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

Seventy-Seventh Session
April 29, 2013

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:38 p.m. on Monday, April 29, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Clark County Senatorial District No. 20
Senator David Parks, Clark County Senatorial District No. 7
Senator Greg Brower, Washoe County Senatorial District No. 15
Senator Mark Manendo, Clark County Senatorial District No. 21

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:

Teresa McKee, representing Nevada Association of Realtors
Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry
Paula Berkley, representing the Board of Occupational Therapy
Eric Gerken, Chair, Board of Occupational Therapy
Loretta Ponton, Executive Director, Board of Occupational Therapy
Michael Hillerby, representing American Fair Credit Council
Carla Kolebuck, Deputy Commissioner, Division of Financial Institutions, Department of Business and Industry
Bob Varallo, Advisor, Nevada Association of Manufactured Home Owners, Inc.
Gary Childers, Code Compliance Officer, Manufactured Housing Division, Department of Business and Industry
John Griffin, representing Manufactured Home Community Owners' Association

Chairman Bobzien:
[The roll was taken; a quorum was present.] I will open the hearing on Senate Bill 402.

Senate Bill 402: Revises certain provisions relating to real estate. (BDR 54-913)

Senator Michael Roberson, Clark County Senatorial District No. 20:
This bill solves a licensing problem for real estate agents, which is a matter of omission from statute that ties the hands of the Real Estate Division. Real estate licensees can hold two different types of permits under

Nevada Revised Statutes (NRS) Chapter 645, a property management permit and/or a business broker permit. In order to apply for either of these permits, the licensee must pay for and attend at least 24 hours of permit education, pass a permit examination, and submit the application and payment of fees to the Division. This permit is tied to the agent's real estate license and must be renewed at the same time as the license, every four years. Currently, NRS 645.785 allows for a late renewal of a real estate license, but it has no corresponding allowance for a late renewal of the underlying permits that are attached to the license. When a licensee is late in renewing his or her license, this omission causes an irrevocable expiration of the permit, but allows the renewal of the license if a penalty is paid. This bill corrects that and allows for late payment for not just the license but also the permit. Teresa McKee will walk you through the bill.

Teresa McKee, representing Nevada Association of Realtors:
There is an omission in statute that treats the late renewal of the permit differently from the late renewal of the license. In section 1, subsection 1, you can see that if a license is renewed late, there is a penalty that can be paid and the license is renewed if it is renewed within one year. The permit, which is renewed on the same day as the license, is irrevocably expired when the renewal is one day late. No penalty payment can reinstate that permit. The Division has to require that the licensee go back to the pre-permitting school for 24 hours of permit education at some substantial cost, retake the test, and reapply for the permit.

Section 1, subsection 2 mirrors the existing language regarding licenses and would allow a late renewal penalty of $20, in addition to the regular renewal fee of $40, so long as the renewal was completed within one year of the expiration date. If it is greater than one year, then the permit would not be renewed and the person would have to go through the permitting process again. This bill also requests in section 1, subsection 1 that the late license renewal penalty be set at a standard amount of $100 instead of the current language that requires a penalty of one and a half times the amount of fees required for renewal.

Chairman Bobzien:
Are there any questions?

Assemblyman Frierson:
Why are we doing this and what is the problem we are fixing? What are the current fees?

Teresa McKee:
The problem is if a person is late in renewing his license and permit, he only has to pay a renewal fee on his license, but the permit is gone and he has to go back to school for 24 hours, at a cost of between $300 and $1,000, to renew the permit, which could be anywhere from one day and one year late. That is not required for a license. We are trying to avoid the termination of the permit for something that happens because of an error in timing to renew a license.

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:
In 2009, there was a change with an implementation of July 1, 2011, which doubled the terms of the real estate license, and the fees also doubled. The penalty for a late renewal of a broker's license doubled, which resulted in the cost of late renewal being $540. It became discouraging and financially difficult for a licensee, with the two-year term going to four years for renewal and a late penalty at one and a half times the amount otherwise required for a renewal. The flat fee of $100 would make it more affordable for a licensee to renew late with penalty (Exhibit C).

Chairman Bobzien:
Are there additional questions?

Assemblywoman Carlton:
Did we go to a two-year licensing term and then back to a one-year?

Gail Anderson:
The late renewal has always been within 12 months, but the licensing term of an original license went from 1 year to 2 years and then a subsequent renewal went from 2 years to 4 years. That was in 2009 and enacted July 1, 2011. So we are under a doubled licensing period and a doubled fee.

