MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-Seventh Session
May 31, 2013

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:43 p.m. on Friday, May 31, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman Ira Hansen, Assembly District No. 32

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Caitlin Brady, Committee Secretary

OTHERS PRESENT:

Donald E. Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry
Danny Thompson, Nevada State AFL-CIO

Paul McKenzie, Northern Nevada Building & Construction Trades Council Development Corporation; Advisory Council to the Division of Industrial Relations, Division of Industrial Relations, Department of Business and Industry
Jack Mallory, Southern Nevada Building and Construction Trades Council, Build and Construction Trades Department, AFL-CIO
Adam Plain, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry
Bruce Breslow, Director, Department of Business and Industry
Patrick Sanderson, Laborers International Union of North America Local 872
Thoran Towler, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry
Robert Ostrovsky, Nevada Resort Association
Ray Bacon, Nevada Manufacturers Association
Samuel P. McMullen, Las Vegas Metro Chamber of Commerce
Tray Abney, The Chamber
Neena Laxalt, National Home Service Contract Association
James Wadhams, Service Contract Industry Council
Erin McMullen, American Resort Development Association
Karen Dennison, American Resort Development Association; American Resort Development Association Resort Owners Coalition
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry

Chair Atkinson:
I will open the hearing on Assembly Bill (A.B.) 106.

ASSEMBLY BILL 106 (1st Reprint): Provides for the award of certain costs, fees and expenses to prevailing parties in actions before the Occupational Safety and Health Review Board under certain circumstances. (BDR 53-156)

Assemblyman Ira Hansen (Assembly District No. 32):
Assembly Bill 106 allows prevailing parties in actions before the Occupational Safety and Health Review Board, Division of Industrial Relations (DIR), Department of Business and Industry, to be awarded certain costs, fees and expenses. This mirrors federal law that applies to 23 states under the federal Occupational Safety and Health Administration (OSHA), U.S. Department of Labor. The Nevada Occupational Safety Health Act is a State law that

implements the federal Occupational Safety and Health Act of 1970. Twenty-seven states, including Nevada, have opted to implement their own state OSHA plans. The remaining 23 states are governed by the federal OSHA plan. The DIR administers the Nevada OSHA (NV OSHA) law. The DIR is tasked with providing safe and healthy working conditions for every employee by establishing and enforcing regulation, educating and training employees and establishing reporting procedures for job-related accidents and illnesses. Under State law, there is an enforcement provision for suspected violations. If DIR issues a citation, an employer has 15 working days to notify DIR that it will contest the citation. This appeal is sent to the Board, which consists of five members appointed by the Governor. The Board holds a formal fact-finding hearing and renders a decision based on the evidence presented. If an employer is unhappy with the Board's decision, it can appeal to district court. Nevada law currently does not allow awarding attorney's fees and expenses to the prevailing party. However, if the State is governed by the federal OSHA plan, the Equal Access to Justice Act applies. This act provides that a party prevailing against the United States in litigation may be awarded fees and expenses unless the agency's position was substantially justified. Fees and expenses can also be awarded if the agency proposed a penalty that was reduced and subsequently determined to be unreasonable. These awards are statutorily limited to certain small entity parties with a designated net worth and number of employees. This federal law was originally enacted in 1980.

Sections 2 through 5 include definitions of terms used in the bill. For example, "expenses" includes the cost of studies, analyses, reports, tests or projects necessary to prepare a party's case. "Fee" includes reasonable fees for attorneys, persons representing a party before the Board and extra witnesses. Section 5 defines parties eligible to be awarded expenses and fees. "Party" is a natural person with a net worth of $2 million or less. "Party" can also be a business with a net worth of $7 million or less and 500 or fewer employees. These are the same thresholds as federal law. The DIR employees are not considered parties for purposes of this bill.

Section 6 awards costs to prevailing parties for actions against DIR or the court.

Section 7 awards fees and expenses to prevailing parties unless the Board or court determines the position of DIR was substantially justified or the existence of special circumstances make the award unjust. The prevailing party would need to submit an application to the Board or court for fees and expenses within

30 days of the decision. Any fees awarded must be based upon the prevailing market rate for the type and quality of the service provided. The Board or court may reduce or deny the amount awarded if it is determined the prevailing party engaged in conduct that unduly or unreasonably protracted the final resolution or matter.

Section 8 of the bill provides that the employer would be considered the prevailing party if the demand by DIR is substantially in excess of the judgment obtained by DIR and is unreasonable when compared to the judgment. This is only applicable as long as the employer has not committed a willful violation of law or acted in bad faith, or if there were not special circumstances that make the award unjust.

Section 9 of the bill allows DIR to appeal the award of costs, fees or expenses. If the award is affirmed, DIR must pay interest.

Section 10 requires the award of costs, fees and expenses be paid by the funds appropriated by the Legislature to DIR.

The genesis of A.B. 106 is a union cabinet shop in Sparks called Victory Woodworks. Victory Woodworks was working in Clark County and was accused of safety violations by NV OSHA. Once everything was settled, Victory Woodworks was exonerated and the Board dismissed their case with prejudice. Victory Woodworks incurred about $8,000 in fees and expenses. There is no mechanism to allow them to recoup those expenses. There are such mechanisms under federal OSHA laws. The language in A.B. 106 comes, almost verbatim, from the federal OSHA standards and the Equal Access to Justice Act.

I worked with the Office of the Attorney General on how to fund the awards. Instead of money coming from the State General Fund, there is a torts claim fund called the Fund for Insurance Premiums used by the State to settle minor tort claims. There is currently about $2 million in that fund. The awards would come from the Fund for Insurance Premiums instead of the State General Fund.

I have submitted Proposed Amendment 9412 (Exhibit C) on behalf of DIR. It is not fair to allow the government to sue or take advantage of a private individual without allowing the individual a way to recoup losses if he or she is wrongly accused.

Senator Hutchison:
Do sections 5 through 7 mirror federal law? There is means testing in federal law. Does federal law contain "substantially justified" language?

Assemblyman Hansen:
This is taken almost verbatim from federal law because there are significant amounts of case law. This is not breaking new ground. It is taken almost verbatim from the federal Equal Access to Justice Act.

Senator Hutchison:
Are you concerned about how many employers, companies or individuals would be determined to qualify for payment of attorney's fees from the State given the language? It is limiting about who can receive awards because of means testing and net worth requirements. Typically, if you prevail, you prevail—it does not matter what your net worth is or if it was substantially justified or not. Under A.B. 106, there is a means test, and the court does not have to award to a prevailing party if the court believes DIR was substantially justified or there were other special circumstances that would make the award unjust. It seems as if that would swallow the rule.

