

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

**Seventy-Eighth Session
May 8, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:41 p.m. on Friday, May 8, 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: 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 David R. Parks, Senate District No. 7
Assemblyman Pat Hickey, Assembly District No. 25
Senator Tick Segerblom, Senate District No. 3
Senator Kelvin D. Atkinson, Senate District No. 4

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:

Ernest Figueroa, Chief Deputy Attorney General, Consumer Counsel,
Bureau of Consumer Protection, Office of the Attorney General
Ernie Adler, Attorney, Carson City, Nevada
Daniel Mathis, President and Chief Executive Officer, Nevada Health Care
Association
Theresa Brushfield, Residential Care Home Owner and Administrator,
Las Vegas, Nevada
Shawn McGivney, M.D., President, Residential Care Home Community
Alliance of Nevada, Inc.
Jose O. Castillo, Jr., President, Association of Homecare Owners of
Northern Nevada, Reno, Nevada
Jennifer Kandt, Executive Director, Nevada State Funeral and Cemetery
Services Board
Bart Burton, Member, Nevada State Funeral and Cemetery Services Board
Warren Hardy, representing La Paloma Funeral Services
Anthony J. Guerra, M.D., President, Wongu University of Oriental
Medicine
Chris Ferrari, representing Nevada Dental Association
Adam Plain, representing Nevada Dental Association
Sara Partida, representing Nevada State Medical Association
Russell Smithson, representing the Nevada Orthopedic Society
Gwen Braimoh, Director of Instruction, Expertise Cosmetology Institute,
Las Vegas, Nevada
Eloy Maestas, Secretary/Treasurer, State Barbers' Health and Sanitation
Board
Royal Byron, Private Citizen, Las Vegas, Nevada

Chairman Kirner:

[Roll was called, a quorum was present, and protocol was explained.] We will start with the work session document for Assembly Bill 481 ([Exhibit C](#)). This bill, should it pass, will be rereferred. It was referred back to this Committee from the Assembly Committee on Ways and Means.

Assembly Bill 481: Provides additional authority for the enforcement of the laws prohibiting deceptive trade practices. (BDR 52-1168)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 481 was heard in this Committee on Monday, May 4, 2015, and makes various changes to the enforcement of laws prohibiting deceptive trade practices. [Read from work session document ([Exhibit C](#)).]

There was an amendment presented to the Committee during the hearing, but it was dated April 22 and caused some confusion. We went back and created a conceptual mock-up based on that amendment, which starts on page 2 ([Exhibit C](#)) for your review. It is also in the Nevada Electronic Legislative Information System (NELIS) and represents an agreement between the Office of the Attorney General and the Department of Business and Industry to remove sections 1, 2, 11, and 13, and reinstates certain provisions proposed to be deleted in sections 8 and 9. It requires administrative fines received by the Director to be deposited in the State General Fund rather than the revolving account for the Consumer Affairs Division and any grant funds received to be deposited in the account. I believe there are representatives here from Business and Industry and the Attorney General's Office to answer any questions.

Chairman Kirner:

Before we take a motion, I understand there may be questions needing clarification. Do any Committee members have questions that need answers?

Assemblyman Ohrenschall:

I had this question during the hearing regarding section 5, subsection 1, of the mock-up. Now subsection 2 says "may" be made by certified mail with return receipt or as otherwise allowed by law. I still wonder what is meant by "otherwise allowed by law" and why the change from "must" to "may." If I was accused of a deceptive trade practice, I would want to make sure everybody received the notice, not "may" or might get the notice.

Chairman Kirner:

I am going to ask Mr. Mundy if he can respond to that.

Matt Mundy, Committee Counsel:

The *Nevada Rules of Civil Procedure* Rule 45(b), if I recall, provided for personal service generally for subpoenas issued. When I looked at the rules, this would provide for certified mail service or personal service by an employee of the Consumer Affairs Division. I cannot speak as to the substantive change from must to may or what the intent behind that is.

As to the term "otherwise allowed by law," if there was some other statutory provision that provided for the issuance of a subpoena in some other manner, then that would govern or at least be an option.

Assemblyman Ohrenschall:

Is your interpretation then that "otherwise allowed by law" would be by subpoena?

Matt Mundy:

Yes, if there was another provision of law providing for the issuance of the subpoena, the manner in which it was served.

Assemblyman Ohrenschall:

I am okay with the new language, but I think the word ought to stay "must" and not "may" just to protect the rights of the person accused.

Assemblyman Nelson:

I am inclined to agree with Assemblyman Ohrenschall. I am curious as to why the wording was changed from "must" to "may." I do not know if the bill sponsor knows.

Chairman Kirner:

One thing we know, "must" and "may" and "shall" and "may" make a big difference. I get that lesson taught to me many times by the chair of the Legislative Commission. If that could be clarified and add some light to the situation, we would appreciate it.

Ernest Figueroa, Chief Deputy Attorney General, Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General:

The intent of this bill was to provide the Department of Business and Industry the very similar mechanism to provide service of the subpoena to a potential target and help eliminate unessential costs to hire process service to personally serve the particular person.

Regarding the exact language from "must" to "may," it is my opinion any language can be used as long as you provide the Consumer Affairs Division the

option to serve by certified mail or personal service. The intent is to give the potential target notice of an opportunity to be heard, and what we are trying to accomplish is to provide adequate notice.

Chairman Kirner:

I understand the goal. Assemblywoman Kirkpatrick, you have a lot of experience with this. Do you have any thoughts one way or the other on this?

Assemblywoman Kirkpatrick:

I brought up "must" in the first hearing we had because, if you remember, I was concerned how the process worked. Would they do that now in lieu of? I am inclined to agree with my colleagues.

Chairman Kirner:

Unless there is objection from any other members of the Committee, we will change it back to "must."

Matt Mundy:

If I understand the Committee's intent correctly, service of any notice of the subpoena may be made by certified mail. In section 5, you want to keep in the second sentence that allows for personal service? Service must be made by certified mail, except as otherwise provided, in the second sentence?

Chairman Kirner:

I will read it the way I think we want it. Assemblyman Ohrenschall, correct me if you think it is different. "Service of any notice or subpoena must be made by certified mail with return receipt or as otherwise allowed by law. An employee of the Consumer Affairs Division of the Department of Business and Industry may personally serve a subpoena issued pursuant to this section."

Assemblyman Ohrenschall:

I concur, and that would give me a lot more comfort.

Assemblyman Nelson:

That might cause a problem, though, if we say "must be made by certified mail." I am wondering if the wording of the second sentence is inconsistent with "must." The second sentence says that an employee can do it. Do you think that is okay, Mr. Mundy?

Matt Mundy:

To facilitate the intent, you would need to say, "except as otherwise provided in this subsection," so that service would be required to be made. The exception under the subsection would be for the second sentence, "An employee of the

Consumer Affairs Division of the Department of Business and Industry may personally serve...." The conflict between the two sentences would be rectified.

Assemblyman Nelson:

I suppose so. I think that the second sentence is probably an exception to "otherwise allowed by law," is it not? I guess it depends on whether, typically, an employee is authorized to effectuate service. This is a very arcane legal point that I am sure our Chairman is happy we are discussing. For example, if I am party to a lawsuit, I cannot make service. The law will not allow that. The question is whether an employee of the Consumer Affairs Division under general law has standing to do that. If not, the second sentence is changing the law or is an exception to the law.

With that said, we will let Assemblyman Ohrenschall and Mr. Mundy figure out what to say.

Matt Mundy:

I think there is a higher standard for an employee of the Consumer Affairs Division because they are employees. The personal service is a higher standard of service than sending certified mail, so I think that is the distinction because the employee is an agent of the Division.

Chairman Kirner:

Are we okay, Mr. Mundy, if we return the language to the "must" rather than the "may," leaving the rest of the paragraph unchanged?

Matt Mundy:

I think that you could. I would say if you are going to keep the second sentence in with respect to the employee personal service, then I would add "except as otherwise provided in this subsection" so that the two sentences do not conflict with each other.

Chairman Kirner:

I am comfortable with that. Members of the Committee, any other comments?

Assemblyman Ellison:

I know this was sent to the Assembly Committee on Ways and Means and this was put into the budget, but is the \$241,000 still in there or is that in the General Fund budget now?

Chairman Kirner:

That is a fiscal question and not part of this, since we are doing policy here. I cannot answer that.

Assemblyman Ellison:

I will vote to get this out of Committee, but I will reserve my right to change my vote on the floor.

Assemblywoman Neal:

I need clarification on section 10, subsection 1, where it says, "may, during the course of the investigation... obtain and use any intelligence, investigative information or other information obtained...." What does "any intelligence" mean? There is the disclosure provision at the end, even though it is disclosure between the Department and the Attorney General or local government agencies, but what is "any intelligence"? What is the scope of that language?

Ernest Figueroa:

This provision mirrors the provision that the Attorney General uses in its investigation. The scope is any information while we are in a pending investigation is what we consider to be covered by this particular provision. It provides us the necessary protections to safeguard the integrity of the investigation we are conducting.

Chairman Kirner:

If I understand, you are testifying that this is basic standard language?

Ernest Figueroa:

Yes, this is currently the language that the Attorney General utilizes in its parallel powers under this section.

Chairman Kirner:

I will entertain a motion to amend and do pass.

ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 481.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

Is there discussion on the motion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN PAUL ANDERSON AND
HANSEN WERE ABSENT FOR THE VOTE.)

We will move to Senate Bill 146 (1st Reprint).

Senate Bill 146 (1st Reprint): Revises provisions relating to the payment of wages to certain employees. (BDR 53-629)

Senator David R. Parks, Senate District No. 7:

Senate Bill 146 (1st Reprint) authorizes an employer of a residential facility for a group of similarly situated persons to enter into a written agreement with an employee who is required to be on duty for 24 hours or more to exclude from his or her wages a sleeping period not to exceed 8 hours if adequate sleeping facilities are provided. If the sleeping period is interrupted by a call for service by the employer, the interruption must be counted as hours worked, or to such an extent that the sleeping period is less than five hours, the employee must be paid for the entire sleeping period.

