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

Seventy-Eighth Session
March 20, 2015

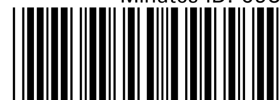
The Committee on Commerce and Labor was called to order by Vice Chair Victoria Seaman at 1:33 p.m. on Friday, March 20, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 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:

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

COMMITTEE MEMBERS ABSENT:

Assemblyman Randy Kirner, Chairman (excused)
Assemblyman Paul Anderson (excused)



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Chris Ferrari, representing Provident Trust Group, LLC
D. Neal Tomlinson, representing Provident Trust Group, LLC
William Patterson Cashill, representing Nevada Justice Association
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Mendy Elliott, representing Chiropractic Physicians' Board of Nevada
Louis Ling, Board Counsel, Chiropractic Physicians' Board of Nevada
Benjamin Lurie, D.C., President, Chiropractic Physicians' Board of Nevada
Marlene Lockard, representing Nevada Chiropractic Association
Mindy McKay, Records Bureau Chief, General Services Division, Department of Public Safety

Vice Chair Seaman:
[Roll was called. Rules and protocol were explained.] We will open the hearing on Assembly Bill 275.

Assembly Bill 275: Revises provisions governing trust companies. (BDR 55-1013)

Assemblyman Erven T. Nelson, Assembly District No. 5:
I am happy to present Assembly Bill 275. I would like to ask Mr. Ferrari, Mr. Tomlinson, and Mr. Helquist to join me at the table. Mr. Helquist is a constituent of mine. The purpose of this bill is to put Nevada on an equal footing with other states with whom we are competing for trust company business. Our largest competitor is probably South Dakota. We are asking that certain definitions be changed so that Nevada can operate in the space along with other progressive states. It is similar to what has been done in the areas of limited liability companies.

As many of you know, through the years Nevada has modernized its laws in order to attract a number of companies to incorporate in Nevada, either as limited liability companies (LLC) or as corporations. In that arena, we compete with Delaware, which is our primary competitor, and Wyoming. We are constantly updating the laws so that the corporate governance laws are as attractive as possible to bring in new business. As a result, we have approximately 200,000 entities in Nevada that have utilized our LLC laws and which do not even operate in the state. They have payroll, manufacturing, and other operations in other states, but Nevada is utilized for incorporation because our laws are friendly, and that brings a lot of revenue to our state. We are trying to do that with this bill, on a smaller basis.

Chris Ferrari, representing Provident Trust Group, LLC:
We know there will be forthcoming opposition on the measure, with concerns raised by Mr. Cashill from the Nevada Justice Association. We are also working with Commissioner Burns and were able to speak with him earlier. He heads the Division of Financial Institutions, Department of Business and Industry. We will be happy to work with both parties following the hearing.

With me today is Neal Tomlinson, a partner at the Snell and Wilmer law firm. I would like to give you an overview of the bill, and then perhaps Mr. Tomlinson can walk you through the bill section by section.

The intent of the legislation, as Assemblyman Nelson alluded to, is to put Nevada on an equal playing field with the other states. In current statute, there are two definitions of fiduciaries. The first is a traditional fiduciary. The second is what is called an excluded fiduciary. An excluded fiduciary does not provide investment advice and only invests at the specific, written direction of a client. A fiduciary, on the other hand, may provide investment advice, therefore giving them a different level of involvement in that client's operation and decisions and accountability or liability. Assembly Bill 275 clarifies the delineation between the two types of fiduciaries.

A self-directed individual retirement account (IRA) client, where this often comes up, might invest in a mutual fund or a bond. There are individuals who may want to invest in real estate. That is done through a self-directed IRA. In order to do so, one would have to, pursuant to *Nevada Revised Statutes* (NRS), engage a fiduciary or an excluded fiduciary by statute, and the IRA must have a custodial account as it is defined in NRS 163.5533. These specific consumer accounts must meet criteria defined by both the Internal Revenue Service (IRS) and the U.S. Department of the Treasury and overseen and regulated by the Financial Institutions Division.

A holder of one of these accounts would not be able to direct an excluded fiduciary to operate outside of these statutory boundaries, thereby providing existing consumer protection. This bill does not do anything to erode or alter any aspect thereof. In the event that an excluded fiduciary would serve as a fiduciary, that person would assume the commensurate liabilities already in statute.

With your permission, Madam Vice Chair, I would like to ask Mr. Tomlinson to run the Committee through the bill in a section-by-section manner.

D. Neal Tomlinson, representing Provident Trust Group, LLC:
The intent of this bill is to clarify the roles of fiduciaries and excluded fiduciaries. Section 1 is the introductory language. Section 2, subsection 1, sets forth the manner in which a fiduciary or an excluded fiduciary may, as reasonable and prudent, delegate certain duties.

Section 2, subsection 2, provides that before delegating a duty, a fiduciary or an excluded fiduciary may obtain the prior written approval of all beneficiaries or from the court. Section 2, subsection 3, provides that if a written approval is obtained, the fiduciary or excluded fiduciary is not liable for the acts of the agent, except in cases of gross negligence or willful misconduct in the selection or monitoring of that agent.

Section 3, subsection 1, sets forth the necessary protections for an excluded fiduciary. Section 3, subsection 2, references the defined terms of a custodial account owner, excluded fiduciary, and trust adviser. This is important because custodial accounts are governed by the Internal Revenue Code and NRS Chapter 163. Section 4 amends the definition of fiduciary to exclude servicers of individual retirement accounts.

We believe the roles need to be clarified to bring Nevada in line with South Dakota. The traditional known leaders in trust law are South Dakota, Delaware, Nevada, and Alaska. Clarification in the statute of the different roles of fiduciaries and excluded fiduciaries will be a good thing for the trust business and for everyone.

Vice Chair Seaman:
Are there any questions from the Committee?

Assemblywoman Neal:
Section 3, subsection 1, paragraph (a) says an excluded fiduciary has "no duty to review or evaluate." Paragraph (b) says an excluded fiduciary has "no duty to advise or warn." When you remove that duty, can there be an issue

with a noninstitutional trustee who may hold information for the benefit of the trust? Who would be a noninstitutional trustee who may be bound by the duty to warn and advise?

Neal Tomlinson:
In our opinion, this does not change the roles or responsibilities of a fiduciary. If a person is acting in a fiduciary capacity, that does not change at all. If an excluded fiduciary is acting upon the direction of the client, that gives the excluded fiduciary certain protections, and that is what this section is intended to do—to clarify those different roles where duties have been delegated between the fiduciary and the excluded fiduciary. The liability and the requirements of the fiduciary remain in place and are not changed by this.

