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

**Seventy-Ninth Session
May 12, 2017**

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 12:17 p.m. on Friday, May 12, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chair
Assemblywoman Maggie Carlton, Vice Chair
Assemblyman Paul Anderson
Assemblyman Nelson Araujo
Assemblyman Chris Brooks
Assemblyman Skip Daly
Assemblyman Jason Frierson
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblywoman Dina Neal
Assemblyman James Ohrenschall
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senate District No. 11

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Wil Keane, Committee Counsel
Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Angela Dykema, Director, Office of Energy, Office of the Governor
Joe Valenti, Director of Consumer Finance, Center for American Progress, Washington, D.C.
Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO
Marlene Lockard, representing Retired Public Employees of Nevada; Nevada Women's Lobby; and Service Employees International Union Local 1107
Priscilla Maloney, representing Local 4041, Retiree Chapter, American Federation of State, County and Municipal Employees, AFL-CIO
Natha C. Anderson, President, Washoe Education Association
Bryan Murray, Chief of Enforcement, Securities Division, Office of the Secretary of State

Chair Bustamante Adams:
We will start with our work session.

Assembly Bill 468: Revises provisions relating to mortgage brokers and mortgage bankers. (BDR 54-1028)

Kelly Richard, Committee Policy Analyst:
Assembly Bill 468 revises provisions relating to mortgage brokers and mortgage bankers (Exhibit C). It is sponsored by Assemblywoman Jauregui and it was heard in this Committee on April 12, 2017 and May 10, 2017. The bill combines the provisions related to the regulation of mortgage brokers and bankers in *Nevada Revised Statutes* (NRS) into a single chapter; both professions will be known as "mortgage loan originators."

When this bill was heard on May 10, 2017, Jon Gedde, on behalf of the Nevada Mortgage Lenders Association, submitted the attached amendment. The amendment makes various technical changes throughout the bill. Some of these changes include, but are not limited to:

- Extending the bill's effective date;
- Changing references to "mortgage loan originator" to "mortgage company," and "mortgage agent" to "mortgage loan originator;"
- Providing the Commissioner of Mortgage Lending with discretion in:

  - Investigating a mortgage company, mortgage loan originator, or other person under certain circumstances;
  - Taking possession of the property held by a mortgage company;
  - Taking certain disciplinary actions.

- Removing certain provisions relating to determinations of a person's demonstrated financial responsibility;
- Removing certain provisions relating to the availability of a mortgage loan originator's records for inspection by the Commissioner;
- Allows the Commissioner to prescribe by regulation the form of the required surety bond;
- Includes certain activities related to the solicitation or making of mortgage loans in the definition of a transaction of business, for purposes of complying with certain chapters of NRS.

Chair Bustamante Adams:
This bill was referred to the Assembly Committee on Ways and Means without recommendation, and then it was referred back to this Committee to hear the policy. Are there any questions? Seeing none, I will entertain a motion.

> ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 468.
>
> ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Bustamante Adams:
I will assign the floor statement to Assemblywoman Jauregui.

Assembly Bill 405: Establishes certain protections for and ensures the rights of a person who uses renewable energy in this State. (BDR 52-959)

Kelly Richard, Committee Policy Analyst:
Assembly Bill 405 establishes certain protections for and ensures the rights of a person who uses renewable energy in this state (Exhibit D). The bill is sponsored by Assemblyman Brooks. It was heard in the Subcommittee on Energy and in this Committee on April 5, 2017. The bill creates the contractual requirements for an agreement for the lease or purchase of a distributed generation system and a power purchase agreement. The measure establishes the minimum warranty requirements for an agreement concerning a distributed generation system. The bill makes it a deceptive trade practice if a person fails to comply with these provisions. It also provides immunity from legal action for a good faith action by solar installation companies in the installation, maintenance, and operation of a distributed generation system. Finally, the measure creates the Renewable Energy Bill of Rights that applies to each natural person who is a resident of Nevada.

There are two amendments attached to the work session document. The first amendment is a conceptual amendment that adds more primary, joint, and cosponsors to the bill. In addition to those listed on the next page, Assemblywoman Tolles has also indicated she would like to be added as a sponsor of the bill.

Following that, there is a mock-up amendment. The mock-up amendment makes several changes:

- Substitutes the term "Disclosure" for "written statement;"
- Modifies the definition of "power purchase agreement" and "solar installation company;"
- Revises the information and disclosures required to be provided on a lease or purchase agreement;
- Provides that violations related to the lease and purchase agreements constitute consumer fraud;
- Requires the agreements to be provided in Spanish, if requested;
- Modifies the provisions of the Renewable Energy Bill of Rights;
- Adds new Sections 26 through 32, which relate to net metering. These sections:
  - Require a utility to file a request with the Public Utilities Commission of Nevada (PUCN) to establish an optional time-variant rate schedule;

- o Require a utility to charge a net metering adjustment charge to each customer-generator who accepts the offer of a utility for net metering;

- o Require the Legislative Committee on Energy, in consultation with the PUCN, to make certain recommendations to the Legislature within certain months if certain criteria are met;

- o Preclude a utility from charging a customer-generator any fee or change that is different than that charged to other customers of the utility;

- o Require the PUCN and a utility to allow a customer-generator to continue net metering at the location at which the system is originally installed for the life of the system or for 20 years, whichever is longer;

- o Sets forth the procedures for determining the peak demand for electricity;

- o Repeals Section 704.7735 of Nevada Revised Statutes.