There are a number of other issues, but I think the important thing to know relative to this is the genesis of this bill came from an order issued by the Office of the Labor Commissioner, Department of Business and Industry, in October 2013. Since I am not that versed on explaining the full complications of the matter, I have with me former Senator Ernie Adler who, I believe, represented one of the individuals in this particular case. Mr. Adler is also part of a major portion of this bill.

I also have another part of the bill that somehow, at the very last moment in work session, was deleted in the Senate Committee on Commerce, Labor and Energy. I will yield to your direction as to when I might ask that it be considered to be added back in as a friendly amendment ([Exhibit D](#)).

Chairman Kirner:

My understanding of this bill is that it pretty much mirrors federal language. I say pretty much because it is not quite identical, but closely identical except for the written part, as I understand it.

Senator Parks:

Yes, that is exactly what the intent of this bill was to do: to put into statute where it was not in statute, mirroring the provisions of federal law.

Chairman Kirner:

You had just mentioned, going to step two, the fact that there is some other language or other work that did not make it into the first reprint?

Senator Parks:

Yes, that is correct. It is on the Nevada Electronic Legislative Information System (NELIS) as the final proposed amendment dated March 24, 2015, (page 2, [Exhibit D](#)). It is "Proposed Amendment 9823." The language is in sections 3, 4, and 5 of that mock-up.

Chairman Kirner:

Do you want to speak to that now?

Senator Parks:

Yes. Under current Nevada statute, all live-in health care facility employers are required to pay for all hours that live-in caregivers are on site, even if the caregiver is sleeping. This can be unreasonable, restrictive, and very costly. On the other hand, federal law provides for live-in domestic service workers, under the U.S. Department of Labor's Fair Labor Standards Act, where an employer may claim the Fair Labor Standards Act overtime compensation exemption for live-in caregivers under the *Code of Federal Regulations* (CFR), Title 29, Section 552.102.

Persons employed in domestic service are covered by the Fair Labor Standards Act. They must be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the rate of pay for all hours worked over the 40 hours in a work week, unless they are subject to an exemption. Domestic service workers who reside in an employer's facility and thus are live-in domestic service workers may be exempted from the Fair Labor Standards Act overtime pay requirement. In order to be a live-in domestic service worker, a worker must reside on the employer's premises either permanently or for extended periods of time.

Senate Bill 146 (1st Reprint) is being requested to provide relief for residential health care facilities that are now required to pay for all hours that a live-in caregiver is on the residential health care facility premises. My intent was to only request adoption in Nevada statute of 29 CFR § 552.102.

Ernie Adler, Attorney, Carson City, Nevada:

The reason this is before you is because the Legislature has not really spoken on this issue. Many states, including California, have adopted the federal standard. It is really easy to implement because there is so much case law that interpretation is clear. I think what Senator Parks wants the Committee to do is, essentially, adopt the same standards most other states have. The reason Nevada does not have that standard is that the Office of the Labor Commissioner has come up with a different standard than the federal standard because Nevada has never spoken to this issue.

The flaw in the current reprint of the bill, to put it simply, is if you own the residence where a mentally ill person is staying and you provide services, then the eight-hour sleep time provision applies. What is left out of the current reprint is, say there is an employee who is going to live full-time at the house. An elderly person is going to take care of them who is going to work eight hours a day but has his own room in the house and is going to sleep there overnight, every night. Without the provision that Senator Parks spoke of, you would have to pay that caregiver overtime for that sleep time. I think that was a mistake made at the last minute in the other house, but I would urge you to put those provisions back in the bill.

Chairman Kirner:

Are there any questions from the Committee members?

Assemblyman Ohrenschaal:

The mock-up on NELIS, the very last amendment, is the one that incorporates everything you desire in the bill. On the first page it reads, "Prepared for Senator Parks/March 24, 2015," correct?

Senator Parks:

Yes; what I am requesting is the bill as it is in front of you from the Senate, as well as the reincorporation of sections 3, 4, and 5.

Assemblyman Ohrenschaal:

There is no minimum? In southern Nevada, we have some residential group homes that are operated in homes where there are two or three adults who cannot live on their own. So this will be equally applicable to a small home like that as to a large facility that has 30 or 40 patients?

Senator Parks:

What we see, typically, is that we have a private residence that has anywhere from two to eight, nine, or ten residents, and that home is operated by a provider who also employs the services of an individual to live in and to provide for all the daily housekeeping activities, as well as meal preparation and similar activities. What we are seeking to do is to pay them their regular pay without having to pay them when they are sleeping. You will hear from a number of individuals, especially Dr. Shawn McGivney, who will be explaining this in greater detail as to what the request is. In no way are we asking for anything other than what is currently in the federal Fair Labor Standards Act.

Ernie Adler:

If this bill is not passed, there are a lot of unintended consequences. For instance, there are group homes for the mentally ill in Reno that are above

40 persons. All the people in those group homes are on Medicaid, so the whole facility is on a very, very tight budget. If you add a bunch of overtime on top of what they are already paying, they may not be able to exist as a group home. All those people will go back into the state system, and it would be catastrophic. This really is an important bill.

Chairman Kirner:

I want to be sure of the difference between the first reprint and what the mock-up to the amendment is. As I am reading it, Committee members, it looks as if the piece that is missing is section 3, where you have subsections 1, 2, 3, and 4, and under 4, paragraphs (a), (b), and (c). Those are the pieces I think are missing. Does that concur with your thinking?

Senator Parks:

Yes, it would be sections 3 and 4, to give you a more specific definition.

Chairman Kirner:

Okay. We just need to have that when we get back together to work it another time. Not seeing any more questions, we will ask those in favor of the bill to come forward.

Daniel Mathis, President and Chief Executive Officer, Nevada Health Care Association:

I wanted to come forward and recognize the residential facilities for groups here in Nevada. The programming is very essential to the continuum of care. I have submitted written remarks, and I support S.B. 146 (R1). It incurs the inclusion of the overtime exemption allowed for domestic employees who reside in the household where they may work.

Chairman Kirner:

I am assuming your support also includes that portion in the mock-up?

Daniel Mathis:

Agreed. I have several residential facilities for groups that are members. I had a conference call this morning and they clarified that for me very clearly with those inclusions.

Chairman Kirner:

Are there questions for Mr. Mathis? [There were none.] I see people in Las Vegas who wish to testify.

Theresa Brushfield, Residential Care Home Owner and Administrator, Las Vegas, Nevada:

In 1995, I had the honor of being Congressman John Ensign's delegate to the White House Conference on Aging. At that conference, fair housing was discussed as amended in 1968 and allowed small homes, ten beds or fewer, to be in a community where people who are disabled or elderly could stay, not be warehoused in medical facilities, and be allowed to join in the areas where they live. For the 26 years that I have been in business, I have always relied on *Nevada Revised Statutes* (NRS) 608.250; however, as was discussed earlier, in October 2014, the Labor Commissioner made a ruling that said NRS 608.250 was not valid for our type of business.

For the Bureau of Health Care Quality and Compliance, Division of Public and Behavioral Health, Department of Health and Human Services, the *Nevada Administrative Code* (NAC) 449.199 says if there is one person in your facility, there must be a caregiver. The same agency, but a different department—state mental health—has determined the cost of caring for a person in a residential facility is \$940 a month. They have paid the same amount for ten years or more.

I think the state needs to get all these people together and realize that for a mental health home with seven residents, the cost of labor would be \$6,831, yet the state of Nevada will only pay \$6,580 for seven residents.

Chairman Kirner:

I am assuming that this is a good bill, as far as you are concerned, to help address those needs?

Theresa Brushfield:

I have been in this business 25 years. I am almost 70 years old, and I wanted to use this as my retirement. God forbid I would ever have to live in it, but if I do, it is a wonderful place. My residents, if I had to charge them, would be \$380 to \$660 more per month for my six residents. They cannot afford it; we cannot afford it. I want you to approve the federal law 29 CFR § 552.102—that is all I want from you. I will have a great day and you will, too, because I can tell that possibly in 40 years you might need our services.

Shawn McGivney, M.D., President, Residential Care Home Community Alliance of Nevada, Inc.:

I work as an internist and a geriatrician in the community doing home visits, and I see firsthand the problems facing seniors regarding long-term care and health care. I work with and am in contact with many live-in workers,

residents, and families who rely on this live-in option. I am here to support the passage of S.B. 146 (R1) with the live-in language, the entire mock-up that Senator Parks presented, including section 5. Section 5, subsection 3, paragraph (o), is important to include [page 5, ([Exhibit D](#))]. I have provided 180 additional statements of support of S.B. 146 (R1) from the broader residential care home community for the live-in exemption added into this bill ([Exhibit E](#)). Also, I submitted four documents for the Committee's review [([Exhibit F](#)), ([Exhibit G](#)), ([Exhibit H](#)), and ([Exhibit I](#))]. I assume you have those; if not, I provided more copies today of those four attachments.

There are several reasons why it is so vital to pass S.B. 146 (R1) with the live-in exemption language included that the Senate Chair removed, sections 3, 4, and 5 of the mock-up provided by Senator Parks. First, it protects the live-in worker who physically lives in the home where he or she chooses to work. The worker benefits from not having to pay for housing, utilities, transportation, and food costs. With the live-in exemption language included, they are protected by a mutual written agreement. They will be paid for each hour worked but agree not to be paid for sleep time or overtime. They choose this job and live-in accommodations if it benefits them. If this bill is not passed, many could lose their jobs and their housing.

Second, if S.B. 146 (R1) with the live-in exemption is not passed, many affordable, cost-effective, private pay residential care home beds will be lost because they will no longer be able to pay for sleep time and overtime and offer the housing and other benefits for free. The math just does not work.

Third, there are only two practical choices that offer 24-hour, long-term care: skilled nursing facilities (SNF) and residential care homes (RCH). Of those, residential care homes are the most cost-effective, 24-hour care option, ranging in price from \$1,500 to \$4,500 per month, whereas a nursing home can cost \$6,000 to \$18,000 per month at the private pay rates. Please refer to the long-term cost comparison table for further explanation ([Exhibit I](#)).

Chairman Kirner:

We have received many letters of support and the comparison table.

