

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

**Seventy-Seventh Session
April 24, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:42 p.m. on Wednesday, April 24, 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. Settlemeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Assembly District No. 24
Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

James V. deProsse, Acting Administrator, Manufactured Housing Division,
Department of Business and Industry
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
J. David Wuest, R.Ph., Deputy Secretary/Inspector, State Board of Pharmacy

Liz MacMenamin, Vice President, Government Affairs, Retail Association of Nevada
Chris Ferrari, Consumer Healthcare Products Association
Kevin J. Kraushaar, Esq., CAE, Consumer Healthcare Products Association
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Kristin Erickson, Nevada District Attorneys Association
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Rocky Finseth, Nevada Land Title Association
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Vanessa Spinazola, Legislative & Advocacy Director, American Civil Liberties Union of Nevada
James R. Elste, Chief Cyber Strategist, Nevada Cyber Initiatives
Jack Mallory, Southern Nevada Building and Construction Trades Council
Bill Uffelman, President and CEO, Nevada Bankers Association
Randi Thompson, Nevada State Director, National Federation of Independent Businesses

Chair Atkinson:

I will open the hearing on Assembly Bill (A.B.) 22.

ASSEMBLY BILL 22: Revises provisions governing the continuing education requirements for certain persons licensed to perform work of limited scope on manufactured or mobile homes or other similar structures. (BDR 43-358)

James V. deProsse (Acting Administrator, Manufactured Housing Division, Department of Business and Industry):

Assembly Bill 22 allows the Administrator of the Manufactured Housing Division, Department of Business and Industry to waive the license renewal requirement of obtaining 8 hours of continuing education units (CEU) for a specialty serviceperson. We do not want to eliminate the CEU requirements. If there are significant changes in regulations, safety standards or codes, we want to be able to require CEUs. Of the five types of licenses issued by the Division, the specialty serviceperson license is the only category that requires licensure from another agency as a prerequisite. For example, the State Contractors' Board issues licenses based on passing an exam, experience, referrals and

compliance history. It is an unnecessary burden on a licensee for the Division to require CEUs for similar licensure. We require additional licensure because *Nevada Revised Statutes* (NRS) prohibit work on manufactured homes or personal property by persons not licensed by the Division. All of our structures fall into those two categories. None of the surrounding states requires CEUs for equivalent license renewals. Having the authority to waive the requirement will not adversely affect public safety. We have had six companies not renew their licenses because there are not CEU courses available. There are not courses available. There is not enough of a population for courses to be developed. We have expanded the CEU option and allowed Occupational Safety and Health Administration classes to count toward the CEU license requirements. That is the only way we have been able to accommodate the requirements.

Senator Hutchison:

Do you want to rely on licensure from State boards for these specialties?

Mr. deProsse:

Yes. For example, the National Electric Code has a portion dedicated to manufactured housing. Those licensees have met the qualifications when licensed by the State Contractors' Board, but NRS prohibits them from working on manufactured homes without Division licensure. There are limited options for our constituents. There is a need for these specialty servicepersons.

Senator Settlemeyer:

When did we put CEUs into statute? I remember having the discussion that there would not be enough classes to fulfill the requirements.

Mr. deProsse:

I do not know.

Chair Atkinson:

Did anyone representing the owners of manufactured home parks talk to you about an amendment?

Mr. deProsse:

No. There was industry interest relative to commercial coaches on another bill.

Chair Atkinson:

I will close the hearing on A.B. 22. I am opening the hearing on A.B. 39.

ASSEMBLY BILL 39 (1st Reprint): Provides restrictions on the retail sale of certain products that are ephedrine and pseudoephedrine based. (BDR 54-218)

Brett Kandt (Special Deputy Attorney General, Office of the Attorney General):

This bill authorizes the implementation in Nevada of the National Precursor Log Exchange (NPLEx), a real-time stop sale electronic tracking system for use by pharmacies and law enforcement to prevent the unlawful sale of nonprescription pseudoephedrine (PSE) for use in the manufacture of methamphetamine (meth). Assembly Bill No. 148 of the 74th Session and S.B. No. 112 of the 74th Session were enacted to control the sale of over-the-counter medications that could be used in the manufacture of meth. Meth precursors were subsequently placed behind drug counters, and retailers are required to adhere to certain restrictions of their sale. State and federal laws limit the amount of nonprescription PSE consumers can buy, with the goal of preventing the diversion of PSE for meth production. Assembly Bill 39 will update the process and safeguards by authorizing the use of the latest available technology to stop unlawful purchases of PSE.

