

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Seventh Session  
February 20, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:34 p.m. on Wednesday, February 20, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Policy Analyst  
Dan Yu, Counsel  
Wynona Majied-Martinez, Committee Secretary

**OTHERS PRESENT:**

James Westrin, Commissioner, Division of Mortgage Lending, Department of Business and Industry  
Charles Mohler, Chair, Advisory Council on Mortgage Investments and Mortgage Lending, Division of Mortgage Lending, Department of Business and Industry; Eagle Private Lending, Inc.  
Keith Lynam, Windermere Prestige Properties; 2013 Legislative Chair, Nevada Association of Realtors  
Fred L. Hillerby, Renown Health  
Bill M. Welch, President/CEO, Nevada Hospital Association  
Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO

Senate Committee on Commerce, Labor and Energy  
February 20, 2013  
Page 2

Paul McKenzie, Executive Secretary-Treasurer, Building & Construction Trades  
Council of Northern Nevada, AFL-CIO  
John Russell, Recording Secretary, Northern Nevada Labor Union  
William H. Stanley, Director of Organizing, International Union of Elevator  
Constructors, AFL-CIO

**Chair Atkinson:**

I will open the meeting on Senate Bill (S.B.) 47.

**SENATE BILL 47**: Makes various changes to provisions governing the regulation  
of the mortgage industry. (BDR 54-361)

**James Westrin (Commissioner, Division of Mortgage Lending, Department of  
Business and Industry):**

I have submitted my written testimony ([Exhibit C](#)).

This bill makes four changes. The first change, [Exhibit C](#), page 1, relates to the required employment relationship between a mortgage agent and a mortgage broker or mortgage banker. The second change, [Exhibit C](#), page 2, item 2, would clarify *Nevada Revised Statute* (NRS) 645B.015, subsection 11, related to who qualifies for nonprofit exemption. [Exhibit C](#), page 2, item 3, presents the third change. It would enable a person who has qualified for and been issued a mortgage agent license to renew that license when not employed by a mortgage broker or mortgage banker. The fourth change would limit application of the attorney exemption in NRS 645F.380, subsection 1, in [Exhibit C](#), page 2, item 4.

**Senator Hardy:**

Is the agent not allowed to take compensation from anyone except the mortgage broker or mortgage banker? Would that preclude the agent from moonlighting in another business or doing something else?

**Mr. Westrin:**

No. The purpose of the limitation relates only to mortgage agent activities which would include taking an application or negotiating loan terms with a client. It makes clear that the agent can be employed by only one mortgage company at a time. The agent would be allowed to have a second job working in an unrelated field.

**Senator Hutchison:**

My question regards section 11 of S.B. 47. It excludes attorneys from the term "foreclosure consultant" and "foreclosure purchaser." Are those attorneys who work in this foreclosure area licensed or regulated in any way by any government agency or association other than the State Bar of Nevada (State Bar)?

**Mr. Westrin:**

I am not aware that they are regulated or governed by any other statutes or associations besides the State Bar.

**Senator Hutchison:**

Is there any concern by you or others that these attorneys can be properly regulated in this area by the State Bar? Typically, the State Bar deals with attorneys and their practice of law. Engaging in this arena would include more than simply the practice of law. Is there any concern, based on experience, regarding attorneys who are involved in the foreclosure crisis?

**Mr. Westrin:**

During the past 24 months, we received 29 complaints involving attorneys. Several are attorneys from outside the State. They are not members of our State Bar. In my interpretation of these types of exemptions, which are common in many regulatory statutes, attorneys are allowed to provide services to a client in connection with other matters. I do not think the exemption is intended to be an overall exemption. I do not think it means that an attorney could open a loan modification company without having to be licensed under the particular statute that governs that activity.

**Senator Hutchison:**

Do you know of any communications with the State Bar in which officials are aware they have responsibilities for attorneys who practice in business areas different from their practice of law?

**Mr. Westrin:**

The State Bar and my office have worked closely when we have received complaints concerning an attorney. We refer matters to State Bar officials, so investigation and supervision are provided.

**Charles Mohler (Chair, Advisory Council on Mortgage Investment and Mortgage Lending, Division of Mortgage Lending, Department of Business and Industry; Eagle Private Lending, Inc.):**

The Advisory Council on Mortgage Investment and Mortgage Lending supports S.B. 47 with a few proposed changes ([Exhibit D](#)).