Shawn McGivney:

Many do not realize that most people who reside in RCHs are private pay and are not on the state Medicaid plan. If RCHs are forced to close or drastically raise their rates because of the mandatory pay for sleep time and overtime, these private pay residents will quickly be forced into nursing homes and onto state Medicaid when they cannot pay the higher SNF private pay rates.

Also, Nevada is already in crisis when it comes to long-term care options due to a lack of beds. There are currently 70 Nevadans living in out-of-state SNFs on Medicaid due to a lack of beds. These 70 people are estimated to cost the state taxpayers \$5 million a year. We believe this could continue to happen and get worse if S.B. 146 (R1) is not passed with the live-in exemption.

At present, Nevada has the lowest number of SNF beds per capita in the nation. There are only 5,000 nursing home beds and 3,000 RCH beds. Many of those 5,000 nursing home beds had been used for chronic care/long-term care in the past, but now those beds will likely be reallocated to a higher pay SNF rehab at \$600 per day and the new behavioral health rate of \$300 to \$500 a day, instead of choosing to accept the lower pay, chronic long-term care residents where Medicaid pays \$200 a day. If S.B. 146 (R1) is not fixed, the state could see thousands, not 70, but thousands of residents displaced from their current private pay RCH beds and quickly into SNF care and then onto the Medicaid budget.

From my perspective as a doctor in active practice and as a taxpayer, the live-in exemption benefits many. The seniors and disabled can remain in the community in a safe, highly monitored, affordable, home like environment. The workers who choose this type of work benefit by getting paid for all hours worked while saving on expenses. The state benefits indirectly by reducing Medicaid spending and passing legislation that is consistent with the requests from all of their own state agencies and the Centers for Medicare and Medicaid Services that are requesting more cost-effective, private pay, community-based, long-term care beds.

Please support and pass S.B. 146 (R1) with the live-in language for the sake of our seniors, workers, and Nevada taxpayers, as it is the right thing to do.

Chairman Kirner:

Are there any in opposition to the bill? [There were none.] Is there anyone who is neutral? [There was no one.] Sir, are you in support or opposition?

Jose O. Castillo, Jr., President, Association of Homecare Owners of Northern Nevada, Reno, Nevada:

I am in support. J. Mariah Brown of Demand Media wrote in one of her articles:

Small businesses contribute to local economies by bringing growth and innovation to the community in which the business is established. Small businesses also help stimulate economic growth by providing employment opportunities to people who may not be employable by larger corporations. Small businesses tend to

attract talent who invent new products or implement new solutions for existing ideas. Larger businesses also often benefit from small businesses within the same local community, as many large corporations depend on small businesses for the completion of various business functions through outsourcing.

Residential home care, as we all know, is one of the small businesses in the state of Nevada. Residential care homes are fully licensed, regulated, and monitored by the state. Residential care homes are required to carry liability insurance, subject to annual state inspection, supervised by a certified administrator, and required to install an R-3 residential sprinkler system with a monitored alarm. Residential care homes adhere to the state's labor standard law, which includes, but is not limited to, paying employees at least the minimum wage in a safe workplace and environment.

Employees of residential care homes are required to undergo training and obtain certifications. Providing a high-standard quality of care to its residents is the priority of every residential care home. Most of the time, it is the residential care home that pays for such training and certifications. There is a substantial amount of time and money involved in maintaining a residential care home for its accreditation, hiring dedicated and well-trained caregivers, and providing a high-quality standard of care for its residents. Yet, residential care is affordable.

Payment of wages to caregivers and employees who sleep in residential care home facilities would increase the labor cost and would have a substantial impact not only to the labor cost but also to the employees and the quality of care. Most of the employees in residential care homes who sleep in the facility prefer to do so because of economic reasons. They save money for they do not have to pay for their food. They have a safe and comfortable place to stay, and they do not have to travel every day to work. Management ensures, however, that employees are provided adequate sleeping time and facilities. Ineffective shifting of work would affect the continuity of the quality care for each and every patient.

Caregivers are expected to become familiar with the needs of every resident, such as, but not limited to, the residents' medications, sleeping habits, hygiene, and moods. Caregivers and the residents develop trust and, most of the time, the residents and their families request that their caregivers remain in the facility. By knowing that one or more of their caregivers is always in the facility, the residents and their families have peace of mind. Family environment remains in every residential care home facility and that makes a difference. To maintain a high standard of care, the rates of residential care homes would

have to increase which may affect their affordability. It will be an additional financial burden not only to the facility and the residents but also to the caregivers who benefit from sleeping in the facility.

As a small business owner, and on behalf of other residential care home owners, I am asking that our plea be heard urging the approval of S.B. 146 (R1) regarding residential care homes and the live-in caregiver exemption.

Chairman Kirner:

Senator Parks, would you like to make closing remarks?

Senator Parks:

I have two things. I know there are a number of people who have come to the hearing in support of S.B. 146 (R1) and, with your permission, I would like to ask them if they could raise their hands so you could see the turnout in support of the bill.

My second comment is that in the drafting of this bill, especially the Proposed Amendment 9823, our legal staff consulted with the Labor Commissioner to make sure the Labor Commissioner did not have problems with this bill. I am told that he had no opposition. I will work with you and your staff to return a mock-up that, hopefully, you will find to your liking.

Assemblywoman Fiore:

Thank you for bringing this bill forward. It is a great bill and is very needed.

Chairman Kirner:

I think that we will get another chance to visit with you today, Senator Parks. We will close the hearing on Senate Bill 146 (1st Reprint) and move to Senate Bill 286 (1st Reprint).

Senate Bill 286 (1st Reprint): Revises provisions relating to the Nevada Funeral and Cemetery Services Board. (BDR 54-905)

Jennifer Kandt, Executive Director, Nevada State Funeral and Cemetery Services Board:

The board would like to thank Senator Brower for sponsoring the bill, and we thank the members of this Committee for hearing the testimony today. As many of you are well aware, the Nevada State Funeral and Cemetery Services Board was reviewed by the Sunset Subcommittee of the Legislative Commission, and there were numerous changes that resulted from

that review. A new board was put into place in October 2013, and a new executive director was hired in June 2014. I am the new executive director.

The changes before you today are a result of eight publicly noticed meetings held over the course of six months with the new board members. The board recognizes that there is still the need for considerable changes through regulation, and we will be working on those in the future.

Before you is Senate Bill 286 (1st Reprint), which revises Chapters 451, 452, and 642 of *Nevada Revised Statutes* (NRS), all pertaining to the funeral industry. Some of this bill is general cleanup, and there are other more substantive items that I will address.

Sections 4 and 5 create a permit for a direct cremation facility. Direct cremation is where there is no formal viewing of the body. Currently, these locations are operating under permits that the previous board termed "limited establishment permits." These did not clearly exist in statute. What did exist was a license to conduct direct cremation immediate burials, but it is written as if you were to issue that license to a natural person and not to a location. You will see throughout the bill that we are proposing to eliminate the license to conduct direct cremation immediate burials, and replace that license with a direct cremation facility permit, which would apply to a location and not to a natural person.

I am sure most of you are familiar with places like the Neptune Society. Those are the types of places we are addressing. There is no need for them to have a preparation room. They do not embalm bodies, so we do not want to consider them a full-service funeral establishment because that is not what they do. Parts of these sections would require them to disclose on all advertising and signage that their scope is limited to direct cremation only so that the public understands there is a limit to the services they offer.

Sections 6 and 7 of this bill create a funeral arranger license. This license would be given to individuals who consult with families on funeral services and options, pricing, and merchandising. At present, these individuals sitting down with families to make arrangements for disposition do not have any licensing requirements and, essentially, work under a licensed funeral director. The board believes it is in the best interest of public protection to require these individuals to be held accountable through licensure. The arrangers would be required to pass a test on state and federal laws pertaining to the funeral industry and also pass a background investigation. Currently, these individuals may be fired from one facility when acting unethically or inappropriately, and they just move on to the next facility.

Section 8 of this bill gives the board authority to conduct fingerprint-based background checks relying on computer-based checks. We have had people self-disclose criminal histories that we are unable to pick up through the background investigations that we conduct because we do not have fingerprint authority. Because people in this industry are often collecting large sums of money from people in very vulnerable situations, the board would like to ensure that these individuals being licensed do not have undisclosed criminal histories.

Section 9 requires funeral directors and embalmers to complete continuing education in a field relevant to the funeral industry. Nevada is one of only a few states that do not, at this time, require continuing education for this industry, and someone who has been an embalmer for 30 years may not have any current training. The board feels that this can put not only the licensee but the public at risk.

Section 14 of the bill requires licensees to comply with all Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, requirements. Obviously, they must comply, but by placing the requirement in our statute, the board may potentially take action against the licensee for failure to comply with OSHA requirements. For example, if OSHA finds blood-borne pathogen issues in the facility and those findings are reported to us, the board could potentially move forward with disciplining their license.

Section 20 modifies the responsibility of the Office of the Attorney General to state that the Office of the Attorney General only recommends certain action and discipline matters, as opposed to the Attorney General actually deciding on those matters.

Section 32 requires applicants for a funeral director's license to spend one year as a funeral arranger prior to becoming a funeral director. Funeral directors are required to complete and sign death certificates and ensure that all permits are in place prior to disposition. They oversee the preparation and care of remains and are also responsible for the proper management of a funeral establishment. The board does not feel that they can be adequately prepared for these duties without having first worked in a facility for at least a year, especially considering that there are no formal education requirements for this work.

Section 46 adds unethical practices contrary to the public interest to the list of acts constituting unprofessional conduct. The board cannot have a list of every possible thing someone might do in this industry that constitutes unethical practice, and this would assist the board in discipline cases that might not clearly fit into a specific category.

Section 47 of the bill makes changes to the content of the permit and advertising for facilities. The statute now states that the facility cannot operate or advertise under any other name than the owner. The reality is that these facilities operate and advertise under the name in which they are doing business, and we would like to clarify that these facilities cannot operate or advertise under any other name other than the name in which their permit is issued.