Assemblyman Hansen:
This is not supposed to be a lawyer-employment act. We did not want to make it so severe we would hamper the NV OSHA in its job to ensure worker protection. They have a job to do, and this opportunity would apply only when NV OSHA abuses the system. I would not mind seeing it go further in protecting the contractors who are typically accused, but we want to make sure OSHA is allowed to do their job to protect worker safety.

Senator Hutchison:
Do you think this strikes the right balance?

Assemblyman Hansen:
Yes.

Donald E. Jayne (Administrator, Division of Industrial Relations, Department of Business and Industry):
The DIR is neutral on the public policy of A.B. 106. As Assemblyman Hansen testified, the language mirrors the federal OSHA plan. Similar language does exist in a handful of state plans but not in every state plan. It does not directly

affect workplace safety, so it is not a federal requirement for state plans to have this provision. That is why DIR views it as public policy. If the State decides to implement this public policy, DIR included a fiscal note on the bill. It is a new provision, and staff would have to be devoted to working on it. Additional attorney's fees would be incurred for the staff counsel that supports the Board. Ultimately, the penalty portion would be paid out of the Fund for Insurance Premiums. Penalties would not impact the State General Fund, but they would impact DIR through the assessment-based enterprise fund at DIR.

Danny Thompson (Nevada State AFL-CIO):
When A.B. 106 was heard in Assembly Committee on Ways and Means, we noticed the fiscal note was zeroed out. Having served on the Advisory Council to DIR for about 14 years, I am familiar with the processes. In the past, DIR has had problems. The federal OSHA audited NV OSHA after incidents on The Strip where 16 people died. The NV OSHA was criticized for not having enough experienced NV OSHA inspectors. The NV OSHA inspectors serve an apprenticeship, and when they become certified, they quit and join the private sector. Certified NV OSHA inspectors can more than double their salaries in the private sector.

I am concerned about funding this through an enterprise fund. When the enterprise fund runs out, NV OSHA will have to raise the assessment fees. Will this affect the assessment to every employer in the State? I think it will. The State requires NV OSHA inspectors to take furlough time when they are the ones who generate revenue. The DIR has limitations to control what happens.

Senator Hutchison:
Based on your experience with DIR, are you aware of cases where courts have ruled cases as frivolous or told DIR they did not have substantial justification for bringing a case?

Mr. Thompson:
I am not aware of any.

Senator Hutchison:
I am wondering if this has ever happened. If it has never happened, then there may not be a problem. I do not think a judge will award attorney's fees based on the wording of this bill.

Mr. Jayne:
This is new to Nevada, so we do not have a model. The way the bill is structured, when a citation is contested it would go to the Board not in front of a court. When the Board makes a determination or decision on whether to overturn or modify the citation if DIR does not have substantial justification for the citation, then attorney's fees could be awarded. The body that would pass judgment would be the Board or the court if anyone appealed beyond the Board. If someone chose to appeal the decision, took it to district court and lost again, then there could be additional penalties and interest.

Senator Hutchison:
Even though this is new, the idea of going through this process is not new. Are you aware of a board or a court ever telling OSHA they have brought a frivolous action against a contractor or they do not have substantial justification for bringing a case against a contractor?

Mr. Jayne:
No, I do not know of any cases like that.

Senator Hutchison:
Have you ever seen that happen in your experience?

Mr. Jayne:
No, I have not seen that in my experience. All of my experience is in Nevada.

Senator Hutchison:
If that is the case, there probably is not a concern about a court or board awarding these kinds of fees. Is that a safe assumption based on your prior experience?

Mr. Jayne:
That is an element about which we can merely draw assumptions and build speculation. We built some assumptions in our fiscal note, and I could try to go through them. We estimated we would win 80 percent of the cases. Of the 20 percent of cases that were left, we had to assume how many would be appealed. We attempted to bring that down to a smaller number. We do not have any experience in this area, so it was based on a series of assumptions.

Senator Hardy:
I am intrigued by your 80 percent-to-20 percent assumption. Does federal law include attorney's fees provisions?

Mr. Jayne:
It is my understanding the language in A.B. 106 is modeled after federal legislation.

Senator Hardy:
If we look at this federally and start multiplying the 20 percent you assumed, we start delving into people who are not only the individual who approached Assemblyman Hansen. It sounds like it is not unusual for the government not to be defensible in their accusations. Is that fair a statement?

Mr. Jayne:
I believe that is a reasonable statement. I am sure these awards have been made because at least half the states have this provision. I am sure those cases have been brought and awards granted. Hopefully, it has been on a limited scale.

Senator Hardy:
If we have other states or the federal government that have figured out this provision of awarding attorney's fees, there is probably some history that would help us determine how at risk an enterprise fund would be and how that fund could be accessed by people who were not accused rightfully. Therefore, we would have some kind of idea what that would be. Is that how you did your fiscal note?

Mr. Jayne:
As I have mentioned, regarding public policy, DIR is neutral on A.B. 106. As to how to construct a fiscal note based on a series of assumptions, we could not and did not have the time to gather information from every individual state. We were able to garner that it does happen. We built a series of assessments, and we eliminated a majority of the contested citations that would get to a review board by estimating that 80 percent wins is typical. Those sorts of statistics have not been kept for Nevada, historically. We began to build from there. Of the 20 percent left, what was the likelihood of some of those cases coming back for attorney's fees? What was the likelihood of some of those getting past the threshold of "substantially justified?" As in any fiscal note, it is a series of

assumptions. If we had more time, we could poll every state and see if they would give up that level of information and then back into some percentage that would be a national average. We felt the assumptions on which we built it were reasonable. The Department of Administration felt they were reasonable. I have had people tell me we were high and we were low.

Senator Hardy:
How much was the bottom line before the fiscal note was removed because it went into the enterprise fund?

Mr. Jayne:
Our fiscal note has remained the same. We show where the revenue would come from if we had to administer the elements of A.B. 106. From a policy standpoint, we are neutral. If the bill were processed, we would need the resources to conduct that effort.

Senator Hardy:
I am looking for a number. I am looking at $2 million in an enterprise fund. What does the enterprise fund go to normally? Does it turn it over yearly? Are we going to drain the enterprise fund?

Mr. Jayne:
The enterprise fund is an assessment to all insurance companies in Nevada. It includes private insurance, self-insured individuals and self-insured groups. The bottom line of the fiscal note is zero. The fiscal note came in at zero because DIR would receive revenue via the assessments. The impact to the enterprise fund if this bill were processed is probably between 1 percent and 1.5 percent in each fiscal year. The total for the biennium is about $917,000. The zero on the fiscal note is because the revenue would come from enterprise fund.

