

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

**Seventy-Eighth Session
February 25, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:31 p.m. on Wednesday, February 25, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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:

Assemblyman Pat Hickey, Assembly District No. 25
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Ira Victor, representing Sierra Nevada InfraGard Member Alliance
James R. Elste, Chief Executive Officer, Inqiri, Reno, Nevada
Todd Shipley, President and Chief Executive Officer, Vere Software, and
Principal, Great Basin Data Recovery, Reno, Nevada
Tray Abney, Director of Government Relations, The Chamber of Reno,-
Sparks, and Northern Nevada
Lea Tauchen, Senior Director of Government Affairs, Grocery and General
Merchandise, Retail Association of Nevada
Ray Bacon, representing Nevada Manufacturers Association
Alexis Miller, representing National Federation of Independent Business
Paul Enos, Chief Executive Officer, Nevada Trucking Association
Peter Maheu, President, Nevada Society of Private Investigators,
Las Vegas, Nevada
Robert Gronauer, President, Bobby G and Associates, Las Vegas, Nevada
Larry Smith, Owner Nevada Digital Forensics, Inc., Las Vegas, Nevada
Arleen Sirois, President, Integrity Investigations, LLC, Henderson, Nevada
Ron Levi, Owner, Forensic Cyber Investigations, LLC, Las Vegas, Nevada
Renée L. Olson, Administrator, Employment Security Division, Department
of Employment, Training and Rehabilitation
Lisa O. Cooper, Executive Director, Board of Massage Therapists

Chairman Kirner:

[The roll was called. A quorum was present.] We are going to remove
Assembly Bill 85 and Assembly Bill 89 from the work session agenda because
new amendments were submitted today.

I will open the hearing on Assembly Bill 173.

**Assembly Bill 173: Revises provisions governing private investigators.
(BDR 54-758)**

Assemblyman Pat Hickey, Assembly District No. 25:

I have submitted an overview of the bill ([Exhibit C](#)). I had my personal email hacked, or better put, hijacked. My friends and relatives got letters from some foreign country imploring them to send money so I could get home from London. When that happens, the victim feels violated. I actually had one cousin who was willing to send the money.

I turned to a constituent, Ira Victor, who really provided the impetus for this bill. He is the head of a company called Data Clone Labs that helps individuals like me who have had a violation of their personal or business data. They helped me recover my data and secure a safe email account. When this happens, it is serious.

This bill is going to give people the opportunity to help solve these problems in a professional and businesslike manner in Nevada without unnecessary, overlapping, or inappropriate regulation. Elon Musk of Tesla Motors came to Nevada recently and remarked out in front of the Capitol that one of the things he really appreciated, and which maybe helped with Tesla's decision last year to build its gigafactory near Reno, was the lack of overregulation in Nevada. I think that is an important characteristic we need to remember.

This measure defines the term "information security professional" for the purpose of exempting those professionals from licensure as private investigators, and specifically excludes such a profession from licensure when he or she is engaged in the activities specified in the bill.

In 2008, the American Bar Association (ABA) issued Recommendation 301, which urged state legislatures to ensure that computer or digital forensic service professionals would be exempt from licensure as private investigators. They recognized Nevada as one of only three states that required a computer forensic examiner to be licensed as a private investigator by opinion of the regulatory body or by common knowledge in the state.

The ABA's resolution included the following reasons why people engaged in providing certain information security services should be exempt from private investigator licensing requirements. The first reason is that the investigation and expert testimony should be based on the current state of science and technology. The second is that the traditional role of private investigators is significantly different from that of a computer forensic or network testing

professional. The third is that numerous certifications are available to ensure proper training and competency of information security professionals.

The fourth reason noted in the ABA's resolution is that the public and the courts would be negatively impacted if only private investigators could perform those services, because they are unlikely to be qualified to perform in the areas about which I am talking. Another reason is that data and systems are spread around multiple jurisdictions, and that patchwork of differing requirements for computer forensic and network testing professionals creates unneeded jurisdictional complexities. Perhaps more importantly, there is very little supporting evidence that public safety or consumer protection would be best served by such licensing requirements. For these reasons and more, I urge your support and consideration of this legislation.

Ira Victor, representing Sierra Nevada InfraGard Member Alliance:

The members of InfraGard are private-sector partners with the Federal Bureau of Investigation (FBI) to protect the nation's critical infrastructure. I am a certified information security professional. I hold six certifications in the field of information security. I live and work in Nevada.

In 2013, the Legislature passed Assembly Bill No. 306 of the 77th Session. It amended *Nevada Revised Statutes* (NRS) Chapter 648, the private investigators' statute, to inadvertently require the tasks performed by information security professionals go through the private investigators' licensure. The professionals in our field were not aware of the changes made by that bill. I learned about the changes a few months ago when I received a cease and desist letter from the Private Investigator's Licensing Board (PILB). The letter informed me that I must immediately stop all work for all of my customers. It said I was fined \$2,500, and those fines would escalate until they reached \$10,000 for each and every action that I took on behalf of my customers.

Our work differs significantly from the work done by private investigators. The vast majority of us come from computer science backgrounds. We have been through very different training from private investigators. Private investigators largely come from law enforcement backgrounds, and we have very different skill sets. The daily headlines are filled with cybercrime. You read about millions of identities stolen, hundreds of millions of dollars stolen out of bank accounts, and millions of credit card numbers stolen from businesses. These stories give the impression that cybersecurity, or information security, is strictly a law enforcement issue and that an information security professional has an investigatory function. Information security is a very critical business function.

There is a less glamorous side to all of the news stories. The large-scale breach that Sony Entertainment experienced dominated the headlines for many weeks. You heard about stolen movies and embarrassing emails between executives that were revealed to the world. You heard about international intrigue and speculation about who was at the center of the attack against Sony Entertainment. Federal law enforcement and divisions of the United States military got involved to track down the perpetrators.