Sections 54 and 57 consolidate the authority to order burial with the authority to order cremation and make several changes to the authority, which includes relinquishing the authority for anyone arrested for or charged with the death of the decedent. Currently, if someone is arrested and charged with murdering their spouse, the spouse who is arrested maintains the authority to order the disposition of that body. The family is then faced with getting a court order so that they can take control over those remains. We do not feel that is in the best interest of the public. In addition, that section allows the authority to pass to the next person in priority when the authorized person is not reasonably available or is unwilling to make those funeral arrangements after a 30-day period.

Section 55 requires operators of a crematory to ensure that any person physically operating the equipment has completed a crematory certification program that is approved by the board. We are not certifying these individuals. We are only requiring they attend a training and that they have the expertise to properly operate that equipment through requiring the training. Courses are, typically, six to eight hours in length and are valid for a period of five years.

Chairman Kirner:

Committee members have questions, and Assemblywoman Bustamante Adams, I have a question for you. During the interim, this board was one that you discussed, including whether or not to eliminate the board. You decided not to and allowed it to reconfigure itself. What we are looking at today is a lot of revitalization of a board that was dormant and not doing its job. Do I have that right?

Assemblywoman Bustamante Adams:

That is correct, Mr. Chairman. Last session, the Sunset Subcommittee of the Legislative Commission made recommendations to eliminate, and this Subcommittee put out several parameters that they needed to correct in order to keep it. I am happy to report the Funeral Board did so, and met all the requirements, and now these are the new boards with their recommendations on things that they could do to be more efficient for Nevadans.

Chairman Kirner:

That was my understanding as well. What we are seeing is a phoenix, if you will, of this board and it sounds like Ms. Kandt is doing an excellent job of trying to bring it back to life.

Assemblyman O'Neill:

Regarding the continuing education units (CEU), as I recall, there is not a facility in Nevada that offers mortuary sciences, is that correct?

Jennifer Kandt:

Yes, that is correct. We would work out some of these details and regulations, but there are a number of online trainings that would pertain to this industry. In fact, there are a significant number of online trainings, including anything from blood-borne pathogens to embalming infants. This has not all been put into place, but I am assuming they would allow parts of these crematory operator trainings to pertain to that as well.

Assemblyman O'Neill:

What I was curious about was the online availability so it was not that onerous on the administrators to get their CEUs.

Assemblywoman Carlton:

This is light years advancement, and the only concern that I have is we have a new licensure classification and funeral arranger, but I do not see the fee listed. Traditionally, we list the cap in statute and then you work up to the cap. We do not allow it just to be done by regulation. The regulations adjust it within the parameters, so I am wondering what type of fee you would be looking at for the application fee, and then what would be the examination fee?

Jennifer Kandt:

At present, in NRS Chapter 642, it states any certificate, license, or permit issued by the board, so it encompasses all of them. The initial applications are \$375. A renewal is \$200; however, as part of the negotiations when we were working with the industry on this bill and we were adding requirements for them to ensure that their crematory operators have training and continuing education, we negotiated renewal of licenses to happen every two years. We are, essentially, cutting their renewal fees in half, but we are adding the requirement to license additional people.

Assemblywoman Carlton:

Is that statutory change in the bill?

Jennifer Kandt:

The two-year period is statutory within the bill, yes. There were changes through an amendment.

Assemblywoman Carlton:

The only concern I have is those fees are not actually statutorily in the bill, but apparently the fees are cross-referenced somewhere.

Jennifer Kandt:

Nevada Revised Statutes Chapter 642 already has those fees established and we did not need to make changes to that particular section because it applies to any permit, license, or certificate issued.

Assemblywoman Carlton:

This to me seems like an entry-level position, and they will be paying the full freight like everyone else. I am just not sure if those dollar amounts are appropriate for an entry-level position that I see in here. The funeral arranger is a person behind the desk. I want to make sure that someone is not getting priced out of a job and they end up losing it. We have people doing this now, and this will be new licensure for them.

Jennifer Kandt:

In every case I have seen so far as executive director, it is the funeral establishments that are actually paying the fees for the individuals working within their establishment. It is the company that is paying for them to be relicensed. Because we are cutting their fees in half by requiring them to only relicense every two years, I think the industry was actually pleased with that idea.

Assemblyman Ohrenschall:

Last session, we added a new fee, a \$10-per-death-certificate fee. I wonder if that is mostly going to the operations of the board or how is that being spent?

Jennifer Kandt:

The \$10 fee is what is supporting the board at this point. The industry is so small that to exist on licensing fees was almost impossible for this board. We were now able to hire an inspector to do our inspections and investigations and to do so many of these things that the Sunset Subcommittee wanted to happen, so that is what is funding us.

Assemblyman Ohrenschall:

How much does that generate in the biennium? Do you have that data?

Jennifer Kandt:

I could get you the exact number. It ranges from approximately \$15,000 per month to around \$18,000 a month. It varies in terms of how many cases there are.

Assemblyman Ohrenschall:

Sections 3, 4, and 5 talk about this new direct cremation facility. Is that meant to be a more affordable option for people who cannot afford a high-priced funeral and are on a very tight budget? Will this also be subject to regulation at the local level? I see the only requirements for the permit to operate a direct cremation facility is to be at least 18 years of age and be of good moral character. I am definitely over 18. I think I am of good moral character, but I am not sure I am qualified to operate one of these. What other kinds of qualifications will the board put on that, or will it be limited to anybody who has the money to start one and is over 18 and is of good moral character?

Jennifer Kandt:

Part of what is in the bill is that a licensed funeral director will be required to manage that establishment, so you would need a licensed individual to work in that facility who is a funeral director. There may be additional requirements that we work out, again, in regulation—that is the minimum.

Assemblywoman Fiore:

Why does the board have the final decision on the complaints? It would seem to me that the Attorney General should retain that right.

Jennifer Kandt:

Our Deputy Attorney General had advised us that it was very unusual for the Attorney General's Office to be making the decision on whether we proceed with a complaint, and that it should be the Attorney General's Office that typically advises the board on when they should proceed and when they should not, but it is not the Attorney General's decision.

Assemblywoman Fiore:

By statute, though, he is the legal advisor to all boards, so that is my first concern. Section 5.5 requires that a person who advertises crematory services on the Internet own the facility. There are services that contract with crematories for a discount and resell those services. This would not be allowed under this bill, like the Neptune Society, which does it on a national level? I do not believe they would be able to do that under this bill.

Jennifer Kandt:

The Neptune Society actually has two physical locations within the state of Nevada, so they absolutely can sell their online cremation services. What is happening in other states has not happened here yet. We have not had the issue, but it is fast becoming a big issue in other states. These companies are selling the cremation online. They do not have a physical location in that state. They do contract with a licensed individual who provides the services, but when the family has a problem with those services and what they were sold or what they were told, they have a difficult time because the funeral establishment that provided the services blames the online retailer, and there is a very difficult situation with who do you go after when the board has no authority over the online entity that has sold the services.

Assemblywoman Fiore:

Why would a funeral arranger have to be licensed by the board? Why should they not be able to arrange a funeral just like a wedding planner?

Jennifer Kandt:

There are very specific requirements under the Federal Trade Commission regarding things that someone has to do prior to making an arrangement and during the arrangement. We believe they need to fully understand those requirements and all of the state laws surrounding the funeral industry. Even more importantly, we want them to have a background check. They are working with these families during a very vulnerable time, and there is a large likelihood they could end up taking advantage of those families, and we do not want that happening either.

Assemblywoman Fiore:

It is 2015. What prompted this bill? How have you been running it without licensure so far?

Jennifer Kandt:

I think as was brought up earlier, for about 16 years, this board was not operating very well. The executive director was running the board from her home in San Diego. The board met infrequently, and I think there were a lot of issues that went unaddressed. When an entirely new board was put in place, they decided that so many of these issues that had been unaddressed for so long needed attention.

Assemblywoman Neal:

Section 54, subsection 1, paragraph (i) is stricken. This is the priority of who can decide against cremation or how the human remains will be disposed. Why did you strike out the person who has joint tenancy, because that could be

a roommate, and we both own the property, and that could be the closest person to me. Why would that individual no longer be a part of the priority?

Also, in section 54, subsection 3, dealing with the authority to order the burial, it mentions the person who was involved in the death, possibly charged with manslaughter, or the ultimate demise of the person, what was the public policy purpose behind that? Let us say it was a father or mother who killed a child, and the parent has remorse and wants to bury the child. Why is that now eliminated as a possibility?

Jennifer Kandt:

One reason is that, if they are currently incarcerated, signing all the paperwork that is necessary for this to happen becomes very difficult for a funeral establishment. The second thing is, if it is a situation where that person was intentionally involved in that person's death, the remaining family members do not want that individual controlling disposition of that person.

With your first question regarding the primary domicile in joint tenancy, joint tenancy being a real estate term that they own the property together, for a funeral establishment to determine ownership of the property, many of them were getting into trouble with this because it was not that they owned the property together, but perhaps they were living together. The board felt that it had created so many issues that they needed to eliminate it altogether.

Assemblywoman Neal:

The same section 54 and subsection 3, I understand what you are saying, but you have the words "or charged." Charged does not necessarily mean incarcerated. Charged does not mean that I am behind bars. It means that I was charged with a crime and not convicted, so why that language?

Jennifer Kandt:

We did have the Nevada Network Against Domestic Violence come to our hearing before the Senate side in support of this particular section, because the most common scenario with this would be husband or wife killing husband or wife in a domestic violence incident, and then the person has control of that body. The board felt that that was very important not to put a family through that. We are saying that it just goes to the next person in line. It is not that spouse at that time.

Assemblyman O'Neill:

When I was in college, I worked in a funeral home and actually thought of becoming a funeral director. I appreciate everything you have put in this bill. I can see the time.

Has there been any discussion by the board to open up to allow other disposal of remains, such as emulsification, in Nevada?

Jennifer Kandt:

That has not yet been something discussed. We have not had anyone approach the board wanting to offer that service. Bart Burton, an industry representative on our board, would have more specific information for you.

Bart Burton, Member, Nevada State Funeral and Cemetery Services Board:

The problem is that it is a very expensive process to get the equipment in place. Why there are so few of them is that the price to regain your money out would take some time. At first, it did not seem as if there was a lot of attention on it, and it seems in current times that it has declined.