Senator Hardy:
Will this increase the assessment on the insurance companies?

Mr. Jayne:
My estimate would be 1 percent to 1.5 percent increase in each fiscal year to cover this.

Paul McKenzie (Northern Nevada Building and Construction Trades Council Development Corporation; Advisory Council to the Division of Industrial Relations, Division of Industrial Relations, Department of Business and Industry):

The Building and Construction Trades Council of Northern Nevada is neutral on A.B. 106. We have dealt with contractors that feel they have been overly assessed for violations on the job, and we have seen contractors that are under assessed.

Sitting on the Advisory Council for DIR for the last 6 years, I have listened to the staffing issues NV OSHA has faced. The financial downturn in the State has caused that to become worse. The wage rates that the inspectors get do not lead to people wanting to stay there a long time. Most of the people who are staff that have been there for a long time were there before the downturn. They are going to be there for their whole careers. Private industry wants the staff DIR trains. They are the best people to go out and keep a site from having NV OSHA violations because they are trained in what to look for. We had a mine inspector recently who completed his training and was offered a job at $450,000 per year in the private sector. That does not tend to let us keep inspectors.

There needs to be a way for a person to feel relief when wrongly accused of something. There is financial burden put on the accused to spend time and money to clear his or her name, and additional burden on the DIR and NV OSHA staff. The experienced NV OSHA inspectors will be preparing and presenting the cases, so we are taking them out of the workplace to substantiate that the cases are good. The adverse effect that can have on workforce safety is unknown, but it will have an effect because they will not be out there doing their jobs. The apprentices we are training cannot work without an experienced inspector. That is how mistakes in citations are made. Every public agency will protect its employees.

When the contractors feel they have been wronged and NV OSHA thinks they are right, the two will not meet in the middle and negotiate a resolution. This is going to make the contractors feel they can pursue this as far as possible and, if they are vindicated in the end, they will be paid. On the other hand, the way I understand the explanation of the bill, DIR does not get attorney's fees back if they are justified because DIR is not included in the definition of "party."

I fear there could be a negative impact on safety because inspectors will not be inspecting. This is good for the contractors. I am concerned that this will overload NV OSHA and reduce worker safety because of limited staffing.

I do not think there will be very many of these cases in the first year. Less than 5 percent of the cases the Board hears are overturned as being frivolous. The majority are substantiated. Many times the cases are settled under reduced penalties. Under this legislation, the parties can pursue for attorney's fees and expenses. Reducing the penalties saves time and money for both parties. Letting parties pursue for expenses will quell either side from wanting to negotiate.

The fiscal note is very important because it will come from every contractor and business in the State, and insurance rates will increase. The estimate is 20 percent of cases will be appealed. If the rate is higher, then insurance rates will increase even more to cover the cost because this is an enterprise fund. The funding mechanism to pay those fines is a separate fund from DIR's operations fund. The Office of the Attorney General administers the fund for litigation from the Fund for Insurance Premiums. That fund is there to protect the State General Fund from litigation. That fund would replenish, but the needed staffing is the biggest cost.

Senator Hardy:
The State-trained NV OSHA inspector who goes to work in the private sector is probably doing more prevention than inspection, which is what I want. The NV OSHA inspectors are worth their weight to prevent problems. We could look at this like tuition. Maybe people should pay the State to receive this training.

It sounded like you want mediation included in A.B. 106. The parties could see a mediator instead of going to court. Do you know how the estimate of 20 percent of the cases being appealed relates to other states? How do you feel about mediation?

Mr. McKenzie:
Mediation is valuable to both parties in any conflict. I am not sure that mediation before going to the Board would keep the costs down. The Board is a type of mediation court panel, and the members review the case from an independent standpoint. There are members from business, labor and the public to review these citations and judge the merit of them. The preparations are intense. The contractor Assemblyman Hansen mentioned had to hire an

attorney, and members of his staff had to prepare and do this. If there was a chance to sit down before going to the Board to see if there is a reasonable solution, that might be something that could eliminate all of this.

Senator Settelmeyer:
I have worked in and around construction most of my life. I understand your concern about NV OSHA inspectors having to spend time substantiating citations. In the same respect, most of the NV OSHA inspectors are doing their jobs. They are looking out for safety and doing a great job. Every once in a while there is a rogue person who is on a vendetta and is manufacturing violations. Would it not be a good idea to have something to help curb those frivolous citations in order to redirect inspectors to focus on worker safety?

Mr. McKenzie:
I do not disagree with A.B. 106. There is a reason for this legislation. My concern is there may be ways to address the issue that are not quite as costly as this. I am concerned that we are increasing costs for everyone to operate in the State because of increased operations costs of NV OSHA to prepare for these cases. This is something to bring up in mediation prior to investing so much in it. I am concerned about the cost and effect on NV OSHA and that coming back to the employers. If the employers are not in business, people are not working.

Senator Settelmeyer:
I want NV OSHA to be busy because then we would have an extreme amount of construction. That would be great. I am concerned because sometimes when construction slows down, construction-based entities tend to be more detail-oriented.

Jack Mallory (Southern Nevada Building and Construction Trades Council, Building and Construction Trades Department, AFL-CIO):
Like my counterparts from other labor organizations, the Southern Nevada Building and Construction Trades Council is neutral on A.B. 106. I agree with what Assemblyman Hansen has argued for having some type of recourse against frivolous complaints. I would prefer to have a clearer definition of "substantially justified," although that may be a legal term that is easily interpreted by the courts. I believe Senator Hardy's suggestion for mediation would be a valid method for trying to resolve issues. The DIR indicated that there had been an increase over recent years in the number of appeals of

citations that have occurred, in part because of changes in the nature of construction. Many general contractors, owner-developers and awarding bodies have imposed additional requirements to disclose safety issues from previous years. There has been an increase in the number of appeals of citations that have been imposed because of the potential negative impact it would have on construction.

Adam Plain (Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry):
The Division of Insurance, Department of Business and Industry is neutral on A.B. 106. We do not have a stake in this bill. I wanted to clarify a few issues regarding the discussion on the fiscal impact of the bill. The DIR does assess its costs to employers even though it is an enterprise fund. Some of those are self-insured, and some are fully insured in the commercial market. An insurer receives a premium tax credit under *Nevada Revised Statutes* (NRS) 680B.036 to the extent it ensures a fully insured commercial market policy. Increasing premium tax credits will impact the State General Fund. Increased costs passed on to fully insured employers will have a long-term effect on the State General Fund.

