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

Seventy-Ninth Session
February 27, 2017

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 1:30 p.m. on Monday, February 27, 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.

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:

Assemblyman Richard Carrillo, Assembly District No. 18

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Wil Keane, Committee Counsel
Kathryn Keever, Committee Secretary
Olivia Lloyd, Committee Secretary

OTHERS PRESENT:

Leah L. Jones, Legislative Liaison, National Employment Lawyers Association
Ruben J. Garcia, Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas
Leon Greenberg, Attorney, Las Vegas, Nevada
Cherie Mancini, President, Service Employees International Union Local 1107
Detra Pasby, Private Citizen, North Las Vegas, Nevada
James Halsey, Assistant Business Manager, International Brotherhood of Electrical Workers Local 357
Lorraine Marshall, Private Citizen, Las Vegas, Nevada
Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada
Robert Ostrovsky, representing Nevada Resort Association
Gary Milliken, representing Nevada Contractors Association
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce
Jack Mallory, Assistant Business Manager/Secretary-Treasurer, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15
Warren B. Hardy II, representing Nevada Restaurant Association; and Associated Builders and Contractors of Nevada
Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada
Randi Thompson, representing National Federation of Independent Business
Ray Bacon, representing Nevada Manufacturers Association
Bill M. Welch, President and Chief Executive Officer, Nevada Hospital Association
Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry
Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Nathan R. Ring, representing International Union of Operating Engineers Local 12; and Laborers International Union of North America Local 872
Kevin B. Christensen, Chair, State Apprenticeship Council

Chair Bustamante Adams:
[The roll was taken.] Today we have two bills and a presentation on State Apprenticeship Councils by the Nevada Labor Commissioner. I am going to take the bills out of order. I will open the hearing on Assembly Bill 211.

Assembly Bill 211: Revises provisions governing compensation and wages. (BDR 53-764)

Assemblywoman Sandra Jauregui, Assembly District No. 41:
Assembly Bill 211 would revise the *Nevada Revised Statutes* (NRS) chapter relating to compensation and wages. If any employee prevails in an action or proceeding to recover wages not paid in accordance with the provisions of this chapter, the employee may recover an amount that is three times the wages owed.

The intent of A.B. 211 is to protect Nevada's hard-working families who are most at risk of being victims of wage theft. Employers who fail to pay overtime wages, pay final paychecks, grant sick leave, give tips, and who pay less than minimum wage or misclassify employees hurt the very people we fight to help. We need to protect Nevada's hard-working families and ensure they are earning their fair share of wages.

Wage theft is not specific to one industry. It occurs across a wide range of industries every single year. In fact, it hurts businesses that pay their workers in accordance with the law. Responsible business cannot compete with companies that do not pay their workers fairly. Employers who do not pay their workers fairly do not pay their fair share in taxes either, forcing cutbacks in vital services.

Assembly Bill 211 would act as a deterrent to employers who might take advantage of workers. Bad actors who continue to break the law can be subject to paying up to three times the wages owed to the affected employee. My intent is not to punish employers or businesses. These laws already exist. My bill provides employees with more choices to pursue restitution.

Currently, an employee files a claim with the Labor Commissioner for wages owed. The Labor Commissioner makes a final decision on the claim. After that, employers and businesses are given an opportunity to make the employee whole. Most businesses do. A small percentage of employers and businesses fail to pay unpaid wages, even after the Labor Commissioner's final decision. We are trying to target these bad actors, the employers and businesses that refuse to pay the wages they owe. As it stands now, employers and businesses that do not pay are sent to collections. This is done through the Office of the State Controller. There is nothing an employee can do to collect the money owed them. Assembly Bill 211 would give employees a private right of action to pursue wages up to three times the amount owed.

In 2011, the Economic Policy Institute, a nonpartisan nonprofit, released a study of wage violations in two states, California and New York. This study, commissioned by the U. S. Department of Labor, determined that wage theft costs employees an average of 37 to 49 percent of their income in lost weekly wages. This study shows that wage theft drove between 15,000 and 67,000 families below the poverty line in those two states.

Wage theft affects low-income and immigrant populations disproportionately, especially low-income women of color. They have little power to address this issue on their own. They need employment and they are usually not members of a labor union at their workplace.

States as diverse as South Carolina and Massachusetts now provide employees who are victims of wage theft with treble damages. This has been done in order to address this problem and deter employers from engaging in this conduct.

Leah L. Jones, Legislative Liaison, National Employment Lawyers Association:
Wage theft is defined as the failure to pay employees what they are legally entitled to. Wage theft occurs in many forms: working employees off the clock, stealing tips, not paying overtime, misclassifying workers, failing to pay final pay, failing to pay an employee sick leave. There are many different forms of wage theft.

Assembly Bill 211 would help employers who are paying their employees correctly compete with employers who are not paying their employees correctly. Under Nevada law, the current minimum wage is $7.25 per hour.

A policy brief released in September 2014 by the Economic Policy Institute, a nonpartisan think tank, shows that a minimum wage employee earning $7.25 per hour and working a 40-hour week makes $290 a week. If you multiply this by 50 weeks, that totals $14,500 per year. If you take a half hour, just a half hour of time each and every week, that amounts to $18.12 a week or $960.25 per year that an employee loses due to wage theft. That is with just a half hour each week. That $960 may not seem like a lot, but to a minimum wage employee, it is a lot. The Economic Policy Institute brief also found that two-thirds of American minimum wage workers experience wage theft. The average amount of that wage theft is $2,634 a year.

Wage theft is not an isolated incident. Assembly Bill 211 would help employees seek redress for the work that they have done and the wages that they have in fact earned.

Ruben J. Garcia, Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas:
I am speaking in a personal capacity. According to the U.S. Department of Labor, wage theft costs employees between $8 billion and $14 billion a year. Assembly Bill 211 is one part of a strategy to address these losses. These strategies include a number of other legislative innovations such as wage liens or other mechanisms to encourage employees to bring these

claims forward and to deter employers from violating the law. In minimum wage cases, or even cases involving the Equal Pay Act of 1963, the damages are a very small amount. In some cases, the employer may see fines or damages as simply the cost of doing business if they are caught.

Assembly Bill 211 is part of a number of innovations throughout the country to address the problem of wage theft. A number of states are passing legislation providing for treble damages in wage theft cases. Nevada would not be the first. Treble damages are something available in a number of other areas of federal law. There are proposed amendments to the Fair Labor Standards Act (of 1938) (FLSA). Last year, in Congress, Senators Patty Murray and Sherrod Brown, along with Representative Rosa DeLauro, introduced proposed amendments to the FSLA. This legislation, designed to crack down on employers who engage in wage theft, is to deal with what they see as a national problem.

Strategies to address wage theft can take a number of forms. They may include triple back pay, as is proposed in A.B. 211, civil penalties and improved enforcement efforts using recovery, or it can empower workers to bring violations forward. This has occurred in other states.

There are a number of ways to deal with wage theft, but the bottom line really gets to the kind of conduct we are trying to deter—the intentional underpayment of wages owed under the law. This bill represents one strategy to prevent wage theft. It should be considered along with a number of other strategies during this legislative session.