Chair Bustamante Adams:
Are there any questions from the Committee?

Assemblywoman Carlton:
What was the impetus behind the change in the disclosure?

Wil Keane, Committee Counsel:
The bill had originally referenced written statements in the substantive provisions in the consumer protection portion of the bill, and the request was to change that word to disclosure and then define the term "disclosure" to mean a written statement. I do not see a substantive difference. It is a wording difference.

Assemblywoman Carlton:
I am good with the consumer protection piece of the bill. I have concerns about the battery storage. I will not be able to support this bill today.

Assemblyman Hansen:
If this passes with the 5 percent rate at retail peak levels, what is the estimated dollar amount someone will have to pay? Poor people who buy power are not going to be buying these kinds of systems. One way or another, this will affect power bills as I understand it. I have not been able to get a firm number.

Wil Keane:
The 5 percent that you are referring to is on the mock-up. It is the amount of the discount off the price that is going to apply when this bill first goes into effect. There will be several layers of discount.

Assemblyman Hansen:
I was told the 5 percent off the 100 percent is determined based on the peak retail cost for NV Energy. The credit NV Energy will pay to the people who have the photovoltaic system is 95 percent of that number.

Wil Keane:
What we are talking about in section 28, subsection 4 is the reduction in the amount that someone with a net metering system will be credited for the power that they push back to the grid. If you are a net metering customer and you are pushing back one kilowatt hour of power back into the grid, you would normally get . . .

Assemblyman Hansen:
I understand in the past, that was how they sold the system. They sold the system and told the buyer they would get some credit. In the past, the credit was pretty substantial, and that is why people would believe the system would pay for itself. What is the 100 percent number that NV Energy has to start with to come up with the 95 percent number?

Wil Keane:
The 100 percent would be the unit of energy the net metering customer pushed out into the grid, the price the customer would have had to pay if he was using that unit of energy. That is the 100 percent.

Assemblyman Hansen:
So it is not a flat rate. Would it be based on the peak rate?

Wil Keane:
It depends on when the unit of energy is being pushed out into the grid. If you are pushing the unit of energy out at midnight, you would get the amount you would have had to pay for a unit of power at midnight. That is what your credit would be, less 5 percent. The 5 percent is a reduction in the amount of credit that you would otherwise get.

Assemblyman Hansen:
I will vote for the bill, but I have some questions. If it were truly market driven, we would not need this bill. There is some sort of subsidy, otherwise they cannot be cost competitive.

Assemblywoman Tolles:
For the group that was grandfathered in before it got a one-to-one ratio of credit, whatever kilowatt they pushed back to the grid, they were reimbursed 100 percent. What this does is make the reimbursement 95 percent. If there is any subsidy, it is that 5 percent going back to the grid.

Wil Keane:
Yes, I agree with your explanation.

Chair Bustamante Adams:
If this bill passes, the Office of Energy has added a fiscal note. I do not know if the fiscal note still applies if we move forward.

Angela Dykema, Director, Office of Energy, Office of the Governor:
We have a minor fiscal note attached for section 25, for the printing of the pamphlets in English and Spanish. With the amendment to remove that, that fiscal note would go away.

Chair Bustamante Adams:
Are there any other questions from the Committee? [There were none.] I also have a request from Assemblywoman Neal to be added as a sponsor. I will entertain a motion with the conceptual amendment and the mock-up amendment and to add Assemblywoman Neal as a cosponsor.

> ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 405.
>
> ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

Is there any discussion?

Assemblyman Paul Anderson:
I am supportive of the motion. I have two concerns. As we look at the percentages of penetration and the market share, based on the peak measurement, I know that different companies in the solar industry work off of different business plans. Those incentives could be both an incentive and a disincentive to be in the market. I want to continue to be able to digest that and understand how we get to those percentages and those numbers, meaning the 2 to 6 percent, and that 95 percent where we start versus where we end up a few tiers later. I agree with the tiered system, but I am not sure I can get to the numbers, as Assemblyman Hansen said. I am not sure I can put a number to those percentages and what that cost is spread out across ratepayers and power providers in the future.

My other concern is, as we look to a market that certainly seems to be heading toward an open market, how does the liability of paying that net metering rate play into the decision making, and who takes over the payment? I think we still have time to figure that out this session and give some direction to future legislative bodies as to what we hope is the intent. Certainly in an open market that liability has to move to the next power provider, which will not be the current power provider. If I am coming into this market as a new power provider, I would want some clarity as to what my liabilities are when I take on a client.

Those are the two parts of the puzzle that are left unanswered in my mind. I am supportive of moving this forward. There is a lot of discussion to be had.

[(Exhibit E), (Exhibit F) and (Exhibit G) were submitted, but not presented.]

Chair Bustamante Adams:
I will call for the vote.

> THE MOTION PASSED. (ASSEMBLYMEN CARLTON AND DALY VOTED NO.)

I will open the hearing on Senate Bill 383.

