

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

**Seventy-Eighth Session
April 27, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:37 p.m. on Monday, April 27, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus

COMMITTEE MEMBERS ABSENT:

Assemblyman Paul Anderson (excused)



GUEST LEGISLATORS PRESENT:

Senator Patricia Farley, Senate District No. 8
Senator James A. Settelmeyer, Senate District No. 17

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Connie Jo Smith, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Erin McMullen, representing Nevada Resort Association
Sean Stewart, Executive Director, Nevada Contractors Association, and
representing Las Vegas Chapter, Associated General Contractors
Joanna Jacob, representing Las Vegas Chapter, Associated General
Contractors; and Nevada Contractors Association
Jack Mallory, representing Southern Nevada Building and Construction
Trades Council
Russell Smithson, representing Southern Nevada Chapter, NAIOP,
Commercial Real Estate Development Association
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro
Chamber of Commerce
Margi Grein, Executive Officer, State Contractors' Board
David Brown, Board Counsel, State Contractors' Board
Vance Farrow, Industry Specialist, Health and Medical Services, Office of
Economic Development, Office of the Governor
Keith L. Lee, representing Board of Medical Examiners
Jenny Reese, representing State Board of Podiatry
Bryan Gresh, representing State Board of Osteopathic Medicine
Jeanette K. Belz, representing Nevada Psychiatric Association
Kelly Martinez, Government Affairs Officer, Office of Administrative
Services, City of Las Vegas
Sandra Lowery, President, Board of Examiners for Social Workers
Victoria Carreón, Director of Research and Policy, Guinn Center for Policy
Priorities
Steven Burt, Secretary/Treasurer, Board of Examiners for Alcohol, Drug
and Gambling Counselors
Jennifer J. Gaynor, representing Nevada Health Care Association

Chairman Kirner:

[Roll was called, a quorum was present, and protocol was explained.] I will open the hearing on Senate Bill 256 (1st Reprint).

Senate Bill 256 (1st Reprint): Revises provisions relating to the civil liability of innkeepers. (BDR 54-1018)

Senator Patricia Farley, Senate District No. 8:

I am here to present Senate Bill 256 (1st Reprint) for your consideration. What does S.B. 256 (R1) do? Hotel operators are expected to provide an environment that is safe and secure for guests on their property. As early as the year 1367 in England, the innkeeper has been responsible for the protection of personal property of his or her guests. The Nevada hospitality industry has an undisputed reputation for providing world-class service. When guests stay at hotels in our state, it is important that they know the extent to which their valuables are protected and whether they need to make extra accommodations to guard against loss.

Currently Nevada limits the liability of an owner or keeper of any hotel, inn, motel, motor court, boardinghouse, or lodging house in this state for the loss of or damage to certain personal properties brought by the patron onto the hotel premises, including personal property left in the motor vehicle.

In 2011, the Nevada Supreme Court ruled that the language of the current law does not shield an innkeeper from liability for the loss of or damage to a motor vehicle. Therefore, S.B. 256 (R1) seeks to limit an innkeeper's liability for the loss of or damage to a patron's motor vehicle brought onto the premises of the innkeeper and not just the contents of the vehicle.

I urge you to support this legislation.

Chairman Kirner:

This went through the Senate 21 to 0?

Senator Farley:

Yes.

Chairman Kirner:

Were there any issues that you needed to correct or change?

Senator Farley:

No. Everyone was in favor of it as a good piece of legislation.

Erin McMullen, representing Nevada Resort Association:

On behalf of the Nevada Resort Association, we want to thank Senator Farley. I am here to answer any questions and give additional details, if the Committee would like. Basically, we are trying to make the car itself and the contents of the car held to the same gross negligence standard.

Assemblyman Nelson:

Is gross neglect the standard in the rest of the statute also?

Erin McMullen:

Yes. You will see that this bill is a first reprint. When we originally brought this bill forth, we sought to add in the language "property, including without limitation, the motor vehicle or the property inside." That was confusing because the subsections 2, 3, and 4 dealt with issues where the property could be in the safe or limited to \$750 in liability. So we separated out its own subsection, but yes, that applies to the other contents of that section.

Assemblywoman Carlton:

Thank you, Ms. McMullen, for coming to speak with me about this. We had a conversation as to whether this would affect employees in the employee parking garage, but because this is an innkeeper status, it is a relationship between the innkeeper and the customer. I was fine with that, but later in discussing this with someone, I was reminded that about ten years ago, I handed the keys to my car to a valet. When I got the vehicle back, the front seat was ripped. The car was six months old and I had to get an upholstery job. Luckily, the casino stood behind its word and took care of the repair. Would this take that option away from me going to the casino in the future? The way I read this, it looks as if I might not have been able to get my car fixed.

Erin McMullen:

No, that would not take this option away from you. Any damage to the upholstery of your vehicle would have been under a negligence standard. This bill will take it up to a gross negligence standard just like any contents of a car. If your telephone had been stolen or anything that was not part of the vehicle itself, that would have been treated under the same standard. They would still be liable if you were able to prove that, and if you have insurance, obviously, that would also take care of it.