Chair Atkinson:
Was that issue discussed in the Assembly Committee on Ways and Means?

Mr. Plain:
I was not there when this bill was heard. The Division of Insurance has not been monitoring this bill.

Bruce Breslow (Director, Department of Business and Industry):
The budget for DIR was approved with a 10 percent across-the-board increase for safety inspectors. Arizona pays their inspectors much more than Nevada, but they still have the same issue. We are not going to be able to compete with the private sector. Inspectors would prepare for the cases anyway whether there are attorney's fees or not. There is additional new staff. Financially, it does come out neutral, but it is new staff that would be preparing for these hearings. Mediation is typically voluntary. Even with mediation, there is no guaranteed result. Mediation is often a waste of time. However, the parties do negotiate, often before they get to hearings. Fines are reduced and citations are changed during negotiations. This is a good idea. It is great for business to have

the opportunity to recoup losses. This creates more of a level playing field for businesses.

Patrick Sanderson (Laborers International Union of North America Local 872):
For over 40 years, I worked in the construction industry. The only thing protecting employees when there is an unsafe contractor is NV OSHA. I have called them, and they have saved my life and saved me from injury. We need NV OSHA. I am afraid this will cut back on safety because NV OSHA inspectors will be gun-shy about making citations. I am concerned about inexperienced NV OSHA inspectors who are still learning and do not use common sense. When you are a worker, you are only as safe as you make yourself. Sometimes contractors put you in an unsafe area. You can either walk off the job or do the best you can. When you call NV OSHA, they come and inspect the area. The do not always come the day you call, but they do show up. I do not want this to become similar to a construction defect law where liars get rich, nothing is done and people continue to be injured.

Senator Hutchison:
Why would awarding attorney's fees and costs if DIR is found to have brought a case that was not substantially justified cause safety problems? If it is a real safety issue, it will be justified. Legitimate safety issues will be justified.

Mr. Sanderson:
My concern is when the experienced NV OSHA inspectors are taken off the job to testify. There are journeymen and apprentices. There is a shortage of experienced NV OSHA inspectors already. I do not want to take the chance of not having someone competent going to job sites to inspect worker safety.

Senator Hutchison:
Why do think this bill will increase the number of hearings? They have to show up for the hearing when they make citations anyway. Are you saying this will increase the number of citations, so they will have to come in for even more hearings?

Mr. Sanderson:
Every company has someone running it, and they are ego-driven. If they think they have been wronged, they are going to fight it in court. Some NV OSHA inspectors have the same mindset. I do not want to take the chance that

changing this law will take inspectors off the job sites. I want NV OSHA inspectors at job sites protecting workers.

Assemblyman Hansen:
I have been in the construction industry for 34 years. There is nothing in the bill that would protect unsafe contractors. Assembly Bill 106 ensures that if someone is falsely accused, that person has reasonable recourse to have some compensation to be made whole again. Mediation is a great concept. The problem is there is nothing in the middle to meet. The Board does not have a fiscal way to make people whole if they have been falsely accused by the government. That is what this bill does. The Board is now a mediator that can settle these situations. The $900,000 is a new number. I have a letter stating the award is estimated at $80,000 each year of the biennium. This is not a new fund. We already have a fully funded revolving account for tort claims. That is where this would go. There is nothing new regarding the fiscal impact. There would be no cost at all to the State or the Fund for Insurance Premiums. This is a substantially high bar to meet before being able to apply for costs, fees or expenses. There is no evidence that other states have had any adverse impact on safety because they had a reasonable mechanism to make people whole who have been falsely accused by the government. It is nice to protect NV OSHA, but keep in mind we are discussing people who have been falsely accused by the government. It is only right they be made whole when they are dragged through these process and pay out of their own pockets. Contractors are not ego-driven and doing this simply for their egos. They are doing this to make a living, and it is wrong to deprive them of their livelihood and force them to fight the government without allowing them to be compensated. We allow that to happen in small claims hearings. In this circumstance, there is no mediation. There is no board to turn to for any sort of financial compensation in the absence of this law being passed.

Chair Atkinson:
The hearing on A.B. 106 is now closed. I will open the hearing on A.B. 186.

ASSEMBLY BILL 186 (2nd Reprint): Revises provisions relating to compensation. (BDR 53-796)

Mr. Mallory:
Assembly Bill 186 is an important measure related to employment in the private sector. I have been involved in the construction industry as a worker and

administrator for nearly 20 years. I have never seen an abstract of NRS 608 posted on a job site. In this industry, workers should not be at the employer's office; they should be on the job site. When I was working in the field, the only time I would go to the employer's office was to fill out paperwork when I was hired. I always knew my conditions of employment. My employers would provide some information, and the rest was in the collective bargaining agreement that covered my employment. While I cannot speak directly about what nonunion construction employers do relative to this situation, my organization has experience with employers who were sued by its employees because they failed to pay them the minimum wage or overtime pay. These workers were not aware of overtime and minimum wage provisions that exist in State and federal law. This has become almost an industry practice, in part because of the lack of knowledge of the law as well as wanting to drive down costs in increased competition. We believe if these employees were provided the information that is included in this proposed law, they would receive what they are supposed to be paid. Additionally, there are workers who have been underpaid or in some cases not paid at all. Companies have gone out of business, filed bankruptcy or just simply disappeared. This has left many workers with no source of funds to make them whole. I do not have specific information related to how frequently this situation occurs or the number of workers left out in the cold in these situations. The labor commissioner can speak more thoroughly regarding this provision. On the first day of this Session, I approached the business community and explained what I was hoping this bill would achieve and sought input on how this would impact business. I negotiated a reasonable compromise with the representatives that will start to address the problems I have identified.

Section 4 of the bill creates a Wage Claim Restitution Account to provide restitution to employees who are underpaid or not paid by their employers when no other source of funding is available. It would be funded by carving out 25 percent of the penalties that may be imposed by the labor commissioner for violation of NRS 608.040. This penalty is imposed by the labor commissioner when an employer fails to pay an employee in full within 3 days after the wages or compensation of a discharged employee becomes due or on the day the wages or compensation is due to an employee who resigns or quits. This penalty is imposed in addition to the actual wages owed to the employee. Carving out a portion from the penalty does not harm the employee. This provision does not add any fees to employers or divert funds from the State General Fund.

