be one of the last people in the Legislature who would want to take away a person's job.

Chairman Bobzien:
We will walk through the bill.

Shari Peterson, Legislative Chair, Nevada Dental Hygienists' Association:
The distinction between a dental assistant and a dental hygienist is that there is currently no educational requirement for a dental assistant. A dental assistant has a broad scope of practice. They can polish your teeth, apply sealants, and construct temporary crowns. It is the purview of the dentist as to how they are used, but they do work chairside and use instruments in the mouth. The dental hygienist is formally trained and goes through a program accredited by the American Dental Association. Their primary responsibility is to provide preventive dental care in the form of cleanings, fluoride, and preventive aspects of care. [Shari Peterson provided prepared testimony (Exhibit AA), a letter of support (Exhibit BB), a position statement from the Nevada Dental Hygienists' Association (Exhibit CC), a handout from the Raven Maria Blanco Foundation, Inc. (Exhibit DD), and a handout from the Dental Assisting National Board (Exhibit EE).]

This bill asks Nevada to require that all dental assistants have knowledge and accountability measures in the services they provide. We are asking that all dental assistants be trained in cardiopulmonary resuscitation (CPR), infection control standards, radiation safety, and technique. We also are requesting that if this person has a scope of practice, she should be aware of her scope of practice and be asked to take a jurisprudence test on the dental practice application. I believe if these individuals know what their scope of practice is, they would be compliant with the scope of practice. In the case of a dental assistant who is trained on the job, she is told by word of mouth what to do, and she can gain her scope of practice based on what is delegated to her. The dental assistant may not know what the scope of practice is. We are asking for these measures because it is for the benefit of the public.

This bill creates a two-tiered system for dental assistants. It does not eliminate the existing dental assistant, but it allows for those individuals who have gone through a formal education program and have gained a certified dental assistant (CDA) national board status to be registered in this state. The advantage of formally trained dental assistants is they are trained with a broad scope. On-the-job dental assistants would also have the opportunity to challenge the CDA examination. There is a provision for those who go through a formal program and those who have been working in private practice and have over 3,500 hours accumulated within a two- to four-year period. The current dental assistant would not have to challenge the examination and could remain in their on-the-job trained status.

This would provide greater assurance to the public who puts their trust in any individual in the dental office. There is a mandate for the dentist and the hygienist to display their licenses. The public does not know if the dental

assistant has had adequate training in radiation safety or infection control. Dentists and dental hygienists are required to have four continuing education units (CEU) in infection control every two years, but dental assistants do not. The primary function of the dental assistant is the processing of the instruments and doing the infection control in the office. A secondary responsibility is exposing radiographs. Not only are we held to the dental practice act, but we also have to conform to radiation safety. Currently, when a dentist renews his license, he lists those individuals in his office who are dental assistants and he attests that those individuals have completed radiation safety training. That is sent to the Board of Dental Examiners of Nevada, but we do not know the extent, caliber, or consistency of that training. We are asking for something formalized to be in place so the public can be assured that every person exposing them to radiographs, processing the instruments, or making the facility safe and disinfected have had equal training and understanding of the process.

With the two-tiered system, it will encourage the dental assistants to obtain the CDA certification so they have a standardization across all states. The CDA examination is recognized by 38 states.

Chairman Bobzien:
Please, continue walking through the bill.

Shari Peterson:
Section 2 of the bill gives a definition to dental assistant. Currently, we do not have a definition, although the wording appears in both statute and regulation. Section 3 gives a definition for a registered dental assistant, which we are proposing as the second tier of dental assistants. Section 4 says that the dental assistant and the registered dental assistant can only perform those tasks which are delegable duties within regulation. Section 5, subsection 1, paragraph (a) is where we are asking for uniformity in education as well as accountability for all dental assistants. The written examination would be the jurisprudence examination, which would encompass the scope of practice under which the dental assistant would work. Paragraph (b) states that they need to be able to complete a course of study and be able to submit proof of that to the Board of Dental Examiners. In section 5, subsection 2, paragraph (a) it talks about dental assistants being required to complete CPR training. In paragraph (b) it requires that the dental assistant have training in infection control procedures. We want to have the same four CEUs that are required of dentists and dental hygienists to renew their licenses. Many dental assistants already have this training, but the public and the Board have no way of knowing. This is putting in measures so it ensures the public that we have uniformity in education for the professions.

Section 6 says the registered dental assistant will be issued a certificate of registration and what the assistant would need to conform with to obtain the certification. She would have to present good moral character, be at least 18 years of age, be a citizen of the United States, successfully pass the CDA examination, complete the jurisprudence examination on scope of practice, and meet the radiation safety requirements. The radiation safety and the infection control are inherent in the CDA certification. When they pass the CDA examination, they have met a certain competency benchmark of understanding. It outlines that the certificate will be renewed every two years.

It states in section 6, subsection 4, paragraph (a) that we want these people to come into compliance by July 1, 2014. I can tell you, that would be a feat. We did not ask for that date. I think it would take about a year for the Board to be able to enact regulations and create that registration for the dental assistants. After the regulations are in place, it may extend another year to allow dental assistants who wanted to become registered dental assistants to take the examination and to apply for registration. We are looking at a two-year time frame for all current dental assistants to complete a radiation safety course and the infection control course if they have not done so, or take the jurisprudence examination and the CPR certification. We are looking at making a revision to that date or placing more parameters pertaining to the date and how it would be enacted. Section 6, subsection 4, paragraph (b) also addresses that the Board may consider whether an applicant's license from another state has been revoked or suspended.

Section 7 addresses the renewal period and the requirements needed to renew the certificate of registration. Section 8 allows the Board to do what they need to put the provisions in place. Section 9 discusses the ability to revoke the certificate. Sections 10 through 12 make sure the words and definitions that are in the practice act are consistent with applying things to a dental assistant and a registered dental assistant.

Section 13, subsection 2, paragraph (c) gives the parameters that a registered dental assistant must perform tasks under the direction of a licensed dentist or dental hygienist. Section 14, subsection 2 directs the Board to outline specific tasks for the dental assistant or the registered dental assistant based on her education or training. This would be under the purview of the Board. There are consistencies across the United States in what constitute basic duties and advanced duties. There are many resources that describe how other states have separated dental assistants from a higher level dental assistant.

Chairman Bobzien:
Are there any questions?

Assemblyman Ohrenschall:
Do dental assistants often work independently?

Shari Peterson:
They are required to work under the direct supervision of a dentist, and they can only work when the dentist is present if they are providing any intraoral procedures. There is no provision for a dental assistant to work outside the four walls of a private practice.

Assemblyman Frierson:
What is the average income of a dental assistant?

Shari Peterson:
I do not know. I would like to introduce Joanne Wineinger, who is a district trustee for the American Dental Assistant Association and who was very integral in trying to enact legislation for dental assistants and registered dental assistants in the state of Texas. She is also a trustee for the district that is representing Oklahoma in the issues that are currently being investigated (Exhibit FF).

Joanne Wineinger, District Trustee, American Dental Assistant Association, Denton, Texas:
I am here representing the American Dental Assistants Association (ADAA) and our president, Dr. Carolyn Breen. I am also chairman of the ADAA Council on Legislation. The organization is concerned about the citizens of Nevada, their health and well-being, but we are also concerned about the dental assistant. Across the country, we have many dental assistants who are practicing dentistry. In your state you have dental assistants who are practicing dentistry innocently because they do not know the jurisprudence of the state and have never been educated in radiology or infection control. The primary chain of infection depends solely on the dental assistant and she has zero education. She is educated by her doctor, who is busy and who does not monitor the assistant to be sure she is doing sterilization properly. The dentist in the incident in Oklahoma said his dental assistants do all the sterilization, but he is responsible for what they do. They are told what to do, but not why. She has no background in microbiology and does not know the difference between a bacteria, a virus, tuberculosis, or human immumodeficiency virus (HIV). The uneducated dental assistant treats in your mouth and that is dangerous.

In Nevada, and in my state until 2004, the Legislature requires more of the person who cuts your hair or does your fingernails than the dental assistant who does treatments in your mouth. The citizens of Nevada will be appalled and amazed by that information, as they are in my state and many others.

I have been inundated recently about what is going on in Oklahoma. There is a lot of backpedaling and "let's cover ourselves" from the American Dental Association, the American Dental Assistants Association, the Academy of General Dentistry, the Occupational Safety and Health Administration (OSHA), and the Centers for Disease Control. Nobody wants to admit what is being done. I have been a dental assistant since 1957 and have always been active in the profession. I was a CDA for 33 years. Now I am a patient, but I travel the country and know what is going on in the states. You will receive opposition to this bill; probably the most will come from the Nevada Dental Association. They would like to keep us barefoot and pregnant. They do not want dental assistants to know what we strongly believe they should. They need to know about infection control, what happens when she pushes the button and exposes the patient to radiation, and what is accumulation radiation. She has not been taught those things.

I have heard dental assistants imply that they are not smart enough to pass a competency test about infection control and radiation. Do you want an incompetent dental assistant?

In 1989 there was a federal mandate that anyone who exposes radiation would have to be registered with the state boards of radiation. It was not until 2003 that Texas came into compliance. I do not know if Nevada is in compliance. The ADAA supports the education of dental assistants in jurisprudence so they know what their scope of practice is and what they are allowed to do legally in the office. Uneducated dental assistants do as they are told. We would not want a single dental assistant to lose her job. They are too valuable and most of them love what they do, and are good at it, but only as far as they know what they are doing.