Assemblywoman Carlton:
Why would we make a fine less when the way to avoid it is to renew on time?

Gail Anderson:
We have probably lost about 16 percent of our real estate licensees in the last four years with the change and the economic circumstances. It was a consideration to make it easier for a licensee to maintain his license. If he does not renew on time, he is inactive and cannot work. We have seen a significant loss in the numbers of inactive licensees who had renewed their licenses just to keep them. They would have to take education to reinstate their licenses. We considered the total numbers and the economy in the real estate sector and how it affected the real estate sales professionals and their activities.

Assemblywoman Carlton:
By changing this amount, are we hurting your budget?

Gail Anderson:
Most of our nonrenewal percentages have been coming from inactive licensees not keeping their licenses. We are losing licensees anyway at a rate of 12 to 14 percent for the fiscal years 2010-2012. Our revenues are dropping regardless, and I thought it might help some people to maintain their licenses, even if they were in an inactive status, if that penalty was not as great.

Assemblyman Ellison:
Your Division is understaffed. Is there is a way that the process could be streamlined? There seems to be a problem in getting certificates issued.

Gail Anderson:
We do have online renewal and that process is available 24 hours per day, 7 days per week, and we encourage licensees to take advantage of that. A licensee who is renewing may continue working even before the new license is processed and issued. Once the Division has received the application with the fee, that license is considered renewed. The licensee does not have to stop working until he receives his new license. Individuals do have to wait for a new license to be issued for an original application, a change of broker, or a new office. Once the licensee has submitted and paid timely, they are good to go. Yes, we have staffing issues, and those are being addressed in our budget as well as we can.

Assemblyman Ellison:
It seems to me that people were waiting to have continuing education posted before the certificate could be sent and that is when the license was suspended.

Gail Anderson:
If there is a deficiency in the application for renewal, the license is inactivated until that deficiency is corrected. If they did not have enough education hours submitted, that would be a deficiency. We process everything as it comes in. On our online renewal, we process the license unless the education is entirely missing, and then we do some audit and follow-up. The renewal process keeps moving forward; if the application is received, it is complete, and the payment is made, the licensee can continue to work.

Assemblywoman Bustamante Adams:
The flat rate is for the real estate license renewal?

Gail Anderson:
The flat penalty is for the underlying real estate license only.

Assemblywoman Bustamante Adams:
How did you come up with the $100?

Gail Anderson:
The penalty for a broker was $95 and increased to $180 when the term was doubled and the fee nearly so. The penalty for a salesman was $75 and increased to $140, so we considered a number in between those two and proposed the flat fee of $100 for the real estate license penalty.

Assemblywoman Bustamante Adams:
This is a way to help people get back in this profession. How many people could take advantage of this opportunity if the change were made?

Gail Anderson:
It is hard to quantify. I am hoping to reduce the number of failures to renew, which have been running 12 to 14 percent. I am hoping some people will decide that even if they have missed their renewal deadline, with the flat fee penalty, it might still be financially feasible to renew with penalty. It is similar with the business broker permit. It has been a hardship to have to refingerprint and reapply for the permit. Both issues are being addressed in S.B. 402.

Assemblywoman Diaz:
How much do they currently pay?

Gail Anderson:
For a broker or broker salesman whose fee is $360, the penalty is $180, meaning a total renewal with penalty of $540. That would change to $360 and the $100 flat-fee penalty, for a total of $460. For a salesman, his renewal is $280 for four years, and the late penalty is currently $140, so it is a total renewal with penalty of $420. That would change to $380.

Assemblyman Ohrenschall:
Do you think you will be able to assist the inactive licensees to become active again if the market improves? Do you see people who fail to renew come back often, or do they look for another profession? I think it would be a positive thing if this bill can help people from being shut out of the profession. I think we will need those licensees with the new inventory that is going to be coming.

Gail Anderson:
Yes, I believe it will help. I think people who have stepped aside, because they could not afford to renew with penalty, will renew. Our most significant loss in renewals has been inactive licensees, and I believe they would have the opportunity to reconsider. I have two letters on my desk from people who were disheartened that their license could be renewed late with financial penalty, but not their permit. I think both of these things will help keep people and restore people. It only goes back 12 months, but it is still a significant amount of time for a licensee to reconsider as the market improves. Our property management market is the one area that is growing in our licensing base.

Chairman Bobzien:
Are there any final questions? Seeing none, is there additional support? [There was none.] Is there any opposition? [There was none.] Is there anyone to speak from a neutral position? [There was no one.] I will close the hearing on S.B. 402. I will open the hearing on Senate Bill 153.

