

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

**Seventy-Eighth Session
May 23, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 2:36 p.m. on Saturday, May 23, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblyman Paul Anderson
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:

None



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Janel Davis, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Renée L. Olson, Administrator, Employment Security Division,
Department of Employment, Training and Rehabilitation
James L. Wadhams, representing the Guaranteed Asset Protection
Alliance
Jesse A. Wadhams, representing the Guaranteed Asset Protection
Alliance
Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers
Association
Jon Sasser, representing Legal Aid Center of Southern Nevada

Chairman Kirner:

[Roll was called. Rules and protocol were stated.] We will hear two bills today. We were going to hear Senate Bill 374 (2nd Reprint) in a work session, but we will not be processing that today. I know the involved parties have been meeting together and I appreciate that. I understand they are close to an agreement, but are not completely there. I am going to hold that bill until late Monday evening. I understand there was another interest in a conceptual amendment that the Office of the Governor is working on separately and it should not be a part of this bill. I am going to support the Governor's decision.

**Senate Bill 374 (2nd Reprint): Revises provisions relating to energy.
(BDR 58-800)**

I will open the hearing on Senate Bill 24 (1st Reprint).

Senate Bill 24 (1st Reprint): Revises provisions governing unemployment compensation. (BDR 53-383)

Renée L. Olson, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation:

Senate Bill 24 (1st Reprint) amends *Nevada Revised Statutes* (NRS) Chapter 612 in regard to unemployment insurance compensation. Section 1 of the bill amends the definition of employment to include active duty members of the Nevada Army National Guard and Nevada Air National Guard so that they are eligible for federal unemployment compensation benefits for former service members. This amendment was added to the bill at my request.

Section 1.5 deals with two issues under the confidentiality sections of the statute. It allows the Employment Security Division to comply with statutory requirements under NRS 396.531 and NRS 232.920 by providing employment and wage information to participate in the statewide longitudinal data system. Section 1.5 also removes the reporting requirement burden from the private carriers of industrial insurance and places that requirement on the Division of Industrial Relations in the Department of Business and Industry. Under this section, the Division of Industrial Relations would be required to provide information to the Employment Security Division about claims filed for workers' compensation and temporary total disability (TTD). It requires the Administrator of the Employment Security Division to compare that information to the records of the Division for the purpose of determining whether claims are being filed under both systems by the same individual at the same time. This was also added to the original bill by an amendment. The parties involved, who were representatives from the industry, the Division of Industrial Relations, and the Department of Employment, Training and Rehabilitation (DETR) worked for a long time to come to an agreement on the amendment.

Section 2 changes the base period. The base period is the period preceding unemployment during which wages are reported. It changes the base period that can be used to establish a claim from the initial period of disability to any period of disability. This brings the statute into conformity with the published Nevada Supreme Court opinion *Anderson v. The State of Nevada Employment Security Division*, 130 Nev. Adv. Op. No. 32, May 15, 2014. This court decision basically said that the claim should not be limited to the initial period of disability.

Section 3 extends the period for the collection of overpayments due to fraud, misrepresentation, or willful nondisclosure from five years to ten years and brings our statute in alignment with the period allowed under the federal Treasury Offset Program (TOP). Under the TOP, we are able to recover overpayments of unemployment insurance benefits against the individual's federal tax refund.

Section 4 makes it an active fraud to fail to disclose the filing or receiving of benefits under workers' compensation or temporary total disability at the same time they are submitting a claim for unemployment insurance. This would further support our ability to deter improper payments.

There is a fiscal note for zero dollars on the bill. It was filed by DETR and references a fiscal impact in budget account 3270 for the statewide longitudinal data system. If this bill provides us the ability, under the confidentiality laws, to provide the information, any cost that would be associated that I could foresee in terms of building an interface with the systems would be covered under budget account 3270 in the statewide longitudinal data system. That budget has been closed already. There is really no fiscal impact to budget account 4770. We have asked this fiscal note to be removed. I did not think too much of it since it was a fiscal note amount of zero, but now DETR has to go before the money committees and explain that there is no fiscal impact. We would like the fiscal note removed, but we have been told by the Budget Division, Department of Administration, that it could not be removed that way, and we would have to request that the Legislative Counsel Bureau (LCB) remove it.

Chairman Kirner:

I am looking at an amendment that was proposed in February 2015 by the Employers Insurance Company of Nevada. I presume that amendment was worked out in the Senate?

Renée Olson:

Yes, and it is the amendment already incorporated into the bill.

Chairman Kirner:

Are there any questions?

Assemblywoman Neal:

Section 3, subsection 4, adds new language, "If the overpayment is due to fraud, misrepresentation or willful nondisclosure, the Administrator may, within 10 years after the notice of overpayment, recover any amounts due in accordance with the provisions of NRS 612.7102 to 612.7116, inclusive." Where is this language coming from?

Renée Olson:

I would say that is the length of time we were able to collect those fees in accordance with the federal TOP. It is not coming from another statutory guideline; it is coming from the amount of time they allow us to collect by those means. The TOP is our ability to capture federal income taxes that might be refunded to that individual. It only applies in cases of fraud.

Assemblyman Nelson:

My understanding is that these claims will not cost the state of Nevada anything because they will be paid by the federal government. Is that correct?

