

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

**Seventy-Ninth Session  
May 31, 2017**

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 1:36 p.m. on Wednesday, May 31, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B 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](http://www.leg.state.nv.us/App/NELIS/REL/79th2017).

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Paul Anderson (excused)  
Assemblyman Jason Frierson (excused)  
Assemblyman James Ohrenschall (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Patricia Farley, Senate District No. 8



**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Chase Whittemore, representing Argentum Partners  
Mike Draper, representing Paramount Marketing Consultants  
Danny Thompson, representing Starpoint Resort Group, Inc.  
Christopher David Jones, General Counsel, Starpoint Resort Group, Inc.; Resort Stay International; and Getaways Resort Management  
Myles Timmins, Private Citizen, Henderson, Nevada  
Allen Lichtenstein, representing Starpoint Resort Group, Inc.  
Marcus Conklin, representing Nevada Mortgage Lenders Association  
Jon Gedde, Chairman, Nevada Mortgage Lenders Association  
Scott Whittemore, Deputy Commissioner, Division of Mortgage Lending, Department of Business and Industry

**Chair Bustamante Adams:**

[The roll was taken.] I will open the hearing on Senate Bill 438 (2nd Reprint).

**Senate Bill 438 (2nd Reprint): Revises provisions relating to time shares. (BDR 10-992)**

**Chase Whittemore, representing Argentum Partners:**

I am speaking on behalf of Senator Patricia Farley, Senate District No. 8, who could not be here today. I will read her comments into the record: It is my pleasure today to present Senate Bill 438 (2nd Reprint) for the Committee's consideration. With your permission, Madam Chair, I am going to briefly explain the contents of the bill before turning the discussion over to Mike Draper, who will go into more detail about why this bill is needed.

Senate Bill 438 (2nd Reprint) begins to address serious concerns expressed by law enforcement concerning time share marketing representatives, primarily on the Las Vegas Strip. Currently the Real Estate Division, Department of Business and Industry, requires time share marketing representatives to register with the Real Estate Division, but there is ambiguity in the statute.

As you will hear today, there are time share marketing companies that represent more than one developer and are good operators. As such, the bill will codify that a time share marketing representative may represent more than one developer, but only if they are tied to a fixed location. Currently, the Las Vegas Metropolitan Police Department (Metro) and the Real Estate Division have expressed concern that, should there be issues with the time share marketing representative and that representative represents more than one developer,

it can be difficult to figure out for whom that representative is working. Metro has stated that concern is eliminated if the representative is tied to a fixed location and the representative has registered for each developer they represent. The bill in its reprinted form eliminates the requirement for fingerprint background checks, as the Real Estate Division was concerned that would create a significant financial burden on the state that it was not prepared to deal with.

The bill further adds standards to which a representative must adhere, including that he or she shall not make any material misrepresentation; make any false promises likely to induce someone to attend a promotional event; engage in any fraudulent, misleading, or oppressive sales techniques or tactics; or fail to disclose his or her purpose to induce a person to attend a promotional event. This bill is an important first step in addressing a serious concern with a lack of oversight on these entities.

**Mike Draper, representing Paramount Marketing Consultants:**

Paramount Marketing Consultants is the largest independent time share marketing company in the country. Currently, Paramount has about 370 employees; 200 of which are registered or certified with the state of Nevada. Paramount Marketing is considered one of the gold standards for this industry by regulators, law enforcement, and customers alike. The primary purpose of this bill is to codify inconsistency and ambiguity in the statute. The statute currently reads that a time share marketing representative may represent "a developer." The *Nevada Administrative Code* (NAC) reads that time share marketing representatives must be registered with the state for each developer they represent. There has been some ambiguity the Division has been trying to address for the past year or year and a half. We think we have a bill that codifies the requirements and provides a foundation for law enforcement to address some issues that have been perpetuated over the last several years on the Las Vegas Strip.

We have worked for many months with the Division of Real Estate and with law enforcement, and we participated in workshops. We worked hard to get to this point and find a bill that would have little impact on various business models. The dissent you will hear today is just a dissent between two business competitors. This bill will primarily impact my client. My client is one of the only, if not the only, time share marketing companies that represents more than one developer. Both of our developers, Wyndham Resorts and Berkley Resorts are supportive of this bill.