Much less attention was focused on the operational nightmare that Sony Entertainment underwent. In the weeks following the attack, Sony had to hire a team of information security professional contractors to help them get their business running. This was not unusual. Few of the attacks are on the scale of the attack on Sony. There is a pattern when the news coverage focuses on the cybercrime issues and not the critical business issues felt after these attacks. Sony could not enter data into its accounting system and had trouble making payroll. Sony's phones and email systems did not work. At times like this, the business starts to grind to a halt. New products cannot be rolled out. In some cases, a business's very existence is threatened by a cyberattack.

These are the unglamorous problems that information security professionals face every day. We have two primary roles. We have to prevent incidents like the Sony attack by helping businesses proactively secure their systems and infrastructure in advance. We consult on policies and practices and help train the employees to be more resistant to an attack that uses psychological techniques to get into systems. We use "penetration testing." We simulate what an attacker would do when they are inside the network, and we find the potential holes or vulnerabilities so we can advise our clients how to change the configuration. We might make suggestions, software updates, or equipment changes that help better secure their information and make the business more resilient. We help information technology (IT) managers explain to the executives where the risks are and what the impact might be to their business.

The second job we do is incident response. We arrive after a system has failed. We get the businesses running again. These failures could be caused by natural disasters, by power outages, or by innocent mistakes or the incompetence of an employee. Sometimes it is due to a cyberattack.

I have two examples of cases on which I have worked. One was a small construction firm that outsourced its IT department. They had just landed their largest project since the recession. To prepare for that project, their IT company was upgrading their server. In the midst of the upgrade, the data became unreadable. All of the architectural plans and project plans for this big job were unavailable to them. The owner of the company was frantic. We got

the call to come in and help them. This is an example of the unglamorous work that we do and what makes this a business function for them.

Another example is an organization that lost control of its building's centrally operated locking systems. The doors of the building were locking themselves while people were inside the building. It was chaos.

Our work varies according to the situation. We restore systems and regain access to data that is seemingly unavailable. We lock down holes that might allow an intrusion. Sometimes we learn that a rogue employee is to blame, or we find that the system has been attacked from the outside. The details are included in our report. We give the report to management, which takes action.

We are not private investigators or police. We do not do the things outlined in NRS Chapter 648, which include identifying the habits, conducts, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, and I could go on and on. We do not do those functions. That is how the statute reads. We do not hunt down cyber criminals. Unlike private investigators, the majority of information security professionals come from the ranks of eyeglass-wearing nerds. All certified information security professionals undergo hours of specialized computer science training. I have six of those certifications which I have to renew periodically. Staying current is an expensive and time-consuming matter.

After I got the letter from the Private Investigator's Licensing Board, I met with my attorney. He said a prolonged appeals process could cost me in excess of \$100,000. That would be in addition to the fines that I was facing. I went to the minutes of the 2013 Legislature. I saw that the intent had nothing to do with keeping us off the job. I met with Executive Director Kevin Ingram of the PILB, and he agreed with me that what I do as an information security professional is not covered in what a private investigator does. Ultimately, he lifted the sanctions and the fines. I realized that the law needs to be changed to clarify this confusion brought about by the changes in 2013.

The language in A.B. 173 will make some very important changes because there is already a shortage of information security professionals. We feel the shortage all over the country. My last two projects were from out-of-state organizations. They could not find someone to provide the emergency services they needed. We, in Nevada, got the business because we have good service providers and we want that to grow. That is important. The Governor's Office of Economic Development (GOED) is trying to nurture telemedicine. We cannot do telemedicine in Nevada without information security professionals. They are

also trying to encourage high-tech manufacturing. We cannot get high tech manufacturing done without information security professionals.

In a world where the most valuable asset we have is our information, we all want better information security. Nevada businesses need information security professionals and private investigators. We need both services. Each field is specialized, and neither field should be subsumed under the other. I am asking for your support of A.B. 173, which would allow information security professionals to be exempt from the private investigator licensing requirements in NRS Chapter 648.

James R. Elste, Chief Executive Officer, Inqiri, Reno, Nevada:

I am here to speak in support of A.B. 173 as a subject matter expert in information security. [Read from prepared testimony ([Exhibit D](#)).]

Todd Shipley, President and Chief Executive Officer, Vere Software, and Principal, Great Basin Data Recovery, Reno, Nevada:

I submitted written testimony ([Exhibit E](#)). I am retired from the City of Reno Police Department. I did technical work as Director of Systems Security and High Tech Crime Prevention Training for SEARCH, the National Consortium for Justice Information and Statistics, a Sacramento-based nonprofit. I started my own software company and sit on the business advisory board for the University of Nevada, Reno computer science department. I speak nationally and write on the topic of information security.

The ongoing dispute in the state of Nevada about where digital forensics and information security work falls, and whether it should be under the PILB, has been going on for a long time. I testified on these bills in the past. I was against most of them because the definitions do not fit with IT security. The Private Investigator's Licensing Board has determined that doing investigations of any kind is their purview. According to the law, they are probably correct. If you are doing digital forensics and looking into people's user behavior on their computers, it probably does fall under the existing law. Mr. Victor talked about those information security personnel who are out there defending small businesses and our communities against attacks. Those people do not clearly fall under the PILB, nor should they.

Assembly Bill 173 tries to rectify that. Section 1, subsection 1 defines what those people are, so it is clear under the law who is exempt from licensure under the PILB. Subsection 2 defines some titles, which I think is moot and does not need to be there because it is sufficiently covered in subsection 1.

I believe this bill should be passed. It makes a necessary remedy to a misinterpretation of previous law so people who are defending us every day can continue to function and not be fined for falling under the PILB's purview.

Chairman Kirner:

Are there any questions?