Assemblywoman Neal:

When I was reading *Arguello v. Sunset Station, Inc.*, 127 Nev. Adv. Op. 29, 252 P.3d 206 (2011), the reason the court ruled a particular way in reading *Nevada Revised Statutes* (NRS) 651.010 is because the law did not speak to motor vehicles or the theft of motor vehicles. The act of adding this language, basically, would be stating that there is no civil liability or adopting the standard of gross negligence. I was uncomfortable with it because I did not understand the way it was pitched to me, as if somehow there were two different standards, when actually there was not a standard for the situation because it was not addressed in the statute. The court could not rule because it was not there for the court to rule on.

Erin McMullen:

I think the issue is that, absent a different standard that is stated in the statutes, it is just a baseline of a negligence standard. In your office, we gave you the example of someone punching in the car window and stealing your iPhone off the front seat. If there was damage or theft to the iPhone, the innkeeper would be held to a gross negligence standard for the contents of your vehicle. Whereas, for the car itself and the damage to the window, that would be just a negligence standard. We are not removing our liability whatsoever or trying to change that. The only thing we are saying is that they should be held to the same standard. They would both be subject to the same standard.

What the court said in the *Arguello* case is that, as the language currently reads, the innkeeper, essentially, is not civilly liable for theft, loss, damage, or destruction of any property brought by a patron upon the premises and property left in a motor vehicle. The court said that the only reason it could not rule that way was because there is no way that a car could be left in another car. If they had intended to say that the motor vehicle itself was included, they would have said so and, frankly, that is simply where this clarifying language or change that we are trying to make comes from.

Assemblywoman Neal:

The *Arguello* case also said, in the footnotes, that NRS 651.010 does not abrogate common law bailment liability as it relates to motor vehicles because it was not addressed in the statute. If I park my car in valet, you get custody and control of my car; this says "not civilly liable." It does not say "not grossly negligent." Section 2 says "not civilly liable," so who is responsible? I get to the valet, you have the ticket, but my car is not there. It says theft, loss, damage, or destruction.

Erin McMullen:

That is a great question, and I think what we are getting hooked up on is that it is not civilly liable, but if you continue reading in that section, it says "in the absence of gross neglect by the owner or keeper." This is just stating that they are not civilly liable unless there is gross negligence on their behalf.

To your question about bailment, obviously, there is a higher duty of care given to the innkeeper or the property. When you temporarily turn your vehicle over, you receive something in return and expect that when your car is brought back from valet, the car will be returned to you in the same condition that you left it in, versus when the car is parked in an open parking lot, whether or not there are police patrolling. The police cannot be in control of every car at every moment all the time. There is a higher duty of care owed, and that would be something that has to be determined by the trier of fact.

Chairman Kirner:

Are there those who are in support of this bill? [There were none.] Is there anyone opposed to the bill? [There was no one.] Are there any who are neutral to S.B. 256 (R1)? [There were none.] Are there any closing comments regarding this bill? [There were none.] I will close the hearing on S.B. 256 (R1) and open the hearing on Senate Bill 223 (1st Reprint).

Senate Bill 223 (1st Reprint): Revises provisions relating to contractors. (BDR 53-984)

Senator James A. Settelmeyer, Senate District No. 17:

As Chairman of the Senate Commerce, Labor and Energy Committee, I thought it was important that I come and admit that the Senate made a mistake, and I would like you to correct that error. Senate Bill 223 (1st Reprint) came to my Committee, and it had issues, problems, and concerns. I had interested parties working on these issues and concerns trying to come to a compromise from both sides. Unfortunately, at the very end, that created a situation where they could not come to a compromise; therefore, I had them come to my office and a compromise was achieved.

That being said, one of the things within the bill that was not part of the compromise is in section 2, subsection 1, paragraph (b). Everything was supposed to go to a one-year limitation within the bill. Unfortunately, we did not catch this when I went to the floor in the rush to get everything out on time. Where it says 180 days, we intended that to state one year. The essence of the bill was a situation where prime contractors were doing jobs and their subcontractors were working for them. Unfortunately, the

subcontractor would not pay into a fund for union benefits and things of that nature. Regrettably, some of these people are not finding out for three or four years.

Of course, the prime contractors wanted to say 30 days so that they would have the ability to redact that money from the subcontractor to make sure they would not have to pay for it. However, 30 days was far too short a time frame for those union funds to determine the money was owed. Therefore, what is in front of you is a compromise in that respect, and I am here also to make sure that those individuals do not try to get a different bite at the apple. I think the compromise reached between both parties was fair, and I am trying to make sure neither one of them tries to renegotiate in front of you. That is why I am here today and, also, to correct an error that was allowed to pass out of the Senate that was supposed to state one year.

Chairman Kirner:

Is there other testimony on this bill?

Sean Stewart, Executive Director, Nevada Contractors Association, and representing Las Vegas Chapter, Associated General Contractors:

We appreciate Senator Settelmeyer's work on this bill, as well as our conversations and negotiations with labor. This issue is brought forth and has to do with notice and the ability of the contractor to receive notice so that action can be taken and the money can be paid in a timely manner. Before, there was no notice requirement. We have put it into this section of law so that notice can be given.

Joanna Jacob, representing Las Vegas Chapter, Associated General Contractors; and Nevada Contractors Association:

I am here to walk you through the bill and talk to you about some of the key parts where we compromised. Starting with section 1, this is the section where we added the requirement for notice. Under Nevada law, the prime contractor is liable for things that happen on the job, but we asked that the notice be included here to say if the notice is not given as set forth in this bill, they do not assume extra liability for the payments of another person on the job.