Renée Olson:

If you are referring to the definition of employment that we changed to allow National Guard employees, then yes. These would be based on their federal wages so they would be qualified under their federal unemployment compensation program. It does not come out of the state Unemployment Trust Fund.

Assemblyman Ohrenschall:

In the new language from section 1, on page 3, lines 14 through 22, who exactly are you trying to exempt? Also, I looked up NRS 400.040, but I do not quite understand it. Could you explain it to me?

Renée Olson:

In section 1, the language is not meant to exclude; it has already excluded National Guard members from receiving any kind of unemployment compensation benefits. In this case, there has been a change over the years in how National Guard employees are used in the United States military. When it becomes a matter of full-time active duty that they have been involved in, they are earning federal wages. It is stated under section 1, line 17, "Is paid under title 32 of the United States Code." It allows us to pay them the federal compensation benefits they are due; it does not exclude them.

Assemblyman Ohrenschall:

Could you explain what the statewide longitudinal data system is?

Renée Olson:

The statewide longitudinal data system was a concept under the P-20W Advisory Council to provide information for higher education to track when someone has gone through a degree program—or something of that nature—to see where they are employed later and what kind of wages they are earning. Under our confidentiality, we are allowing ourselves to provide that information into the system. It will be used for various research and reporting tools by higher education.

Assemblywoman Carlton:

The new language on page 9, line 22 says, "Filing a claim for or receiving benefits" This has to do with the TTD payments. I am concerned that if someone files the claim, but does so inappropriately, that can be corrected. They have not received any money, but may have just made a mistake as far as filing. I want to understand the filing a claim portion. Some people do not fill out the form correctly or it must be done on the Internet or over the phone. If it is done over the phone, you do not necessarily have control of what goes on that form. I would hate to see someone penalized for something they did not realize they were supposed to report if it can be corrected before they actually receive the benefit since no money has been dispersed.

Renée Olson:

This would lead us to ask the question of what is happening when there is a claim being filed at the same time. It would imply that, if they are applying for disability, they are not able or available for work. If you are not able or available for work, you do not qualify for unemployment insurance. We would then investigate why both were filed, and we would be asking questions. We would not automatically come to a determination that fraud was involved.

Assemblywoman Carlton:

Does it say that somewhere in the bill?

Renée Olson:

It does not say that in the statutory claim.

Assemblywoman Carlton:

If it does not say it somewhere, it does not necessarily make it true. I think that needs to be addressed.

Matt Mundy, Committee Counsel:

I think section 4, subsection 1, paragraphs (a), (b), and (c) is a nonexhaustive list of what constitutes fraud. Section 4, subsection 1, is contingent upon a person not making a false statement or representation, knowing it to be false, or knowingly failing to disclose a material fact. Those are three examples and all fraud has an element of doing something knowingly or willfully with the intent of deceit.

Assemblywoman Kirkpatrick:

I am trying to think back to when we had an abundance of people using this and getting overpayments. I remember we had put some regulations in place so people who were not doing it on purpose were separated from those committing fraud, and we could really know the difference. I believe my colleague wants to make sure people do not get wrapped up in fraud when they really are not trying to be part of it. I thought we put regulations in place within the *Nevada Administrative Code* (NAC) so that people knew what the process was. I know DETR was helpful with this process. A letter is first sent out to give them the option of answering questions so they can prove it was not fraud. I think the word "knowingly" gives people the ability to show that it was accidental, a mistake, or that they marked the wrong box. From all the help I received from my constituents, it was pretty easy to determine whether it was fraud or accidental.

Renée Olson:

I do not remember any regulatory changes because they would have already been established in our regulations. It could be that it was prior to my serving as Administrator. Our regulations and statutes well define the steps that we have to take for investigating and determining fraud. We look for the intent, and we give a person a lot of chances for an investigation in that area.

Assemblywoman Kirkpatrick:

Does that go to the overpayment piece? I learned from my constituents that if they ignore you, you are not going to be very patient. We probably have all had constituents who ignored the letters. It is much harder to go back if that is the case. For me this clarifies a little more in depth when you can go after someone once you have exhausted all other steps. Is that a fair statement?

Renée Olson:

Yes. I think you might also be referring to the fact that they have appeal rights after a determination has been made. When the individuals receive their letters stating they have an overpayment, it will also state the amount and will advise them of their appeal rights. There are different levels of appeal. For example, the lower appeal decides whether the Administrator made the proper

determination. If the claimant still does not agree with that level of appeal, he can go to the Board of Review. If he does not agree with the Board of Review, he can go to district court and beyond.

Assemblywoman Kirkpatrick:

Were there any concerns in the Senate Committee on Commerce, Labor and Energy?

Renée Olson:

No, there were no questions or concerns over this issue.

Assemblyman Ohrenschall:

As of now, are there any statute limitations under the new language in section 3, subsection 4, that states "the Administrator may, within ten years of the notice of overpayment, recover any amounts"?

Renée Olson:

It is currently five years.

Assemblyman Ohrenschall:

Is that just through regulation or is it stated in section 3, subsection 4?

Renée Olson:

As of right now it would be taken under the regular fraud provisions, which states five years in the statute.

Assemblyman Ohrenschall:

Would this double the time the Administrator can try to get this money?

Renée Olson:

Yes, on the fraud provisions.