Senate Bill 383: Revises provisions governing financial planners. (BDR 54-1150)

Senator Aaron D. Ford, Senate District No. 11:
I am here to present Senate Bill 383, which revises provisions governing financial planners. My goal today is to ensure that Nevadans who are receiving investment advice that could affect their ability to save for a home, afford their college tuition, or enjoy a secure retirement are getting advice that is in their best interest. That is what a fiduciary leader requires. An article from *Money Magazine*, published in April 2016, states,

> As a reminder, "fiduciary" is a fancy way of saying that a financial professional must put your needs first and must pledge to disclose and manage any conflicts of interest that exist. For example, if the adviser recommends an insurance policy and offers to sell it to you, she must tell you if she receives any compensation for doing so. Investment professionals who are not fiduciaries are held to a lesser standard, called "suitability." That standard means that what they sell you has to be appropriate, though not necessarily in your best interest.

Contemplate that for a second. As you are planning for retirement, the advice you are receiving does not have to be in your best interest. This bill seeks to address that. Why is it important? By way of background, the U.S. Congress sought to address this issue of the proper standard of care applicable to investment advisers and brokerage dealers in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The act mandated a study on investment advisers and broker-dealers to evaluate the effectiveness of existing legal or regulatory standards of care for broker-dealers and investment advisers. The U.S. Department of Labor concluded that there should be a uniform fiduciary standard for investment advisers and broker-dealers. As a result, in April 2016, President Barack Obama unveiled a new rule that expanded the fiduciary duty required of these types of advisers via the federal rulemaking process. The Obama Administration made clear that people who give investment advice should follow a simple principle—provide guidance only with the client's interest in mind rather than with the intent of securing a bigger payout for themselves.

The rule was supposed to go into effect in March 2017. Very quickly into his administration, President Donald Trump signed an executive order halting the implementation of the fiduciary standard rule for "further review." As recently as a month ago, President Trump, once again, delayed implementation of these rules. It appears likely that the rules will be postponed indefinitely or ultimately dropped in their entirety. This is a major step backward for consumers in your districts, those who have sent you here to look out for their interests.

We can take steps in Nevada to protect our own residents. In researching this issue at the state level, "financial planners" are already defined and regulated in Nevada statutes. They have been since 1993. Under existing law, a financial planner is a person who, for compensation, among other activities, advises others as to the investment of money. Additionally, the existing law provides that a financial planner already has a fiduciary duty toward a client that is subject to civil liability for breach of that duty. However, under our current statute, broker-dealers and investment advisers who were in the study are exempted from the definition of financial planner and, therefore, do not have to comply with the fiduciary duty standard. That is, broker-dealers and investment advisers do not have to be looking out for your best interests and they do not have to be looking out for the best interests of your constituents when they give advice.

In the past, investors had clear choices when seeking assistance in investing their money. Investment advisers provided financial advice by either exercising discretionary trade authority or providing financial planning such as an entire wealth management framework including tax, estate, and mortgage planning in exchange for a fee. Whereas, broker-dealers provided execution services for clients who wished to trade, occasionally made recommendations to customers on which they could choose to act or not to act, and they were compensated by commissions on transactions to these accounts. The lines, however, have now been blurred considerably over the past decades, hence, the reason why the federal government, with the study they conducted, has determined that broker-dealers and investment bankers should be held to the same fiduciary standard. Investors have benefitted from having the choice of working with an investment advisor or a broker-dealer. However, as consumer choice is expanded, our rules governing the duty of care owed by those advisers and brokers have not kept up.

Senate Bill 383 imposes a uniform fiduciary standard upon broker-dealers and investment advisers. Specifically, section 1 of the bill revises the definition of financial planner to remove the exclusions for a broker-dealer and an investment adviser, thereby making such persons subject to the provisions of the existing law governing financial planners. It means that now broker-dealers and investment advisers will be considered, just as financial planners, as people who have to operate their businesses with your constituents' interests in mind first.

As I mentioned previously, this requires a fiduciary duty toward a client and it provides that a client who suffers an economic loss by virtue of either a violation of a fiduciary duty, a grossly negligent selection of a course of action advised, or a violation of any law of this state in recommending the investment or service may bring a civil action. To put it simply, broker-dealers and financial advisers in Nevada will be required to put the best interests of your constituents first.

Section 2 of the bill addresses a drafting concern to ensure that the existing definition of financial planner carries forward the purposes of our statutes. This maintains existing law that a financial planner must be licensed as an insurance consultant for certain purposes related to viatical settlements. We have reached an era where the majority of Nevadans' long-term prosperity is largely tied to their ability to make sound investments. I believe it is critical that we hold these professionals making those investments to the highest standards of professional conduct, and I urge your support.

Joe Valenti, Director of Consumer Finance, Center for American Progress, Washington, D.C.:

Senate Bill 383 is an important measure to ensure that all Nevadans receive trustworthy, reliable financial advice that is truly in their best interest. The bill addresses long-standing and troubling accountability gaps in financial advice, particularly given the Trump administration's continued delay of a federal rule by the U.S. Department of Labor to set a higher bar nationwide for the advice that savers and retirees receive. Today, I will discuss why Senate Bill 383 is important in context of the administration's actions; explain the significance of impartial financial advice; describe the consequences of conflicted advice; and address some unfounded criticisms of a higher standard.

In April 2016, the U.S. Department of Labor (DOL) released a long-awaited final rule, commonly known as the "fiduciary rule," to close long-standing loopholes that allow retirement investment advisers to put their commissions before the clients' best interest. This rule took six years to develop, incorporated extensive public comment, and was expected to apply to retirement advice earlier this year. Instead, following a February 3, 2017, presidential memorandum, the DOL has already delayed implementation of the rule for at least 60 days and may make further changes or impose additional delays, even as each day's delay costs investors nationwide approximately $46 million.