Since 2007, the Substance Abuse Working Group has studied the legal, social and economic impact of meth use in this State and reported to the Legislature on its findings. The Substance Abuse Working Group, chaired by Attorney General Mastro, has found substantial evidence of continued meth production and abuse around the State. They determined a more effective way to enforce limits on sale of PSE is necessary. Criminals form coordinating teams that make purchases at multiple stores to bypass the sales restrictions and acquire illegal quantities of PSE to manufacture meth. This is commonly referred to as "smurfing."

In order to combat the ongoing problem of meth production and abuse better, the Substance Abuse Working Group has determined that one possible solution may be NPLEx, a multi-state real-time stop sale system funded by the manufacturers of medications containing PSE. The NPLEx system stops unlawful PSE purchases at the point of sale. The NPLEx system is used by pharmacies and law enforcement to track sales of PSE. The technology is available to any state that authorizes the implementation and use of such a system to stop illegal PSE sales.

To date, 26 states have adopted real-time, stop sale technology. I have provided a map ([Exhibit C](#)) identifying the states currently using the NPLeX system. Several states, including California and many East Coast states, are considering legislation authorizing the use of NPLeX. The states in green on the map use the NPLeX system. The NPLeX system monitors all nonprescription PSE purchases in real-time to prevent meth criminals from exceeding legal purchase limits. It also tracks purchases among all participating states so meth producers are unable to cross state lines to obtain PSE illegally. The NPLeX system stops illegal sales in real-time and provides law enforcement with an effective way of using the records already required to identify meth producers. The National Sheriffs' Association passed a resolution in 2009 calling for the implementation of a multistate electronic tracking system. The Consumer Healthcare Products Association represents the U.S. manufacturers of nonprescription PSE. They are working with states to implement the NPLeX system. Real-time, stop sale technology is an alternative to prescription status for PSE. The two states in yellow on the map, [Exhibit C](#), allow PSE under prescription status only. This bill provides an alternative to prescription status. This will result in no new barriers to consumers, impose no new costs on the health care system, allow the State to keep sales taxes generated by over-the-counter PSE sales and meet the law enforcement goal of preventing illegal sales of PSE. Law enforcement agencies are granted real-time Web-based access to NPLeX transaction records at no cost.

I have also provided an aggregated general data chart ([Exhibit D](#)) for all states participating in NPLeX from 2012 and the first 2 months of 2013. This chart shows the number of boxes and grams of illegal PSE blocked and the law enforcement usage per state. The yield of PSE to meth is between 50 percent and 75 percent. One gram of PSE produces approximately between 0.5 and 0.75 grams of meth. Based on the chart, you can see the substantial amount of PSE not turned into meth. There are associated economic, social and environmental costs to consider too.

Section 2 of A.B. 39 authorizes the State Board of Pharmacy to determine whether a real-time, stop sale system is appropriate and available for use by pharmacies and law enforcement agencies in Nevada free of charge. The Board would be required to adopt regulations for use of such a system. Section 3 requires pharmacies to use a real-time, stop sale system if one is approved. It also provides some liability limitations for pharmacies complying with use of the system and prohibits pharmacies from completing a sale or transfer of a product

in violation of applicable law. Section 3 requires the Board to adopt regulations for exceptions to allow for the completion of a sale or transfer of PSE in two situations. First, a sale or transfer is allowed when the pharmacist or an employee of the pharmacy has a reasonable fear of imminent bodily harm. The pharmacist or employee would be allowed to override the system and make the sale or transfer. Second, in the event a pharmacy experiences a mechanical or electronic failure of the real-time, stop sale system, the pharmacist or employee of the pharmacy would be allowed to use the current system and have the purchaser sign in a manual log.