We have proposed the following changes as outlined in [Exhibit D](#). On page 6, lines 18-24 of the bill regarding the control and supervision of employees: after "agents," add "employed by the mortgage broker;" on page 9, line 14, with some clarification on the co-brokering of loans and transactions when brokers share fees, change first mention of mortgage agents to residential mortgage loan originator. On page 10, line 17 makes changes similar to those on page 9. On page 12, add the requirement for the 501(c)(3) Internal Revenue Code exemption. We have been working closely with the Commissioner, Division of Mortgage Lending, Department of Business and Industry, on these changes.

**Senator Jones:**

Upon recommendation of counsel for the Senate Committee on Commerce, Labor and Energy, I want to disclose that I am counsel on a case against Mr. Mohler.

**Chair Atkinson:**

That is an issue for discussion outside these proceedings. Thank you for your disclosure.

**Senator Denis:**

Could you explain that first change on page 6, line 24, where you want to insert the words, "employed by the mortgage broker"? Can you explain what that does and why it is necessary?

**Mr. Mohler:**

That would allow for written policies where employees work for a mortgage broker who is a single operator or runs some other small shop.

**Keith Lynam (Windermere Prestige Properties; 2013 Legislative Chair, Nevada Association of Realtors)**

I support S.B. 47, section 11, in particular, regarding "An attorney at law licensed to practice in this State."

**Chair Atkinson:**

We will close the hearing on S.B. 47 and bring it back in a work session because of amendments we may need to add. We now will open the hearing for S.B. 87.

**SENATE BILL 87**: Repeals certain provisions relating to unlawful employment practices. (BDR 53-104)

**Senator Joseph P. Hardy (Senatorial District No. 12):**

For the record and full disclosure, I am a doctor. We are interested in two parties: patients and patient caregivers. This bill addresses both. Because of the double negative of the bill in its original format, and because I could not quite understand it in that form, we have presented a mock-up proposed Amendment 7580 to S.B. 87 that I would prefer to reference ([Exhibit E](#)).

The law protects a prospective employee's right to use tobacco or any other product if the person uses the product on his or her own time away from the employer's premises. The prospective employee's right to use tobacco is protected also when use does not adversely affect the person's ability to perform his or her job and does not affect the safety of other employees.

For the most part, this is a good protection of the rights of prospective employees. However, when it comes to medical facilities, we also need to be concerned about patients in those facilities. Some of them have severely compromised immune systems or respiratory ailments that can be adversely affected by thirdhand smoke.

Thirdhand smoke is a term used to describe the gases and small particles in cigarette smoke that are deposited on every surface they contact, including the smoker's hair or clothing. These toxic particles remain long after the cigarette has been extinguished and any secondhand smoke has cleared. However, it is difficult to prove that a specific prospective employee's thirdhand smoke will cause a particular patient's worsening condition. In addition, it would be difficult for a medical facility official to prove that a prospective employee's off-premises tobacco use will adversely affect his or her ability to perform his or her job.

This bill addresses the problem of thirdhand smoke in a way that is specific and narrowly tailored. This proposed amendment, [Exhibit E](#), simply removes the requirement for a medical facility to prove that a prospective employee's

off-premises tobacco use will adversely affect the health of patients. This bill will help safeguard the health of vulnerable members of our community who are older, ill or infirm by allowing medical facility officials to choose not to hire based on tobacco use. In this way, we can help keep thirdhand smoke and its adverse effects out of our medical facilities. Further, it is important to emphasize that this bill affects only prospective employees and will not result in any current employees losing their jobs.

I have cast out the term "medical facility," the definition of which is included in NRS 449.0151. I have provided a copy of the statute for your reference ([Exhibit F](#)). The proposed amendment to NRS 613.333 will also be included as section 2 of S.B. 87.

**Senator Hutchison:**

Does this bill arise from specific instances where existing health conditions are aggravated because a patient, or someone else who is vulnerable, has been exposed to thirdhand smoke?

**Senator Hardy:**

Instances involving secondhand smoke have been regularly and dutifully placed on the record. In Clark County's Southern Nevada Health District, places were closed because the odor lingered, even where individuals were not exposed to secondhand smoke. Some people are sensitive to the odor. I cannot give you a specific example of a patient in a medical facility, but other people who have an interest in this may be able to do so.

**Senator Settelmeyer:**

I appreciate the concept of the bill. I am among those who are allergic to cigarette smoke, so I understand that the condition could be aggravated for an individual who is not doing well medically. Is it all tobacco products or just the smoke that you are concerned with? What if somebody chews or uses snuff?