Assemblyman O'Neill:

In closing, I would like to say that having the arranging side of funerals, to me, is one of the most important parts of your regulations. That is where the families can be taken advantage of the most. I really appreciate that. Please stay in touch with me. I would like to support the board in the future, if you would please.

Chairman Kirner:

We will invite those who are in support of the bill to come forward.

Warren Hardy, representing La Paloma Funeral Services:

We fully support this legislation. We have come a long way in two years. It has been stated that two years ago, there was a piece of legislation to eliminate this board. We supported that and we supported the alternatives to this board. However, the decision was made to move forward and to give this board one more chance. On behalf of the industry, I am here to tell you that things have gone remarkably well—beyond what any of us could have imagined. I would be remiss if I did not single out Ms. Kandt for her work in doing that. She has been a phenomenal advocate for this board, worked very closely with the industry, and is consistently and aggressively in contact with the industry to make sure we are aware of what is happening.

I also want to recognize the leadership of Assemblywoman Bustamante Adams and Assemblywoman Carlton. When I was serving in the Legislature, then-Senator Carlton was our board czar and brought so much knowledge to this. This is an area where she took particular interest, and I want to thank her for her leadership in that. Again, we are in full support of this bill. We support the funeral arranger portion because it has been mentioned that those are the people who mostly touch the public from the industry's perspective.

I want to touch on Assemblyman Ohrenschall's comments about the reason for the direct cremation. That is a growing part of the industry, and his observation is precisely the reason it is there. It is extremely economical for families to choose this direct cremation avenue. We are in the direct cremation services, and we do for the family only what they cannot do for themselves. I think they start at \$500 in our location, so this is a very good bill. I am pleased to report that the process of getting this board back and headed in the direction it should be has gone very, very well, and we appreciate the Committee's consideration of this legislation.

Assemblyman Ohrenschall:

As to my question regarding the direct cremation facilities, do you think they will be used for our deceased who are indigent and do not have family or a family who cannot afford a burial or cremation? Do you envision that being used also?

Warren Hardy:

Yes, that is currently one of the areas that is primarily used. Those contracts go through social services in the county, absolutely.

Assemblyman Ohrenschall:

So they are being used now? There are direct cremation facilities now and we are just putting it into statute?

Warren Hardy:

Yes, they are. Part of the problem was this is a part of the industry that rose up because of economic demand, because of folks who wanted to be able to avail themselves of these services. The prior funeral board attempted to accommodate that, but we learned that in statute, there is not a provision for them to do that, and that is the reason for this change. Direct cremation has been occurring for quite some time, and now this brings it in line with statute and also the regulation and other things necessary to protect the public.

Assemblyman Ohrenschall:

Let us say a family can only afford that \$500, and they do the direct cremation. They will not have the viewing but they would still be able to get the remains or an urn, or something like that, or would that be additional?

Warren Hardy:

Yes, and there are additional services you can request. If you want a viewing, it is a bit limited in terms of what will be required. Some of that will be worked out in regulation. If the family can only afford the cremation itself and wants to

do everything themselves, this provides for that, and this law provides for the regulation that will occur shortly that will help protect the public in those cases.

Chairman Kirner:

Are there others in support? Seeing no others in support, I will invite those who are in opposition to this bill. Seeing no one, are there any who wish to testify neutral? Seeing no one, does the bill sponsor wish to make a closing comment?

Jennifer Kandt:

Thank you all for your time today and for recognizing the amount of work this new board has put in to making these changes. I think it is a good thing for the public that you decided not to deregulate this industry because there are quite a few issues going on that we are addressing and, again, we appreciate your support.

Assemblywoman Kirkpatrick:

I was the biggest opponent of making sure that the Funeral Board went forward, and voted no, but I will take my hat off to you for the hard work that you put in reengaging the industry—something they should have been part of all along. I like to recognize good work when people go back from the Legislature and try to fix things and bring them up to national standards, which is important in our state. I commend you for all the work you did.

Assemblyman Ohrenschall:

On the direct cremation facilities, I did not realize until Mr. Hardy testified that they are already in existence. Do you know how many of these direct cremation facilities we have in Clark County versus statewide?

Jennifer Kandt:

We have six licensed facilities at this point. Again, they were issued their permits under something the board had termed "limited establishment permits," which clearly did not exist in statute. There is a definite need to clean that up. Certainly we do not want to revoke the license for the Neptune Society because that is what I think we would be faced with doing.

Assemblyman Ohrenschall:

Are the six all in Clark County?

Jennifer Kandt:

No. We have two in Reno, and four down south.

Chairman Kirner:

I think you are very much on the right path. We appreciate your bringing this bill forward.

I have been emailed and written to and otherwise encouraged to jump to Senate Bill 393 (1st Reprint).

**Senate Bill 393 (1st Reprint): Revises provisions related to Oriental medicine.
(BDR 54-864)**

Senator David R. Parks, Senate District No. 7:

I come before you this afternoon with Senate Bill 393 (1st Reprint), a bill that revises the teaching of acupuncture in a clinical setting. Thank you for considering this bill. Joining me shortly will be Senator Tick Segerblom, who is the cosponsor on the bill, and he will be providing additional testimony.

Senate Bill 393 (R1) is about the practice of Oriental medicine. Under existing law, the State Board of Oriental Medicine regulates practitioners of Oriental medicine, including acupuncturists. Senate Bill 393 (R1) seeks to exempt from licensing requirements an acupuncturist licensed in another state who is employed by a Nevada school of Oriental medicine for the purpose of teaching, supervising students, or demonstrating the methods and practices of acupuncture to practitioners in a clinical training setting.

That concludes my comments, and I would like to ask Assemblyman Hickey to make a few remarks.

Assemblyman Pat Hickey, Assembly District No. 25:

I am here testifying today as an individual and not as a sponsor of the bill. As I understand it—and I visited this school, which I believe is in Assemblyman Silberkraus's district in Henderson—the need for this bill is to allow for instructors in this school of Oriental medicine to qualify for their accreditation, and they apparently have moved along the process. It is to allow licensed acupuncturists to teach and demonstrate in the academic setting, and not in any way to circumvent the other laws in the state, that are regulated by the State Board of Oriental Medicine with respect to licensing acupuncturists to practice in Nevada. It is simply to help with their accreditation application in order to be able to produce more acupuncturists, which I think is a worthwhile cause in and of itself and a healthy business enterprise that adds to our Nevada economy. For that reason, I am in support of my two colleagues' bill.

Senator Tick Segerblom, Senate District No. 3:

We have a great acupuncture school in Las Vegas, which is going to be world renowned, and this bill allows us to bring in experts from China. The one thing about acupuncture is we do not have lots of experts in the United States, but in China, they have fantastic universities as this is the number-one source of medical training. This bill will allow us to bring those experts from those universities over to teach in our school, which they currently cannot do. It offers a fantastic opportunity for Nevada and for the United States, frankly.

Assemblyman Nelson:

If you bring someone in, I understand they will not be paid for practicing, but do you contemplate paying them for their expenses to come here or perhaps an honorarium or something like that?

Senator Segerblom:

Absolutely. They will be part of the faculty. The need for this is they have a lot of clinical settings, and these physicians would be in with the students in the clinical setting saying, "Put the needle here; put the needle there," or whatever. Those students might pay a modest fee for a clinical setting, but these particular doctors are not paid by the patient but paid by the university. We would pay their expenses to come here.

Assemblywoman Fiore:

Thank you for bringing this bill forth. I like this bill a lot.

Senator Segerblom:

I do not know if Dr. Guerra is still there, but we have the Director of Wongu University of Oriental Medicine down south.

Chairman Kirner:

You are referencing acupuncturists who might come from China to participate as part of the faculty. My presumption is, and the reason we have this bill to exclude them from licensure, would be that they would not practice at all. They would just work as faculty in the school, is that correct?

Senator Segerblom:

That is correct, but currently they could not even advise on patients under our current standards. Nevada has one of the toughest acupuncture laws in the country and was the first state to license acupuncture in the 1970s. This helps our university.

Anthony J. Guerra, M.D., President, Wongu University of Oriental Medicine:

A few days ago, I had the pleasure of being with you in Carson City and met many members of this Committee. I was truly impressed by the effort you are all making. I met with some of you at eight o'clock in the morning and some of you at eight o'clock in the evening and between your various sessions. I hope today this session ends early for those of you who have a four- or five-hour drive back to your family.

In the annals of Oriental medicine in the United States, the Nevada Legislature is a significant player. As *Time* magazine wrote on April 23, 1973, some 42 years ago: "The Nevada state legislature last week became the first in the nation to declare traditional Chinese medicine 'a learned profession.'" *Time* went on to say "By nearly unanimous vote, the lawmakers legalized acupuncture, herbal medicine, and other Chinese practices."

At that time, Dr. Benjamin (Yee-Kung) Lok was to become the first licensed doctor of Oriental medicine in the nation. Today, Dr. Lok's grandson Henry Lok is a student at Wongu University, the first and only school of Oriental medicine in the state of Nevada. Wongu is now in its third year of operation and has gained candidacy status from the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), [of the Higher Education Act] a federally recognized body that allows schools to apply for federal Title IV financial aid for students. Moreover, Wongu gained this status in the quickest time in the history of ACAOM.

That is all very good indeed, yet we must all be perplexed by the retarded growth of the profession of Oriental medicine in Nevada precisely in light of its first position status. How is it that today we have only 55 licensed doctors of Oriental medicine in the entire state, or one licensed practitioner for every 54,000 residents, when California has one acupuncturist for every 3,000 residents. Or compare our state to Arizona, which today has over ten times the number of licensed acupuncturists and a practitioner/population ratio of 1 to 11,000, nearly five times better than the Nevada ratio of providers to population.

Let me bring the attention back to the point of S.B. 393 (R1). In addition to 2,500 hours of didactic instruction, the master of science program at Wongu requires 1,000 hours of supervised clinical training. When the ACAOM site team visited Wongu in May 2014, after lauding the school for being better prepared for receiving candidacy than any institution it had reviewed in 20 years, the team said there are only 50-plus licensed acupuncture practitioners in the state of Nevada and that it is a challenge to recruit more

experienced practitioners to teach the program, especially finding clinical supervisors.