Assemblywoman Neal:
How many people in Nevada are experiencing wage theft, and how many employers are involved in wage theft? What is the precedent for using treble damages? Are any neighboring states using treble damages?

Assemblywoman Jauregui:
I spoke to the Labor Commissioner. Many people in Nevada are experiencing wage theft, but we only have information on the number of claims filed with the Labor Commissioner. In 2016, there were 2,328 complaints filed. Of these, 10 percent of the employers (about 239) did not pay the unpaid wages even when directed to do so by the Labor Commissioner. This is 239 working families in Nevada who did not get their unpaid wages.

Leon Greenberg, Attorney, Las Vegas, Nevada:
Today, under Nevada labor law, there is no allowance for exemplary, double, treble, or punitive damages of any form. A worker suing for unpaid wages has a right to collect unpaid wages, but nothing more under current law. This differs greatly from other states. In New York, there are general provisions in labor law that allow for double damages in cases of successful unpaid wage claims which are secured by a decision of the court.

South Carolina is a state that does not have some of the other labor protections that Nevada has in respect to minimum and overtime wages, but triple damages are available. This model, which provides employees who are successful in a lawsuit an opportunity to receive more than just the wages owed, is common.

I want to emphasize to this Committee that the real value in this type of legal structure is not so much in the cases where the recovery is secured, but in the deterrent effect of the law. Currently in Nevada, when employees successfully sue for their wages, all they get are their wages. This creates a circumstance where unscrupulous business operators, those who do not want to compete on a level playing field, who do not pay fairly or follow the laws, essentially have a big gateway. They have an advantage over businesses that follow the law. The likelihood that employees will sue unscrupulous business owners over wage theft is relatively small.

As it stands now, if employees prevail, the employer only has to pay the actual amount of wages owed. This creates a situation where if businesses wish to function in an unethical fashion, they have a great opportunity to do so. For these reasons, treble damages are extremely important to protect working families in Nevada.

Ruben Garcia:
Arizona has a similar statute for triple wages. The number of states looking at this remedy is growing. The last time I checked, approximately 10 or 12 states have passed this particular remedy. A number of other remedies are part of legislative strategies and they are very common in many other states.

Assemblywoman Carlton:
What does it mean when it says, "Prevails in any action or proceeding"? If I am hearing you correctly, when an employee is the victim of wage theft and files a claim and wins, there is no real hammer in the law to enforce payment. It is simply turned over to collections. Is this so?

Assemblywoman Jauregui:
"Prevails in any action or proceeding" means that we are giving an employee the choice now. They can either file a complaint with the Labor Commissioner or choose a private action. In regard to collections, when the Labor Commissioner files the final decision, the employer is contacted and given an opportunity to make the employee whole. If the employer does not pay what is owed, it is turned over to the state to collect. It leaves the Office of Labor Commissioner and goes to the Office of the State Controller.

Assemblywoman Carlton:
This bill helps to provide a hammer for employees. Currently, if an employee files a court action and wins, the fees of the prevailing side are not paid. The employee receives only the wages he or she is owed. They cannot recoup the fees they have spent trying to collect unpaid wages. This can cost employees more than their wages to take it to court**.** Is this correct?

Assemblywoman Jauregui:
Correct. Currently this is true under state law. There are federal laws allowing them to collect up to two times the wages owed. Changing Nevada's laws to allow an employee to collect three times the wages owed is to act as a deterrent to employers.

Assemblyman Ohrenschall:
Is there data showing that treble damages are an effective deterrent in jurisdictions that have passed this type of legislation? Is it an effective deterrent against wage theft in particular industries or overall? Are there protections against retribution currently in the law for employees who report wage theft? What kinds of protections exist for employees who try to speak out and report this?

Ruben Garcia:
Many of these laws are relatively new; we do not have the longitudinal data to document the impact. If you look at other areas of law, for example antitrust law, you find treble damage liability. I do not know of any data collected regarding this.

The issue of retaliation for bringing wage claims is a separate issue; it is not part of this bill. There are protections under the law if employees bring wage claims. This bill does not address retaliation directly; it only deals with amounts due for unpaid wages.

Assemblyman Ohrenschall:
Are the existing protections against retaliation contained in state or federal law or both?

Ruben Garcia:
Both state and federal laws contain provisions against retaliation. A number of areas of law protect employees from retaliation; this includes retaliation for safety claims and for organizing unions. A number of different laws protect employees from retaliation.

Assemblyman Hansen:
I am sympathetic to people on the low end of the wage scale, but I have some concerns. For example, a plumber working on a large project paying prevailing wage can make $70 per hour. If there is a labor dispute, you can be talking millions of dollars, especially with treble the damages. Who has the burden of proof and are there caps on the legal fees?

Assemblywoman Jauregui:
Currently there are no caps.

Leah Jones:
As far as the burden of proof is concerned, it goes back to the deterrent effect of this bill. Your scenario of a large project is a fair competition issue. One contactor may not be paying its employees, including overtime that is due or insurance to which they are entitled. Another contractor, on the same job site, may be paying the correct wages, including the overtime rate. This situation creates unfair competition for the contractor who is doing the right thing.

Assemblyman Hansen:
Who ultimately has the burden of proof?

Leah Jones:
If an employee files a lawsuit against his or her employer, the burden of proof is on the employee to show that there is a violation. It goes back to the defendant to prove that he or she has not been paid properly. They can do this with records, timesheets, and things like that. It is not any different from any other civil lawsuit.

Assemblyman Hansen:
The majority of employees in Nevada work for very small businesses with 5 to 15 employees. When situations occur, often they are simple, honest mistakes. It is not theft, it is a mistake. The wording in this says, "may." Is there some provision in this bill that unintentional acts will not automatically result in treble damages? I am concerned that people who have made an honest mistake will be punished.

Small-business owners can become confused by changes in record-keeping, labor laws, and other regulations. They would not intentionally cheat their employees. I want to make sure that there is a provision in this bill to protect the small-business community.

Assemblywoman Jauregui:
This only applies to businesses that are willfully breaking the law, not those that might have made a mistake. We are working on an amendment to this bill to make sure that this is clear.

Assemblyman Paul Anderson:
How big is this problem? Have other states found treble damages to be a deterrent? There are several states with similar damages, but I cannot find any information on whether treble damages is a deterrent. Is there a good-faith effort clause? In Massachusetts, for example, their laws have a good-faith effort clause. It covers businesses that have made a mistake, or if they are making an effort to make payments but cannot find the person, and similar situations. It helps businesses, especially small businesses.

Ruben Garcia:
The intent of this bill is to get at the bad actors. We are talking about what would be the biggest deterrent. When we talk about bad actors, we are talking about intentional misclassification of employees or employees who have not been paid. We are not talking about people who make honest mistakes. There is a difference between honest mistakes and paying people a couple of dollars per hour less than they should be paid. Most claims are not for large sums of money, and the biggest damage awards are usually against people who intentionally misclassify employees or violate the law.

Assemblyman Kramer:
What will your amendment say about good-faith efforts? Large businesses typically have personnel and payroll departments. They keep excellent records and can go back to past years and track everything easily. However, in my experience, smaller businesses can be

more casual about record-keeping. I am concerned that we will be creating a burdensome level of record-keeping for small businesses. Will this additional level of record-keeping create an expense for small businesses? If so, what will this cost be?