When we talked to the Real Estate Division and Metro, we learned about a lot of issues they were concerned about on the Las Vegas Strip—harassment, nuisance, and other such behaviors—that they heard about from many sources, including time share marketing representatives. My client uses a business model where they primarily operate out of kiosks and buildings in fixed locations. Most of the kiosks are in resorts such as the MGM Grand and The Venetian. As you can imagine, the toughest enforcement for my client is not law enforcement, but the casino resorts which will not tolerate any harassment of their guests.

Most of my clients' contracts say representatives are not allowed to go beyond eight feet from the kiosk or fixed location where they operate. Their contracts say if there is any sort of harassment or nuisance, they will lose their lease. They operate under a very strict set of codes.

Section 1 of the bill revises the definition of "representative" to clarify that the representative may provide services to one or more time share developers. This law is consistent with current NAC regulations. This clarification will eliminate any ambiguity between statute and code.

Section 2 says that for any time share representative to represent more than one developer, the representative must operate out of a fixed location. The ultimate purpose for this policy is that it is much easier for law enforcement to regulate fixed locations because they know where the representatives are and who they are representing, allowing them to quickly track them down and address any issues and/or complaints. My client represents two developers who have different products and are looking for different things. One developer may require clients to have a passport; the other may not. One developer might be geared toward different income levels or families so the marketer has different products to offer.

In this bill, we also attempted to regulate some of the conduct of time share sales representatives. That is in section 3 and includes making any material misrepresentations, making false promises of a character likely to induce other persons to attend a promotional meeting, and so forth.

The trade association for time shares, American Resort Development Association (ARDA), is neutral on this bill. The Division of Real Estate is neutral and Metro is neutral, although they were initially in support. As we deleted fingerprint background checks and those types of things to address fiscal concerns, they have shifted their position to neutral. This has really become an issue between two business models. You will hear words today like unconstitutional and restriction of freedom of speech. This does not limit any business model. Everyone can keep operating as is. Currently, my client conducts fingerprint background checks on all employees before they are hired. That information is shared with the Division of Real Estate. The Division of Real Estate does not have the regulatory authority to address any more than a superficial capacity, but they do have that information. In talking with Metro, they would definitely like to see other things addressed going forward, but this is a start. We feel this codifies some things without impacting the industry as a whole.

**Chair Bustamante Adams:**

Are there any questions from the Committee?

**Assemblywoman Neal:**

How many entities who are engaged in this practice do not have a fixed location?

**Mike Draper:**

I do not know the number. I only know our business model, and there are a lot of different models that work in time share marketing. Some are independent. Some of the developers have their own marketing teams. I cannot speak to the number of those working outside of fixed locations. We are the largest proprietor working in fixed locations.

**Assemblywoman Neal:**

With this bill change, do you want to make all of the other entities perform like you?

**Mike Draper:**

I absolutely do not. We are the only business model that currently works with multiple developers. We are saying that if you are going to work with multiple developers, you have to operate out of a fixed location. People who are not working out of fixed locations can continue as they are, but can only represent one developer, as they currently do.

**Assemblywoman Neal:**

What harm is being created if marketers work with multiple developers and have a fixed location?

**Mike Draper:**

We agree. That provision is in the bill because the Division of Real Estate and Metro felt that would make it easier for them to track the marketers. One of the problems they have with any of these marketers is that they do not know who their employer is. Currently, regulation through the Division requires us to register for each developer we work for. It should be just as easy for them to figure out which developer one of our time share marketing people are working for as it is for somebody who works for just one developer. We wholly agree. We are comfortable with that not being a requirement.

**Chair Bustamante Adams:**

Are there any other questions from the Committee?

**Assemblywoman Carlton:**

This looks like two companies that are in competition with each other on the Strip. They both send people out to the Strip to get people to sit through their presentations with some type of enticement. Currently, representatives cannot work for multiple developers and do this. They have to work for one developer. Is that correct?