The ADAA supports education, and one of our goals is for every dental assistant in the United States to be a CDA. This is a small step to protect your citizens. We would like to have the federal credential, and I encourage you to do so.

Chairman Bobzien:
Are there any final questions? Seeing none, is there anyone else to testify in favor of the bill?

Tracy Wale, President, Infection Control Solutions, Las Vegas, Nevada:
I am a registered nurse as well as a certified health care safety professional. In 2010, the Nevada Legislature in conjunction with the Board of Dental Examiners of Nevada took outstanding initial steps to protect the health and safety of the public when they established a requirement for four hours of

infection training for all licensed dental hygienists and dentists prior to license renewal. By the end of this year, all should have completed the four hours. As a result of this training, in many areas, my team of safety engineers and I have observed a favorable impact on infection control practices throughout dentistry. We applaud the Board and their licensees for the change that they have effected.

There is a tremendous amount more to be accomplished. This is where the problem lies. Dental assistants are the core of dental infection control programs. Unlike licensed providers, dental assistants assume primary responsibility for cleaning and decontamination of operatories and clinic contact surfaces between patients. They are primarily if not exclusively responsible for all cleaning, decontamination, packaging, and sterilization of instruments used in dental and oral surgical procedures. They are responsible for the instruments from the time they leave one patient's mouth until they are used on the next patient.

Despite the large responsibility resting on the shoulders of the dental assistant, there is currently no requirement within the state that supports initial or ongoing personal or professional continuing education related to infection control practices. In the absence of some type of licensure or registration, I am not certain how that can be accomplished. That being said, where this lack of ongoing training manifests itself is in lapses in sterilization practice, which place subsequent patients at risk for cross-contamination, not to mention the dental health care workers themselves as they handle the instruments.

I would like to summarize the observations of my team of nationally certified safety engineers and infection control specialists and myself by saying that we see significant lapses in processing and sterilization on a routine basis. We have seen lapses that are often similar to, if not more significant than, some of the things described in the last week in Oklahoma. If it did not get clean, it will never be sterile. It is essential to note at this point that none of these outcomes were the result of malicious behavior, nor were they the lack of any desire on the part of the dental assistant to do what was right. The lapses are exclusively the result of lack of science-based training predicated upon guidelines established by the CDC and other agencies. Dental assistants are more often than not a group of outstanding, bright people that have not had the benefit of formal and ongoing infection control training.

We support the provisions of A.B. 324 and an ongoing effort to ensure providers and their staff do everything they can to protect the health and well-being of Nevada's citizens as they access health care. The mandated education completed by licensed providers is a huge step in promoting and

ensuring the safe delivery of care to all dental patients. This education must be extended to the dental assistants who assume primary responsibility for infection control practices. We support the establishment of an ongoing development of personal and professional accountability through registration, licensure, or other professional credentialing processes that recognize the clinical and academic accomplishments of dental assistants throughout Nevada.

Chairman Bobzien:
Are there any questions? [There were none.] Is there anyone in opposition?

Chris Ferrari, representing Nevada Dental Association:
I found Ms. Wineinger's comments offensive. Ms. Peterson, Ms. Laxalt, and the Nevada Dental Association have met during the interim and made significant progress. We understand the concerns brought forward in this bill, but we are concerned by the timing. Under *Nevada Revised Statutes* (NRS) 631.313 it is very clear that tasks performed by a dental assistant must be under the supervision of a licensed dentist. Beginning at NRS 631.313(3) it lists what a dental assistant can and cannot do. Dental assistants are the most supervised member of the dental team and work hand in hand with the doctor or hygienist and must be directly supervised at all times. The *Nevada Administrative Code* (NAC) 631.220 also clearly details what a dental assistant can and cannot do under direct supervision. Dental assistants helping with X-rays are required to have radiographic training under NAC 631.260, and the dentist is required under that code to furnish such proof to the Board. With regard to CPR training, dental assistants are not required to have it, but the majority of offices provide this training to assistants at the same time the dentists and hygienists get the training. If the Legislature feels this should be required, it could be easily done through regulations and mandates as radiographic training is.

We believe that passage of this legislation will be costly to the Board and potentially cost-prohibitive to recruiting dental assistants. I understand that there will be a dual level system whereby only those choosing to do so would be registered dental assistants, so the cost issue may not be as significant. Under section 6, subsection 2, paragraph (d) of the bill, there is a certification process from the Dental Assisting National Board, Inc. On their website, it lists the cost of the test as $375. That is not insignificant, but I understand the goal is total patient safety. Also in this section are requirements for biennial license and a requirement to take a jurisprudence test given by the Board of Dental Examiners, and an approved course in radiation safety.

After seeing this legislation introduced, and looking at it from a patient's safety perspective, we reached out to the Board of Dental Examiners and asked if they had received any complaints pertaining to dental assistants. They said there

had been two complaints in the past two years, neither of which rose to a level requiring Board action. I know OSHA requires that dentists train employees on safety and infection control. They also inspect every office upon opening and can randomly inspect any office to ensure compliance with federal guidelines for infection control in dental health care settings.

All liability in a dental office falls on the dentist. If the dentist asks a dental assistant to practice outside of her scope, the dentist is directly liable. Members of the Nevada Dental Association do not support any practice outside of statute or regulation. For these reasons, the Nevada Dental Association opposes A.B. 324. We are not opposed to the concepts proposed in this bill. We believe the time is limited and would prefer the opportunity to work out the solution in an amiable way following this interim.

Chairman Bobzien:
Are there any questions?

Assemblyman Ellison:
Is it common in small offices that the staff trades off doing different tasks? What would this do to small practices?

Chris Ferrari:
I cannot speak for every office. The bill allows a two-tiered system. We understand where the group is trying to go with the bill, but we want to take time to answer questions like yours.

Assemblywoman Kirkpatrick:
There does not seem to be an appetite to work on this bill in the interim. How could you not know what this bill does if you are opposing it?

Chris Ferrari:
We are willing to work with all parties during the session or during the interim. We still have questions.

Assemblywoman Kirkpatrick:
I want to know specifically what you do not like section by section. Can you bring it to my office tomorrow?

Chris Ferrari:
I will have information for you tomorrow.

Assemblyman Frierson:
I did an overview of other states, and it seems that very few states require solely trained dental assistants, but a great number of them do have tiered requirements.

Chris Ferrari:
Based on conversations with Ms. Peterson, I think the goal is to enable dental assistants who seek a higher level to have this advanced registration component. I do not think there would be a problem from the Association on that. We are just trying to figure out the practical applicability of the bill as it pertains to each individual staff.

Assemblyman Hansen:
The question in my mind is need. I was looking in the NACs and it says that each licensee—a dentist—who employs any person other than a dental hygienist to assist him or her in radiographic procedures shall include with his or her application for annual renewal of his or her license a certified statement containing the name of each person so employed, his or her position, and the date he or she began to assist the licensee in radiographic procedures and proof that the employee has received adequate instruction concerning radiographic procedures and is qualified to operate radiographic equipment. We already have this issue in regulations. I suspect the Dental Board has already dealt with some of these problems, and they could have it addressed by simple regulations rather than setting up a whole new licensing class for people who are already being instructed in things that we are being told they do not have any instruction in. I suspect that some of this is that we are making up a problem that does not necessarily exist.

Chairman Bobzien:
Is there any other testimony in opposition? [There was none.] We will move to neutral testimony.

James Kinard, President, Board of Dental Examiners of Nevada:
The Board's position on A.B. 324 is neutral. The Board's duty is to protect the health interest of Nevadans by ensuring that qualified professionals are licensed to provide dental care and ensuring that violators of laws regulating dentistry are sanctioned accordingly. The Board's response to A.B. 324 will be limited to fiscal impact and some issues about implementation of the bill. We initially submitted our fiscal impact to be $70,000. After consultation with staff, we would like to amend that fee to $100,000 because of the administration of the jurisprudence examination. The Board only gives the jurisprudence examination on the first Monday of each month. We do not have the capability to facilitate testing every dental assistant throughout the state. We would have to develop

an online process so we could reach rural areas. It is true that we do not currently know how many dental assistants are in the state. Not all of the dentists submit the names of their dental assistants. We know we have 1,777 dentists, and if we consider 3 to 5 assistants per office, we are looking at as many as 5,000 to 9,000 dental assistants. The Board currently has 2,900 licensed individuals, so this could potentially quadruple the size of our licensing pool.

John Hunt, Legal Counsel, Board of Dental Examiners of Nevada:
I have been the general counsel and prosecutor for the Board for the last 20 years. The Board realizes that any policy consideration whether to license assistants or not is the purview of the Legislature with input from various special interest groups and the general public. I would like to address what the bill will mean to the Board as far as enforcing the provisions. If you look at section 6, subsection 1, it says a person "may" apply; it should say a person "shall" apply. In subsection 2, it says the Board "shall" issue; I am sure it should say "may" issue, based upon whether the individual is qualified or not.

What is important about this bill is that you are creating a new class of licensee, whether that class of licensee is going to be obtained through on-the-job training or based upon educational requirements set by the Board. If that happens, section 9 says the Board may suspend or revoke the certificate of registration as a dental assistant or issue a reprimand to a registered dental assistant. If you are going to create a new form of licensure, it should say anyone who is issued a certificate must comply with all of the rules and regulations of the Board, including the disciplinary provisions that are contained in NRS 631.350. This means that these individuals will have a right to due process before the Board could take any actions against them. It would be no different than the dental hygienists or the dentists.