Leah Jones:
I want to be sure that I understand your question correctly. Are you talking about people who employ casual or day laborers and pay in cash? Are you talking about workers who do not have social security benefits, Federal Insurance Contributions Act (FICA), and similar things taken out of their paychecks? Or are you talking about a small-business owner with two or three employees who is using QuickBooks or a similar program to make sure they are paying their employees properly? I think these are two different scenarios.

Assemblyman Kramer:
Even if a business owner is using QuickBooks and withholding the necessary deductions, disputes may arise—a time card is not signed, and the employer, acting in good faith, pays for a certain number of hours. Later, the employee comes back and tells the employer that he was not paid for the correct number of hours. The employee may say that he did not get his full lunch break on a certain day and they are short a half-hour of pay. The employer would not have documentation of that because the employee has not signed a time card. What type of documentation do employers need to defend themselves if employees challenge the amount they have been paid? What type of documentation do you need in order to file a claim if you are the employee?

Will there be any extra expenses for small businesses because of additional paperwork required for their records? I can see a situation occurring where a disgruntled employee who has been fired comes back and disputes the wages he has been paid. They could say that they are going to file a claim against the employer for treble damages. What backup does a business owner need? What will it cost?

Leah Jones:
If an employee is disgruntled about a half-hour lunch break, or maybe it happens once a week for a couple of months, the employee can file a complaint with the Labor Commissioner. *Nevada Revised Statutes* (NRS) 608.140 requires a demand letter prior to filing any civil lawsuits against an employer. This goes back to Assemblyman Hansen's question about the burden of proof or not suing small employers for small amounts. An employer has a chance to work things out with the employee. They can discuss what the employee feels he or she is owed, look at the available documentation, and try to figure it out together. You asked if there is any data on how much it will cost employers to do the necessary record-keeping. I do not have that information. In studying this area, I do not believe that an employee would be able to bring a cause of action for small wages. Assembly Bill 211 is meant to be a deterrent to bigger companies. The intent of this bill is not to make it harder for small employers to pay their employees or to do business.

Assemblyman Kramer:
There are many horror stories out there about employees who have been fired filing claims for unlawful discharge or claiming unpaid wages. The threat of a lawsuit causes the employer to pay the $500, the $1,000, or the $10,000. In order to avoid going to court, they settle. This is harmful to small business.

Assemblywoman Neal:
I was reviewing the minutes for the Assembly Committee on Commerce and Labor hearings on Assembly Bill 143 of the 72nd Session. A $5,000 penalty was added to the law then. Under this bill, the remedies were cumulative; if an egregious act occurred, it would be considered a criminal action as well. Has this had an impact? In cases of egregious acts of wage theft, how many people have been able to pursue criminal action against employers who have been found guilty? This bill does not seem to eliminate this. Does this affect NRS Chapter 338? Does it now apply to public employers as well as private employers?

Assemblywoman Jauregui:
This only applies to NRS Chapter 608. It applies to private employers, not public employers.

Ruben Garcia:
It goes back to the question of what is the likelihood of the employee prevailing. Going back to Assemblyman Kramer's question, a lot of this goes back to the kinds of records the employer keeps. Under other current laws, employers are already required to keep records. This bill does not affect that obligation. Courts have the ability to look at the cumulative nature of remedies for that complaint. That is how that is playing out in the courts.

Leon Greenberg:
Just to clarify, the $5,000 penalty Assemblywoman Neal was referring to can be collected by the Labor Commissioner. The Labor Commissioner or the district attorney can pursue criminal prosecution for nonpayment of wages. It has been my experience that an employee pursuing civil action through his own counsel provides no additional remedies for the employee. There is not a $5,000 penalty or any additional damages beyond the amount of wages owed to the employee.

In respect to the burden on the employer, as Professor Garcia noted, state and federal laws already require employers to maintain accurate records on the wages they pay their employees and the time their employees work. The enactment of this law does not change these requirements.

In terms of litigation, it can be an issue of fact to be determined in the civil court system. There has been discussion about false claims and the possibility that this legislation would enable bad actors to bring abusive or improper claims against employers. Our civil system has provisions to deal with this. The reality is that if somebody brings a false claim before the court, our civil system has provisions to deal with these situations.

For example, there are offer of judgment rules in our civil system. If an employee without a valid claim or one who has a very nominal claim sues a defendant, or employer, the employer can make an offer of judgment. Presumably, the employer can establish that employees are not entitled to what they are claiming. If the employer prevails, he is entitled to an award of attorney's fees or costs because the employee did not accept the reasonable settlement for the actual amount owed or what was offered.

Similarly, there are legal protections against malicious prosecution. There are criminal statutes that penalize those who perjure themselves or make false claims. We are not talking about changing the playing field in terms of what employers or other small-business operators are faced with. As Assemblywoman Jauregui has been emphasizing, we are trying to remove any incentive that bad actors have to seek economic reward by a pattern of conduct such as wage theft.

Assemblyman Daly:
Currently provisions exist in the NRS requiring employers to keep records. These requirements for records of wages are in NRS 608.115. Under this statute, employees can request copies of their records. If requested, copies must be provided to employees within ten days of their request. Employers are required to keep these records for two years. There is a lot in place to protect and defend an employer.

I have dealt with a number of employment issues over the years. If an employer does not keep adequate records and uses what I call the "shoe box defense"—they say they have their papers in a shoe box, or they did not really keep records—they create a liability for themselves. If they cannot prove that they have paid the required wages and the employee has kept records, including the hours worked, the employee will prevail in any action or proceeding. Both the employer and the employee should keep records. Record-keeping requirements are already in the law and people need to follow the law.

Employers commit wage theft in a variety of different ways. I have seen most of them and they are difficult to prove. Assembly Bill 211 can provide a deterrent. I think you are on the right track with the verbiage about "willful or knowingly."

Chair Bustamante Adams:
Is there anyone in support of A.B. 211?

Cherie Mancini, President, Service Employees International Union Local 1107:
I speak today in support of A.B. 211. I do this on behalf of the home care workers whom Service Employees International Union (SEIU) represents. They make $10 per hour on average. They are among the most frequent victims of wage theft—likely because the agencies that employ them can get away with it. Home care workers provide valuable care that allows the elderly and disabled to remain in their homes. They are mostly women, minorities, and immigrants. They rely on every dollar they earn, and they are reluctant to speak up for fear of retaliation.

A report published in 2009 found that nearly 93 percent of home care workers reported overtime violations, 90 percent said that they work before or after shifts without being paid, and nearly 1 in 5 reported minimum wage violations. They are exploited by agencies and deprived of their rightful wages.

When one woman who works for a home care agency spoke up and had the audacity to be paid fairly, her employer responded, "You are illegal and you are asking me for more money." One owner of two Las Vegas home care agencies deprived workers of overtime by splitting their hours between her two companies, thus avoiding the 40-hour threshold for overtime pay.