Chairman Kirner:

I will ask those in support of this bill to come forward. [There was no one.] Is there anybody opposed to the bill? [There was no one.] Is there anyone in the neutral position? [There was no one.] I will close the hearing on S.B. 24 (R1). I will open the hearing on Senate Bill 253 (1st Reprint).

Senate Bill 253 (1st Reprint): Enacts provisions governing the sale of guaranteed asset protection waivers. (BDR 57-795)

James L. Wadhams, representing the Guaranteed Asset Protection Alliance:

I am here today representing the Guaranteed Asset Protection Alliance (GAPA). While the bill we are presenting today is going to create some confusion, it is actually designed to eliminate confusion. I want to give the Committee some perspective. In 2005, a law was passed dealing with insurance companies that sell insurance products which guarantee payment for the difference between the amount of the loan and the value of the collateral that was lost. This is regulated as insurance because it is sold by an insurance company.

As time has passed, we have seen more lenders and financing companies offering these contracts in the terms of the agreements with their borrowers. It accomplishes the same thing, and that is a waiver of that deficiency. If a car is lost shortly after you buy it and you financed 100 percent of it—which is what most of us do—the insurance company pays the depreciated value, which leaves a loan balance. If you buy guaranteed asset protection (GAP) or credit insurance from a separate insurance company, that is currently regulated under *Nevada Revised Statutes* (NRS) Chapter 691C, adopted by this Committee in 2005.

If you enter into an agreement directly with your lender and the lender says they will waive the GAP, this is currently unregulated. The two transactions are similar. The only difference is how the financial relief is accomplished. If it is an insurance company, it is currently regulated, but if it is the lender directly, it is not.

The bill before you today is designed carefully because the words are very similar and confusing: "guaranteed asset protection insurance" and the waiver of deficiency, which is "guaranteed asset protection waiver." The words in the marketplace are similar. The purpose of this bill is designed for those circumstances where the consumer chooses to deal directly with a financing company to eliminate that potential gap. They can do so and still have some consumer protections. The reason it is placed in Title 57, which is the Nevada Insurance Code, is because of its similarity to the product sold by third-party insurance companies. A consumer with a question can call the same regulator and presumably get consistent answers and will certainly get some help.

The purpose of the bill is to provide consumer access to regulatory information and consumer assistance, but nonetheless, distinguish between the products and arrangements made by insurance companies which are similar to everything seen in ordinary insurance contracts. Under NRS Chapter 691C, you have to file claims and wait 30 to 60 days to get the claim paid. When you make the deal with your financing company, you have to forward the value of the collateral, and under the terms of your financing agreement, the contract is paid in full. Senate Bill 253 (1st Reprint) covers agreements directly under the lender versus the NRS Chapter 691C transactions when there are outside insurance companies involved.

These sorts of financing opportunities are typically offered through car dealerships, furniture dealers, appliance dealers, motorcycle dealers, and boat dealers because of the rapid depreciation and the typically 100 percent financing of those purchases. You do not normally see this for homeowners, although there have been substantial adjustments by lenders in the homeowner area where the value of that collateral turns out to be quite a bit less than the amount of the loan. Again, because they are lenders, they are not regulated like insurance companies. If you bought insurance to cover the difference, it would be regulated by the Commissioner of Insurance.

This bill adds the opportunity for consumers who deal with their financing company to have access to a state agency that can give them some assistance in that regard.

Jesse A. Wadhams, representing the Guaranteed Asset Protection Alliance:

Sections 2 through 15 are definitional for the bill. Section 16 clarifies which provisions of the Insurance Code apply to the deficiency waiver. Sections 16 and 17 clarify the role of financing companies versus the insurance companies to make sure there are different provisions. Section 18 discusses the authorization for finance companies and dealers to sell a GAP waiver. It ensures that the Truth in Lending Act and other federal components are complied with. Most importantly, section 18, subsection 3, states that the sale of a GAP waiver becomes a part of the finance agreement. Therefore, there is no need to go to the insurance agent to file a claim or get a check; it simply becomes a part of your finance agreement and is paid in full.

Sections 19 and 20 regard a number of the consumer protections in place that we discussed in the Senate. Section 19 ensures that the waiver is optional and must be optional in the finance agreement. Section 20 lists the disclosures to ensure that the consumer has all of the appropriate disclosures, such as full refunds and where to go in case of cancellation. Section 21 mentions the free-look period where every consumer is offered 30 days free in which they

can decide whether the waiver is for them. Within the 30-day period, they can ask for a full refund of the price. The borrower is also able to cancel after the 30 days. After the initial 30 days, the borrower is able to ask for a mandated full or partial refund.

Section 22 covers the dealers' assets receivable for their book of business. They must have insurance coverage for that portion. Sections 23 through the remainder of the bill gives the Insurance Commissioner regulatory authority and some oversight in the ability to issue cease and desist orders and gives the consumer a place to go for questions and answers.

Assemblyman Ellison:

If I buy a car today and drive it off the lot, this bill will cover the depreciation to buy another car. Is that correct?

James Wadhams:

That is correct. You drive the car off the lot and it immediately becomes a used car and its fair market value is something less than what you just signed up for on your financing contract.