This would create a new class of licensure, and it is anticipated that between 5,000 and 9,000 people would be licensed. That responsibility will fall on the Board and they will enforce violations through revocation, suspension, or remedial training, which is the current process. I have prosecuted cases for the past 20 years, and there has been occasion when the dentist has allowed a dental assistant to practice outside of her scope and has been disciplined and action was taken against the dentist. The mechanism is there, but it is up to the Legislature if there is a shift in the policy decision. You should be aware that this is a form of licensure, and therefore they will be entitled to any and all due process requirements and the right to participate on the Board. The Board will do everything possible to implement the policies enacted.

Chairman Bobzien:
Are there any questions?

Assemblyman Hansen:
In your legal opinion, based on the prosecutions in which you have been involved, is there a loophole in the law that results in the public's health being endangered that would be solved by licensing the dental assistants?

John Hunt:
Being neutral in perspective, in 20 years there have been prosecutions for dentists who have allowed dental assistants to go outside their scope of practice. That is not a sizeable number of prosecutions and actions taken by the Board.

Chairman Bobzien:
Is there additional neutral testimony?

Fred Hillerby, representing Board of Dental Examiners of Nevada:
Technically, this is not a fiscal note because it is not General Fund money and we are supported by licensure fees. However, there is no provision for that in this bill. We will have to add that there is a new type of licensee and what it will cost for their initial examination and the renewal of that license. The numbers we have provided will help you and help us advise you on what we think the range of fees should be. We have to have specific authority from the Legislature to charge those fees.

Chairman Bobzien:
Is there additional neutral testimony? Seeing none, is there anything else, Assemblywoman Carlton?

Assemblywoman Carlton:
If I did not think there was a need or a public safety issue, I would not have brought the bill. I hope we can avoid a dental disaster in Nevada with this legislation.

Chairman Bobzien:
I will close the hearing on A.B. 324 and open the hearing on Assembly Bill 404.

Assembly Bill 404: Revises provisions relating to time shares. (BDR 10-960)

Assemblyman Jason Frierson, Clark County Assembly District No. 8:
I am here today to introduce A.B. 404. Last fall, I was requested to submit legislation with the intent of improving the process by which the state regulates

time-shares. I introduced the bill because it would be a consumer-positive bill dealing with the interests of Nevada citizens and guests wishing to buy time-share units in Nevada. I also introduced the legislation because it would be positive for jobs, construction revitalization, revitalizing the economy for Nevada business, and adding revenue to the state budget. I would like to have the American Resort Development Association (ARDA) explain the bill.

Karen D. Dennison, representing American Resort Development Association:
We are the national trade association for the time-share industry. I have submitted written testimony that walks through every section of the bill (Exhibit GG). I will go through the three general overview points that are the reasons why we believe this bill is necessary. We also have proposed amendments (Exhibit HH), which we have formulated with the Administrator of the Real Estate Division. We would like to continue with the Division, which is opposing the bill.

The time-share industry is among the most highly regulated businesses in the state of Nevada. In order for a time-share developer to do business in Nevada, that developer must go to the Real Estate Division and obtain a time-share sales permit. It is a very detailed process which examines the financial ability and the background of the developer. All of the project documents for the time-share plan are presented in addition to the management agreement. Most importantly, as part of the statement of record that is filed with the Division, the public offering statement is filed for review and approval. We are looking for a streamlining of the process. The system is broken and needs to be fixed. There is a major hospitality brand that had to wait nine months to open a time-share project on the Las Vegas Strip. Others on the panel will explain the financial ramifications of that.

In the renewal department, it has taken more than a year to get a simple renewal that has minor amendments. This is not acceptable from the standpoint of the industry. We are trying to work with the Division to come up with some reasonable time frames within which we need to hear from the Division. We are proposing in our amendment for initial filings, if it is one component site, that the time frame be 45 days to either approve or deny with reasons for denial of that time-share application. If it is more than one site, that the time frame should be 120 days is reasonable. There is a process of denial and deficiency evidence presented to cure deficiencies. The process can take longer if there are deficiencies in the application. If there is no feedback from the Division, our bill provides that the application of any type be deemed approved. Currently, there are some provisions regarding deemed approved in the statute. The renewal period is deemed approved after 30 days if there is no disapproval. The problem with renewals is that the Division now issues the

disclosure document, which is the developer disclosure document, the public offering statement. We think this is antiquated, outdated, and unnecessary. The common-interest community law in *Nevada Revised Statutes* (NRS) Chapter 116 allows the developer to issue and sign the public offering statement. That is what we are proposing here. Even though we would have an automatic renewal process in 30 days, as is currently in statute, the developer is faced with giving an expired public offering statement to the consumer. This holds up securitizations of time-share paper on Wall Street. I cannot give an opinion where a document is enforceable when the public offering statement given prior to the signing of that document has expired. We have serious financial ramifications.

We propose a provision which streamlines the filing process for out-of-state time-shares, which are projects in which some or all of the units are located outside the state. We intend to propose further amendments because some of the language was omitted in the bill. Those amendments would provide that out-of-state time-share would have to be registered out of state and the registration scheme of the other state would have to be substantially equivalent to, or provide greater regulation than, those provided in Nevada. In summary, we are hoping to fix a broken system with reasonable time frames with give and take on both sides.

The second major reason is an issue that ARDA has been working on for several years. That is abuse in the resale market. The resale market is where a time-share that has previously been sold by a developer is now being resold by an owner or a time-share association. We see the abuses in sales through resale brokers who do not follow our current law, which requires licensing as a real estate broker. We are attempting to put additional teeth in the resale provisions. We are providing for a five-day right of rescission for the purchaser and for the listing agreement for the seller. We are proposing enforcement provisions where advance fees are collected. We have additional disclosures regarding the advance fee listings that must be made. We are also making it a deceptive trade practice to violate any of the provisions in NRS Chapter 119A, which deal with resale of time-shares. One egregious practice, which section 4 of the bill is concerned about, involves transfer companies. These companies prey upon owners who no longer want their time-shares and charge people to take the time-share. They take the money and do not pay the association. This is a deceptive trade practice under the bill.

The third reason why this bill is important has to do with time-share associations. They have experienced shortfalls in their revenues almost to the point of bankruptcy in some cases due to the downturn in the market. People cannot afford to pay their maintenance fees even if they have paid off

their time-share. The time-share association has to foreclose on those time-shares to recoup their money by reselling the time-shares. Our bill does two things about associations and resales. The first is to clarify in the law that an association that has to foreclose on a "right to use" time-share is exempt from the registration process described earlier. We want to make clear that not only associations which acquire deeded time-shares for nonpayment of assessments but also those that reacquire their right to use time-shares will be exempt from the registration process. It is a limited scope of time-shares that have been acquired for nonpayment of assessments.

The second point that affects resales is how they are resold when they are using a resale broker. A time-share resale broker under law passed in 1999 must be a licensed real estate broker under NRS Chapter 645 and also must register with the Division as a resale broker. I worked on that law with the Real Estate Division at that time, and we were focused on the abuses and the fact that resales had to be regulated. We did not address that time-share resale brokers have to have a sales staff that is licensed under NRS Chapter 119A. They are not licensed under the regular broker licensing statutes. We see no difference in a sales agent working for a project broker or a time-share resale broker, who are both licensed under NRS Chapter 645. They have supervisory duties, and we have included, at the request of the Administrator, that it requires the broker to have supervisory personnel who are licensed in each branch office. We are hoping to alleviate any concerns that if a resale broker were to have more than one branch office, those sales agents would not be supervised. The time-share industry contributes significantly to the state economy, and this bill makes Nevada competitive with other states in attracting new development and keeping existing time-share projects operational.

Chairman Bobzien:
We will take additional testimony.

Stephany Madsen, Senior Vice President, American Resort Development Association, Orlando, Florida:
I also represent ARDA's Resort Owners' Coalition, which represents over one million time-share owners who look to us to help protect their interests in legislative issues. I have submitted information for your consideration (Exhibit II). We represent the time-share industry in the United States and have numerous major public companies who are our members and who are registered in states all over the country. Most states have one form or another of a time-share law that is not at all dissimilar to NRS Chapter 119A. During the last 20 years we have worked with about 20 states to revise and modernize their time-share laws to reflect the industry as it is today. There is some of that in

A.B. 404. Most of the provisions that you see in the bill have been utilized and adopted in other states, so they are not without being tested. Included in our handout is a chart of all of our efforts to try to solve this problem and to work with the Real Estate Division to come up with some reasonable solutions for the terrible delays. The delays date back to 2011 with concerns about the Division's budget.

There has been a fiscal note added to this bill today. We have been offering for a year to come up with some reasonable funding mechanism to speed up the processing of time-share filings in the Real Estate Division, including offering money to hire consultants to be supervised by the Division. We still stand ready to alter the fees to the Division so they are more level and flow from year to year despite the fact that Nevada has some of the highest filing fees in the country. We have also included a chart in our background information where you can see how other states compare with regard to time-share filings and registration fees. Two other charts give you a picture of the kinds of delays that have been experienced. We surveyed our members in July of 2012 and none of them could report any filing approvals as required by law of 50 percent or more. The approval rate was very low, and the longest reported delay was 20 months to get a permit or amendment approved by the Division. The second chart shows six of our members' filing statistics for the entire year of 2012 together with the fees that they paid for those services and the waiting time they had. We also prepared a colorful chart which shows how filings are reviewed in several key states. Florida, which is the largest time-share state, has about 360 individual time-share resorts plus out-of-state developers who register projects there. Nevada falls to the bottom of the list of significant time-share states with 40 percent of its filings taking 7 to 12 months to be approved and 60 percent currently taking more than 12 months to be approved. That is why we support A.B. 404 and hope that you will consider it.