Assemblywoman Neal:
I read the Divided Trusteeship Act, which came from the National Conference of Commissioners on Uniform State Laws. This Act was prepared in a March 2015 Drafting Committee meeting. One of the nuance issues discussed in the document was that exact question, and I did not know the answer.

My second question is related to where you say we are in competition with South Dakota. Reading this draft of March 2015, I had assumed that an excluded fiduciary is also a directed trustee, because that individual receives directions from the trustee to do X, Y, and Z. In this document, it said there are three different categories in which a directed trustee could act in an area. The excluded fiduciary could have no duties, which relates to Nevada, South Dakota, and New Hampshire; he or she could have moderate duties, which is a Delaware rule; or he or she could have traditional duties. When I was looking at NRS Chapter 669, which you are changing, I noticed you are going further than the initial statute. Please talk about these three categories, and that you could have chosen a more moderate or traditional viewpoint in order to give or remove duties. You had some wiggle room there. I would like to understand what the competition is in relationship to South Dakota.

Neal Tomlinson:
The language we used is largely modeled after South Dakota's statute. South Dakota is known, as is Nevada, as a leader in this area.

Assemblywoman Neal:
Why was South Dakota selected when another state might have provided a bit more protection and ability? When talking about a fiduciary relationship, there has to be a relationship in order to have a breach. It seems to strike at the core of the relationship that there would be a higher burden to prove relationship to

then attach fiduciary duty. That is why I am asking, what are we doing, why are we doing it, and how is it competition?

Chris Ferrari:
There was no intention to skirt any duties of any of the parties within our current statute. Pursuant to Mr. Tomlinson's comments, the only objectives of the legislation are (a) to make us competitive with states like South Dakota, and (b) to better define what that excluded fiduciary role looks like, in that the excluded fiduciary is strictly a pass-through. It is a place where the money is held until it is strictly directed by the owner of the account. No action can be taken otherwise.

This bill is not attempting to alter any current statute. We are removing the language in NRS Chapter 669 because that language existed in a similar manner in NRS Chapter 163. That is a clarifying measure to make it comport with what is already happening in NRS Chapter 163.

We would be happy to get with you afterward, Assemblywoman Neal, and walk through some of these sections, and we will do some additional research.

Assemblywoman Bustamante Adams:
I know we have done several things over the last session regarding these types of laws to ensure we are competitive as a state. Could you please elaborate in layman's terms, because I understand we are separating the standard fiduciary from the excluded fiduciary. I would like another example so those members who have not served before on the Committee on Commerce and Labor can understand it a little better.

Chris Ferrari:
Let us say that an IRA owner has money in his or her retirement fund and wants to put that into an investment property through an individual retirement account. The account owner does not want to go with the traditional stocks or mutual funds, but wants to buy a rental property. In order to do that, by law, the account owner has to open a custodial account. That custodial account is regulated by the U.S. Department of the Treasury and the IRS, and that enables the commissioner to overview everything that happens in that account. The account owner will personally tell the trustee that he or she wants to purchase that real estate investment. If the real estate investment does poorly, that excluded fiduciary should not be liable therefor, because they are holding the money and acting at the direction of the client.

Vice Chair Seaman:
The excluded fiduciary has no authority to tell you where to invest the money. He or she is strictly there to do what you ask them to do.

Chris Ferrari:
Yes, they are the middleman, so to speak.

Assemblyman Ellison:
What protection is there for the parties who could still go to court and sue? There are still checks and balances, correct?

Neal Tomlinson:
That is correct. It would not remove anyone's common law right to pursue anyone for any wrongs or for breach of duties.

Assemblyman O'Neill:
If I go to the bank because I want to send money to Nigeria for my aunt's safe return to the United States, the bank will usually warn me, "Are you sure you want to respond to that email and send that money?" In the case you are talking about, can any advice be given for some form of protection?

Neal Tomlinson:
Yes, we are talking about the fiduciary, who would render advice; that does not change. The excluded fiduciary does not render advice. That individual acts upon the direction he or she is given, and that is the difference.

Assemblyman O'Neill:
If I told my excluded fiduciary that I received an email from Nigeria saying I have won the Irish lottery and I need to send $1,000, would the fiduciary send that $1,000? I think that is what some of the issues may be. Even the bank will question the matter to make sure and give some advice.

Neal Tomlinson:
I think part of the protection that is included is that we are having written direction. If the account owner says something to the fiduciary, we are allowing them to have prior written direction to what the account owner wants done. We would hope that common sense would also prevail. I think there are adequate protections for that.

Assemblyman Nelson:
If you look in section 2, subsection 3, it says "the fiduciary or excluded fiduciary is not liable for the acts of the agent, except in cases of gross negligence or willful misconduct . . . ." In your hypothetical,

Assemblyman O'Neill, if you could convince a court that not saying anything constituted gross negligence or willful misconduct, then you could still hold the excluded fiduciary liable. As an example, I have a self-directed IRA. I instructed my IRA administrator to invest in something, and it turned out badly. I instructed him to invest in a different investment, and that has turned out very well. Since I told the administrator that he must complete my request, and I executed a form, signed, and faxed it to him, the burden is on me. One turned out well, the other turned out badly. It was my decision and it was my choice in accountability. I made the decision and I bear the brunt. I also get the rewards if it comes out well.

To answer your question, for example, my wife's email was hacked. People were calling me asking if my wife was in Turkey, and telling me she needed $2,000 to get home. I talked to her, and she said others had called her. If I went to the bank and said I wanted to wire money to Turkey, and the bank did not tell me that was a scam, maybe that would constitute gross negligence. There is some protection there.

Assemblyman Ohrenschall:
I think the proponents mentioned that similar legislation is attracting investment to jurisdictions such as South Dakota and Delaware. Have there been problems there, or has it worked out well? Do you know of increases in litigation because of legislation like this, or do you think the results have been good? Do you have any anecdotal evidence?

Assemblyman Nelson:
I am not aware of any, but I will defer to the other gentlemen at the table.

Neal Tomlinson:
I have read about the subject in other states, but I am not aware of any problems.

Assemblywoman Neal:
How do you distinguish between what is information and what is advice in this bill? The bill says they do not have the duty to advise, but if A.B. 275 passes, how would a person know if he or she is giving information to the client or giving advice?

Neal Tomlinson:
The fiduciary in this case is the one who would be relied upon for advice. Section 3, which you are referencing, refers to the excluded fiduciaries. In this case, the fiduciary is the one who would not be rendering advice. They are acting upon the direction of their client, and that is the difference.

Section 3 only applies to an excluded fiduciary and would not apply to the person rendering the advice, which would be the fiduciary.

Assemblywoman Bustamante Adams:
Does the due process for any kind of recourse, if that was necessary, change if we distinguish between these two?