Meanwhile, last week the U.S. House Financial Services Committee approved the so-called Financial CHOICE Act [Creating Hope and Opportunity for Investors, Consumers, and Entrepreneurs] on a party-line vote, a sweeping bill to deregulate financial institutions and decimate consumer and investor protections. If passed into law, the Financial CHOICE Act would effectively kill the DOL rule and block it from taking further action to protect savers and retirees.

This context is important because Nevadans know all too well the consequences of unscrupulous financial practices. The foreclosure crisis that devastated this state was in large part caused by salespeople offering deceptive and often toxic mortgage products to current and prospective homeowners. For retirement investors and investor advocates, this type of story is again all too familiar and the stakes enormously high.

As traditional pensions have continued to be less available to workers, families are increasingly on their own to achieve retirement security and other financial goals, and many are struggling to keep up. Across the country, more than half of all working-age families are at risk of an insecure retirement. Fifty-five percent of Nevadans who have not yet retired worry about running out of money when they do. With most retirement savings now held in 401(k) plans and individual retirement accounts, or IRAs, financial professionals take on a central role in helping families sort through confusing and major financial decisions in which trillions of dollars in these accounts are at stake. The advertising around financial advice, at first glance, appears to be quite clear. In a study by the Consumer Federation of America, 25 firms affected by the DOL rule all claimed in their materials that their employees were financial advisers and created the expectation that they were engaged in retirement planning, not product sales.

In the public eye, this expectation is powerful and lasting. Ninety-three percent of Americans surveyed by investment firm Financial Engines earlier this year stated that they consider it important for all retirement financial advisers to be legally required to put their clients' best interests first. More than half of those surveyed believed—incorrectly, I might add—that this legal requirement already exists. And yet, this expectation is often untrue. Despite authoritative titles and public assurances, what many ultimately receive is a sales pitch disguised as impartial advice.

The DOL's prior rule governing financial advice, first written in 1975 and not anticipating the decline in traditional pensions and the significant growth of 401(k)s and IRAs, contained numerous loopholes that let advisers off the hook for the products they sold. Advisers could claim in the fine print that their advice was not the primary basis of an investment decision, that the two parties did not have a mutual agreement, or that it was only one-time advice. These loopholes, in turn, opened the doors to conflicted compensation practices. When advisers are paid based on the types of investments they sell, they may earn double or more the commission for recommending one financial product over another, regardless of which product is more appropriate. The rewards for advisers can be quite lucrative. For example, selling certain insurance products could earn an adviser a Caribbean cruise.

Clients, on the other hand, pay the price, as illustrated by two prominent types of cases involving one-time advice, one of the loopholes I mentioned. Cases involving former federal employees, including veterans, are a prime example of customers simply paying too much. The federal government's 401(k) plan, known as the "Thrift Savings Plan," has been described as "the best retirement plan ever." Participants are frequently targeted by companies arguing that they would be better off outside the plan after they leave the government. By moving their money out and following the advice that is given, they end up paying fees that are at least 20 times higher than if they had simply left the money alone. Over time, even small differences in fees add up. Paying 75 basis points, or 0.75 percent, more in investment fees each year over a worker's entire career could mean having to work three years longer just to achieve the same retirement income as someone in a lower-fee plan.

Higher fees are only the beginning. The consequences are often far worse as customers end up in dangerous and inappropriate investments. Elaine and Merlin Toffel, an elderly couple in Illinois, walked into their local bank branch to figure out what to do with their existing low-cost investment accounts and walked out with expensive variable annuities. An impartial adviser could have recommended some modest investment changes, but instead the Toffels not only incurred tax consequences as a result of their adviser's recommendations, but were placed in products with hefty surrender charges that made it harder to pay for long-term care.

In both cases, investors did not receive the impartial advice they were offered, but rather a self-dealing sales pitch construed as impartial, personalized financial advice. Similar cases exist all over the country, adding up to an estimated $17 billion each year from the pockets of retirement savers and retirees. On average, roughly 1 percent of all assets are invested in IRAs. Nationwide, federal tax breaks for retirement cost an estimated $181 billion in revenue. These are tax benefits that should go primarily to support Americans' financial futures and not to pad financial companies' bottom lines.

According to Internal Revenue Service data, Nevada residents contributed nearly $86 million toward IRAs in 2014 and received $8.2 billion in income from pensions, annuities, and taxable distributions from retirement accounts that year. If about 1 percent of these assets, too, are lost to conflicted advice, that represents a major loss to both family financial security and the state's economy.

To be sure, some have argued that requiring a fiduciary standard for advisers will result in higher costs or decreased access. These claims are false. All customers receiving advice already pay for that advice in one form or another. Under this bill, as with the DOL rule, customers will be charged transparently for their advice, instead of seemingly free advice concealing years of fees that they may never notice. The market for advice is actually likely to get more competitive as investors have more transparency and new entrants are able to deliver financial advice under a fiduciary standard at a lower cost. In advance of the DOL rule, these trends have already begun.

Recently, Thomas Powers, a 75-year-old investor, was told that he would be newly assessed a 1 percent annual fee in response to the DOL rule. When he threatened to move his money elsewhere, that fee fell to 0.3 percent. One relatively new firm, Rebalance IRA, offers advice on a platform that reduces its average customers' fees by 68 percent. Whether in mortgages, consumer loans, or other types of products, fears of constrained access all too often hide the true nature of the products being offered.