I was asked to read a statement from a major international brand public company that asked that their name not be used and which registers their time-share resorts in a majority of the states. They chose about a year ago to stop selling any of their product in Nevada for two reasons. They did not want to deliver a stale public report to consumers, and at one point they were asked to include information in their filing and their public offering statement that they felt was incorrect. They withdrew the sales of ten projects from the state of Nevada. They also support A.B. 404 and would like to begin doing business in Nevada again with their ten projects. These are out-of-state projects being sold in Nevada.

I would like to call your attention to a letter of support from Hilton Grand Vacations (Exhibit JJ). [Ms. Madsen also referred to a letter of support from Wyndham Vacation Ownership, which was not received.]

Keith Stephenson, Director of State Governmental Affairs, American Resort Development Association, Orlando, Florida:
I will be presenting proponent testimony for A.B. 404 on behalf of Mike Anderson, the general manager of resort operations for Las Vegas area resorts for Hilton Grand Vacations, the time-share division of Hilton Worldwide. I will also present testimony on behalf of Tara Young, who is the general counsel of Diamond Resorts International. Both are members of ARDA. Mike and Tara were available for testimony earlier today from Las Vegas, but due to the delays in the Committee and other obligations, they asked us to read their testimony.

Chairman Bobzien:
We cannot read testimony into the record, but you can submit it to us; it will be in the record. [Testimony not received].

Assemblywoman Kirkpatrick:
Time-shares seem to keep coming back no matter how much you fix them. Every session we have to solve the problems of the world as it applies to time-shares and we seem to get bigger bills with new issues. What are the issues? If we are such a horrible state, why do we have legislation every session to fix something? Is this fix forever or just for this session?

Karen Dennison:
The time-share statute has not been completely and comprehensively dealt with since 2001. We have had time-share bills in the past to fix various problems. This is a highly regulated industry, and the regulations are sometimes technical. We are trying to focus on the three main reasons we brought this bill. The first is so time-shares can continue to be a vital industry in Nevada. Nevada ranks sixth in the number of time-share projects in the nation.

Assemblywoman Kirkpatrick:
That is not what your colleague said. She said people are not coming to Nevada because we are not doing things right. Either we are sixth and highly ranked and respected, or we are terrible and the industry is not coming unless we make the changes in this bill. It is one or the other.

Karen Dennison:
These are projects that have been in the state for many years. I believe the testimony was on new filings in the state and had nothing to do with existing

projects in the state, which are trying to limp along with a broken system which has only been broken for the last three or four years. Prior to that, we had no problems with getting our filings or renewals approved on time. This is a problem that has been created for us. Our members are clamoring that we do something about it because they represent a vital economic interest of this state. The second reason we are bringing this bill relates to the resale abuses that were brought on by unscrupulous people, and we believe making it a deceptive trade practice, and including civil penalties, will put a lot of teeth in the enforcement by the Attorney General as well as the Real Estate Division.

Assemblywoman Kirkpatrick:
In what section of the bill is that?

Karen Dennison:
One is in section 4 and the other is in sections 42 through 44. The third issue is making sure that time-share associations that are cash strapped, and need new owners to come in and pay assessments, be able to resell their time-shares in the normal fashion. That is, to use a licensed real estate broker as the supervisor and have the sales team staffed by sales agents who understand time-share.

Assemblywoman Kirkpatrick:
I will disclose that my sister is a real estate person. It has always been my understanding that real estate people do not go back and forth between residential and time-shares.

Karen Dennison:
That is absolutely what I was saying. People who sell condominiums and single-family residences are not going to be selling time-shares and vice versa. We are asking that sales agents be able to sell time-shares on the resale market like they do on the initial sale when a developer is selling a time-share.

Assemblywoman Kirkpatrick:
Who is currently doing the resales?

Karen Dennison:
The Administrator will take the position in her statement that sales agents cannot be used by time-share resale brokers to resell time-shares. We believe that was in the spirit of the statute and should be made concrete and clarified in this bill.

Assemblywoman Kirkpatrick:
Who is selling the resales now?

Karen Dennison:
It is either the association selling their own or people hiring time-share resale brokers. Associations have the ability to sell because they have a lot of people coming through, staying in the rooms, and they can offer to people who are staying there without using a broker because they are the owners of the time-shares and they are selling their own time-shares like any owner can sell his or her own property. The associations sometimes need to get a resale broker because they have a huge volume of foreclosures to get into the market. The other category would be the individual owners who are tired of ownership and want to resell.

Assemblywoman Kirkpatrick:
I have had to call the Administrator about people who got into situations because there may have been some miscommunication. I want to protect the consumer. I want to get to the heart of the issue. Why did we not address those issues last session?

Assemblyman Grady:
Are all of your sales made on a contract of sale and are they recorded?

Karen Dennison:
Section 42 deals with resold time-shares. It is not the typical contract of sale where there is an installment through the contract. If it is a deeded interest, there would be a deed given to the resale buyer. These contracts are not typically recorded. If it is a "right to use" interest, that may be a situation where a contract of sale was used and at the end of the payment period you would get a membership interest in an association.

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

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:
I appreciate the opportunity to express my concern regarding several aspects of A.B. 404 (Exhibit KK). I do not oppose the bill in its entirety. I appreciate the work I have done with ARDA and their team. The Division has two areas in concept in this bill about which I need to express my opposition and concern. I would also like to address the broken system that has been referenced here. The Real Estate Division has had significant staffing reductions. These started in 2009 and 2010 and continued in 2011. My significant staffing reductions have been due to the fee revenue in my General Fund budget account from time-share filings and time-share licensees of over $500,000. That had ramifications in the laying off of staff. This program had three full-time

positions, now has one, and for a period of 10 months had no one. The one current employee handles time-shares, the registration and filings for the sale of subdivided land in the entire state, and membership campgrounds. We do have a staffing resource issue and we recognize the issues.

The two areas I will address are the date-specific language and the "deemed approved" and "is effective" language that defaults specifically in sections 3, 26, 27, and 30. This language is tied to performance dates that the Real Estate Division must meet or the filing, by statute under this language, is deemed approved or is effective. We do not have a staff to meet these deadlines. That becomes a significant problem, in my mind, of reducing consumer protection and hampering the ability of the Real Estate Division to regulate time-share marketing and sales activity that occurs in our state.

We currently find deficiencies in submittals by developers. I am not opposed to the public offering statement being drafted and submitted by the developer. They amended the bill to include that the Real Estate Administrator will approve for use or tell them the deficiencies that need to be corrected. That is important because up until now, I am issuing all of the public offering statements in the state, the developer draft, doing revisions, and addressing deficiencies. We do get deficiencies in filings. The public offering statement is the consumer disclosure statement, and it specifies exactly what is being offered in the project, such as the physical amenities, the use rights, the restrictions and limitations, and any lawsuits and litigations in which the developer is involved. There are a number of very important disclosures that the consumer needs to know. We need to ensure that those are adequately covered.

Again, I oppose the "deemed approved" and "is effective" language, particularly within the time frames. We have been working together on this for many months and many meetings. The "deemed approved" language does not exist in any state of which I am aware on an initial filing. We have talked to a number of states about how they are handling some of these matters. I do not have a problem with it on renewals. I do have concerns about amendments, which are major changes in the filing, and certainly, what is being offered in an initial filing. We also talked to our regulatory neighbor in California on their processing, staffing, and time frames. I agree and concur that some of the renewals that have not been processed are long overdue. We have been trying to address that. We have been prioritizing initial filings to get those things open and operating. We have been prioritizing amendments that add components and sites in our processing.

The other area of the bill that I do oppose is the use of time-share sales agents to conduct time-share resale activity. A time-share sales agent, as has been

made clear under NRS Chapter 119A, is not a real estate agent, although a real estate licensee under NRS Chapter 645 can perform time-share sales activities under his real estate license, and some do. The time-share sales agent has very limited training of 14 hours, which only covers NRS Chapter 119A. The training is often offered by the project broker although we have one prelicensing provider offering it at this time. That training is for the specific developer at that specific site location under the supervision of the project broker. The time-share sales agent does pass an examination for licensure, but that examination is limited to what is in NRS Chapter 119A. There is a provision in NRS Chapter 119A for provisional licensing of time-share sales agents. When we were having a boom back in 2007, the law was passed that allows a license to be issued before the results of a criminal background investigation are received by the Real Estate Division. It is limited in time and cannot be renewed.

In California, Florida, and Arizona, the sale and resale of time-shares is done by real estate licensees. They do not have the special carve-out as we do of the special time-share agent. Time-share resale is a real estate activity by definition and it is corroborated in NRS Chapter 119A. The terms real property and real estate as used in NRS Chapter 645 shall be deemed to include a time-share whether it is an interest in real property or merely a contractual right to occupancy. The real estate licensee conducting time-share resale activity provides his client all of the standards of care and requirements of a real estate licensing transaction. That includes the duties owed by a Nevada real estate licensee in a transaction. These are duties in NRS Chapter 645 concerning fidelity to your client, reasonable skill and care, disclosure to each party, abiding by obligations, presenting all offers, and a number of disclosures under that chapter, which is basically an agency arrangement with a client that a real estate agent does and a time-share sales agent does not. They are not qualified, they are not trained, and they cannot do this.