Assemblywoman Carlton:

We have discussed this issue many times. I need a more specific explanation, because I do not know if you are solving the problem.

James Elste:

The language introduced to section 1 of Assembly Bill No. 306 of the 77th Session in 2013 added a reference to a private investigator as a person who "makes any investigation for the purpose of obtaining, including, without limitation, through the review, analysis and investigation of computerized data not available to the public, information with reference to" It refers to the notion of nonpublic databases. When you incorporate that into statute, it leaves ambiguity. That encompasses any nonpublic database, meaning databases that belong to corporations and individuals. The notion of a nonpublic database is too encompassing. It eventually subsumed people like IT professionals and information security professionals who may, in the course of their work, access nonpublic databases but are not in fact doing the work of private investigators.

The language in A.B. 173 defines the term "information security professional" and the practices in which they engage and excludes them from that rather overbroad term of accessing nonpublic databases. The crux of the language added in 2013 created the unintended consequence.

Assemblywoman Carlton:

So the solution is not to just delete the language added in 2013 and go back and actually solve the problem? Is the solution to create a whole new definition of this profession, which, with this listing could cause problems?

James Elste:

I believe that is also a solution. The challenge with that is that ostensibly there was intent behind introducing new language into the statute in 2013, and rather than trying to roll that back, we simply provided additional clarity to accommodate the unintended consequence.

Assemblyman Paul Anderson:

I have a concern similar to Assemblywoman Carlton's about defining a new job description in statute, which makes it difficult to change long term. The technology field changes quickly, and we are not defining what it really means. I could get a lot of certifications that might put me into that classification. It does not necessarily mean I am qualified to be a security professional. As I read NRS 648.012, what is your opinion on software and controls that are put into existing networks across the board, such as web filtering software? Would that fall under that category and would it restrict an IT company to manage and review for the client?

Ira Victor:

The letter I received from the PILB specifically mentioned the part on my website where I do the work you mentioned. That is being captured under the current PILB and is why I received the cease and desist order. I would not have been able to configure the server when I was under the cease and desist order from the PILB.

Assemblyman Paul Anderson:

That would also mean that the employer might be misaligned with that statute as well if they were doing it in their own company.

Ira Victor:

I am a consultant, and I have a Nevada company.

Assemblyman Paul Anderson:

That is not what I was referencing. If I own a company and I am installing my own firewall software that is web filtering, am I misaligned with the statute?

James Elste:

Yes, I believe that is true. Chapter 648 of the NRS reads that a company would not be able to implement technologies designed to monitor their own environment, or have employees of their organization conduct information security activities to otherwise remediate security issues. The language is overly broad and does not provide enough context for interpreting those types of activities in what one assumes is the correct interpretation. That interpretation would be that they are allowed to do these things with their own data and systems.

Assemblyman Paul Anderson:

I see the need for the change. I would like to talk about readjusting that portion of the statute, because just by adding the information security part, it does not alleviate other people who may be included in this. I may not be identified as an

information security professional, but those are common practices across the board for any IT professional, security related or not, or a company that implements that whether it is a monitoring system, or internal controls, or door systems. I am overly concerned about defining in statute an occupation that rapidly changes.

Assemblywoman Bustamante Adams:

Can you expand on what the process is to get certifications? Is there accountability to the public?

Ira Victor:

I hold six information security certifications. They cover things like information governance, which is how information is managed within an organization. Certifications cover how to assess any risk to information the company may have. They include digital forensics, which is the science of looking at the computer systems and what happened to them in the past. I have a certification to audit for credit card security.

Every certification has an ethics component. We have very high ethical standards in information security, and we have zero tolerance for someone who crosses the line. There is no one strike. I had to go to classes or training and then take an examination or write a thesis-level paper to get the certifications that are vetted by my peers. I must take ongoing training and recertification classes to keep my certifications current. As a member of InfraGard nationally, we undergo FBI background checks. If we fail the check, we are out of the organization. We have very high ethics, ongoing training, and checks to make sure we are staying within the lines.

Assemblywoman Bustamante Adams:

Is that just from InfraGard, and the other testifiers have other certifications?

Ira Victor:

There are a number of standards bodies that do research on advanced information security, and they teach people the information. InfraGard does not certify people in specific skills. Other entities do that. The SANS Technology Institute conducts training every year in Nevada. An organization called ISACA, formerly known as the Information Systems Audit and Control Association also does training in Nevada. I have certifications from those organizations. I believe my colleagues have certifications from similar organizations.

Assemblywoman Bustamante Adams:

If someone is unethical, who does the disciplining or the revoking of the certification?

Ira Victor:

If there is a violation, the person would be removed from the membership of InfraGard as soon as an infraction hit their background check. The person's certifications would be revoked. The SANS Institute has a zero-tolerance policy for unethical behavior, as do ISACA and others who will also decertify the moment they find an unethical action. The zero-tolerance policy is made very clear from the first day of training.

Todd Shipley:

There is a distinction between what the PILB is trying to control and what is occurring. Mr. Victor is talking about the general information technology work to control and protect all computers. The Board wants to control digital forensics when an individual is looking at user behavior on a particular computer to determine whether there was a crime or an effort to control another computer. There is a separate set of skills used by people who are enlisted by corporations to conduct investigations. That is more in line with what the PILB is trying to control. They want to know who looks at that individual user behavior based on attacks. I am licensed by the PILB to do digital forensics on specific user behavior for corporations, for attorneys, and for presentation in court. That is not what the general IT field does.

The current interpretation could be as broad as bringing in Best Buy, Staples, and Office Depot because they are looking at small systems and networks. With this legislation, we are trying to establish a line between where the PILB should and should not have authority. Removing the existing language does not solve the problem. We still do not define the user behavior that the PILB wants to regulate. This legislation cuts out a certain group to ensure that they do not get regulated, but it does not solve the underlying problem with digital forensics being part of the PILB and how they are going to regulate it.