With Washington set to delay or even reverse new rules of the road for retirement savers, Senate Bill 383 would allow the state of Nevada to take a stand against conflicted financial advice that costs savers too much and gives them too little.

Chair Bustamante Adams:
Currently, the brokers, the dealers, and the investment advisers are not subject to the term "fiduciary," and that is what this bill is requesting. Will the way they are regulated in Nevada change?

Senator Ford:
The regulatory process is something that the Office of the Secretary of State will undertake.

Chair Bustamante Adams:
Do you know how many financial planners and broker-dealers we have in the state?

Senator Ford:
I do not know that off the top of my head.

Assemblyman Paul Anderson:
These people are regulated by the Securities and Exchange Commission (SEC), and they have their own licensing series that they have to take in both the state and federal regulation process. Is the concern that the federal regulation or its enforcement is in question?

Senator Ford:
The study that took six years to accomplish and led to rulemaking by the Obama administration has not been enacted. If the federal government is not going to protect Nevadans from these types of practices, then we in Nevada can protect our own constituents. We are looking to apply the results of the study to our constituencies here in Nevada.

Assemblyman Paul Anderson:
So this is based on inactions of the approximately first hundred days of the new administration on that study. We do have federal regulations intact that govern these people. They all have to be licensed, and that is strictly governed, both on the federal and the state levels as well as through the Office of the Secretary of State. I am wondering if we are trying to preempt or reinforce something that is simply a study that the federal government has not chosen to take action on as well. Are there any other states attacking this in the same fashion?

Senator Ford:
It is less a preemption and more of a protection. The question for all of the Committee is, What is the problem with having your constituents' best interests looked out for when they are engaging financial advisers? They already have the fiduciary duty for financial planners.

We are looking to ensure that people who engage with investment advisers and brokers are also given the benefit of having their best interests looked out for as opposed to their commissions. I am not looking to preempt anything. I am looking to extend a protection that over the course of six years, the determination has been that these professionals should be held to the same standards as financial planners.

Joe Valenti:
There have been concerns over decades about inconsistencies in the duty of care that is required of broker-dealers and investment advisers. Sometimes, the same individual may act in both capacities at once. There are a number of federal regulations governing both of these categories, but there is no consistent uniform standard for advice that was rendered. You would have people with different titles, wearing different hats, and being subject to different standards. This is an effort to establish a uniform standard at the state level regardless of what action is ultimately taken by the federal government. It may be a number of prolonged delays and may involve revisions to their rulemaking. It may also involve federal action that would eliminate this rulemaking.

Assemblyman Paul Anderson:
I recognize our need to protect our constituents. I am one who would want to be protected going into a situation where I am asking for advice and hoping that my best interests were being looked out for and not necessarily any sort of fee or commission interest that I would be walking into. Why is this a bigger issue today than it was 10 or 20 years ago? I do not think the regulations have gotten any looser over that time period. When I wanted to become a stockbroker in my early years, I went through a Series 7 exam. Those are pretty rigorous and federally regulated because we wanted to see them consistent state to state. Are we preempting a federal statute that would then hold us outside of a standard that may be federally and consistently applied? If a constituent moves from state to state or if they move from a different state, will we have concerns or less protection?

Joe Valenti:
With regard to the preemption question, I believe there are four states in which the courts have recognized that there is a common-law fiduciary obligation for advice that is given, whether it is given from a broker-dealer or and an investment advisor. There are states where the courts have already created a differing standard of care.

With regard to federal legislation, a number of people have brought us the National Securities Markets Improvement Act of 1996 (NSMIA) and it does preempt some state laws governing the sales of securities. I am not an attorney, and I would not be willing or able to render a legal opinion regarding whether NSMIA would preempt it, but I do not believe the NSMIA law would get in the way. I have the committee report from the U.S. House of Representatives when this law was passed. It states that it was the committee's intention not to alter, limit, expand, or otherwise affect in any way any state statute or common law with respect to fraud or deceit including broker-dealer sales practices in connection with securities or securities transactions.

Senator Ford:
We have always been able to extend more protections as a state, absent preemption, than the federal government has. This is an example of where a federal desire to protect all citizens in our country has been stalled. We have an opportunity to take the lead in that regard. Over the past decade the lines have blurred considerably between what broker-dealers, financial advisers, and investment brokers do. Because of that blurring of the lines, there is a different standard of care associated with the advice and interaction they have with their clients. Under that circumstance, it is important that we put together one standard that protects all of our constituents under all circumstances.

Assemblyman Paul Anderson:
I think that is an accurate statement. If you look at The Glass-Steagall Act of 1933 and the Dodd–Frank Wall Street Reform and Consumer Protection Act that has moved forward in both the Consumer Financial Protection Bureau and is moving forward into commercial banking, the protections have often blurred those lines. As we merged all these financial institutions into one big group, it has created some blurry lines. That has been going on for decades. I am still questioning whether it would be good to have further enforcement at the state level, or would it be better to hold and wait or use something that is already intact with the Office of the Secretary of State or federal regulations to protect our citizens.

Assemblyman Kramer:
One of the requirements for a stockbroker is to give the client the most beneficial trade of that day over the broker or his firm. I know there are protections that were designed to cover most of what you are talking about. What specific incidents have happened in Nevada where people have been treated unfairly? Is there a number or a dollar amount? People do lose money on investments. Would what we are trying to do now really help?