We also made it clear in this section that the contractor is not liable for liquidated damages or interest or attorney's fees on an action to collect if that should happen. The point of this bill, and some of the changes that we made, was to try to bring this to resolution quicker on the job. Hopefully, that will help.

Section 2 is the statute of limitation period that Senator Settlemeyer mentioned. We moved it to a one-year statute of limitation for any claim under this chapter, and that is regardless of whether you are an in-state or out-of-state contractor.

I want to draw your attention to the next big change in section 4. This was part of the last meeting we had in Senator Settlemeyer's office to try to come to a compromise. A lot of the opposition we heard in the Senate was that sometimes when hours are reported on a job to the union, those hours are not reported to the trust fund until the following month. Sometimes the only thing reported were the hours worked without any kind of identifying information about a project location, so they were not able to identify the general contractor. We added the language beginning with, "Upon commencement of work on a project, any prime contractor or subcontractor participating in a health or welfare fund or any other plan for the benefit of employees is required to notify such fund or plan of the name and location of the project so that the fund or plan may protect potential lien rights under NRS 108.221 to 108.246, inclusive." This was a key part of the compromise that we reached on the Senate side.

Section 5 is where we moved on the notice that Senator Settlemeyer mentioned. We had a 30-day notice on the original proposal, but it was impossible to comply with. So we ran it to a 45-day period that the union trust fund or any kind of trust fund would have to figure out if a payment had been made, improperly made, or not made at all. That period runs from when the payment is deemed delinquent. That provision is in section 5, subsection 1. I will let Mr. Mallory explain that when he testifies. I think there are varying definitions of "deemed delinquent," but it is usually plus or minus 15 days after the payment is due. That was a term that was used because it is a date certain that all trust funds use when they determine something to be delinquent. We wanted to trigger the notice period to run from something that could be ascertained. A lot of the trust funds we were working with had different due dates, and this was our attempt to find common ground.

After this, there is a 45-day period in which they have to figure out if there is a discrepancy or an issue. After the expiration of that 45-day period, they must give their notice within 15 days. What this really means is that the pre-lien notice, by the time we go through all these steps, usually works out to be several months later. That is essentially the compromise we reached.

Chairman Kirner:

If I understand your testimony, the contractors and the unions are in agreement on this bill, as it now stands, save for one change. Is that true?

Senator Settlemeyer:

Yes, we have met with Mr. Mallory and tried to find a compromise that all parties could try to live with. This did not give either side what they wanted, so they are probably both a little mad.

Chairman Kirner:

But is that not good policy sometimes?

Senator Settlemeyer:

Maybe.

Assemblywoman Kirkpatrick:

I think the intent of this is to ensure that the prime contractor, before the last draw or the final payment of retention money, has the ability to go in and lien that so they can pay the trust fund correctly. Is that the intent?

Senator Settlemeyer:

That is the intent, obviously, with the concept of the 45 days after declaring of delinquency. We may not be able to get that if the job is a short job, but most jobs take three or four months, and they will have the ability to make sure the person has built out and they can hold that last bit of retention if there is money owed. That was the desire of making it much shorter; however, upon hearing the issues and concerns from Mr. Mallory, I did not feel it was appropriate to just do a straight 30 days. That is why we added upon declaration of delinquency. We went to 45 days to try to give enough time.

Assemblywoman Fiore:

Is there a penalty in this bill for the contractors who do not give notice about the trust funds?

Senator Settlemeyer:

I am not familiar with that. However, no, it is not within the bill.

Assemblyman Ellison:

There have to be checks and balances that are already in this bill. My concern is what if somebody said, "Hey, I made the payment; do not hold my 5 percent back," and come to find out, it was not made. Apparently, they will need to have someone sign off to say yes, go ahead and release the 5 or 10 percent

they are holding back to authorize it to be signed off to where they can pay them, is that correct?

Senator Settlemeyer:

This law is not going to be perfect. It is looking to do better than the situation we had which let people go out four years and then not have any ability to reach backwards when you find out you owe someone \$130,000. Clearly, in most cases, the job is already done, the subcontractor is gone and probably went bankrupt, especially in the recent economy we had, and there is no ability to reach back; then the prime contractor is stuck with the bill that they had already paid the subcontractor the money for. This bill seeks to find a better balance by going to one year. Will the situation still potentially occur as you indicated? Probably so. This is meant to be an improvement in the situation.

Assemblywoman Carlton:

This is really more between the prime contractor and the subcontractor as to who is responsible for paying the benefits. The benefits get paid by one or the other. This just gives a little more level playing field between the prime contractor and the subcontractor. That is really the compromise about who is actually going to pay the bill that is owed.

Senator Settlemeyer:

The concept here is to make sure that the debt is a responsibility to be paid. However, what this bill seeks to do is ensure that the prime contractor has the ability to know when a subcontractor has not paid. That way they can ensure that it is paid, or they will pay it, but try to get the money from that subcontractor before (a) the subcontractor leaves town, or (b) goes bankrupt.

Assemblywoman Carlton:

The union benefit plan, the Taft-Hartley plan, gets paid no matter what. It is just a decision as to who pays it.

Senator Settlemeyer:

What we are asking in this bill is that they are given up to a year, but we are trying to get the notice that the bill is due. We do not want to create a situation that has happened in the past: the bill is due three or four years later. That, to me, is problematic.