Section 5 codifies what we believe is already a presumed requirement. Employers must provide new employees, at the time of hire, specific information regarding their employment including their rate and method of compensation, overtime provisions, regular pay date and the contact information for the workers' compensation insurance carrier. While this section does not specify the method an employer must use to provide this information, it does add administrative burden to the employer. The intent of "at the time of hire" is for this to apply on the date a new employee actually starts working and is in compensable status. An employee handbook would potentially satisfy the requirements for information regarding pay date and contact information. Many employers who have a stationary work environment display the excerpt of NRS 608 in plain view in areas where workers normally congregate. The information regarding workers' compensation insurance is posted with that. Collective bargaining agreements contain much of this information. While the proposed law does not specify the method to provide the information, we believe those things would be considered valid methods for providing it. Section 5 goes into effect October 1, and the remainder goes into effect upon passage and approval.

Senator Settelmeyer:
I agree with the concept of posting the information. Currently, if an employee is underpaid, an action will be brought forward, and the labor commissioner goes after the employer who will have to give money to the employee. Is this additional money? Is this in case the employer does not pay? What happens if the employer pays later? Is someone being paid twice?

Thoran Towler (Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry):
The most common claim is for individuals who are not paid for the last 2 weeks of work. My office takes the claim, and we try to make sure we can get money for that employee. We focus on the wages first. Under NRS 608.040, we can also collect penalties. Penalties equal the daily rate of pay for that employee up to 30 days that the employee remains unpaid. For example, if the employee files a claim for $2,000 for the last 2 weeks of work, we will usually recover the $2,000 plus penalties. The penalties could amount to an additional $1,000. The employee receives a check for $3,000 even though the claim was for $2,000. Section 4 of the bill proposes that the Office of Labor Commissioner would keep 25 percent of the penalties we collect and send it to a restitution fund. The penalties are necessary because people filing claims usually need to pay late

charges or overdraft fees. They deserve the penalties, but the penalties are generous. Approximately 10 percent of the claims we receive are from people whose employers have disappeared. This bill creates a restitution fund for the 10 percent of people for whom we are not able to collect unpaid wages. The individual claimants would receive less in penalties, but they would continue to receive their full wages and some penalties.

Senator Settelmeyer:
About the 25 percent that would go to the new account, where did it used to go?

Mr. Towler:
Everything under NRS 608.040 goes to the claimant. Under section 4 of the bill 75 percent, instead of 100 percent, would go to the claimant and 25 percent would go to the restitution fund.

Senator Settelmeyer:
We are taking money away from the claimants. Is there an easier way to do this without having the State Treasurer and State Controller involved?

Mr. Towler:
The State Treasurer and State Controller offices are completely involved already. We did have a separate account previously, but during our legislative audit 2 years ago, it was determined that it would be safer to have all our money handled by the State Controller and State Treasurer. It may take a little more time, but there is better tracking of money.

Senator Hardy:
I am not familiar with NRS 608.013. Are there parameters around that? If you hire someone to fix your home, if you have a small business or if you hire seasonal workers are you included in NRS 608.013? Whom does NRS 608.013 capture? Is there a level of business? Is it limited to businesses with 25 or more employees?

Mr. Mallory:
The NRS 608.013 captures every employer doing business in the State.

Senator Hutchison:
It seems that, anecdotally, we are using the construction industry to model legislation for every single employer in the State. This law applies to a company with just two employees. Why are we doing this?

Mr. Mallory:
My experience is in the construction industry. It is my belief the vast majority of businesses are already complying with these requirements. Representatives from the business community could better address their perspectives. This is intended to affect those individual employers who are currently not complying with what we believe to be an inferred requirement under law.

Senator Hutchison:
Who are these employers?

Mr. Mallory:
I could give you a list of companies that have been pursued in litigation by their employees for failure to pay overtime, minimum wage or issues with workers' compensation. We are trying to create a standard for all industries.

Senator Hutchison:
Would that list to which you are referring to be directed at the construction industry?

Mr. Mallory:
It would not.

Senator Hutchison:
Do you have lists of law practices, accounting firms, Laundromats and other businesses?

Mr. Mallory:
The list would include only construction industry employers based on my experience in the construction industry.

Senator Hutchison:
Do you have a list of other companies outside of construction that are having problems with this? Has that been explored?

Mr. Towler:
I have looked into this and talked with different associations of employers in Nevada. The first version of this bill had some strict requirements, and there were employers that were against it. This version is more realistic. Many employers already provide this information and think this is the current law. There are many cases in my office where the employer claims to hire an employee at $10 per hour and the employee claims to have been hired at $12 per hour. I believe them both. There is miscommunication. I am against additional regulations because I do not think it is necessary to heavily regulate business. It does not promote growth. This bill could have a great benefit because it is not a very strong requirement, and it could benefit those employers when there are miscommunications.

Senator Hutchison:
Are there other specific penalties attached to violation of section 5? What happens if an employer does not conspicuously post an abstract of NRS 608 or provide this information at the time of hire?

Mr. Towler:
Page 4 of the bill references NRS 608.195. That is a catchall law. Any violation of NRS 608 is technically a misdemeanor, and there could be a penalty of up to $5,000 per violation. The provisions in this bill would fall under NRS 608, so that would be a possible penalty. There is also the possibility of up to 6 months incarceration for a misdemeanor. That is not common, and it has been several years since a district attorney has prosecuted under NRS 608, but those are the associated penalties.

Senator Hutchison:
If we pass A.B. 186, any employer in the State that does not conspicuously post the material set forth in section 5 or provide the information, regardless of the size or sophistication level of the employer or any prior violations, the employer could be subject to a misdemeanor citation, which could include up to 6 months incarceration or a $5,000 fine. Is that correct?

Mr. Towler:
Those are the maximum penalties.

Mr. Mallory:
Statute already requires that an employer conspicuously post the information. That is not something added to law. We are proposing to clarify what we believe to be inferred, that employers are required to provide that information to their employees.

Senator Hutchison:
Is it your position it would be good policy in this State if employers who, regardless of size, sophistication and prior citation, do not provide that information be subject to a misdemeanor charge including up to 6 months imprisonment and a $5,000 fine?

Mr. Mallory:
I believe so. I think there is a lot of discretion granted to the labor commissioner in these matters in terms of the severity of the offense and the penalty fee imposed. I cannot speak for the Office of Labor Commissioner, but I think the absolute maximum that could be imposed would be for an extremely egregious violation.

Senator Hutchison:
Is that pure speculation on your part?

Mr. Mallory:
Yes.

Mr. Towler:
I have been labor commissioner for a year and a half. Historically, and under current control, we become aware of issues either by complaint or by audit. For a first violation, unless it is absolutely egregious, we issue a warning and schedule a follow-up audit. If the employer continues to violate law, we start issuing citations. The fines usually start at $250, depending on the violation. We want to help businesses come into compliance.