The other aspect in a time-share sales transaction that a real estate agent might do is represent both parties. That requires a consent to act, which is a real estate licensing activity that is used when a real estate licensee wishes to get the consent of both parties to a transaction to represent both sides in the transaction. These are real estate activities. Time-share real estate is third-party. Real estate transaction is not at a particular project with a particular developer and development. It is out there and all over on all different kinds of resale programs. I concur that a real estate licensee does need to understand what is being offered in the sale.

That, in my opinion, is a very important aspect of time-share resale—to protect consumer interest. Therefore I oppose the changes in the bill that allow a

time-share sales agent under NRS Chapter 119A to conduct resale activity in our state. I concur and remove my opposition to section 10. That clarification was made to me, and I appreciate that. I have a primary concern in providing service to the developers. We are working on that, and I am hoping to get a position in our Governor's recommended budget for an administrative assistant. We have mentioned a fiscal note to, perhaps with the industry's support, be able to get a program officer who would handle time-shares.

Chairman Bobzien:
Are there any questions?

Assemblyman Livermore:
How many transactions do you do in a year in time-shares?

Gail Anderson:
I do not know.

Assemblyman Livermore:
I guess there is a fee associated with those. Why are you understaffed? Is the fee not adequate?

Gail Anderson:
It was an overarching element. Over $500,000 to the Real Estate Division has been lost to the budget when the market fell. There were no new intervals filed, there were some that dropped out, and there were not as many licensees. These were sales agents, not just resale agents. Things in our state slowed down and it had a tremendous impact on us. It has recovered a bit and stabilized a bit.

Assemblyman Livermore:
How many staff do you have?

Gail Anderson:
There is one person in the project section in the state.

Assemblyman Livermore:
Does she do multiple tasks?

Gail Anderson:
Absolutely.

Assemblyman Livermore:
If you were to clear her calendar, you could clear the backlog of applications that are out there. I do not know what other tasks there may be, but I assume that you made that decision to give her the other tasks.

Gail Anderson:
All the duties she does are in the project section, but she is also clerical as well as the reviewer. She does all of the subdivided land registrations in the state for home builders, condominiums, and time-shares.

Assemblyman Livermore:
I think you should look again at your priorities and see if you can clear this backlog. The consumer has a right to expect a transaction to take place. Four months is way out there and I would hope the Division rethinks this.

Gail Anderson:
Thank you. We will definitely take that.

Chairman Bobzien:
Are there any final questions? [There were none.] We will move to the next person in opposition. Please refrain from reading testimony. We will gladly take your testimony for the record.

Bill Gabrielli, Real Estate Sales Agent, Century 21 Aadvantage Gold, Reno, Nevada:
In the past ten years, I have sold over 500 time-shares through developer sales in Incline Village and in the past seven years through resales. I have been the president of the homeowners' association for a fractional ownership in a condominium in Hawaii. I am speaking against A.B. 404. I oppose the proposed change to allow time-share sales agents to sell time-share resales. There is a total difference between selling for a developer with very little training and direct supervision versus handling many different time-share resales. I have owned time-shares for over 23 years and have traded. I have an extensive background and that is why I am here today. I was one of the victims who paid unscrupulous marketing companies up-front monies and received no performance for it. Brokers are licensed and do not collect up-front monies and do not act in this manner. There are issues that Florida is bringing up against these developers. [Provided prepared testimony (Exhibit LL).]

It is a simple process as a sales agent under NRS Chapter 119A. A sales agent is a time-share agent under NRS Chapter 119A, and a salesperson is a licensed real estate person under NRS Chapter 645. I am one of those and I specialize in time-share resales. I was party to bringing a cooperative agreement to an

Incline Village homeowners' association, where I acted as the agent under the brokerage of Century 21 to resell time-shares that were brought to the homeowners' association by the foreclosure process for nonpayment of dues. The homeowners' association there did not want to handle those resales and used a real estate attorney who looked into the liabilities of handling that. They felt the best choice was to have an appropriate broker handle that through direct communication with the homeowners' association. In fact, the homeowners' association actually made money on each of the foreclosures. As stated by Administrator Anderson, as a real estate licensee under NRS Chapter 645, I am required to present duty owed, and in almost all cases in time-share resales it is quite different. You represent the buyer and the seller in most cases. My fiduciary duty is to do the same things under NRS Chapter 645 that you have to do for regular real estate.

My position is against sections 14, 15, 16, and 18, which would allow either a project broker acting on resales or a homeowners' association to have a simplified licensee under a sales agent represent time-share resales. These time-share marketing companies are the scourge of the industry and are affecting a significant number of people who come to me through our lead system in the Las Vegas office. Many of these people have already spent hundreds if not thousands of dollars with sometimes multiple companies who have promised them that they will either take their time-share back or have a sales person work on it, and all they have to do is pay the up-front fees. These are not brokers who are doing that.

My opinion is that time-share resales should be done by licensed real estate salespersons under NRS Chapter 645. This is the way it is done in every state, and there is no lesser designation as there is in Nevada. I suggest that maintaining would be better for consumers and Nevadans. Please do not take this aspect of consumer protection that is in place away by lessening the laws as proposed.

Chairman Bobzien:
Are there any questions? Seeing none, please continue to talk to see what can be done on this bill. Is there any final testimony on this bill? Seeing none, I will close the hearing on A.B. 404. I will open the hearing on Assembly Bill 494.

Assembly Bill 494: Revises provisions governing the Nevada State Funeral Board. (BDR 54-573)

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

In the interim, I served as Chairwoman of the Sunset Subcommittee of the Legislative Commission. The Subcommittee was created last session as an ongoing statutory committee through Senate Bill No. 251 of the 76th Session, which was a bipartisan effort between Assemblywoman Debbie Smith and Senator Ben Kieckhefer. The Subcommittee was named "Sunset" because of the need for regular assessments of Nevada's boards and commissions. It is a nine-member Subcommittee composed of three members each from the Senate, Assembly, and the public selected from names submitted by the Governor.

This interim the Subcommittee held several public hearings and ultimately made several recommendations to the Legislative Commission to either terminate, modify, or continue several boards and commissions. A complete summary of the recommendations has been made available to you in the Nevada Electronic Legislative Information System (NELIS) (Exhibit MM). At each hearing, we reviewed operating budgets for at least three years, including the balance of any funds maintained by the group. We reviewed recent legislative audits, efficiency studies, and reports filed with the Legislative or Executive Branch over the last three years. Additionally, we asked for minutes of any meetings in the past year.

The Nevada State Funeral Board regulates funeral homes and burial services. It also investigates complaints and makes disciplinary actions against licensees. During the June 5, 2012, Subcommittee hearing, the Board's executive director explained that there were 185 licensed funeral directors and embalmers and four apprentice embalmers in the state. Additionally, five establishments were pending licensure and there were eight prospective licensees. Members of the Subcommittee noted that the Board does not have a walk-in office. Licensees must contact the Board by telephone and the Internet. It was also noted that the Board lacks inspection documents. Staff of the Board noted that it is only required to retain documents for one year.

The Subcommittee approved sending a letter to the Board's deputy attorney general to review this requirement. Members of the Subcommittee expressed concerns about the administration of the Board, including office operations and staff expenses. Warren Hardy, representing a licensee, testified that the funeral industry supports having a board, but stated that the administrative functions desperately needed improvement. He suggested transferring the duties of the Funeral Board to the Department of Health and Human Services.

I received complaints from a constituent about the Funeral Board several times because of their lack of response, and as a business owner in that industry, it

was a great concern for him. I served with Assemblywoman Carlton on the Subcommittee, and she had similar concerns regarding the Board. We are recommending to terminate the Funeral Board and transfer its duties to the Department of Health and Human Services.

Chairman Bobzien:
Because of the problems with the Funeral Board, the intent is to put this into receivership, right?

Assemblywoman Bustamante Adams:
That is correct.

Chairman Bobzien:
Are there any questions?

Assemblyman Ellison:
Have they been keeping up with their activities?

Assemblywoman Bustamante Adams:
Not to my knowledge. I received an audit report from our legislative auditor that had not been submitted on time which indicated several of the infractions we found as the Subcommittee. That was the only documentation I received.

Assemblywoman Kirkpatrick:
I want to get rid of this board. As a member of the Legislative Commission, I know we have asked many times why the Funeral Board does not file its audits. At one point, we were told that it was a mistake and they did not know how to use the system. I tried to call myself, but there was no answer and no answering machine. I asked the Legislative Counsel Bureau Director to reach out and he got no response. Three years went by with no financial reporting. When we finally got the reports in 2012 for the year 2010, I discovered that the Executive Director makes more money than the Board takes in. When I asked, what is the function, that person could not be there to testify.

If people are paying money into a Board that is supposed to serve them, and the Legislative Commission asks them to appear because they do not submit reports, then what do they do? I think they were collecting fees and paying a large salary, but they were never available to provide answers. On the last audit, I asked how is it possible the Executive Director makes more than the Board takes in and there is no paperwork that indicates they have a large reserve? There is no telephone that you can call and get a response. I do not know what their purpose is. I believe they are unresponsive and a waste of space. I applaud you for bringing this bill and I think it is four years too late.

If you are willing to get rid of the Board altogether because it is not beneficial, I am happy to do that. I am not willing to help save it.