Section 4.5 provides some liability limitations for the Board in the event of a failure or misuse of the real-time, stop sale system. Section 6 limits the quantity of PSE that can be sold to the same person to 9 grams in a 30-day period. That is the federal standard. Finally, section 7 requires retailers of PSE products to consult the real-time, stop sale system if they fall within the scope of section 3.

Senator Hutchison:

This is straightforward and common sense approach to this problem. I am impressed by how much PSE was blocked in the states using the NPLeX system. What impact would implementing this system have on the meth problem in this State?

Mr. Kandt:

When the meth epidemic started approximated 10 years ago, the problem was caused by manufacturing within our State. There are tremendous environmental, economic and social consequences. The Legislature put some safeguards in place in 2007. Those safeguards, combined with efforts by law enforcement, produced a great deal of success in preventing local meth production. The number of large-scale meth producers has decreased substantially. The amount of meth trafficking into the State, especially from Mexico, is still a problem. We still have problems with small manufacturers or one-pot producers. One-pot producers try to obtain illegal quantities of PSE to produce small quantities of meth, often in soda bottles, for their own consumption or sale. The NPLeX system is not a final answer, but it will help. Assembly Bill 39 improves the process by using the latest available technology.

Senator Hardy:

Is this designed to be paid for by a surcharge? Which states are supposed to be blue on the map, [Exhibit C](#)? What is the percentage of meth produced using the bottle method? If a person presents false identification, is the seller liable? I thought we included in the bill that the seller would not be liable, but I cannot find it.

Mr. Kandt:

The manufacturers of nonprescription PSE contribute through the legal sale of their products to fund the cost of the NPLEEx system. That is why it is available free of charge to the states that authorize its use. The map indicates there are active bills authorizing the use of the NPLEEx system, but does not identify them. They are California, Georgia, Pennsylvania, New York and others. There are liability limitations on any pharmacy that complies with the use of the system. Regulations could be developed by the Board to specify the means of compliance by the pharmacy when false identification is presented.

Senator Hardy:

Are the statistics provided from the bottle method of cooking meth? What is the percentage of meth produced using the bottle method versus the amount trafficked in through barrels?

Mr. Kandt:

I do not know how much meth is being trafficked through large volume trafficking. We do not know if every stopped sale indicated on the chart in [Exhibit D](#) was going to be used for the unlawful production of meth. We are working under the assumption that a majority of those sales would have gone to meth production. I do not know how much meth those sales would have produced relative to the total number of grams of meth produced in the Country or State. A lot of meth was prevented from being produced.

J. David Wuest, R.Ph. (Deputy Secretary/Inspector, State Board of Pharmacy):

The Board is in full support of A.B. 39. The documentation needed to participate in the NPLEEx system is already being collected by the pharmacies. It is kept on paper or electronic logs, but is not used anywhere else. A customer can obtain PSE from one pharmacy and then go to another pharmacy across the street to buy more. The systems are not connected.

Senator Hardy:

A person could return to the same pharmacy, then, and unless the pharmacist looked through the log, the customer would be able to obtain illegal amounts of PSE. Correct?

Mr. Wuest:

Some pharmacies have systems that could prevent that from happening. Some chain pharmacies have their systems linked to other stores in the chain but not pharmacies outside the chain. What you described could happen. This bill would bring all pharmacies to the same level.

Senator Hardy:

This is a good system, and it is already paid for.

Mr. Wuest:

The NPLeX system is paid for and the Board will handle inspections through its normal process. There is no economic impact to implementing this bill.

Senator Hutchison:

Section 3 allows a pharmacist to override the system if he or she fears imminent bodily harm. Would that include when a criminal is threatening a pharmacist? If so, how often does that occur? Is there a way to track the fact the pharmacist overrode the system?

Mr. Kandt:

Other representatives can give you a more accurate view of procedure to be followed in those instances. Pharmacists already deal with situations with unreasonable customers. This builds on those techniques.