Assemblyman Nelson:
I do not think the due process changes at all. I think the standard of care you would have to prove changes. In section 2, subsection 3, which I just looked at, and also in section 3, subsection 1, paragraph (c), subparagraph (3), it excludes any act or omission, except gross negligence or willful misconduct, when acting as a trust adviser. Under the bill, you would have to prove something other than garden variety negligence. Gross negligence or willful misconduct would have to be proven, and gross negligence is a term of art—there is a lot of case law on it.

Assemblywoman Bustamante Adams:
Is there somewhere I could look to compare the law between South Dakota and Nevada? We are trying to stay competitive. What kind of model legislation has been enacted in the last few years that shows South Dakota has something that Nevada does not? Could I find that information?

Neal Tomlinson:
Yes. We will provide a copy of that to show you the different references.

Vice Chair Seaman:
We would like to invite those in favor of the bill to please come forward. [There were none.] Is there anyone in opposition to A.B. 275?

William Patterson Cashill, representing Nevada Justice Association:
I have been a licensed Nevada lawyer since 1969. I have been a federal prosecutor in this district and outside this district with the organized crime section in St. Louis. During my career, I have prosecuted securities fraud cases. As a civil lawyer, I have represented plaintiffs who have been defrauded by stockbrokers, by real estate brokers, and by fiduciaries of all types. I have defended insurance companies charged with bad faith for having failed to adhere to the standards required of fiduciary-like companies, as insurance companies are described in some of the case law in Nevada.

Fiduciaries in Nevada are a particularized class of people and organizations. Fiduciaries, in general, are those in whom others place their trust. In some situations, there is a requirement that a degree of special reliance be established

factually before a court or jury. The key to a fiduciary's responsibilities is that someone other than the fiduciary has chosen to believe in and place their trust and confidence in that fiduciary. Fiduciaries under Nevada case law, going back to the 1920s, have included lawyers, doctors, investment advisers, stockbrokers, real estate brokers, and even contractors—anyone in whom someone places his or her trust.

This bill turns on its ear the concept of fiduciary duty. With all due respect to my colleague, Assemblyman Nelson, for whom I have the utmost respect, the standard of proof that is required of one who seeks to hold a fiduciary or excluded fiduciary liable is changed from the law that has prevailed in Nevada for nearly a century. Fiduciaries are required, under Nevada law, to be absolutely honest; to make full disclosure; to exercise due care, which is a negligence standard; to be loyal; and to avoid conflicts of interest. In the famous case of *Golden Nugget, Inc. v. Ham*, 95 Nev. 45, 589 P.2d 173 (1979), the Nevada Supreme Court said a fiduciary must disclose to the person who has placed his or her trust in the fiduciary matters that on the surface do not seem to allege wrongs, but which may cause the person placing his or her trust in the fiduciary to make further inquiry.

Lawyers in Nevada are required to disclose to their client if they have committed malpractice; for example, missed a statute of limitations. In the case of *Clark v. Lubritz*, 113 Nev. 1089, 944 P.2d 861 (1997), a group of doctors was held liable not just for a fiduciary duty, but also for punitive damages for having failed to disclose to a junior partner the fact that they were paying him on a different financial basis than they were paying themselves. There is a requirement under Nevada law that fiduciaries toe the line and be responsible. Nevada has not just an independent streak but a libertarian streak.

The bill abrogates the responsibilities in general that fiduciaries have under Nevada law and grants at least partial immunity to a class of business people while holding the rest of us, from contractors, to doctors, to lawyers, to business people, to a different standard, and that is not fair.

In balance, the Nevada Justice Association opposes the bill because it denies citizens equal access to justice, and sets a category of specialization for immunization for a group of people without protecting the rest of us as citizens for wrongs they might commit.

As a follow-up to some of the points made by my worthy colleagues, it is my understanding that the defense of "I was just following orders" fell by the wayside a long time ago. Professionals, such as fiduciaries, are required to exercise professional skepticism and independent judgment. Nothing about

those concepts is included in this legislation. When a person comes to a fiduciary or an excluded fiduciary and tells him he just received this wire from Nigeria saying he has won the lottery, and has to send $5,000 in order to pick up the ticket, the fiduciary is required, irrespective of what this bill says under existing Nevada law, to tell him he is out of his mind.

The concept of due process has changed. The traditional duty of care is eliminated as a source of liability for a fiduciary or an excluded fiduciary. The standard is increased to gross negligence or willful misconduct. That is not the existing law in the state of Nevada.

Assemblyman O'Neill:
A similar law has been enacted in South Dakota. Have there been any problems that you know about?

Pat Cashill:
I do not know.

Assemblywoman Bustamante Adams:
Can you give me an example of gross negligence or willful misconduct relating to section 3?

Pat Cashill:
Willful misconduct involves a state of mind: "I intend to harm." Gross negligence is a step down. Reasonable care is care that a reasonable person would exercise under the circumstances, and that is a judgment call. Judgment calls can be wrong. Gross negligence is a step up. For example, I knew the light was just about to turn red, and I ran it. That is gross negligence. I intended to do the act, but I did not intend to harm anybody. Negligence involves professional judgment; doctors, lawyers, engineers, and other professionals are held to the standard of reasonable care. I misdesigned a building, or I did not mean to, but I blew a statute of limitations. A doctor says that he or she made the wrong call and did not perform these tests and should have. That is bad judgment, but that can be a breach of the duty of care. In that sense, the scales of justice have to be tipped ever so slightly in favor of the person who claims the wrong was done. For gross negligence, those scales have to tip further, and willful misconduct is short of beyond a reasonable doubt, which is the criminal standard.

Assemblywoman Bustamante Adams:
Can you provide an example with regard to the trust company and the excluded fiduciary? What would that look like?

Pat Cashill:
As I understand A.B. 275, excluded fiduciaries are persons who are assigned a task by the fiduciary himself or herself. The excluded fiduciary can, under the terms of this bill, say, "I was just following orders. I did not exercise any independent judgment. I thought what the person who trusted me was doing was wrong, but I did not have the responsibility to tell her that she was wrong." That flies in the face of the general standard of care, which a fiduciary has to exercise in the state of Nevada. If you see something that is wrong, you are obligated to speak up. You have to be absolutely honest. You have to be candid with the person who places his or her trust in you. From a professional standpoint, you can tell the person, "You can make that decision, but it would be a terrible decision, and it is the wrong decision for these reasons."

These Nigerian emails are scams, and everyone knows that. Under the terms of this bill, the excluded fiduciary does not have the responsibility to speak up. We think that is wrong.