**Mike Draper:**

Not exactly. There is a letter from the Office of the Attorney General that went out last year, and there is a regulation in the NAC that says a representative must be registered for each developer he or she represents. There is dissent on what the statute means. When you read the statute [*Nevada Revised Statutes* 119A.120], it says, "'Representative' means a person who is not a sales agent and who, on behalf of a developer . . . ." The phrase "a developer" is the problem that creates ambiguity. Some interpret that to mean one developer. Some interpret it to be the general term—a representative represents a developer.

**Assemblywoman Carlton:**

The NAC is the regulations; we have to go with the *Nevada Revised Statutes* (NRS).

**Mike Draper:**

Correct, that is where the ambiguity lies. We are trying to codify NRS to clear up that ambiguity.

**Assemblywoman Carlton:**

It seems to me this is already being done and somebody got caught doing it. Now, we are going to make sure the law says what we thought it said so we can keep doing what we thought we could do to begin with.

**Mike Draper:**

Nobody got caught doing this. The Division of Real Estate decided they wanted the ability to regulate time share marketing representatives as a whole. This came up as part of that discussion. There were no citations issued or complaints received about multiple developers or anything like that. This was one of the areas they wanted to clarify and codify because there were dissenting opinions, particularly between two businesses, about what that statute said.

**Assemblywoman Carlton:**

Is this in litigation?

**Mike Draper:**

It is not.

**Assemblywoman Carlton:**

I have concerns that these are two businesses that have a difference of opinion, and the Legislature is being drawn into the middle of it.

**Mike Draper:**

I do not disagree with that opinion, and that is why we have tried to make it so this does not impact anybody else's business model. Everyone can continue operating as is, but it codifies how that is, and it sets a foundation for the Real Estate Division and for Metro to go forward.

**Chair Bustamante Adams:**

Are there any other questions from the Committee? [There were none.] Is there anyone wishing to testify in support of the bill? [There was no one.] Is there anyone wishing to testify in opposition?

**Danny Thompson, representing Starpoint Resort Group, Inc.:**

Starpoint Resort Group, Inc. is the Jockey Club on the Las Vegas Strip. I would like to have my clients in Las Vegas testify.

**Christopher David Jones, General Counsel, Starpoint Resort Group, Inc.; Resort Stay International; and Getaways Resort Management:**

We have over 600 employees in Las Vegas and several in the Lake Tahoe area. There are 23 resorts in our system, and we manage several at Lake Tahoe as well. I think there is a total misconception about what our concerns are with this bill. It does nothing to protect the public. It does nothing to help Metro, and I think they have admitted it. If you ask them, they would say this is not going to identify people who work for other people. If anything, this bill diminishes the accountability of the time share representatives to their broker and to the public.

It is basically a deviation from the structure of Nevada law. Nevada real estate law and the regulations have a structure of how brokers deal with the public and their associates. The broker is in charge of managing the real estate salesperson and the time share salesperson. The time share representative must register with a broker. The broker on the license for the time share representative signs a statement that he is responsible for the trustworthiness and the character of the time share registrant with the Real Estate Division. They also basically agree that they will supervise these individuals' daily activities. If some time share representatives are registered with multiple developers, how are these brokers going to represent their activities? We do not know. I have been working with Metro for three or four years on different issues that have occurred on the Strip. We have instituted badge programs and a code of conduct. I do not believe Metro is opposed to the way things are; they are just looking at how they can maintain the Strip as a safe place for families, tourists, and locals. I do not believe this bill does that in anyway. We think this bill should not be passed, and we have submitted our own amendment ([Exhibit C](#)) that Mr. Thompson will go over.

**Myles Timmins, Private Citizen, Henderson, Nevada:**

I have been a real estate broker/time share broker for the last 37 years in Nevada. I also hold a real estate broker license in Arizona and have held one in Florida and New York. This bill does not work. As a broker, I do not want someone working for me who is working for somebody else, because when they do something wrong, who will the public go to? Who is the Real Estate Division going to go to? These people are doing a great job, but once they realize they have more than one boss, I believe the public will definitely not be covered. This is a move by an unlicensed company from out of state that came here to try to get itself in a better position. They are unlicensed, yet they are trying to do something with licensing. The whole thing does not make sense to me. They have had to have two brokers in charge of one person before, and it did not work. It is not going to work now.