Senate Bill 153: Revises provisions relating to occupational therapy. (BDR 54-568)

Senator David Parks, Clark County Senatorial District No. 7:
Senate Bill 153 makes various changes relating to the powers and duties of the Board of Occupational Therapy. They include clarifying the authority of the Board to enforce regulations, to prepare and to maintain records of administrative proceedings, to determine the eligibility of an applicant for a license as an occupational therapist, and to investigate complaints against the licensee.

Paula Berkley, representing the Board of Occupational Therapy:
This bill is the first since the Board's inception in 1991. We have gone through all of our statutes and determined what changes are more appropriate and realistic today. There are two basic types of changes in the bills. One is on the scope of practice and the rest involve administrative procedures. We developed this bill over a series of four hearings and posted the proposed changes for almost six months prior to the session so we could share our information and process. We felt because it was a scope change, we would send it to our most closely comparable profession, the State Board of Physical Therapy Examiners, to review it and make suggestions. In the handout we provided, there is a letter from their Board in support of the bill [(Exhibit D), page 5]. The key thing to remember about the scope changes are that they are a rewording so they better reflect the profession as it is today.

Eric Gerken, Chair, Board of Occupational Therapy:
At the bottom of page 2 of our bill there are changes in wording to clarify some terminology and bring our definition of occupational therapy up to date to match the American Occupational Therapy Association's guidelines. The changes on the top of page 3 explicitly state some of the settings where occupational therapists work. On page 3, lines 7 through 12, are additions to clarify the purpose of occupational therapy. The remainder of section 2 makes basic changes to update language. It is more appropriate for us to refer to our customers as clients instead of patients, especially in settings such as schools or other settings outside of a hospital. On line 33 of page 3 there is a change of terminology from physical therapeutic modalities to physical agent modalities, which are things like hot packs, cold packs, and ultrasounds. These are updates in language.

Loretta Ponton, Executive Director, Board of Occupational Therapy:
Our section of the *Nevada Revised Statutes* has not been substantially updated since 1991. We believe these proposed changes will strengthen the role of the Board and provide us the flexibility in our structure to address current standards for education and practice and also the certification requirements for occupational therapists and occupational therapy assistants.

Section 1 of the bill is an addition to the healing arts which includes occupational therapist as a provider of health care on insurance billings and reporting requirements. The addition of occupational therapists will ensure occupational therapists are held to the same standards and provisions as other health care providers serving the public.

Section 3 of the bill pertains to exemptions from licensure. [Read from prepared testimony (Exhibit D), pages 1-4.] We would be pleased to answer any questions.

Chairman Bobzien:
In section 3, subsection 5, it seems to describe a person who came into the state for a temporary period of time to maybe fill a gap in workload. The safety provisions were that they would be working with another licensed occupational therapist and were licensed in another state. What is the thinking behind getting rid of that particular exemption?

Loretta Ponton:
The Board had extended discussion on this item, and they feel that to be able to regulate and protect the public, anybody practicing in the state should hold a Nevada license. There are references in this section that if it is equivalent to other states, we would not know if someone was practicing without a license or

what the other equivalency requirements could be unless they were under the purview of the Board.

Chairman Bobzien:
Is there history with this?

Loretta Ponton:
There have been no issues while I have been with the Board, which has been for approximately the last five years. Without a complaint coming to the Board, we would not know. We want to be proactive and avoid that situation where someone may be practicing in this state without a license under the purview of a licensed occupational therapist. As it is now, we would not even know if that individual was in the state.

Chairman Bobzien:
Are there additional questions?

Assemblywoman Carlton:
I am concerned about the term "agent." Is there an agent that you would not be allowed to use?

Eric Gerken:
This is more current terminology. Occupational therapists cannot use things that are invasive, like sticking needles in patients. We can do things that are mostly external. Ultrasound is something that penetrates the skin through a thermal action but is not a physical penetration. There are some limitations to what we can do as occupational therapists with modalities, but the change is more to bring it up to current terminology.

Assemblywoman Carlton:
My concern is if we change it and you came across a licensee that was doing something he was not supposed to, but it involved an agent that was not defined correctly, there would be no way to discipline him for using something inappropriately. By becoming a provider of health care, under the Affordable Care Act (ACA), the state has to pick up the cost for any new mandates or provisions of health care that were not in place when the act passed. We may be walking into an unfunded mandate for which we would have to pick up the cost of habilitative and rehabilitative care. There are three or four confusing parts of the ACA and this is one of them. I am not sure if it applies to you or not, so we will have to investigate that.