Senator Ford:
We are talking about examples where the investment advisor is giving advice. Should it only be a suitable piece of advice or does the advice need to be in the best interests of the client? What the study has demonstrated is that it should be the best interests of the client that should be the standard that is applied, not a suitability standard. That may be confounded by the fact that brokers could win a cruise if they sell so much or make so much in commissions.

You will hear from people today who can offer examples. Barry Gold of AARP Nevada has asked me to put his support on the record, and we will provide the comments he made in the Senate on this bill (Exhibit H). Several of your senior citizens have been swindled. Several of them have been subjected to a non-fiduciary duty standard that gives credence to what it is that we are trying to do here. You will hear from others today of examples of why it is important that we ensure in our state that your constituents, Assemblyman Kramer, are looked out for in terms of their best interests as opposed to the commission a person giving advice may receive.

Joe Valenti:
There is a distinction, and the Department of Labor recognizes this in its rulemaking. It is a fairly well recognized distinction between what is considered order-taking and what is considered advice. We want to be very clear that we do not want to take actions that would impede the ability of someone to call a broker and request a particular investment. However, in circumstances where a recommendation is given and compensation is offered to the individual making that recommendation, whether that compensation is direct or indirect, is something that is material and should be made known and addressed.

Chair Bustamante Adams:
Seeing no other questions, I will move to support.

Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO:
We are in support of this legislation. The constituents Senator Ford is talking about are also the people I represent who are invested in deferred compensation accounts, pension systems, and health care systems. Over the course of time, I have spent 12 years as the treasurer of the Las Vegas Fire Fighters Union and 12 years as the chairman of a health insurance trust fund that managed $25 million in funds. I spent 6 years on the state pension board. In all of those positions, I had a fiduciary responsibility to the people I represented to act in their best interest. If I did not act in their best interest and I was to self-deal or deal on behalf of someone else, I would be liable and subject to penalty.

I am able to give you a couple of examples. As the chairman of our health insurance trust fund, we decided at a point in time to change investment advisers for the health insurance trust fund that we had. The gentleman who had the investments before thought he was a lock when we requested a proposal to consider new investment managers. He did not win the bid, and instead of working with us and setting up a plan to divest our assets in a systematic way to save us funds, he dumped them all on the market in one day, which cost us thousands of dollars.

I was also appointed to the deferred compensation committee for the city of Las Vegas. There were three investment managers. One of the things we did with them was a benchmarking report on their fees. We found that one of the investment managers was charging very high fees compared to the other two. We asked what was driving his fees, and he responded that it was the funds we were in. He had our funds in the the advisers' fund, which was the highest-costing fund. I asked if they invested the funds separately. His answer was no; they were invested all together. However, if the fund were to go under, the advisers would be paid back first, and the investors' fund would be paid back second.

They charged much higher fees in the advisers' fund. This was one of the best performing funds out there and it had been in place for over 20 years. I asked him to move the funds to the investors' fund to save us money. A 0.4 basis point for someone in a deferred compensation retirement plan may not seem like much, but over the course of a 20- to 30-year career of investment, that amounts to a lot of money. Your money is not invested any differently, but you are paying more profits to the investment advisers. We moved our members to a fund with the same rate of return for less cost.

On the Public Employees' Retirement System (PERS) fund, as a fiduciary on the board of trustees, the PERS investment staff researched the 30-year period during which they had been investing. They compared using money managers—which we had—with having the same funds in index funds, which have much lower investment fees; the end result would be a wash. The amount that you save in investment fees is equal to the amount of greater return you might have from an investment manager with less risk. That is why, now, all of PERS investments are in index funds. All of their equities and bond funds are in index funds because the fees are much lower, there is less risk, and you get the same amount of return. For those reasons, it is common sense to do what is best for the people you represent. If these investment managers are taking money from people to invest, you would think they would be operating in the best interests of their clients. For those reasons, we are in support of this legislation.

Assemblyman Paul Anderson:
You had the fiduciary responsibility with the funds that you were advising managers to choose. You had the ability to select. In college, as an exercise, we threw darts at *The Wall Street Journal* to pick stocks, and we beat the index. It is difficult to say that past performance is why we should pass a law.

Rusty McAllister:
In another fund we were invested in, we got quarterly reports of the various funds they were invested in. When the laypeople looked at their account, they would compare how their investment compared with those of their peers. We found that a large number of those funds were in the bottom 10th or 20th percentile on the three-year or five-year rate of return, compared to their peers. I asked why we were being offered these poor investments. They said they could put whatever funds in there we wanted; the ones we were doing poorly with were the funds they got the best rate of return for investment fees on, so that is what they offer. Unless somebody knows to dive in and create a really good plan, it is very difficult for the layperson to try to invest those funds and do a good job.

Assemblyman Kramer:
I also negotiated agreements with investment advisers, and every one of the contracts we did had a fiduciary responsibility clause in it. Had one of those people, when we changed advisers, sold the portfolio and if we felt we did not get a good market rate, they would be subject to a lawsuit. A professional does that, and if you are suggesting the reason for this

law today is to protect groups, I do not think it is that well-suited. It is to protect individuals who have a nest egg and who go to someone they think will represent their interest, but who does not. Your job is to analyze those and only bring the best programs so your employees have a good selection to choose from. I think we have two different subjects here.