**Senator Hardy:**

Tobacco products are tobacco products. That gets to the other part of the equation: the outcome for the person who works for the facility.

We know that chew or snuff, all those products, are carcinogenic, meaning that they can cause cancer and other problems for the institution's employees. Facility administrators would like employees to be healthy. They would like to

have an opportunity to say with veracity and authority, "We don't smoke or use tobacco products."

**Senator Jones:**

When someone enters the facility, is it the smell of smoke that is the concern? Or is it only that the hospital or medical facility administrator wants to be able to say that all employees are required to be healthy?

**Senator Hardy:**

I want to make a distinction. This bill is not directed toward existing employees. It concerns prospective employees, and it is a choice. If I say I want to work in your facility, the hiring manager can ask, "Do you smoke or use tobacco products? If you do, we would prefer that you quit. If you quit, we will hire you." They also have the choice to say, "We would hire you anyway, given where you're going to be and in what circumstance you're going to be." But it is a health issue for two people: the patient and the medical provider.

**Senator Jones:**

My concern is that when it comes to thirdhand smoke, I am not sure S.B. 87 solves the problem because it does not change the behavior of current employees. Smokers or others who use tobacco are still going to be in the workplace. The question remains: Is there a way to do this in a more limited way?

**Senator Hardy:**

I would take your suggestion.

**Chair Atkinson:**

It opens another problem when we consider an employee who has a history in that workplace. If we find that the newer employee is still smoking or has started again, he or she could be terminated. But what about the employee who has been there all along?

**Senator Hardy:**

This does not do anything to the employee who is already there. It only gives the medical facility the choice of whether to hire or not hire somebody, depending upon their tobacco use. It does not address the situation in which somebody begins to use.

**Chair Atkinson:**

What happens if I am a new employee, or I have been an employee, and I am not smoking now, but a year later I start smoking again?

**Senator Hardy:**

It does not address that.

**Chair Atkinson:**

If I am a recent hire, I probably would not understand that “Joe,” who has been here 12 years—smoking and probably a hazard—is protected but because I am a newer employee, I cannot smoke. I just see some issues with that.

**Senator Denis:**

Could we designate a time frame? We could say that we would have a smoke-free facility after a specific date. The transition would not be immediate. The rule would cover all the new employees when hired and then address all other employees. Everyone would have time to stop smoking. If a smoker had been there for many years and did not stop, that person would have time to find another job. At some point, we would have a smoke-free facility. We might want to look at that.

**Chair Atkinson:**

I am concerned about the loophole that would be created. I would be concerned at the point when half the workforce is smoking and the other half is not.

**Fred L. Hillerby (Renown Health):**

I want to apologize to anybody who read and wondered what I was trying to accomplish. By way of clarification: If I am an employee who has worked 12 years, and the person who just came on board does not smoke, it is a condition of his employment. Being a nonsmoker was not a condition of employment 12 years ago when I was hired. That is why one person would be allowed to smoke and another person would not. I would hope people would understand that, but maybe not. That is why we were concerned about how this policy might apply to longtime employees. Once we implement the policy, can we then say now we can fire them?



Anybody would be concerned about a capricious act on the part of the employer, someone who just decided "I do not think I like you very well and you are a smoker, so I am going to fire you. Your neighbor is also a smoker, but I will not fire him or her."

That would be of greater concern than understanding why a new employee who agreed to the condition is not a smoker. We understand the addictive power of nicotine. It is of great concern.

**Chair Atkinson:**

My major concern coincides with Senator Denis' comment. We are trying to create an environment where smoking no longer exists, but I am not sure this proposal gets us there. We will still have employees who legally can smoke and who can transmit thirdhand smoke. The new employee had better not smoke, because he or she would be fired. We would have two different standards in the same facility. One would be for those who can smoke and the other would apply to those who cannot smoke.

**Mr. Hillerby:**

I understand that concern, Senator. You and I have had that conversation.

I would like to point out that at Renown and at almost every hospital in Nevada, we have programs and smoke-free campuses, and we intend to protect our patients and our employees. We provide wellness programs that include smoking-cessation programs. We are working diligently because we are concerned about our patients and our employees. We want them to be as healthy as possible.

About a year ago, *The New York Times* published an article that quoted federal estimates which say that employees who smoke cost, on average, \$3,400 more a year for health care and lost productivity. With the many health care needs and limited resources, we have to become smarter about how we use those resources. Smokers in the workplace are no longer sustainable. The bottom line is that we have to start somewhere. Firing existing employees is not the place to start. We do not choose to do that. We will continue to work with them on smoking cessation and providing incentives to quit. If you are willing to pass this bill, future hires, at least, will not be smokers.

