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

## Seventy-Eighth Session
## April 6, 2015

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 2:12 p.m. on Monday, April 6, 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 Brent A. Jones, Assembly District No. 35
Senator Donald G. Gustavson, Senate District No. 14

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Scott J. Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Todd J. Cohn, Executive Director, Advocacy and Regulatory Compliance, TriNet
Helen Foley, representing TriNet
Renée L. Olson, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Ray Bacon, representing Nevada Manufacturers Association
Sharron Angle, Private Citizen, Reno, Nevada
Lynn Chapman, representing Independent American Party
Janine Hansen, representing Nevada Families
Barbara Jones, Private Citizen, Reno, Nevada
Bruce Gilbert, Executive Director, Silver State Health Insurance Exchange
Damon Haycock, Chief Operating Officer, Silver State Health Insurance Exchange
Barry Gold, Director, Government Relations, AARP Nevada
Gary P. Gordon, representing U.S. Chamber of Commerce
Yvanna Cancela, Political Director, Culinary Workers Union Local 226

**Chairman Kirner:**
[Roll was called, and a quorum was present.] We will begin today's hearing with the work session. The sponsor of Assembly Bill 211 has asked us to hold that bill.

**Assembly Bill 211: Revises provision relating to mechanics' and materialmen's liens involving certain renewable energy projects. (BDR 9-414)**

We will open the work session with Assembly Bill 6.

**Assembly Bill 6: Revises provisions relating to autism spectrum disorders. (BDR 54-67)**

**Kelly Richard, Committee Policy Analyst:**
Assembly Bill 6 was heard in Committee on March 6, 2015, and revises provisions relating to autism spectrum disorders [continued to read from work session document (Exhibit C)]. The bill as drafted removes references to "certified autism behavior interventionists" throughout various sections of *Nevada Revised Statutes* regulating such professionals, instead defining an autism behavior interventionist as a person who provides behavioral therapy under the supervision of a licensed psychologist, behavior analyst, or assistant behavior analyst. The bill also changes statutory references of "behavior therapy" to "behavioral therapy." The measure removes the existing $36,000 cap on payment for applied behavior analysis treatment.

Two amendments are attached to the work session document for the members' consideration. The first amendment was submitted by Mary Liveratti on behalf of the Nevada Commission on Autism Spectrum Disorders. The amendment provides for the credentialing and regulation of registered behavior technicians. The amendment also requests a grandfather provision be added for individuals currently certified as autism behavioral interventionists by the Board of Psychological Examiners.

The next amendment proposed by Keith Lee provides that the amendatory sections of the bill apply only to health plans delivered, issued, or renewed on or after January 1, 2017, to provide time for health plans to make new actuarial assumptions for plans issued in future years. The amendment also proposes to limit the maximum benefit for applied behavior analysis treatment to 360 hours per year for children over the age of five and 720 hours per year for children who are five years old and under.

**Chairman Kirner:**
You have heard the bill with amendments. Normally I would call for a motion to accept and do pass. However, I spent some time reviewing this with some folks. With regard to the limitation on hours and the limitation on age, those presented concerns for me. After further discussion, I have tentatively agreed to a different arrangement, and I would like to share that with you. For those who are younger than eight years of age, the limitation would be 800 hours.

For those individuals who are older than eight years of age, the limitation would be 400 hours.

In some sense, these are arbitrary, perhaps; at the same time, I have looked at 17 other states that have rules on this and tried to take the most generous situation and put it into our laws.

**Assemblywoman Kirkpatrick:**
Because we did not see this amendment, and I do not remember a discussion on the hours, is there an opportunity for discussion?

**Chairman Kirner:**
We will open A.B. 6 for discussion. The other two characteristics of this bill that we were addressing were the age limit, which is set at 22, and the additional position. I think we are all in agreement with the additional position. On the age of 22, the fact that came into play was that it is covered under high school youths. If we move that to age 26, as it would be under a different statute, we would have a fiscal note. I did not want this bill to go to the Assembly Committee on Ways and Means and possibly get held there. I want to move the bill to the Senate side. I stayed with age 22, and I am comfortable with the other position that was being proposed, lowering the barrier of entry in potentially providing more services. I am open to further discussion.

**Assemblywoman Carlton:**
I agree with you. In working on this issue for a very long time, I am very comfortable with the other proposals. Thank you for trying to deal with these hours and look at other states. There is another area I have concerns with. The discussion we have had, and I am not sure how aware the Committee is on essential health benefits, but when we originally put in the $36,000 cap in 2009, that became illegal under the Affordable Care Act (ACA). Therefore, we converted the 32,000 hours into what were actual visits. If you take the visits, you can equate them to the hours, and the hours are between 520 and 700 hours per child under what was passed in 2009.

With your proposal, Chairman Kirner, the 800 hours would be above the essential health limit benefits, but the 400 would be below. I do not believe it would be appropriate for the state to go backwards on something we had offered as an essential health benefit. What goes along with those proposals puts us in a position where that is the floor of what can be offered. We can do more, but that is the floor, and if I am incorrect and the Commissioner of Insurance needs to come to the table to explain, I would more than welcome the help.

My concern on this is the 400 hours. That is my legal and legislative concern. My personal concern is that we will be treating children at a different level of care, depending on their age, who have the same disease. I have real discomfort with setting a precedent that we would use age as a condition of treatment. We know these children get better. I have witnessed it. I have seen children sit at the testimony table on the second floor in the Senate who were nonverbal. Two to three sessions later, those children were again sitting at the table reading a document, testifying as to how this treatment really helped them, and their parents were overwhelmed by how well the children had done. My concerns are the hours and the effect it will have by treating these children differently.

**Assemblyman Ohrenschall:**
My colleague, Assemblywoman Carlton, and I were both here in 2009, and worked closely on this bill. She was in the other house and, while we have come a long way, I do not think we are there yet. I am worried that even with the amendment, and I appreciate what you are doing, that it is not going to be in the best interests of these children. We look at the Governor's State of the State Address and hear about the priority he has placed on trying to reach out to kids on the autism spectrum. I cannot be supportive of the second amendment to this bill.

**Assemblyman Ellison:**
Are you not going to accept the first two amendments that were proposed? Is that the motion on the floor and then take the new amendments?

**Chairman Kirner:**
There is no motion on the floor. We are just discussing it. The first amendment had to do with the timing?

**Kelly Richard:**
The first amendment has to do with the registered behavioral therapist.

**Chairman Kirner:**
I am supporting that.

**Assemblyman Ellison:**
The second amendment was to change the age limit, was it not?

**Kelly Richard:**
The second amendment delays the implementation day. There is a proposal to bifurcate a cap on the amount of services provided.

**Chairman Kirner:**
The reason the implementation is delayed is because the Division of Insurance of the Department of Business and Industry would issue the rules. Let us say that it is January 2017, then by May 2016 insurers have to come forward with their proposals. Those two are fine. The third one was a bifurcation and that is the one Assemblywoman Carlton spoke to, and the one I have raised the numbers on, in terms of hours and age.

**Assemblywoman Bustamante Adams:**
Would we be able to take the amendments separately, or do we have to take them as a group?

**Chairman Kirner:**
At this point, I am only talking concept, and then we will take motions and move forward.

**Assemblywoman Kirkpatrick:**
I want to understand the second amendment under section 16. I have concerns because 720 hours does not seem like much, especially for older kids. We are trying to get them back into society, so I do not like the idea of bifurcating. Let us pick one set of hours and work with it, if that is what folks are wanting to do. It seems to me we should not be focusing this on a dollar amount or hours only because we have had this discussion session after session. The insurers never, ever want to be on the side of just giving the care. Whether a child is 3 years old or 16 years old, he or she still has to get that service so they can move forward.

I want to understand: $36,000 is crossed out, then the hours per year are listed, and it says, "and copayment, deductible and coinsurance." The word copayment, it seems that it is now different. I know that it is capitalized and that may just be the way it comes out. Is there a benefit based on the maximum copayment or the total amount? I need to be clear on what this is. I wish we could just do this and not have to worry about any legal problem, and at least from the Interim Finance Committee (IFC), we remember that there were some legal issues on whether or not kids were getting services, and I would hate for the state to be in that position going forward.

**Chairman Kirner:**
I am open to a good discussion on this. What I tried to do by moving from 360 hours to 400 and moving from 720 to 800 hours was to increase the amount of coverage. At the same time, I wanted to move the age level up because I think early diagnosis and treatment are critical to this, and yet I know that some people do not get early diagnosis until age three, possibly four.

I want to give them plenty of time, which is why I chose eight. It is not magic in my heart, but that is just where I went with that.

**Assemblywoman Kirkpatrick:**
Could you help me understand what the other states are doing and why they are working on the hours? I did not think to look at it from the hours perspective because we talked more about the benefit cap and not about the hours. What is the theory that the other states are using? I have not heard that discussion since we started talking about autism. I was the biggest skeptic of the whole autism issue when that started in 2009, but Assemblyman Ohrenschall was such a persistent legislator. We had full discussions for many hours in meetings. I think your perspective on why other states do that might be helpful.

**Chairman Kirner:**
Of course, I do not have their motivations behind all of that, but I had some information. For example, Kentucky, up until age seven, will use $50,000 per year. Ages 7 to 21 is only $1,000 per month, or $12,000 per year. I went to the number of hours because I think hours are more flexible. If you use $50,000 a year, that might be good in 2015, but it might not be good in 2016 and 2017, because for the number of hours, the reimbursement rates will change over time, and that is why I shifted to hours.

Michigan uses age 6, $50,000 per year, and ages 7 to 12, $40,000 a year. Ages 13 and up is $30,000. Montana uses $75,000 if less than eight years old and $36,000 after that. What you are seeing is a bifurcation in these states based upon the kind of treatment one might receive in the earlier years, which is a little more intensive than one might receive in the older years. That is where I got started on the bifurcation process.

**Assemblywoman Kirkpatrick:**
Is it because Kentucky was getting the children when they were younger? We have a lot of kids who are over that age threshold. Did I hear you say this would be grandfathered in for any new folks?

**Chairman Kirner:**
No, I did not say anything about grandfathering. I am saying that is what Kentucky is doing. I am not sure I like the Kentucky plan, which is why I tried to make Nevada's a little more generous. Kentucky limits theirs to age seven and under, and I am going to age eight, including the eight-year-olds.

**Assemblywoman Kirkpatrick:**
Would it be helpful if we heard from the Insurance Commissioner to see if there are any ACA requirements that we want to be aware of? I thought the whole purpose this session was to leverage Medicaid dollars for individuals we had been sending out of town. I have talked about my friend, Mr. McGowan, whose son Zack has traveled more than not. I want to be sure we are doing more on the surface for services, so we are actually getting to the kids.

**Scott J. Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:**
As background on the $36,000 cap, that is in statute and in the application of the Affordable Care Act. In 2009, the Legislature imposed a $36,000 cap for the treatment of autism spectrum disorders. The ACA, when it was signed and passed in 2010, eliminated dollar value caps on benefits. In our discussions with the Centers for Medicare and Medicaid Services in Washington, D.C., and discussions around the caps, we were informed that because of the cap, we could allow our central health benefits package to have an actuarial equivalent in the number of hours that is equivalent to $36,000, and that is what the current essential health benefit package looks like now. That is the whole concept behind the hours you were discussing.

**Chairman Kirner:**
Can you give us insight as to what those actuarially equivalent hours roughly equate to?

**Scott Kipper:**
I will need to do a bit of research and talk to our staff who do the product approval, but it is my understanding that the hours are anywhere from around 250 to 300 on up for some carriers who said they do not have a cap on those hours.

**Chairman Kirner:**
So that is your actuarially equivalent, roughly, and the proposal I laid out before you exceeds that substantially. Maybe that answers your question.

**Assemblywoman Carlton:**
Legally, I am concerned about the bifurcation of the ages because we have offered this benefit to all children under the essential health benefits, and now we will be bifurcating the benefit depending on age.

The 400 hours at the one age range would be less than the equivalency of the visits equal to the hours that are available now. Those children could possibly

get fewer visits. I do not think, legally, we are supposed to go backwards on essential health benefits—those are supposed to be a floor.

**Chairman Kirner:**
Right, and I understand what you are saying. I do not see us going backwards on that with the 400 and 800 hours. I understand your argument on bifurcating.

**Assemblywoman Carlton:**
Mr. Commissioner, on the essential health benefits, am I right that that is a floor?

**Scott Kipper:**
The $36,000 actuarial equivalent is a floor.

**Assemblywoman Carlton:**
People keep calling it a cap. It is the base. Any insurance company can go over that amount if the company wants to provide the coverage for its participants, but that is the minimum amount of coverage. My concerns are that the 400 hours, depending upon the cost per hour, will end up putting us in jeopardy for not providing the service to those children.

**Scott Kipper:**
I would look at the 400 hours and see how that carrier actuarially created that equivalency and what dollar value is being placed on that.

**Assemblywoman Carlton:**
Also, look at the bifurcation of ages, since we did not bifurcate under essential health benefits.

**Scott Kipper:**
We would have to look to those other states to see what rationale was used. There are some states that have bifurcated hourly benefits, and we would ask to discuss that either with our deputy attorney general or the Legislative Counsel Bureau's staff.

**Assemblywoman Carlton:**
It is my understanding that Kentucky is now in a class-action lawsuit dealing with this bifurcation. Could you look into that for us, please, to make sure we do not put ourselves in harm's way?

**Scott Kipper:**
I would be glad to do that.

**Chairman Kirner:**
There are many states that have bifurcated systems, so the proposal we have before us is not that unusual in that regard. I thought we had this worked out, but I am still not quite comfortable with this. There are no motions on the floor at this point, so I am going to move this to Wednesday. Mr. Kipper, we will need to work with you between now and then.

We will next hear Assembly Bill 228 on the work session.

**Assembly Bill 228: Revises provisions governing trade regulations. (BDR 52-999)**

**Kelly Richard, Committee Policy Analyst:**
Assembly Bill 228 is the next bill before you and revises provisions governing trade regulations and was heard in Committee on March 16, 2015. As drafted, the bill specifies that the "single document rule" does not apply to the sale of a motor vehicle in which, by agreement of the parties, a device has been installed that can disable the vehicle remotely. The bill also provides for the regulation of the use of such devices in relation to the financing or leasing of a motor vehicle. It prohibits a party financing a motor vehicle from requiring a buyer or lessor to agree to the installation of such a device as a condition of the financing contract. The measure requires certain disclosures and notice requirements, and specifies that certain violations by a financer constitutes a deceptive trade practice [read work session document (Exhibit D)].

There are two amendments attached (Exhibit D). The first amendment was submitted by the bill proponents during the first hearing on the bill. It makes it a deceptive trade practice for a creditor to install or use electronic tracking technology in a motor vehicle unless the creditor provides certain disclosures. A consumer must be allowed to cancel the tracking technology without affecting the vehicle financing, and the agreement to use the tracking technology must be optional and not a condition of financing.

The amendment also makes a creditor's installation or use of starter interrupt technology to disable a motor vehicle a deceptive trade practice unless the consumer is provided with certain disclosures. Under the proposal, starter interrupt technology is prohibited if: (1) a motor vehicle can be disabled while the engine is running; (2) the technology causes an audible warning that lasts longer than 20 seconds; and (3) if the consumer's payment is unpaid for less than ten days for the first instance of late payment, or less than five days for any subsequent payment or default under the contract. The amendment would cap statutory damages at $1,000 for violations.

The second amendment was submitted by Paul J. Enos on behalf of the Nevada Trucking Association (page 7, Exhibit D). The amendment specifies that the provisions of this bill do not apply in business-to-business transactions.

**Chairman Kirner:**
I will entertain a motion to amend and do pass.

> ASSEMBLYWOMAN SEAMAN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 228.
>
> ASSEMBLYMAN NELSON SECONDED THE MOTION.

Is there discussion on the motion?

**Assemblywoman Fiore:**
Assembly Bill 228 is a real struggle for me and some of my colleagues. I do not like this bill, and I have to vote no on it. It is just a bad bill, and I urge my colleagues to vote no on this bill.