Assemblyman Ellison:

Upon the sale with a guaranteed asset protection waiver, what if I had that car for eight or nine months and I have a couple thousand dollars paid into it? I have already put an investment into the car and made several payments and it is still a new car. Can you explain how that is going to come in?

James Wadhams:

I am going to assume, like with most people, that this is a four-year finance agreement and I financed 100 percent of it. It will be about the end of year two, or the beginning of year three, when the loan balance has been brought down to the point where it equals the value of the vehicle. After that point, there would be no gap because the value of the vehicle would exceed the remaining amount of the loan. The loan balance should drop faster than the depreciation over the course of the life of the loan.

Right now, under the circumstance that you have described, there are essentially three ways for a consumer to deal with that. First, you can do nothing and take the risk yourself. Many people choose to do this. They say nothing will ever happen and they will be okay, which is a perfectly legitimate approach if you are tolerant of that risk. Second, you can buy an insurance policy from a company that sells insurance policies to consumers, which are regulated under Nevada law. Third, you can deal directly with the financing company.

The question Assemblyman Ellison asked is a little subtle. Typically when you go into the car dealership, unless you have previously arranged your financing with a credit union, the car dealer has two or three things to do. Sometimes in order to make the sale, they will sell you a financing plan while they submit your application to Ford Motor Credit Company, for example. The financing may temporarily be with the dealers' loan portfolio, but typically they end up selling those loans to Ford Motor Credit Company or something like that. If you deal directly with the financing company, the risk is covered under the loan agreement. If something happens, you do not have to file a claim with an insurance company; you just report that directly to the financing company.

Assemblyman Nelson:

In section 22, there is a requirement for the lender to purchase insurance to guarantee these obligations. I wonder why the lender is not, in essence, an insurance broker? It looks to me as if that is what is going on.

James Wadhams:

The answer precisely follows the one I gave Assemblyman Ellison. In many circumstances, particularly with cars, the car dealer has a credit facility—a small pool of money they can lend while they place that loan document with one of the more major lenders. The purpose of section 22 is to make sure that if that debt has to be forgiven because an accident happened before that contract was moved to a major lender, that dealer has the ability to cover the responsibility of paying off that loan. The first part of section 22 is about the dealer so it is the dealer's direct lending.

The last sentence of section 22, subsection 1, lines 42 and 43, is when it gets to Ford Motor Credit Company, for example, and the concern that they might not have the capacity to cover the obligation is obviously not as great. Therefore, you will see the word "may," which is discretionary. The other element of your question is what kind of insurance. It is typically purchased by lenders. We frequently call it accounts receivable insurance. Obviously, many of the home loan companies buy that because they do not know what is going to happen if they have to foreclose or if there is a default. Lender insurance has nothing to do with the consumer directly. This is a safety valve to make sure if there is temporary small-lender financing before it gets to the bigger companies, that protection is still there.

Assemblyman Nelson:

We have been analogizing to real properties like home loan-type situations. I am wondering if the future of this would be to establish something equivalent to a one-action rule for these types of transactions. This way the lender would be limited to its collateral and, if it sued on the note, it would lose the collateral. Is there any talk about that?

James Wadhams:

I have not heard that yet. Quite frankly, I have not heard discussion from this body for a number of years of the one-action rule. It was a major topic several sessions ago. I think the point you are making is that it is possibly the future. It is certainly applicable in real estate because those are typically much larger loans. While purchasing a car today is no small matter—neither is a television or refrigerator—that one-action rule has not yet been deemed by this body to be applicable to those small loans.

Assemblyman Nelson:

Of course not. We just made a big deal with Tesla Motors, and those cars cost as much as my first home, or close to it.

Assemblywoman Neal:

I would like more clarification on section 15 where it states in subsection 1, "The provisions of subsection 2 of section 18 of this act, subsection 2 of section 20 of this act and section 25 of this act do not apply to a guaranteed asset protection waiver offered for sale or sold in connection with a lease or retail installment" Why are leased or commercial vehicles excluded from the Truth in Lending Act? It is further illustrated again in section 22, line 40, where it reads, "other than a guaranteed asset protection waiver concerning a leased vehicle." Why are they excluded?

James Wadhams:

I believe the answer relates to the fact that a lease transaction is essentially a closed-end transaction with a residual at the end as opposed to a financing purchase where, over the course of four years, I end up owning a car free and clear. In a lease transaction, I may lease it for three or four years. I will have to turn the car back in, and it still has value. The risk factors related to a lease transaction or to an installment sale are different. I believe that is why the reference to NRS Chapter 97 is in there.

Assemblywoman Neal:

Why does the language in section 15, line 5, include "or lessor who purchases or leases the vehicle solely or primarily for commercial use or resale"? It speaks to leases and a lessor who then ends up purchasing the vehicle for a certain purpose.

James Wadhams:

I think it is because the commercial use or resale is different than a consumer who buys it for their own personal transportation. For example, a business buys a delivery van and it is used commercially. A nonconsumer transaction resale is somebody who is buying cars and reselling them so there would not be a typical user of those vehicles. That transaction is a completely different financing transaction.

Assemblywoman Neal:

Does the Truth in Lending Act apply to those kinds of transactions?

James Wadhams:

I am not sure I could say they do or do not apply to that. I would defer to somebody who has familiarity currently with the Truth in Lending Act because I am not prepared to answer that. I can certainly get that information, but I do not have it today.