Assemblyman Nelson:

Generally speaking, in the contract between the prime contractor and the subcontractors, the subcontractors agree that they are going to make all these payments, right? But there is no privity of contract between the subcontractors and the union or the trust fund, is that not correct?

Sean Stewart:

Yes, that is correct. There is usually a relationship between the general contractor and the subcontractor. The problem we were having is that, oftentimes, the general contractor is not aware what agreements the subcontractor himself has with other entities, including trust funds. The general contractor may have never been aware that there was a trust fund that needed to be paid. They had paid the money to the subcontractor and assumed he had done the right thing.

Assemblyman Nelson:

I understand, but if nobody is paid, does the trust fund have a remedy? Typically, they would go to the contractor, and say, "Hey, you have got to supervise your subcontractors and get this paid." This is changing it so that they can only do that for a year, is that correct?

Sean Stewart:

This does not change any relationship between the trust fund and the contracting party, which would be the subcontractor or the general contractor. They still have all their rights and remedies to collect the money that is owed through contract. The only thing this does is allow notice to be given to the general contractor that there may be an issue.

Chairman Kirner:

Are there those who are in support of this bill?

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:

We appreciate the opportunities we were given by Senator Settelmeier, as well as the diligent work of the Associated General Contractors of southern Nevada, Nevada Contractors Association and their representatives, and the open dialogue we were able to engage in on this bill.

The thing that really helps us to support this bill more than anything else is the requirement that the subcontractor provide notice to the trust funds. That is probably the most important thing, secondarily to the actual trigger date for the requirement to provide the notice to the general contractor.

I want to make one thing clear: the trust funds do not automatically go to the general contractor if somebody is late paying a bill. There is a series of processes that the trust funds go through. They go to the subcontractor themselves. They say, "You are late on your bill. You need to pay." If the subcontractor has the ability to pay, then they pay. If they are going to be a week late, they say we are going to be a week late. Usually the best remedy

is open and honest discussion and communication between the parties. We have always viewed general contractor claims as being the last recourse, the last source of funds that we pursue when collecting trust fund contributions. There are always contractors' license bonds; there are surety bonds that protect the trust funds. Unfortunately, historically it has been practice to pursue those collections because of the liability that is written into the law against those general contractors.

We appreciate the opportunity to participate. There was some discussion during Ms. Jacob's testimony about the 45-day period, and I would be happy to elaborate on that.

Chairman Kirner:

I appreciate your working with the other side and coming together with a sound compromise.

Russell Smithson, representing Southern Nevada Chapter, NAIOP, Commercial Real Estate Development Association:

We are in support of the bill as compromised, and support the bill for reasons previously put on the record.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

We would also like to thank the efforts brought forth today regarding this compromise legislation. We believe that it makes practical sense and clarifies the obligations that have been brought forward regarding Senator Settlemeyer's discussion today. We would like to offer our support.

Chairman Kirner:

Are there questions from the Committee? Seeing none, are there others in support? [There were none.] Are there any in opposition? [There was no one.] Are there any who are neutral? [There was no one.] Would the bill sponsor like to make a closing statement? [He declined.] We will close the hearing on S.B. 223 (R1). We will move to Senate Bill 50 (1st Reprint).

[Senate Bill 50 \(1st Reprint\)](#): Makes various changes to the regulation of contractors by the State Contractors' Board. (BDR 54-387)

Margi Grein, Executive Officer, State Contractors' Board:

With me today is David Brown, legal counsel for the State Contractors' Board. Senate Bill 50 (1st Reprint) addresses some housekeeping issues ([Exhibit C](#)). In addition to the testimony that we gave in the Senate, we have one

amendment that was inadvertently left off the reprint, and I would ask that Mr. Brown clarify that for us.

David Brown, Board Counsel, State Contractors' Board:

In the bill's first reprint, in section 2, there was an amendment which added a new subsection 4. In the prior subsection 4—which in the bill's first reprint is subsection 5—paragraph (c) was omitted. This is what we would call the Habitat for Humanity amendment. This deals with a qualified individual presently under a certain restriction on a natural person serving as a qualified individual for multiple business entities. This would allow a qualified individual of a for-profit corporation to serve as a qualified individual for a nonprofit corporation, such as Habitat for Humanity. Heretofore, it has been required that they essentially look outside the corporations to donate or volunteer those services, and we feel that this is a good amendment. It was inadvertently left off in the first reprint. That is the only change we submit for the bill today.

Chairman Kirner:

I think we do not have that amendment on the Nevada Electronic Legislative Information System. I would appreciate it if you could get a copy of the amendment to our committee manager.

Chairman Kirner:

Does the Committee have questions for Mr. Brown? [There were none.] Are there those who wish to testify in support? [There was no one.] Are there any who wish to testify opposed? [There was no one.] Is there anyone who is neutral? [There was no one.] We will close the hearing on S.B. 50 (R1) and move to Senate Bill 68 (1st Reprint).

**Senate Bill 68 (1st Reprint): Revises provisions governing professions.
(BDR 54-290)**

Vance Farrow, Industry Specialist, Health and Medical Services, Office of Economic Development, Office of the Governor:

We submitted a presentation ([Exhibit D](#)) that I believe you have before you today. I will not point out every piece of it, but if you would turn to page 2, Senate Bill 68 (1st Reprint) authorizes health licensing boards in various chapters of *Nevada Revised Statutes* (NRS) to expedite health and medical professional licensure for applicants seeking a professional license to practice in Nevada. It implements a suggested 60-day timeline and suggests requirements for expedited licensure for health and medical professionals in allopathic and osteopathic medicine and several other professionals in health care.