**Assemblywoman Kirkpatrick:**
I am concerned about the single document rule. There was a lot of discussion that went on with the interest rates, the safety precautions, and I understand that we have nothing in place. The single document rule seems to be the crux of the problem when it comes to having these types of ventures. If we could change that somewhat, I would be a little more inclined to go that direction. We need some regulations and there are none in place today, but I do not know that by having bad regulations in place that it does any good.

**Assemblywoman Carlton:**
I share Assemblywoman Kirkpatrick's concerns with the single document rule. The other problem for me is, yes, we do not have anything in place right now, but there is the fact that currently a vehicle cannot be repossessed until the payments are 30 days in arrears, and A.B. 228 authorizes the disabling or, in a way, repossession of a car in 10 days. To me, that is one of the bigger issues. I would like to fix this, but I am not going to fix it at the expense of all the other people who will be harmed by this, so I still have some concerns about this bill and will not be able to support it as it is amended.

**Assemblywoman Seaman:**
I support this bill and I urge my colleagues to support this bill so we can regulate these things.

**Assemblywoman Diaz:**
I shared this with the individuals who are seeking this regulation that I believe that ten days is not enough of a window for someone to make a late payment before you disable someone's vehicle. I told them that when we are late on our mortgage payments, they do not come and say, "We want your house back in 30 days." I think there are other means, for example, a text message or emails, to get people's attention if they forgot to make the payment on time. I think that is happening a lot, and I feel as if I am on the same page as my colleague, Assemblywoman Kirkpatrick. That one page document rule is a stickler for me as well.

**Assemblyman Ellison:**
This is being done right now. These practices are being done as we speak. The law is just being cleaned up. I still have a couple of problems, and I want to talk to a friend who is in the audience. I am going to vote yes to move the bill, but I am reserving my right to change my vote on the floor.

**Assemblyman Hansen:**
For clarification, this is entirely voluntary, is it not when people decide to use these devices at the time of purchase? In the contract, people are made aware that if they are behind in payments after ten days, they have a disabling device on their automobile. No one is forcing them to do this. Is my understanding on that completely correct?

**Chairman Kirner:**
That is my understanding as well.

**Assemblyman Nelson:**
Following up on Assemblyman Hansen's comments, it is my understanding that this will allow potential car owners to get credit where they otherwise could not get it. I think if we say no, you cannot do this, then we are creating a second class of citizens that cannot get credit. Based on that, I support the bill.

**Assemblywoman Fiore:**
I am changing my vote to yes, but I am reserving my right to change my vote on the floor.

**Chairman Kirner:**
I will call for the vote.

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

We will move to Assembly Bill 275.

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

**Kelly Richard, Committee Policy Analyst:**
Assembly Bill 275 revises provisions governing trust companies and modifies the definition of "fiduciary" to exclude certain servicers or administrators of individual retirement accounts. The bill also exempts an excluded fiduciary from certain fiduciary duties and limits the liability of an excluded fiduciary for certain acts or omissions. Finally, the measure allows delegation of certain duties by a fiduciary or excluded fiduciary under certain circumstances [read work session document (Exhibit E)].

The attached mock-up, Proposed Amendment 9926, has been submitted by the bill sponsor (Exhibit E). The mock-up moves the new language in the bill from *Nevada Revised Statutes* (NRS) Chapter 669 ("Trust Companies") to Chapter 163 ("Trusts"); changes "may" to "shall" in subsection 2 of section 2, thus requiring a fiduciary or excluded fiduciary to obtain the written authorization of beneficiaries prior to delegating a duty pursuant to that section; removes paragraph (d) of subsection 1 of section 3, which provided that an excluded fiduciary is not deemed to be conducting trust company business while acting within the scope of his or her duties as an excluded fiduciary; and restores the deleted language in NRS 669.045, which includes servicers and administrators of IRAs in the definition of "fiduciary."

Additionally, there is a conceptual amendment (Exhibit F), which would add a transitory provision stating that the amendatory provisions of this act apply only to a cause of action that accrues on or after the effective date of this act. That would be in order to ensure that the amendatory provisions of the bill cannot be construed to apply retroactively to causes of action that arose prior to the enactment of this bill.

**Chairman Kirner:**
I will entertain a motion to amend and do pass.

> ASSEMBLYMAN NELSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 275.
>
> ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

Is there discussion on the motion?

**Assemblywoman Kirkpatrick:**
I would like to know if the lawsuit was discussed or completed.

**Assemblyman Nelson:**
That is part of why we added that conceptual amendment to make sure it is not applied retroactively. It will not apply to any ongoing investigations or cases. I think Commissioner Burns is in the audience in Las Vegas. Maybe he would like to weigh in on that. My understanding is that he is now in support of the bill. This is why we pulled it last week, because there was a concern that we wanted to make sure, and I want to put on the record, that this will not have any influence or impact upon any pending investigations, actions, or litigations.

**George E. Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:**
I want to thank the sponsor for working closely with me on amending this bill so that it preserves the public interest cautions that I had raised concerns about in my testimony when the bill was introduced. With regard to the replacement of this into NRS Chapter 163 and how it affects liability of directed trusts, that is a policy issue, not a regulatory issue, which is my purview. It is a decision that this Committee has to make as to how to classify the legal liabilities of the folks who have these accounts. It will not, to my understanding, affect any current cases taking place. It will not be ex post facto, as Assemblyman Nelson just explained.

**Chairman Kirner:**
Is there any further discussion? Seeing none, we will go to a vote.

> THE MOTION PASSED. (ASSEMBLYWOMEN CARLTON AND NEAL VOTED NO. ASSEMBLYMAN SILBERKRAUS WAS ABSENT FOR THE VOTE.)

We will close the work session and move to the hearing on Assembly Bill 389.

**Assembly Bill 389: Revises provisions governing employee leasing companies. (BDR 53-766)**

**Assemblyman Paul Anderson, Assembly District No. 13:**
Assembly Bill 389 is a bill related to employee leasing companies. The bill amends the existing regulatory structure governing employee leasing companies, also known as professional employee organizations, in order to remove unnecessary barriers placed on small businesses that depend on employee leasing to handle their critical human resources (HR), payroll, and benefit functions for their employees.

The companies themselves function in a key part of our business community. They help small businesses like my own by offering human resource services to provide access to retirement plans, health insurance, life insurance, and other benefits that a small business would not be able to gain access to. They leverage the power of numbers by combining employees of all their small business clients together and are able to offer what oftentimes is referred to as Fortune 500-caliber benefits of payroll and human resource services.

As an entrepreneur myself, and as a small business owner, I can attest firsthand to the challenges that business owners face as it relates to managing human resources, the state and federal complexities in reporting, and trying to attract top-tier candidates. While being a small business, I cannot always offer the benefits other companies can. Employee leasing companies are one solution that a business can use and turn to in order to provide these professionalized services and allow entrepreneurs to focus on the business itself.

I am working with the National Association of Professional Employer Organizations and their Nevada members on this issue, as well as state agencies that are key to the successful passage of this bill.

With me today to go through this bill is Todd J. Cohn of TriNet, one of the state's and nation's largest employee leasing companies.

**Todd J. Cohn, Executive Director, Advocacy and Regulatory Compliance, TriNet:**
TriNet is an employee leasing company that provides HR solutions to small to mid-size businesses so the businesses can focus on what their companies do best. We provide a bundled HR product that combines a cloud-based application with strategic services to simplify the HR needs of our small business clients. As a company, we partner with more than 11,000 small businesses nationwide and in all 50 states in a variety of industries, servicing just shy of 300,000 employees at their small business locations. We managed

more than $23 billion in payroll in 2014, and last year, in March 2014, our company became publicly traded on the New York Stock Exchange.

As Assemblyman Anderson stated, this bill amends the existing regulatory structure governing employee leasing companies in Nevada in order to remove what had become some unnecessary barriers placed on small businesses that choose to partner with companies like ours on critical HR payroll and benefit functions for their employees.

The bill itself also helps to create parity in the Nevada law with a vast majority of other states nationwide. This is especially important for our company as the uncompetitive landscape of the existing inflexible statutory structure has led us to devote many resources outside the state of Nevada. For comparison purposes, over the last six years, our company has grown to service more than 300 percent more small business customers nationwide. Our internal sales staff has grown by over 400 percent, and our investment in research and development has grown well over 400 percent as well. Yet those numbers are not recognized here in Nevada, where our growth has been very stagnant because of the statutory structure.

With that as a background, I want to go through the four areas that this bill addresses that we believe will make a very critical difference in growing business in this state, not only for our company, but for companies just like ours.

First, Assembly Bill 389 amends the definition of employee leasing companies to make it very clear that we are providing HR services, as we described, to existing employees of our small business clients. We oftentimes get confused because of the vernacular that we are somehow placing employees at our client's side, and we are not. We are not temporary staffing companies. We are providing services to existing companies.

Second, the bill amends current requirements of the annual financial statement required for our registration. This provision helps correct existing statutory language that forces many companies like ours to incur tens of thousands of dollars of additional auditor costs every year for unneeded non-GAAP (generally accepted accounting principles) attestations that are above and beyond our annual audited financial GAAP statements that we are required to submit under the law.

Third, the bill eliminates the requirement that nondomestic employee leasing companies maintain a physical location in the state. To my knowledge, we are one of the few states, if not the only one, that has statutory requirements that

requires a business to have a physical location in the state in order to conduct business. Since any nondomestic company must already have a registered agent when we register to do business in this state, for us, this requirement seems a bit duplicative and a costly measure that seems unnecessary.

Finally, and most significantly, A.B. 389 amends the unemployment insurance tax reporting structure used by employee leasing companies to allow for direct reporting into each of our client company's unique tax accounts. This allows for more flexibility in the business model. It maintains consistency with the current workers' compensation law, whereby the law will no longer force our small business clients to pay more money for an experience-rated tax than the client legally should. It removes an unintended modified tax barrier for small businesses that partner with an employee leasing company. This will, once and for all, allow some flexibility so that business owners will not have to choose between paying more money tax-wise to be part of an employee leasing relationship in order to provide their employees access to better benefits and professionalized HR services.

**Helen Foley, representing TriNet:**
In brief discussions today with the Employment Security Division, Department of Employment, Training and Rehabilitation, the Division has a concern about section 1 and some consequences of that section. While we believe that everything would have worked out all right, we decided that we would prefer to propose an amendment. We wanted to give an employee leasing company and their clients the option of either remaining under the employee leasing company for purposes of unemployment insurance or allowing them to stand alone with that.

It is our belief that the Employment Security Division would be more comfortable with just having that client company be the employer of record every time. Some states do it one way, some states do it another way. We believe that in Nevada, maybe 85 or 90 percent of the client companies will choose to stand on their own rating system and as their own employer for that purpose. We have just brought forward an amendment, which is not on the Nevada Electronic Legislative Information System (NELIS) because we decided just before the hearing that it might make things a lot easier for us.

**Chairman Kirner:**
Does anyone on the Committee have any questions?

**Assemblyman Ellison:**
This is something that is enabling. You can do this right now, correct?

**Assemblyman Paul Anderson:**
Certainly the employee leasing companies are legal and run smoothly right now. Some of the obstacles the leasing companies are running into are related to the unemployment insurance. For example, if an employee leasing company takes on a lot of contractors and a lot of information technology companies, I would get into a blended rate with the contractors, who have a lot more turnover than I do in my business. I am now paying higher workers' compensation and unemployment insurance fees through using an employee leasing company than I would if I were out on my own. Sometimes the benefits I gain from that relationship are overcome from that. Oftentimes, it is a barrier to using these services because of that blended rate. The goal is simply to allow that rate to be split up so they can be reported separately, and I can stand on my own if I choose to, or stand blended with the rest of their clients if I choose to.

**Assemblywoman Carlton:**
We have had discussions about employee leasing companies for a long time. The first stint that the Commissioner of Insurance and I did in 2009, there was a court case we had to deal with on employee leasing companies and workers' compensation. My concern is I see on the front of the bill it has no impact on state government but, logically, you as a business are going to choose whichever is best. I see the unemployment insurance dollars being impacted by this. I have some concerns about that. We have already bonded out on those to pay off the debt, and the rate just went up for employers in the past, and I would hate to see fewer dollars go in. I just want to make sure we understand how these components are going to fit together. Each business is going to choose what is best for them, the lower amount, which means we will get dinged.

**Helen Foley:**
You are correct. There will be some type of fiscal note on this. When the modified business tax (MBT) was first developed, everyone paid the same rate and there was no problem. Once there was a bifurcated system, and the smaller businesses did not have to pay, it ended up really hurting those client companies. The majority of them are very small businesses, and it hurt them terribly, because then there was only one big umbrella rate and they did not get to take advantage of this as individual companies. We were really sorry we did this to all these small businesses. However, we really need your money. Every session since this was changed, there have been no tax bills that have come along that would raise any significant funds. It is our opinion that if you are going to raise $1 billion this time to clean up inequities and have the money to fund state government, it is high time you look at these small businesses that have been punished for all these years and correct that mistake. We are still

trying to work on what the fiscal note would be, but we believe the amount is less than $1.5 million.

**Assemblyman Paul Anderson:**
I think the question revolved around the unemployment insurance part of that. I think that even right now there could be an employee leasing company that only targeted those that have really low unemployment rates and then bundle in a couple of construction companies that would gain access to the lower rate, even blended.

In current statute, those same problems could still exist, but now it is in reverse order. I would not necessarily choose to employ an employee leasing company because they have too many contractors under their unemployment insurance rate, which exacerbates the problem on that end of it.

I think the current statute allows this to flow one way or the other, and we did not touch on the MBT portion in the introduction. In statute, as the Legislature changed that threshold—currently set at the $85,000 per quarter threshold, roughly $340,000 a year—that as a blended, inside employee leasing company, I immediately am paying MBT versus gaining the benefit of that threshold before I have to start paying the MBT.

**Assemblywoman Carlton:**
Employee leasing companies are there to give a benefit to the small business to be able to buy in bulk so that the small business receives a better deal on something. Now, it seems to be working in the reverse, to where they want to buy in bulk on the things that benefit them, but not have to pay on the other side that the bulk rate actually impacts them on. I would respectfully disagree with Ms. Foley on the unintended consequences. I believe we were all well aware of what was going to happen, but it is a give-and-take situation. I will go back and look at that, but I do not want anyone to think that this was something we did not pay attention to. When it came to the MBT in 2003, we all paid very close attention.

**Assemblywoman Kirkpatrick:**
I have a little different perspective than most, but I do not claim to be like everybody else. For me, I am thankful that first, we have a bill this session, as opposed to trying to address it based on MBT exemptions. In all my discussions, it appeared that the MBT was really the problem, not so much the unemployment insurance. It was not a problem until 2009 when we took the MBT exemption up, and we took it up again in 2011, and that is where the real issue started. I know there were discussions with the Office of the Attorney General during the interim about that particular business model plan.

My understanding of this is more in line with the current business model plan that is across the nation that everybody else has. I had some very heated discussions on this, and I think there is discussion this session to do something different with the MBT. I think that at the end of the day, this is still going to end up in the Assembly Committee on Ways and Means because of the fiscal impact. At least we have a hard piece of paper to look at to help factor that into our overall discussion. From my recollection, we looked at the business model for leasing companies across the nation. It was odd that Nevada was the only one that was different. Although I agree with Assemblywoman Carlton's concerns, this would be the best way to address them and be more in line with a national employee leasing company, based on Nevada's current statutes.

**Assemblywoman Bustamante Adams:**
As a small business owner, Assemblyman Anderson, you pay the MBT on the blended rate, which is higher than if you were to pay the MBT just as a stand-alone, correct?

**Assemblyman Paul Anderson**:
Correct. Essentially, if I were a stand-alone business under the threshold, I would not pay at all. If I get wrapped up into an employee leasing company to gain those benefits, I end up paying because I am part of a total payroll.

**Assemblywoman Neal:**
I am confused about the blended rate. In section 2, subsection 4, adding the definition of an "ongoing relationship," which is further discussed in section 2, subsection 3, to me, the definition expands so that it covers more parties, and maybe that is the goal. The definition was added in 2009, if not before. I am trying to get an understanding of the need to change the definition. In the initial testimony, you mentioned being inclusive to people beyond the state. So the registered agent conversation you were having about individuals not necessarily having a place of business here, but having a relationship to the state, I am trying to get clarity on the meaning of that and also piggyback on Assemblywoman Bustamante Adams' question in terms of the blended rate and how that definition fits into the scope of what you are talking about.