Assemblywoman Diaz:

I Googled "information security professional" and what immediately comes up is "certified information systems security professionals." Why is the word "certified" not in the bill? Are we opening it to anybody to be a pseudo-information security professional without the backing of the certification?

James Elste:

You are referring to a certification that comes from the International Information Consortium, which is known as Systems Security Certification (ISC). It is a widely recognized certification for information security professionals, and it is one of many. These organizations are internationally recognized certifying bodies for information security professionals. When I came to be the state's

Chief Information Security Officer, one of the requirements was that I held a Certified Information Systems Security Professional (CISSP) designation and one for a Certified Information Security Manager (CISM). Those certifications give employers a reference point for their qualifications.

It is not an absolute requirement for an information security professional to possess those certifications. There are a variety of certifications for specialties like digital forensics or incidence response and there are a variety of specialties within information security. All of the certifications are indicators of proficiency in areas of expertise.

Assemblyman Ohrenschall:

What is the difference between the current system being regulated by the PILB versus what this bill proposes? If a company thought an employee was stealing and hired someone in your industry to check the computers, and the employee was a bad actor and stole trade secrets or names and information about clients, the most that the PILB could do would be to discipline or pull a license. Could the certification organizations like ISACA and SANS do anything to make the victim whole, or would the victim have to go to court to recover damages?

Ira Victor:

The company would have to seek civil action against the individual, or it might give the information to law enforcement. As information security professionals, we would not get involved in that. It would be the role of law enforcement or a private investigator to determine who that person was and what his background was. We would only look at what happened on the computer. We do not look at who the person is but what happened on that computer.

Assemblyman Ohrenschall:

In the unfortunate scenario where the information security person is the bad actor, the certification organizations are not going to do anything to recompense the client, correct?

Ira Victor:

Correct, they are not going to take any action. Let me add that the zero-tolerance policy exists across the industry. If any of my peers go rogue, we have a zero-tolerance policy, and they are out.

Assemblyman Ellison:

How many ratings and certificates are available in this field?

James Elste:

It is one of the interesting consequences of the information technology industry that certifications become essentially collections that professionals create. In information technology, a person works with many different vendors' products, different types of technology, and different areas of specialization and expertise. The certification function has essentially been established both by vendors who certify on product expertise and by organizations that certify on specializations of expertise like information security and its subspecialties.

As an industry, we coalesce around broadly accepted standards that are generated by federal agencies and standards bodies. The certification mechanisms help us identify individuals who have achieved levels of expertise and experience. Certifiers like the CISSP require three years of working as an information security professional before you can earn that certification. It is an attempt to identify individuals who possess certain skills and expertise, and it can be used as a measure of expertise in a field that is full of individuals with varying levels of experience and expertise. It is common to find people with lots of acronyms after their names to identify their certifications. Mr. Victor is a great example with six very well respected certifications that I recognize and understand.

Assemblyman O'Neill:

Do your agencies have insurance to protect your clients if you are found to act inappropriately?

Todd Shipley:

Yes.

Chairman Kirner:

Are there others in support of this bill?

Tray Abney, Director of Government Relations, The Chamber of Reno, Sparks, and Northern Nevada:

We support the concept behind this bill. It would be hard to find a business that does not use IT in its operations. We need to make sure that we have a robust industry. It looks as if current law would make it more costly to hire these people and would make less of them available. We urge you to support this bill.

Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada:

We are in support of this bill because the retail industry is often a target of cyberattacks and, unfortunately, data breaches are most likely going to continue

to happen to businesses of all sizes. Our members need access to information security professionals to keep their information safe, to identify security issues, and to keep their businesses running, especially if a breach situation should occur. It is small business that would be mostly impacted because they do not have the financial resources, expertise, or time to have a full-time IT staff.

If one of our members were to contact the Retail Association of Nevada when they had a breach situation and needed assistance, we would not refer them to a private investigator. We would refer them to a security professional. We see these as very different disciplines with very different purposes. The Retail Association has a couple of private investigation businesses in our membership. I reached out to them to see if information security situations would be something they could handle, and they informed me that is not something they could or would handle. We would like to see the supply of information security professionals in the state grow so that our small business members have access.

Ray Bacon, representing Nevada Manufacturers Association:

The manufacturing community was among the first communities in the business sector to widely computerize their operations. Their planning, scheduling, purchasing, and everything else they do has been on computers, starting approximately in the 1970s. Most of the time when some level of an issue occurs, you do not know whether you have a software problem, a hardware problem, a breach, or any of a dozen other things that can happen. At that stage of the game, you are going to look for someone with computer expertise. You have no idea if you are dealing with a crime issue or not. Consequently, we use computer forensic specialists on a regular basis to help determine these issues. It is a very valuable service, and I concur with Ms. Tauchen.

Alexis Miller, representing National Federation of Independent Business:

We have over 2,000 members in Nevada and we agree with the remarks of the speakers in support of this bill.

Chairman Kirner:

Are there any questions? [There were none.] Are there any to testify in favor of the bill in Las Vegas? [There were none.] Are there others in favor of the bill in Carson City?

Paul Enos, Chief Executive Officer, Nevada Trucking Association:

I am here in support of A.B. 173 and would like to echo the comments about access to the security professionals. We believe this would help the trucking industry when we have issues with data breaches.

Chairman Kirner:

Are there any questions? [There were none.] Are there any people to testify from a neutral position? [There were none.] Are there any in opposition to the bill? We have a number of people in Las Vegas who represent the Nevada Society of Private Investigators. I would like a couple of people to represent the group. Is there any opposition in Carson City? [There were none.] We will proceed in Las Vegas.