Senator Settelmeyer:

The NPLeX system has the opportunity to save lives. A few states have banned the sale of PSE without a prescription. It appears that the NPLeX system is just as effective as a prescription-only ban. In the other states using the NPLeX system, are PSE products required to be behind the counter? Would we be able to have PSE products not behind the counter if we use NPLeX?

Mr. Wuest:

It would not be effective to have PSE products not behind the counter. I think the states using NPLeX all require PSE products to be behind the counter.

Liz MacMenamin (Vice President, Government Affairs, Retail Association of Nevada):

The Retail Association of Nevada (RAN) supports A.B. 39. Meth is a truly debilitating drug that causes damage to the user, his or her family and society. The NPLEx system has been a great success in the 26 states using it. The chain pharmacy members of RAN believe Nevada will benefit from using the NPLEx system. A real-time stop sale system will allow our members to monitor sales of PSE products and enable pharmacy employees to stop a sale if a quantity is larger than that legally allowed. The system will allow law enforcement to track and prosecute criminals without affecting law-abiding citizens. Law enforcement will receive fraud alerts immediately. The industry has been using a logbook, but it has not been successful. There is new technology available to connect all pharmacies. Many pharmacies already use an inter-chain connection to monitor across different locations of the same pharmacy. This will allow tracking across pharmacies. The bill does allow pharmacists to proceed with a sale if there is imminent danger, and law enforcement will be notified of the sale immediately.

Chair Atkinson:

Section 3 and section 4.5 of A.B. 39 state there is no liability as long as the pharmacies were not using the system improperly. Correct?

Ms. MacMenamin:

Yes. The Attorney General was helpful in drafting language that would allow a pharmacist or pharmacy staff to conduct a sale or transfer if he or she has a reason to allow the sale and can show it is valid. The liability for handling this properly is included in the bill.

Chair Atkinson:

Pharmacists will be able to assist customers if they feel they need to without fear of a lawsuit. Correct?

Ms. MacMenamin:

Yes. If three or four members of a family were all sick at the same time, the family would have problems buying enough PSE medicine. The pharmacist is able to work with the customer if there is a valid need for more of the drug and make the sale.

Mr. Wuest:

The bill does not prohibit a physician from writing a prescription for a PSE product.

Senator Hardy:

I appreciate the fact that doctors will still be able to write prescriptions. I did some math about dosages. If you have 9 grams of PSE and each dose is 50 milligrams, you end up with 200 doses per month. If you take a dose every 4 hours, you have 50 doses. If there are three or four people in a household who contract a cold within a week of each other, which is normal, you will need more than 50 doses. I like the bill.

Senator Hutchison:

My understanding of the limited liability in section 3, subsection 4, is that a pharmacy is not liable for using the system in a civil action as long as the pharmacy is not negligent or reckless. Any lawyer can claim negligence. If the intent is to allow pharmacies to use the system without fear of lawsuits, I do not think this will accomplish that.

Ms. MacMenamin:

We understand that. We do not want negligent or reckless pharmacists. We do not think there will be a problem with pharmacies that operate in good faith.

Senator Jones:

Please clarify the liability described in A.B. 39, section 3, subsection 4, and the seeming immunity described in section 4.5.

Mr. Kandt:

Section 3, subsection 4, addresses the liability limitation for the pharmacy in using the system. Section 4.5 addresses the liability limitation for the Board in providing the system. The two sections provide liability limitations for two separate entities. The liability limitation set forth in section 3, subsection 4, was based on model legislation used in other states. The liability limitation in section 4.5 was included at the request of the Board.

Mr. Wuest:

Similar language was used in the Nevada County Sheriff Narcotics Task Force in California.

Chris Ferrari (Consumer Healthcare Products Association):

The NPLeX system will enable Nevada to track PSE purchases with other states, specifically looking at the smurfing issue. The newly developed one-pot method uses a 2-liter bottle and creates a hazardous situation. It can provide meth for several users. This will help stop small producers and stop people from crossing state lines to buy PSE. Electronic tracking happens in real-time.

Chair Atkinson:

I remember in 2007 when we put the safeguards into statute. We have to continue to massage these issues because we always seem to get outsmarted.