Assemblywoman Carlton:

Currently in the state, I can buy GAP insurance through my auto insurance dealer. If I call my agent at AAA and ask for GAP insurance, I can purchase it. It then goes on my insurance bill. When I reach the point where I will no longer need it, I can take it off. Is that correct?

James Wadhams:

That is not universally true. Typically the auto insurance companies' insurance rates are based upon replacement value of a vehicle. Replacement value would be the fair market value of the vehicle at that time. Those insurance companies typically do not sell original cost replacement. Recently I have seen some offered at full cost, new car replacement value, but that has not been the case in the past. If you want to go to an insurance company that will sell you an insurance policy that does that, that would be an option.

Assemblywoman Carlton:

Is it an available product regulated through the Insurance Commissioner?

James Wadhams:

That is correct.

Assemblywoman Carlton:

My concern is that we are building up the loan. When you add a cost to a loan, put the interest rate on it, and it is a five-year loan that you cannot take the GAP insurance off of, how much does that end up costing you over the life of the loan? Every little bit makes a difference. I figured that out on one of my cars when I went back and looked. Those small amounts over the course of five years can make a big difference.

James Wadhams:

I am guilty of having to take the first of the three options I previously stated, and decided I would be okay. I ended up with a loss, and I had to pay a loan off even after I returned the value I received from the insurance company on the car. The specific answer to your question is that you are negotiating the loan. In my judgment, you should shop for different lenders. If you have a credit union, I would start there because their interest rates are typically the lowest. The Insurance Commissioner does not regulate loan rates.

Assemblywoman Carlton:

Will this amount be built into the financing and, therefore, make a difference in the term of the loan?

James Wadhams:

Yes, it would make a difference in the term of the loan.

Assemblywoman Kirkpatrick:

This is not the first time we have seen this bill, correct?

James Wadhams:

Correct. You would have seen the insurance bill in 2005.

Assemblywoman Kirkpatrick:

I want to understand who these people are. I have not figured out why they need these extra options. Who are the people who would be offering this? Are they Nevada companies and where do you go to get them? There is a lot of language in here, and I am curious how people are subject to this and who regulates them.

James Wadhams:

This bill would apply to entities like Toyota Financial Services, Ford Motor Credit Company, or Harley-Davidson Financial Services. They are lending entities and creditors. Page 3, line 30, deals with creditors and finance companies. *Nevada Revised Statutes* Chapter 691C was actually revised in 2005 and deals with entities like Harbor Insurance Company and Balboa Insurance Company, which are third-party insurance companies. They are dealing in a more limited area. The distinction is the who is who. Financing companies are the lenders and the currently regulated NRS Chapter 691C companies are insurance companies. There are two different types of entities.

The reason the bill has surfaced is because of the confusion. We do not want consumers to be confused about the two entities. Depending on the problem, consumers can call the Insurance Commissioner for problems with insurance companies, or the Federal Trade Commission for Truth in Lending Act questions regarding lending companies. Because they are similar types of transactions by different types of entities, it gives the Nevada consumer a place to call.

Assemblywoman Kirkpatrick:

This is how we got into the housing crisis. The people who were building the houses were also loaning the money and providing the insurance. People were confused. Would this have the same effect, but on the car industry? The car industry is now coming back and people are finally buying cars again. I do not want unscrupulous car dealers able to offer these products, and then the buyer ends up in the same situation where he loses his car over something he thought he took care of. Buying a car is confusing enough, but adding all the other insurance pieces makes it even more confusing. What benefits do constituents get from this? I am not seeing the need for it.

James Wadhams:

We could not pass this legislation, but these transactions would still continue. Lenders make loans and are not restricted in how they structure those loans, or the terms, or interest rates of the loans. For example, I am a member of the Nevada Federal Credit Union, and it typically has lower rates than Ally Financial, Inc. Before I buy a car, I am going to make sure I have the lowest interest rate. However, this is a different type of transaction regarding something happening to my car. I can choose to take the risk of not having GAP insurance since people do not have car accidents very often. If I am willing to run the risk of losing my car and still having to pay off the loan, I can do that. If this bill fails, these transactions will not be regulated and the consumer will not have a place to call for assistance in Nevada. It will solely be a Federal Trade Commission regulation and lenders will be able to do what they want.

Assemblywoman Kirkpatrick:

Are you telling me that this will provide some consumer protection? I thought you could not leave the car lot after buying a car without first purchasing insurance. It seems I am hearing something different. What stops insurance providers from selling you an insurance plan that is super expensive, but does not recover the costs? Sometimes people buy life insurance and some 20 years later they figure out they are paying more than they will actually get. What stops that cost from going up? Will the Insurance Commissioner now regulate this?

James Wadhams:

Yes. If this bill does not pass, the transactions continue. This is just an opportunity to give consumers a place to get information they do not already have. Please do not confuse the auto insurance you must have to register your vehicle with this bill. If you finance your vehicle, your lender is going to insist you have casualty insurance at least so that its collateral is protected. That insurance will only pay the current fair market value of that vehicle. If you are fortunate enough to be able to buy a brand new vehicle by financing \$20,000 and you drive it off the lot, the moment it crosses the curb it is probably only worth about \$18,000. The insurance you buy to register the vehicle does not cover the difference in value. You can take the risk that nothing will happen; you can choose to buy an outside GAP insurance policy to cover that; or you can negotiate with the lender to add it to the loan value. Again, those are the three choices. Confusing GAP insurance with your liability insurance is part of the problem. Insurance companies will only replace the fair market value.