Assemblywoman Neal:
One of the points brought up in the March 2015 draft by the Uniform Law Commission said the movement in this direction is reversing *Rollins v. Branch Bank and Trust Co. of Virginia*, 56 Va. Cir. 147 (2001), and the question needed to be reconciled. How is the waiver of the directed trustee's duty to monitor and warn reconciled with the general standard of fiduciary duties for a directed trustee? I believe you said that you find yourself at an impasse because you have a general standard on one side and a consent standard on another side. "I was told to do X, Y, and Z. This is my lane, I shall not move out of this lane, and therefore I am not liable." How would you reconcile that? What is the provision that says there is a standard of care that says you should have told me something, although I do not know what that something was? What do we do?

Pat Cashill:
If a client comes to me and says, "I want you to advise me on a particular issue, and I am willing to sign a waiver of any potential liability I might face because of anything I decide to do based on anything you have told me," I would stand down. I would not represent that person because my responsibilities as that person's lawyer would be compromised. I would be told that anything I do is okay, and that is beyond a professional's duties to his or her client and abrogates the essential connection that there has to be between professional responsibility and judgment and the advice that the client seeks.

Assemblyman Ellison:
Have you talked to the sponsor of the bill yet and told him your concerns?

Pat Cashill:
I did not. I have the greatest confidence in Assemblyman Nelson's abilities to work with us to forge a bill that will satisfy his and our particular needs, but I did not have a chance to meet with him before this hearing. I communicated in writing.

Assemblyman O'Neill:
Just to be clear—if this bill passes and goes into law, under the law as it would now be—let us say I call my excluded fiduciary and tell him or her that I want to invest in the Nigerian sapphire mines described in an email I received. Would that not be considered an act of omission or gross negligence? I thought you just said it is. The protection is there, if I understand you correctly. You said they would have to be out of their mind to do that. To me, "out of their mind" is gross negligence for that excluded fiduciary not to say something. I would then have a tort of action against him or her, would I not?

Pat Cashill:
As I understand the terms of the bill, the excluded fiduciary has no responsibility whatsoever to inform the person who places her trust in him that the decision she is making is wrong. The excluded fiduciary can simply say, "I was just following orders," and not say a word. All the excluded fiduciary is required to do, under this bill, is execute the trade—to send the money. That concept, in our view, abrogates the responsibilities that fiduciaries have in Nevada under the common law of this state.

Assemblywoman Bustamante Adams:
This sounds as if it is salvageable. Do you know if South Dakota and Delaware, which also compete in this market, have the provisions to provide for the protection of the consumer and also meet the needs of what Assemblyman Nelson is trying to achieve?

Pat Cashill:
As I understand the testimony by the sponsors of the bill, A.B. 275 mirrors either a model act or laws that were passed in other states such as South Dakota. If that is so, and if the standard of care as being reasonable care is being eliminated as a source of liability, then that changes the landscape. I do not know whether that foreign legislation does precisely that, except to the extent I believe my colleagues' testimony where it alters the burden of proof in a civil action by the beneficiary against the fiduciary.

Vice Chair Seaman:
Is there anyone who would like to testify as neutral to A.B. 275?

George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I want to speak to the Committee regarding the perspective we have on the intended or unintended consequences of this bill from a practical standpoint.

Assembly Bill 275 proposes to eliminate a key public protection that was enacted by the 2009 Legislature with the complete revision of NRS Chapter 669 to modernize and enhance the protection of the public interest to regulate companies that are engaged in fiduciary activities. Essentially, from our perspective, A.B. 275 deletes NRS 669.045, subsection 2, that requires administrators or servicers of individual retirement accounts (IRA) to be licensed, examined, and supervised under NRS Chapter 669. This would eliminate the key public protection against these companies that call themselves "administrators" but hold themselves out to the public to provide what are essentially fiduciary services; that is, acting as a repository for the individual's funds until invested, and in some cases holding the assets that are invested in the name of the administrator for transaction purposes. These activities are tantamount to the definition of a fiduciary under NRS 669.045.

The convoluting technical language of A.B. 275 regarding the definitions of "fiduciary" under NRS 163.554 and "excluded fiduciary" under NRS 163.5539, confuses a fundamental consumer protection issue. Assembly Bill 275 will permit third-party administrators or servicers for individual retirement accounts to hide behind a "custodian's" trust or depository institution license so that the administrator does not have to be licensed to meet capital and other safety and soundness requirements, be examined to ensure that all activities and transactions are properly performed, or be supervised when discrepancies are found or consumer complaints are made.

Nevada Revised Statutes 669.045 closed a legal loophole that allowed the third-party administrators or servicers of IRAs to operate without regulatory oversight. The provisions of A.B. 275 permit agents, also known as third-party administrators, to hold and service self-directed individual retirement accounts without liability for the services they provide, and no liability for the fiduciary that fronts their license for the administrator as a custodian that delegates servicing to the third-party administrator.

As recently as last year, an example of what can happen when administrators or servicers of individual retirement accounts are not subject to licensure, examination, and supervision is the case of *Securities and Exchange Commission v. American Pension Services, et al* in Utah. Our neighboring state Utah does not have a law similar to NRS 669.045 requiring the regulation of IRA administrators like American Pension Services (APS). The U.S. Securities

and Exchange Commission (SEC) had to step in and take American Pension Services into receivership due to a loss of over $22 million to self-directed individual retirement accounts that resulted from misappropriation of funds and fraudulent statement accounting to customers. The charges were described in an April 30, 2014, article from *Investment News* regarding American Pension Services. To quote from the article, Karen L. Martinez, director of the SEC's Salt Lake City regional office, said in a statement, "This misconduct jeopardized retirement security for thousands of APS customers."

In speaking with the Utah Department of Financial Institutions, it was stated that the department wished Utah had a statute like NRS 669.045 so that they could have possibly identified the misconduct at American Pension Services through regulatory examination and possibly prevented the $22 million loss to its customers, who included many Utah citizens.

I respectfully request that the Committee on Commerce and Labor take the information presented in this testimony into consideration when making its determinations regarding the statutory revisions proposed by A.B. 275, and ensure that the Financial Institutions Division continues to have the statutory authority to fulfill its legislatively intended duty and responsibility to protect the public interest regarding fiduciary activities.

Vice Chair Seaman:
Have you reached out to the sponsor?

George Burns:
I was contacted by the representative of the sponsor late this morning. I discussed with them the fact that I would be testifying in a manner similar to this and that we needed to work together.

Assemblywoman Kirkpatrick:
Can you send what you just read to the staff so that we could read it and go through it?

George Burns:
I have provided a copy to the staff in Las Vegas for them to send to the Committee.

Assemblyman Hansen:
The law has been in effect since 2009. Have there been any prosecutions of cases in Nevada like the Utah example you gave?

George Burns:
We are currently engaged in a cease and desist order action against a company of this very sort and taking them to hearing for violation of our state law.

Vice Chair Seaman:
Is that only one case that you know of, or are there several cases?