Kevin Kraushaar, Esq., CAE (Consumer Healthcare Products Association):

The Consumer Healthcare Products Association is the national trade association representing nonprescription PSE manufacturers. We are strongly in support of A.B. 39. The NPLeX system provides interconnectivity from state to state. Within seconds, a pharmacist will receive a stop sale or clearance alert. There is a 3.6-gram daily limit and 9 gram limit every 30 days. Approximately 60 percent of pharmacies in the Nation are already using the NPLeX system on a storewide or chain-wide basis. This will connect all pharmacies. The NPLeX system prevents someone from going store to store because it is a real-time stop sale alert. If a stop sale alert is received and a pharmacist believes he or she is in imminent danger of bodily harm, the pharmacist can override the system to make the sale. Law enforcement will be notified if this happens. It is a real-time notification. Federal law requires all products containing any amount of PSE to be sold from behind the counter. In 2007, Nevada placed all these products under pharmacy-only sales requirements. I agree with Senator Hardy's math regarding dosages.

Senator Hutchison:

How will small pharmacies be affected? Is there any concern about the price of legally purchased PSE?

Mr. Kraushaar:

The over-the-counter marketplace amongst manufacturers and retailers is one of the most competitive marketplaces in the entire health care system. It helps keep costs low. Small and independent pharmacies would be required to participate in the NPLeX system. There will be interconnectivity with all pharmacies in the system. An individual pharmacy will not be able to view information from other pharmacies, though. Each pharmacy will only have its

in-store data available. Law enforcement will be able to see the entire spectrum of what is happening with PSE sales. It will be easier to implement the NPLeX system in Nevada than some other states because PSE is only sold in pharmacies.

Mr. Wuest:

All that is needed to participate in NPLeX system is Internet access. There is a time rollout built into the bill to ensure all pharmacies can comply with the new requirements.

Brian O'Callaghan (Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department supports the bill. We support anything that can reduce the manufacture and use of meth.

Kristin Erickson (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports the bill.

Robert Roshak (Executive Director, Nevada Sheriffs' and Chiefs' Association):

The Nevada Sheriffs' and Chiefs' Association supports the bill.

D. Eric Spratley, Lieutenant (Washoe County Sheriff's Office):

The Washoe County Sheriff's Office supports the bill.

Chair Atkinson:

I will close the hearing on A.B. 39. We will open the hearing on A.B. 83.

ASSEMBLY BILL 83: Revises provisions governing certain disbursements of money from escrow accounts. (BDR 54-686)

Assemblywoman Irene Bustamante Adams (Assembly District No. 42):

When an individual purchases a home, the final step in the process is a closing with a title or escrow company. The title and escrow companies act as independent third parties between the buyer and seller. In that role, the title and escrow companies ensure both parties in a real estate transaction have signed the necessary documents and have met the due diligence requirements. Title and escrow companies also handle the dispersing of all funds associated with a real estate transaction. The original law was enacted in 2009, at the peak of the real estate market, when it was discovered that some individuals were

attempting to pass fraudulent cashier's checks. It has served Nevada well. However, there is a need for clarity to avoid unnecessary delays in the process.

Rocky Finseth (Nevada Land Title Association):

Section 1 of the bill amends NRS 645A regulating escrow companies in the State. We are removing the language "is payable in this State" on page 2, line 9. On line 10, we have replaced "located" with "authorized to do business." Section 2 of the bill amends NRS 692A relating to title companies. The changes are similar to those in section 1. The bill originated because at the peak of the real estate market, individuals tried to pass fraudulent cashier's checks. The cashier's check I provided ([Exhibit E](#)) is being drawn from a US Bank located in Reno. However, the funds are being drawn from a US Bank in Minneapolis, Minnesota. Some title and escrow companies have interpreted current statute to mean this check is not acceptable and they put a hold on real estate transactions. The changes in this bill clarify that US Bank is authorized to do business in the State and the check is drawn on an institution in the State, so the transaction can close that same day. I do have a proposed friendly amendment ([Exhibit F](#)) changing the effective date to July 1.