Chairman Kirner:

Have you taken a look at the unsolicited fiscal note?

James Wadhams:

Yes, but I will defer to the agency that put it in; we have had some discussion with the agency. I would suggest that the fiscal impact of this is nominal because the consumer is going to make the choice regardless. Are they going to buy from the insurance company or end up negotiating with their lender? It does not change the licensing revenue of anybody required to hold a license.

Assemblywoman Diaz:

My biggest concern is consumer protection. Hearing that this bill will ensure consumers have a place to call to complain does not give me a lot of comfort in advancing this legislation. In section 16, subsection 1, I would be interested in these waivers having oversight. They also need to be held accountable for

unfair and deceptive trade practices. As I read section 16, it appears that these waivers would not be subject to it. Is that true?

Jesse Wadhams:

These would be covered by trade practices in NRS Chapter 597. In addition to the provisions within Title 57 that are applicable to this, general trade practices in NRS Chapter 597 would also apply.

Assemblywoman Diaz:

I have information here that says the certificate of authority is not required per section 16, subsection 2. How does that pan out?

James Wadhams:

This is a critical distinction. If there is an insurance company involved, it must have a certificate of authority per NRS Chapter 691C—statutes that were passed in 2005. No certificate of authority is required for financing companies. Ally Financial and Ford Motor Credit are not required to have a certificate of authority from the Insurance Commissioner because they are not insurance companies. This is why this bill applies to the creditors, not just to insurance companies. There is already a law in place for insurance companies. The consumer protection we are trying to copy is similar consumer protection for consumers who are not sure what they have, and are in need of some answers. They can call the same regulator and are likely to get the correct answer because that regulator knows which is which.

Assemblywoman Diaz:

For my not so savvy constituent who does not know how to navigate the already complex and cumbersome system of buying a car, it seems to me we are creating an exotic insurance industry that does not have any type of regulation, but legislates that it is not insurance per this bill. This does not sit well with me.

Assemblyman Ohrenschall:

On page 5 of the bill, section 19, lines 15 through 18, it reads, "A creditor shall not require the purchase of a guaranteed asset protection waiver as a condition for the approval of credit, the terms of the credit or the terms of the sale or lease of a vehicle covered by the finance agreement." Do you believe that may be occurring now? If this bill passes, the only way it can be enforced is by a consumer reporting it to the Insurance Commissioner, correct? Would there be any other enforcement mechanism?

James Wadhams:

I want to emphasize that if this bill does not pass, these financial transactions will continue without the protections that this bill affords. The simple answer is that part of this language was put in to anticipate that there would be a concern. The motorcycle dealer is going to force you to increase the interest rate on your loan to cover this waiver of deficiency.

Assemblyman Ohrenschall:

That is my concern exactly.

James Wadhams:

The language specifically says you cannot force a person to increase his interest rate to cover a particular risk. You can choose option number one and do what I did and say it is not going to happen to me.

Assemblyman Ohrenschall:

I am not shopping for a motorcycle any time soon, but if I went to buy a motorcycle and they said they would finance me at 7 percent. If I included their great GAP policy, then it would be financed at 5 percent. Would that be prohibited or allowed under this bill? They are not forcing me to walk out or to take their better deal and purchase the product.

James Wadhams:

I would be surprised if any lending company would offer you a discount on the interest rate to eliminate that risk. That is what the lending of money is about: the extension of credit and the risk that you will be able to repay, or that collateral has the value. It seems contrary to the nature of lenders to discount a loan value. I do not think this would be a realistic scenario in the marketplace.

Assemblyman Ohrenschall:

Page 8, lines 1 through 3, says "The Commissioner may order any person, including, without limitation, a creditor or administrator, to cease and desist any conduct that violates any provision of this chapter." What if something does not rise to the level of a violation of the law? For example, if it is just an issue between the consumer and the creditor, under this law, if it passes, could the contract force them to resolve it in arbitration or would they be able to resolve it with the Insurance Commissioner's help?

James Wadhams:

It clearly allows the Commissioner to issue a cease and desist. If the lender on your motorcycle purchase is packing that loan, it is a violation of the law and this bill makes that clear. However, someone would have to find it because we do not have regulators sitting in every lender's office. If you feel you have been

forced to do that in order to buy the motorcycle, you have some recourse. If the Commissioner sees that it is happening, he can issue a cease and desist contrary to the law in the first section. This is a remedy that may solve your problem, but it is currently not available

Assemblyman Ohrenschall:

Is my only current remedy to go to court?

James Wadhams:

Yes.

Assemblywoman Neal:

Since section 17, subsection 1, paragraph (a), excludes companies from using the words "insurance," "casualty," "surety," or "mutual," how are those companies that use those terms in their name being dealt with now? The regular person who buys it is confused as to what he has actually purchased. Subsection 3 of section 17 states, "This section does not apply to a creditor who, before January 1, 2016, includes in the name of the business" They do not have to comply with the provisions of section 1. How do those groups who are now exempt function in the regulatory environment you are now creating for consumer protection?