Assemblywoman Bustamante Adams:
I agree it was not serving the needs of our constituents.

[Vice Chairwoman Kirkpatrick assumed the Chair.]

Vice Chairwoman Kirkpatrick:
Are there other questions?

Assemblyman Grady:
Is there only one employee, and how many members are on the Board?

Matt Mundy:
The Board consists of five members appointed by the Governor.

Assemblywoman Carlton:
I have felt the same way about this Board for six to eight years. There are some technical issues in the bill which we will need to work on with the Department of Health and Human Services, including fee structures.

Assemblyman Hansen:
I agree with you.

Kelly Richard, Committee Policy Analyst:
According to the directory of the *Nevada Legislative Manual*, which was published at the beginning of this year, there are currently five board members and one paid employee who is the Executive Director.

Vice Chairwoman Kirkpatrick:
I believe the Executive Director is paid over $100,000 and I am happy to get that information.

Assemblywoman Bustamante Adams:
I do not have the operating budget, but that was one of the questions that was posed during our hearing. We do have the minutes which reflect the salary of the individual.

Vice Chairwoman Kirkpatrick:
I would like to hear responses from the industry.

Warren Hardy, representing La Paloma Funeral Services:
La Paloma Funeral Services has been trying to deal with the Funeral Board regarding questions and concerns since they have been in existence. It has been a very frustrating experience. When we learned that the Sunset Subcommittee was going to look at this issue, we were delighted to participate and share our concerns. The Subcommittee has responsively considered our concerns. We were asked to suggest an alternative to the Board. The Department of Health and Human Services is the best alternative we could suggest because they have similar charges. There may need to be some amendments to match this bill with other areas under the Department.

Our problems as a licensee have been expressed. The Board is difficult to contact, there are no regular inspections, and we are aware of some public complaints that are over three years old that have not been addressed. The information on their website is not regularly updated. Their phone coverage is hit and miss. There is no office maintained in Nevada that we know. We believe that a much more efficient way for the taxpayers to be served is by folding this responsibility into an agency that has experience in dealing with these kinds of things. We have heard of funeral homes who have applied for licenses and have not received them for over a year. I have heard of some that have gone five or six years without the required inspections.

Because of the Sunset Subcommission, we have actually reached out to and had contact from some of the Board members. Some of the members, particularly the new ones, have been astonished that they have not heard of some of the issues we are discussing. We feel there have been some good conversations with the Board members, which is why we recommended the advisory committee. We want to have input from the industry. We are willing to look at alternatives. We need to have an agency that is responsive to our needs and the needs of our customers.

Vice Chairwoman Kirkpatrick:
Are there any questions?

Assemblyman Ellison:
Do you want Health and Human Services to set up a committee to regulate the funeral industry?

Warren Hardy:
That is exactly what we are proposing. That is similar to what happens in other areas and is based on conversations with Health and Human Services. There are other industry advisory committees that meet to advise Health and

Human Services in matters relating to the industry. We believe the industry needs much more professional management.

Vice Chairwoman Kirkpatrick:
If you go onto the Nevada State Funeral Board website, they do not even have a mission. I would like to hear from Board members because I do not understand their purpose. If I was paying fees for a service, I would be angry. I would like to hear from people in the industry.

James Mullikin, Managing Partner, Bunkers Mortuaries, Cemeteries, and Crematory, Las Vegas:
I have served on the Nevada State Funeral Board for approximately three years and I am the treasurer. I do not represent the Board, but I represent myself, my business, and the families we serve. The grieving families at my business and their primary concern lie deeply in my heart. I am neutral on this matter because there needs to be a comprehensive revision of *Nevada Revised Statutes* (NRS) Chapter 642 as well as other statutes that relate to the funeral, cemetery, and cremation industry in Nevada. The majority of the laws are antiquated and most no longer apply. That is the environment I walked into at the Funeral Board.

There are issues, and there have been movements within the Board over the past several years. My personal opinion is that there needs to be an immediate change in the Executive Director position. I believe this bill is a lateral move. It needs to be more comprehensive. There need to be more definitive answers concerning what fees are collected and how they impact the industry and the consumers. Any fee increase passed to the industry goes back to the consumers. I am also concerned with the time frame proposed for implementation of January 2014 and if Health and Human Services will be ready.

I am confused about people not being able to contact or know who the Board members are, because that is public record. With full revisions to bring the laws more current with the funeral, cemetery, and cremation industry in Nevada, I think we would be better served rather than making this a lateral move.

Vice Chairwoman Kirkpatrick:
We will move to the next speaker.

Tyson Smith, Funeral Director, Boulder City Family Mortuary, Boulder City, Nevada:
I originally opposed this bill but have shifted towards neutral after hearing testimony. I think this proposal transfers the problem and does not fix it.

My big concerns are financial. You are taking a self-sufficient board, functional or not, and putting it on the backs of taxpayers. It will run into the same problems that we have faced for years with the Board since I have been in Nevada. We have always struggled to keep our heads above water financially. I do not know where you are going to get the people to do our inspections that are being done now free of charge. I know there will be taxes because the money has to come from somewhere. I would rather it not come from my tax dollars. My tax dollars should go to education, which is needed in this state.

One of the lines in the bill says that the Health Division is entirely exempt from the regulations unless they apply to them. I think we need to have checks and balances with this new system if we get rid of the Board. Many of the issues that we face as funeral directors have to do with the Health Division itself. One of the issues is that our death certificates are $20 apiece. That is very expensive compared to other states. We need to have somebody put checks and balances on the funeral industry.

[Chairman Bobzien reassumed the Chair.]

Chairman Bobzien:
Are there any questions?

Assemblywoman Kirkpatrick:
To say that the information about the Board is public, a person could get the information from the Office of the Governor, but the website lists an email address and the mail goes to a mail center. As the treasurer who signs the checks, can you tell me how the fees are collected and how in the last audit you could pay the Executive Director more than was actually collected?

James Mullikin:
I do not deny the mailing address situation. That was the address when I came on the Board. Nevada disclosure laws prohibit board members from talking outside of a board meeting, so we have to put items on the agenda to discuss. That is an item that concerns me. We need to have a Nevada presence. We need to figure out how to have an office. The communication comes from the Office of the Governor through the Executive Director to the Board. My main concern is that something positive happens for the citizens of Nevada and the industry as a whole. As far as the Executive Director making more money than the Board took in, that is not correct. Since I have been the treasurer, I have proposed that her pay be cut and it was.

Assemblywoman Kirkpatrick:
The last minutes that were posted were from 2002. As a business person, I would be concerned about a service that I am not getting. As a Board member and a business person, we cannot get that information through our legislative audit process that is due every year. There are 160 other boards that do it, but the Funeral Board never does it. The treasurer always submits the reports, but the Executive Director said that was her responsibility. I do not know that the Board has been beneficial and what the harm is if it goes away. Boards like this make government look bad. I do not know your mission and I have no way to contact you on a regular basis. If you do not post your minutes at least once a year, you are not even considered a board. Where is the information? As the Legislature, we have a responsibility to make sure that the boards we create do their jobs. I will never agree to let this bill continue. I do not see that there is a win. Nobody has proven that it is functional. Functional is what we strive to do efficiently in the state. The Funeral Board could have gotten a bill three years ago when it was an issue. I do not know how we do a comprehensive plan when we have not received any information for seven years. It is too late for that.

James Mullikin:
I appreciate and understand your comments. I am neutral on this. There have to be sweeping changes. This is the first time I have heard about a request for a comprehensive change. I attended most all of the Sunset Subcommittee hearings and spoke at several. I indicated that if the Committee was not getting information from the Executive Director, to please either contact the Chairperson of the Board or me and we would make sure that information got to them in a timely manner. I have not had any requests from any Committee members or legislative parties. In checking with the past two chairpersons of the Funeral Board, they have not had any communication either. We know where the problem lies; perhaps it is too late to fix it, but this is a lateral move and there needs to be a more comprehensive review of the statutes as it affects the industry as a whole to accomplish what we all want. That is protection for our citizens and to make sure the industry is as good and qualified as it can be.

Chairman Bobzien:
Are there any questions?

Assemblywoman Carlton:
This will not fall on the taxpayers' backs. When we do an advisory committee, those who are licensed or certified end up picking up the same amount of fees. I believe the state can be more efficient and actually get the inspections done. We are not going to ask for additional fees. The current fees can be evaluated, and I believe the state could do it for less than it costs now with the quality of

inspections that the constituents of the state deserve. That will be an issue in the future. Those changes are done through the regulatory process with open meetings and workshops. Any statutory authority that would be needed would come from the Administration through the Health Division back to the Legislature for us to address in a future legislative session.

Chairman Bobzien:
We will come back to Carson City to hear more testimony,

Gerald Hitchcock, Funeral Director, Freitas Rupracht Funeral Home, Yerington, Nevada:
My concern is the fiscal impact that this bill has on certain items that will be removed. I am probably the longest-serving Board member on the Funeral Board. I want to address some of the issues that have been discussed. The salary of the Executive Director is between $38,000 and $42,000 per year. Regarding the issue about the phone, I have never had my calls not answered, and there is the ability to leave a message. I am the only Board member in northern Nevada. My inspections of funeral homes have been on a constant basis. At no time was I contacted by any members of the Subcommittee. I was not aware of the meetings. On those items, I agree with the Board.

My main concern is the fiscal impact. The licensing fee is set in code and cannot be changed without implementation by the Legislature. The wording that says the Health Division can charge a fee to cover operating costs is a concern to us as funeral directors.