**Todd Cohn:**
I will try to tackle both of those questions. I think the purpose behind changing some of the definitions is truly to have the statute recognize what it is that we do. The original statute is probably teetering on 16 to 18 years old. When the statute said employee leasing, it contemplated this idea of physically placing an employee at one of our client's sites. That is not what we do.

The changes to the definitional sections are to better encompass what it is that the state is regulating, the true business practice.

To the second question regarding the blended rate, and this may become a moot point with the amendment we have offered that we are talking to the Department of Employment, Training and Rehabilitation about, it would not be a choice. If we came to an agreement, the statute would likely change in a way that would identify the clients as the sole employer for unemployment insurance purposes. Instead of having to choose the lowest rate possible, what would really happen if this amendment went through, the state would always look at the client company and its own experience in hiring and firing individuals to calculate unemployment insurance tax to the state. I think that would resolve some of the questions you and others may have pointed out as problematic areas, which might go away.

**Assemblywoman Bustamante Adams:**
If we are trying to change the definition, is there any other way we could not use employee leasing, and have you thought about that? Employee leasing is really confusing. I would hate to have you explain yourself year after year, or session after session.

**Todd Cohn:**
The vernacular in the industry has shifted in the 18-plus years from employee leasing to what is known as professional employer organizations (PEO). Of the 42 states that regulate us in some way, shape, or form through licensure, registration, et cetera, probably 35 of the states refer to us as professional employer organizations. Those legacy states like Nevada and Florida have had statutes for 15-plus years, so the regulators and the community that understands the services know it by that definition. The industry has chosen not to try to change it. If someone would like us to move in that direction or to have an "or" so that there are two ways to describe it, we would be amenable to that. In a sense, if it is not broken, do not fix it, and that is why we have not attempted to do so here.

**Assemblywoman Kirkpatrick:**
The words "ongoing relationship" seem like an odd statute definition all by themselves. I understand what you are trying to say: you have to belong to this organization in order to reap the benefits of how it works. Maybe we need to, at some point within this session, look at some of the terminology and, to Assemblywoman Bustamante Adams' point, with term limits coming, there may not always be someone here who understands where we came from and have some definitions in line with national standards. That is exactly what we were trying to do to avoid the chaos that we have had in the past. I think if this

goes to Ways and Means or if it goes to the floor, you might want to standardize some of these terms so that we are consistent across the country.

**Helen Foley:**
Great idea, and we are more than happy to do that. We have to go through the complete explanation with every new legislator that I talk to about employee leasing companies. It would be great if we could standardize the terms.

**Assemblywoman Kirkpatrick:**
Just because we fix this problem with the MBT, and to address Assemblywoman Carlton's concerns about the unemployment insurance numbers, this does not exempt these types of companies from the business license fee or any of those other things, so there are additional revenue sources that they also will pay, as well as benefiting from some of the workers' compensation dollars being a little less. It is almost like insuring. If my daughter, at the age of 22, tries to get full coverage insurance on a car, that would probably break the bank. If she lives at home and gets insurance, then it will probably save her some dollars. That is as simple as I believe that the organization is. I have lived it since 2009. I just want to be sure that I am right.

**Helen Foley:**
Yes, you are correct. With an employee leasing company, especially when you have so many small businesses, the leasing company is the watchdog over all their companies. They make sure everyone has everything in on time to the state governments. They have the ability to have a much richer plan for retirement and for other types of insurance that a person can obtain because of the way they come together and do that.

In the days long before the ACA, every one of these small companies had very, very good health insurance plans because of the participation in an employee leasing situation. There are real benefits to the state to have all of these things collected as a payroll company would complete them and send them off. You can guarantee that they have all paid on time with the employee leasing company. We would be more than happy to work on new language to clarify things.

**Assemblyman Paul Anderson:**
I wanted to point out that we are aware of some concerns from agencies, and we are working with the agencies to come up with something amenable. I understand there is a fiscal note as well. I am sure something will be going to Ways and Means.

**Chairman Kirner:**
Are there those who are in support of A.B. 389? Seeing no one come forward, are there those who are opposed to A.B. 389?

**Renée L. Olson, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation:**
Not wanting to come forward to create questions about what makes good public policy, the Employment Security Division (ESD) of the Department of Employment, Training and Rehabilitation has not been involved in the conversations mentioned earlier with the Office of the Attorney General and others. We are coming into this conversation having seen the bill, and looking at it from that perspective, we are opposed to the language in the bill. We perceive there are issues possibly with conformity to federal law that we have to comply with. We have reached out to the U.S. Department of Labor and have not heard back whether we have a conformity issue with federal law. There are laws with the federal government that are meant to prevent rate manipulation within the unemployment insurance system. We are still exploring those concerns.

We also have concerns about how this one business industry is being handled specifically in statute whereas others do not receive specific handling in the statutes. When we refer to employees being the factor in the calculation for the rate, the rest of the statutes do not handle the computation in that manner. We are looking at conflicts that would be created within Chapter 612 of *Nevada Revised Statutes* (NRS), in addition to the language added in the bill.

The bill has a fiscal note that we submitted. This is based on the original language and what we assume we would have to do in order to properly account for, handle, and report for the separate taxes for each individual rate. If it were reported as one employer, they would still be considered the employer of record, paying different rates under that one employer. Our system currently does not handle the tax accounting in that manner.

During the discussion about the MBT, I think what is occurring is that having each individual employer counted separately impacts the MBT. I do not deal with the MBT in terms of being a tax administrator, so I would not be able to address that issue specifically. Modifying NRS Chapter 612, which deals with unemployment insurance, in order to address an MBT situation seems to be a little confusing.

All in all, we oppose the bill. We are working with individuals on the proposed amendment that you do not have yet. We are willing to continue to talk over our concerns and look at questions the new amendment might pose for us.

**Chairman Kirner:**
This is not a new idea. Many states do this, so it is not unusual. It is not reinventing the wheel. My presumption is that other states have the means to handle these sorts of things. Have you been working with the bill's sponsor or have you been watching the bill and have not had the opportunity yet?

**Renée Olson:**
We just started working with the bill's sponsor. The information I was provided in specific terms as to how the unemployment insurance laws are impacted was that there are four other states which have similar laws. I am confused by the idea that the majority of states have laws in this regard versus the information I received that said four states had similar laws. We would have to look at those laws individually because every state has different unemployment insurance laws. We have just started working with the bill sponsor, and we will continue to do so.

**Assemblywoman Kirkpatrick:**
In my personal discussions with the Attorney General at the time, Catherine Cortez Masto, this was a national model that did not fit in Nevada. One of the big discussions we had is that this only became a problem when we made changes in 2009 when we had to make cuts and we had to play the shell game and move dollars around, but we did not quite change the statutes to match that. I do not want to speak for Ms. Cortez Masto herself, but I know that she had the trade association from the leasing companies reach out to her. There was no way to address it. At least the suggestion at the time was to bring a bill so that we could look at what other states were doing. It seemed unusual that Nevada was the only state that did not comply. It seems like there needs to be a lot more communication, but I was not under the impression at any time in the last two years that there were only four other states. I was under the impression that many states had a model similar to this, so I would be curious myself.

**Renée Olson:**
I guess what I am saying is that I am confused, too, based on the statement that most of the states have this model. I think I would just have to catch up in understanding the conversation prior to me being involved in the conversation.

**Chairman Kirner:**
Are there companies that band people together in order to get better cost value for benefits? As far as unemployment insurance and workers' compensation and other issues, I am not sure where that goes. I think if you will be working with the sponsors, that should sort itself out.

**Renée Olson:**
If I could add one more comment. There is nothing that I am aware of in statute that would prevent these companies from basically charging the individual client companies in accordance with the unemployment insurance risk that they pose individually. Law does not prevent these companies from charging differently when they recapture the costs of these taxes from employers, the individual companies. There is nothing preventing them from charging them in accordance with the impact they would have individually on the unemployment insurance rate.

**Assemblywoman Neal:**
In section 2, subsection 4, it says that the ongoing relationship "does not include a temporary or project-specific agreement," and I wanted to get your opinion about that. There could be a time period. It could be one year, it could be longer. Does that mean that the exclusion in the definition means that they would not be responsible for the unemployment insurance or the other items? You would have to look in section 1, subsection 4, paragraph (b), because it is part of the definition of what an employee leasing company means. There is an "ongoing relationship" definition, in section 2, subsection 4, and it excludes two things: temporary and project-specific agreements.

**Renée Olson:**
I think before I can answer your question, I would have to give it more consideration.

**Matt Mundy, Committee Counsel:**
I do not think you would be an employee leasing company under the definition if you had an agreement that was for a specific term, regardless of the extent of the term. As I understand the definition, "ongoing relationship" does not include a temporary or project-specific agreement. It could be any amount of time, but if you had an agreement that specified that the work was related just to the completion of the project, there would not be a relationship between the client company and an employee leasing company.

**Chairman Kirner:**
Seeing no further questions and seeing no one else in opposition, we will invite those who are neutral on the bill.

**Ray Bacon, representing Nevada Manufacturers Association:**
I have not had a chance to discuss this bill with Assemblyman Anderson. I received an answer this morning, which confused me, and I will do my best not to confuse the issue. As a bit of history, my counterpart from Mississippi was cornered by a press person who said, "Your auto companies are leasing

their employees. Therefore, they are paying less for workers' compensation, unemployment insurance, and everything else. The pay is bifurcated, and everyone is being cheated." That led to a conversation on one of our conference calls, and it turns out the response from some of the auto industry to the General Motors and Chrysler bankruptcies is that is what they have started doing—leasing employees.

In the state of Indiana, which has the largest percentage of manufacturing jobs in the country, some of the auto industry, not the big three, have started doing exactly that. The best estimate at this stage of the game is that roughly between 12 and 18 percent of the manufacturing jobs in Indiana are through a PEO or a leasing operation. In Indiana, the workers' compensation is correct, because Indiana's law says their workers' compensation is based upon what the actual job task is, not whether the employee is part of a leasing company. However, their unemployment insurance is wrong, and so those employees are not counted in the employment base for the state of Indiana. Turns out, they are not here either. They are not in Mississippi. They are not in several states, at least. We do not know about everybody else yet. We have a confusing mess.

The reality of the situation from a national database is that we do not have any manufacturing jobs in this country right now. I do not know how many other sectors it impacts, but I understand what they are trying to do. Yes, there are tax implications and things like that, but there are also database implications. If we are going to be looking at big data and how important that is, right now we do not know where we are. As part of moving forward on this bill, we probably should figure out that piece and how we get to the point where at least the state of Nevada is reporting our data appropriately so that our federal data looks right, whether anyone else's does or not. Did that confuse things completely?

**Chairman Kirner:**
Would the bill's sponsor like to make a closing comment?

**Assemblyman Paul Anderson**:
I think the issues addressed by Mr. Bacon are valid, and I think this bill actually resolves some of those issues. I think the amendment will help, as that gets circulated to the Committee, when each business is reporting directly under the business's ID through the leasing company. It goes through their ID so those employees will be covered and will know exactly where folks are and if we are charging the correct rates. If I understand Assemblywoman Neal's question accurately, it is to separate the employee leasing companies from temporary labor agencies—very different environments.

**Chairman Kirner:**
I will close the hearing on A.B. 389 and open the hearing on Assembly Bill 368.

**Assembly Bill 368: Repeals provisions creating and providing for the Silver State Health Insurance Exchange. (BDR 57-1066)**

**Assemblyman Brent A. Jones, Assembly District No. 35:**
My bill today has a sister piece of legislation [Senate Joint Resolution 14], which is to remove the Silver State Health Insurance Exchange from the health exchanges in the *Nevada Constitution*. My bill is a simple bill. It is simply to remove the Silver State Health Insurance Exchange as a state exchange. Although it is a simple bill, it is a complex subject.

As we are all aware, the Affordable Care Act, commonly known as Obamacare, has had a lot of press, a lot of news, and a lot of problems. A majority of Americans continue to dislike it. You did not get to keep your doctor, and you did not save $2,500 a year, as we know.

States are reacting to this situation differently. [Referred to page 2, PowerPoint presentation (Exhibit G).] Thirty-four states do not have an exchange. There are a number of states that are bringing statutes and laws to get out of the state exchange business: Georgia, New Hampshire, North Carolina, Wyoming, and Missouri have all brought statutes to get out of running the exchanges. In Missouri, 62 percent of the voters supported a ballot initiative to block an exchange.

Other states have passed legislation protecting citizens from being made to participate in exchanges: Alabama, Arizona, Ohio, Oklahoma, Wyoming, and 29 other states have rejected state exchanges. Right now, 34 states, a majority, are not involved in the state exchange business per se. Later on, you may hear testimony that if we do not have a state exchange, then these people will all go without insurance. That is not true. There is still the federal exchange. To say that we will not have anything if we get rid of our own exchange is a complete mischaracterization.

Another problem with exchanges is that Obamacare is in flux. There are currently outstanding lawsuits, *King v. Burwell* is an important one, and how that is decided will have a big effect on how exchanges can operate and how the federal system will operate. There are problems associated with the health care system as it is under Obamacare.

We were going to have a gentleman from the Cato Institute describe the actual *King v. Burwell* case. He is very educated and knowledgeable. Unfortunately, we are not able to have him with us via telephone today for the hearing.

With regard to Nevada's health exchange, we were part of a group that received $474 million in federal funds to implement a state exchange, of which Nevada received a little over $70 million. We are familiar with what happened with the exchange and the Xerox situation, and how it did not work in the first go-round. After 2015, the exchange is supposed to be operated by using state money, grant money, and user fees. Now it is transitioning from the grant to the actuality where it will cost the state money. It is plain economics when you have bureaucracies involved and increased costs to complete the transition. Those costs have to be passed on to the consumer somewhere. The costs do not just miraculously appear and are paid for—somebody has to pay for them, whether it be the federal government, the state government, or the consumer.

The Governor is proposing $12.4 million for the exchange and another $12.8 million from member fees over the next two years. That is $25 million to run our state exchange. If we have already spent over $75 million and we have what we have, do we really think that we can only spend $25 million to get an efficient program? I am not quite sure that can happen. As shown on page 6 in my handout (Exhibit G), of all the money that was spent, only 1 percent of our population was serviced by the state exchange. There is talk about how Medicaid or Medicare expansion helped a lot of the uninsured, but that is a different issue from exchanges. Private individuals can help people get health care insurance and not go through the exchange. People are not going to be dropped. All that money that was spent to provide service to only 36,000 people, a little over 1 percent, works out to over $2,500 per person just to enroll. That is not very efficient. Private industry could have done that with much less expense.

There is a projection of approximately 60,000 enrollees in 2015 but, again, that is only about 2 percent of the state's population compared to all the money Nevada is spending on the exchange. Senator Don Gustavson, who is bringing the Senate bill, will talk briefly. Sharron Angle will speak more in depth. Before I turn it over to them, I want you to think of these questions. Why are other states limiting or rejecting these exchanges? Not just a couple of other states, but a majority of other states. Why is the exchange so unpopular with the very people it is supposed to be helping? Why did the exchanges not work with the extensive subsidies, and how will they work with $25 million if they could not work with $75 million? That includes all the money to promote, including billboards. That is our state money that we are having to spend.

How can the people of Nevada be asked to pay for something they do not want and cannot afford and that makes the cost of living higher?

**Senator Donald G. Gustavson, Senate District No. 14:**
I am here today in support of Assembly Bill 368, which is the companion resolution to Senate Joint Resolution 14, the measure that I presented this morning in the Senate Committee on Commerce, Labor and Energy. This resolution would essentially make permanent the prohibition on the state from establishing or operating a state health insurance exchange in the future as is being repealed in A.B. 368.

As you just heard, Nevada is not the only state to consider legislation to repeal or prohibit portions of the Affordable Care Act. Supporters of legislation in these states argue that the Affordable Care Act increases health care costs, causes insurance premiums to rise, decreases the quality of health care, increases taxes, and forces businesses and individuals to pay more on health care. It is even forcing businesses to cut their employees' hours to fewer than 30 per week to get around paying for the employees' health care.