Regarding section 1.3, pages 3 and 4 briefly outline some of the problem statements within the sector. Obviously, we have shortage gaps within various fields of health and medical care professionals. That has been documented very well in John Packham's health policy report, *Health Workforce in Nevada, 2013 Edition*, published by the University of Nevada School of Medicine in 2013, to be updated in 2015. The in-state pipeline and education medical programs that we have are not sufficient to grow the numbers that we need, so we are going to have to recruit in various shortage areas.

At the current pace, it would take approximately ten years to produce enough physicians to treat our population, provided there is no further population growth, which is almost never the case. The recruitment of health and medical professionals to Nevada requires a significant focus, given proposed expansions to higher education and expanded medical residencies throughout the state. [Continued to read from presentation ([Exhibit D](#)).]

As of February 22, 2015, approximately 73,500 Nevadans enrolled in private plans under the Affordable Care Act (ACA), which is more than double the 2014 enrollment. Nevada's Medicare population will see a steady increase of seniors, age 65 years and older, over the next 20 years. That, again, is very well documented. Additional measures are aided by expedited licensure to recruit health and medical professionals to address growing needs.

On page 10 of ([Exhibit D](#)) are listed some of the professions that will be affected by S.B. 68 (R1), and next to those professions you will see, under the location quotient column, it depicts the percentage that Nevada compares to the national average with regard to those professions. In the jobs column, those are the number of folks who would be brought in for Nevada to equate to a national average within some of the boards included in S.B. 68 (R1).

The solution is to create new provisions for granting Nevada health and medical professional licensure with expedited timelines within 60 days among identified Nevada health and medical licensing boards. Our office has received a friendly amendment from the Nevada State Board of Optometry ([Exhibit E](#)), and they have a representative here who can answer specific questions that you may have for that Board.

Assemblywoman Kirkpatrick:

I want to understand this, because we have seen a similar bill that had to do with veterans, Assembly Bill 89. What I do not see in here is some kind of certification to ensure the minimum standards in Nevada are met. We want the good folks to come to our state. Where is that protection in this bill? I do not see that in section 1, where I would think the board would have the ability to

ensure that they meet the minimum Nevada standards. Where are those protections so that we get all the good folks?

Vance Farrow:

Each of those criteria is within each actual chapter, pertaining to each board. We have not circumvented any board's authority with regard to the qualifications or the criteria about which they license. We are simply looking to expedite the process so that they acknowledge receipt of the application within 15 days. If there are any deficits to the application, they shall contact that applicant with whatever that listing of qualifications are and, thereafter, there is a 45-day period in which they have time to comb through the individual's background.

We offer a caveat for the fingerprint analysis. We know that boards, themselves, cannot do that. We know that is an outside party that is providing that information. We allow for an extended period of time for them to receive the information back from that fingerprint analysis. We ask that they make their decision to license that individual applicant within 10 days beyond that receipt of the fingerprint analysis.

Assemblywoman Kirkpatrick:

What will be the tracking process to ensure it actually moves quickly? We have had this discussion for a long time, and I think you are correct. Ten years is too long. Where will the tracking process be with the boards so that we know it is going to be an incentive to people who are trying to come to the state? How are you trying to use it?

Vance Farrow:

We have asked the boards to date stamp receipt of the application, and then provide those evaluation metrics on an annual basis so we are able to track how well the boards are doing. This legislation was actually patterned after the State Board of Nursing's standard, so we have applied a lot of what it is that they are doing to this legislation.

To answer your earlier question with regard to Assembly Bill 89, it is essentially this same legislation applying to veterans and their spouses.

Assemblyman Ohrenschall:

In section 1.3, subsection 2, paragraph (a), subparagraph (4), you are saying that the license by endorsement would not be available to one of these doctors who has been held civilly or criminally liable for malpractice in the District of Columbia or any state or territory of the United States more than once. I am wondering how you arrive at that? I can see having a distinction between

civil liability versus criminal. If the person is held criminally liable in their professional capacity for some act, I would be a little concerned about he or she practicing in Nevada. It all seems to contradict the language above, which says the individual would not have been disciplined or investigated by their regulatory authority.

Chairman Kirner:

When we looked at A.B. 89, to Assemblywoman Kirkpatrick's comment, we struck that more than once. I am wondering if we should be doing that in this bill, as well.

Vance Farrow:

We received an amendment addressing that particular issue and the language, and I believe that you should have that also before you.

Assemblywoman Carlton:

This resembles greatly the credentialing language that we have used in a number of different boards, except for what Assemblyman Ohrenschall just brought up. We thought that going back further than five years was not fair. If a well-established doctor, nurse, physical therapist, or whomever wanted to come to the state, and if that person had been good for five years, then we were willing to go with it. My concerns fall with the use of the term "endorsement," which has another meaning in the medical world, as an endorsement on a license for a specialty. I am afraid there is some confusion there. My concern over the cost of the 15-day turnaround is that it would increase the cost to the board, which would then increase the cost to other licensees to cover this expedited cost. I am wondering if those things have been taken into consideration.