**Senator Jones:**

Is there anything that would prohibit a facility administrator from terminating workers and rehiring them under the category of "new employee"?

**Mr. Hillerby:**

I do not think so, from a legal standpoint, but from a practical standpoint, that is not an exercise we would want to entertain. The result is we would just end up alienating our employees. It would be intellectually dishonest.

**Senator Jones:**

We also have a lot of change in the medical field. We have companies that take over others. That has happened quite a bit in Nevada over the past 2 years. Would it not be the case in a turnover situation that employees would be considered new employees under this provision, and therefore, be required to be nonsmokers?

**Mr. Hillerby:**

Senator Jones, I am not a labor lawyer. I am not sure whether I can answer that question truthfully. In takeovers that we have seen and in our own case, where we switched from county hospital to private not-for-profit hospital, the employees were still the employees. Their conditions of employment remained the same. Whether the facility is owned by a religious organization or is an investor-owned organization, I do not suspect we would see such a thing happening. Hospital administrators are all concerned about the health of employees and patients. They will continue to do whatever they can to help. They recognize that smoking is very addictive, and it is necessary to offer people chances to improve and get better.

**Bill M. Welch (President/CEO, Nevada Hospital Association):**

The Nevada Hospital Association and its members unanimously support S.B. 87. We have presented this issue before. We represent more than 90 percent of the hospital patient units in Nevada. We believe this bill allows us to take one more baby step toward a healthier environment for our employees and patients.

We see this as optional. The bill does not say that it will be mandatory for a hospital to put this policy into effect. It would allow it to put this policy into effect. As Mr. Hillerby indicated, we have a number of programs we make available to employees, and we encourage them to participate. In addition to the wellness and smoking-cessation programs, which are at no cost to employees,

many employers offer a monetary benefit for employees who participate. Those are some of the strategies we use to help the workforce be healthier.

This is our mission—to help the community become healthier. We think that starts by setting an example. We, then, would be in a better position to go into the community and promote nonsmoking and good health.

**Chair Atkinson:**

Would you do anything differently in terms of promoting someone? Would this rule become a condition for someone moving to the next level?

**Mr. Hillerby:**

We do not have a policy for that. This is only for potential employees. Unless we pass this proposal, such action would be against the law. If we were to interview a promising applicant who smokes, it would be our intent to offer our smoking-cessation program and then let the applicant return and reapply for the job.

**Senator Jones:**

If the ultimate goal is to ensure that employees are healthy and smoke-free, would it not make more sense to have the legislation state that it becomes effective July 2014 or 2015? Then, you could “discriminate” against all smokers. You would have a date that would provide plenty of time to transition. You could then tell existing workers: “By this time, we are going to require that you be nonsmokers.” They can engage in the smoking-cessation programs and get to where they want to be. Does that not make more sense?

**Mr. Hillerby:**

Senator Jones, no matter how much time is allowed, we still would have the issue of discrimination once we get to that point. I do not know how many employees would quit in 2, 3 or 5 years. This law would provide us with a good place to start. At least we would know that no new employees would be smokers.

**Senator Jones:**

Are your employees at-will employees right now, or are they under contract? If under contract, for what period of time?

**Mr. Hillerby:**

The majority are at-will employees, but some are under contract.

**Mr. Welch:**

Most of our urban hospitals have employment and labor agreements in place. Also, all employees are hired according to personnel policies that cite the processes. The agreements discuss the employees' and the employers' responsibilities. As far as promotions and opportunities are concerned, unless hospital staff were to ignore policies and procedures, there should not be discrimination, since this legislation would apply. The worker would continue to be employed.

Our long-term goal is to get to a 100 percent smoke-free workforce. Do we think we can get there today? Not necessarily. That is why we came here today in support of S.B. 87. We want to begin moving toward that goal.

Some places around the country have considered policies that reflect Senator Jones' comments. Some hospitals have implemented such policies, including the Cleveland Clinic Lou Ruvo Center for Brain Health. As you review some of the articles, you will find hospitals that have gone to that extent where their laws allow.

**Chair Atkinson:**

Have their laws allowed for creating smoke-free workplaces?

**Mr. Welch:**

They are moving toward mandating all employees to be smoke-free.

**Chair Atkinson:**

Senator Jones is looking at the point where some people are in positions that are under contract and some belong to labor unions. With this law, would we be circumventing their ability to deal with their management on this issue? With this, are we doing it for them?