When the commissioners of ACAOM wrote their action letter granting candidacy status to Wongu, they reiterated that it is imperative to find a solution to the paucity of licensed practitioners who could serve as supervisors for its students. This bill is specifically constructed to solve the catch-22 that we find ourselves in in Nevada. We need to train more Nevada practitioners, but we need more experienced, licensed practitioners to do that training. This bill makes that possible and, for that reason, I ask for your support.

Chairman Kirner:

Does the Committee have any questions?

Assemblywoman Carlton:

Why would we not want them to be licensed in this state so we know who is here and what they are doing? We license doctors who come in and teach. We license dentists—we have a special category for that. What is the barrier and why would we need to exempt them?

Senator Segerblom:

It is the time that is consumed to pass our board. We only test twice a year, and it is a very difficult exam. We have a huge didactic factor, and there is also the language barrier. If we are bringing in these experts from China to have them take a test in English, we are not capable of doing that right now.

Anthony Guerra:

We are contemplating people coming in for one or two years. The process usually is a year-long process to be licensed in this state. It is fairly impractical, and that is the catch-22 we are trying to overcome. Remember that the licensing for practitioners would be for those people going into private practice, but this bill stipulates that these people who are licensed from other states can only supervise our interns. They cannot practice. They cannot be paid even in our clinic for their services. They are there simply in an instructional capacity.

Assemblyman Ohrenschall:

I am wondering if the language in section 1, subsection 2, paragraph (b), about the teacher, the professor being "licensed to practice acupuncture in another state or jurisdiction," is broad enough to apply to someone from China or Taiwan who is going to come here to teach?

Senator Segerblom:

That is what the Legislative Counsel Bureau (LCB) Legal Division said, the jurisdiction part.

Assemblyman Ohrenschall:

It does not need to say "foreign" jurisdiction or anything like that?

Senator Segerblom:

We are happy to put that in there, but the reality is that these people would be licensed in those jurisdictions. We are not just pulling someone off the street in China and bringing them over here. These are the top, the crème de la crème, so to speak.

Chairman Kirner:

I see no other questions from the Committee. Are there others who wish to testify in support of this bill? Seeing no one, are there any in opposition? Seeing nobody in opposition, Senator, do you have closing remarks? [There were none.] We will close the hearing on Senate Bill 393 (1st Reprint) and move to Senate Bill 341 (1st Reprint).

**Senate Bill 341 (1st Reprint): Revises provisions relating to dentists.
(BDR 57-261)**

Chris Ferrari, representing Nevada Dental Association:

With me from my office is Adam Plain, who will be running through testimony in support of Senate Bill 341 (1st Reprint) and the proposed amendment ([Exhibit J](#)) that is available to you on the Nevada Electronic Legislative Information System (NELIS). We understand in conversations with counsel that there could be a challenge of germaneness based on the amended language. If it would be okay with the Chairman, we would like to testify in support and provide the testimony on the record and work with interested parties following the hearing to craft any amendment that would address any germaneness challenge.

Chairman Kirner:

That would be fine.

Chris Ferrari:

I would also like to commend my colleagues from the insurance industry with whom we have been working for several months on this measure. We thought we had come to something that was ready to go, and we want to make sure that is the case.

Adam Plain, representing the Nevada Dental Association:

Senate Bill 341 (1st Reprint) is an attempt to bring more clarity to contracts between health care providers and provider networks. There is a fairly substantive amendment, which Mr. Ferrari spoke about, that is a collaboration between the Nevada Dental Association and insurance interests.

The issue at hand is the transfer or assignment of a contract entered into between a provider of health care and a provider network to another provider network. For example, if I sign a contract with Network A that permits them to assign a contract to Network B without my express consent on the transfer, it is implied in the contract, that is the situation we are addressing. It is a common practice and it is not one that we are looking to change in this bill. The point of the bill is merely to require communication when transfers like these occur so that providers can be made aware of the situation. The health care professionals want to help as many patients as possible. What they are not particularly fond of is finding out they are part of a network only when the patient is in their waiting room telling them that their name is on a website somewhere, and that they are holding a card that says they can receive services.

Going to the amendment ([Exhibit J](#)) that is on NELIS, section 1, subsection 1, simply requires that when a contract between the provider and a network plan is signed, it must indicate in the contract if it is assignable to a third party. It can only be assigned to a third party if expressly permitted within the contract, and a telephone number has to be included so that the provider can get information about the plan.

Subsection 2 of the bill requires that when a contract is assumed by a plan, meaning it is assigned to a third party, the third party must notify the provider within 30 days that they have assumed the contract. The notice must include specific information about how the provider can contact the plan. If the plan fails to make the required notice within the 30 days, then the provider is not bound to the terms of the assignment.

Senate Bill 341 (1st Reprint) does not affect how patients interact with their plans. It does not affect how patients interact with their providers. It simply requires slightly more communication between providers and plans. After all, can we really expect someone to uphold the terms of a contract if they do not know who are the other parties involved?

Chairman Kirner:

Just to be clear on the issue of germaneness, members of the Committee, if you use the word provider of health care, we want to be more specific

in terms of dental care. You and I agreed to work with the Legislative Counsel Bureau (LCB) Legal Division to rephrase this so that it fits the germaneness. With that, I will open it up to questions from the Committee.

Assemblyman Nelson:

If the contract is assigned, is the assigning entity still liable, or is part of the deal that they will give up their accountability?

Adam Plain:

Typically in these situations, the assignability language in a contract allows that the terms of the contract can be assigned to a third party without the original party waiving its rights to the contract as well. So it basically allows for expansion of the contract to additional parties.

Assemblyman Nelson:

I just want to make sure that the patients are adequately protected. When they sign up for certain coverage, they may not have been agreeing to a third party coming in. Is that the state of the law right now?

Adam Plain:

It is more of a situation between providers and network plans. For example, if Mr. Ferrari and I were to enter into a contract that contained assignability language, it may allow me as the network plan to assign the contract, perhaps for consideration, to a third party, allowing them to also have access to the contract in which Mr. Ferrari and I entered into. It essentially creates a new contract between Mr. Ferrari and the third party. It expands the scope of the contracts. In the case of a provider, it expands the number of network plans that they may be included in, but it does not affect the contractual relationship between the provider and the patient.

Assemblywoman Carlton:

Is this more for typical health insurance, or does this aim more at the medical discount plans that are out there where the plan is sold and then switched off? What are we really trying to get to?

Chris Ferrari:

The bill started out in its original version as broader and more related to traditional health plans. After the last couple of months of dialogue, what the health plans identified was that they are not really in the business of discount plans. The amendment you see on NELIS is a result of our working together and trying to focus more specifically to the discount plans where we see this occurring.

Assemblywoman Carlton:

So am I working off the first reprint, or am I working off a whole new document again?

Chris Ferrari:

An entirely new document. The one that is on NELIS is a wholesale amendment to the bill itself.

Assemblywoman Carlton:

So the one I marked up is no longer valid?

Chris Ferrari:

Correct.

Chairman Kirner:

Are there other questions from the Committee? I will invite those who are supportive of this bill to come forward.

Sara Partida, representing Nevada State Medical Association:

Senate Bill 341 (1st Reprint) is aimed at adding some regulation into the practice of rental networks, which is where an insurer can assign its provider network to other insurers who have not directly contracted with the providers. And, although the bill as it was reprinted applies only to dentists, this problem really is more global and applies to all providers of health care. So, we wanted to be here today and support the amendment. Although we think this is a baby step in the right direction, we would really like to see this eventually apply to all providers because this is not just a dental issue.

Russell Smithson, representing the Nevada Orthopedic Society:

I will echo the comments of Ms. Partida in that this is not just an issue for dentists but also all providers of health care in general. We hope the issues of germaneness can be worked out and all doctors can be included.

Chairman Kirner:

Are there others who want to come forward to testify in support of this bill? Seeing no one, is there anyone who wishes to testify opposed to this bill? Seeing no one, is there anyone who wishes to testify neutral? Seeing no one, Mr. Plain, do you want to make closing comments?

Adam Plain:

We would be happy to work with counsel to work out any issues and any issues that legislators may have going forward.

Chairman Kirner:

As this bill was presented to us, it was narrowed down to the field of dentistry and not so much in terms of the overall issue. At this point, barring anything coming out of Legal, I think we want to keep it narrowed down. Maybe that is a baby step, and maybe next time it can be expanded. I will close the hearing on S.B. 341 (R1), and open the hearing on Senate Bill 370 (1st Reprint).

**Senate Bill 370 (1st Reprint): Revises provisions relating to barbering.
(BDR 54-673)**

**Gwen Braimoh, Director of Instruction, Expertise Cosmetology Institute,
Las Vegas, Nevada:**

I own two cosmetology schools, and I am here today asking for your support for Senate Bill 370 (1st Reprint). There are barriers to barbering instructors and to opening a barber school. I have a cosmetology school. We have been in operation for 14 years. We are accredited and we offer Title IV [of the Higher Education Act] funds. This issue started about one and one-half years ago. These barriers are in place because the barbering laws have not been changed for about 15 years.

There are mainly minor changes in the bill. In section 1, it talks about the written and practical examination of barber instructors. The barber instructor exam is now being administered by the State Barbers' Health and Sanitation Board. We feel it is very subjective for the Barber Board to administer the exam and license the instructors.

Also, the National-Interstate Council of State Boards of Cosmetology, Inc. (NIC), which governs pretty much all of the testing for cosmetology and barbering throughout the country, has proctors who administer that exam. If a barber does not pass the exam the first time because he or she had test anxiety or for other reasons, the barber instructor will have to go back to barber school, as the law reads, for an additional 250 hours. There is only one barber college in the state of Nevada. I am not sure if you were aware of that. That instructor would either have to contract with the one school that is currently in Las Vegas or travel out of state, like the majority do. There are many who travel to California and Arizona just to receive their barber training. I know that is very subjective. Across the country, there are proctors who administer the test. I think it is fair in the conversation of revising this law that the Barber Board oversee the examination, but for the Barber Board to actually test and administer licenses is very subjective.

Section 1, subsection 3, paragraph (b), includes the term for receiving the examination results. Once an individual has taken the written and practical

exam, it would be fair for him or her to receive the results in a timely manner—within 10 days, or no more than 21 days. I know for a fact that that has not happened.