[[Exhibit D](#)] was also submitted but not discussed and is part of the record.]

**Allen Lichtenstein, representing Starpoint Resort Group, Inc.:**

I was approached by Starpoint Resort Group, Inc. to do a constitutional analysis of this bill. I have done a lot of litigation about speech activity on the Strip. We are talking about First Amendment activity because it is on the public forum. The Ninth Circuit Court of Appeals reiterated that last week. The time share representatives do not do sales.

They are not allowed to do sales and, therefore, what they are doing is protected commercial speech. It is important because when you start looking at something that is dealing with protected speech in a public forum, the analytical rules are somewhat different.

Constitutionally, the first problem with this bill is in its vagueness. What exactly does it mean to operate at a fixed location? From one model, we have a fixed location in a kiosk in a hotel or someplace else. The language of this bill does not limit it to that. A fixed location could be a particular spot standing out in front of the Bellagio or The Venetian or someplace else. That creates another problem, because I am not sure, since no other commercial speaker on the Strip is limited to standing in one spot, if it would be constitutional. Courts are likely to look at the record to show justification for that, and there is no particular record. How will a police officer know whether the individual is in the category of those who have to stand in one spot as opposed to someone who is standing in that one spot but can go someplace else? There is no rationale and no justification, therefore, it is a limitation that cannot pass rational scrutiny.

We are dealing with a much higher level of scrutiny because of the First Amendment aspect. Just the vagueness of what it means to be in a fixed location creates that kind of problem. If a broker is vouching for a representative and is responsible under the regulations for the behavior of their employee, once that employee is employed by two, three, or four people, the line of responsibility is no longer there. That individual is then pretty much a free agent. I am not suggesting that the business model we heard about is not going to work. It may work, but it is not in keeping with the statute as it now reads. That is not the only model this bill would allow. It would allow people representing any number of businesses without clear lines of demarcation; not tied to a kiosk, but a fixed location standing on the Strip. I do not think it is workable nor does it seem, based on the Ninth Circuit Court and even the U.S. District Court, that it could pass the constitutional standard that would be required for that kind of regulation on commercial streets.

[([Exhibit E](#)) was also submitted but not discussed and is part of the record.]

**Chair Bustamante Adams:**

Are there any questions from the Committee? Seeing none, do you have any comments, Mr. Thompson?

**Danny Thompson:**

The Jockey Club has been on the Las Vegas Strip as long as I can remember. It is a local business. If you process this bill, you are processing a piece of legislation that will favor an out-of-state business marketing company from Florida that is competing with a business in Las Vegas that has a structure and 600 employees. This bill would do real harm.

As far as constitutionality, for the past 25 years, until January of this year, I was the chief executive officer of the Nevada AFL-CIO. I have been involved in many lawsuits about constitutionally protected free speech on the Las Vegas Strip. I can tell you this piece



of legislation is unconstitutional. If I am standing behind a desk at a kiosk doing one thing, and someone else is walking around the Strip but cannot do what I am doing, that is unconstitutional. We never lost one of those cases. If this goes to the court, you will lose.

**Chair Bustamante Adams:**

I am having our legal counsel research that.

**Danny Thompson:**

I was involved in some of those cases in Mr. Lichtenstein's brief ([Exhibit E](#)), and I can tell you unequivocally that we never lost any of them. The reason Clark County cannot drive the smut peddlers from the Strip is because they have the constitutional right to be there. You cannot treat people differently.