James Wadhams:

Again, that brings up the point I have been trying to make that lending entities and insurance companies are two different industries. The purpose of section 17, subsection 1, is to make sure they are not cross-referencing themselves. For example, Ally Financial, under the provisions of this section, cannot call themselves Ally Casualty Insurance Company because that is what AAA is. Insurance companies have to be licensed and should be the only entities using those terms. The consumer should be assured that if someone is advertising that they are a surety or casualty company that they have a license under Nevada law.

If they are a financing company like Harley-Davidson Financial, they cannot call themselves an insurance company and make you think you have bought insurance if all you did was deal with it in your financing contract. It is difficult keeping these two industries from confusing consumers by what they call themselves. I tried to make this point at the very beginning. The purpose of this bill is to deal with the natural confusion that comes because the only difference between these two is that one is done by an insurance company and the other is done directly by your lender. We are trying to keep that as sorted out as we can.

Chairman Kirner:

I would like to hear from those in support of the bill.

Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers Association:

We support this bill. As dealers, we have sold products such as credit life insurance and GAP insurance for decades. Consumers want that choice, and it is their choice. It is not part of the sale of the car. If they want that, they can negotiate it with the finance office at the time of purchase. We have had very good success with these products. In our business in Nevada, we have a tremendous number of repeat customers who come back to the various dealerships and purchase cars, and we are proud of that. The products we offer are good products.

To Assemblywoman Carlton's comments, in terms of the financing the price of these products is not so prohibitive that it drives up the monthly payment. The dealer gets a buy rate from the insurance company to finance that contract for the entire loan, including these products. I urge your support on this bill.

Assemblywoman Bustamante Adams:

Can you explain the business model? If you offer the product, is there a commission to the person who adds these other products on with the finance officer? How does that work?

Wayne Frediani:

Every dealership has different pay scales for their employees. I would assume, like most in the industry, that there is some sort of compensation, usually through the commission structure on the total package deal put together. I do not know what those rates would be, but I do not think they are excessive. I would assume that there is, yes.

Assemblywoman Bustamante Adams:

Do you know if it is done on a monthly basis? For example, would the person who sells it get a monthly commission? If it is that way, do you know what the percentage would be of a person's annual gross revenue or what the percentage of these commissions would add up to?

Wayne Frediani:

I do not know what that would be. In most cases in the car industry, it is usually a biweekly payroll system based on total number of sales and the commissions they made inclusively. I do not know what those percentages are and they vary from store to store.

Chairman Kirner:

Is there anyone who wishes to testify in opposition?

Jon Sasser, representing Legal Aid Center of Southern Nevada:

I have provided written testimony with attachments ([Exhibit C](#)) from Dan L. Wulz, who is the resident expert on these types of issues with the Legal Aid Center of Southern Nevada. He has testified in front of this Committee before. He is out of town and, unfortunately, could not be here today. I will reference his testimony from time to time.

We were in front of this Committee a couple of months ago discussing Assembly Bill 365, which was another attempt by James Wadhams to offer other products through car dealerships. We said these products were really insurance and that they should not be offered without being regulated as insurance. The Committee chose not to process that bill. Quite frankly, I am here today to discuss similar issues.

I want to thank the sponsor of the bill, Senator Farley, who added some consumer protections. One was the ability to rescind at a later date. I would also like to thank Senator Harris who asked for the disclosure language that went into the bill. We think that makes it a better bill, but still think it has a fatal flaw. Basically, the bill authorizes entities other than insurance companies to sell insurance in our state. If you are going to sell insurance now, an insurance company is licensed by the Division of Insurance of the Department of Business and Industry and there are a number of regulations, including and covered by the Deceptive Trade Practices Act. Most importantly, the price has to be based on loss data ratios. This bill would allow these products to be sold by finance companies and others without that type of oversight.

Mr. Wulz attached a letter to his testimony ([Exhibit C](#)) from the Division of Insurance that looks at debt protection products that are very similar in nature to what is being offered here today. The Commissioner determined they are insurance and should be covered as insurance and not be sold in our state unless sold by people who are licensed to make these types of sales. I do not know the extent of what products are being sold today. Mr. Frediani said he offered products and mentioned credit insurance and GAP insurance, but not this product. If it is being sold through people who are not licensed to sell insurance, there is a legal problem.

This bill will legitimize that practice. Going forward, without the same level of consumer protection that insurance has, we are talking about there being a choice for consumers. You will have three choices: take a risk, buy an insurance policy, or buy one of these other products. When preparing the fiscal note, the Division looked at that and said if it could sell a product that was not regulated, and the price was not regulated, it would go the unregulated way. The fiscal note assumes that insurance companies that are selling this today will cease to sell, so option number two will not exist in our state. This would be the end of the GAP insurance industry and it will be replaced by this unregulated product.

We also attached some articles from the National Consumer Law Center to Mr. Wulz's testimony ([Exhibit C](#)). These articles have looked at a similar industry where people with credit cards can buy either credit insurance or a debt protection product covered by federal law through the national banks so that states cannot get into that area. The Government Accountability Office (GAO) did an analysis over time showing that the insurance companies were returning about 90 cents on the dollar whereas these other products were returning about 21 cents on the dollar. They are extremely profitable for those involved. The consumer is getting a poor deal and is going to drive the GAP insurance companies out of the state, or the same companies will simply start selling this additional product. The organization Mr. Wadhams represents, GAPPA, not only includes the major finance companies, but also many of the insurance companies. The basic goal of this group is to lobby in all 50 states to make sure their products are not labeled as insurance. We urge this Committee not to pass the bill.