Paula Berkley:
Occupational therapy does not participate in Medicaid and that will not change. We feel required to do things that all health care professionals are required to do and carry insurance the way other health care professionals do. I think this was more of an attempt to take responsibility for that which we are already doing and not in anticipation of going into any new fields. As far as the ACA goes, until we are told, we do not think we are affected.

Assemblywoman Carlton:
My concern is upon passage of this bill, with their new definition, we want to reach out to Commissioner of Insurance Kipper and ask him to review this and give us an opinion on where we are going and where it could end. If you remember, there have been discussions around autism concerning habilitative and rehabilitative care that will be covered under ACA because it is now considered an essential health benefit. So you would be providing an essential health benefit in the state, and I am not sure where it would put this profession in the scheme of things.

Paula Berkley:
I appreciate the guidance and will do that.

Chairman Bobzien:
Our staff will look into that.

Assemblyman Ohrenschall:
I was looking at the Board's website; do you have a walk-in office?

Loretta Ponton:
Yes, we do. It is in Reno.

Assemblyman Ohrenschall:
What hours is it open?

Loretta Ponton:
We are open to the public from 10 a.m. to 3 p.m.

Assemblyman Ohrenschall:
In section 12 of the bill, on page 8, line 4, the word "annual" is removed from the renewal of a license. Is the Board contemplating having license renewals be every two or three years?

Loretta Ponton:
We removed the word "annual" in section 11 where we propose to give the Board the flexibility to establish the term of a license. If the Board changed the term of a license from one year to two years, the word "annual" would not be appropriate, so we are removing it in anticipation of the change.

Assemblyman Ohrenschall:
On page 8, at lines 14 through 16, there is deleted language about a licensed occupational therapist directly supervising an assistant or an aide. Can you explain why you are deleting that language?

Loretta Ponton:
This section delineates the reasons that could result in a misdemeanor conviction. The Board did not feel that this type of infraction would warrant a misdemeanor.

Assemblyman Ohrenschall:
But the aides and assistants will still be supervised?

Loretta Ponton:
Absolutely. We do have strong regulatory language that delineates the level of supervision which is already covered by regulation. This is to remove it as a misdemeanor violation.

Assemblyman Ohrenschall:
How does the public find your walk-in office since only the post office box is in the heading of your website?

Loretta Ponton:
Our physical address is also on our website, in the right column.

Chairman Bobzien:
Are there additional questions?

Assemblyman Daly:
On page 5, lines 19 and 20 in section 6, subsection 2, the language seems pretty broad. It seems to say that the Board can do whatever they want, whether they are authorized or not because all they have to do is find that it is necessary. I think you need to narrow the language.

Loretta Ponton:
I understand your concerns. Our concern was if we are delineating what the Board can do, there may be an instance where we may take specific action that

is not specifically referenced in here, and that would preclude us from carrying out one of our duties to protect the public. It is a catchall and was not intended to increase the powers over and above those allowed.

Assemblyman Daly:
I will look to see if it is in other boards, but it struck me as being overly broad.

Matt Mundy, Committee Counsel:
I found the same language in two places in the statutes, for the Board of Massage Therapists and the Board of Registered Environmental Health Specialists. It does not look like it is used a lot, but it is there.

Assemblyman Daly:
Even though it is there, it still may not be good. In section 11, you are removing the provision for an annual renewal. Are you still going to have an annual renewal and is it going to be covered by regulations?

Loretta Ponton:
Yes, this would give the Board the ability to extend the length of the initial license. The license is currently one year and we could move to a two-year license, and that would be renewed every two years. Currently, we are on an annual licensure and renewal.

Assemblyman Daly:
If you increase the period of the renewal, you cannot change the amount you charge for the renewal without coming back to the Legislature and getting a two-thirds vote to do that. Not having an annual renewal could adversely affect the revenue of the Board.

Assemblywoman Carlton:
I do not want to take issue with this Board because we have never had any issues with them and they have filed all of their reports appropriately. I have concerns when I look at their fee schedule, because there are no numbers in it, and we do change fees and define terms of licensure and discipline in the Legislature. I understand any other business they need to do, but that is usually aimed at just the executive director getting the everyday business of the board done. It is not normally aimed at allowing discipline, certification, and other types of things. It is meant purely as business language. I did not like the language when we included it in the massage therapy board, but it was a new board and we were not sure what they were going to need to do when we established it. We included it there so it did not hamstring them when it came to some of the issues in southern Nevada, with people calling themselves massage therapists when they were not and to allow the police to do their job.