Public money pays for 83 percent of home care. When workers are cheated, taxpayers are cheated, too, and the employer fraudulently pockets the profits. Home care workers are isolated and there is a lack of oversight in the industry. All of these factors create an atmosphere where wage theft thrives. Treble damages can be a disincentive to greedy employers, but home care agencies must also be regulated and required to abide by federal labor standards. It is in the public interest to ensure home care workers are valued and protected. We have an aging population, and there is a high turnover of employees in this rapidly growing industry. Our failure to respect and pay home care workers fairly put our loved ones and spouses at risk. We believe A.B. 211 is a step in the right direction and will make bad actors think twice before they deny their employees their rightful and hard-earned wages.

I would like to add, in response to Assemblyman Hansen's remarks, that when good employers make a mistake, their employees go to them and the mistake is corrected. They do not have to go to court. Normally, when you are not paid properly, you go to your boss and say, "I have a problem with my paycheck." Honest people who know they made a mistake will correct it. Small mistakes are not the problem. People and companies who blatantly and knowingly take rightful wages away from hard-working individuals are the problem. We need stiffer penalties to make them think twice about stealing employees' wages.

Detra Pasby, Private Citizen, North Las Vegas, Nevada:
I am, unfortunately, all too familiar with the topic of this hearing. I am a home care worker employed by two agencies that share common ownership. I have been denied my rightful wages for more than four years despite the Obama Administration's new federal labor standards. I generally work 46 hours per week; however, I am paid 23 hours of regular time by one agency and 23 hours of regular time by the other agency. My employer requires this arrangement in order to avoid paying me overtime. I am telling you my story despite my fear of losing my job. I am telling you my story because, like other home care workers, I work hard and earn little. Each of us deserves to be paid fairly for the valuable services we provide. I encourage you to protect all low-wage workers against wage theft.

James Halsey, Assistant Business Manager, International Brotherhood of Electrical Workers Local 357:
Wage theft and the underpayment of wages is a problem in Nevada and have been for some time. In recognition of this problem, our union and our contractors acting together hired a wage compliance officer in 2002. Over the past 15 years, our compliance officer has assisted over 343 underpaid electricians. Without the compliance officer's help, these wages would not been paid. To put this in perspective, I added up the wages we helped our workers collect. It totals $1,062,160.19. Between 2002 and 2015, until our compliance officer was able to help our workers collect these wages, they were deprived of them. Some of these cases involve smaller dollar amounts and are explained by administrative errors. However, many contractors engage in wage theft.

An example of this is Fire Station 22, a Clark County project. In 2010, a new fire station was built to replace an existing one. This was a prevailing wage job; signs were posted on-site clearly specifying it was a prevailing wage project. In this case, an electrical contractor deliberately misclassified the workers as laborers instead of electricians. These workers were working 40 hours a week. In addition to misclassifying the workers, the employer compensated them for only 16 hours of work per week.

The contractor in question had a history of incorrectly paying employees on prevailing wage projects. This project, Fire Station 22, began in 2010; in May of 2011, a wage claim was filed on behalf of 16 electricians. Clark County issued a wage determination of over $400,000 in March 2012. The contractor appealed this and finally settled for $175,000 in the fall of 2012. In the end, only half the workers received any money. Because of this kind of wage theft, we have contractors who compensate workers unfairly. Both the workers and the county lose out when this happens.

There need to be more incentives for a contractor or company to pay a worker correctly. It is apparent from what we have experienced that the current law does not encourage compliance.

Chair Bustamante Adams:
Is there anyone else here in support of A.B. 211? [There was no response.] Is there anyone in opposition to A.B. 211?

Lorraine Marshall, Private Citizen, Las Vegas, Nevada:
I oppose A.B. 211. I am a small-business owner and treble damages will encourage employees or former employees to sue, even if they are lying. Things such as sick leave and paid time off (PTO) can be disputed. It can take the small-business owners a lot of time to prove their innocence.

As an example, once when I was out of town I had a former employee bring a cross-claim against my business. Because I was out of town, I had to work with the state to get an extension for my response. When I returned to my office, I spent hours pulling documentation together to prove my innocence. In the end, my business was found innocent,

but what does this bill do to address people who make false accusations to get money from a small business? Are there any deterrents being considered to discourage rather than encourage these types of lawsuits, especially when the individual is not telling the truth? Many people say they are friends of small businesses, but bills such as this certainly do not show this. I believe that most politicians do not understand the amount of time, energy, and effort it takes to prove your innocence. They think it takes five minutes to pull up some paperwork, but this is never the case. Sometimes you have to consult with an attorney or a human resource (HR) expert to prove your innocence. By allowing former employees to get triple damages, you are encouraging many false claims because there is no downside for them. They just want to try to make as much money as they can in any way they can.

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

I represent the 1,500 members of The Chamber, Reno-Sparks-Northern Nevada. It sounds like The Chamber could support this bill if amended. It depends on the specific language of the amendment. Obviously, we are concerned about the word "willfully" if employers are making a good-faith effort to move forward on a claim. We want to make sure that state government is helping small businesses become stronger. We are always concerned about anything that is punitive or that transfers money from small businesses to lawyers. Again, not having seen the amendment, we cannot comment on that. We are opposed to A.B. 211 as it is now written.

Robert Ostrovsky, representing Nevada Resort Association:

Today I am representing the Nevada Resort Association. We are in opposition to A.B. 211. We are not satisfied with the language as a whole. Based on the testimony we have heard today, we believe that the intended targets of this bill are bad actors—intentional violators, people who are operating in bad faith. We do not have any disagreement with deterring this conduct. Nor do we have any disagreement with the concept of allowing the injured party to receive treble damages. We believe that the way the bill is currently drafted it applies to all sections of NRS Chapter 608. This affects everything from break time to lunch time to overtime to minimum wage rules.

We believe it is appropriate that the focus of the bill be narrowed to NRS 608.190. This section talks about intentional acts by an employer. The Resort Association is prepared to support this bill, if amended, narrowing the focus to NRS 608.190—intentional acts need to be well-defined. We believe that NRS 608.190 does that. If it is inadequate, we are willing to work with the bill's sponsor on the language to make this clear. I have experience with both hotels and manufacturing. From my perspective as a former senior HR executive for both MGM Resorts International and Bally's, whether you are a large or small employer, there is no defense like a written record. Even the presidents of the hotels I worked at had to sign time sheets every week. They hated it, but in the end, having a signed time sheet indicating break times is the best insurance policy that you can buy. It may be painful for small employers, but today we have heard testimony about employers wrongly accused of wage theft. A paper record is how employers can defend themselves.

We can support the bill with the appropriate changes. We will continue to work with the bill's sponsors; they have been very cooperative in dealing with us. I think we are all after the same thing, but we do not believe that this language gets us there.

Gary Milliken, representing Nevada Contractors Association:
I am in agreement with Mr. Ostrovsky's comments. Assemblyman Paul Anderson's remarks regarding good-faith efforts are pertinent to this conversation. Adding the word "willful" helps to make the bill's intent clearer.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:
The Chamber is opposed to this bill in its current form. We have had conversations with the bill's sponsor, and she is receptive and open to the dialogue we are having regarding the broadness of the current drafting. We, of course, will look at the amendment once it is available to see if it addresses our overall concerns about the bill. Our concern is that we want to assure that we are protecting good actors. The Chamber supports the bill as far as it pertains to bad actors. We look forward to the additional dialogue with the bill's sponsor and the upcoming amendment.