George Burns:
This is the one case that is pending since the law was passed. The law has been very adequate in being able to keep people out of the state who are trying to perform these actions. Please realize that not only does this affect Nevada citizens, but these companies operate on a national level through the Internet. It affects individuals across the country. One of the things that concerns us the most is the black eye that gives Nevada.

Assemblywoman Carlton:
That is one of the questions I asked the proponents when they came to visit me yesterday, if there were any outstanding cases on this issue. I am concerned if the state changes the law now, whether that could have bearing on the case. Are you involved in what is going on? Do you see any problems with this change in statute having an effect on the ability to go after the bad actors in this particular case?

George Burns:
In pursuing this particular case, we are about to go to hearing and are attempting to come to a settlement which would result in the company removing itself from Nevada. One of the proposals they put forward to us was, "If the law changes before we settle this, what effect will that have?" Honestly, I can tell you that I believe that part of the purpose of this legislation is in order to affect that case.

Assemblywoman Carlton:
That is the exact question I had yesterday before I even had a chance to talk to Mr. Burns. We have seen other incidents such as this come to the Legislature where someone thinks they are about to lose a court case, and they decide to change the rules so they win.

Vice Chair Seaman:
Would the bill's sponsors like to make closing remarks?

Assemblyman Nelson:
We will be happy to work with everyone who has spoken in opposition or is neutral. Mr. Cashill attempted to meet with me this afternoon before the

hearing and, unfortunately, I was in another meeting. I will meet with him, go through everything, and see if things can be worked out.

For the record, I had no knowledge at all there is a case pending, which Mr. Burns just mentioned. My authoring this bill had nothing to do with any pending case.

Chris Ferrari:
I wish to take a bit of exception to the allegation from Mr. Burns. In no manner is the intent of Assemblyman Nelson's legislation to alter any current administrative or legal proceedings. I want to be sure that is very clear for the record.

Vice Chair Seaman:
We will close the hearing on Assembly Bill 275 and open the hearing on Assembly Bill 231.

Assembly Bill 231: Revises provisions governing the practice of chiropractic. (BDR 54-701)

Mendy Elliott, representing Chiropractic Physicians' Board of Nevada:
Assemblyman Oscarson has been extremely helpful as we have worked through the various elements of the bill. This bill will revise provisions governing the practice of chiropractic. With me today are Louis Ling, the Chiropractic Physicians' Board of Nevada's attorney, and Dr. Benjamin Lurie, who is president of the board.

For your reference on the Nevada Electronic Legislative Information System, we have provided three exhibits: a letter of support from the Chiropractic Physicians' Board (Exhibit C), a document which will provide a section-by-section explanation of the bill (Exhibit D), and a proposed amendment, which will be clarifying (Exhibit E).

I will turn the hearing over to Mr. Ling, who will take us through the various elements of the bill, and then to Dr. Lurie, who will be providing comments.

Louis Ling, Board Counsel, Chiropractic Physicians' Board of Nevada:
I will briefly take us through the seven sections of this bill. The first section is language that is patterned after language already in the statutes of seven other health care boards in Nevada. I also represent the Board of Osteopathic Medicine. This language is, essentially, taken from their statutes. The language addresses a situation where complaints are received that a chiropractic physician who is treating patients is impaired in some form or fashion, whether

by alcohol, drugs, or a mental illness, for example. If the investigating board member who has been assigned that case feels there is reason to believe the complaints are credible, the board has the ability to order a blood or urine sample taken from that chiropractic physician, which would allow us to gather the information needed to determine whether the allegations received are proven or not.

The board's intent is remedial, first and foremost. If we were to receive such a complaint and were able to verify that the chiropractic physician was impaired, our inclination and our hope are that we could get that chiropractic physician into treatment and address the issue so he or she can return to practice and practice safely.

Section 1 has an amendment which amends the last sentence of subsection 1. That was at the request of Assemblyman Oscarson, who was concerned with the language. The way the language now reads, the costs of that testing could be put on the chiropractor or the chiropractic assistant. We have agreed to an amendment that says the board will bear those costs. If we are going to order them to be tested, we are also going to pay for the costs.

Subsection 2 amends our definition of "unprofessional conduct." *Nevada Revised Statutes* (NRS) 634.018 presents a lengthy list of things the Legislature has defined to be unprofessional conduct. You will see near the end of the bill that section 7 includes the ability to charge unprofessional conduct. We are adding to the definitions of unprofessional conduct for disciplinary purposes. The first change is in section 2, subsection 4. We are simply bringing this area into the twenty-first century. We have always had advertising problems with chiropractors. This section gives us the ability to address those communications. There was nothing in statute that allowed us to look at Internet communications, websites, or any of the social media, which is where most of the advertising appears now.

We are also proposing a simple one-word change in section 2, subsection 13. The current law states "repeated malpractice," and the word "repeated" is being removed. This allows the board to look at the first act of malpractice when we get the complaint. We propose adding a new subsection 18, which will allow the board to address practices that are below the standard of care for chiropractors. We consider this to be proactive, which means that, hopefully, we will be able to look at complaints regarding standard of care where, thankfully, no patient has yet been hurt. This addition would give us the ability to address that issue.

Section 3, subsection 5, will allow the board to accept applicants who are coming to the board from foreign schools. Presently, we turn those applicants away if the applicant graduated from a Canadian school or the school in New Zealand. We would like those people to apply and go through the application process. The new language in subsection 5 will allow us to do that as long as the accrediting agency in the United States recognizes the accreditation of a New Zealand or a Canadian school. We are then able to say, if the Canadian schools are up to the same standards as the United States, we can accept Canadian applicants. We are hoping this will broaden our applicant pool.

In section 4 of A.B. 231, the intent is for those chiropractors who move to Nevada to be issued a temporary license for up to ten days, with a maximum issuance of two per year. If the individual is in Nevada to provide chiropractic services for free, for nonprofit organizations or other kinds of health care, or to treat athletes at no charge, the applicant will need to go through the process to obtain a temporary license, and we ask to be allowed to waive the $50 fee for that application.

Section 5, subsection 2, is a change related to our applications for renewal that we missed the last time we appeared before the Legislature. This will say that when the individual applies, he or she must have the application postmarked or to us by midnight, December 31.

Section 6 is a provision allowing an applicant who did not renew his or her license in a timely manner and is now two years-plus not licensed with our board. In some cases, it might be as long as ten years that a license has lapsed. The law allows the person to apply to reinstate his license. In this provision, we are asking that when he does so, we also be allowed to do a criminal background check by obtaining a set of fingerprints.

Section 7 states the grounds we can use to initiate disciplinary action. Since we are making changes to the definition of "unprofessional conduct" in section 2 of the bill, we are removing language in section 7 that talks about gross or repeated malpractice, since we are changing the definition of unprofessional conduct to be a single act of malpractice.