I believe every one of us could tell more stories about how much the health care premiums have gone up for our friends, neighbors, and employers than could tell stories about those who have had their premiums go down.

This fiasco that we have gone through in Nevada has cost the taxpayers millions of dollars investing in a failed system called the Silver State Health Insurance Exchange. It should be abolished now with A.B. 368 and then codified in the *Nevada Constitution* with S.J.R. 14 so that A.B. 368 could not simply be repealed by the next legislature.

The State of Nevada is currently in the process of terminating the original contract through which eligibility determinations and the application and enrollment processes were to be provided. The exchange now offers consumers access to the federal platform for eligibility determinations, applications, and enrollment. We need to completely divorce the State of Nevada from its exchange and have those who wish to enroll go directly to the federal platform.

Only 73,596 consumer health plan selections have been made through the exchange as of February 22, 2015. Figures that have been provided by insurers through March 1, 2015, which includes a two month reporting lag for one medical carrier, indicate that—at a minimum—only 58,459 consumers have paid premiums for plans chosen through the exchange. They project the total

number of paid enrollments to exceed 60,000 for plan year 2015 out of almost three million people in Nevada.

Over $90 million of taxpayers' money was invested into this failed plan for 60,000 Nevadans to sign up for a government-controlled health care plan that, in most cases, is unaffordable, undesirable, and, in many cases, you cannot even choose your own doctor.

I urge your support of Assembly Bill 368.

**Sharron Angle, Private Citizen, Reno, Nevada**:
I am a former Assemblywoman here in support of Assembly Bill 368. You have several handouts and my PowerPoint presentation (Exhibit H) which is available on NELIS. Page 2 of the packet is a map of 34 states that have opted out and the 14 states that still have the state health exchanges. Since this map was made, Utah and Idaho are no longer in the blue category [having a state-based exchange].

Assemblyman Jones and Senator Gustavson have pointed out some of the things that have failed, such as the $75 million in costs that we have very little to show for and the abandonment of the Silver State Health Insurance Exchange. We are now using the federal website. The law will remain in place, even though Nevada is taking advantage of all the federal websites, and we still have a law that charges us with having an exchange. Even though Nevada's exchange does not work, our law demands it. That is why we want to pass the constitutional amendment S.J.R. 14, but also A.B. 368 that we are discussing today.

The Silver State Health Insurance Exchange is under NRS Chapter 695I. This idea that there is state control is just an illusion [page 4, (Exhibit H)]. We are subject to all the federal rules and regulations administered by the Internal Revenue Service (IRS). We also have some risks, one of which was discussed and published in June 2014 in the *Las Vegas Sun*. The article examined the lawsuits that the Silver State Exchange has had filed against it for delay of services. In one case, a Las Vegas lady was one of the complainants. I think you will hear testimony that this is no longer a lawsuit since this woman died because of delay of services by the state exchange. Her husband has brought that charge forth. We are still at risk if this continues to fail. We will still be dealing with legal actions.

The second risk we saw is identity theft. Your personal information is not kept in Nevada, but goes into a hub [page 4, (Exhibit H)]. If we had been able

to have Twila Brase, president and cofounder of Citizens' Council for Health Freedom, testify via telephone today, as we were able to this morning in the Senate, she would have given you expert testimony. She talked about how this hub works, and that all of our data goes into this central server at the federal system. In short, the federal data services hub serves as the central server, and the websites and states at <healthcare.gov> serve as a feeder system for all data transfers to and from the hub and for a transfer of dollars to the health plans. The Silver State Exchange is simply a feeder system into the federal hub. Despite all assurances and statements otherwise, the state exchange is not under state control. The exchange puts states under federal control.

In Ms. Brase's letter, she cites a paper she wrote titled, "State Health Insurance Exchanges Will Impose Federal Control," which is available on her website and maintains that state exchanges must fund themselves after the initial grants. The state exchanges are also under the federal superstructure. The exchange not only steps all over the Tenth Amendment of states' rights, but it serves as a place where we will be blamed for the inadequacy of the federal system. I ask you to read through the above-named expert's testimony regarding the hub that Nevada feeds into.

There are fewer doctors participating in systems such as Medicare because Obamacare affects Medicare and has been resulting in higher costs for seniors and the rationing of care. I included in your packet an email from a local doctor who talks about how his small business has been impacted by the problems he has incurred because he has to comply with this law. We will hear testimony that, by repealing our state exchange, we are not repealing Obamacare at the federal level, but there are benefits for us to repeal our state exchange. We will get into that in a few minutes.

In an article from an Associated Press (AP) story that has been published at LifeHealthPro.com—we checked with the Legislative Counsel Bureau (LCB), and this is still in place—you will see on page 7 that the fees will now go to every member on a per month assessment, which is paid by their insurance carriers, but we all know that businesses do not pay fees or taxes; individuals do that. That will be passed on to the customer, and it becomes a $13 per month, per member charge. Those folks who can least afford it will now pick up the cost of this, and that last sentence should make your ears perk up. The exchange, not you, the Legislature, retains the ability to adjust fees in subsequent years as the enrollment and average premiums increase or decrease to ensure its ability to meet all its obligations without relying on the State General Fund. The fees will be raised or lowered to the customers as the enrollment goes up or down. The Legislature will not be regulating that—that will be up to the exchange.

Page 8 (Exhibit H) shows a chart that in 2013, Nevada premiums increased by 179 percent. The premiums have now leveled out. This chart is also in your packet, which shows the increase that is now only 11 percent and sometimes 4 percent, depending on your age group.

Our second expert witness, Michael F. Cannon, the director of health policy studies at the Cato Institute, says, in the executive summary of "50 Vetoes: How States Can Stop the Obama Health Care Law," to date, 34 states, accounting for roughly two-thirds of the U.S. population, have refused to create exchanges. Under the statute, this shields employers in those states from a $2,000 per worker tax that will apply in states that are creating exchanges. I want you to think about that. There are 34 states that shield their employers from a $2,000 per worker tax by not being in the exchange. Nevada does not because Nevada has an exchange that passes through to our employers. Those 34 states have exempted at least 8 million residents from taxes as high as $2,085 on families of four earning as little as $24,000 per year. Collectively, states can shield all employers and at least 12 million taxpayers from the law's new taxes and still reduce federal deficits by $1.7 trillion simply by refusing to establish a state exchange.

Mr. Cannon's report, mentioned above, is quite lengthy, and we have taken out several pages just to give you the Nevada statistics. If you will look at page 10 in his report [not an exhibit] Mr. Cannon talks about how you, as legislators, did not receive all the information you needed when you passed the exchange bill. The U.S. Department of Health and Human Services did not give you everything you needed to make an informed decision. Now that you have the information, I am asking you to reconsider that decision. You are state officials, and you will take the blame for whatever happens at the federal level if services are denied. You have an exchange—it will look like you denied those services—not the federal government.

Also in Mr. Cannon's report, there is a chart that shows the estimated number of currently uninsured low- and middle-income residents each state can exempt from the individual mandate. These are people who will have to pay a penalty in Nevada if insurance cannot be obtained and who cannot afford to go on the state exchange: 144,187 Nevadans. That is more than the 60,000 individuals we are servicing with the state exchange.

The next chart shows employers that are exempted from the employer mandate. It says the ruling would give those state officials the power to exempt large employers in the state from the employer mandate: 4,630 of our businesses would be exempted if we did not have a state exchange. That would affect 792,696 Nevada workers. We would be doing our businesses a favor by going

onto <healthcare.gov> and joining 34 other states that are offering this shield to their businesses and the people who work in their states.

I would direct you to some expert testimony we were going to have from Edmund Haislmaier. He is a senior research fellow in the Center for Health Policy Studies at The Heritage Foundation. He talks about the subsidies that go along with this, and that as we get this exchange going, we have subsidies. He talks about how losing your exchange does not mean the loss of your insurance. You will want to take a look at how subsidies and insurance are not equal. You will still be insured even if you lose the subsidy.

Finally, he sent me an article published in March 2015 on *King v. Burwell*, and what will happen. It is online at <report.heritage.org/ib4371>. Those states that are outside the exchange and do not have state exchanges will be able to shield their businesses and their workers from these mandates.

Are we better off after five years of the Silver State Exchange? I would submit to you that we are not. We have seen a lot of citizen resistance, and here is an opportunity for you to help your constituents and the citizens of Nevada to regain some of the things they have lost simply because of the impacts of this health care law.

We have discussed the cost and the coverage. This chart [page 11, (Exhibit H)] shows that we only offer four to six carriers in our state. You will hear testimony that that is what gives us control—that we control those carriers in Nevada. I will submit that there are more options at <healthcare.gov> for our citizens. They have more choices. The only entities that benefit from that kind of control are the carriers themselves because the competition has been limited for them. You have not given the people more choices. You have just limited the competition and allowed them to have those carriers to have a benefit.

There are solutions and things you should be thinking about as legislators. There are ways to insure people that are better than this exchange. First, you can pass A.B. 368, which would take people out from under these health care decisions that we have come in contact with in Obamacare. You could allow them to be portable, and that means that individuals could have an insurance policy that goes with them. It is not dependent upon where they work. The insurance coverage can be carried with them.

A choice of providers could be offered, more than the four to six we are getting now. Health savings accounts can be offered. Thirty-five states have offered

high-risk pools that take care of preexisting conditions. You could do what 35 other states have done with a collective current enrollment of 227,000 individuals to ensure access to coverage.

You could allow people to purchase across state lines. Georgia law allows this. Maine and Wyoming also permit them to go out of state to get insurers that offer products. Finally, a pooling mechanism could be offered by extending group coverage from the workplace to associations and organizations.

**Assemblywoman Kirkpatrick:**
This does not repeal everything all at once, but slowly, based on the way I read it, correct? So if at first you have to stop doing this and stop doing that, was there any discussion on how Nevada would pay back the dollars that we used to initially set up this process?

Utah was one of the first states that had a health exchange in place for some time. When the ACA came about, Utah formulated into what was already in place and included small businesses to be part of the discussion. What has changed in Utah that they are no longer participating in their own exchange?

**Assemblyman Jones:**
Yes, we wanted to do transitions so it is not just dropped off all at once. Second, I tried the Office of the State Controller and LCB, and it is really difficult to know how the dollars are going. I asked about the Xerox lawsuit, and we cannot get any information—mum is the word. I cannot give you an educated answer on your second question because I asked for a lot of that information, which was not provided.

I am not familiar with what happened in Utah but, obviously, they were not happy.

**Assemblyman Nelson:**
Could you say again what will happen under the *King v. Burwell* case? I know we are waiting for a decision; I think it is more advantageous to not be in a state exchange, but I guess it depends on how the U.S. Supreme Court rules, right?

**Assemblyman Jones:**
Yes. Unfortunately, we heard from the gentleman from the Cato Institute who was asked about that earlier today in the Senate hearing, and he is very knowledgeable. You are correct. Until we know what the ruling will be exactly, we cannot say how this will be affected. His belief was that we would be

much better off if we did not have an exchange after the ruling, if the ruling goes as expected.

**Assemblyman Nelson:**
Is the Cato report on NELIS?

**Sharron Angle:**
No, I gave it to you in print form. If you read the abstract at the top of the legal memorandum from The Heritage Foundation, which is available online at <report.heritage.org/lm149>, it tells you what he believes will happen. It says if the plaintiffs in *King v. Burwell* are successful, the tax credits for those who obtained insurance through the federal health care exchanges will be struck down. Absent action by the federal government or states, a ruling for the plaintiffs and against the Obama Administration would mean that individuals for whom insurance coverage became a greater out-of-pocket expense without the premium support tax credit would become exempt from the individual mandate. That is their finding. If the Supreme Court finds for *King*, the individuals would be exempt from that mandate, which means they would not have to pay the penalties, which is exactly what is going on right now in those states that do not have state exchanges. They are shielding their citizens, as well as their businesses, from the penalties.

**Chairman Kirner:**
To be clear, my understanding is that Nevada does not have a state exchange. Nevada has a hybrid state-federal exchange, so it is not a "state exchange." Is that your understanding as well, Assemblyman Jones?

**Assemblyman Jones:**
Yes. Initially we had a complete state exchange, and that did not work as intended. Now, it has gone through this hybrid where we are a shell for <healthcare.gov>.

**Sharron Angle:**
It is a hybrid, and it is a shell, and Nevada does not have an exchange, but the law is still on the books saying that we do. I believe that is what Assemblyman Jones wants to correct so that the law reflects reality.

**Chairman Kirner:**
We have previously heard a bill [Assembly Bill 86] that strikes the state exchange. That has been formally struck from the law. The bill had to do with areas of expertise of members of the Board of Directors of the Silver State Health Insurance Exchange.

**Assemblywoman Neal:**
You had said that this will transition out; what is the timeline? You strike out the creation and the purpose, NRS 695I.200. The purpose is to reduce the number of uninsured persons in Nevada, to facilitate the purchase and sale of qualified health plans, and assist residents with access to programs. When is that supposed to be transitioned out? If there is a core purpose that helps and serves the benefit and needs of individuals, when was that supposed to be transitioned out? I did not see a timeline. I just read that there was supposed to be a transitional plan. I am trying to figure out how the purpose works when the purpose is deleted and this section becomes effective upon approval and passage.

**Assemblyman Jones:**
I do not know the purpose of this. The Silver State Exchange may be able to help the people you talked about. By limiting the Silver State Exchange, our citizens will still have the Affordable Care Act, Obamacare, through <healthcare.gov>, and they will also have private industry that can provide insurance, which is now bronze, silver, or gold plans. What we are trying to do is to get the state out of the business of what the federal government is already doing, as have 34 other states. The language is transitional, so it is not that on July 1 we are completely finished. We need to transition out.

**Sharron Angle:**
I believe what Assemblyman Jones is saying is that you will see a very smooth transition because we are already with <healthcare.gov>. Those services are being provided, and that mission is being fulfilled. The people who are receiving that service will not see a diminishment in anything they are receiving now. They will not see any of that transition. We will see the transition here only because we need to do that smoothly, but you will not see an effect with the customers themselves.

**Chairman Kirner:**
In addressing the cost of $75 million in taxpayer dollars in your PowerPoint presentation (Exhibit H), for clarification, I am going to go through a series of questions. The $75 million in taxpayer dollars, was that Nevada dollars or was that federal dollars?

**Sharron Angle:**
No, this is federal grant monies that we received as a state.

**Chairman Kirner:**
That did not work.

**Sharron Angle:**
That is right.

**Chairman Kirner:**
That money was federal dollars. Moving to the hub in your presentation, if we were not on the state exchange but on the federal exchange, would that change the hub, or would all of our data still be there, exactly as it is now?

**Sharron Angle:**
Yes, that is correct. If you look at the states that do not have exchanges, for example, Alaska and Texas, those states also feed into the hub. However, their data that feeds in is collected by the federal government, not by their state. So they are not participating in that collection. Whatever information the government is collecting from that state is coming directly to <healthcare.gov> from the person who is purchasing, not going first through the state exchange, then to the hub. That is why you would come in for the blame on anything that happens in this hub because your citizens see your state exchange. The hub is not seen at <healthcare.gov> as the one they are doing business with. The state exchange is seen, and that is seen today, when purchasing. People are going to a website in Nevada assuming they are working with our exchange, when in actuality they are working with <healthcare.gov>. It is very much more transparent for a Texan or an Alaskan. That person sees what he or she is working with: I am working with the federal government. My information is going directly into the hub from me—I am entering the information, rather than entering into a state database and then having the information transferred.

**Chairman Kirner:**
As a commentary, most people are more distrustful of the federal government than of the state.

Regarding the primary care workforce chart [page 6, (Exhibit H)], to me, this is a discussion on a national level about Obamacare, not about the state of Nevada. Am I misperceiving that chart?

**Sharron Angle:**
If you will look down that chart, you will see Nevada, and it talks about our primary care physicians, how many additional physicians will be needed by 2030, and the initial number needed by the ACA. It is Obamacare that is causing us to need that many more care providers. I think it is relevant when talking about nurse practitioners and physicians and our health care industry that we look at Nevada, and that we are going to need additional health care workers.