If you want to involve yourself in a dispute between two businesses, we would like to propose an amendment ([Exhibit C](#)) that clarifies the law. Today, the law says if you are a representative, you can only work on behalf of one developer at a time. Section 1 of Proposed Amendment 4754 to S.B. 438 (R2) takes it back to "a developer. Section 2, subsection 1 of the amendment clarifies that "The Administrator shall register as a representative each applicant who . . . ." Section 2, subsection 1, paragraph (b) adds, "Identifies the developer and project broker with whom the applicant will be associated," and in paragraph (f), it removes the portion that says they have to submit proof of the fixed location to the Real Estate Division. Finally, section 3, subsection 4 adds new language that says, "The Administrator may impose a fine, or suspend, revoke, reissue, subject to the conditions, or deny the renewal of any representative's registration issued under the provisions of this chapter, at any time if the representative has, by false or fraudulent application or representation, obtained a registration as a representative or, whether or not acting as a representative, is found guilty of . . . ." Then it clarifies that we are talking about time share promotional meetings, or if they induce other people to attend a time share promotional meeting or sales presentation without disclosing that such meeting or presentation is for the sale of time shares. This is a very competitive business, and everybody is trying to get people to listen to their presentation. There have been issues, and that is why Metro is concerned and why we added that in our proposed amendment. If you are considering processing this bill, we would ask you to consider this amendment.

**Chair Bustamante Adams:**

Are there any questions from the Committee? [There were none.] Is there any neutral testimony? [There was none.] Are there any closing remarks?

**Senator Patricia Farley, Senate District No. 8:**

This is not about two different business models. The driving factor for me to bring this bill forward was because the Real Estate Division has brought similar legislation in previous sessions because of the problems identified, and Metro was strongly in support. Regardless of which business it is, it was trying to drive at a public issue. What concerned me most is the Real Estate Division does not have enough money to actually supervise, fingerprint,

and make sure who is out on the street selling these time shares. What is happening is Metro is more involved in monitoring and policing this activity because we do not know who is luring people, what they are promising, and what they are getting paid. That is my concern. I asked them to solve that problem. I have not seen the amendment that was submitted today nor, after one discussion, has anyone in opposition spoken to me.

**Assemblywoman Tolles:**

Did you have conversations with Metro regarding this issue?

**Senator Farley:**

I absolutely have. In previous hearings in the Senate, they testified in favor and in support of this bill. Through this political process, they are now neutral.

**Assemblywoman Tolles:**

There was testimony that Metro did not have concerns, and that did not seem to match.

**Senator Farley:**

I met with the Real Estate Division who brought a similar bill in a previous session because of this problem. They work with Metro on these issues. That is the selling point for me.

**Mike Draper:**

As much as one can try to confuse this issue, it is really a simple bill. To the point of fixed location, as the opponents of the bill and Assemblywoman Neal brought up, we are comfortable with time share marketing representatives to work from floating locations and represent multiple developers. The process as it works is that these time share representatives apply with the Division of Real Estate, they reveal the broker they are working for, and that broker is licensed with the Division. In this case, we would have multiple brokers because we work for multiple developers. Each developer has a broker, so for my client, they have two brokers. Both of those brokers, who are quite comfortable with this mechanism, understand they share liability for any misbehavior or misconduct from our client. If the broker is not comfortable with that, they do not have to engage in this business model. Both of our developers are very well respected.

Both Wyndham Resorts and Berkley Resorts have brokers who are very comfortable with this and understand they share liability if there is a question of liability. If a complaint is filed, it would probably say either "Wyndham representative" or the "Berkley representative." I would know right away who it was. If there is ever a dispute, both of our brokers share in liability. It is the same process that we figure out liability right now. If a time share representative has an issue, it is the same broker who registered him. If there is any question about whether my client is operating illegally or what the statute says, we would not need another proposed amendment suggesting we can only represent one developer. Clearly, there is ambiguity in the statute. Clearly, "a developer" does not mean one. It could mean for each developer represented, otherwise we would not need the proposed amendment. We are trying to clarify ambiguity, and we are trying to do it without imposing our model on anyone else's model.

It has been mentioned that we are unlicensed. That is a very misleading way of putting it. My client is absolutely licensed to do business in Nevada. They are not licensed with the Real Estate Division because the Real Estate Division does not have a licensure category for time share marketing companies. They are not licensed real estate brokers, but they are not doing sales. I know if the Real Estate Division had more funds, it would like to be able to license and regulate this part of the industry. This bill is quite simple: how do we codify statute, provide a foundation for going forward, and start to regulate and clean up some of the things happening in this industry with minimal impact on jobs and companies?

**Chair Bustamante Adams:**

Senator Farley, I heard you say the opponents of the bill have not spoken to you.