Benjamin Lurie, D.C., President, Chiropractic Physicians' Board:
We would like to thank Assemblyman Oscarson for sponsoring our bill this session. We also thank the Committee members for allowing us to come around and discuss the bill prior to the meeting.

Assemblyman Nelson:
Does this bill help you fulfill your statutory duties on the board?

Benjamin Lurie:
We believe it does. There are cases that come up, but it is rare that we would have to use this type of action. It is a tool for us to address the consumer complaint or employee complaint and be able to catch a doctor before he or she hurts someone.

Assemblywoman Carlton:
I had a chance to follow through on some of the information you gave me and do some comparisons under the different NRS Chapter 630 statutes. I still have concerns about the "reason to believe" language in section 1, subsection 1. I look at some of the other areas in NRS Chapter 630 where someone may have raised a reasonable question as to the competence of the practice of medicine and reasonable skill and safety. That seems to me, under NRS Chapter 630, to be a little more than just "reason to believe." The problem I have with "reason to believe" is that nowhere in this bill are we talking about opening an investigation or any due process. I am not sure if that was overlooked, but it seems that what I read in the other statutes is that there is a complaint filed, an investigation opened, and then we move forward. If we are missing that, we should probably address it. I am concerned about that language and what the due process will be.

Louis Ling:
The process you described in terms of receiving a complaint is the same for us. We have the same authority and the same basic process as what you described with the Board of Medical Examiners. We have to receive that complaint. You quoted from NRS Chapter 630, and that is the same standard for us. Section 1, subsection 1, of the bill says, "has reason to believe that the conduct of a chiropractic physician or chiropractor's assistant has raised a reasonable question as to his or her competence to practice . . . ." It is the same language, and we are trying to make sure our process parallels the seven other health care boards that have this authority and have been granted that authority by the Legislature to make sure that if we have an impaired practitioner, we will be able to address that situation in the same way as the other health care boards. Without that power or authority, we are left with the situation that drove this bill, which is a doctor about which we had credible evidence was practicing under the influence of drugs or alcohol, and still is. We have no way to address that. Short of going in and watching him pour a drink for himself while he is at his table, there is literally no way for us to catch him. We have been unable to address that case as we would like to.

This would give us the tool, in that rare case, and we would be able to order that chiropractic physician to give us a sample.

I have represented the Board of Medical Examiners, the State Board of Osteopathic Medicine, the Nevada State Board of Veterinary Medical Examiners, the State Board of Pharmacy, and the Board of Psychological Examiners over my career. I rarely have had to use this tool with those boards. About half the time we have used this, it clears the practitioner. You might receive a spurious complaint, and this also gives the doctor or pharmacist a way to clear his or her name.

Assemblywoman Carlton:
I think I did not receive an answer on the opening of an investigation and how that would be handled. Also, under NRS 634.018, you have in section 2, subsections 9 and 10, references to habitual use of alcohol and conduct unbecoming a person licensed. It seems to me that those two provisions would be helpful in what you are addressing. I still do not have an answer on the complaint process.

Louis Ling:
I did not mean to not answer your question. Our process is that we receive complaints through our website, through paper, through emails, and rarely do we receive complaints from telephone calls. The complaints are logged by the executive director and given a number. The director then discusses the complaint with the board's president, Dr. Lurie, and they decide to assign the matter to an investigating board member. On the board, we have five chiropractors and two public members who are both attorneys. The complaint is assigned to one of the seven board members. They open an investigative file, and that is how a complaint of this type would be handled and processed. You would not be looking at invoking section 1 until after the initial process has been put in place.

Assemblywoman Bustamante Adams:
I had similar questions. What was the trigger point for the complaint, and does the person have due process in the overall scheme? You also mentioned other boards that have similar authority. The other boards have this tool within their purview, if the situation were to arise, correct?

Louis Ling:
Yes. I have had to use this with the State Board of Osteopathic Medicine. To give you an example, there was a physician who had an untreated mental illness and was causing harm in his practice. The board had to step in because we received a complaint from a vendor the doctor was using, but that situation

ultimately led to a further investigation. Unfortunately, we had to revoke the doctor's license because he would not treat his mental illness. There was nothing we could do, but we certainly could not let him continue to treat patients. I have used this statute once in the last two years, so it is not used often, and that is a good thing.

Assemblywoman Kirkpatrick:
I thought I heard you say that an investigation is opened, but the bill says you start the complaint review. In my mind, that is a big difference. I want to be clear on that. Also, I want to talk about the diversion program because I think that some boards adopt them differently. What do you think the board's language would be? As the board's attorney, you will submit recommendations. As seen in the past, not all diversion programs are equal. We have also seen in the past that not all diversion programs work well.

Louis Ling:
Regarding the diversion programs, which we have not had to address that with this board, my recommendation would be to use one that the State Board of Pharmacy, the Board of Veterinary Medicine, and I believe the State Board of Nursing and the Osteopathic Board send people to, which is the Pharmacists Recovery Network (PRN) in Las Vegas. There is also a branch that treats people in the north. We have had good success in using PRN. The lead is a substance abuse counselor, who we would normally refer the person to. In the case of a complaint like this, we will usually have one of two scenarios. The doctor will be tested, and he will say, "I do have a problem. What do I do?" We would then send him to PRN because I have had a long-term working relationship with PRN, and I feel very secure that they do a good job for their clients.

You also run into the rare case where the doctor says, "I do not have a problem—prove it." That individual will get due process. I file a complaint, and it will be my job to prove that the doctor, in fact, is practicing while impaired. In that case, the end result will be the same. If the doctor is found by the board to have practiced while impaired, he or she will still be sent to PRN for treatment. The difference now is, that is coercive, and we would be monitoring that treatment through our disciplinary process.

Assemblywoman Neal:
Section 1, subsection 1, notes whether the person's conduct "has raised a reasonable question as to his or her competence . . . ." What protections do we have to make sure that it is not subjective? How do we deal with that issue?

Also, in section 3, subsection 1, you reference "furnish satisfactory evidence . . . ." In paragraph (b), could you please clarify the reference to subsections 2 and 5?

Louis Ling:
Subsection 2 being referred to is in section 3, subsection 2. Subsection 5 referenced is the new language in section 3, subsection 5. We would not be waiving the items listed in subsection 1, paragraph (b). All of those items will apply to the applicant for licensure through the board.

To address your earlier question, the reasonability as a lawyer is a test we all use. There are many, many cases defining reasonability. The check on this is the fact that who you have reviewing this, based on the process of this board, is going to be the investigating board member. If it involves a chiropractor, it will be a fellow chiropractor. Nothing like this will happen without counsel being involved as well. The check on this is when you start doing something as intrusive as making somebody give a urine or blood sample, you are in a realm where if you are misusing your authority, you are potentially committing a civil rights violation.