Vance Farrow:

Most boards operate from notifying the applicant once they have received their application if, in fact, there are deficits. To that extent, that is the only fiscal impact on the board, and that is something that all boards already do. We did not require each applicant be contacted whether there were deficits or not, which would provide a very strong fiscal note, especially for the Nursing Board, which licenses some 40,000 individuals on an annual basis. We took that portion out. As far as the nuances within the definition, the true reciprocity is not what this is trying to achieve, so endorsement was the better terminology, as opposed to reciprocity. In reciprocity, they may have a license in North Carolina, and they apply for a license in Nevada. As long as they are in good standing, it is rubber-stamped and they are allowed to practice in Nevada, which is something that no one wanted to see happen. So we are going through a different approach, which still allows for background checks,

still allows for fingerprint analysis, and still allows for the boards to meet the criteria they need for licensure.

Assemblywoman Carlton:

I appreciate that. I wrote this language in 2001, so I get it. I am just concerned about the term "endorsement" because it has another meaning in this state, and that is why we used the term credentialing back then, because a person would be presenting his or her credentials for approval. You are not getting an endorsement on your license. Just so you are aware of that and can discuss it with folks who may already be using that term in their licensure scheme. I would not want it used in two different ways within one chapter.

Chairman Kirner:

I will invite those who are supportive of the bill to come forward.

Keith L. Lee, representing Board of Medical Examiners:

We appreciate Mr. Farrow's bringing this bill. We had the opportunity to work with him during the interim and ironed out some of the difficulties we saw. We appreciate his ongoing efforts, and we see this as another avenue to welcome physicians into our state. We wholeheartedly support the bill.

Jenny Reese, representing State Board of Podiatry:

The podiatrists are in support of the bill, with one technical amendment they are requesting ([Exhibit F](#)). Regarding the fingerprinting language that was put into other sections in the bill, they are asking that be incorporated into section 11. They will not issue any license without fingerprinting, and we would appreciate your consideration on that.

Bryan Gresh, representing State Board of Osteopathic Medicine:

Ditto everything Keith Lee said. We are in support.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:

The Las Vegas Metro Chamber of Commerce is also in support of this bill as discussed earlier. We were in support of this bill on the Senate side and also support efforts regarding our state's economic development efforts in the health care sector and addressing the doctor shortage in our state.

Chairman Kirner:

Do we have your proposed amendment on podiatry?

Jenny Reese:

It was submitted late this morning, but I have a copy.

Chairman Kirner:

Are there any other questions for this panel? Seeing none, are there others in favor of this bill?

Jeanette K. Belz, representing Nevada Psychiatric Association:

We also thank Mr. Farrow for working with us. I do not believe he mentioned our amendment ([Exhibit G](#)), but it is my understanding the Office of Economic Development, Office of the Governor, considers this a friendly amendment. We would look to see a change in section 1.3, subsection 2, paragraph (a), subparagraph (3), where it says, "Has not been disciplined or investigated," and modify that to "Has not been disciplined or is not currently under investigation." If you have been under investigation and you have been found guilty of something, then you have already been disciplined. If you are just under investigation, the board is required to investigate all complaints and may end up with nothing at all. We did not want to penalize the individuals who were currently under investigation, and we would request a similar change in section 7, relating to the State Board of Osteopathic Medicine.

Chairman Kirner:

We have that amendment ([Exhibit G](#)) on the Nevada Electronic Legislative Information System.

Kelly Martinez, Government Affairs Officer, Office of Administrative Services, City of Las Vegas:

We want to offer our support. We feel the reciprocal licensing privileges for medical professionals will attract skilled physicians from across the country to the Las Vegas Valley, impacting the medical corridor, which is located in downtown Las Vegas, and we feel that will help revitalize our efforts to continue our downtown revitalization.

Chairman Kirner:

Are there questions?

Assemblywoman Carlton:

I would like a clarification. On page 18, it is my understanding that section 7, subsection 1, paragraph (b), is the portion that addressed the educational component, and I believe the physician assistants (PA) who would work under the State Board of Osteopathic Medicine would need a separate recognition for their education, because it is not the same as an allopathic physician. In regard to the specialty recognized by the osteopathic association, that is how those

PAs get their education, so I believe we would need to add education for osteopaths and the allopathic side. I would be happy to work with Legal to make sure all the PAs in the state have the right education, because they would never test on the other side.

Chairman Kirner:

Just to be sure, that is section 7, subsection 1, paragraph (b), where it talks about certification recognized by the American Board of Medical Specialties.

Assemblywoman Carlton:

Yes, we would need to add the other educational component for osteopathic.

Chairman Kirner:

Thank you. Good catch. Are there any who are opposed to the bill?

Sandra Lowery, President, Board of Examiners for Social Workers:

While the Board, in general, supports Mr. Farrow's purpose in this bill, there are some technicalities with social work that make it difficult to support the language in section 45. I believe that you have a document ([Exhibit H](#)) from Kim Frakes, our executive director, that outlines our concerns. I wanted to briefly note those for you.

There are six areas of concern, one being the area of education. In some states, an individual can be identified as a social worker without education. However, in Nevada, our Board requires a bachelor's or a master's degree in social work. We would want the language to specify the need for a degree and education so that we are not endorsing someone who may not have any education.