**Mr. Hillerby:**

I do not believe so.

**Danny Thompson (Executive Secretary-Treasurer, Nevada State AFL-CIO):**

We do not support discrimination against anyone, either on or off the job. We

do not support S.B. 87. I appreciate Mr. Hillerby's amendment because it narrows the scope. The original bill, however, said that if an employee uses a product that is known to cause cancer, even if in off-hours, he or she could be fired if the employer knows.

In response to Senator Jones' question, it is common practice when a facility is sold that all employees are terminated and then asked to reapply. It happened in Reno just last year. That illustrates a problem this bill could cause. I certainly understand and respect the reason why you want to do this. I do not smoke. People who do smoke have a death wish, because there is no question that it kills them and kills the people around them. However, there are ways to control that.

We used to represent the workers at the ammonium perchlorate plant in Henderson before it blew up. Smokers worked there but they could not smoke on the property or anywhere near the property because they could get blown up. It is notable, however, that the 1988 accident did not happen because someone was smoking.

There is nothing wrong with an employer saying that one of the conditions of employment is that smoking in the facility is prohibited as is smoking within 200 feet. A lot of people would say that is a great idea, especially if they do not like walking through secondhand smoke.

The concerns that have been raised here today are legitimate. If you change the existing policy, when a facility is sold, common practice would be to lay off all the employees and ask them to reapply. If this were the law, you would be subjecting individuals to the possibility of not being rehired. There are other ways that employers can make a facility a no-smoking area. You can control the areas around the facility.

When smokers leave for lunch, they smoke. That is what smokers do. Resolving this may not be as easy as it sounds. I appreciate your reasoning. I represent every trust fund in the State, and we have our own funds. We run wellness programs because the costs of caring for people who live an unhealthy lifestyle—not just smoking, but drinking and other activities that would lead to poor health—costs us money. We look at those situations because at the bottom line, our trust funds are struggling to get by just like everyone else, given the cost of health care in America.

We would like to study this issue further.

**Chair Atkinson:**

I have the same question for you that I had for Mr. Hillerby. If we do something about this, it would have to be part of every facility's contracts. It would become a nonnegotiable item because it would be law. Right?

**Mr. Thompson:**

A collective bargaining agreement cannot circumvent either the State or federal law. It would not matter what the collective bargaining agreement said. It would be State law that supersedes.

**Paul McKenzie (Executive Secretary-Treasurer, Building & Construction Trades Council of Northern Nevada, AFL-CIO):**

We do not support S.B. 87. I have spent a good part of my adult life in labor unions and representing labor unions, first as shop steward, then as business agent, now as an officer in the Building Construction Trades Council of Nevada. Discrimination or termination for no cause has been a major issue with employers since the day I represented my first working person.

We have a problem with the idea that we can create a law that governs whether a person smokes at home and does not smoke on the job. If smoking does not affect the way a person performs the job, can we say there is reason not to hire or to terminate and circumvent collective-bargaining agreements that may have been in place for years? I know that the one at Renown has been in place for almost as long as I have been in Reno. We still were negotiating when I moved to Reno in 2001. The one in Elko has been in place since 1997. I negotiated the first agreement at the Elko hospital. Those collective agreements, the just-cause termination clauses in those agreements, would be null and void.

We are walking a slippery slope if an employer can decide what an employee does off the job is going to be dangerous. Playing basketball, for example, and hurting a knee. Could the employer terminate that employee because it might interfere with job performance? If the employer thinks the employee's medical costs to get that knee repaired down the road are the employer's liability, that employer might think there is the right to terminate. If we start here, there is no saying that next Session someone might attempt to keep employees from doing things that can get them hurt: playing basketball, jumping out of airplanes,

crawling rock mountain, and riding four-wheelers. In those cases, employers may want to terminate employees because they might get hurt and the employer will be liable for the medical costs. That is basically what we are saying here.

Employers can suspect but cannot prove that thirdhand smoke affects patients. If there were reason to suspect the possibility of harm from thirdhand smoke, employers could set up a locker room in the facility or make sure employees wear clothes they did not wear at home. Then employers could ask whether things from outside are detrimental to the patients.

Employers should consider those questions anyway. It is not only thirdhand smoke that is detrimental. It is smog, pollen and everything else that is packed into the hospital on clothes that can affect patients. Taking precautions is the way to address this, not telling a person not to smoke at home or play basketball in free time.