Peter Maheu, President, Nevada Society of Private Investigators, Las Vegas, Nevada:

I do not have a lot of initials after my name, but I have lectured at the International Masters of Gaming Law, the American Bar Association, the International Association of Gaming Attorneys, the California Department of Justice, Tulane University, the Northern American Gaming Regulators Association, and the National Tribal Gaming Commissioners Regulators. My company employs between 175 and 300 employees that are faithful, loyal Nevadans.

I have been a private investigator in California since 1983 and in Nevada since 1997. My company was one of two companies authorized by the state to conduct all background investigations on state employees. We have conducted over 10,000 investigations in over 100 countries. We maintain data banks in our computer systems consisting of background investigations for hundreds if not thousands of employees of the state of Nevada.

Our concern with this bill is not the qualifications of the information security professionals, but that there is no background investigation conducted on them except by their association. There is no state jurisdiction to find who these individuals are. An FBI background check, contrary to public opinion, is not as thorough as all of us would like to think. They do not report criminal activity to the FBI. For example, our concern is that in the process of investigating the computer of a teenager, or trying to locate a missing child, they might find child pornography on the computer. The parents have no way of knowing whether the person is a child pornographer, a blackmailer, or other type of criminal. We have no way of knowing what the security professional's criminal record is.

We feel this change to NRS Chapter 648 opens the door to allow people who have not been properly vetted to have access to people's computers and information. We pay a fortune to be vetted by the State of Nevada and have no complaints about that. Our primary concern is people having access to computer data information who have had no background investigation with no repercussions other than losing a certification. I have no idea what those certificates mean, and I am not sure anyone on the Committee knows what

they mean. When we have someone look at our computer systems, we do a full background investigation on that person.

Our concern is access to information, not fixing broken computers. If people had access to our background investigations' information, we would have to report that based on the Fair Credit Reporting Act. The person would then have to go through a federal reporting agency to be allowed to look at that information. We have alarm systems, computer systems, safety systems, and security systems on all of our equipment. The citizens of Nevada need to know that the person looking at their computer does not have ill intent or a background of ill intent. Bad behavior is repetitive, and I do not know how bad behavior is discovered by being certified. That is our opposition to the change in NRS Chapter 648.

Chairman Kirner:

Is there other opposition?

Robert Gronauer, President, Bobby G and Associates, Las Vegas, Nevada:

I am a licensed private investigator, private process server, and private patrolman. I am definitely against A.B. 173. To get my licenses, I had to be vetted. I am a Marine Corps veteran and have been a police officer in Baltimore and Las Vegas. I was well vetted in those places, but the vetting did not count with the PILB. I had to pay for a background check on myself. I have to keep a roster of any employees I hire for when I am audited by the PILB. I have to pay a lot of taxes. In order for me to hire a person, he or she has to get a work card, which costs. I was impressed by the information security professionals who spoke today, but I do not know why are they afraid to get licensed under NRS Chapter 648 as it is now. We do not want the state to lose money because they will not get licensed and their employees do not need to get work cards. We are insured and pay for our licenses each year.

Mr. Shipley said the information security professionals have a broad set of standards. Under the PILB, there is no broad set of standards. It is their way and that is the way it is. There is nothing wrong with information security professionals doing business in Nevada if they follow NRS Chapter 648. If they were so good in their business, why did they not catch this provision in Assembly Bill No. 306 of the 77th Legislature. Where were these people then?

They have strong support from The Chamber and the Retail Association of Nevada. The supporters are being told one story. The other story is that there are a lot of small businesses in Nevada like my own. I only employ ten people. We rely on the work we do, but I have to pay to have these employees. To me, government does not get out of the way of small business. There is always

something I have to pay. When I look at my livelihood or the livelihood of enormous companies, there is no problem. Chapter 648 of the NRS is fine the way it is. These well-qualified people need to pay the money, get vetted, and be able to stand by the people they hire. I have to stand by every person I hire.

The proponents for this bill never said why they oppose NRS Chapter 648. I do not think it is fair for them to try to take over this industry or try to pull the wool over people's eyes. I could give up my license on security and not pay insurance or licensing fees for it and say I am a security information person. I could start my own business. There are a lot of less qualified people than me who do it. I do not think that is right, and I think we have to be careful about what we are opening.

Larry Smith, Owner, Nevada Digital Forensics, Inc., Las Vegas, Nevada:

I retired in 2012 after 24 years with the Las Vegas Metropolitan Police Department. I spent 13 years in the computer forensics detail. Immediately after retirement I opened my own corporation, which I still operate. There are some areas about which I cannot comment because I do not do that type of work. I have several certifications myself.

The three topics that I want to address are in section 1, subsection 2 of the bill. In paragraph (a), it is the data network forensic analyst; in paragraph (i), it is the digital forensic analyst; and in paragraph (n), it is the mobile device security analyst. I want to talk about these because of the word forensics. Forensics, means loosely for the courts. If you are doing forensics on anything—a network, a car, a fingerprint, or a body—it is because it is most likely going to go to court. It is not data recovery and it is not securing somebody's network. I agree with Mr. Shipley, Mr. Victor, and Mr. Elste that most of these things probably do not require a private investigator's license. Forensics, computer forensics, network forensics, and mobile phone examinations, in my opinion, do require one for the reasons stated earlier. If I am an ex-felon or an 18-year-old just out of high school, I do not need a certification to get a business license to do computer forensics. I could take any one of your computers, look through it, and not pay the state any fees, have any insurance, or have a background check. I could pretty much do whatever I want with your data, the pictures of your kids, your tax records, and everything that I get. If you want to take my certifications away, it does not take my business license away.

Nothing that Mr. Victor spoke about would require an appearance in court for a criminal or civil matter, so it is not really forensics. It is security, securing the networks, and recovering data. To get a certificate, it does not require a background check or insurance. Two of the three computer forensic examiners in Las Vegas have been fined by the PILB, and both object to this bill because

they understand the security and insurance requirements. I am opposed to at least three of the terms in this bill.