I would like to see more definition in here. The actual fee schedule should be included. Usually fees and licensures are established by statute, so if there are any changes, the public has input through the legislative process.

Paula Berkley:
We were responding to many specific guidelines and were trying to make it easier on ourselves, but I would offer to remove that section. It was our intention to be efficient. Our fees are specifically stated in regulations. If you would prefer that we put those in statute instead of in regulations, it does not matter to us.

Chairman Bobzien:
Are there any further questions? Is there anyone else wishing to provide support testimony? Seeing none, is there any opposition? [There was no response.] Is there anyone to testify from a neutral position? Seeing none, I will close the hearing on S.B. 153 and open the hearing on Senate Bill 288.

Senate Bill 288: Revises provisions relating to debt-management services. (BDR 56-976)

Senator Greg Brower, Washoe County Senatorial District No. 15:
This bill relates to a bill passed in 2009 when the Legislature passed the Uniform Debt Management Services Act, which is in *Nevada Revised Statutes* (NRS) Chapter 676A. The law provides for the regulation of providers of credit counseling, debt settlement, and related services, including placing limits on allowable fees such services can collect. Several other states have also passed and adopted this uniform act. Subsequent to Nevada's passage of the uniform act, the Federal Trade Commission (FTC) in 2010 completed a review of the debt management industry and adopted new rules which significantly changed the way such businesses can collect fees. Because those new federal rules conflict with the uniform act adopted by Nevada and many other states, I introduced this bill to address that resulting problem. My first concern about this bill is the consumer protections in the 2009 act. We are convinced, as is the industry generally, that the fix presented by this bill actually strengthens the law with respect to consumer protections, and we urge your consideration.

Michael Hillerby, representing American Fair Credit Council:
I want to thank Senator Brower, who is a uniform law commissioner, for agreeing to introduce the amendment to the uniform act. The American Fair Credit Council (AFCC) supported the introduction and the passage of that act and has supported regulation of this industry around the country with the FTC action for several years. The FTC rule, which came about after the passage of the uniform act in Nevada, found that there had been abuse in the

debt settlement industry. I have provided two exhibits. The first includes a brief, descriptive outline on credit counseling and debt settlement (Exhibit E). Those are parts of the industry that are regulated by NRS Chapter 676A. Consumer credit counseling generally seeks to reduce the monthly payments by lowering interest rates. Debt settlement seeks to reduce the amount of principal owed on debts. That is for people who owe fairly large amounts of money and are in serious financial hardship. Also available to consumers are bankruptcy and trying to negotiate things themselves. The FTC found that there had been some abuses in the debt settlement industry and those warranted federal intervention. They did a long study and passed a long federal rule that is summarized in the handout (Exhibit E).

The second handout I provided is the Federal Register ruling on the advance fee (Exhibit F). They found that it was appropriate to outlaw the collection of any fee by a debt settlement provider until the consumer had enrolled and shopped among providers for fees the debt settlement company had negotiated on his behalf, which takes from 6 to 18 months. The debt settlement provider goes back to the consumer and tells him what they have negotiated. If the consumer likes the amount they settled for, which averages about 52 percent reduction, and they agree to the fees that were negotiated in the beginning, he can ratify the agreement, and make at least one payment to his creditors. Then the debt settlement company can start to collect the fees from the consumer. This bill deletes all the provisions about set-up fees, credit check fees, monthly progress fees, and other things the industry was able to charge and replaces it with the federal language which bans any advance fee collection until all of the work is done and the consumer has had a chance to say that he likes the work, likes the fee, and has made a payment toward one or more creditors.

Chairman Bobzien:
Are there any questions?

Assemblyman Frierson:
What is the current practice and what will it be if this legislation passes? I assume that currently there is a set fee schedule, and I would imagine the only way this could be profitable is if it resulted in a contingency fee structure.

Michael Hillerby:
Typically, customers pay a percentage of the total enrolled debt or pay a percentage of the amount saved. As I understand it from the AFCC representative with whom we work, most of the businesses do it as a percentage of the debt enrolled. An accounting firm in San Francisco did a lengthy survey and study of the industry and found, on average, that savings was about 52 percent of the enrolled debt.

Assemblyman Frierson:
Is that if this passes, or is it the current practice?