**Chairman Kirner:**
I do not dispute those comments, but it does not seem to me to make a difference. I am trying to state the purpose of the bill, and it does not seem to make a difference whether Nevada is on the state exchange or the federal exchange. Under the ACA, we will have that shortage of physicians and health care providers. Am I reading that incorrectly?

**Sharron Angle:**
No, you are not reading that incorrectly. We will, because we will still be under the ACA. We will, of course, have other benefits from being out from under our state exchange.

**Chairman Kirner:**
I am somewhat discounting that page because it is Obamacare, and if we want to attack anything, that is probably where I personally might go.

Continuing with the PowerPoint (Exhibit H), the next slide [page 7] talks about the adjustment of fees. The fact of the matter is, if we are on <healthcare.gov>, we have a fee similar to what we have had with the state, if I have that correct, so we have to pay them for services. Is that a different number, or does it somehow affect the citizens in our state differently?

**Sharron Angle:**
I believe what we are discussing now is the transparency of this. When I go to <healthcare.gov>, I know I am dealing with the federal government. I know that my fees are going to go to them. This is solely dealing with the Silver State Exchange. The exchange is taking its fee to keep the exchange here, and I am not sure how that passes through to <healthcare.gov>, since we are not actually providing everything for that fee we are collecting—if I am making myself clear.

**Chairman Kirner:**
You are clear, and we will get some further explanation on that. I think you will want to listen to that when we get there.

The next slide [page 8, (Exhibit H)] talks about Nevada premiums increasing 179 percent. Again, that is not related to the state exchange. That is related to Obamacare or the ACA. I am not trying to be offensive at all. I am trying to separate the role or effect of the state exchange vis-à-vis the role or impact of the ACA.

**Sharron Angle:**
I beg to differ with you on this one point. These fees, and the fee increases, have to do with the four carriers within the state that are directly a result of the Silver State Exchange. As I mentioned earlier, there is more competition on <healthcare.gov>. You would be able to find, perhaps, a carrier with a lower premium if you were allowed to go outside the state. That was why one of the solutions is to allow you to go outside the state. When you are restricted to those four to six carriers, that is what determines the premium increases, and I submit that this then directly is an effect of the Silver State Exchange.

**Chairman Kirner:**
For my purposes, and to clarify, what you are saying is that if we were on <healthcare.gov>, we would have more than four options and likely, therefore, there would be less expense than the four options that Nevadans are restricted to under the state exchange. Did I articulate that right?

**Sharron Angle:**
Yes, I believe you did. We would have more options and, perhaps there would be a less expensive option just because a person would have more options.

**Chairman Kirner:**
Obviously, we do not know. It is presumptive, but the theory is if we were not on the state exchange and were on the federal exchange, there would be more options within the state and, hopefully, something would be better, but we do not know that. Maybe we will have testimony on that a bit later.

Regarding the citizen resistance, cost, and coverage [page 10, (Exhibit H)], I am not sure I understand the $2,500 per year. Was that the ACA's promise to reduce costs?

**Sharron Angle:**
That is correct.

**Chairman Kirner:**
Would that have occurred with the state exchange or the nonstate exchange? Are you saying because of the Silver State Exchange, we did not benefit from that but, if we had been on the federal government exchange, we would have gotten that benefit?

**Sharron Angle:**
If you go back up to the slide [page 8, (Exhibit H)] that looks at the increases, you will see that in the blue areas, some states were able to save their citizens money. Nevada increases premiums; they decrease premiums. It does not

follow that just because it was Obamacare that every state had this difficulty with premium increases.

**Chairman Kirner:**
I go back to my point, again. If we had not had the Silver State Exchange, and we went directly to the federal exchange, is it your position that we would have saved $2,500 per family or some other amount per family? In other words, is it the Silver State Exchange that is costing Nevadans $2,500 per year?

**Sharron Angle:**
What I am submitting with this chart is that, yes, those states without exchanges have in some cases been able to decrease the premiums, and that would be because they are going through <healthcare.gov> or they are having more choices. I would not assume to know exactly what is going on there. All that I can see are the numbers that you can see, and some states were able to offer lower premiums, and they are not members of state exchanges.

**Chairman Kirner:**
For now, those are the questions I have. I am looking at these other suggestions: choice of providers, health savings accounts, which come by virtue of a high deductible-type plan. Otherwise, I do not know that we can have health savings accounts, but I am not certain of that.

**Sharron Angle:**
Thank you for bringing that up. I have a friend who does billing for physicians, and she is sent the uninsured. She has had several people sit across the desk from her saying, "I have insurance. I am insured with the Silver State Health Insurance Exchange." She said, "Yes, but your deductible is $5,000 and the cost of your care is $3,500, so you will have to come up with the $3,500. Basically, you are uninsured." This has been a shock to those who thought they were insured, who thought they were going to get their care paid for, and now realize that because of the deductible, they are not able to. Those high deductibles, at least, when you have health savings accounts, when you are in charge of your own health care, you understand you will have to save that deductible in order to get the lower cost of the premium. In this case, it was almost a detail hidden from them. They thought they were insured. When they went in for the care, they found they were not because of this high deductible.

**Chairman Kirner:**
Right, I understand that. These are the differences between the gold, silver, bronze, and platinum plans when people sign up for insurance. I do not know if that is so much the Silver State Health Insurance Exchange or just the state of affairs with the ACA.

**Assemblyman Jones:**
I think it is generally recognized in business and in economics that when there is an extra layer of bureaucracy or management, the costs will be higher as a result of that extra layer. Overall, although we cannot specifically say exactly the cause or effect, we know that whenever there are additional fees or additional people or management, somebody has to pay for that.

**Chairman Kirner:**
You had hoped to get testimony today on the telephone, and we just received that information today, so we were not able to put that together. I apologize for that.

Are there others who are in favor of this bill?

**Lynn Chapman, representing Independent American Party:**
We are in support of A.B. 368. We believe that it has been a long time coming. We needed to have people take a look at this, and we needed you to take a look at this. If our state is not working on things, why are we paying people to do what the federal government can already do? I think it is a waste of money. The taxpayers are tired of being the ones who are putting money out all the time and it is being wasted. We are getting higher fees, higher regulatory fees, which are all taxes. Federal dollars, state dollars, where does that come from? Why, we the people. We are tired of paying out all this money, and we are not getting returns. We urge you to support this bill and vote yes to help the taxpayers in Nevada.

**Janine Hansen, representing Nevada Families:**
Thirty-four states have thus far refused to establish exchanges and have exempted at least 8 million taxpayers from the individual mandates penalty tax. This is especially important for a lot of taxpayers in Nevada. About 144,000 Nevada taxpayers could be hit by these federal penalty taxes. I am one of those people because I just lost my insurance and do not have any. I think with removing Nevada entirely from the Silver State Health Insurance Exchange, which has been a real boondoggle and at a horrendous cost of $75 million, we would have had a lot of money to spend on other things we would like if we had not gotten into that mess.

With this exemption, this will allow an affordability exemption for those who fall in a certain lower income category from the individual mandate. Since the ACA does not authorize tax credits in states that do not establish exchanges, states that decline to create or remove themselves from this enable those individuals to qualify for that exemption from that penalty. States can collectively exempt

at least 12 million currently uninsured taxpayers from the individual mandates penalty tax.

We would appreciate that consideration for people who are in lower incomes, people who may not be able to afford or have access to insurance under Obamacare, and that this would be a protection for those people who would not be subject to the penalty tax in the state of Nevada, like me.

**Chairman Kirner:**
The individual mandate penalty? That has to do with the Affordable Care Act in general, and not something that is unique to the Silver State Exchange. Am I correct in that? Whether or not you get the individual mandate penalty, it has to do with whether or not you have insurance, either through the <healthcare.gov> or the state. Maybe you can elaborate on that.

**Janine Hansen:**
I am not an expert on this by any means—far from it. However, in reading this information, I would say that in those states that have established exchanges, the people in those states are in a position to have that penalty tax applied to them. However, if you are in a household that is in a state that does not have an exchange and has to go through the federal exchange, and you fail to purchase the minimum essential coverage, you will not have to pay an individual mandated penalty tax. You will be exempted from that.

**Chairman Kirner:**
I am not sure you are accurate on that, but we will get somebody who does know more about that.

**Janine Hansen:**
It would be good to check that, but I think the affordability exemption is from the mandate for those people in states where they do not have a state exchange—an exemption from the penalty tax. It would be good to know that for sure, and that is my reading of this information, for those who are in that 144,000 in the state of Nevada who do not have coverage.

**Barbara Jones, Private Citizen, Reno, Nevada:**
The bill was well presented, and most of the people I know would like you to repeal this in the Assembly and in the Senate. Please pass this bill.

**Chairman Kirner:**
Seeing no others in support, we will recess [at 4:29 p.m.]. I will call the meeting back to order [at 6:04 p.m.]. Are there any others in favor of this bill? [There was no one.] Are there those who are opposed?

**Bruce Gilbert, Executive Director, Silver State Health Insurance Exchange**:
I am not here to debate the merits of the Affordable Care Act. That is not what I do, and that is not what the Silver State Exchange is about. We operate an exchange which allows individuals to purchase subsidized health insurance policies—that is what we do. We do not make health care decisions. We do not do a number of things that were discussed earlier today.

I would like to start by misquoting Mark Twain, by saying that the reports of the Silver State Health Insurance Exchange's failure and demise have been greatly exaggerated. We continue to exist, and we have activities. We are not simply an extension of the federally facilitated marketplace. I think there is some fundamental confusion about what the exchange does and how we work with our federal partners. Hopefully, I can clear that up through my testimony and through questions that the Committee members might have.

There is no question that we had a bumpy rollout in 2014. That is true in other states as well, and is not unique to the state of Nevada. Nonetheless, by the last open enrollment period, the issues that had bedeviled us had been addressed, the platform was replaced, and everything worked. The exchange did not fail—Xerox failed. Our technology platform failed, but the remainder of our activities were a success. We persevered, we succeeded, and everything worked. In the end, some 72,000 Nevada consumers signed up—most of whom were the working poor, or those who needed subsidies in order to be able to afford coverage.

The uninsured rate, in the state of Nevada, has declined by half over the past 18 months. That is not opinion; that is fact that is provided by a study done by the Department of Health and Human Services (DHHS). The rate went from 20.7 percent uninsured to 11.4 percent, with the biggest impact being on uninsured children. That rate declined from 14.8 percent of the population to only 4.4 percent currently. That is as a result of the combination of both expanded Medicaid and offering subsidized health plans. As a practical matter, it has been a significant differentiator.

Nevadans currently pay less for their insurance, for their health plans, than if the Silver State Health Insurance Exchange did not exist. The difference would be about 1.2 million. The reason for that is that the Centers for Medicare and Medicaid Services (CMS), if you are on the federally facilitated marketplace, would be receiving an assessment or a fee from the carriers in the amount of 3.5 percent of the premium. Our fees are considerably less. If you were to ask why that is, it is really pretty straightforward and simple. The Silver State Health Insurance Exchange is not a monolith. I have a total of 13 employees who work for the exchange. We are one of the smallest state agencies.

We are the smallest, fully operating health care exchange staff in the country. We have a $6.2 million budget, and two-thirds of that money goes to consumer assistance and education. That is why we can be less expensive.

There was talk about the Governor's recommended budget over the next biennium. The answer to that is that our revenue will be $12.4 million from fees. There is not an additional $12.8 million that I am aware of. We receive no State General Funds, of course.

There has been a lot of discussion about whether Nevada controls its insurance marketplace, and I would submit to you that it very clearly does. Decisions with respect to the exchange are made in Carson City—they are not made in Washington, D.C. We decide which insurance plans and which insurers are offered on the exchange. That is not a determination that is made by <healthcare.gov>. We determine the structure of and the availability of in-person assistance, which is provided in the state of Nevada, and is not provided in states that utilize the federally facilitated marketplace. We oversee and manage the consumer education and outreach functions, and we provide augmented customer service to Nevadans on the exchange.

The federal involvement is significantly less than in federally facilitated marketplace states. They are a technology provider. Essentially, that is what they do. We replaced Xerox. We replaced them with <healthcare.gov>, and that is the way things work, but they certainly do not run our exchange.

There has been some discussion about the effect of the *King v. Burwell* case and how that would play out.

**Chairman Kirner:**
One of the questions on that case, assuming that the court decides in favor of the challengers, is whether Nevada's exchange has to continue to exist or does it not? I understand that would probably cause a few other actions in Congress.

**Bruce Gilbert:**
There is no law that says that any particular state has to have a state-based exchange. Nevada is always able to say we want to have an exchange or we do not. What the *King* case is about has to do with subsidies, purely and simply. The argument that has been made before the U.S. Supreme Court is this: the Affordable Care Act appears to indicate that subsidies are available only in those states that have established a state-based exchange. That is the language of the Affordable Care Act.

The disagreement arises out of the fact that the federal government has extended those subsidies to those who are within the federally facilitated marketplace states as well. The argument that has been posed by the plaintiffs is you can only have subsidies if you have a state-based exchange. If the court were to rule in favor of the plaintiffs, because Nevada has a state-based exchange, our subsidies are not at risk. If, however, the court was to rule in favor of the plaintiffs, and a state does not have a state-based exchange, then there would be no subsidies available for consumers to be able to offset the cost of premiums.

I know there are a lot of questions, and I want to spend as much time answering your questions as I possibly can.

**Assemblyman Hansen:**
The subsidy question is a big one because as the federal subsidies are reduced over time, we have to fill that gap somehow. I have seen numbers suggesting by 2017 or 2019, Nevada will be in the several hundred million dollar range that the Legislature is going to have to come up with to compensate for the loss of the federal subsidies. Can you give me some rough projections, in your opinion, or are there actuarial tables that show how, as the federal share is reduced, the state will make up the difference?

**Bruce Gilbert:**
I am sorry I do not have that information available and with me. I will make sure to get that and provide it to you.

**Assemblyman Nelson:**
You probably heard the testimony earlier today that we do not really have a state-based exchange, but we have a hybrid exchange. I would like to hear your comments on that and how that would affect your statement about the result of *King v. Burwell*.

**Bruce Gilbert:**
We fit into a really unique category of three states to be what is called a supported state-based marketplace. That is the technical term the CMS uses in referring to us. There is no question that we are a state-based exchange. Although we utilize federal technology, we are state-based as far as the federal government is concerned because of the way that our enabling authority was written, which says, "The Silver State Health Insurance Exchange is hereby established," and the magic words are that it was established by a state. The fact that we utilize the federal platform makes no difference whatsoever.

**Assemblywoman Fiore:**
Thank you for being here to testify. I know that sometimes that is difficult. I just find it conflictive that you are in opposition since you work for Silver State Exchange. I find it to be a conflict of interest because if we were to repeal it, that would affect your employment. Do you know what I mean?

**Bruce Gilbert:**
Sure.

**Chairman Kirner:**
It sounds as if there was no question in that, just a statement. However, I have some questions. In earlier testimony, we heard the concept that if we did not have a Silver State Exchange and then Nevada went to the federal exchange, the options available to our citizens would be enhanced and increased. I would like to hear your comments or your thoughts on that.

**Bruce Gilbert:**
There is something we need to understand at the outset with regard to this particular question, which is that every citizen has the right to purchase coverage either through the exchange or outside the exchange. There is nothing that requires any individual to purchase through the exchange. The differentiator is we are the sole offerer of subsidies. That really makes purchasing through the exchange unique.

**Chairman Kirner:**
But if we are on the federal exchange, they would offer the same subsidies, would they not?

**Bruce Gilbert:**
They would indeed.

**Chairman Kirner:**
I understand what you are saying. Let us focus on the state exchange offering subsidies versus the federal exchange offering subsidies. Would we be able to have more than the four insurance providers if we were on the federal exchange?

**Bruce Gilbert:**
We actually had five carriers this year, and we will have six next year. I believe the number will continue to go up. I am not aware of anything that would indicate that there would be additional participation by carriers if you utilized the federal exchange as opposed to the state-based exchange.