Assemblyman Hansen:
What happens if you are a business owner and all your paperwork is in order? What happens if the business owner is challenged and exonerated? Does the employer receive any compensation for his time and legal costs?

Robert Ostrovsky:
In my experience, it is very rare in Nevada for any case to ever make it to a courtroom. Most matters are resolved administratively with the Labor Commissioner's Office. Many times, employers can defend themselves without incurring legal fees, but there may be occasional legal fees. I cannot speak to what would happen if a case goes before a judge in a district court. I cannot tell you the rules for awards.

Assemblyman Hansen:
So the answer to my question is no? This may open up a new avenue for disgruntled employees to go to court. You are obviously representing some very big employers: MGM for example, has 50,000 employees. Obviously, you are going to have top-notch people making sure that all your records are in order. I have many questions as to how this whole thing will work out for smaller companies.

I am concerned about class action lawsuits. It is one thing to have one or two employees filing claims that cannot be substantiated, but what if many employees file claims?

For example, James Halsey, the International Brotherhood of Electrical Workers (IBEW) representative, testified that the IBEW has recovered over $1 million in wages owed their workers. Under this bill, somebody could now be on the hook for $3.5 million. I can see this opening up a huge assortment of problems in terms of class action lawsuits, especially for

large projects involving unions. The potential impact of this is enormous, particularly on prevailing wage projects. Medium-sized and smaller contractors may not keep their records as well as MGM and the giant casinos do. They could really, really suffer under this bill. I have real concerns about treble damages. Do you have any experience with class action lawsuits involving wage disputes?

Robert Ostrovsky:
No, I have not had experience with class action lawsuits. James Halsey, the IBEW representative, testified earlier that the majority of claims are settled with the employer. For example, if someone worked out of a classification for two hours during the day, will they get two hours of upgraded pay or will they get upgraded pay for the entire day? Those kinds of payroll errors are not uncommon. In a big company on payday, there are always people at the paymasters saying things like, "I was a cook that day, not a cook's helper; they upgraded me for the day." Mistakes are made and they are fixed. The words "class action" make most employers shudder. They usually think dollars. Frankly, from my perspective, if I am a lawyer and someone comes to me and says, "My boss owes me $27 in overtime," I am going to say, "I am sorry to hear that." But no one is going to pursue a $27 claim. That is just a fact. A $27,000 claim is a different matter, one likely to be pursued.

Assemblywoman Carlton:
It is not uncommon for mistakes to be made. Unfortunately, employees usually have to wait another two weeks to get their pay. Most businesses do not cut checks immediately; the employee has to wait until the next payday to get it. Mr. Ostrovsky, when you were talking about wages, you said that limiting this to just wages would make people more comfortable. Did I hear you correctly?

Robert Ostrovsky:
No, I think it should be all monies owed no matter what the source. What I had said was this bill, as written, covers everything. My concern is treble damages should apply to intentional acts only, not errors. If an employee is owed money for a missed lunch break or meal payments due, it should fall under this same provision if it is an intentional act.

Assemblywoman Carlton:
What would not be included in your model?

Robert Ostrovsky:
Nothing that can be monetized would be included. If employees are owed money, they are owed money.

Assemblywoman Carlton:
What do you want to eliminate? In your previous testimony, you said you wanted the focus narrowed to NRS 608.190.

Robert Ostrovsky:
The way this bill is drafted now, it talks about "any form"—any action or proceeding. I view going to the Labor Commissioner as an action. If an employee goes to the Labor Commissioner and the Labor Commissioner writes a letter to the employer, I consider that an action. I think this bill should cover intentional acts, which are covered by NRS 608.190—the willful failure or refusal to pay wages due. Treble damages should require legal action. There has been repeated testimony about courts making decisions. If a court makes a decision, there ought to be treble damages.

My problem is that whenever I had a case where someone went to the Labor Commissioner and the Labor Commissioner called or sent me a letter telling me that an employee was due X amount of overtime, I paid it. I did not wait two weeks to do this. When I was in charge of HR, I told the paymaster to pay it within 24 hours. I do not think that we have a difference of opinion. The issue I have is what triggers the treble damages.

Assemblywoman Carlton:
It had sounded to me like you wanted to include some things but not others. Would paid sick leave and break times still be included?

Robert Ostrovsky:
Anything spelled out in NRS Chapter 608, as required by the Nevada labor law, would be included.

Assemblyman Frierson:
My questions are along the same lines. My reading of NRS Chapter 608 shows that it already sets forth the requirement that the behavior be a willful failure or a refusal to pay wages. I do not think that A.B. 211 proposes to take that out. There is a process already in place in the law to determine if someone has willfully failed to pay. We are concerned with the people who have willfully failed or refused to pay.

My question is for you, Mr. Ostrovsky, Mr. Abney, and Mr. Moradkhan. Mr. Abney and Mr. Moradkhan indicated that they echoed your sentiments. If we clarify that we are talking about the confines of the statute, you indicated that that would satisfy the Nevada Resort Association to the extent that there would be support for this bill. I want to make sure I have heard correctly. I recognize that you have not seen the language yet. I know you need to see the specific language first, but is that something that you also echo?

I know that often a bill draft does not include the whole chapter, but NRS Chapter 608 has that language in it. If the issue is addressed and clarified, can you then support this bill?

Paul J. Moradkhan:
The Chamber would absolutely be open to that once we see the amendment to this bill. At this time, our legal counsel has a concern that the current version of this bill actually takes away the clarification of malfeasance. This is the Chamber's concern.

Assemblyman Frierson:
Thank you. I do not want to speak for the bill's sponsor, but I wanted to put this out there so that, moving forward, we could have a fruitful conversation about whether that would encourage support with the existing language in the statute.

Jack Mallory, Assistant Business Manager/Secretary-Treasurer, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15:
In the construction industry, wage theft is a catch-me-if-you-can crime. Workers are unpaid, underpaid for their overtime, or paid less than minimum wage. On prevailing wage projects, they are paid less than the prevailing wage, and they are underpaid for the number of hours they work. If a complaint is filed with the Labor Commissioner's Office, in many cases, the claim is limited to workers who come forward and file the claim or complaint. Potentially there are other workers on the same project in a similar situation.

The reason I am in opposition to this bill is that it does not contemplate enveloping these additional workers. Our organization would be satisfied if there was a mechanism in this bill to allow individuals to be included in a claim. This would be done within the administrative process of the Labor Commissioner's Office. If a case is found to be valid, a complete investigation would be undertaken by the Labor Commissioner's Office to determine if more workers were harmed.

For example, several years ago the Clark County School District self-performed repaints on a number of schools. They did not pay the workers the prevailing wage even though this was required. Two workers filed a complaint with the Labor Commissioner. They ultimately ended up receiving compensation from their claim against the Clark County School District. However, there were dozens of workers on these job sites. They were potentially involved in this case, but only two workers were made whole. The outcome of this case, *Southern Nevada Painters and Decorators and Glaziers Labor Management Cooperation Committee Trust v. Manpower Incorporated of Southern Nevada*, LCTS Nos. 24208 and 24209 (Nevada State Labor Commissioner, Dec. 11, 2015), was that the Clark County School District was found to have violated prevailing wage law. These two workers were awarded approximately $120,000.