In terms of postgraduate supervised experience, since part of what we are looking at is dealing with the provision of mental health services, to have an advanced degree in social work and to have a clinical license requires the completion of postgraduate internship hours. One of the challenges in Nevada is to use substantially equivalent experience, and that is what we do with our Board. The challenge is that in some other states, an individual may, in a very lackadaisical manner, be able to secure supervision, have an affidavit signed, and then be deemed as competent as a clinical social worker. Nevada requires specific supervision from a licensed clinical social worker, and that there is a specific plan for the supervision, that there is a specific agency at which the supervision is provided, and that there is a specific amount of supervision.

Chairman Kirner:

Were you comfortable with the language we used in Assembly Bill 89?

Sandra Lowery:

I think most of that covers what our concern is.

Chairman Kirner:

Let us take a look at licensure examinations.

Sandra Lowery:

When we look at examinations, presently we have language in our statute that allows for waving of licensure examinations for out-of-state applicants who have successfully passed the appropriate exam within the previous 15 years [referred to letter ([Exhibit H](#))]. We would want to ensure that we continue to use our national standard, which is the Association for Social Work Boards' examination as the instrument and to go ahead and maintain that 15 years, because it allows us to ensure that knowledge, skills, and abilities have been maintained.

Looking at direct practice experience, one of the stipulations in this bill is that, essentially, anyone who is a social worker, perhaps somebody who has not practiced and has been out of the field for 10 to 15 years, can simply come to Nevada and be licensed as such, without any experience required. We want to maintain our own standard of making sure that somebody has substantially equivalent licensed experience before they come into Nevada. Our concern is public safety.

Chairman Kirner:

Investigations and disciplinary status of applicants?

Sandra Lowery:

The "more than once" language has been addressed. Our Board was very concerned about allowing somebody to practice when they have committed an offense at least once. As you know, and in previous legislative sessions, one of the things that social workers sometimes do is they will start shopping for states for licensure. For example, I will start trying to get my licensure in Nevada while I am under investigation in Ohio. Even if the Board is aware of a sanction in another state where the applicant is no longer holding a license to engage in social work, our Board would be required to endorse that licensure. We have some concern about that.

Chairman Kirner:

Let us take a look at the last segment, expedited licensure for endorsed licenses.

Sandra Lowery:

Interestingly, the way this is written, it indicates that endorsement will be done at Board meetings or between meetings by the President [referred to letter ([Exhibit H](#))]. Currently, the Social Work Board does not operate that way. To do it that way will actually slow down the endorsement process a great deal. We are a volunteer board, and we are required to meet quarterly. Our executive director oversees all aspects of our licensure. If there is a question that comes to the Board President, we would like to keep it the way it is, instead of potentially slowing things down.

Chairman Kirner:

My recommendation would be to reach out to our legal counsel offline and see if we can come up with the language that meets the requirements and does not dilute the bill. Was this all put on the record on the Senate side?

Sandra Lowery:

I do not know. Typically, Kim Frakes goes to all these meetings. Unfortunately, somebody gave her a week's vacation, so I am here.

Chairman Kirner:

Are there others in opposition? [There were none.] Are there any who are neutral on this bill?

Victoria Carreón, Director of Research and Policy, Guinn Center for Policy Priorities:

I am testifying as neutral on S.B. 68 (R1). We conducted a complete analysis of mental health workforce shortages in this state. Through that analysis, we found that there are significant barriers in licensing for people coming from other states, so expediting licensing would significantly help address these shortages. In particular, having universal timelines across all of these health fields will help ensure that out-of-state health professionals have more certainty when they are offered a job in Nevada and that can make Nevada a more attractive state during recruitment efforts [read from policy statement ([Exhibit I](#))].

We would like to point out a couple of things. One is that the licensing boards will need to revise their existing policies to accommodate these new timelines. As you have heard, this is basically an overlay onto existing endorsement statutes. For example, with the Board of Psychological Examiners, they require

applicants from other states to take a written state examination. Currently, that examination is only offered three times per year. In speaking with their Board, they anticipate moving to an electronic exam and offering it every 60 days to accommodate the proposed timelines. Other boards that have oral examination requirements will need to expedite these exams or move to written exams or eliminate those requirements through regulations.

We recommend you approve this legislation. We think it has good merit to improve expediting of licensure, but there are other, future things that you should probably do as well. In the future, you really want to have the legislation revise the existing endorsement statutes. As you were hearing just now from the Social Work Board, this does not exactly fit with how they currently do things. As I said earlier, this is overlay onto the existing statutes, so in the future you really want to meld them together and make them all one so that you can address any other impediments that are keeping people from getting licenses in a timely fashion.

Another thing we suggest you look at in future legislation is creating uniform fingerprinting requirements ([Exhibit I](#)). As Mr. Farrow stated, that is somewhat outside the purview of each of the licensing boards, but each licensing board has its own policies as to whether or not they look at fingerprints and must have them back prior to issuing the license, or whether they will approve a license without receiving those fingerprints. We think looking at that and making that more uniform would also help expedite licensing in the future.

Chairman Kirner:

Are there others who are neutral? [There were none.]

Assemblywoman Carlton:

A personal observation I would like on the record: I understand the exam component, but I would not want any of our boards to get rid of what we typically call the "blue book" exam, which covers the laws and regulations that guide that particular profession. It is not a "you have to pass it to get your license" exam. It is merely an informational test to make sure everyone is well aware of the rules they have to operate under, and that would not be one of the exams that I would hope people would set aside or change. I think it is very important that people coming into the state know what their guidelines are.