**Senator Farley:**

I met with them once in my office and shared with them that my position was to solve a community issue that was the concern of the Real Estate Division and Metro. I have not seen the amendment.

**Chair Bustamante Adams:**

Professional courtesy in this building dictates that those in opposition work with the sponsor. I would encourage those individuals to do so. Time is running out, so please let me know by 8 a.m. tomorrow if you have reached a compromise. I will close the hearing for Senate Bill 438 (2nd Reprint) and open the hearing for Senate Bill 498 (3rd Reprint).

**Senate Bill 498 (3rd Reprint): Revises provisions relating to mortgage brokers, mortgage agents and mortgage bankers. (BDR 54-484)**

**Marcus Conklin, representing Nevada Mortgage Lenders Association:**

Jon Gedde will provide the testimony on this bill.

**Jon Gedde, Chairman, Nevada Mortgage Lenders Association:**

Senate Bill 498 (3rd Reprint) provides flexibility to the Division of Mortgage Lending, Department of Business and Industry, to adopt new standards, adjust to changes in market conditions, and align with federal guidelines more quickly through flexibility to do so in the *Nevada Administrative Code* (NAC) instead of several items in statute. Four areas are proposed to be changed:

1. Align the education requirements with the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act, which is the federal requirement.
2. Enhance flexibility on the examination frequency.

3. Improve the flexibility on reporting guidelines so the Commissioner of the Division of Mortgage Lending may allow for information to be submitted through other formats as they become available, specifically the Nationwide Mortgage Licensing System.
4. Update the definition of a commercial mortgage loan.

**Chair Bustamante Adams:**

Are there any questions from the Committee?

**Assemblywoman Neal:**

Section 2, subsection 3 and section 7, subsection 3 both say, "The Commissioner may waive the requirement to submit a report pursuant to subsection 2 if substantially similar information is available to the Commissioner from another source." What is the other source?

**Jon Gedde:**

The Nationwide Mortgage Licensing System (NMLS), which is actually the nationwide multi-platform licensing system for mortgages, is the national registry with whom all residential mortgage agents need to register. Mortgage brokers, mortgage bankers, and mortgage companies all need to be registered with NMLS, which currently has quarterly reporting requirements, including a few of the same data points that the Division of Mortgage Lending currently acquires through their monthly activity reports. However, the current NMLS does not have all of the same data points necessary for the Division of Mortgage Lending to effectively do their job. Our understanding is that the NMLS is going through an upgrade process. We have no idea how long that process will take. Therefore, we want to adjust the *Nevada Revised Statutes* (NRS) to give the Commissioner of the Division of Mortgage Lending the flexibility, when and if substantially similar information is available through that alternate reporting mechanism, to waive the requirement for the monthly activity report that is currently required to prevent a duplication of work.

**Assemblywoman Neal:**

In sections 1 and 3.5, why are the three hours of continuing education related to laws and regulations being removed?

**Jon Gedde:**

We have provided you with a copy of the standards throughout the country for continuing education ([Exhibit F](#)). Nevada has an extremely high bar for the requirement of state law-specific education. We are eliminating the three-hour requirement. The five-hour requirement for total hours of education will remain. It gives the Division of Mortgage Lending the flexibility to adjust any specifics for education as needed.

**Assemblywoman Neal:**

Being that we have gone through a series of mortgage issues, knowing the laws and regulations is important. The only thing left is the two hours relating to ethics, and you lowered the total required continuing education hours from ten to eight throughout the bill. What is happening in the space where they no longer need for that to be a "must" statement, and it is now flexible? I think they should know the laws. Not being clear on what is happening on the federal level and what could change at the state level gives me pause for concern.

**Jon Gedde:**

I appreciate your question and concern. However, the regulatory environment at that time was completely different than it is today, specifically at the national level. When I was first licensed in 2006, the requirement to become a licensed mortgage agent in Nevada was to send a check to the Division of Mortgage Lending. That was it. There was no education requirement for pre-licensing, and there was nothing else required other than a background check. Now we have national standards. The national standard through the SAFE Act is 20 hours of pre-licensing education along with a comprehensive background check and registration with the NMLS. Nevada also has pre-licensing education requirements and other standards that are followed to initially get a license.