We feel that this type of provision allowing other affected workers to join a claim fits well into this bill.

Warren B. Hardy II, representing Nevada Restaurant Association; and Associated Builders and Contractors of Nevada:
I agree with Mr. Ostrovsky's comments. This bill is very concerning on first read. However, when you understand what it is trying to accomplish, it is worthwhile. The intent of this bill is very valid and important. It is my understanding that the bill's sponsor intends to find language to ensure that it is clear we are talking about willful acts only, and that treble damages will kick in only after a finding that there has been a willful failure to pay. It is difficult to argue against that. I would associate myself with this bill.

Regarding Assemblyman Hansen's remarks, I would point out that the devil is always in the details. We are very interested in seeing the language in the amendment. When that language is presented and makes sense in all the respects that Assemblywoman Jauregui has indicated, then our associations will be in support.

Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada:
I do not want to be repetitive. I have the same concerns as the other representatives of the business community who have previously spoken. We will reconsider our position when we see the language in the amendment.

Randi Thompson, representing National Federation of Independent Business:
I also say ditto. There are bad actors on both sides. Both employees and employers can be bad actors. I share Ms. Marshall's concerns that treble damages could encourage frivolous claims against employers.

Ray Bacon, representing Nevada Manufacturers Association:
The only time the manufacturers' sector ends up with someone who is consistently down at the minimum wage level or slightly above is when we change the minimum wage. This becomes an issue when that happens. We have not raised the minimum wage for a decade. That is being discussed now.

The minimum wage is not the thing that gets us in trouble when there is oversight on the collections. The problem occurs when somebody goes into overtime with the new minimum wage. Overtime is paid at one and a half time. Our state is unique, and I am not aware of any available software that can calculate these changes. Some companies create their own software to cover this situation, but many companies are using standard software. This is a matter of oversight; it is not a willful attempt to avoid paying wages. I think this bill is okay, but the Nevada Manufacturers Association will be watching this bill. If we change the minimum wage, it will require manufacturers to adjust their payroll software to calculate the new pay scale. We have not had to do this for a long time.

Chair Bustamante Adams:
Is there anyone else who opposes A.B. 211? [There was no one.]. Is there anyone to testify in the neutral position? [There was no response.]

Assemblywoman Jauregui:
I would like to thank all the organizations that have approached me with suggestions for an amendment to this bill. We are working on language that will be more specific and target bad actors—those who are willfully withholding wages.

[(Exhibit C) was submitted but not discussed.]

Chair Bustamante Adams:
I will close the hearing on A.B. 211. I will open the hearing on Assembly Bill 149.

Assembly Bill 149: Revises provisions relating to noncompete provisions in employment contracts. (BDR 53-316)

Assemblyman Richard Carrillo, Assembly District No. 18:
Assembly Bill 149 seeks to limit the amount of time that a noncompetition agreement can restrict an employee from engaging in certain specified activities after the employment relationship has ended. Essentially, it is to ensure that Nevada workers are able to keep a roof over their heads and food on the table for their families. Nevada workers should not have to worry for months or years about how they are going to support their families. The bill does not attempt to limit other agreements to protect the employer's trade secrets or other legitimate business interests.

Many workers in Nevada enter into these types of contracts with employers. The concern is that longer time periods cause a significant hardship on workers. While it is reasonable to expect that the employee not divulge trade secrets, it seems completely unreasonable for an employer to expect an employee to wait anywhere from one to five years to become employed in the same industry, or potentially, even a similar industry.

The Nevada Supreme Court has held that a noncompetition covenant "is in restraint of trade and will not be enforced in accordance with its terms unless [the noncompetition covenant] is reasonable" [*Hansen v. Edwards*, 83 Nev. 189, 191 (1967)]. In 2016, the Nevada Supreme Court held that a noncompetition covenant is reasonable if the restraint is not "greater than is required for the protection of the person for whose benefit the restraint is imposed" and does not impose "undue hardship upon the person restricted" [*Golden Road Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49 (2016)]. In that ruling, the Nevada Supreme Court considered the duration of the restraint imposed upon the employee, the territory in which the employee was restrained from employment, as well as the type of employment that the employee was restrained from pursuing. Assembly Bill 149 seeks to address only the duration of the restraint imposed and to codify into the law the Nevada Supreme Court ruling.

Section 1 of the bill codifies the standard established by the Nevada Supreme Court to determine whether a noncompetition covenant is reasonable. This section also establishes that a noncompetition covenant is void and unenforceable if the employee is prohibited from competing or working for a competitor for longer than three months. Section 2 of the bill provides penalties for an employer who executes a noncompetition agreement that violates the provisions of section 1. Section 3 provides that provisions of the bill do not apply to noncompetition agreements entered into prior to July 1, 2017, unless modified or amended after that date. The premise of this bill is to protect the hard-working families of Nevada.

[A document (Exhibit D) and testimony (Exhibit E) were submitted.]

Assemblyman Kramer:
I like the wording in section 1 saying it is "supported by valuable consideration." In other words, if an employer goes forward and tells an employee he or she cannot compete but the employee is paid for three or six months, then that is valuable consideration. It is clear that

they should not compete because they are being paid. How do you determine that valuable consideration has been made, or is it a judicial or arbitration determination? Is it an amount agreed upon up front? How is this determined?

Assemblyman Carrillo:
I want to ask the committee counsel to provide information on how this is determined.

Wil Keane, Committee Counsel:
There is no set amount for consideration. I want to make clear to Assemblyman Kramer that it is not that the employer will be paying an advance for the time that the employee will not be competing. It is built into the compensation that the employee is receiving. For example, in the seminal case of *Hansen v. Edwards*, in the end that noncompetition agreement was found to be void. Initially, what had happened was the employee received an extra 50 cents per hour for agreeing to enter into that noncompetition agreement. If the noncompetition agreement had not been found to be unduly burdensome, then the valuable consideration would have been the extra pay while the employee was employed. That valuable consideration aspect is actually in the law, *Nevada Revised Statutes* (NRS) 613.200.

Chair Bustamante Adams:
Mr. Keane, can you talk about the two cases mentioned in the bill, *Jones v. Deeter*, 112 Nev. 291, 296 (1996) and *Golden Road Motor Inn, Inc. v. Islam,* 132 Nev. Adv. Op. 49 (2016).

Wil Keane:
The most recent case and the one that most people are looking at is *Golden Road Motor Inn.* Sumona Islam was a casino host at the Atlantis Casino Resort Spa also known as Golden Road Motor Inn, Inc. She had a noncompete agreement. She agreed that she would not engage in any employment in a gaming establishment within 150 miles of the Atlantis for one year. The Court found that to be unreasonable. *Hansen* serves as the original, seminal case. The other more recent case is *Jones*. This case concerned lighting services. The employer took on an apprentice and they had a noncompete agreement; the employee agreed not to compete in the same industry within 110 miles of the Reno-Sparks area for five years. That was found to be unreasonable.

Key language was originally written by the Court in *Hansen.* It has been repeated by the Court several times, most recently in *Golden Road Motor Inn, Inc*. This is the key consideration of the Court. In *Hansen,* the Court explained that under Nevada law, "[a] restraint of trade is unreasonable, in the absence of statutory authorization or dominant social or economic justification, if it is greater than is required for the protection of the person for whose benefit the restraint is imposed or imposes undue hardship upon the person restricted."