Michael Hillerby:
It is both. That is the current practice and that would continue to be the practice. The fee is negotiated between the consumer and the provider. The consumer can shop to find an arrangement and fees that he likes. There are companies that provide a percentage of the amount saved versus the amount of the debt enrolled. The consumer sees at the end, before he makes a payment to the provider, how much he has saved and what the fee is. That average was between $2.70 and $4.70 in savings for every dollar in fees. There are still substantial savings for customers.

Assemblyman Frierson:
Currently, are some companies charging up-front fees and not negotiating a settlement?

Michael Hillerby:
Not since the introduction of the FTC rules. Those federal rules preempted the state rules. The only way the state rules could apply was if the company was a provider based in Nevada dealing only with citizens of Nevada. If they were engaged in providing interstate services since October 27, 2010, the federal rules have banned any advance fee payment. Prior to the new rules, the percentage was negotiated and collected over each of the months while the provider was negotiating debt. The FTC found that some providers at the end of the period were collecting the fees, but not making a meaningful offer to consumers; hence, the decision to ban the fee.

Assemblyman Frierson:
Could you clarify what section 2 is doing in a practical sense?

Michael Hillerby:
That removes the reference to the set-up fee. There can no longer be a set-up fee charged to get a credit score or any other thing. It removes reference to those because you cannot refund a fee you have not collected.

Chairman Bobzien:
Are there additional questions?

Assemblywoman Bustamante Adams:
How many debt management services exist in Nevada?

Michael Hillerby:
I do not know the answer to that. We are not aware of any companies that exist solely in Nevada to serve Nevada consumers. There are a number of providers around the country. Post the FTC ruling, about 80 percent of the companies that were in the business of providing debt settlement services went out of business because they could not abide by or did not want to abide by the new rules. The companies that remain are those that have largely supported regulation and those that have enough capital to advance the 6 to 18 months of work on the customer's behalf before receiving payment. I will try to find out how many exist in the country.

Chairman Bobzien:
Are there additional questions?

Assemblywoman Carlton:
I am confused as to what the practice and fees are today versus what the practice will be if this bill is passed. I understand the timing, but I wonder about the amount. Is this going to change the total amounts that people are going to have to pay to receive these services?

Michael Hillerby:
It has changed the fees. The FTC gave great consideration to that in their lengthy report. They studied in depth whether fee caps or the ban on the advance fee was the way to go. They decided the ban on any advance fee and a competitive market were in the best interest of consumers. Consumers can pay for debt settlement in two ways. They can shop around, enter a contract, and pay a fee based on the amount that they will save, or they can pay a percentage of the entire amount of the debt enrolled. The FTC said that number was best set between providers and customers, and that consumers would benefit because any advance collection of fees was banned. From the understanding of the AFCC, most of those engage in a percentage of the debt enrolled, which will obviously be a smaller number than a percentage of the amount saved. We allowed for that in the original uniform act passed in 2009. You see a slightly lower percentage if it is the percentage of the debt enrolled and a higher percentage maximum fee if it is a percentage of the amount saved.

Assemblywoman Carlton:
If this bill does not pass, are we out of compliance with federal law?

Michael Hillerby:
Yes, that is my understanding from the AFCC. They have gone state by state in the seven states that adopted the uniform law to try to remove those advance fees. What it could leave available is if a company wanted to set up business here and register with the Division of Financial Institutions (FID) and market only to Nevadans, they could, in fact, continue to charge the advance fees with no real guarantee of how much they would ultimately save consumers. We feel that is still a risk that some Nevada consumers could face. The AFCC and others have gone around the country in an attempt to remedy that.

Assemblywoman Carlton:
Have there been any conversations with FID on how many businesses we may put out of business? I do remember a group of small businesses testifying here in 2009. I am concerned that if we pass this, we could put some Nevada companies out of business.

Michael Hillerby:
We are not aware of any Nevada-specific debt settlement companies that only offer their services to Nevadans. This does not affect credit counseling. It is governed by another set of rules and fees that remain in this law. They were not the subject of the FTC ruling. That was limited to debt settlement. It was because of those monthly payments that were being collected without the consumers always seeing an appropriate value in return. I will be sure that there are no Nevada-specific debt settlement companies. We think the advance fee ban is probably best for consumers, and companies should be able to comply with that. Many of those that would not comply left the industry, and that has been a good thing for consumers.

Chairman Bobzien:
Are there further questions? Seeing none, is there additional testimony in support of the bill? [There was none.] Is there any opposition? [There was none.] Is there anyone to testify neutrally?