Chairman Bobzien:
Are there any questions?

Assemblywoman Kirkpatrick:
I would get you a copy of the report we received. Maybe somebody submitted wrong information. I called many times and got no response. She may respond when Board members call. We waste a lot of staff time asking for that information. I have a great bill that is coming that will create a directory and a better website, and Assemblyman Hansen has another to list emails and phone numbers of people who are on boards. We both sit on the regulation committee and see that the reports do not get done. Where is it that I am supposed to go contact somebody?

Gerald Hitchcock:
I have been on the Board for going on nine years. I have one number which I am sure is to a cell phone and I do not know if she recognizes my number. Anytime a situation comes up from funeral directors in the north, I can give

them information concerning the law. I have others contact the Executive Director. I tell them to call me if they do not get an answer. I have never had anyone call back. There was an issue that they were slow in issuing the licenses. I am licensed in several different states. I gave the Executive Director the system that is used in Montana. We are a self-funded Board and it comes from fees paid by licensees. We take in about $59,000 per year plus penalties. Since I have been on the Board, we have been cost-conscious in what we are doing. We have tried to increase certain fees. The state demands an audit from us and that is one of our major expenses. I think two years ago our audit was not filed in a timely manner because of the expenses involved. As far as I know, all the audits until that time had no problems. Last year the Executive Director found a company that did the audit at an affordable price.

Complaints are issued to the Board and are handled between our Executive Director and the Office of the Attorney General; they do not come to us until it is time to act. If we hear about it ahead of time when it comes time to put a disciplinary action on any of the licensees in the state, then we would not be able to sit on that. Most of the complaints have been worked out prior. I can only recall six to ten complaints from the Office of the Attorney General on which we have had to take disciplinary action. It is an unusual process. Of all the states, Nevada's laws need to be updated. In this state it is difficult to do that because of how the Legislature meets every other year. Since I have been on the Board, we have made several changes in the law with a positive effect.

Assemblywoman Kirkpatrick:
I would like a phone number where I can reach people when I have a constituent complaint. The number I have is 702-290-5366, and the address is 4894 Lone Mountain Road, which is in the mailbox center.

Chairman Bobzien:
Is the phone number on the website wrong?

Gerald Hitchcock:
I believe it is correct.

Assemblyman Ohrenschall:
Has the Board ever had enough money to maintain a walk-in office?

Gerald Hitchcock:
No, the amount of revenue we collect has never been sufficient to rent an office.

Assemblyman Ohrenschall:
You mentioned the Board members inspect the funeral homes and crematories on a voluntary basis. If this bill is passed, will the Board members continue to perform these inspections, or will that be a duty the Health Division will have to take over?

Gerald Hitchcock:
The way the bill is written, the inspections have to be done by a licensed funeral director, and there is a fee that can be collected while doing the inspections. I do the inspections and attend the meetings, which are held in Las Vegas, without billing the Board as a courtesy to my profession. I foresee that everyone who does it under A.B. 494 will bill for the inspections.

Jim Smolenski, General Manager, FitzHenry's Funeral Home, Carson City, Nevada:
I am speaking as neutral, and I wish to address the fee structure described in sections 18 and 20. Section 20 talks about the fee structure that is already in place. For me to operate my funeral homes in Carson City and Gardnerville, it costs $1,400 per year, which is paid to the Nevada State Funeral Board. If I read section 18 correctly, it says that the Health Division shall charge and collect an annual fee from each holder of a license certificate. It means there is the possibility of an additional fee to regulate the funeral industry. In conversations with others in the industry, it is agreed that if this bill is to go forward, a lot of these items need to be addressed, reworded, and analyzed.

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

Robert List, representing Palm Mortuaries, Las Vegas, Nevada:
Over the past few weeks, there has been a great deal of communication within the industry about this bill. Unofficially, there has been a consensus formed to some degree among members of the industry. The industry respects totally the work of the Sunset Subcommittee. They appreciate and acknowledge that given the record before the Subcommittee, the recommendation should not be a surprise. The shoddy recordkeeping that has gone on over the years is apparent to everyone who is familiar with it. The Executive Director apparently lives in San Diego, California, so there is no surprise that there has been difficulty in communication. She may have a Nevada residence officially, but that is where she spends her time. There have also been a number of recent changes to the Board and there have been some positive improvements in the makeup of the Board. There is a growing recognition that there needs to be a change in the staff. I think that is something that has been a long time coming. The Subcommittee, as I understand, asked for financials from the Board and

never received them. It is no wonder they are upset. The most recent minutes are from October of 2002. The operations need to be brought into the twenty-first century. There is not another state, let alone one that has grown the way Nevada has, that has such a lack of professionalism at the Board and the staff level.

I applaud Mr. Hitchcock for his personal endeavors, work, and volunteerism, but that is not the way it should work in most states. We have over 185 licensed funeral directors and embalmers in the state. There were 20,000 deaths in the state last year. This is a big industry. Funeral homes throughout the state deserve a more modern and up-to-date statutory structure and professionalism from their Board. The good news is that the industry has come to recognize that and is prepared to step up and address the problem. Like other unique professionals and specialists, there is a need for professional knowledge among those who regulate this industry. The physicians regulate their industry. They are professionals and understand what needs to be done and how to go about it. Attorneys, nurses, and many other professionals do it without turning it over to state employees to regulate their industry.

This is a self-funding board that has been underfunded. For $57,000 per year, I cannot imagine how they can effectively oversee all the licensing, inspections, the disciplinary matters that have to take place and to protect the public as they go along. In all honesty, I think there will be increases in fees no matter who is running this operation, whether it is at the board level or at the state level if the job is going to be done properly. The fees are about $3 per death. Most states have a burial fee of about $5, which would generate $100,000. A modest increase, in my judgment, may be forthcoming, welcomed or not. There is testing, licensing, and all of the regulatory functions that have to take place. When you have a part-time executive director who lives out of state, it is certainly no wonder that it has not been done.

What Palm would like to see—and I think this attitude is shared by a number of others—is to reform and recast this Board and its function rather than to turn it over to an already very busy state agency that does not have the expertise to do the work that people like Mr. Hitchcock are doing on a volunteer basis. We are asking the Committee to allow the industry to circulate some ideas that have already been put in writing and draft form and to get back to the Committee with some suggestions on how to reform and reconstitute the system and not turn it over to a government agency to run. We would like the Board to do it with a proper staff and to protect the public. The concepts should be presented to the Board members and should be circulated within the industry, and a framework proposed to accomplish some reforms through

relatively simple amendments to the existing law. We ask the Committee to entertain this alternative to what is proposed in the bill.

Chairman Bobzien:
Would there be an amendment that may increase fees?

Robert List:
That could be part of it.

Chairman Bobzien:
If that happens, we may have to send it to the Assembly Committee on Ways and Means. That means our deadline of April 12 becomes all the more looming, in that we have to get the bill out of our Committee and referred in time to meet the deadline. Your deadline is Monday.

Robert List:
We could have it to you by then. I understand Assemblywoman Kirkpatrick's frustration, but I believe you have gotten the industry's attention and there can be a solution that will enable this Board to take control, staff it properly, and to begin to conduct itself in a professional manner.

Chairman Bobzien:
We will encourage you to work with Assemblywoman Bustamante Adams and to make haste.

Assemblyman Ohrenschall:
When you talk about a fee increase, do you think it is something that the smaller independent funeral homes can sustain and continue to stay in business?

Robert List:
It is not something I can answer off the top of my head. It is a relatively modest fee which is common and done in most states. Somebody is going to have to underwrite this stuff. You are not going to be able to hire inspectors on a $57,000 annual budget.

Gerald Hitchcock:
We as a Board suggested a fee as other states do. Any fee is passed to the consumer. We had proposed a fee that would be attached to each death certificate. Nevada is one of the only states that does not charge a burial fee. California charges $11 for their permit. We charge families only for a certified death certificate. When we proposed that, the Legislative Counsel Bureau kicked it back.

Chairman Bobzien:
The issue is that you need statutory authority.

Robert List:
And that would entail going to the Assembly Committee on Ways and Means.

Chairman Bobzien:
That is murky.

Gerald Hitchcock:
We were told by the Office of the Attorney General that we could do that as a Board regulation. We proposed it and it came back because it did not have statutory authority.

Chairman Bobzien:
Is there anyone else to speak? [There was no response.] I will close the hearing on A.B. 494 and open the hearing on Assembly Bill 426. This bill, because it has a study, will also need to be referred to the Assembly Committee on Legislative Operations and Elections.

Assembly Bill 426: Revises provisions relating to mortgage lending. (BDR 54-42)

James Westrin, Commissioner, Division of Mortgage Lending, Department of Business and Industry:
This bill gives the Division of Mortgage Lending the authority to license and supervise residential mortgage servicers that are operating within the state of Nevada. Under existing law, there is a registration requirement for mortgage servicers who are operating outside of the state of Nevada but servicing mortgage loans within the state. It is more of a notice statute than a regulatory statute. We do not have any teeth in it to enforce any regulatory provisions or have any authority to examine books and records of those entities. Also, under current law, if the company is located in the state, they would need to be licensed under *Nevada Revised Statutes* (NRS) Chapter 645A as an escrow company. So we have two issues. We have no regulatory authority over companies outside of the state, even though they are affecting consumers in Nevada as much as companies inside the state, over which we do have regulatory authority.