This is what the Court looks at, which is why in the end, noncompete agreements are always on a case-by-case basis. Among the things the Court looks at are the exact duration, the exact geographic limit, and the exact limitation on employment. One of the things that the Court had issue with in *Golden Road Motor Inn, Inc.* was that Sumona Islam was not allowed

to engage in any employment with a gaming establishment. She was a casino host, but the noncompete agreement said she could not serve in any capacity. The Court found that unreasonable. These agreements are looked at on a case-by-case basis. At this point, there is no judicial limit of time. It is whatever is reasonable.

What this bill is doing is putting a limit saying that, under statute, more than three months would be unreasonable.

Assemblyman Frierson:
I am curious about the three-month limit. Where did it come from? Did we get this from somewhere else? Does it exist elsewhere? Is that number soft or have we already looked at the reasoning behind this time period?

Assemblyman Carrillo:
It comes from Massachusetts law. The majority of language used in section 1 is taken from Massachusetts law.

Chair Bustamante Adams:
You mentioned that your constituents brought this concern to you. Can you elaborate?

Assemblyman Carrillo:
One of my constituents was employed in the broadcasting industry, and his position was eliminated. He had to wait a year before he could return to work in that field. It was difficult for him to make ends meet during that time. The noncompete agreement he signed created an undue hardship for him. He had a particular skill set and wanted to work in that field. My constituent brought this problem to my attention.

I have signed a noncompete agreement when I worked in the air-conditioning trade. My employer did not want me to take customers away from them if I was offered a better job somewhere else. I completely understand the need for a noncompete agreement.

Chair Bustamante Adams:
In your testimony, you said your bill seeks to address the duration of a noncompete agreement but does not limit an employer's ability to protect trade secrets. Is that correct? Can employers still have another agreement to protect their trade secrets and legitimate business interests?

Assemblyman Carrillo:
This is fluid. Every type of trade is different. I understand that employers are concerned with protecting trade secrets and other legitimate business interests. Many business owners who have discussed this bill with me tell me that they have brought employees from another place and it did not work out or the employee received a better offer. I understand these concerns. They have invested in that employee. They may have hired them from another state and paid relocation fees.

I am open to discussing the time limitation. Not all employees are key employees working at a high level in the organization. There are lower tiers of workers, and it would create an undue hardship on them if they could not work in the field for one year. For these employees, three months is more reasonable and this may need to be considered on a case-by-case basis. I am willing to work with concerned individuals. I am open to amendments on this bill.

Assemblywoman Neal:
I am looking for clarification on section 1 in the bill. It says, "Does not impose undue hardship . . . ." Earlier you referred to several cases (Exhibit D), but what are the factors that would be reviewed in order to determine undue hardship? Who, exactly, would make that decision? Is this between the employer and employee or is there someone else involved?

Wil Keane:
The Court looks at undue hardship on the employee and their decision is very factually based. In each of the cases, the Court looked at what the employee was doing, what the employee's situation was, and what the agreement was. They also look at the area in which the person cannot practice. Is 150 miles from the Atlantis, for example, unreasonable? Are the restrictions about what they can or cannot do unreasonable? If you cannot hold any position with any gaming company, as was the case with *Golden Road Motor Inn, Inc.*, is that reasonable? They look at the duration to see if it is reasonable. The Court looks at these things. In the original case, *Hansen,* the time frame was limitless—it went on forever. The Court asks, "Does this agreement end up imposing a hardship on the employee?" This is up to the Court to decide and is based on the facts of the case. There is no intermediate party involved in the decision. The Court looks at the facts for that particular employee and says, Does this impose an undue hardship on this employee? This is up to the Court.

Assemblywoman Neal:
I know that you have addressed this briefly, but what is considered "valuable consideration"? I could give you a dollar—that is consideration. Are we changing a contractual term? What does this do in terms of contract law and the standards for consideration? What is the implication of having these two words side by side in terms of the future of contract law?

Wil Keane:
It is important to note that this only applies to agreements going forward. We are not changing any existing agreements unless they are renegotiated. If they were renegotiated, they would have to be renegotiated with the new terms of this law in mind. As far as what is reasonable, reasonable or "valuable consideration" is a term in the existing statutes. The language in section 2 of A.B. 149 is not from the Court.

I am sure the Court, when they look at this, would look at the consideration in terms of what the agreement says. What is the employee giving up and what is reasonable consideration for that? It could vary. In one of the cases I mentioned, it was 50 cents per hour extra pay. It moved the pay from $6 per hour to $6.50 per hour. Valuable consideration is decided on a case-by-case basis as well.

Assemblyman Hansen:
My question is for the committee counsel. This seems as if it is going to criminalize the behavior of an employer with a noncompete clause if it is found to be unenforceable. It will become a gross misdemeanor and fall under criminal law.

Take the example of an insurance company. Let us say that you and I work in an insurance company together. It is located in Sparks, Nevada. I own the insurance business and you are my employee and your contract has a noncompete clause that I think is completely reasonable. You have access to all the details of my business, including email lists of all the clients. What if we have a conflict and you quit? What if you move to Fallon from Sparks, open an insurance business, and immediately begin using my email list to contact all my clients even though we have a noncompete clause? You now live 60 miles away. I think this is wrong, and I challenge you in court. If I lose that challenge, or if I try to enforce the clause, I could be guilty of a gross misdemeanor now.

Wil Keane:
The gross misdemeanor is in the current statutes, NRS 613.200. To answer your question, the way it works now, if you are guilty of a gross misdemeanor, a fine of not more than $5,000 is the punishment. The current base rule is that an employer is not supposed to willfully do anything to prevent an employee who has left or been discharged from obtaining other employment. This is the basic rule.

What we have is a carve-out from that. It was put in place in 1995, and that carve-out was to say that the prohibition which would have resulted in a gross misdemeanor does not apply to you if what you are doing is entering into a noncompete agreement, because on its face, a noncompete agreement is interfering with someone's ability to gain other employment. We had this carve-out for that, and what we are doing now is saying that there is a limit on this carve-out. We are essentially saying that in this carve-out, which for the most part had been delineated by the Court in its various cases, we are essentially codifying those Court provisions and adding the three-month provision. The three-month provision is not in the cases. It is something that we are adding.

You have raised a good point: How is an employer supposed to know if their agreement violates the law? If you enter into a noncompete agreement, will you end up in court?

Assemblyman Hansen:
What I am looking for is clarification. I do not want to keep people from being able to make a living, but I do not want to see somebody with sensitive information about a company leaving the company with that information. I do not want them to be able to use this proprietary information to compete against their original employer. Noncompete clauses are allowed by law so that employers can avoid this situation. What are we going to do to make it clear what is and is not acceptable under the law?

Wil Keane:
I would note the gross misdemeanor for interfering with someone's ability to gain employment is already very fact-based. In some ways, the three-month rule makes it clearer as to what the time limitation can be. Now, court cases are the only thing an employer has as a reference. This bill makes the law more clear.