In section 2, subsection 4, when the instructor candidate fails the exam for the first time, he or she would have to go back to school for 250 hours, which must be paid for, and find a school that is approved by the board. The revision brings in the schooling requirement after the second time the person fails the exam.

As far as the number of stations per student, in cosmetology we are required to have one station per student while the students are actively enrolled in school. That way individuals are able to have a station where they know they will be servicing clients or practicing technical procedures.

Section 2.5 addresses how many barber instructors it would take to operate or open a school. The law currently reads, I believe, that there must be one instructor for every ten students. We are requesting it be one barber instructor for 20 students and two instructors for additional students. The reasoning for that is, at present, we have three barber instructors in the whole state of Nevada. We need to grow or create instructors. I am sure it is not every barber's dream to be an instructor, but for myself as a cosmetologist, standing behind the chair for 19 years, I wanted to go back to school to become a cosmetology instructor. There were schools available for me to do that. At this time, there is one barber school and, in the process of wanting to add barbering to our program, I have had to recruit out of state.

Chairman Kirner:

Are there any questions?

Assemblywoman Neal:

In the beginning part of your testimony, you were saying that if the applicants fail the exam, they have to go back to school for 250 hours. Is this a good or bad thing? In the original bill it said three or more times. This one says two or more times, but it is still the same 250 hours of further study that has to be done in a barber school approved by the board each time before he or she may retake the exam for their license. Is that what we are trying to go for?

Senator Kelvin D. Atkinson, Senate District No. 4:

To not make it too confusing, I think it simply goes to the fact that before this, if an individual failed the exam, and before he or she could retake the exam, they have to go back and take 250 hours of course study again. In the bill before this one, we actually had it reading they could take it three times before having to go back and take class. We had meetings with some folks down

south and compromised it down to two times, so that a person could take it at least two times before having to go back and take 250 hours of schooling. The conversations I had with them was this: why are we making folks go back after failing one time to take 250 hours? I am not an attorney. Maybe you have some on this Committee, but if you fail the bar exam, you do not have to go back to law school to take hours; you simply take the test again. If you fail the driver's license exam, you do not go back to class; you study and go back and take the test again.

I believe this was a healthy compromise so that folks did not have to go back to another 250 hours after failing the exam one time. We should be a little more reasonable and let people test again.

Assemblywoman Neal:

The way lines 24 and 25 on page 3 read, in section 2, subsection 4, the language seems to go two separate ways. It is saying that if the applicant fails to pass the exam two or more times, the applicant must complete 250 hours of further study. Pausing there, it continues, "in a barber school approved by the Board each time before he or she may retake the examination." It is the way the words "each time" read. If I fail, I have to do 250 hours before I can retake the exam. Each time, I have to go back to the barber school, do 250 hours, and if I fail it again, I have to go back to the barber school and do it again, because "each time" separates it.

Senator Atkinson:

If Assemblywoman Neal wants to work with us and change it to exactly what we are trying to do, that is fine. We are trying not to make them have to go back each time and take 250 hours. We are simply trying to allow them to take it two times before they have to go back. If the language is not clear, I do not mind working with Legal or someone to change it to reflect exactly what we agreed on in the Senate.

Assemblywoman Carlton:

Section 1, subsection 2, says, "The Board shall oversee the examination for a license as an instructor but shall not administer any aspect of the examination, including, without limitation, the practical demonstration or written test." Nevada gives a blue book test. It is our laws and regulations and is an open book test, but it is the blue book test to make sure that people understand the rules and regulations in the state. Who would actually give that test if the Board cannot give it, because it is a legal test?

Gwen Braimoh:

The test is a national test, which is the test the NIC administers on the computer. Regarding the law test, every participant has to know the barbering laws, but the practical test, which is whatever subject matter that has to be taught, is currently being done by the board members. All across the country, including in cosmetology, the NIC trains proctors.

Assemblywoman Carlton:

I understand you want to do this national test. I just want to make sure that the blue book test is done by somebody here in Nevada, not a national organization, because they do not get what goes on here. My concern is that by putting this language in here, you will not have the regulatory board doing the regulatory test—that is the problem.

Gwen Braimoh:

I do not think that is the problem. I am going to reword this. The NIC trains the Nevada proctors.

Assemblywoman Carlton:

I understand the proctor part. I am talking about the regulator doing the regulatory test. The proctors will do the practical and the written tests, but the blue book test is what I am concerned about. Rather than take a lot of time, I would love to sit down and talk with you about it and figure out how we can address that.

Gwen Braimoh:

That is fine.

Assemblyman Ohrenschall:

Earlier there was testimony that right now in Nevada we have only one barber school. In section 4, subsection 1, paragraph (b) of the bill, I am wondering if by changing the minimum enrollment from 10 to 20 students and requiring extra barber chairs in the school, is that one school going to be able to make these upgrades, or will they be grandfathered in on these new requirements?

Senator Atkinson:

This, possibly, gives them the opportunity to have more than one time in which they can have school. If the barber school were to tell you today it has requested to have more than one time when they have a class, meaning different hours, they have been denied that. Hopefully, this section may give them the opportunity to have more.

We have one barber school in this state of almost 3 million people. There is no barber school here in the north. If the Chairman of the Senate Committee on Commerce, Labor and Energy were here, he would tell you that his wife is a cosmetologist who wants to get into barbering, but finds it very challenging because she would either have to go down south or go to school out of state. That is an issue for Nevada.

I know we do not like to compare ourselves to California, but that state has over 300 barbering schools. This would give an opportunity for the one existing school to have more than one. You are right; the chairs are what they are: one person per chair, one student per chair. The barbering school had over 25 people on the waiting list, and when he was denied additional times to have classes, several of those people requested their money back. I think they can read the writing on the wall, and they probably went out of state to barbering school. Once an individual makes up his or her mind that they want to go to school and obtain some education, they want to get ready, and they are not going to wait. They are going to do what they have to do to get the education they need to start taking care of their families and putting food on the table.

Assemblyman Ohrenschall:

I have a constituent whose grandson went to upstate New York to go to a barber college.

Assemblywoman Kirkpatrick:

We have been trying to do this for a very long time, so this is a comment. My daughter is going to trainer school to be a personal trainer, and she gets a second bite at the apple to take the test a second time before she has to repay or reschool for 13 weeks. There is some kind of incentive, because some people just do not test well the first time if they are nervous, for instance. I think Assemblywoman Neal makes a good point that we might want to make that clearer.

I do not see the same thing on the blue book. The way I read it, you have to be licensed as a cosmetologist before you can be an instructor. So you have already taken some kind of test. We are not just letting people in off the streets. I think we just need to clarify that, and we can ask our staff to look at that to ensure that that is what happens. I think by putting the words in that the board, when the board comes, they license you, they tell you, and through a regulation process, they ensure that.

I am happy to see if our legal counsel can clarify that, because I know that many barbers in the past have not wanted this to change. I think everybody is itching to grow and everybody understands what we do not want to have

is a dying industry because we need to revitalize it. There is so much more going on. I will ask our staff to clarify that. I think Assemblywoman Neal was right with the way it was read and maybe drafted. We know how that happens.

Chairman Kirner:

Are there other questions from the Committee?

Assemblyman O'Neill:

In section 4 it talks about the ratio of instructors per students, and it seems to be one instructor per 20 students up to 40 if you have to go to two instructors. So the instructor could handle a class of 39 students?

Gwen Braimoh:

Yes; the way it is normally written and is actually done is two instructors per 25 students, or three per 75 students with the State Board of Cosmetology law. When the student is enrolled, that student could be enrolled part-time, day class or evening class. If you have 20 students, it all depends on where they are as far as academics. If they are in the classroom, or they are working on the floor, I think we meant to say two instructors per 20 students.

Senator Atkinson:

That is existing language. We attempted to change that in the first reprint, and we did not agree on that. We had a meeting with some of the folks down south who did not agree on it either, so this is just reverting it back.

Chairman Kirner:

Seeing no other questions from the Committee, are there folks here who wish to testify in support of this bill? Seeing no one, are there any who wish to testify in opposition to the bill?

Eloy Maestas, Secretary/Treasurer, State Barbers' Health and Sanitation Board:

Under section 1, subsection 3, paragraph (b), the bill states that the results of the examination must be sent to the applicant. The National-Interstate Council of State Boards of Cosmetology does not do that—they never have. The NIC sends the applicant's test results to the State Barbers' Health and Sanitation Board. They will not send the results to the applicant.

Something else to clarify, the NIC does not have proctors. The NIC sends an individual to Nevada to teach us to be proctors—that is what they do. That was misinformation saying that NIC has proctors because they are not in that business. They are in the business to develop the examination so we can administer it as a board.

Another problem I have with this is that we have never had an issue with the individual getting their results within ten days. We had one individual who did not receive the results within the ten days, and the reason was it was Labor Day week and it fell in that time frame when he took his test.

The way NIC operates is that we have to get the test back to them within 24 hours. As soon as the examinee is finished, the test immediately goes into a FedEx envelope. I immediately take it to FedEx, and it is gone within an hour after the applicant is done examining, and we are pretty thorough with that. We have had only one individual who misstated that he had never received his results, but if he had never received his results, why did he come to the board to reapply to take the instructor's exam again? Therefore, he did not know he had failed?

Another thing I have a problem with is only using instructors. We only have three instructors in the state of Nevada. One currently owns a school; one is currently putting in a school, which should be open sometime the middle of this year; and the other one is neutral. That is really not a huge pool when you have two different schools. Who is going to test whom? One school is going to test the other person's instructor, or vice versa? We would like to see if we could get a larger pool of instructors, maybe licensed Nevada barbers who have at least five years of work experience in our state, and we can get them to be taught also as proctors, not just instructors. We have some veteran barbers who can bring a lot of good to our profession, as they have been barbering for many, many years. That is one of the things we would like to see changed to benefit our profession.