**Chairman Kirner:**
One of the things that was said was that we are not using any state money, no General Fund money. The money you get to pay for you and your staff comes from charges to the insurance companies. A statement was made that if you charge the insurance companies, then they have to pay this. The insurance companies are not paying it because they will reorganize the premiums so that all other Nevadans are paying for this. How would that be different if we were on the federal exchange?

**Bruce Gilbert:**
There would essentially be no difference, other than the fact that the fees would be higher.

**Chairman Kirner:**
Why would the fees be higher?

**Bruce Gilbert:**
Because CMS charges 3.5 percent of the premium as their fee, and our fees are lower. When the insurers determine their premium rates, they have to take those costs into account.

**Chairman Kirner:**
One of the numbers that was presented on a slide presentation was a 13 percent number. I cannot recall what that was. Do you recall?

**Damon Haycock, Chief Operating Officer, Silver State Health Insurance Exchange:**
I believe that was a reference to a $13 per member, per month fee. We established that last year for plan year 2015. In February of this year, we passed a new regulation to adopt fees for 2016, which are at 3 percent of premium, a full half-point below what the federal government will charge next year.

**Chairman Kirner:**
Economically, having the state exchange is less expensive than if Nevada were on the federal exchange, is that correct?

**Bruce Gilbert:**
That is correct.

**Chairman Kirner:**
You mentioned earlier that we provide certain services in terms of education and other kinds of things. If we were on the federal exchange, we would look to

them to provide those same services. Would that increase our cost with the federal exchange? Or is that covered under that 3.5 percent?

**Bruce Gilbert:**
I do not know if that would increase the cost. However, the amount of service that you would be provided for your 3.5 percent would be lower than what is provided now. The best example I can give you for that is, one of the things we do as a state-based exchange is to provide brick-and-mortar enrollment stores where individuals can go, seek out people who can help them determine what type of coverage they should purchase and, in fact, work with them through the application and enrollment process. There is not a single state that is serviced by the federal government that provides that type of service.

**Chairman Kirner:**
If I can follow that track, one of the things that we heard is the story about an individual who discovered that he or she had a high deductible plan and this individual was shocked, I guess. I assume that is the difference between bronze, gold, silver, et cetera. It sounds to me as if in that particular individual case, to your point you just made, that person may not have received that education. Is that the responsibility of the so-called navigators? Who has that responsibility to help the consumer choose wisely?

**Bruce Gilbert:**
The answer is, that is exactly what the navigator program is supposed to help people do, that is, understand how to enroll. But, more importantly than that, you need to work with brokers and agents, people who understand copays and deductibles, and how those figure into the premium in the value of your insurance policy. We work very closely with the agent and broker community in the state of Nevada. A letter will be submitted specifically with respect to this bill indicating they would like the exchange to continue because they understand that we help make certain the public is aware of the types of services and assistance the agent and broker community provides.

**Chairman Kirner:**
Exactly what is the role of the Silver State Exchange? You talk about brokers. If I were to apply to the state exchange, would you merely point me to a navigator, or would you direct me to a broker?

**Bruce Gilbert:**
There are multiple ways to enroll in insurance. Depending upon how you feel about your qualifications to choose the right plan, you can go any number of ways. If all you want is to go to <healthcare.gov> and sign up, and you

believe you have sufficient information for you to make a reasonable and rational choice, you have that opportunity.

If you do not understand how to go through the application process, we make navigators available who assist you in understanding how the application and enrollment process works. Still, they are not to point you to any particular plan. The job of the navigator is to assist you with the function of the technology itself.

**Chairman Kirner:**
Are the navigators state employees or insurance employees?

**Bruce Gilbert:**
The navigators are independent contractors who have their own company.

**Chairman Kirner:**
Who pays the independent contractors?

**Bruce Gilbert:**
We pay for the navigators, including paying to have the contractors licensed, and we pay the cost of providing the navigator program. It is one of the requirements of being a state-based exchange for the federal government.

**Chairman Kirner:**
Earlier there was some question about whether or not the individual mandate penalty only applied to people who were in the state plans or federal plans or neither.

**Bruce Gilbert:**
We have a conflation of things when we start talking about the mandates. The mandate applies to everyone in every state. There is no state that does not have to comply with the mandates. Should *King v. Burwell* be decided in favor of the plaintiffs, then a state could opt out of the individual mandates. The problem then is you have no subsidy dollars to offset the cost of coverage. The two go hand-in-hand. If there is a mandate and there is a penalty, it is because there are subsidy dollars available. At the present time, there is no state in which employers or individuals are free of complying with the mandates of the Affordable Care Act.

**Assemblywoman Neal:**
I want to try and compare the federal plan with the state's plan. I have gone through the process. My sister had a stroke and did not have insurance. I went through the Silver State Health Insurance Exchange in order to get her

insurance. We went to the website, logged on, and several options popped up. We entered the income, and there is a choice as to what is available and whether or not it will cover previous bills—a certain amount. What is the difference between the federal exchange and the ability to look at the different plans? The site will give you dental, vision, and a cost. You can compare three, you can compare two, you can compare multiple plans. What is the difference?

**Bruce Gilbert:**
If we are talking strictly about technology, nothing else, the difference is that if you go through the Silver State Health Insurance Exchange website, the first thing you hit is a prescreener. That prescreener, through answering six or so questions, will suggest to you that either you should go ahead and go to <healthcare.gov> and get a qualified health plan or, in the alternative, that you qualify for coverage through Access Nevada, which is the expanded Medicaid program. We did that specifically because in the first enrollment period, it was very clear that there was significant pent-up demand with respect to Medicaid, and there were an awful lot of people who qualified for that. It made sense for us to be able to bifurcate and send them each way.

Once you go through the prescreener, the technology is essentially the same, so there is no significant difference in terms of the technology. The difference is the associated services but not the technology.

**Assemblywoman Neal:**
In terms of taxes, my sister had the benefit of having coverage under the ACA. When she did her taxes, she called me and said, "Now it is asking me did I have insurance?" Regarding that first prescreen, "Do you have insurance or do you have another type of insurance, or did you go through the exchange," I told her to pick that you purchased insurance through the exchange. Then it told her that she did not have a tax penalty because she went through the exchange or she had her own insurance. If the exchange becomes null and void, what would be the difference in terms of the tax situation if you go to the federal level? And what would be the difference in terms of her future tax implications if *King v. Burwell* comes through, because the case involves subsidies, correct? Her costs are being offset because she is a part-time employee and does not have enough income to meet the full amount of what she has to take care of for insurance. If the *King* case comes through, she would have to cover the full cost or opt out because the state has the option to opt out. How would that adjust her current insurance?

**Bruce Gilbert:**
With regard to the taxes themselves, taxes are taxes. It does not matter if you are operating under the federally facilitated marketplace or our marketplace. The tax rules are exactly the same. The difference comes depending upon what happens with *King v. Burwell*, because in the event the court finds for the plaintiffs, your sister would not receive a subsidy. Because she will not receive a subsidy, she may or may not be able to afford insurance. She would not be required to pay a penalty, but that is a poor trade-off for not having insurance.

**Assemblywoman Neal:**
What is the negative consequence of sticking with the Silver State Health Insurance Exchange? If we stay as a structure, what is the negative of staying right where we are? What is the negative of going with the federal exchange? If you already have insurance, I want to know what are the effects that a person could plan for? What would I tell my constituents? What would I tell my sister who had a stroke, and then she still needed insurance to continue care. What would I tell her the future implications are for her care?

**Bruce Gilbert:**
Let us start with technology because that is the easy answer. The technology is going to be the same. The process for enrolling and for applying, for selecting plans, will be the same either way, so that is not really positive or negative. That is really a neutral.

When it comes to consumer education and outreach, there is more under the state exchange than there is under the federally facilitated marketplace. Basically, what they will do is say go to <healthcare.gov> or call our 800 number. We do things a bit differently. We have on-site enrollment stores, and we put two-thirds of our budget into consumer outreach, assistance, and education.

The wild card is really the *King* decision. If it comes out in favor of the plaintiffs, if we are not here, there are no subsidies. There are no penalties, but there are no subsidies. The people who cannot afford coverage will not be able to purchase coverage. Today, 89 percent of persons who purchase insurance through the exchange receive advanced premium tax credits or premium subsidies. It reduces their premiums, on average, by 67 percent, which is no small amount. If that goes away, my own personal opinion is that a lot of people will lose coverage, and that is an opinion that is buttressed by the American Academy of Actuaries who wrote to Secretary Sylvia Burwell at the U.S. Department of Health and Human Services on February 24. Their assertion was that eliminating subsidies in the federally facilitated marketplace states

would likely result in significantly fewer individual market enrollees and higher average health care costs.

The American Academy of Actuaries is not a political think tank. This is not somebody who does anything other than assess the financial consequences of certain actions. The difference is if *King* goes the wrong way, she has to try and struggle and find the money to pay. If she cannot, that is unfortunate.

**Chairman Kirner:**
That is a case that has not been resolved yet, so we do not know, and the case could go either way.

One of the things we talked about earlier was the chart that the proponents put up about $2,500 per year and 179 percent premium increases. If I have this correctly, the assertion was made that had we gone on the federal exchange to begin with, we might end up with not so much as a 179 percent increase but something less. With the $2,500, which was the promise made to all Americans, we may have ended up with less expensive insurance products. Can you comment on that? Do you recall the conversation?

**Bruce Gilbert:**
I do recall the conversation. There is nothing that I know of that would indicate Nevada citizens would have received $2,500 or come out better by $2,500 a year. I know that was a statement that was made in Washington by the President. It was not made by anybody in the state of Nevada and certainly not by any member of my staff.

**Chairman Kirner:**
There was a chart that showed a 179 percent increase in premiums. I believe that number, by the way. I would like your comments on that.

**Bruce Gilbert:**
I think it is important we understand what we are talking about when we are talking about an increase in premiums in 2013. That is the year that the essential benefits were determined under the Affordable Care Act. There was nothing that was done in this state that drove those particular premium increases. In fact, I wish Mr. Kipper, the Commissioner of Insurance, were here because I believe he would be able to tell you that that was not a state result, but rather the natural consequence of changes in benefits that were required by federal law.

**Chairman Kirner:**
What you are testifying to is that is not a function of the Silver State Exchange, nor is it a function of the federal exchange; that is a function of these other requirements.

**Bruce Gilbert:**
That is correct.

**Assemblywoman Fiore:**
You recently implied that the only health care with the Silver State Exchange is through Medicaid. If someone does not qualify for Medicaid, do you still refer them to <healthcare.gov>? Is that not where you send them if they do not qualify and if you are just using expanded Medicaid with the Silver State Exchange?

**Chairman Kirner:**
I think what he was saying was, if you go on to the system to potentially purchase insurance, the system technology will ask you some questions. As a result of those questions, you become eligible for Access Nevada or you become eligible to buy a policy through the Silver State Exchange. So they are not really directing them.

**Assemblywoman Fiore:**
What if they do not qualify for Medicaid?

**Bruce Gilbert:**
If they do not qualify for Medicaid, based on that prescreener, we tell them that they can purchase a qualified health plan. We redirect them to the technology that allows them to do that.

**Assemblywoman Fiore:**
If there are other means of getting insurance, why do we need the Silver State Exchange?

**Bruce Gilbert:**
People have always had the opportunity to purchase insurance outside the exchange—even individuals. There is nothing that compels someone to purchase through the exchange. The key difference is that if you purchase through the exchange, based on your income, you may qualify for a subsidy that helps offset some of the cost of the premium. We are the only gateway, or avenue, that allows you to do that. What happens is we assist persons who are the working poor. Our sweet spot is generally about 138 percent of the federal poverty level to maybe 300 percent of the federal poverty level. Those are the

people we really help because they are able to secure significant premium savings.

**Chairman Kirner:**
If I may add on to what I think she is seeking, if we had the federal exchange and we did not have the Silver State Exchange, the same experience would occur. For people who went to enroll, if they were at less than 138 percent of the poverty level, they would be directed to Access Nevada for Medicaid. If they were greater than 138 percent and, using your numbers 300 percent, then they would be able to buy the insurance the same way they do now.

The difference between the Silver State Exchange and the federal exchange, as I am hearing you, is the service levels, the education component, and one Nevadan is talking to another Nevadan, basically.

**Bruce Gilbert:**
Yes, except that, again, our fees are lower.

**Chairman Kirner:**
Are you testifying in opposition, Mr. Gold?

**Barry Gold, Director, Government Relations, AARP Nevada:**
Yes, I am. The Silver State Health Insurance Exchange, known as Nevada Health Link, is working and helps Nevada families learn about, shop for, and obtain low-cost health insurance. An exchange is really a marketplace, and what I strongly suggest is you ask Insurance Commissioner Kipper to come speak to the Committee to confirm what the difference is between a state-based exchange and a federal-based exchange. I think you will find he will confirm all the things Mr. Gilbert is saying.

Nevada Health Link had a very bumpy first year, plagued by problems generated by a faulty website and an unresponsive call center designed and run by Xerox—that was the problem. I attended a majority of the Nevada Health Link Board meetings that first year and saw the frustration experienced by the Board, staff, and most importantly, Nevadans looking for health insurance. That changed dramatically when Nevada moved to what is known as a supported state-based exchange. We are now using the federal website, or platform, which is working very well and provides an efficient shopping experience for consumers.

I attended the Board meetings when Mr. Gilbert was interviewed for the job. It was a very open, transparent process. There were several candidates who

were interviewed. I watched those interviewed and saw when he started. Things have changed dramatically.

Remaining a state-based exchange, or a supported state-based exchange, allows Nevada to stay in control. We have heard some of what that does. We determine through the Department of Insurance, the Directors of the Board of Silver State Health Insurance Exchange, and some advisory committees what the insurance policies will cover—what the coverage is going to be, what the rates will be, and what our community assistance is going to be. We get to help choose who the navigators, assistants, and brokers are, and where they go. They attend community health fairs and settings. You have seen the commercials, and they help people buy insurance. Buying insurance is complicated.

We now use the federal website, which avoids the costs involved with having a private contractor like Xerox, and no longer have to rely on a vendor to fix, or in Xerox's case, not fix, the problems. What we have now is the best combination and it includes input from Nevadans on what insurance is sold through the exchange, what it looks like, and what it costs. Nevadans make up the Board, and Nevadans are included on the advisory boards that consider consumer issues, business issues, and more. Starting this year, Nevada Health Link must be self-supporting and will require no state funding. We keep control with no cost to the state. There are no General Fund costs, and as you heard, Nevada Health Link has set the premiums of their per month, per member cost to be lower than those with <healthcare.gov>. Our people are getting a better break from it.

We have heard the different numbers. The last I heard was 73,000. Mr. Gilbert said 72,000. Earlier we heard 60,000, so a lot of Nevadans signed up for insurance this past year through Nevada Health Link showing the success of the current system—a supported state-based exchange. That is what we are.

The uncertainty of the Supreme Court case is currently under debate. It could, potentially, take away the subsidies that a large majority of those 73,000 Nevadans receive. This would make their insurance unaffordable, forcing them once again to be uninsured. Nevada's uninsured percentage has gone from about 24 percent to about 11 percent—a remarkable change. Nevada was one of the top states for the uninsured. That rate has dropped dramatically. I have heard that over 75 percent, Mr. Gilbert said 89 percent, of those who buy insurance from Nevada Health Link receive some assistance or subsidy to help pay the cost. It reduces their cost by 67 percent. Imagine if tomorrow you were told your health insurance was going up 67 percent. How would you feel about that? I think most of the people who are listening to

me or who are sitting in that room have a little higher income than the people who receive the subsidies. The people who receive the subsidies are pretty much the working poor, and if they did not get those subsidies, they would not be able to have insurance, and they would lose that insurance.

Eliminating the Silver State Health Insurance Exchange will take control away from Nevadans and could force thousands of our citizens to no longer be able to afford their precious health insurance. This is the wrong way to go.

To answer Assemblyman Hansen's question about the subsidies that go down over time, those are not the individual subsidies that pay for insurance. The subsidies that he is talking about are not subsidies. They are the Federal Medical Assistance Percentage (FMAP). It is Medicaid expansion money. Right now, the federal government is paying 100 percent of the insurance for the Medicaid expansion individuals. That is the money that goes down over time, but the subsidies to individuals buying insurance through the health exchange are not set to go down. I wanted to clear that up.