Chairman Kirner:

Are there any questions?

Assemblywoman Bustamante Adams:

If this group of entities does not want their products to be labeled as insurance, what type of money are they generating? Do you have any figures on how much money these entities are bringing in?

Jon Sasser:

I do not have any figures on GAP insurance. Nationally, the related credit life insurance and the protection products mentioned in the article bring in a tremendous amount of money. I think debt protection products are about \$2.4 billion. For credit cards, or cardholders, they only receive a 21 cents on the dollar return.

Assemblyman Ohrenschall:

From the language on page 8, lines 1 through 11, I can see that the Commissioner can try to right the wrongs and help the consumer. It seems there are remedies in place to protect the consumer.

Jon Sasser:

There is some oversight under the Commissioner because he issues cease and desist orders and can fine someone \$500 for a violation. It removes other consumer protections that are covered in Title 57. The list is in section 16. As insurance, you cannot put a mandatory arbitration clause on a contract; if it is not insurance, you can. There are other benefits in terms of lesser consumer protections.

Assemblyman Ohrenschall:

In the jurisdictions that allow this product to be sold as a noninsurance product, do you know if mandatory arbitration is a standard part of the contract so that consumers are forced into something like that?

Jon Sasser:

I have never heard Mr. Wadhams mention which states' laws specifically authorize these types of products. I do not know if any do. I do not think that was answered in the Senate.

Assemblywoman Bustamante Adams:

When you sell the product, I believe there is a sales tax on it that the consumer would have to pay, correct? If it is not labeled as insurance, would they be charged with the insurance premium tax?

Jon Sasser:

To what extent these products are actually sold, I do not know. Again, you pay above and beyond the cost of the product you are buying. If that becomes part of the sales price, I assume you would pay sales tax on it, but I do not know the answer. If it is an insurance product, there would be an insurance premium tax. I do not know if anyone has done an analysis of the insurance premium tax and what impact it has. I do not think this is a huge ticket item in terms of the overall taxes collected, but it may have some impact.

Assemblyman Hansen:

You mentioned \$2.4 billion in sales. Did I hear that correctly?

Jon Sasser:

I was referring to the article attached to Mr. Wulz's testimony ([Exhibit C](#)). The article was about the types of debt protection products sold nationally with credit cards. If you look at the article, on page 233, it reads the GAO found that "in 2009, consumers paid approximately \$2.4 billion for debt protection products on credit cards."

Assemblyman Hansen:

If this is on the edge of being shady but is generating \$2.4 billion in sales, it seems to me that apparently this is probably a very legitimate product that is used in many different states. If this was some sort of a fly-by-night con to try to get people to buy an extra insurance policy that it really is not, then I could not see it generating these kinds of numbers over a period of time. There must be a demand for the product and a legitimacy to the product, and if it is sold in a lot of other states under this type of product rather than insurance, why would we have to put a red flag into this piece of legislation?

Jon Sasser:

This is a completely different product in terms of how it works. This is for national credit cards under federal law and states do not have the ability to regulate those as insurance. These products are legitimate under federal law and are sold in other states. The GAP type of policy we are talking about in this bill covers a different contingency, for example, if your car is stolen or is going to be totaled, it is covered by GAP. I am not aware of it being blessed by any other state as being legitimate.

Chairman Kirner:

Is there anyone who wishes to testify in the neutral position? [There was no one.] I will ask the bill's sponsors to return to the table for closing comments.

James Wadhams:

There is some confusion, and I started my testimony out on that point. If this bill does not pass, financing companies will not be stopped from doing this. Killing this bill does not stop this. In fact, it is a bit ironic that Mr. Sasser is opposing adding consumer protections where there are none now. These transactions can continue. I am making a distinction that financing companies are not insurance companies, and that is what the Division of Insurance's opinion said in 2003. We do not regulate finance companies; we regulate insurance companies. While it may look the same, the same protections are not there. If this bill passes, there will be parallel protections, and NRS Chapter 598A on unfair trade practices will apply. If the bill does not pass, the lending companies are free to do as they choose and will be dealt with

accordingly. I appreciate the questions because it is precisely why the bill was here: to create some basis for consumers to get answers if they have questions.

Jesse Wadhams:

States that have passed this general bill are as follows: Washington, Utah, Tennessee, North Carolina, Georgia, Nebraska, Montana, and Michigan. Currently, 47 states generally do not regulate GAP waivers as insurance.

Chairman Kirner:

Thank you. I will close the hearing on S.B. 253 (R1). Is there any public comment? [There was none.] The meeting is adjourned [at 4:02 pm.].

RESPECTFULLY SUBMITTED:

Janel Davis
Committee Secretary

APPROVED BY:

Assemblyman Randy Kirner, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Commerce and Labor

Date: May 23, 2015

Time of Meeting: 2:36 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 253 (R1)	C	Dan L. Wulz and Jon Sasser	Written Testimony