These are things a person has to be very careful with, and in advising the state's boards and commissions that I represent, this would only be used if you absolutely had to use it. We would only use this when we felt that the evidence we were receiving or the information we had was credible. What factors into reasonable is: who sent the complaint, why was it sent, what motives might the person have. Is the doctor getting a divorce and is this his soon-to-be ex-wife? That is a different case than if it is the doctor's chiropractic assistant who has worked with him for 15 years and has noticed a huge change in the doctor's behavior. That is what factors into "reasonable." There is no way to define that, beyond saying this is a case where we would do this, and this is a case where we would not. It will always be a case-by-case basis. If there is any other way to get the information, we will get it the other way.

Assemblyman Ellison:
I got a lot of information out of our meeting last evening. My concern is if a complaint is received, I feel that there must be something that says the complaint must be in writing, or an email or fax, but cannot be hearsay. My reasoning is that otherwise there is no way to go back and show that a complaint has been submitted. Could you talk about that issue?

Louis Ling:
I think that goes to what I was discussing with Assemblywoman Neal. That is going to be in the mind of the investigating board member—what is the source of the complaint—and it will vary from complaint to complaint. There is no way to definitively identify when that complaint will be the kind that would prompt us to look at it. It is not only in the back of our minds, but in the front of our minds, many times, that we have to be very careful regarding the source of the complaint. We never want to damage the reputation of a chiropractic physician because of a biased or angry complainant who is trying to use the board to do harm. We are always aware of that. That will be screened early in the process, before we get to section 1. Dr. Lurie can answer that because he has been an investigating board member on a number of cases. It will be seen that the complaining party lacks credibility, particularly if the party does not give us good factual information, such as we are unable to contact the complainant. We check the sources of the complaints.

Benjamin Lurie:
Complaints are logged when received. I look at the document and decide which investigating board member the complaint will be assigned to. All complaints remain anonymous. As we go through the process, the only person who knows about the complaint is the investigating board member. We try to contact both parties. Sometimes records are required from the chiropractic physician or an outside source, which would help the complaint.

When I am working on an investigation, and complaints come in from persons who do not give a correct email address or name or telephone number, the credibility of the complaint is suspect if I cannot reach the complainant or the individual is not responding to my request. We investigate both sides to gather as much evidence as possible before presenting the findings to the board's attorney for legal advice.

Currently, I have a complaint where four emails were sent, and I assume the email is fictitious because it is not being answered. I am about to ask the board for that complaint to be dismissed. I have completed the process through the chiropractor, and all his records are up to standard. I do not see any violation from the name given to us by the complainant, and I have been unable to reach the complainant. We take heed in what you are saying, as far as the validity of these complaints, but all names remain anonymous, unless factual information is found to bring a charge of unprofessional conduct or a violation pursuant to NRS Chapter 634 or *Nevada Administrative Code* (NAC) Chapter 634 to bring the doctor before the board or to enter into a settlement agreement.

Assemblyman Ohrenschall:
The new language in section 3, subsection 5, regarding foreign doctors or graduates of foreign schools who will now be admitted, says, "training and education is substantially equivalent to graduation from a college of chiropractic that is accredited by The Council on Chiropractic Education . . . ." Has that criteria already been developed in terms of determining whether someone who has gone to one of these schools abroad would be admitted to practice here? Are you foreseeing a large number of doctors who have attended foreign schools coming to Nevada to start their practice?

Benjamin Lurie:
Montreal, Canada, has one of the greatest chiropractic schools internationally. We get students who migrate down to the United States.

Just to clarify, there are two councils. The Council on Chiropractic Education (CCE) falls under the U.S. Department of Education and is the accrediting body to the 18 chiropractic schools across the United States. The other governing body, the Councils on Chiropractic Education International (CCEI), is an international branch that makes sure that those schools outside the United States have the same criteria and the same courses that would be offered in the United States. When applicants graduate from a chiropractic school outside the U.S., and if the CCE and the CCEI agree the standards are the same, the Federation of Chiropractic Licensing Boards has advised us to accept the results of the National Board of Chiropractic Examiners exam parts I through IV. As chiropractors matriculate through school, there are four national boards that applicants have to pass before applying for licensure in Nevada. It used to be that all states did not require parts I through IV, but all 50 states now require an applicant to take those four parts. Even international students would have to take national boards parts I through IV and go through the entire licensing procedure for each state, taking the law exams and being here legally with a valid work visa or moving to the United States. Again, the CCEI and the CCE are the two governing bodies that regulate chiropractic education.

Assemblywoman Neal:
In Assembly Bill 231, section 1, subsection 3, paragraph (a), it states that once the chiropractor "accepts the privilege of practicing," he or she is subject to "a mental or physical examination." Is the chiropractor subject to the mental or physical examination upon the reasonable question that he or she may not be performing up to par, or is it an automatic step to find out if the individual has mental issues before receiving his or her license?

Louis Ling:
This is an implied consent similar to what a person gets with his or her driver's license. With the driver's license, there is an implied consent that you are being allowed the privilege to drive on the roads. You are also agreeing to comply if you are pulled over and are asked to step out of your vehicle to perform a test done on the side of the road, or if you are asked to blow into a breathalyzer. This is the same idea. This is only invoked with section 1. The privilege of being a chiropractic physician comes with the fact that if we ever have to use this tool, the physician is granting permission through implied consent that he agree to be tested and provide the result. That will only come up in the scenario where we have a complaint and find there is reason to believe that the doctor is practicing impaired.

Assemblywoman Neal:
Is that a due process issue? If I have an automatic consent provision and something happens, even if I were arrested, you could not make me submit. I would have to get a lawyer. Section 1, subsection 3, paragraph (b), says, "The testimony or examination reports of the examining medical provider are not privileged communications." You could find out something about me, when you pose this reasonable question that gives pause for concern that it might be public, that there are situations or things out there in the universe that I do not want known, and it is not privileged. So now what do I do, because it was an automatic consent when I said I want to be a chiropractor. It is automatically given to you. If something were to happen, where is my right to get an attorney to say that maybe this is not something I want to share or give, or it is something you can use against me. Ultimately, whatever you get, you are going to use it against me.

Louis Ling:
The due process is going to be provided if, and only if, there is cause to believe that—to address something Assemblywoman Carlton raised earlier—it is a cause for discipline to practice impaired. That is one reason we can discipline a chiropractor. Section 1 is trying to establish a tool that will allow us to prove or disprove the allegations made against the chiropractor. If we issued an order and sought a urine or blood sample, would the person have the right to seek an attorney? Of course. Could the person resist this? Of course. The statute provides a consequence if the chiropractor does so, but the doctor does not have to provide that sample. However, that might subject the individual to disciplinary action for failure to provide the sample.