On behalf of the 314,000 AARP members across the state, we urge the Committee to not pass A.B. 368, and keep Nevadans in control of our health insurance marketplace.

**Assemblyman Hansen:**
You said approximately 67 percent of the cost is currently subsidized. I like the Nevada control, but the federal government is slowly going to withdraw its portion of that subsidy, which means the State of Nevada will have to start picking up a higher and higher percentage for the subsidy. Do you have any idea what those numbers may be? I have heard that by 2017, 2019, the General Fund will have to kick in somewhere between $100 million and $300 million per year to offset the federal subsidies that will be withdrawn.

**Chairman Kirner:**
Are you talking about Medicaid?

**Barry Gold:**
The subsidy you are talking about is the federal Medicaid money, or FMAP, the federal matching program for the Medicaid expansion. The new people who came on through Medicaid expansion are currently paid at 100 percent of all their costs. That goes down over time, and that is the $300 million to $500 million costs you are talking about. As to the individual subsidies, if you or I would go on through Nevada Health Link, buy insurance, and get that subsidy, possibly up to 67 percent, and some people are getting 90 percent of their coverage paid for, that individual subsidy does not go down over time.

It is only the Medicaid expansion group of people where that subsidy goes down.

**Chairman Kirner:**
That Medicaid subsidy, which is not part of this bill, actually begins going down in January 2017, so it is part of this biennium's budget for six months.

**Assemblyman Hansen:**
I am confused to some extent. Someone will have to enlighten me a little bit. You mentioned the working poor and that they could not afford insurance otherwise. Are we not in a constant quest to try and make a livable wage something that is paid in Nevada, and are not these things actually subsidizing big casinos, for example, in allowing them to underpay their workers, who otherwise would have to have higher wages to be able to afford insurance? In effect, are we not using the taxpayers to offset what should be paid on a legitimate wage scale?

**Barry Gold:**
That is a different question. That is an economic development question and a wage question. Nevada has historically had a very low rate of people who are insured. That is related to a lot of things, but the biggest problem with that is the more people who are uninsured, the more it raises premiums for everyone else because those people do get medical care. They end up going to the emergency room, and then who pays for that? You and I and all other Nevadans pay for that. Being able to provide insurance to these people who could not buy insurance previously, and subsidizing the insurance in some manner, allows them to get the insurance they so desperately need. The fact of what the minimum wage is and what different industries in Nevada pay is a different issue that I know the Legislature is looking at this year.

[A letter of opposition to A.B. 368, dated April 3, 2015, was submitted by Elisa Cafferata, President and CEO, Nevada Advocates for Planned Parenthood Affiliates, Inc. (Exhibit I).]

**Chairman Kirner:**
Let us draw ourselves back to the merits of the bill itself. Seeing no further questions for Mr. Gold, are there any others who wish to testify in opposition to this bill? [There was no one.] With that, I will move to those who wish to testify neutral on A.B. 368. Seeing no one, I will invite the bill sponsor to the table for closing comments.

**Assemblyman Jones:**
On the access to the federal versus the state exchange, we just looked online and the U.S. Department of Health and Human Services says it will be adding 57 new carriers, a 30 percent increase if you go with the federal program, where at the state exchange level there will be about a 10 percent new carrier increase over the next two years. If you go with the federal program, you will have more access.

In conclusion, the only people who testified in opposition have vested interests. They have their own jobs to maintain. I want you to look back at what was stated. What is stated is that you pay less to a governmental agency but you receive more service. Just as it was stated, you can keep your doctor and your prices will go down. Government agencies are notorious. Government does not provide more services for less money. It is a practical impossibility. I ask you to think about that. Over and over the assertion is, you will pay less to a state government exchange, which is another level of bureaucracy, and you will get more service for less money. It never adds up.

**Chairman Kirner:**
With that, I will close the hearing on A.B. 368, and I will ask the bill sponsor for Assembly Bill 356 to introduce the bill.

**Assembly Bill 356: Revises provisions governing labor organizations. (BDR 53-844)**

**Assemblywoman Michele Fiore, Assembly District No. 4:**
I am here to introduce Assembly Bill 356. The genesis of this bill is the protection of a person's First Amendment right to protest and for a business to lawfully conduct business. This bill does not, I repeat, does not stop anyone from protesting or picketing a business in any way. It does not limit a person's First Amendment rights. It does not stop any organization from legally posting, protesting, or picketing at any business or any location. It does allow a business to legally protect itself from illegal acts by demonstrators or picketers.

Section 2 of this bill specifically disallows a person from damaging, injuring, harming, threatening, or maliciously disrupting the lawful conduct of a business.

Section 3 of my proposed amendment (Exhibit J) specifically disallows a person from destroying, marking, or damaging the property or merchandise of a lawful business.

Section 4 of the proposed amendment specifically states that the intent of the bill is not to limit the lawful exercise of a person's First Amendment rights.

Section 4.5 of the proposed amendment allows a business to sue in court for damages done by an unlawful act, as outlined in sections 2, 3, and 9.3. It also presumes $5,000 in damages, unless a business can prove damages in excess of that amount. These damages may only be assessed if the protester violated a specific section of this bill.

Sections 5 to 9 of the bill have been deleted by my amendment (Exhibit J).

Section 9.3 of the bill further defines what is unlawful during a demonstration or picketing of a business. It specifically prohibits disrupting traffic or using the public right-of-way to interfere with a business. It would not allow threatening language to be used against customers who are entering a business. It would not allow the demonstrators to abuse customers who are entering a business that is being demonstrated against.

Section 9.7 of the bill repeals *Nevada Revised Statutes* Chapter 614.160. This statute limits the picketing by labor organizations, and we believe it is unconstitutional. Instead of a statute on limiting labor picketing, this bill treats that picketing the same as picketing by any person or organization. We felt it was unconstitutional to specifically target labor picketing, and this bill fixes that in our statutes.

This bill is designed to protect both the First Amendment rights of protesters and the rights of the businesses. When I asked for this bill, my thoughts were on the despicable tactics taken by the members of the Westboro Baptist Church, the actions taken against businesses by both pro-life and pro-choice protesters, some of the more ridiculous stunts pulled by members of People for the Ethical Treatment of Animals (PETA), and the actions some out-of-control labor protesters have exhibited. This bill is not anti-anything. It is what I hope is a commonsense way to protect all sides in a protest.

Nothing in this bill will stop demonstrations, nor is it intended to. It is only intended to require a sense of civility of demonstrations and to allow a business to conduct its lawful business without having to worry that customers are being bullied at its front door.

Nothing in this bill limits the ability of anyone to protest. There are no restrictions on free speech. There are no new restrictions at all. Anyone who says this will limit their ability to protest must ultimately want to intimidate,

bully, or threaten a customer of a business, or they must want to destroy that business's property.

I would now like to introduce Gary Gordon, who can speak on the legal aspects of this bill and what it will and will not allow.

**Chairman Kirner:**
The wording we have is "Revises provisions governing labor organizations." As I listen to you regarding Chapter 614 of NRS, this sounds like it takes it out of the labor issue and talks about general picketing, which is quite a different thing.

**Assemblywoman Fiore:**
It is very different, and it encompasses all of us. If we want to behave badly, or bully, we cannot.

**Chairman Kirner:**
Mr. Mundy, I do not know if there is a possibility that the descriptions can be updated, because it is not really a labor or union bill. It is really a general bill on picketing. Is that something that can be changed? He indicates that can be done.

**Assemblyman Nelson:**
With all due respect, I am not sure I agree with you. Section 2 says "a labor organization or any member or agent thereof shall not," with similar language in section 3.

**Chairman Kirner:**
I think those have been revised. Mr. Mundy can address that.

**Matt Mundy, Committee Counsel:**
A great amount of time was spent with Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, talking about the issues in this bill. Admittedly, this is a very complicated area of law because we were talking in the context of labor organizations, we were talking about federal preemption under the National Labor Relations Act (NLRA). We are talking about First Amendment rights, and the distinctions made in NRS 614.160, which seems to draw a distinction between labor dispute picketing and picketing in general. At the request of the proponent, we chose to make it more general in order to resolve some constitutional issues we perceive to exist in statute. To facilitate the request appropriately is why we decided to move it out of NRS Chapter 614. It could still apply to labor organizations but will apply more generally than that.

**Assemblywoman Fiore:**
I have Gary Gordon with me. I would like him to speak on the legal aspects of the bill. Mr. Gordon, will you please introduce yourself and give the Committee your legal background and what makes you an expert in this type of legislation.

**Gary P. Gordon, representing U.S. Chamber of Commerce:**
I am a lawyer from Michigan. I work for the law firm of Dykema Gossett. We are about 450 lawyers scattered around five states and Washington, D.C. As background, for 30 years I was an assistant attorney general for the state of Michigan, and the last couple of years I was the state's chief deputy.

So I take a little bit different view of statutes. When clients ask me to review statutes, I look at how is a poor man or woman going to be dealt with in defending this before one of our courts and before a federal court? Knowing that, the U.S. Chamber of Commerce asked me to come here and talk about some of the legal issues that usually arise when we deal with labor issues.

The two issues that Mr. Mundy already touched on that arise are usually versed in words of preemption and the First Amendment. The National Labor Relations Act is an all-encompassing act and has been variously interpreted by the federal courts as preempting many state labor regulations. But the court, as we all know, which keeps people like me in business, is flexible. It changes. The National Labor Relations Board's position on various issues changes depending on who is on the board. We have looked at this statute in quite a bit of detail and the amendments especially, and we think those take this bill out of the preemption arena. I will address that in a little more detail in a minute.

The second issue is the First Amendment, and whenever you regulate speech and, after all, picketing is a form of speech, people in opposition say, "Ah, ha! It is a First Amendment problem and you are limiting my speech. You cannot limit my speech." That is not what the law says. You can limit people's speech. The state can limit speech when it is exercising the police power over the health, safety, and welfare of its citizens. That is what we think this does.

Picketing, sometimes, is also looked at. In a First Amendment review, there was a case in 1940 called *Thornhill v. Alabama*, 310 U.S. 88 (1940), where the court specifically said labor union picketing is a form of speech. It is protected by the First Amendment and by the National Labor Relations Act. The court backed off a little from that and seemed to analyze restrictions on picketing in terms of property rights as much as they do the First Amendment. I will touch on that briefly.

The preemption is based on two Supreme Court cases: *San Diego Building Trades Council v. Garmon*, 353 U.S. 26 (1957), and *Lodge 76, International Association of Machinists and Aerospace Workers, et al. v. Wisconsin Employment Relations Commission, et al.*, 427 U.S. 132 (1976). In *Garmon*, the court found that even though the National Labor Relations Act does not say anything about this act preempting state law, that should be interpreted as such, and it should be interpreted wherever the National Labor Relations Act specifically regulates an area or where it impliedly regulates an area.

The machinists took the converse position and said, well, where Congress has not excluded, then maybe Congress intended for the states not to be able to regulate. Then, after a series of cases over the years, the Supreme Court has given us great guidance on what a state can do. I would like to read this sentence to you. The exception to preemption, "because it was conduct that touched interests so deeply rooted in local feeling that preemption could not be inferred in the absence of clear congressional distinction." That settles it. The courts have taken that, and that sentence has been quoted time after time in support of state regulation of certain picketing activities. If you look at the National Labor Relations Act, and you say this regulates labor laws, this regulates unions. This regulates the interaction between an employer and its employees, or those who seek to organize its employees. Therefore, under the *Garmon* case, any state regulation would be preempted, but that is not what the law is. The law has developed over the years in a series of cases so that this so-called peripheral concern of the state has been expanded to include that the state can prohibit "obstructive picketing or threatening conduct that may be directly regulated by the state."

Another case said the dominant interest of the state in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. That was a later case, *UAW v. Wisconsin Employment Relations Board*, 315 U.S. 266 (1956). There have been a series of cases, and the cases specifically recognize that state regulation of picketing activities can occur, and it can occur from a property rights viewpoint. When a statute like this is passed and states that nobody, on the companion statute, can picket on private property without the consent of the owner, or when you indicate that you cannot obstruct the use of that property by the owner, by people, by business invitees, that is a property right. You are creating that property right, and the Supreme Court has recognized that that is a fair way to analyze state regulation. When they do that, that can give rise to damages, causes for injunction, and so on, to prohibit that activity.

We all know the phrase that you cannot shout "fire" in a crowded theater. Not all speech is protected. The statute you previously had addressed,

specifically speech engaged in by a labor union, did not address anybody else. I agree with Mr. Mundy that that created some concerns on constitutionality. A statute addressing speech, when it is directed at the conduct, not at the speaker or not at the content of the speech, will generally pass constitutional muster. If you are saying that, for example, a labor union cannot engage in lawful picketing, two things are being addressed: you are addressing speech, which is lawful picketing, and if you prevent a certain kind of speech without an important state interest or a compelling state interest, it leads to what is called a facial challenge. You will lose a facial challenge in the United States District Court right out of the box, unless you have a compelling interest.

Instead of addressing the content of the speech, the states have, as you have here, addressed the conduct of the speech: how the speech is presented. You have not addressed who may engage in the speech. Your statute is general, it is nondiscriminatory, and it is neutral in its wording. In my opinion, this statute, as it is, would pass constitutional muster under a First Amendment analysis.

The last aspect of this statute is the ability of the harmed party to seek damages. The courts have upheld the ability of individuals, for example, to sue a union for illegal picketing, illegal activity, intimidation, and coercion. Even the United States Court of Appeals for the Ninth Circuit, the federal court of appeals within which Nevada lies, has upheld damages in certain circumstances such as in the case *Rainbow Tours, Inc. v. Hawaii Joint Council of Teamsters & IBT*, 704 F.2d 1443 (1983).

I compliment all of you on your stamina. You have had a long day.

**Chairman Kirner:**
Are there questions for Mr. Gordon from our Committee members?

**Assemblywoman Seaman:**
There was an incident about 18 months ago at the Cosmopolitan Hotel on the Strip in Las Vegas where a lot of tourists were threatened. Does this bill have enough teeth in it where that could have been stopped before there was as much damage as we had?

**Assemblywoman Fiore:**
Without a doubt.

**Assemblyman Ellison:**
My question is about harassment. It could be by organizations pulling in front of your trucks and almost causing accidents, or other types of continuous harassment. Can that be skewed as something like this?

**Gary Gordon:**
That kind of conduct would be prohibited by your general criminal laws, as it is, and if it creates damages to someone, through a tort lawsuit or something like that. I suppose intimidating and coercive conduct certainly can be enjoined. This speaks to the action usually at a business site, and as we said, it has a multifold legal analysis. One is property rights. One is regulating the conduct of the speaker. The other is to make sure it is not contrary to the National Labor Relations Act preemption theories. If you are speaking of a businessperson perhaps, and the conduct of his business being harassed, this might be able to be tweaked somehow to cover that. I do not think it currently does to any great extent. But I think that someone subject to that probably still has a viable cause of action to seek an injunction to prevent harm, physical harm, and so on. That certainly meets standards of irreparable harm that the courts would recognize.

**Assemblyman Nelson:**
You mentioned the rights of property owners to protect their property. The general rule used to be that it would particularly pertain to picketing on someone's private property. A legal issue that has come up on the Strip in Las Vegas, is that some of the sidewalks are arguably private property because the resorts did not deed them to the city, or the county, depending on where the sidewalk is located. I think there is an exception, if there is a public thoroughfare, even if it is privately owned, correct?

**Gary Gordon:**
It gets gray. Part of the analysis in some of the cases is over to what degree does the person have rights to that property. For example, there is a case, I believe out of California, that talked about a grocery store. The grocery store had easement rights over a sidewalk, and the easement rights were basically to allow deliveries and so on, and it was not the main entrance of the store. There was picketing in back, and the store sought to enjoin that and to halt that activity. The court said no, you do not really exercise that strong of a property right. Other people can use that. By analogy, if you have something that is a public thoroughfare that the public is invited to utilize, and that the public commonly traverses back and forth, even though it may be deeded to a business entity, that is problematic and would be a difficult case to make.