**Senator Hutchison:**

Would your view of this bill change if there was concrete medical evidence that thirdhand smoke had an adverse health effect on patients? I do not know that changing clothes solves everything, what with everything that is going on with the hair and the skin. Would your opinion change if it were proved there were adverse health effects because of thirdhand smoke?

**Mr. McKenzie:**

It would give me pause to consider that something needs to be done. My first response as a labor representative would not be to tell a person he or she cannot smoke.

As a union steward, I worked in a facility where I regularly had chemicals and substances on my body. If I took them home, they would make my family sick. The solution was not to quit the job. The solution was to have a shower installed. We changed clothes when we got to work; we worked; and at the end of the day, we took a shower and went home but did not take that stuff with us. You can do the same thing coming to work. If there is concern the person is going to bring in something adverse to patients, then set up the facility to make sure that does not occur. Bring in employees, let them shower and wash their hair, put on clean clothes, and at the end of the day change into their street clothes and go home.

**John Russell (Recording Secretary, Northern Nevada Labor Union):**

I do not support S.B. 87. What if a spouse smokes and the employee comes in contact with thirdhand smoke, or walks into a facility and someone is outside smoking? What if that employee associates with a worker who smokes? What if that employee does not smoke but is outside speaking with a smoker on break? What do you do about those circumstances?

**William H. Stanley (Director of Organizing, International Union of Elevator Constructors, AFL-CIO):**

We do not support S.B. 87. The individuals we represent in the International Union of Elevator Constructors work in every single hospital in the State. These individuals come into your hospitals as subcontractors. How will they be affected by such a law? Will they have to refrain from smoking? How do we address those issues in this debate? I can tell you from personal experience, and from representing individuals, that we bring home more issues from working in a hospital than we bring to the hospital.

I worked in a hospital one time and I had a doctor say, "You're not wearing those boots home in the evening, are you?" I said, "Well, sure. They're my work boots."

He said, "No. You're working in the bowels of this hospital in the pits of the elevator, which is the lowest point in the hospital where things collect." He also told me I could not leave and go home to my young family with those things on my body. I had to leave those shoes in the facility, and they discarded them. That is what we did.

I appreciate Senator Hardy's intent. We have smoking-cessation programs in our own health program. We are trying to do everything we can. We know that a healthy workforce is a better workforce. We understand the costs associated with these types of habits, but trying to regulate them in this way is going to create tough situations.

**Chair Atkinson:**

Do we address vendors? They are folks that do not necessarily work for the hospital. But they are there, and we are trying to help and to close some of the loopholes.



**Mr. Hillerby:**

This is simple. We are not talking about whether thirdhand smoke does or does not cause harm. We are talking about how to hire employees who do not smoke. It is for their own good and for the good of people around them. That is all it is. We do not have to screen existing employees and indiscriminately, capriciously and arbitrarily fire them just because they smoke. We would just like to be able to say for our hospital and for others that we have a policy, starting on July 1, 2013 and we do not hire smokers. Whether your wife smokes or you walk through smoke on your way in to the building, what we are talking about here is a hiring practice. We are not trying to solve all the woes of the Earth. We want to have hospitals where all employees eventually will be nonsmokers.

**Chair Atkinson:**

Regarding compliance, we will have to determine what we do about people who are not smoking or who have told us that they are not, but we believe they smoke because they always smell like smoke. Are they always out there with one of the smokers? I am thinking about compliance and where we are going to end up. There is no doubt that someone is going to be questioned and probably wrongly accused of smoking because of always being around their spouses or out on the deck with someone who is a smoker. That is what people are talking about.

**Mr. Hillerby:**

Screening tests can detect nicotine. If you have a suspicion; if the person has always been a smoker; if he or she lied on the application, you can have proof.

**Senator Hardy:**

We do not want to have a flood of new smokers being hired at the hospital. We want to look at this as a starting point, instead of a finishing point.

Senate Committee on Commerce, Labor and Energy  
February 20, 2013  
Page 18

**Chair Atkinson:**

We now will close the hearing on S.B. 87. We are adjourned at 2:42 p.m.

RESPECTFULLY SUBMITTED:

---

Wynona Majied-Martinez,  
Committee Secretary

APPROVED BY:

---

Senator Kelvin Atkinson, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	4		Attendance Roster
S.B. 47	C	3	James Westrin	Written Testimony
S.B. 47	D	1	Charles A. Mohler	Proposed Changes – Mortgage Advisory Council
S.B. 87	E	3	Senator Joseph P. Hardy	Proposed Amendment 7580
S.B. 87	F	1	Senator Joseph P. Hardy	Nevada Statute