Marlene Lockard, representing Retired Public Employees of Nevada; Nevada Women's Lobby; and Service Employees International Union Local 1107:
I am personally an example. Years ago when I saved a little money, I decided to dip my toe into the stock market. My broker would call me periodically and suggest different investments. I knew absolutely nothing about investing and followed his advice. It was not until years later that I learned about churning and I learned that the investment instruments he was recommending not only gave him a higher commission, but it was also selling the investment firm's instruments, and they got money on every piece of investment advice I was given. I look back and think how much money I could have avoided on investment fees.

There is a report by The Demos Group that stated, over the course of an investing lifetime, an average two-income family could spend as much as $155,000 paying the fees that fund managers charge for investing funds for retirement. When I did some research last session, I learned about a PERS system in Rhode Island, I believe, but because they had not changed their laws, their investment fees, under a new regime, ended up being more than what they had to invest in their total fund. They were in the process of a major lawsuit. There is a big difference.

I represent retirees, and the average retiree has absolutely no training or expertise. It should be a fiduciary responsibility for investors to make sure they are looking at the proper investment for their client. That is why we strongly support S.B. 383.

Priscilla Maloney, representing Local 4041, Retiree Chapter, American Federation of State, County and Municipal Employees, AFL-CIO:
I want to explain how the American Federation of State, County and Municipal Employees (AFSCME) became involved in this. In February 2016, President Barrack Obama came to AARP to join members of the Save Our Retirement Coalition including the Consumer Federation of America, Better Markets, Americans for Financial Reforms, the Pension Rights Center, AFSCME, and the AFL-CIO to announce a proposed rule to close a loophole. We are talking about two definitions in our business code, which is something that would be defined as a broker-dealer and an investment adviser, which is limited in section 2, subsection 2 by excluding attorneys, certified public accountants or public accountants, and a broker-dealer or sales representative licensed pursuant to those separate code statutes. Apparently, what was going on in February 2016 was there was a start of a regulatory process and that process has been stalled and is uncertain.

Getting back to the point of this bill, for decades Nevada has marketed itself as being a good place for seniors to retire because we have a beautiful and exhaustive set of recreational possibilities and wonderful entertainment possibilities, especially in Clark County. We tell people to come here to retire. This bill would add additional protections for our seniors in their investment decisions, simply by establishing what would be considered a standard of care if they fall into the definition of a broker-dealer or investment adviser. Rather than a debate on wise or unwise investment strategies, this is simply adding some protections into our existing laws by tightening up who would be subject to a rule that happens to mirror this proposed DOL regulation which now seems to be stalled. My information is that there was a decision made in April 2017 to stall this for another couple of months. That is uncertain, and we appreciate Senator Ford bringing forth this bill to put the protections into Nevada law to make a better living environment for all ages, but which substantially affects our retiree population.

Natha C. Anderson, President, Washoe Education Association:
I am the President of the Washoe Education Association. This information is very complex to me. When I was talking with some of our retirees from the Nevada State Education Association (NSEA), they asked that we support this bill because they are concerned about this issue. We believe this bill provides consumer protection. I am in agreement with the letter submitted by Christine L. Owens, Executive Director of the National Employment Law Project (Exhibit I), where she says this is expanding the consumer protection in an increasingly complex context for the financial planners. I am asking for your support on behalf of our NSEA retirees.

[(Exhibit J), (Exhibit K), and (Exhibit L) were submitted, but not presented.]

Chair Bustamante Adams:
Is there anyone wishing to testify in opposition to the bill? [There was no one.] Is there anyone wishing to testify in the neutral position? [There was no one.] Are there any closing statements?

Senator Ford:
The examples we gave today were intended to demonstrate whether someone's best interest has been taken into play, not whether the investment was ultimately a good one. I think the example of dumping stocks because you have been fired is a prime example of not being considered in the best interest. It may not even meet the current standard of suitability. The point of this bill is for our citizens to receive the utmost protection when it comes to receiving investment advice, broker-dealer advice, and services already in the financial planning arena. I have prosecuted an elder abuse case dealing with the suitability standard as opposed to the fiduciary duty standard. This happens, and it does not just happen in the context of big organizations. It happens to people, it happens to your constituents, and it is a good idea for us to go home and be able to say that when it came time for us to protect you and your retirement or investments, we have instituted in our state a higher standard of care called fiduciary duty.

Chair Bustamante Adams:
There is neutral testimony.

Bryan Murray, Chief of Enforcement, Securities Division, Office of the Secretary of State:
We are testifying in neutral on this bill, but I want to make it clear that the Securities Division is not opposed to the same standard being applied to the same conduct or investment advice. I think there were some questions earlier regarding the role of the Office of the Secretary of State and what we regulate.

Our jurisdiction is under *Nevada Revised Statutes* (NRS) Chapter 90 which includes the licensing and inspection of investment advisers that are not subject to SEC regulations, which generally means that we regulate and license all of the investment advisers with less than $100 million under management. The SEC will take all of the investment advisers exceeding that amount. We also have concurrent jurisdiction with regulating and inspecting broker-dealers operating in our state with the SEC and the applicable self-regulatory organization, which by far is the largest in the Financial Industry Regulatory Authority (FINRA). We have concurrent jurisdiction over the broker-dealers operating in our state with those agencies.