Senator Hutchison:

Are you satisfied with the word "authorized?" Can someone argue if a business is authorized to do business in the State?

Mr. Finseth:

We are comfortable with the language. In order to be authorized to do business in the State, a business must have a business license issued by the State.

Chair Atkinson:

I will close the hearing A.B. 83. I will open the hearing on A.B. 492.

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

Assemblywoman Irene Bustamante Adams (Assembly District No. 42):

The Sunset Subcommittee of the Legislative Commission was created by S.B. No. 251 of the 76th Session to review boards and commissions to ensure efficiency. I chaired the Subcommittee. We made several recommendations to the Legislative Commission to terminate, modify or continue several boards and commissions. The Credit Union Advisory Council advises, consults and makes

recommendations concerning credit unions to the Commissioner of the Division of Financial Institutions, Department of Business and Industry (B&I). The Council was created, in part, to ensure larger, for-profit counterparts did not overshadow credit unions. The Commissioner is subject to the administrative supervision by the Director of B&I and is authorized to adopt regulations about credit unions only with the advice and consent of the Council. The Director of B&I expressed concern that regulated industries, such as credit unions, should not supervise the regulator, directly or indirectly. We recommended the Council be divested of any authority over the Commissioner and act in a purely advisory role.

George E. Burns (Commissioner, Division of Financial Institutions, Department of Business and Industry):

The B&I is concerned with the supervisory authority the Council has over the regulator of the industry. The savings and loan crisis in the 1980s and 1990s and the current financial crisis taught the financial industry that the regulator of any industry should be fully independent from oversight by that industry. No other industry I oversee has similar supervisory authority over the regulator. The B&I supports the bill. It was reached in consensus with the credit union industry that recognizes the inherent conflict of interest.

Chair Atkinson:

I will close the hearing on A.B. 492 and open the hearing on A.B. 181.

ASSEMBLY BILL 181: Makes various changes to provisions governing employment practices. (BDR 53-48)

Assemblyman David P. Bobzien (Assembly District No. 24):

I have submitted my written testimony ([Exhibit G](#)) explaining the bill. I have also submitted the Council of State Governments' handout ([Exhibit H](#)) to which I referred in my testimony. Social media and social media privacy are emerging areas of law and legislation. We need to be ahead of these issues in concern for privacy. In this day and age, it makes sense for an employer to look at the public aspects of an applicant's digital identity. That is not the focus of this bill. The intent of this bill is what can be seen after logging-in to an account. Assembly Bill 181 is intended to make it clear that prospective employers are not permitted to ask prospective or current employees for personal login information. The bill does differentiate between a social media account and an account an employee may maintain for the express purposes of the business.

For example, an employee who maintains a company's Twitter account would not be subject to the privacy protections for that specific Twitter account. The financial industry has concerns complying with emerging regulations from the Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA) on these same issues. Some of the initial amendments presented were too broad. We will work to come up with an acceptable solution.

Senator Hardy:

Would this apply to private contractors for the military or employees required to obtain top-secret clearance?

Assemblyman Bobzien:

This is not intended to impede law enforcement proceedings or investigations. I do not know how it would affect background checks. It is not my intention to preclude someone from going through a necessary background check. I think that is a matter of federal law.

Senator Settlemeyer:

Could we say "unless necessary to comply with FINRA" to solve these issues?

Assemblyman Bobzien:

That is probably what we will do. I saw some initial broad exceptions saying, "if the account could be used for business." That is too broad. The SEC has issued new regulations on how individuals and businesses disclose information through social media accounts. I am reticent to comply completely with the SEC regulations. I want to ensure A.B. 181 is very narrowly tailored.

Senator Hutchison:

It may need to be industry-specific. Have any other industries expressed concern about this?

Assemblyman Bobzien:

A number of businesses testified in the Assembly Committee on Commerce and Labor that this bill will not prohibit such a request from going forward if there were a law enforcement issue. They supported the proposal. No one else has asked for an exception to be made. Most employers understand this is not a good practice in which to engage.