The reason we are adjusting these education hours now is because the current standard does not really do anything to increase the safety or security of the industry. Three hours of Nevada state-specific law education is really overkill. We simply want to change the ten hours to eight hours to align with the federal standards. We have talked at length with the Division of Mortgage Lending about these changes, and I feel we are very much in agreement on the goals we are trying to achieve. We have also come to some agreements about the educational requirements in the NAC. Specifically, for qualified employees, they will still be required to complete a certain number of state-specific education hours and other things like that, which will ensure the safety of the industry.

**Marcus Conklin:**

You may recall Assembly Bill 468, which was heard by this Committee a number of times. That bill was designed to specifically eliminate NRS Chapter 645E and roll all licensures into NRS Chapter 645B. Part of the reason you see duplication in this bill is because this bill deals with NRS Chapters 645B and 645E, because 645E has not yet been eliminated. We are really only talking about one change even though you see it in multiple chapters. Assembly Bill 468 passed the Senate this morning so eventually, NRS Chapter 645E will roll away. As long as those two statutes exist, we have to duplicate the process.

The education hours being reduced from ten to eight corresponds with the requirements from the federal SAFE Act. However, this bill says, "at least." This is the minimum standard to be met. If the laws were to change as they are now, the Commissioner would have the power and the authority to require additional hours to make sure that licensees have that knowledge.

These laws do not change on a regular basis, or they change in a very minor way. What this does allow is more time to be spent at the federal level with the federal law to make sure people understand what is being passed down from the federal level. It does not eliminate the ability of the Division to require change if they deem it necessary.

**Assemblyman Daly:**

In section 1.5, subsection 2, paragraph (d), it talks about the periodic standard examination, which was annually. Subsection 4 says if they met some standards, they could take the examination once every two years. Are you planning on putting in a minimum standard instead of at the Commissioner's discretion? With the language being left that open, it could be once every ten years if somebody got behind. I would be more comfortable if the bill said not less than once every two years.

**Marcus Conklin:**

We have submitted a document that highlights the national standard for examinations ([Exhibit G](#)). At our current level of every year, we are the only state to do that. We have had that requirement since the early 1990s, but I am not sure what the intent behind it was. It is a standard that is far outdated and nearly impossible to meet. This bill is designed to have some ongoing standard, but to allow the Division of Mortgage Lending the ability to follow the problems. You can set a standard, but if you look at the document, you will see that two-thirds of the states have no periodic examination. This will allow them, if they get complaints or if they identify some potential problems in the marketplace, to use their manpower wisely to follow those in an effort to protect consumers as opposed to having to spend all of their resources on a periodic examination that may yield nothing in terms of consumer protection. I think that was the ideology behind this. This will allow the flexibility necessary to pursue things that actually benefit consumers in the marketplace as opposed to simply following the letter of the law.

**Assemblyman Daly:**

We have had the annual examination for a long time, with the exception that if you omit certain criteria, you can have it every two years. You are saying that different people will be treated differently rather than a regularly scheduled examination. It will be complaint-driven or performance-driven. Do you have anything in regulation now, or are you contemplating regulations that would make the "periodic" more structured?

**Marcus Conklin:**

I think the law says there needs to be periodic examinations which indicates there needs to be a schedule. We are simply allowing the Division of Mortgage Lending to set that schedule. They only have finite resources to participate in the places where they think they should. They need the flexibility to set that schedule so they have the resources necessary to respond to problems. I am not suggesting that everyone would be on a different schedule.

I am merely suggesting that you can spend all of your time going through the process and have no resources available to address problems when they arise. You do not know when they are going to happen, but there are problems in the marketplace. This bill is only designed to offer them flexibility to move as necessary within the confines of those resources and still follow through on the periodic examination.

If you look through your records of audits that have been done by the legislative auditor, you will see that over a period of time, it is very difficult to actually conduct these examinations. What happens is that you end up not getting to everybody, or if you do get to everybody, they do not get a full examination. Under this bill, I think the number of examinations you get in an average year, or the amount of time it takes to get to everybody, would be spread out. Each examination would be more thorough. To me, that is a better process, plus it leaves you with the resources necessary to deal with any market problems you foresee.