It appears that the current draft of the bill would put the fiduciary standard upon broker-dealer firms in NRS Chapter 628A and not under NRS Chapter 90. I am not sure if our division would have authority to regulate the provisions where they are being put now. Currently, the bill removes the exclusion for broker-dealers, but not the sales representatives. Those are the individuals who actually provide the investment advice. It would create a private causative action for the customers of the broker-dealers, but not for the sales representatives. There is an important federal law overlay, which is the preemption issue. Certain federal laws preempt state laws which are inconsistent or more burdensome. Currently, I do not believe there is any potential preemption issue for Nevada to impose a fiduciary standard on broker-dealers. I think that would be fine.

There are certain provisions in NRS 628A.040 which require financial planners to obtain insurance coverage or surety bonds in the amount of $1 million. This requirement may be preempted by federal law for broker-dealers and SEC registered investment advisers if they are not currently required under federal law to have insurance coverage or surety bonds. Since financial planner statutes are not in NRS Chapter 90, it appears that we may not be able to enforce the insurance and fidelity bond requirements even if not preempted by federal law.

Chair Bustamante Adams:
Are there any questions from the Committee?

Assemblywoman Tolles:
How many broker-dealers and investment advisers would this impact?

Bryan Murray:
I believe the Securities Division licenses about 1,600 broker-dealer firms and 141,000 sales representatives. They are not all in Nevada, but if they go over the de minimis rule and have more than six clients, sales representatives and broker-dealer firms do have to register with us even if they are not actually located here. We have about 1,500 investment advisers currently licensed.

Assemblywoman Tolles:
The sales representatives are not included in this proposed legislation.

Bryan Murray:
Not as currently drafted. I am not sure of the policy reason behind that.

Assemblywoman Tolles:
If I were an investment advisor or a broker-dealer, how would my life change as the result of this bill from a regulation standpoint? Would it add anything from a workload, compliance, or cost standpoint?

Bryan Murray:
As an investment advisor or an investment advisor representative, there would be no impact at all. Investment advisers are already under a fiduciary standard so this would mainly affect the broker-dealers who are under the suitability standard at the current moment.

Assemblywoman Tolles:
For the broker-dealer, what would that change be? Would it be purely protectionary or would there be an additional amount of compliance?

Bryan Murray:
We believe since the DOL rule has been proposed—and we know it has been delayed, but a lot of broker-dealer firms have already been preparing for it to be in compliance—there has been a move over the past year or more that the firms have been preparing for the fiduciary duty rule.

Assemblywoman Tolles:
What is the current sanction against a broker-dealer who gives advice that would harm his or her client?

Brian Murray:
We receive complaints and can go after conduct by broker-dealers, but there are FINRA arbitrations. Almost all broker-dealer contracts with their clients have a mandatory arbitration provision through FINRA.

Assemblywoman Carlton:
In the process of this bill, did the Office of the Secretary of State reach out to the sponsor prior to this hearing?

Senator Ford:
I received an email last night.

Assemblywoman Carlton:
I am concerned with the process. This bill has been in the process since March 2017. It has not been amended. I have concerns about these issues being brought up near the end of the session.

Senator Ford:
In response to Assemblywoman Tolles, the argument is not that there are not protections; we need more protections. In the case I prosecuted, I won the case, but it was done pro bono and many of your constituents will not be as fortunate to have a pro bono lawyer defend them on a suitability standard or a fiduciary duty standard. Under those circumstances, we need to ensure that someone is given advice in their best interests as opposed to a commission-based issue.

Chair Bustamante Adams:
I will close the hearing on S.B 383. Is there any public comment? Seeing none, this meeting is adjourned [at 1:45 p.m.].

RESPECTFULLY SUBMITTED:

____
Earlene Miller
Committee Secretary

APPROVED BY:

____
Assemblywoman Irene Bustamante Adams, Chair

DATE: ________________________________

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Assembly Bill 468, dated May 11, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit D is the Work Session Document for Assembly Bill 405, dated May 12, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit E is a section-by-section analysis for Assembly Bill 405 dated May 11, 2017, submitted by Assemblyman Chris Brooks, Assembly District No. 10.

Exhibit F is a document titled, "High Level Summary," regarding Assembly Bill 405, dated May 11, 2017, submitted by Assemblyman Chris Brooks, Assembly District No. 10.

Exhibit G is a letter dated May 8, 2017, in support of Assembly Bill 405 to Chair Bustamante Adams and members of the Assembly Committee on Commerce and Labor, from Ron Hunter, Environmental Programs Manager, Patagonia, Reno, Nevada.

Exhibit H is written testimony regarding Senate Bill 383 dated April 12, 2017, submitted by Barry Gold, Director of Government Relations, AARP, Nevada.

Exhibit I is a letter dated May 11, 2017, in support of Senate Bill 383 to Chair Bustamante Adams and Vice Chair Carlton, from Christine L. Owens, Executive Director, National Employment Law Project.

Exhibit J is an email dated May 11, 2017, to Chair Bustamante Adams, Vice Chair Carlton, and Assembly Committee on Commerce and Labor, from Benjamin P. Edwards, in support of Senate Bill 383.

Exhibit K is a letter dated April 27, 2017, regarding Senate Bill 383, to Senator Ford from David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, Washington, D.C.

Exhibit L is a letter dated May 9, 2017, in opposition to Senate Bill 383 to Chair Bustamante Adams from Kimberley Chamberlain, Managing Director and Associate General Counsel, State Government Affairs, SIFMA.