Senator Hutchison:
Administrative penalties and warnings are not articulated in law. That is just your practice in your office under your administration. Is that correct?

Mr. Towler:
Yes. There is a maximum fine of $5,000. We give a warning first and then start fining up towards $5,000.

Senator Settelmeyer:
How much of a problem is this? I would like information on the total amount of underpaid money that was owed to individuals in that last cycle. I would also like to know the total penalties assessed and the total of the funds that remained uncollected because the company went out of business.

Mr. Towler:
I will get you information on the total penalties underpaid, total penalties and total uncollectable penalties for the last fiscal year.

Mr. Thompson:
The Nevada State AFL-CIO supports A.B. 186.

Mr. McKenzie:
The Building and Construction Trades Council of Northern Nevada supports A.B. 186.

Robert Ostrovsky (Nevada Resort Association):
The Nevada Resort Association is opposed to A.B. 186. I am not concerned about the restitution account. I am concerned about section 5, subsection 2, paragraph (i). This would require that we give the contact information for the workers' compensation insurance carrier at the time of hire. The NRS 616A.490 requires employers to post a notice identifying the industrial insurance carrier and specifies the contents of the notice. We have to put that up now. Does posting that notice meet the obligation of this bill? Mr. Mallory believes it does. I do not think the bill is clear. We need to remove or modify section 5, subsection 2, paragraph (i) to indicate the posting of the notice is adequate. The problems in the construction industry do not apply to the gaming industry. Construction workers may never visit the main office. We post these notices; we have big human resources departments, so it easy for us. It is not easy out on the job site where workers need to know their rights.

Ray Bacon (Nevada Manufacturers Association):
The Nevada Manufacturers Association has similar concerns to those of Mr. Ostrovsky. We have also discussed that the notice given to the employee

will be accurate only on the day it is given because of the nature of employment.

Senator Hutchison:
Are your concerns inclusive of the penalties we have discussed?

Mr. Bacon:
That is existing law. We have dealt with that for a long time. In my dealings with NV OSHA, we found they are a reasonable organization to deal with.

Senator Hutchison:
Is it your testimony that section 5, subsection 2 and the associated penalties are current law?

Mr. Bacon:
I do not know.

Samuel P. McMullen (Las Vegas Metro Chamber of Commerce):
The Las Vegas Metro Chamber of Commerce supports the restitution fund. We have heard from Mr. Mallory that the posting of this information is enough, but the language does not seem to say that. If we satisfy the posting requirements for the employees who are capable of seeing this in the break rooms and that is sufficient, then we are in full support. I think this is asking for something more.

I want to reiterate that this is important information and employers have to follow through with providing it. The fines and penalties are appropriate if an employer is not providing this information. There is a lot of information on these postings, and it changes. The administrative penalties can reach up to $5,000, but they do not start there. There is a notification process. We are comfortable with that. This is a subset of what is on those posters. I think the intent is that if employees are not going to be at the office where they can see the posters routinely, then there needs to be another mechanism to provide this information. The language does not seem to suggest that. We thought it would be an alternative to posting this information conspicuously.

Senator Hutchison:
The way section 5 is written, if employers do not conspicuously post the requirements as set forth in section 5 and do not provide the information at the

time of hire, then the employer is subject to the penalties set forth in the act, which we have already described. Are you okay with that?

Mr. McMullen:
That is our concern. We are not trying to be difficult. We have worked with Mr. Mallory. We thought this would be an alternative to the conspicuous posting in the main building in the main business operations and was a catchall to make sure off-site workers would receive the information as well. We thought it would be a much more limited set of circumstances than the technical words of this bill describe. The bill requires the information be given at the time of hire even if an employer conspicuously posts the information. We are also concerned about proving the employer has provided this information so the employer is not guilty of a misdemeanor. This puts the burden on the employer to prove the information was provided at the time of hire.

Senator Hutchison:
Subsection 2 of section 5 is not an alternative; it is an additional requirement to subsection 1 of section 5.

Mr. McMullen:
I agree with your interpretation of the bill.

Tray Abney (The Chamber):
I signed in supporting the bill because I told Mr. Mallory I would. Unfortunately, I have to change that position. The Chamber is neutral on A.B. 186 because we have heard from the Nevada Resort Association and the Nevada Manufacturers Association that they are opposed to this. The Chamber has several of those businesses in our membership. When the bill was heard in the Assembly Committee on Commerce and Labor, we were strongly opposed to it. Mr. Mallory negotiated with us and other groups and got it to a point where our membership decided it was language they could live with. I was not aware there were still members who had concerns, so we are neutral.

Mr. Mallory:
As indicated, the bill is significantly different from the original. Originally, there was a requirement that every employer provide every new employee with a written notice that contained all this information. Employers were to use the standard notices determined appropriate by the labor commissioner and obtain a signature from the employee stating he or she had received the notification in

an understandable language. It was very clear and very restrictive. In the course of the first 66 days of the Session, I had multiple meetings with representatives from the business industry. I thought we had addressed all the concerns in the amendment accepted by the Assembly Committee on Commerce and Labor. These are new concerns I had not heard until today. A number of items are required to be included in the conspicuously posted labor law poster. It is our belief and our position that if those items are included on that labor law poster, that satisfies the requirements of subsection 2 of section 5. The time of hire is actually the time when a new employee engages in compensable activity.

Senator Hutchison:
If that is the intent, would you consider adding an "or" after subsection 1 of section 5?

Mr. Mallory:
I would; however, there would need to be an exception for paragraphs (a) and (b), because employers do not put every employee's wage rate on the labor law posters. I do not think they would want to do that. Labor law posters only have a generic statement about overtime. Overtime, under NRS 608.018, varies for different individuals depending on how and how much an employee is paid.

Chair Atkinson:
There are a few issues to work out. I will close the hearing on A.B. 186. The hearing on A.B. 213 is now open. Assemblyman David Bobzien has submitted remarks about A.B. 213 (Exhibit D).

ASSEMBLY BILL 213 (2nd Reprint): Revises provisions governing the issuance of a certificate of registration to a provider of a service contract. (BDR 57-759)

Neena Laxalt (National Home Service Contract Association):
Assembly Bill No. 74 of the 76th Session removed language from NRS 690C.170. That change removed the ability for small, new home service companies to enter into the State because they could no longer meet the financial criteria. During the interim, the National Home Service Contract Association worked with the Division of Insurance and compromised on the bill before you today, A.B. 213. The amendments in the Assembly removed the fiscal note from the bill.