If the person is cleared, that information is kept confidential. The public never knows. The file cannot be provided to anyone. We cannot even confirm that we were investigating that particular doctor. If we confirm that the doctor was

practicing impaired, then the whole due process machinery is begun. I have to charge the doctor, take the doctor to a hearing, and prove what I think I can prove. The doctor has the full set of rights under NRS Chapters 622A and 233B to defend himself. This is an investigative tool to allow us to determine that the complaint is either well founded or is not well founded.

Assemblywoman Kirkpatrick:
Section 1, subsection 1, with the amendment submitted (Exhibit E), says, "The Board shall pay . . . ." Does that mean an increase in fees for the board to offset the cost if you have to pay for the examinations? Is there a workforce shortage so that we want to open this to other countries? I know we are working hard in Nevada to ensure that we have our own home-grown workforces.

Mendy Elliott:
The reason the board is accepting the responsibility to pay is that, through our statutory process, if a chiropractor or chiropractic assistant is found to be negligent and there is a hearing, we feel that we could recoup our fees, whatever those might be, through that settlement process. To some degree the board, before it acts, needs to be founded that there is an issue. It was deemed appropriate for us, the Chiropractic Physicians' Board, to have that ability to pass those fees and charges through the settlement process. For a few of the chiropractic assistants, and even the chiropractors, some of these tests are expensive. It was felt we could absorb the expenditures because we have the ability to recoup those amounts.

Benjamin Lurie:
As a licensing board, we do not receive money from the state. It is all about licensees coming to Nevada. We look at what we think will be the number of cases that this would be applicable to. It is rare that we see this, and it is one more tool. I do not believe that this would be a huge cost to the board. I do not see 15 or 25 complaints coming in at a time regarding this one subject. Costs vary, and the tests are expensive. Contractual rates are available with laboratories and examiners to do these examinations at a lower fee, from $300 up to $1,500. If at such time the chiropractor was cleared, you are correct, the board would absorb that cost. That is why we need to be very clear that the evidence is there, and we would have reasonable cause to believe that this chiropractor was under the influence.

To answer your second question, we are always looking for licensees and good doctors to come to Nevada. We have a few schools on the West Coast. It is very hard to get chiropractors here. We are an alternative health care. I will not bore you with the details of what our insurance reimbursements are. It is not a

friendly state for chiropractors in which to work and get paid. It is also difficult for chiropractors to get on closed insurance panels and even workers' compensation panels. We are limited, which hinders the number of applicants who move to Nevada. There are other states that are a little more friendly when it comes to those reimbursements. However, there are foreigners who are chiropractors and who have family in Las Vegas or Reno and want to be closer to their relatives. If they have attended schools outside Nevada, we want to give them that opportunity. In the five years I have been on the board, we have addressed this issue three times.

Assemblywoman Kirkpatrick:
I am concerned about people only having the ability to file a complaint via email; I think sometimes it goes into the junk mail. You might never know that someone responded to you. I worry about technology being our only source of communication. Sometimes it is difficult to call somebody and put in a complaint or put in an address. I do not want you to assume that this person's communication has gone into the junk mail or that the computer broke. I am sure that is not your only source of trying to address that complaint, and I would like to hear that on the record.

Louis Ling:
Our most common source of complaints is written. The complaint form is available on the website, and that can be printed and sent to us. We will also accept emails and telephone calls. The Chiropractic Physicians' Board has only two employees. When we receive a new complaint, the complainant is sent directly to the executive director, who will take that call.

Vice Chair Seaman:
Is there anyone who would like to testify in favor of A.B. 231?

Marlene Lockard, representing Nevada Chiropractic Association:
We feel strongly that patient safety is our primary concern, and we fully support A.B. 231.

Vice Chair Seaman:
Is there anyone in opposition to A.B. 231? [There was no one.] Is there anyone neutral?

Mindy McKay, Records Bureau Chief, General Services Division, Department of Public Safety:
The General Services Division houses the central repository for Nevada records of criminal history. I am here to testify as neutral on Assembly Bill 231. In section 6, specific to NRS 634.131, subsection 2, paragraph (b),

subparagraph (3); subsection 2, paragraph (c); and subsection 4, require a chiropractic licensee whose license has expired and who is applying to reinstate the license to submit a set of his or her fingerprints and pay a fee for the processing of the fingerprints. Because the bill is adding the fingerprint background check requirement to a statute where the provision never existed—reference section 6, subsection 2, paragraph (c)—the Federal Bureau of Investigation (FBI) will need to review and approve the language pursuant to Public Law 92-544 as a condition of releasing its criminal history records.

The General Services Division will coordinate the effort with the FBI for that review and advise when a response is received. We do not anticipate any issues with that.

Vice Chair Seaman:
Are there closing comments from the bill's sponsor?

Mendy Elliott:
We will be responding to the questions, and if needed, we will follow up with any of the Committee members.

Assemblywoman Carlton, we will be coming to you with some explanations on your question relative to due process.

Benjamin Lurie:
To address the issue with the FBI fingerprints and the fee, under NRS 634.135, subsection 2, it says, "In addition to the fees set forth in subsection 1, the Board may charge and collect reasonable and necessary fees for the expedited processing of a request or for any other incidental service it provides." The fee charged for the FBI fingerprints is $38.25, which is the same fee we pass on to the chiropractor.

To answer Assemblywoman Carlton's earlier question related to the subject of unprofessional conduct in section 2, subsection 9, when I brought this bill forward, a main issue was the habitual or excessive use of alcohol or any controlled substance. That is unprofessional conduct; however, I believe that we had no way to test for that. Currently, it is voluntary information if a chiropractor or chiropractic assistant is arrested and convicted of a felony for drug abuse; it is a self-reporting mechanism. The board has nothing to fall back on under the unprofessional conduct language.

Vice Chair Seaman:
Is there any public comment before we close the meeting? [There was none.] The meeting is adjourned [at 3:26 p.m.].

RESPECTFULLY SUBMITTED:

____
Connie Jo Smith
Committee Secretary

APPROVED BY:

____
Assemblyman Randy Kirner, Chairman

DATE: _____________________________________

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 20, 2015 **Time of Meeting: 1:33 p.m.**

Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 231	C	Benjamin S. Lurie, D.C., Chiropractic Physicians' Board of Nevada	Letter of Support
A.B. 231	D	Chiropractic Physicians' Board of Nevada	Points in Favor
A.B. 231	E	Assemblyman James Oscarson, Assembly District No. 36	Proposed Amendment by Chiropractic Physicians' Board of Nevada