Chairman Kirner:

Are there any questions? [There were none.]

Arleen Sirois, President, Integrity Investigations, LLC, Henderson, Nevada:

I have been a private investigator for over 20 years in Nevada. I oppose A.B. 173 because the person who does the investigation is not regulated. As a private investigator, I had to jump through a lot of hoops to get my license. We have some of the biggest hoops in the nation to jump through to get our licenses, and we are regulated all of the time. We have to do things right, and we pay a lot of money for our licenses. My response to this bill is, who will regulate them?

Chairman Kirner:

Are there any questions? [There were none.]

Ron Levi, Owner, Forensic Cyber Investigations, LLC, Las Vegas, Nevada:

I spent 25 years in law enforcement with the Pennsylvania State Police and recently moved to Nevada. I am a licensed private investigator in Nevada. I specialize in computer forensics and cell phone forensic examinations. I am opposed to A.B. 173 and particularly to section 1, subsection 2, paragraphs (i) and (n). The remainder of the written bill really does not pertain to investigative status and has nothing to do with private investigations. I am opposed to the sections about digital forensic analysis and mobile device security analysis. Having analyzed hundreds of computers and cell phones, I know that the person handing you the device is basically handing you their entire life history. You have access to all of their data, tax records, social security numbers, pictures, and vacation schedules. Without having some type of credibility and safety built in, anyone can say they are a computer forensic analyst. That includes felons and anyone stealing identities. What easier way is there to steal a person's identity than to open a shop proclaiming you are a computer analyst? Cell phones are also vulnerable.

If the bill gets rewritten, it should not be written in the form of exceptions because there are too many exceptions to this rule. It should be written to include specifically what computer forensics and cell phone forensics encompass and make those definitions clear. Although there are a lot of exceptions in this bill, there are more that are not included.

Chairman Kirner:

Are there any questions? [There were none.] Assemblyman Hickey, please make your closing comments.

Assemblyman Hickey:

The proponents of the bill will get back to the members of the Committee with various responses to some of the questions raised by the private investigators. I will conclude by saying what the American Bar Association said, that investigation and expert testimony should be based on the current state of science and technology. We have learned today that there is an emerging industry that is needed in Nevada and throughout the country. We have competent individuals to do that. The traditional role of a private investigator is significantly different than a computer forensics professional or network testing professional. I would like to clarify that the word forensic has to do with the science of understanding why things happen and is not strictly a legal term. The public and the courts would be negatively impacted if only private investigators could perform those services, because they are unlikely to be qualified to perform them. You listened to individuals who are qualified, and their services are needed. This is a business that is good for Nevada. The individuals we heard have businesses and pay taxes and fees and have insurance. I urge you to support legislation that will allow individuals like this to provide the important service they do.

Chairman Kirner:

I will close the hearing on A.B. 173 and open the hearing on Assembly Bill 154.

Assembly Bill 154: Makes various changes to the Nevada Employment Security Council. (BDR 53-553)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:

I have the honor of being the Chairperson of the Sunset Subcommittee. With me is Carol Stonefield, who served as the legislative staff person for that Committee. The mission of the Sunset Subcommittee was to review all of the boards and commissions created by the Legislature and to determine whether we should continue, modify, consolidate with another entity, or terminate.

I want to focus on A.B. 154 and give you background on the Employment Security Council. It was created in the *Nevada Revised Statutes* (NRS) in 1941. Its purpose at the time was to advise the Administrator of the Employment Security Division on ways to reduce and prevent unemployment; encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; advise on establishing and operating reserves for public works to be used by the state and its political subdivisions in times of

depression and unemployment; promote reemployment of the unemployed; and conduct and report the results of research studies and investigations. The Council also advises on changes to the contribution or benefit rates to protect the solvency of the Unemployment Compensation Fund.

These topics on which the Council is to advise the Administrator have not changed in the NRS since the early 1940s. Within the general structure, this Council falls under the umbrella of the Department of Employment, Training and Rehabilitation.

One of our tasks as the Sunset Subcommittee is to make recommendations to the Legislative Commission on existing statutes so that they reflect a board's current responsibilities or to assist a board or commission to operate more efficiently. That is what we are recommending here. As indicated in A.B. 154, the Subcommittee found no record that the Council has advised or assisted in the establishment and operation of reserves for public works, which seems to reflect the conditions of the Great Depression of the 1930s. The Subcommittee found that the Council does not appear to have published any results of investigations or research studies related to any of its assigned topic areas. The Subcommittee heard testimony from the Council that they do have an interest in vocational training, and we encourage that interest. However, its essential function now is to advise on unemployment compensation.

The Subcommittee is unanimously recommending the continuation of the Council. However, we are recommending the duties of the Council be revised to align with the current practices. As far as I know, there is no fiscal note.

Chairman Kirner:

Are there any questions? [There were none.] Are there any in support of this bill?

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

I look to the Council as the advisory council for purposes of unemployment insurance in setting the contribution and benefit rates. In recent times, we have also enlisted their advisement on different workforce development programs, and we will be using them more for that purpose. I support the bill as written. We do not believe the sections that are being removed from the bill are relevant.

Chairman Kirner:

Are there others to testify in support? [There were none.] Is there anyone to testify from a neutral position? [There was no one.] Are there any in opposition? [There were none.] I will close the hearing on A.B. 154. I am

inclined to include A.B. 154 in the work session. That takes a unanimous approval by the Committee members present.

Is there any discussion on this bill? [There was none.]

ASSEMBLYWOMAN KIRKPATRICK MOVED TO MOVE
ASSEMBLY BILL 154 TO THE WORK SESSION.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND O'NEILL
WERE ABSENT FOR THE VOTE.)

I will entertain a motion on A.B. 154.