James Wadhams (Service Contract Industry Council):
We worked with Ms. Laxalt and the Division of Insurance on A.B. 213. The new language in section 1, subsection 2 allows the commissioner of insurance to create a system where the reserve grows as the company grows. The financial security will grow as the company gains more business. This will allow small companies to come to the State. The change in section 1, subsection 1 clarifies that an insurer who backs up a service contract or a home warranty company needs to be licensed, registered or authorized to do business. It needs to be a legal entity, but the commissioner of insurance will have control. We worked with the commissioner of insurance on this bill too.

Mr. Plain:
During the Assembly Committee on Commerce and Labor hearing on A.B. 213, the Division of Insurance was "negatively neutral" on the bill. During the 76th Session, the Division of Insurance proposed a heavy-handed fix to this part of NRS. The National Home Service Contract Association brought a valid concern to the Division. Originally, we did not like the proposal. We worked with the Association and are fine with the proposal now. This will protect Nevada consumers and allow the industry to resume normal operations.

Chair Atkinson:
During the Assembly hearing, did you speak in neutral position?

Mr. Plain:
Yes.

Chair Atkinson:
Are you still neutral?

Mr. Plain
Yes. We are as positive as can be while still being neutral.

Chair Atkinson:
The hearing on A.B. 213 is closed. I will open the hearing on A.B. 404.

ASSEMBLY BILL 404 (2nd Reprint): Revises provisions relating to time shares. (BDR 10-960)

Erin McMullen (American Resort Development Association):
The American Resort Development Association (ARDA) is the professional association representing the time-share and resort industry. There are over 1,000 members. We have worked on this bill and a counterpart bill, Senate Bill (S.B.) 383, which is on its way to Governor Brian Sandoval. Together, these two bills streamline the time-share renewal and application process.

SENATE BILL 383 (2nd Reprint): Revises provisions governing time shares. (BDR 10-916)

Specifically, A.B. 404 focuses on resale agents and transfer companies. We have worked with the Real Estate Division on these bills. The Real Estate Division lost personnel and staffing and had serious budget constraints because of the economic downturn. It resulted in a backlog in time-share renewal applications. That is the genesis of the two bills. Assembly Bill 404 includes an increased fee schedule for these types of applications or renewals. The increases in fees will allow the Real Estate Division to hire an additional program officer dedicated to time-share renewals and applications. The bill also streamlines procedures. This will help the process and the time-share industry. We also submitted four letters (Exhibit E) in support of A.B. 404. The industry does support the new fee schedule.

Karen Dennison (American Resort Development Association; American Resort Development Association Resort Owners Coalition):
I have written testimony (Exhibit F). The American Resort Development Association Resort Owners Coalition is comprised of approximately one million time-share owners across the United States. We worked with the Real Estate Division on A.B. 404, which we are presenting today and S.B. 383, which has passed both houses. We have submitted an amendment to the bill (Exhibit G). We are in agreement with the Real Estate Division on the language of the amendment. The proposed amendment does not introduce any new concepts. It adds definitions and some additional language we believe clarifies the bill. Assembly Bill 404 streamlines the registration process for time-share developers. The time-share industry is one of the most highly regulated industries in Nevada. Before sales can occur, the time-share developer must register the project with the Real Estate Division and provide a lot of detailed information about finances, experience, the project and the time-share plan of how it will operate in use of time-shares by purchasers. We have tried to

streamline the registration process to make it more business friendly. This is designed to encourage business in the State as well to add additional consumer protections.

Section 4 of the bill regards transfer companies. Transfer companies are unregulated in Nevada. The language is patterned after a recently passed Florida law. Transfer companies are known in the industry as "Viking ships" because they disappear into the sunset. They contact time-share owners and offer to take their time-share. The owners pay between $2,000 and $5,000 to give their time-share to the transfer company. The transfer company has no intention to resell the time-share. This creates a non-paying time-share as far as the associations are concerned. Recently, time-share associations have been cash-strapped with multitude of defaults and foreclosures. It exacerbates the problem when time-shares are taken out of the paying stream of revenue for the assessments. The associations have to incur foreclosure costs. This bill would make it a criminal offense and deceptive trade practice to engage in this kind of heretofore-unregulated practice.

Section 11 and section 11.5 govern exemptions with respect to homeowners associations (HOAs). Currently, HOAs are exempt from the registration process developers must go through. We have added some disclosure requirements for HOAs when they take back a time-share either through delinquent payments or for other reasons. The HOAs need to resell the time-share to return them to paying status. We added disclosure requirements for information the HOA must give the ultimate purchaser. They are the same disclosure requirements a time-share resale broker must give. We have also added a 5-day right of rescission to those sales, similar to the 5-day right of rescission required of developers. In addition to that, we have created a new exemption, which is a-sale-to-existing-owners exemption. For example, if you have a national time-share company that has a time-share located outside the State but the company is registered in Nevada, the company is subject to the jurisdiction of the Real Estate Division and all disciplinary action associated with violating this act. The company is merely exempt from registering, but must give the consumer a 5-day right of rescission period and deliver the disclosures required by the situs state to the consumer.

Section 23 and section 23.5 streamline the registration process. Heretofore, the Real Estate Division has issued the disclosure document, which is really the developer's disclosure document, called the public offering statement. Under

A.B. 404, the developer would issue its own disclosure document. It would have to be approved for use by the Real Estate Division. This is a streamlining measure. The other aspect of these sections is filing an abbreviated registration when a project is registered in another state. The developer is probably filling out a very similar form to the one Nevada requires for the other state. The developer will not have to repackage the information into Nevada's form as long as the other state's disclosure requirements are equal to or greater than our requirements. The Real Estate Division can accept the other state's registration package as the Nevada registration and accept the disclosure document as the Nevada disclosure document. The Real Estate Division would attach a face page certifying it approved that particular public offering statement.

Section 32 of the bill covers fees. The industry has worked with the Real Estate Division to develop a fee schedule. The time-share industry is solidly in support of the fee schedule. It is long overdue.

Section 35 of the bill is very important to the industry. This section allows the time-share developer to attach an addendum when there is an amendment to a disclosure document pending with the Real Estate Division. This will ensure the sale will not be interrupted because of delays. The inability to get a new public offering statement has caused interruptions in sales.