Senator Jones:

There is not a definition of “employer” in the bill. There are varying definitions of “employer” in statute. Does this include the federal government, State government or employers of less than 15 persons? Those are some of the varying definitions I found.

Assemblyman Bobzien:

I intend for it to be as broad as possible. If there are federal supremacy issues with federal employees, then the federal law would trump this. I do not mean to have a numeric employee threshold.

Vanessa Spinazola (Legislative & Advocacy Director, American Civil Liberties Union of Nevada):

The American Civil Liberties Union of Nevada supports A.B. 181. The social media protection will increase privacy, and narrowing credit checks will increase equality. The things we do and say online leave an ever-growing trail of personal information. We should not have to choose between new technology and privacy. Employers do have a legitimate interest in monitoring employees’ work to ensure efficiency and productivity. Electronic surveillance can go beyond legitimate management concerns and become a tool used to spy on employees. We want to avoid that. The bill does not prohibit legitimate, work-related oversight. It would ensure employees’ private information remains private. We should expect in our offices the same standards of privacy we expect offline. Sharing a social media account password may expose a lot of information about a job applicant, such as age, religion, ethnicity or pregnancy that an employer is not permitted access to in a typical job application process. This could lead to discrimination and open employers up to potential lawsuits. Other states have similar laws we would like to review before submitting any amendments. The bill allows employers in the financial sector to comply with SEC rules and regulations. Using credit history to screen job applicants can disproportionately burden African-American and Latino candidates; their credit scores tend to be between 5 and 35 percent lower than those of white workers. The U.S. Equal Employment Opportunity Commission has sued at least two companies for reasons related to credit checks. There is also concern that employer credit checks may be discriminatory under civil rights laws. Employers need to show the use of credit checks is job-related and is a business necessity. Assembly Bill 181 moves towards that by making certain exceptions.

Senator Hutchison:

How does this bill allow financial sector employers to do what is necessary under SEC obligations?

Ms. Spinazola:

The bill divides personal social media accounts and employer social media accounts. Personal social media accounts are covered in section 2, subsection 1, and employer social media accounts in section 2, subsection 2. Social media accounts occasionally used for work purposes would be governed by the employer social media accounts portion of the bill. I will research the federal preemption issue.

Senator Hutchison:

Do you see a need for employers to have limited access to social media accounts used for personal and business purposes?

Ms. Spinazola:

Yes. It is a gray area. I want to look at what other states have done.

James R. Elste (Chief Cyber Strategist, Nevada Cyber Initiatives):

I support A.B. 181. I am a subject matter expert in cyber security, privacy and identity management. I want to highlight two aspects of the bill. First, requiring access to social media accounts as part of the hiring process is contrary to accepted hiring practices. Second, we need to consider the implication of this practice on the growing use of social media accounts as digital credentials outside of individual social media environments. Hiring managers are trained not to ask certain questions regarding an applicant's age, religion or medical condition. If hiring managers were given access to a social media account, that information could be readily accessible. Those questions and answers expose employers to potential liability and discrimination charges. This bill provides sound advice to employers to avoid a compromising position by accessing a social media account. We are seeing increased use of social media accounts as de facto digital credentials across multiple Websites to conduct a variety of transactions. It is imperative to establish and maintain the security and integrity of these digital credentials. Sharing account information and passwords compromises that integrity. You should never share your password. Employees would violate the terms of service of many Websites and be in a breach of contract by allowing someone else access to their accounts. Allowing access to social media accounts could expose an individual's pseudonymous identity.

People often use pseudonymous accounts to protect their identity. Many times these people suffer from domestic abuse, cyber stalking or cyber bullying. We do not want to compromise pseudonymous identities. Finally, this is fundamentally a question of individual privacy rights. Prospective employers are not entitled to access an individual's account as part of the employment process. This will provide clear guidance on appropriate employment practices, support the trustworthiness of digital credentials and protect individual privacy.