ASSEMBLYMAN SILBERKRAUS MOVED TO DO PASS
ASSEMBLY BILL 154.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND O'NEILL
WERE ABSENT FOR THE VOTE.)

Assemblywoman Bustamante Adams will handle the floor statement.

We will move to Assembly Bill 84.

Assembly Bill 84: Authorizes the State Contractors' Board to issue a written administrative citation to a person who acts as a contractor without an active license of the proper classification. (BDR 54-386)

Kelly Richard, Committee Policy Analyst:

The first bill before you for work session is Assembly Bill 84. [Ms. Richard referred to work session document ([Exhibit F](#)).] It was heard in Committee on February 9, 2015, and in work session on February 18, 2015. The bill provides the State Contractors' Board with discretion in determining the administrative penalty for persons the Board has determined to have acted as a contractor without an active license of the proper classification or otherwise violated Chapter 624 of *Nevada Revised Statutes* or the regulations of the Board.

Chairman Kirner:

Is there any discussion?

Assemblywoman Kirkpatrick:

I had asked for regulations, and that was not a friendly amendment. If things change on the floor, I am willing to change my vote. The Contractors' Board has a very good reputation. This legislation was put in place in 2011 to address the handyman concerns where the scope of work was taken away from regular contractors.

In the *Nevada Administrative Code* (NAC) it talks about when a citation should be given. I think it has to be updated if we are going to say "may" versus "shall." In NAC 624.7251, subsection 2, it mentions a violation involving a construction project costing more than \$500,000, which is a large scope of work for some small contractors. Now we are saying you may or may not put that in place. I think that has to be addressed. At some point it says that you have to cite people so there is a record and now we are saying may or may not. I think it is easy to go back and address the regulations to put those concerns in place. The reason we put this in place is because we had trouble with the handyman regulation, but that does not mean we will not have something else. I will be in opposition to the bill.

Chairman Kirner:

Are there other comments?

Assemblyman Ellison:

We tried to iron out this bill, and I am in support of it. It gives back the rights to the investigator in the field.

Chairman Kirner:

Is the \$500,000 a regulation?

Assemblywoman Kirkpatrick:

That is a regulation now in place which would be subject to the "may" versus "shall." I think the Board could address it in regulation with some parameters by working with the contractors. The current regulation says to me that you shall give a citation based on a violation against a senior citizen or a person with a disability. This changes that.

Chairman Kirner:

I think that is fair. If the motion passes, I think part of our legislative intent should be that they need to address the regulations.

Assemblywoman Carlton:

You can only draft regulations on what you have the statutory authority to do. If we tried to push for regulations that were not compliant with this, the

Contractors' Board would have every right to fight back. You have to be clear of the intent. What we put in the law is what counts.

Chairman Kirner:

Is there a motion?

ASSEMBLYMAN ELLISON MOVED TO DO PASS
ASSEMBLY BILL 84.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BUSTAMANTE ADAMS, CARLTON, DIAZ, KIRKPATRICK, NEAL, AND OHRENSCHALL VOTED NO. ASSEMBLYMAN O'NEILL WAS ABSENT FOR THE VOTE.)

Assemblyman Silberkraus will take the floor statement.

We will move to Assembly Bill 93.

Assembly Bill 93: Revises provisions relating to the continuing education required to renew certain licenses. (BDR 54-27)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 93 is sponsored by Assemblywoman Teresa Benitez-Thompson and was heard in Committee on February 11, 2015. It requires psychiatrists, psychologists, clinical professional counselors, marriage and family therapists, and social workers to complete at least two hours of instruction on suicide prevention and awareness in order to renew their license. During the testimony on the bill, there were several suggested amendments by the sponsor as well as by a couple of boards and associations which were supported by the sponsor. Those are outlined in the work session document ([Exhibit G](#)).

The first amendment adds Assemblyman Tyrone Thompson as a primary sponsor and other Assembly members as cosponsors. Another recommendation was to add the phrase "evidence-based" before each reference to suicide prevention and awareness in the bill. The next recommendation is to revise sections 1 and 2 to clarify that all psychiatrists are required to complete the continuing education requirements in the bill whether or not they are board certified. Another recommendation is to revise the bill's effective date to July 1, 2016, to allow professionals to complete the required instruction prior to license renewal.

Chairman Kirner:

Is there any discussion?

Assemblyman Ellison:

Our biggest concern with the bill was the fiscal note.

Kelly Richard:

There is a fiscal note, and it is not removed based on any of the amendments. The Board of Examiners for Social Workers submitted a fiscal note based on the time that would be required to develop regulations and review additional paperwork generated by the requirement for the suicide prevention training. Elko County submitted a fiscal note stating that there would be a cost of obtaining the required continuing education units (CEU) per person.

Assemblywoman Carlton:

The Board of Examiners for Social Workers is fee-based, and the expense would go to the licensees and not the state. I do not know where the Elko County fiscal note is coming from, because most professionals have to do continuing education, and it would depend on their contract whether the county or the employee has to pick up that expense. That is beyond our jurisdiction. As far as I can tell, these do not have state fiscal impact.

Chairman Kirner:

That is my sense of it too.

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:

I agree with both of Assemblywoman Carlton's comments. When I was a social worker in a different county, they helped provide CEUs. Whether an employer provides CEUs is a decision made between the social workers and their employer. This does not add additional CEUs, so if they are going to host CEUs anyway, this would fall within the number of CEUs for which they have already budgeted.

As for the fiscal note from the Board of Examiners for Social Workers, I would like to have a conversation with them. No other board has submitted a fiscal note.

Chairman Kirner:

I do not think these are part of the Executive Budget and would not be required to be heard in the Assembly Committee on Ways and Means. I will entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 93.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN O'NEILL WAS ABSENT
FOR THE VOTE.)