Carla Kolebuck, Deputy Commissioner, Division of Financial Institutions, Department of Business and Industry:
The Division is neutral on this bill but wanted to make note that, in reviewing the proposed language, we noticed there is a technical inconsistency in that certain disclosure requirements contained in NRS Chapter 676A do not parallel some of the proposed language of S.B. 288. Specifically, there is a requirement in NRS 676A.540, subsection 4(a)(2), that provides for a disclosure in customer agreements that references the refund of 65 percent of any set-up fee to be paid upon termination of an agreement. Section 2 of the bill actually removes that requirement. The Division wanted to make note that the disclosure

requirement in the agreement would need to be addressed as well. The Division is happy to work with the bill sponsor to ensure consistency throughout NRS Chapter 676A.

Chairman Bobzien:
Legal will look at that, and we will let Senator Brower know if we need an amendment. Do we have any questions for the FID? [There were none.]

Michael Hillerby:
We would have no objections, since you cannot collect a set-up fee. Even though the agreement references a refund of any set-up fee, since one is not collected, we are not sure if that applies, but we will be happy to adjust any language with your staff, legal counsel, and the sponsor.

Chairman Bobzien:
I will close the hearing on S.B. 288 and open the hearing on Senate Bill 154 (1st Reprint).

Senate Bill 154 (1st Reprint): Revises certain provisions governing manufactured home parks. (BDR 10-23)

Senator Mark Manendo, Clark County Senatorial District No. 21:
Bob Varallo, who is testifying from Las Vegas, is the resident expert when it comes to manufactured homes. The Nevada Association of Manufactured Home Owners is a nonprofit group and these are volunteers. Mr. Varallo has been around for a long time and is hands-on in working with the industry, the Manufactured Home Community Owners' Association, and the residents. We wanted his expertise on this legislation. The bill clarifies the responsibility for the service and maintenance of manufactured home communities, utilities, servicing apparatus, or equipment.

Bob Varallo, Advisor, Nevada Association of Manufactured Home Owners, Inc.:
We are the only organization in Nevada that represents manufactured home owners living in manufactured home parks and communities, and we have done so since 1973. This bill is straightforward and clarifies responsibility when a utility line breaks. There has been some question lately as to who is responsible for the repair of that utility line. It is our position that the line, which was a gas line in this specific case, belongs to the manufactured home community and is part of the infrastructure, particularly since it is underground. Recently, there has been a lawsuit involving this issue. An 85-year-old woman's gas line broke and she was without utilities for five days. She was told by the community manager that she must repair it. She did and it cost her $1,500. She was told

that it was her responsibility and there was a lawsuit. I do not know the outcome of the lawsuit.

It has been a simple matter in the past when a utility line has broken. It is a line that is in the ground. The homeowner brings the home into the community, and all the connections are already there. The utility connections are completed and inspected. It is our opinion that when the utility line breaks, the landlord who owns the property is responsible for the repair of the utility line. If I were to move my home, I cannot take the utilities any more than I can take the driveway. Therefore, the responsibility should stay with the landlord and the owner of the community.

Gary Childers, Code Compliance Officer, Manufactured Housing Division, Department of Business and Industry:
The Manufactured Housing Division is in support of S.B. 154 (R1).

Chairman Bobzien:
Are there any questions?

Assemblyman Daly:
In section 1, subsection 3, it says that any maintenance to a utility service apparatus has to be performed by a person who is qualified by licensure to perform such maintenance. I am curious as to what license you are referring to. A contractor is licensed under *Nevada Revised Statutes* (NRS) Chapter 624. Then in paragraphs (a) and (b) you are talking about qualifications. Are you talking about the qualifications of the vendor you hired or an individual handyman? How do you handle that with different counties having different regulations? There needs to be more definition, from what I read, on what license and qualifications you are talking about.

Gary Childers:
That is addressed by the local jurisdictions. The issue that the bill is addressing concerns the infrastructure of the park. It is no longer within the jurisdiction of the Division, and, therefore, any permits and other things needed to make the repair would have to be issued by the local jurisdiction. They are adamant about the proper licensure to do the work.

Assemblyman Daly:
Let us say we are talking about a gas line. The gas company owns the gas line and they can repair their line without licensure. To repair a lateral that comes off the main line that is inside the community, would you have to have a contractor's license? It is not clear what licensure is going to be required.

Gary Childers:
Any main lines coming into the community and going to the meter would be handled by the utility providers. The lines that are covered under this bill would be from the individual meter to the home. Those would be governed through the local jurisdiction as to licensed contracted plumbers or electricians.