Jack Mallory (Southern Nevada Building and Construction Trades Council):

The Southern Nevada Building and Construction Trades Council supports the bill. We do not believe this bill prohibits an employer from looking at the public face of a prospective employee. It does protect the private information of an employee. We also support not allowing credit reports as a condition of employment for some employers. The financial downturn has had a devastating impact on the construction industry and its employees. Many of those employees would be at a disadvantage if credit reports were made a condition of employment.

Bill Uffelman (President and CEO, Nevada Bankers Association):

The Nevada Bankers Association supports the intent of A.B. 181. The securities industry has no interest in accessing the social media accounts of prospective or current employees when those accounts are used exclusively for personal use. Many broker-dealers use personal accounts for business purposes. The FINRA regulations require employers to monitor employees' business communications and maintain logs. This is done through key word searches and employees accessing social media accounts through an interface, which then collects relevant data. Assembly Bill 181 would conflict with the duty of brokers to supervise, record and maintain business-related communications as required by FINRA. A personal account that is used for business purposes must be treated as a business account. The National Association of Securities Dealers' (NASD) Rule 3010(d) states, "Securities firms must establish procedures for the review of registered representatives' written and electronic business correspondence." The FINRA Regulatory Notice 10-6 states, "Firms must adopt policies and procedures reasonably designed to ensure that their associated persons who participate in social media sites for business purposes are appropriately supervised" It goes on to say, "The content provisions of FINRA's communications rules apply to interactive electronic communications that the firm or its personnel send through a social media site." The FINRA Regulatory Notice 11-39 requires a firm's procedures:

must be reasonably designed to ensure that interactive electronic communications do not violate FINRA or SEC rules, including the content requirements of NASD Rule 2210, such as the prohibition on misleading statements or claims and the requirement that communications be fair and balanced.

New Jersey uses the language: "Nothing in this act shall be construed to prevent an employer from complying with the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations." They also define personal account to exclude accounts used for business purposes. Michigan's language states,

This act does not prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization ...

I have submitted a proposed amendment ([Exhibit I](#)) to delete "It" on page 2, line 3, and insert "Unless an account is being used for business purposes, it." We do not want to prohibit the industry from doing what they are required to by other laws and regulations. The provisions in section 2, subsection 2, do not provide the same protections.

Senator Hardy:

I am concerned with your proposed language of "unless an account is being used for business purposes." Would this affect someone who has a personal side business that is not related to the employer who wants access to the social media account? For example, if a broker made and sold oatmeal on his or her free time and used a social media account to conduct his or her oatmeal business, would this apply?

Mr. Uffelman:

I wrote the amendment quickly. It is not my intent for this to apply to anyone unless the individual is involved in the business that is required to monitor activity.

Senator Hutchison:

We could include the word "regulated." The amendment would read, "Unless an account is being used for business purposes in a regulated business reasonably required access to an employee's social media account, it" That would narrow the scope.

Mr. Uffelman:

Yes, that might work instead. We could model it after New Jersey, which has language saying nothing prohibits an employer from doing what is otherwise required by law.

Randi Thompson (Nevada State Director, National Federation of Independent Businesses):

The National Federation of Independent Business supports A.B. 181. Our concern is in section 3 regarding the use of credit reports. Employers face increasing challenges to find information about employees. Human resources representatives are instructed not to discuss former employees. A credit report is one of the last tools the hiring process has left. There is adequate flexibility in the bill to allow a credit report to be used for positions reasonably related to credit information. This bill will protect people adversely affected by the economic downturn and allow employers the ability to use a credit report when necessary.

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Chair Atkinson:

I will close the hearing on A.B. 181. The meeting is adjourned at 3:33 p.m.

RESPECTFULLY SUBMITTED:

Caitlin Brady,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 39	C	1	Brett Kandt	Map
A.B. 39	D	1	Brett Kandt	Chart
A.B. 83	E	1	Rocky Finseth	Copy of a Cashier's Check
A.B. 83	F	1	Rocky Finseth	Proposed Amendment
A.B. 181	G	5	Assemblyman David P. Bobzien	Written Testimony
A.B. 181	H	3	Assemblyman David P. Bobzien	Council of State Governments Handout
A.B. 181	I	1	Bill Uffelman	Proposed Amendment