Assembly Bill 426 will be a significant step towards providing protections to homeowners against abuses by establishing a regulatory watchdog that would have the authority to scrutinize the records of these mortgage servicers and their activities. It puts the responsibility of the Division to draft, promulgate,

and adopt significant regulations to put into place and administer this bill. Based upon information that we have derived from the current registration information, there are about 170 licensees who would come under this bill. That would require the office to ramp up its licensing staff to handle and process new licensing applications.

There is also a supervisory component to the bill. The Division would be required to conduct annual or periodic examinations of their books and records. Because the agency is fee-funded, it would be essential that this bill would fund itself and provide the Division with adequate staff and resources to do the job that is essential to regulate this industry. The Division projects that the licensure and supervision of the residential loan mortgage servicers will require the addition of approximately seven examination personnel to conduct the increase in examinations and investigations. With the assistance of our administrative services officer, there was a fiscal note submitted which projects the program will be self-supporting.

With respect to the interim study, in conversations I had with stakeholders, industry participants, and others shortly after joining the Division, a common theme developed. Through a number of changes in Nevada's mortgage regulatory scheme intended to address specific issues that were happening in the mortgage industry, the law had become complicated, a little disjointed, and difficult for people to understand and comply. In my reading of the statutory scheme, I formed the same opinion. The Division would welcome the opportunity to participate in a study, to review our statutes and regulations, and to provide any information or suggestions that would help organize, clarify, and simplify the mortgage regulatory laws in the state of Nevada.

Chairman Bobzien:
The concern for the study is that it is a big change, and we want to make sure we take the time to fully absorb what has to happen and how it might be applicable to Nevada. We appreciate your willingness to work with us on that. Are there any questions? [There were none.] Is there any additional testimony?

Charles Mohler, Member, Advisory Council on Mortgage Investments and Mortgage Lending:
We have been working with the Commissioner with this and other bills. There is a similar bill, Senate Bill 354, that has similar language and also asks for a study. We support this bill and would like to continue to work in the legislative process to move it along.

Chairman Bobzien:
Is there any additional testimony? [There was none.] Are there any questions from the Committee? [There were none.] I will close the hearing on A.B. 426. I will open the hearing on Assembly Bill 331.

Assembly Bill 331: Revises provisions governing the billing practices of certain providers of health care. (BDR 54-731)

Assemblywoman Ellen Spiegel, Clark County Assembly District No. 20:
I am here today to talk to you about medical insurance. When a patient goes to the doctor and fills out paperwork, which asks if he has medical insurance and has it changed, they verify the insurance and the copay is paid. What happens beyond that is out of the patient's control. Sometimes, the front office does not communicate to the back office if there is a change. If there is a change in insurance providers, they might bill the old carrier, or they may wait so long that it goes beyond the time frame that they have the contractual right to bill. When either of those things happens, the patient may be billed by the medical provider for the full charge. It is what I call the "fluffy charges." They say the patient does not have insurance or the insurance company rejected the claim. The patient cannot receive a negotiated rate or a cash rate, so there is a big charge. This bill provides that if a patient goes to the medical provider and gives them all the correct information, and there is a billing problem which is the fault of the provider, the patient is not liable for anything more than he would be had the medical provider billed accurately.

I have worked with a number of industry professionals to develop the amendment (Exhibit NN). The amended bill says what I explained. If a patient goes to a health care provider and gives them all of the correct information, the health care provider needs to maintain a record of the information that is provided. If they do not bill the insurance carrier in a timely manner, or do it incorrectly, the patient is not liable for anything more than what he would be had the medical provider billed accurately and in a timely manner. This does not apply if the patient provides inaccurate information. This is not meant to harm providers; it is meant to help consumers.

I worked with providers in a proverbial woodshed that included hospitals, health care providers, dental providers, and insurance carriers. We worked together to come up with this language.

Chairman Bobzien:
Are there any questions?

Assemblyman Livermore:
What do you think is a reasonable time?

Assemblywoman Spiegel:
Reasonable time is defined in the contracts between the health care provider and the insurance carrier. They are different per contract.

Assemblyman Livermore:
What is normal?

Assemblywoman Spiegel:
My understanding is that for some carriers it is 60 days, 90 days, and longer. It depends on the field of health care and the contract.

Chairman Bobzien:
Are there any questions? Seeing none, I will move to the next speaker.

David Goodheart, representing Nevada Hospital Association:
We want to thank Assemblywoman Spiegel for her work on this bill. We enthusiastically support the bill as amended.

Chairman Bobzien:
Are there any questions? Seeing none, is there anyone wishing to testify on this bill? [There was no response.] I will close the hearing on A.B. 331. I will open the hearing on Assembly Bill 492.

Assembly Bill 492: Revises provisions governing the Credit Union Advisory Council. (BDR 56-577)

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42:
As the chairwoman of the Sunset Subcommittee of the Legislative Commission during the interim, I wish to report that we were able to review the Credit Union Advisory Council, as noted in the Subcommittee's bulletin (Exhibit MM). We learned that the Advisory Council advises, consults with, and makes recommendations concerning credit unions to the Commissioner of the Division of Financial Institutions for the Department of Business and Industry. Representatives of the Advisory Council explained that the Council was created in part to ensure that, within the Division of Financial Institutions, the credit unions were not overshadowed by their large for-profit counterparts.

Representatives of the Advisory Council explained that the Council provides mechanisms to communicate with a regulator who frequently is not from the credit union community and may not have an extensive understanding of a credit union's unique financial structure. During the hearing, the Department of Business and Industry's former Director, Terry Johnson, noted that the role and mission of the Advisory Council needed to be reexamined. He expressed concern that regulated industries, such as the credit unions, should not directly or indirectly supervise their regulator, such as the Division of Financial Institutions. Currently, the Commissioner is subject to administrative supervision by the Director of the Department of Business and Industry. The Commissioner also is authorized to adopt certain regulations only with the advice and consent of the Advisory Council. The director noted in later correspondence to the Subcommittee that there was consensus with the Nevada credit unions to make such a change. The Sunset Subcommittee recommended that the Advisory Council be divested of any authority over and be purely advisory to the Commissioner.

Chairman Bobzien:
Are there any questions? Seeing none, we will go to Las Vegas and welcome Commissioner Burns.

George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
As Assemblywoman Bustamante Adams explained in the Sunset Subcommittee of the Legislative Commission, there are issues relative to the current credit union statute. The statute, which is over 25 years old, gives the Advisory Council administrative supervisory authority over the Commissioner of the Division of Financial Institutions, their primary regulator. The statute is at best antiquated and at worst is an unsafe and unsound conflict of interest. It does not take into consideration, nor did it ever contemplate, a financial crisis such as we experienced in the savings and loan debacle in the late 1980s and 1990s or the current financial crisis. It is fundamentally inappropriate for industry to have supervisory authority over its regulator. We support the bill that has been introduced to correct this problem.

Chairman Bobzien:
Are there any questions for Commissioner Burns? Seeing none, if there is nothing else to be put on the record on this bill, we will close the hearing on A.B. 492. Is there any public comment? [There was no response.] Are there any matters to come before the Committee from members? [There was no response.]

The meeting is adjourned [at 10:42 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: April 3, 2013 **Time of Meeting: 1:47 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 11	C	Kelly Richard	Work session document
A.B. 39	D	Kelly Richard	Work session document
A.B. 206	E	Kelly Richard	Work session document
A.B. 277	F	Kelly Richard	Work session document
A.B. 354	G	Kyle Davis	Handout
A.B. 354	H	Kyle Davis	Handout
A.B. 354	I	Kyle Davis	Letters of Support
A.B. 354	J	Lea Tauchen	Handout
A.B. 354	K	Tim Shestek	Handout
A.B. 354	L	Jennifer Gibbons	Prepared testimony
A.B. 354	M	Tim Shestek	Handout
A.B. 354	N	Tim Shestek	Letters of Opposition
A.B. 369	0	Jan Crandy	Handout
A.B. 369	P	Jan Crandy	Handout
A.B. 369	Q	Jan Crandy	Handout
A.B. 369	R	Jan Crandy	Handout
A.B. 369	S	Jan Crandy	Handout
A.B. 369	T	Michael Harter	Prepared testimony
A.B. 369	U	Nicole Cavenagh	Prepared testimony
A.B. 369	V	Jan Crandy	Handout
A.B. 369	W	Ken MacAleese	Prepared testimony
A.B. 369	X	Adam Plain	Prepared testimony
A.B. 436	Y	John Williams	Prepared testimony and proposed amendment
A.B. 436	Z	Assemblyman David Bobzien	Proposed amendment
A.B. 324	AA	Shari Peterson	Prepared testimony
A.B. 324	BB	Shari Peterson	Letter of support
A.B. 324	CC	Shari Peterson	Position statement
A.B. 324	DD	Shari Peterson	Handout
A.B. 324	EE	Shari Peterson	Handout

A.B. 324	FF	Shari Peterson	Handout
A.B. 404	GG	Karen Dennison	Prepared testimony
A.B. 404	HH	Karen Dennison	Proposed amendments
A.B. 404	II	Stephany Madsen	Handout
A.B. 404	JJ	Stephany Madsen	Letter of support
A.B. 404	KK	Gail Anderson	Prepared testimony
A.B. 404	LL	Bill Gabrielli	Prepared testimony
A.B. 494 A.B. 492	MM	Assemblywoman Irene Bustamante Adams	Handout
A.B. 331	NN	Assemblywoman Ellen Spiegel	Proposed Amendment