**Jon Gedde:**

The Division of Mortgage Lending used to have very quick, short examinations that did not encompass a great deal of breadth when they would look at the books and the records of loan files. We are basically talking about a rubber-stamp exam of all of the licensees on an annual or biennial basis just so they could comply with this statute. Knowing how detailed and complex some of these issues are, we felt it best to give the Division of Mortgage Lending the ability to conduct more thorough examinations, especially on the actors who are known to cause problems and in the areas that are known to cause problems instead of doing rubber-stamp examinations more frequently. The intention is to give the Division of Mortgage Lending the flexibility to best devote its resources to the areas that have the potential to cause the most consumer harm.

**Assemblyman Daly:**

I understand your intentions, but I have also seen there have been a lot of changes over time. My concern is about the "at his or her discretion" periodic examinations. If the examinations are not a priority, they will become less frequent or be driven only by complaints until we do not have them. That is why I am trying to push for some type of structure in regulations, or something that says there will be full or partial examinations. If people have done well, as was in section 1, subsection 4, which is being deleted, they could have less of an examination. My concern with the language is that someone in the future could have the discretion to have no examination.

**Chair Bustamante Adams:**

Are there any further questions? [There were none.]. Is there anyone wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in the neutral position?

**Scott Whittemore, Deputy Commissioner, Division of Mortgage Lending, Department of Business and Industry:**

I have worked with both Mr. Conklin and Mr. Gedde. They have been transparent in their desire for this bill and what they were looking for in these individual pieces. The most concern in this bill seems to be the examinations. This is incredibly important to the Division of Mortgage Lending. It is a major reason why we exist. The law allows for biennial examinations of the vast majority of our licensees.

Currently, only about 60 of the 270 who have to be examined are annual. This request from the Nevada Mortgage Lenders Association allows us to spend a greater degree of time and energy when we do give those examinations. Currently, we average about 46 hours for examination, but our full-scope standard is 80 hours. We want to get to a full-scope examination of every licensee. With the budget request we were granted this year, we will get two additional examiners, and that will bring the average up to 61 hours. Our goal is to get 80 hours. We believe this standard periodic examination language allows the Division of Mortgage Lending to assess on a schedule who is going to be licensed and when. Our scheduling would then simply be more discretionary for more thorough oversight, not less.

**Chair Bustamante Adams:**

Are there any other questions from the Committee for the Division of Mortgage Lending? Seeing none, is there anyone else wishing to testify in the neutral position? [There was no one.] Are there any closing comments? [There were none.] I will close the hearing on S.B. 498 (R3). Is there any public comment? [There was none.] This meeting is adjourned [at 2:44 p.m.].

RESPECTFULLY SUBMITTED:

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Earlene Miller  
Committee Secretary

APPROVED BY:

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Assemblywoman Irene Bustamante Adams, Chair

DATE: \_\_\_\_\_



## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Senate Bill 438 (2nd Reprint) presented by Danny Thompson, representing Starpoint Resort Group, Inc.

[Exhibit D](#) is a letter dated May 25, 2017, in opposition to Senate Bill 438 (2nd Reprint) to Members of the Committee from Myles Timmins, Private Citizen, Henderson, Nevada.

[Exhibit E](#) is a letter dated May 25, 2017, in opposition to Senate Bill 438 (2nd Reprint) to Members of the Assembly Judiciary Committee from Allen Lichtenstein, representing Starpoint Resort Group, Inc.

[Exhibit F](#) is a document titled "Supplemental information for NMLA Testimony on SB 498 Re: Provision to remove State law specific CE requirement," regarding Senate Bill 498 (3rd Reprint), submitted by Marcus Conklin, representing Nevada Mortgage Lenders Association.

[Exhibit G](#) is a document titled "Supplemental information for NMLA Testimony on SB 498 Re: Provision to change examination frequency," regarding Senate Bill 498 (3rd Reprint), submitted by Marcus Conklin, representing Nevada Mortgage Lenders Association.