Chairman Kirner:

I will now close the hearing on Senate Bill 68 (1st Reprint), and we will move on to Senate Bill 84 (1st Reprint).

Senate Bill 84 (1st Reprint): Includes certain alcohol and drug abuse counselors, problem gambling counselors and social workers in the definition of "provider of health care" for purposes of various provisions relating to healing arts and certain other provisions. (BDR 54-389)

Steven Burt, Secretary/Treasurer, Board of Examiners for Alcohol, Drug and Gambling Counselors:

I will begin with a bit of background on Senate Bill 84 (1st Reprint) to illustrate its intention. In the fall of 2013, the Division of Health Care Financing and Policy of the Department of Health and Human Services, looked to *Nevada Revised Statutes* (NRS) 629.031 to authorize the development and eventual reimbursement for services provided by alcohol and drug counselors under Medicaid. Alcohol and drug counselors were not included in the list as authorized providers of health care within that NRS. The Division made an exception at the time but made it clear that the Board of Examiners for Alcohol, Drug and Gambling Counselors should move forward to get included in the list, since the Medicaid regulations still required this, and they decided it would be easier to change this regulation than those regulations.

In addition, the Board of Examiners for Social Workers presented a letter requesting social workers be added to this list, which is appropriate and supported by the Board of Examiners for Alcohol, Drug and Gambling Counselors.

Assemblywoman Carlton:

I think I have seen this before in regard to the Affordable Care Act provision where you add a covered benefit to a new provider. How is that accomplished within the state plan, or does the state itself have to pick it up? I am not sure how that all works. How are those components addressed?

Steven Burt:

I am not exactly sure about the dynamics within the Division of Health Care Financing and Policy. They worked really hard to change the Medicaid plan in the fall of 2013 to include the provision of substance abuse services under health care reform. I was asked as a representative of the Alcohol and Drug Counseling Board to get this regulation changed to authorize said payments. I am not familiar enough to answer your question about the state Medicaid plan.

Assemblywoman Kirkpatrick:

Was not this something that was discussed during the interim with the Governor's Behavioral Health and Wellness Council, as well as when we talked about some of the Substance Abuse Prevention and Treatment Agency (SAPTA) requirements? Did this discussion come up? I feel like there was a big discussion about this to ensure that we could leverage those dollars so they could go a little bit further.

Steven Burt:

This is the result of that. Everything is happening as was supposed to happen. It was approved, and the alcohol and drug counselors are being paid for through Medicaid as a payment of last resort, with SAPTA after Medicaid. This is the end result of that just to clean up some language to authorize it within the Medicaid statutes.

Assemblywoman Kirkpatrick:

I do have that report and I can send it back around if folks want to go through it so they can at least remember what the discussion was.

Chairman Kirner:

If there are those in support of this bill, please come to the table.

Sandra Lowery, President, Board of Examiners for Social Workers:

We are thrilled to be included in the healing arts and are very much in support of this bill.

Jennifer J. Gaynor, representing Nevada Health Care Association:

We submitted what we believe is a friendly amendment ([Exhibit J](#)). We have run it by the bill's sponsors. We represent the skilled nursing facilities in Nevada, and the reason for this amendment is we saw that the definition of provider of health care in NRS 629.031 was being addressed to add a couple of categories that previously had not been specifically included: social workers and drug counselors. Our skilled nursing facilities, or SNFs, similarly want to take this opportunity to clarify that their facilities are meant to be included in this definition, and that providers of health care apply to all providers of health care, whether or not our nurses are at a licensed hospital, licensed surgical center, obstetric center, skilled nursing facility, or any other medical facility. In particular, social workers are an integrated part of care planning for our patients at SNFs, so we want to make sure that, as this category of medical practitioners is included in this definition, there is no question they are included when working at licensed SNFs and not just at licensed hospitals.

Chairman Kirner:

Are there questions from the Committee? Seeing none, are there those who are opposed to this bill? [There was no one.] Are there those who are neutral? Seeing none, we will close the hearing on S.B. 84 (R1), and move to public comment. Seeing no public comment, I will close today's meeting. The meeting is adjourned [at 2:46 p.m.].

RESPECTFULLY SUBMITTED:

Connie Jo Smith
Committee Secretary

APPROVED BY:

Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Commerce and Labor

Date: April 27, 2015

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 50 (R1)	C	Margi Grein, State Contractors' Board	Testimony
S.B. 68 (R1)	D	Vance Farrow, Governor's Office of Economic Development	Presentation: Expedited Health and Medical Professional License Endorsement for Nevada
S.B. 68 (R1)	E	Vance Farrow, Governor's Office of Economic Development	Proposed amendment, Nevada State Board of Optometry
S.B. 68 (R1)	F	Jenny Reese, State Board of Podiatry	Proposed amendment
S.B. 68 (R1)	G	Jeanette K. Belz, Nevada Psychiatric Association	Proposed amendment
S.B. 68 (R1)	H	Sandra Lowery, Board of Examiners for Social Workers	Letter from Kim Frakes, Board of Examiners for Social Workers
S.B. 68 (R1)	I	Victoria Carreón, Guinn Center for Policy Priorities	Testimony
S.B. 84 (R1)	J	Jennifer J. Gaynor, Nevada Health Care Association	Proposed amendment