Assemblywoman Neal will present the floor statement. We will move to
Assembly Bill 115.

**Assembly Bill 115: Revises provisions governing audiologists, speech-language
pathologists and hearing aid specialists. (BDR 54-165)**

Kelly Richard, Committee Policy Analyst:

The next bill before the Committee in the work session is Assembly Bill 115, which was sponsored by Assemblywoman Teresa Benitez-Thompson and Assemblywoman Irene Bustamante Adams. [Ms. Richard read from work session document ([Exhibit H](#)).] The bill was heard on February 16, 2015. Assembly Bill 115 abolishes the Board of Hearing Aid Specialists and transfers the duties of the Board to a newly established Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board. The measure makes other changes to the practice of these professions. First, it includes speech-language pathologists and audiologists in the definition of "provider of health care" in Chapter 629 of the *Nevada Revised Statutes* (NRS), which subjects the two professions to various requirements throughout the NRS. Next, the bill requires a speech-language pathologist to hold a current certificate of clinical competence issued by the American Speech-Language-Hearing Association or its successor organization; it also prescribes requirements concerning the practice of audiology or speech-language pathology using telemedicine.

There is an attached Committee amendment which addresses transitory provisions required to transfer the obligations, debts, responsibilities, assets, and liabilities from the Board of Hearing Aid Specialists to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board. There was also an exhibit submitted by the Board of Examiners for Audiology and Speech Pathology ([Exhibit I](#)).

Chairman Kirner:

Is there any discussion?

Assemblywoman Fiore:

I am concerned about the licensing fees doubling. I will vote it out of Committee, but I reserve my right to change my vote on the floor.

Chairman Kirner:

We looked at the fees, and there are some that increase and some that decrease. The net effect is to reduce the fees by \$2,500 per biennium. I think the explanation of that is available on the Nevada Electronic Legislative Information System (NELIS).

Assemblyman Ellison:

I just got the information on NELIS. I am going to vote yes on this, but reserve my right to change my vote on the floor.

Assemblywoman Seaman:

I reserve my right to change my vote on the floor.

Assemblyman Silberkraus:

I reserve my right to change my vote on the floor.

Chairman Kirner:

I will entertain a motion.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 115.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN CARLTON VOTED
NO.)

Assemblywoman Seaman will present the floor statement. We will move to Assembly Bill 126.

[Assembly Bill 126](#): Revises provisions governing massage therapy. (BDR 54-207)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 126 was heard in Committee on February 16, 2015, and was sponsored by Assemblywoman Maggie Carlton. [Ms. Richard read from work session document ([Exhibit J](#)).] The bill makes various changes to statutes governing massage therapy. It adds licensed nail technologists to the list of persons exempt from licensure as a massage therapist if the nail technologist is

massaging the hands, feet, forearms, or lower legs within his or her scope of practice. The measure removes the requirement that an applicant for a license to practice massage therapy pass an examination administered by a board accredited by the National Commission for Certifying Agencies, allowing an examination administered by any accredited board to qualify.

The bill also limits to two years the period during which an expired or active license may be restored or renewed under certain circumstances. Finally, the bill removes an existing provision allowing the Board of Massage Therapists to impose discipline or refuse to license an applicant for a conviction for any crime involving moral turpitude and adds a requirement that a licensee or applicant report to the Board any unethical or unprofessional conduct as it relates to the practice of massage therapy within 30 days of becoming aware of the conduct. Failure to do that would be grounds to impose discipline or refuse to issue a license.

There is an amendment that was submitted by the Board which is attached. The sponsor approves the amendment. It strikes the language in section 2 relating to examinations written by an accredited board and instead requires the applicant to successfully pass a nationally recognized examination meeting certain criteria that is approved by the Board. The last page of the work session document has blue text with suggested language. This is a conceptual amendment to address concerns on the thoroughness of the examination.

Chairman Kirner:

Is there any discussion?

Assemblyman Ellison:

Does the amendment scratch all of section 2?

Lisa O. Cooper, Executive Director, Board of Massage Therapists:

It strikes section 2 where we had a problem. The way the language read, it said the Board needed to be certified. We struck that section, and it will be replaced with the language in the conceptual amendment.

Assemblywoman Carlton:

That was the clarification that needed to be made to address the concerns from constituents who they thought might have an issue with that in the future. This is a cleaner way to do it, so we do not have to come back and fix it again.

Chairman Kirner:

Is there other discussion?

Assemblyman Paul Anderson:

Is this language that is used nationally? Can you help me understand the definition?

Lisa Cooper:

Yes, this language is used nationally. There are several other boards within the United States that have put this language in place. Massage therapy boards are new throughout the country and are move toward this language. Some of them specifically state a test, which is what we are trying to avoid because it boxes you in if that test does not do well.

Chairman Kirner:

Seeing no other discussion from the Committee, I will entertainment a motion.

ASSEMBLYMAN SILBERKRAUS MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 126.

ASSEMBLYMAN PAUL ANDERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Carlton will present the floor statement.

Is there any public comment? [There was none.] The meeting is adjourned [at 3:25 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 25, 2015

Time of Meeting: 1:31 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 173	C	Assemblyman Pat Hickey,	Overview
A.B. 173	D	James R. Elste, Inqiri	Prepared testimony
A.B. 173	E	Todd Shipley, Vere Software, and Great Basin Data Recovery	Testimony
A.B. 84	F	Kelly Richard, Committee Policy Analyst	Work Session Document
A.B. 93	G	Kelly Richard, Committee Policy Analyst	Work Session Document
A. B. 115	H	Kelly Richard, Committee Policy Analyst	Work Session Document
A.B. 115	I	Kelly Richard, Committee Policy Analyst	Fee and Budget Points from the Board of Examiners for Audiology and Speech Pathology
A.B. 126	J	Kelly Richard, Committee Policy Analyst	Work Session Document