Assemblyman Hansen:
Did the case of the 85-year-old woman take place in Reno?

Gary Childers:
No, this case happened in Las Vegas. We have about three cases that address this issue currently open and waiting for a court decision or the passage of this bill.

Assemblyman Hansen:
We had a similar case with my company in Reno. This bill is absolutely necessary to help address this scenario. It looks as if you are attempting to prevent the maintenance people in the manufactured housing community from doing what should be done by licensed contractors.

Gary Childers:
That is correct, and we want the landlord to take responsibility for the cost of that repair.

Assemblyman Ellison:
Are you trying to say the line to the meter is the responsibility of the utility and from the meter to the house is the responsibility of the landlord?

Gary Childers:
We are saying that if you were to move the home out of the lot, anything that goes with it is the responsibility of the homeowner and anything that stayed in the lot would be the responsibility of the community management.

Assemblyman Ellison:
That is the part I cannot understand. That has been existing law.

Senator Manendo:
The Assemblyman is correct. We put this in because we wanted to make sure that the handyman was not digging up gas lines. It appears to be covered by NRS 118B.097, which says that a licensed person is required to perform certain repairs. If the repair to a manufactured home affects the structural, electrical, plumbing, drainage, roofing, mechanical, or solid fuel burning systems in the home, it requires a permit before a repair is to be made. The repairs may be

performed legally only by a person who is qualified by licensure to perform such repairs. I agree that it is probably covered. The Senate Committee on Commerce, Labor and Energy wanted to put it into this bill. We did not want to argue over duplicating something that we all know the intent of.

Assemblyman Hardy:
The utility service from the back of the meter is the responsibility of the homeowner or the community. How does this affect associations? In my area there are a number of manufactured homes where they sell the lots and the responsibility goes to the user. How will this affect those types of covenants and restrictions which are already in place?

Gary Childers:
These would not have any effect on an association because the homeowner is the landowner in an association. Everything on the property would be the land and the homeowner's responsibility. In a manufactured home community, the land is owned by an entity other than the homeowner. We are trying to clarify that the responsibility of maintaining that lot and providing those services to the homeowner is the responsibility of the landowner or park owner.

Assemblyman Hansen:
The reason I think this bill is excellent and necessary is because it will make sure that everyone knows, in clear language, who is and who is not responsible for situations like this. I am supportive of the bill from field experience on how it can impact people.

Assemblyman Ohrenschall:
I had similar situations in my district before redistricting. The park owner was telling the residents that they had to make repairs to the water lines even though they were underground on the owner's property. I would like to thank Senator Manendo for bringing this bill.

Chairman Bobzien:
Are there any questions for the bill sponsor? Seeing none, is there any further support testimony on the bill?

John Griffin, representing Manufactured Home Community Owners' Association:
This is a good bill.

Chairman Bobzien:
Are there any questions?

Assemblywoman Carlton:
What was the viewpoint of your association, and does your association have a current court case?

John Griffin:
The association has discussed the bill and they think this is the current state of the law in the state. The association supports the bill. I am not aware of the situation Assemblyman Hansen described, but I am aware of a lawsuit that is pending in court. I do not know if that park owner is a member of our association. I am aware of some of the facts and circumstances around that lawsuit. The situation is different. It is about moving the home in the park and who pays for it then. It is not, in our opinion, a clear situation.

Assemblywoman Carlton:
This is more about repairs and not remodeling.

Senator Manendo:
That is correct.

Chairman Bobzien:
Is there final testimony in support? [There was none.] Is there testimony in opposition? [There was none.] Is there anyone to testify from a neutral position? Seeing none, I will close the hearing on S.B. 154 (R1). Is there any comment from the public? [There was no response.] Are there any matters to come before the Committee? [There were none.]

We are not going to do the work session today.

Senate Bill 29: Revises provisions relating to the Fund for Low-Income Owners of Manufactured Homes. (BDR 10-360)

[Senate Bill 29 was not heard.]

Senate Bill 40 (1st Reprint): Revises provisions relating to medical laboratories. (BDR 54-314)

[Senate Bill 40 (1st Reprint) was not heard.]

The meeting is adjourned [at 3:19 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 29, 2013 **Time of Meeting: 1:38 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 402	C	Gail Anderson	Testimony
S.B. 153	D	Paula Berkley	Handout
S.B. 288	E	Michael Hillerby	Handout
S.B. 288	F	Michael Hillerby	Handout