Sections 41 through 44 add additional requirements on time-share resale brokers. Time-share resales have been a subject of consumer complaints. Currently, time-share resale brokers must be licensed as real estate brokers and must register with the Real Estate Division. This bill adds that resale brokers must give purchasers a 5-day right of rescission when there is a sale contract between an owner and a purchaser and a time-share resale broker facilitates the sale contract. Additionally, all of the documents governing the time-share plan must be delivered to the purchaser. The same requirements would apply to resale listing contracts. Resale listing contracts are contracts between the seller and the broker to list the time-share for resale or sale. A 5-day right of rescission also applies to those brokerage agreements. Finally, another subject of complaints is advance fee listings, when the resale broker takes a seller's money and then does not promote the property sale. Added in this bill are certain disclosures that must be given to the time-share reseller. We have also given the owner of the time-share the right to void the contract for a period of up to 1 year. There is an additional civil penalty of up to $1,000 per violation.

Senator Hutchison:
Section 32 of the bill contains the new fee structure. Do you believe the increased fees will solve the revenue shortfall and remedy the lack of personnel? Is that the fee structure mentioned in testimony?

Ms. McMullen:
Yes, that is the fee structure we mentioned. I do not think this will solve the problem completely, but it will help fund another program officer. Prior to the economic downturn, the Real Estate Division had a full-time employee and administrative help reviewing time-share applications and renewals. Now, the Real Estate Division has one program officer reviewing applications and renewals twice a week because he or she oversees many other projects. This is a step towards solving the issue and clearing some of the backlog of applications.

Senator Hutchison:
If the transfer companies become unit owners and acquire the contractual obligations of being unit owners once they buy the time-share, why can you not seek legal remedies against the transfer companies?

Ms. Dennison:
There is nothing illegal about what they are doing. They are creating havoc for time-share associations and owners. The transfer companies are preying upon owners.

Senator Hutchison:
This must be a good economic transaction because the unit owners are not being forced to sell their time-share to these transfer companies. The time-share owners do not want to pay fees and maintenance costs, so they sell their unit to a transfer company. Why is that an unfair trade practice? Why can you not seek legal remedies similar to any other unit owner not paying their dues or fees?

Ms. Dennison:
Eventually, a time-share association will seek legal remedies against a transfer company for nonpayment of fees. The foreclosure costs often equal or exceed the resale value of the time-share unit. The time-share association has lost money on unpaid dues and assessments and has to pay foreclosure costs. This is an economic burden on the time-share associations and owners.

Senator Hutchison:
I would like Ms. Anderson to address this issue, too. I am concerned when there is a market for something and we are being asked to make it an unfair trade practice. There is an economic benefit to the time-share owners and the transfer companies when these sales happen. What is the rationale for making this an unfair trade practice? Is there any other reason than it is wreaking havoc on the time-share industry?

Ms. Dennison:
This is a problem that has been discussed at ARDA meetings for 4 or 5 years. Ms. Anderson can tell you about the complaints the Real Estate Division has received. Some of the transfer companies claim to be resale companies, but they are not. They are not regulated. Florida has seen the need to pass similar legislation. We believe this is a good regulatory practice to ensure these types of practices are stopped.

Gail J. Anderson (Administrator, Real Estate Division, Department of Business and Industry):
I have submitted written testimony (Exhibit H) in support of A.B. 404. We worked with ARDA on the proposed amendment, Exhibit G. An important provision for consumers in this bill is the addition of the 5-day rescission period in resale of time-shares. We have received many complaints from people who have purchased a resale unit and were not aware there was no rescission period. There is a rescission period with the sale of a new time-share. That is an important provision.

I also support the requirement for direct supervision by the project broker or a designated broker-salesperson working under the supervision of the project broker of those time-share sales agents. These brokers, project brokers and broker salespersons are real estate licensees under the jurisdiction of the Real Estate Division. There is a high level of supervision, responsibility and accountability needed.

It is my understanding that transfer companies market to consumers, take their money, but never execute a transfer of ownership. That is an unfair and deceptive trade practice. I am part of the Association of Real Estate License Law Officials and chair the Timeshare Advisory Group. We have discussed similar situations and issues at the national level. We have had a number of complaints, and some inquires, from consumers who say someone contacted

them offering to buy their time-share for $1,500. The Real Estate Division always advises consumers against this and to use a time-share resale broker instead. These are practices that are harmful and deceptive to consumers, and this bill gives more authority to take action. Assembly Bill 404 strengthens consumer disclosures, rescission rights and protections. This will also enable the Real Estate Division to process filings and amendments in a more timely manner.

Senator Hutchison:
Under this bill, will time-share owners be able to sell a time-share to a transfer company, assuming the transfer company is not engaged in deceptive trade practices? Will that transaction be illegal now?

Ms. Anderson:
Time-share owners will still be able to resell time-shares. They could utilize one of these companies; we hope they would ask the right questions. The bill allows for a referral into the criminal arena if the transfer company engages in deceptive trade practices. This does not stop that business practice. Many of these transfer companies are Internet-based. They are difficult to track down, but there are means we can use to do so.

Mr. Breslow:
I want to address the economic development aspects. The Real Estate Division has been unable to process the time-share applications. There are companies ready to build projects. Some of the companies, like Hyatt and Disney, have significant projects proposed. We have not been able to process the applications because we do not have a body to do it. This will help alleviate that.

Mr. McMullen:
I work for ARDA and am a proponent of A.B. 404. This is a substantial amendment. If you wait until after work session to send the amendment to the Legal Division for drafting, there could be timing issues. Could the Committee give the amendment to the Legal Division now so they could draft it and get it back to the Committee?

Chair Atkinson:
It is up to the Committee on how comfortable they are. I am comfortable with the amendment. The Committee members are indicating they are comfortable as well. The hearing on A.B. 404 is now closed.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 404 WITH THE AMENDMENT PROPOSED BY KAREN DENNISON, EXHIBIT G.

SENATOR DENIS SECONDED THE MOTION.

Senator Denis:
There will probably be questions, but at least the amendment will be done and then we can answer those questions. We will not have to worry about the amendment not being drafted in time.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Atkinson:
The meeting is adjourned at 3:51 p.m.

RESPECTFULLY SUBMITTED:

_____
Caitlin Brady,
Committee Secretary

APPROVED BY:

_____
Senator Kelvin Atkinson, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	3		Attendance Roster
A.B. 106	C	2	Assemblyman Ira Hansen	Proposed Amendment 9412
A.B. 213	D	2	Chair Atkinson	Remarks from Assemblyman David Bobzien
A.B. 404	E	5	Erin McMullen	Letters
A.B. 404	F	10	Karen Dennison	Written testimony
A.B. 404	G	23	Karen Dennison	Proposed amendment
A.B. 404	H	1	Gail J. Anderson	Written testimony