Assemblywoman Kirkpatrick:

I am trying to understand this. I assume you must have brought these concerns on the Senate side because that is typically how we do it, so that we hear from both sides. How do we grow the industry? Barbershops are outdated, as far as many young kids today are concerned. It is not the same as when I was a kid, when people went to those places, and it was kind of a big thing to do on the weekends. Kids today are not so engaged. How do we create the schools so that folks want to be part of that industry for the long term? How do we do that? I understand your concern that there are only three instructors, so how do we get more instructors? How do we allow people to grow schools? Back in the day when there were 500,000 people in Clark County, I would agree with you, but now there are 2.7 million people, so I want to understand how we grow that industry?

Eloy Maestas:

Believe it or not, barbering is thriving in Nevada. It is literally thriving. We have kids who are eager to go to barber school. As I just stated, Nevada is getting a second school, and we hope it will be open by August. We have an application on file from him and he is currently working. We are growing. The problem we have is that the majority of the population is in Las Vegas. We have some rural communities that have barbershops, like Pahrump. There was one in Ely, but it closed. I hope I answered your question, but we are definitely growing in numbers. When I first got on the board and was appointed by Governor Miller, we would test maybe 20 applicants a year. We are testing between 40 and 45 every exam. We examine four times a year. That is considerable growth, from 20 per year to almost 120 a year.

I would like some clarification on why, in this entire bill, everything will be good and passed January 1, 2016, if it goes the way it is and the bill is not amended, except the part that says the barber shall own a barber school and operate with at least two instructors. Why is that not going into effect until July 1, 2017?

Chairman Kirner:

I think that is just to give them time to develop the regulations around that. It is a standard arrangement.

Eloy Maestas:

People are talking about free enterprise and trying to better the profession, but what type of limitation is this when it has to be two owners? Two instructors can only be the owners of the barbershop? You would have to have two instructors as owners.

Chairman Kirner:

Your question is noted, but this is not a place to debate that.

Eloy Maestas:

Okay. I was just curious why the January 1, 2017, date.

Chairman Kirner:

When we get further along in the testimony, we will ask the Senator to address that. Is that all your testimony today, sir? [Mr. Maestas indicated yes.] Are there others who wish to testify in opposition? Seeing no one, does anyone wish to testify neutral?

Royal Byron, Private Citizen, Las Vegas, Nevada:

I am neutral. I am the owner and operator of Nevada's first and only barber college at this time. I am testifying neutral because I have some concern,

Mr. Chairman, with all due respect to you and the panel and Senator Atkinson. I need clarification, being the only barber instructor in the state of Nevada with an operating school and with three other instructors present, nonactive. The question came up from one of the Committee members regarding a grandfather clause. These laws that are being changed do put a damper on my concern and where I stand, being the only barber college in the state of Nevada, and those who have taken the opportunity as a free enterprise to want to get on the bandwagon and open schools.

I would first like to go on record to let you know that I have produced 250 barbers in the seven and one-half years that the school has been open, and I hold a 98.5 percent success rate. Again, I would like to know where I stand, as one of the members raised the issue about being grandfathered in. We had a meeting down here and met with Senator Atkinson, and that question came up. I am deeply concerned because if these laws affect me, they also affect the many students who are here on a field trip to see how the laws are being produced and changed that may or may not affect them.

I would also like to add my concerns in section 3, subsection 1, paragraph (e), "The fee for the issuance and renewal of an instructor's license, which must not exceed \$250." I took my first exam in 1995. From 1995 to 2000, I endured nine exams until I successfully passed it, and from 2000 to 2008, I held that license in good compliance without being able to use it to even operate a school. That was eight years that had passed. In 2008, I received the opportunity as the only instructor in the state of Nevada from 2000 to 2008, and I have been operating successfully in the state of Nevada. The \$250 fee was imposed on me. From being grandfathered and actually paying a fee for the last 15 years of \$250, my understanding of that original fee was that it was not to exceed \$75. The potential change to that bill is saying that it should stay at \$250. I am not trying to go back and get any compensation for being charged that amount over 15 years; I just want, as neutral, for it to be solid.

My second concern will be for a school to open and operate. Being the only instructor, I operate 19 students based on the original law, which I myself have had to go to court proceedings, litigations, to get clarity on the law, when the original law was one instructor when the active enrollment was less than 20 students. Basically, I need to know where I stand as far as giving my students quality instruction and being able to produce more quality barbers or produce quality instructors from my school. I am hindered because according to the law as I perceive it, I am limited to 19 students—period—not having the liberty to separate that 19 or be able to teach the 19 at one time, for those who want to go part-time or those who are having a problem with financial assistance. At this time, I do not have financial aid. I am going through my

second process to receive Title IV funding, but it is a process, and I am following all the rules.

My first question is, do I carry that grandfather clause so my students do not have to worry about my school closing down for not meeting these laws? Am I at liberty, the way the law is being written, to have one instructor for active enrollment of 20 as it is being changed, and one additional instructor for every two that is being asked to be changed?

Second, in section 4, subsection 1, paragraph (b), subparagraph (4), it says, "One barber's chair for each student present during instruction in the barber school." I have put in several proposals to have a morning and evening session to meet these expectations. As far as getting quality instructors to come to school, it is hard to get someone to leave their clientele to decide they want to go to school to teach and not have that area to where they could come either part-time or full-time to also still provide food on their table at home. There is no reason to have to go to school out of state, or anyone having to leave this state to solicit any instructors, when I have a school that offers that training. The only unattractive thing to that training is that those who want to receive that instruction want to do it part-time. Maybe the panel or Senator Atkinson could give me some answers on where I am heading for the security of my own school and Nevada's first barber college.

Chairman Kirner:

At this point, we will end our testimony and come back to the bill's sponsor to wrap up a number of things. In my notes, Senator, I see that we have an issue with grandfathering as just discussed, something about the fees, the ownership portion that is mentioned in section 2.5, the proctoring, the 250 hours, and the blue books. It seems like, and the colloquialism is, that it might not be soup yet.

Senator Atkinson:

I will attempt to answer most if not all of your questions. To the blue book issue, again, we have offered to meet with Assemblywoman Carlton. That is the first I have heard of any kind of blue book. They never mentioned a blue book either. We met with them for three hours and that never came up, so we will meet and discuss that and, hopefully, provide some clarification in the bill if we need to do that.

Regarding the 250 hours, I think we were very clear on that. The 250 hours was to go back to school for 250 hours. If you failed, we just wanted to clarify that the exam can be taken one additional time, for a total of two times before being required to return to school.

Chairman Kirner:

I think that language needs to be clarified a little bit.

Senator Atkinson:

No doubt about it. I agree with you and Assemblywoman Neal on that.

To address Mr. Royal Byron's questions, nothing in this bill harms a school that is in existence today. No one is trying to harm his school. I am surprised and a little bit shocked that he is even bringing it up, because he and I have already discussed this, and Assemblyman Tyrone Thompson and I have both agreed to meet with him in the off session to try to help him with issues regarding his school. We will continue to do that and maybe some issues have to be addressed in the bill, but there is no harm to him or his school in this bill. As a matter of fact, it makes some things a little bit easier for him to operate, which we have discussed. Hopefully, he will be able to take advantage of some of those things as well. We were going down to ten students, but they had issues so we, again, tried to take his issues into consideration and changed it back.

Chairman Kirner:

The only outstanding issue that maybe you have not addressed, and you might want to touch on, is under section 2.5, subsection 5, where it says, "That the barber school will be owned and operated by at least two instructors."

Senator Atkinson:

That was language we all agreed to, including them. As a matter of fact, it was worse. If you look at both versions, this was from the original bill that we went back to because they had concerns with that and Ms. Braimoh wanted it changed to one. That was again a compromise to go back, and that is why the 2017 language is in, because we did not want to force people to have to do this today. We wanted to give them time to get up to par, including Mr. Byron. If there was something he wanted to do with his school regarding this bill, that would give him time to do it—that was the reason for the dates.

Mr. Chairman, if I could quickly address the issues of one of the board members, Mr. Eloy Maestas. I have to say I think that his testimony and his words were a little bit disingenuous. I am very disappointed in him. I have talked to the Office of the Governor about his testimony on the other side and it looks like I need to talk to them again. Mr. Maestas sat in a meeting for almost three hours with the rest of us and agreed—I will not lie, reluctantly—with almost everything we have here. There have been email responses that I will share with the rest of this Committee on the final parts of this language, which they all agreed to. Now, because he has a friend on the committee, he wants

to come back and retract everything that he agreed to, and I think that is disingenuous. Assemblywoman Kirkpatrick asked if we had talked to them and tried to work out something. I believe we did that in fair negotiations with them. As you all know, the legislative process is a negotiation process, and that is what we did. I felt that we were in a place that was a little more comfortable. Everyone did not get what they wanted, even Ms. Braimoh, but we were at a more comfortable place. I thought everyone agreed on that, even if he had been neutral. But to get up and testify in opposition after a three-hour meeting that we all walked out of and shook hands on, I think is disingenuous, at the very least. I am not sure where that came from, but from someone the Governor appointed as a representative of the Governor's Office, I think the Governor should take a close look. Again, I do not want Mr. Byron to think for a minute that his school is somehow harmed. If there needs to be language that grandfathers him in or makes sure that he is not harmed, we certainly can do that.

Chairman Kirner:

I will close the hearing on S.B. 370 (R1). I want to thank everybody who has participated in this process today. I will open the meeting to public comment. Seeing none, this meeting is adjourned [at 4:22 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: May 8, 2015

Time of Meeting: 1:41 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 481	C	Kelly Richard, Committee Policy Analyst	Work Session Document
S.B. 146 (R1)	D	Senator David R. Parks	Work Session Document from Senate Committee on Commerce, Labor and Energy, April 10, 2015
S.B. 146 (R1)	E	Shawn McGivney, M.D.	Statements of Support
S.B. 146 (R1)	F	Shawn McGivney, M.D.	Testimony in Support
S.B. 146 (R1)	G	Shawn McGivney, M.D.	Letter in Support
S.B. 146 (R1)	H	Shawn McGivney, M.D.	Electronic Code of Federal Regulations
S.B. 146 (R1)	I	Shawn McGivney, M.D.	Long Term Care Cost and Services Comparison
S.B. 341 (R1)	J	Chris Ferrari, Nevada Dental Association	Proposed Amendment