There is a lot of case law, and it continues to grow. If I could always give you a definitive answer, I would be making more money than I am now. I think that is a close question that you have posed, and this may give the business owner an argument. The argument would be more related to blocking ingress and egress and harassing customers, and it would be based more on a conduct-type prohibition that is contained in this rather than a property rights analysis. If somebody is using a public thoroughfare and he or she blocks access to your business, that would still provide a cause of action for damages and/or injunctive relief.

**Chairman Kirner:**
Mr. Mundy, you have a direct Nevada case. Please take us through that.

**Matt Mundy:**
The following occurred at The Venetian Resort and Hotel Casino in Las Vegas in 2001. This is a Ninth Circuit case. A gaming establishment could not prohibit members of a labor organization from protesting on private property that was a public forum, such as a sidewalk. Because the public has an implied public easement over the sidewalk, it is a public forum, a traditional public space in the traditional arena for free speech. Under circumstances such as that, individuals would be able to protest. That does not mean that the protesters would be able to threaten someone with imminent, physical harm. The statute that is being proposed does not restrict persons from protesting on the sidewalks. It is saying that you cannot threaten people with imminent bodily harm, and so forth. It is regulating the nature and the conduct of the protesting, not necessarily restricting them from protesting on the sidewalk if it is determined to be a public place that is a traditional public forum in the context of free speech. That was affirmed in the Ninth Circuit in 2001.

**Assemblyman Nelson:**
That is very helpful because as Assemblywoman Seaman said, we have had a lot of problems through the years on the Strip, with people blocking entrances and exits and getting out of hand. I think anything we can do to strengthen property rights is good.

**Assemblywoman Neal:**
I was reading the *Garmon* case and the NLRA regarding recognitional picketing and informational picketing. There is a distinction. Informational picketing is exempt. When I was looking at the amendment (Exhibit J), section 9.3, subsection 1, paragraph (e), it says it would be unlawful to use language or words threatening to do immediate physical harm to the person or property or designed to incite fear. I understand where it looks like it may be going,

because it is a certain type of speech like if I yell "fire," which is likely to create harm. How do you delineate the use of language or words that appear to be threatening that may be comingled with informational content? The sign says we have the right to contract. Let us say there is an expletive in the middle of the sign. Is that a sign or language that is designed or words that are threatening?

**Gary Gordon:**
Certainly informational picketing and other picketing allowed by the National Labor Relations Act, so long as the picketing is conducted in a nonthreatening, nonintimidating manner that does not violate the provisions of this act, would not be subject to regulation. You bring up an important point that sometimes where there is no alternative for a union, the union will allow employees to picket on private property. It is a very, very limited circumstance, and it is rare when there is no alternative available for the individuals, for example, the sidewalk. If an informational picket can be done, or a strike picket, but the people are not engaged in the prohibited activity, certainly it would not be regulated by this and the kind of activity you are talking about would probably be preempted by the National Labor Relations Act. Where is the bright point? When does conduct become intimidating and threatening? When does language become intimidating and threatening? There is no bright line that you can draw on that.

**Assemblywoman Neal:**
That is exactly my point. I know the Legal Division and everybody worked on this. Can this put us in a lawsuit, in terms of defining what is intimidation? What was the language that created an environment where they say I have the legal right? One person is saying property rights. Speech is being pitted against property rights, yet there is already an established statutory scheme that says X, Y, and Z.

**Gary Gordon:**
I think that the statute is designed to prohibit offensive and threatening conduct and not what you would view as information being provided. For instance, "We are on strike. If you go in there I am going to kill you, or I am going to spike your tires," or something like that. If it says something nasty about the business owner, I do not think that rises to the level of something that would be prohibited by this statute. If it threatens someone or if it threatened the business or if it threatened people entering and leaving that business, then I think it would. You are correct in that there is no bright line you can draw.

**Matt Mundy:**
To give an analogy of how I think that it would potentially be applied is similar to tortious assault, where the standard is whether a reasonable person would believe that he or she is under imminent threat of bodily harm. I think that would probably be similar to the standard applied here.

I would also add that by and large, section 9.3 that is in green language (Exhibit J) is what is in existing statute minus some things and with some additional language that we think remedies some constitutional problems, such as the reference to inciting fear. In the existing statute, it says language designed to incite fear in any person would be unlawful. There is case law that says that inciting fear is unconstitutionally ambiguous language because we do not know what it means. We do not know what it is inciting fear of. The case I read was the fear of going to a business that was using a product that had a product defect. It was dangerous to the person using the product. Was that inciting fear of the use of the product? What is more clearly constitutional is inciting fear of imminent bodily harm. I would offer that analogy in the cases of tortious assault where you might find a reasonable person standard that would have some applicability here.

**Assemblywoman Seaman:**
The way I read this bill, it is very clear that there can be no interference of business, or what we experienced with the Cosmopolitan about a year and a half ago where picketers were spitting on tourists. I think that is very threatening. I am just clarifying that this is what your bill is aimed to prevent.

**Assemblywoman Fiore:**
Yes. The behavior we personally experienced was literally assault. Saliva hitting another person, that is assault. It could be a deadly weapon. Who knows what kind of germs someone has? When you have picketers saying, "I am going to hit you. I am going to beat you up," that is a direct threat. When you have picketers physically punching our tourists, that is a problem.

**Assemblyman O'Neill:**
Mr. Mundy, did I understand you to say that section 9.3 reads, "Chapter 207 of NRS is hereby amended by adding...a new section? I thought you said most of these were already in NRS Chapter 207.

**Matt Mundy:**
Looking at the text in the repealed section, NRS 614.160, that is in the labor organizations title of NRS. Going to what we were talking about earlier, that particular statute was restricted in its application to labor disputes and

that brings about some issue as to its constitutionality. When I talked to Legislative Counsel about how we remedy a potential impediment, we decided it needed to be of general applicability. We copied relevant parts of this statute into the new section 9.3 and moved it into NRS Chapter 207 so that it is of general applicability and does not just restrict the speech of persons engaged in labor disputes. It is in large part a recodification of existing law, but a few issues have been resolved in doing so.

**Assemblywoman Carlton:**
I am concerned that this is being expanded even broader and would include religious organizations. I think free speech and religion are very important, and to restrict a religious organization from expressing themselves would be a problem.

I am really confused by the language in section 2, and I am trying to figure out how you would define "injure, harm, threaten," and then as you go onto the next page, lines 4 and 5, that full paragraph where it gets into any agreements concerning neutrality during a labor dispute or collective bargaining. With this being converted into a different section and applying to a larger group, would that section stay the same, or would it have to be expanded to include restricting religious freedoms and protesting?

**Matt Mundy:**
May I ask if you are looking at the original bill and what line and page again?

**Assemblywoman Carlton:**
The original bill, page 2, starting on line 3, "employee or representative into agreeing to or otherwise complying with the demand of the labor organization, including, without limitation, any agreement concerning neutrality during the labor dispute or collective bargaining." I am trying to understand what that means because I have been on many picket lines, and there are times where one union will have a picket line in front of a place, but the other union, because of its current contract, honors the contract with the company and keeps delivering. How would this apply in those instances?

The second part of the question is because we are expanding this to religious activities also, would this stay in this particular section and then would we add a separate section? How would this be addressed?

**Matt Mundy:**
With the amendment that is being proposed (Exhibit J), page 2, line 3 of the bill document you are looking at, after the word "business," we are going to put a period there and strike everything that is related to demands relating to labor

organizations and collective bargaining because of the very existence of NLRA and potential conflicts with federal law. That will all be coming out.

Regarding your second question concerning religious organizations, the way that section 9.3 is being added to the proposed amendment, it would apply broadly to any person picketing. To the extent we are deleting the language that is specific to employment disputes, it would be unlawful to engage in these activities while picketing. If he or she interferes with ingress or egress to public or private property or uses threatening language, that would apply universally to any person.

**Assemblywoman Carlton:**
Also, with the definitions, how would we define "damage, injure, harm, threaten"? Those are really in the eye of the beholder, so I am not sure how that could be enforced.

**Matt Mundy:**
I think those terms are works of art and, at this point, a court would have to determine what those mean and whether a person has gone that far to violate the statute.

**Assemblywoman Carlton:**
I was on one of the longest picket lines in history, and it is not the same every day. There are days when there are 15 or 20 people, and there are days when there are 7,000 to 8,000 people on the picket line. Is it a day-by-day event? How would we define the picket line itself because I do not see a definition of that in this bill.

**Matt Mundy:**
I think there are no restrictions on the size of the group or of the picket line. I do not think there are any restrictions on the number of people who could be engaged in the activity. I think it goes to what some persons or all persons are doing, to the extent the individuals might be doing something violent or threatening a person's life or harming the person. I think that is what triggers criminal prosecution or civil liability under the statute, not necessarily that it is 2 people picketing or 1,000 people. As long as he or she is in a proper place and picketing peacefully, I do not think that would be a violation of the statute.

**Assemblywoman Carlton:**
I think the definition of peacefully is going to be the issue, and I still see it as an infringement on First Amendment rights.

**Chairman Kirner:**
Seeing no other questions, we will go to those who are in support of A.B. 356. Seeing no one, are there those who are opposed to the bill?

**Yvanna Cancela, Political Director, Culinary Workers Union Local 226:**
I represent the 60,000 members of the Culinary Workers Union Local 226. I want to start by talking about labor unions. Much of what is being discussed in this bill relates to things the Culinary Union has done, and I will address those. I would also like to address the way the bill has been morphed, and it is in no way a "Kumbaya" bill. The bill expressly limits the ability for labor unions and other organizations to picket and to express their First Amendment rights.

First, I want to go through the different things that the bill puts into statute. It says, cannot picket on private property, block entrances or exits, assault someone, operate a vehicle to block access, use threatening language, lay nails on the street, and has different variances of blocking access. All of these are things which organizations like labor unions and others are currently barred from doing and for which they would receive some sort of prosecution. It seems to me that codifying these in statute really addresses a problem that does not currently exist. I challenge the sponsors to find examples of times when this has been done and there has not been action taken on the groups that committed those crimes.

The next problem, and where I think the state could find itself in litigation, is allowing for municipalities to restrict where picketing takes place. I think Assemblywoman Carlton's point about how many individuals picket at one time is where we run into issues of First Amendment questions. If a city decides that a picket can only take place on a sidewalk and not spill over into a public street, they are thereby limiting the ability for that group to have as many people as possible express their First Amendment rights. I think that could be an area of challenge that, at the very least, merits clarification.

As you look at section 9.3, subsection 5, where the bill seems to want to preempt any sort of federal preemption through the NLRA, this kind of language has been found by the Supreme Court to create a chilling effect. When you have this broad, unsubstantiated claim, the Ninth Circuit Court of Appeals found in *Rubin v. City of Santa Monica*, 823 F.Supp. 709 (1993), that this kind of language that does not allow people to know what is in fact allowed, what is prohibited, creates a chilling effect, thus violating their First Amendment rights.

Moreover, I think that it is worth looking at what the NLRA and also the Pacific Railway Act were intended to do. These acts expressly allow for labor

unions to take on actions that may interrupt a business in the pursuit of a collective bargaining agreement. I will read some language from decisions that have upheld that as a way to challenge the way this bill interacts with labor unions. Specifically, in *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), the court said the use of economic pressure by the parties to a labor dispute is part and parcel of the collective bargaining process.

Moreover, looking at the Railway Labor Act, which expressly dictates how the transportation and airline employees can bargain with their employer, the law very clearly says that the use of "economic weapons" is not only legal but is also protected by the Supremacy Clause in the *U.S. Constitution*, and states cannot dictate whether or not they are used. That was upheld in *Brotherhood of Railroad Trainmen, et al. v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969).

I would like to conclude with two additional points. First, I need to address the issue of informational picketing versus threatening picketing because many of the examples that have been mentioned relate to the picketing that the Culinary Union has done; namely, outside the Cosmopolitan for about one and a half years. All of that was, by definition, informational picketing. If the intent of this bill is to eliminate the ability for organizations like the Culinary Union to picket on the Las Vegas Strip, federal law already allows for us to do the kind of picketing that union members have been doing. If the intent of this bill is to make it more difficult for unions and other organizations to engage in those kinds of actions, then I think we run into some of the First Amendment problems that I have outlined previously.

The idea that what happened outside the Cosmopolitan, or what happened outside of Station Casinos, or what has been happening on the Las Vegas Strip and downtown Las Vegas for decades is in any way something that is not legally protected is problematic. Also, we should speak to what that picketing has gotten us: over 60,000 people now have good health care, good paying jobs, a pension, their families have good health care, and workers have fought for that through legal and, frankly, very high-road means throughout the last couple of decades. [Submitted statement (Exhibit K regarding the proposed amendment).]

**Assemblyman Ellison:**
If you keep calling a business or a group keeps calling a business and threatens them and calls their telephones all day long, should that business have the right to call you personally at home, all night long and threaten you? Is that the free rights?

**Yvanna Cancela:**
Are you asking if that is something we do? Are you asking if we personally do these things?

**Assemblyman Ellison:**
I know you do those things because I have been getting calls for the last two weeks. Not only does the Culinary Union call my business, they call my home, all hours of the day and night. I should be able to get the number off caller ID and start calling them at two and three o'clock in the morning and threatening them the same as everyone else is threatened. Is that not fair?

**Yvanna Cancela:**
I am not sure that anyone has ever threatened you. Calling to provide you information is different than threatening.

**Assemblyman Ellison:**
Is it all right for me to call you back and do the same thing? Yes or no.

**Yvanna Cancela:**
It is your right to do whatever is at your discretion.

**Assemblyman Ellison:**
If I start calling you at home in the middle of the night, two and three o'clock in the morning, you are going to be all right with that?

**Yvanna Cancela:**
I would not restrain you from doing anything that is within your rights.

**Chairman Kirner:**
Are there any other questions for this witness? Seeing no further questions, are there any others who are in opposition to this bill? [There was no one.] Are there those who are neutral on this bill? Seeing no one who is neutral, would the bill sponsor like to make closing comments?

**Gary Gordon:**
In rebuttal to a couple of points, Ms. Cancela said that you currently prohibit a lot of this conduct and that it is on the books now. As your legal counsel has pointed out, as is currently on the books, there are some constitutional issues. Also, as currently on the books, it makes the conduct a misdemeanor and does not go further than that. If you are a business owner, what good is it to you to have misdemeanor charges brought against people if the conduct can continue—if there is no way to prohibit that? What this bill does is establish a basis and a means to obtain injunctive relief. It leaves the misdemeanor stuff

on the books. It also creates the possibility of obtaining an injunction and using the power of the court to halt the behavior. I do not think the arrest of individuals reached that.

**Assemblywoman Fiore:**
This is an important and simple piece of legislation. It is similar to the bullying bill but for businesses. Let us pass this bill. It is needed.

**Chairman Kirner:**
If your counsel, Mr. Gordon, would like to submit written comments, he is certainly welcome to do that. We will close the hearing on A.B. 356 and open the hearing for public comment. Seeing no public comment, this meeting is adjourned [at 7:41 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: April 6, 2015** **Time of Meeting: 2:12 p.m.**

| Bill | Exhibit | Witness / Agency | Description |
|---|---|---|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| A.B. 6 | C | Kelly Richard, Committee Policy Analyst | Work session document |
| A.B. 228 | D | Kelly Richard, Committee Policy Analyst | Work session document |
| A.B. 275 | E | Kelly Richard, Committee Policy Analyst | Work session document |
| A.B. 275 | F | Kelly Richard, Committee Policy Analyst | Conceptual amendment |
| A.B. 368 | G | Assemblyman Brent A. Jones | PowerPoint presentation |
| A.B. 368 | H | Sharron Angle, Private Citizen, Reno, Nevada | Why A.B. 368? |
| A.B. 368 | I | Elisa Cafferata, Nevada Advocates for Planned Parenthood Affiliates, Inc. | Letter of opposition |
| A.B. 356 | J | Assemblywoman Michele Fiore, | Proposed amendment |
| A.B. 356 | K | Yvanna Cancela, Culinary Workers Union Local 226 | Statement on proposed amendment |