Obviously, you are right; this bill does not provide guidance as to the number of miles or exactly what will be involved or what jobs are covered. Without this bill, all we have right now are the decisions of the Court.

Assemblyman Kramer:
My question is similar. For example, if I was a massage therapist or a hair stylist and I went to work for an employer, I am probably going to bring many of my own customers to the business when I start working there. What happens later on, if I open my own station or go into business for myself? Do I get to take the clients I brought with me without violating the noncompete? It seems to me that if you go three months without seeing your clients, they will find someone else. I am curious about the three-month period as well.

Assemblyman Carrillo:
Assemblyman Kramer, you bring up a very legitimate concern and it may tie into Assemblyman Hansen's concerns. I have gone to the person who cuts my hair for the past six years even though that person has changed employers during that time. I have had to track her down when she changed employers. I was able to do this because I specifically asked for her contact information in case something should happen. I know that many people do not do that. The reason I did this was that previously I had gone to the same person for haircuts for 15 years. I did not have that person's contact information and when she changed employers, I was unable to track her down. The owner would not provide me with her new contact information.

I understand Assemblyman Hansen's concerns. If I am a business owner and my employee has signed a noncompete agreement, there should be consequences if they try to take the customers away. That would be a legitimate reason to go to court. In Assemblyman Hansen's example, the former employee is damaging the former employer's business.

When it comes down to somebody who has generated his or her own customers, I think this can be written into the noncompete agreement. It can clearly spell out that any customers whom the employee brings with them belong to them and customers generated through the business belong to the business. I do not feel that I am a customer of the business where the person who cuts my hair works. I am loyal to that person, not the business where she works.

Chair Bustamante Adams
We are going to move to those in support of A.B. 149. [There were none.] Is there anyone in opposition to A.B. 149?

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:
This has been a good dialogue on this issue. The Chamber is a broad-based organization, and several industry sectors have approached us with concerns about this bill. We will work to address these concerns with the bill's sponsor. We are specifically concerned about removing the flexibility and structure that currently exist in the law if we codify some components of this bill. Limiting the waiting period to three months is a concern for certain sectors of the Chamber.

Tray Abney, Director of Government Relations The Chamber, Reno-Sparks-Northern Nevada:
I share the concerns expressed by my colleague from the Las Vegas Metro Chamber. I sent this out to some of our members and they have concerns about the definitions. They want to be more precise in defining "valuable consideration"—what does it really mean. This needs to be defined more clearly.

We think three months is a very short period for something like this. My members also point out that nothing in this bill increases proprietary knowledge or trade secret protections. We would like to see these strengthened. We are concerned about employees running off with valuable information. We have concerns about merger and acquisition activities; this bill can have a potentially chilling effect on those.

Robert Ostrovsky, representing Nevada Resort Association:
We have concerns about the three-month provision. I have frequently participated in signing separation agreements. Six months to a year is a more typical period of time. This generally does not apply to hourly employees, but it certainly does for some management positions. The valuable consideration can be wages, lump sum payments, early retirement benefits, or a combination of many things.

One of the cases the Nevada Supreme Court looked at was the question of a lifetime restriction. It sounds unreasonable; unless it happens to be someone to whom you are giving a very large retirement package for the rest of his or her life. Then it is another matter.

A case-by-case analysis is what is important here. We are not opposed to the codification of the Supreme Court's ruling; we are living under that now. We have concerns about the three-month language and concerns about the possibility that we are criminalizing what has been a civil matter or dispute. That concerns us.

Bill M. Welch, President and Chief Executive Officer, Nevada Hospital Association:
The hospital industry faces challenges in recruiting the high-level professionals whom we need in our workplace. This is true for both the management and clinical areas. We spend a lot of money recruiting individuals from out of state. We pay them to relocate and many times we assist them in setting up their trade when they come to Nevada. Our biggest

concern is the three-month period. We understand the intent of the bill's sponsor, but we need to balance this so that we can continue to recruit and bring in a high level of professionals.

Chair Bustamante Adams:
Is there anyone else in opposition to A.B. 149? [There was no one.] Is there anyone in neutral who wished to testify? [There was no one.] I am closing the hearing on A.B. 149. Next, the Labor Commissioner has a presentation on the State Apprenticeship Council. She will provide information on the mission of the program and how it functions and serves Nevada. We will also be discussing ways to make the state apprenticeship program more efficient.

Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry:
I will present an overview of the State Apprenticeship Council, our status, and some options as to which direction the Council should be headed (Exhibit F). The Council was created in 1939 as a result of the National Apprenticeship Act. This act, also known as the Fitzgerald Act, was passed in 1937. It established the standards and requirements for apprenticeship programs throughout the United States.

In 1939, the State Apprenticeship Council was formed. The Office of Labor Commissioner, Department of Business and Industry oversees the Council. *Nevada Revised Statutes* 610.030 governs the Council and outlines the requirements for the makeup of its members. There are federal requirements regarding the makeup of the Council as well. These requirements are contained in the *Code of Federal Regulations* (CFR) Title 29, Section 29.13 [page 2, (Exhibit F)]. Federal law requires three members from employer associations and three members from employee associations and one member from the public. A state official designated by the State Board for Career and Technical Education is an ex officio member without voting privileges. The Labor Commissioner serves as the State Director of Apprenticeship but cannot vote on matters before the Council.

The purpose of the State Apprenticeship Council is to promote apprenticeship opportunities regardless of race, creed, color, or sex—all the things that typically fall under the Fair Employment Act. Apprenticeship programs must meet state requirements in order to qualify as a state apprenticeship program, and the State Apprenticeship Council (SAC) establishes these standards [page 3, (Exhibit F)]. We have seven members on the Council. I serve as the State Director of Apprenticeship.

One hundred percent of both the State Apprenticeship Council and the Office of Labor Commissioner's budget come from the State General Fund. We are a bare-bones agency. Typically, the only funding the Council receives are wages for the Council members, and for some printing and paper costs. The Council has never had significant funding, including grants from the federal government.

The general powers of the State Apprenticeship Council are shown on page 5 (Exhibit F). The real power of the Council is to advise and guide the State Director of Apprenticeship on apprenticeships in the state. The Council advises the State Director on programs that it feels should be approved, not approved, or canceled. If complaints are filed against an apprenticeship program, the Council may advise the State Director on possible courses of action. Once an investigation concludes, the Council may advise the State Director to take action against that apprenticeship program. Their role is to advise and guide the State Director of Apprenticeship.

The next page [page 6, (Exhibit F)] gives you the national picture. States can belong to the broader federal apprenticeship system or run their own state apprenticeship agencies. Twenty-six states have chosen to run their own apprenticeship programs; Nevada is one of these. On the map, these states are shown in purple.

One of the main reasons I am here today is to discuss the recognition of State Apprenticeship Agencies and changes to federal regulations. Page 7 (Exhibit F) outlines some of these changes. In 2008 and again in 2010, the federal government changed some of the regulations concerning apprenticeships. This was done through the Office of Apprenticeship, U.S. Department of Labor. They said that State Apprenticeship Agencies may continue to have apprenticeship councils, but they must choose to be either an advisory or a regulatory body and state laws and regulations must make it clear what type of council the state has chosen.

In 2010, the Nevada Labor Commissioner sent a letter to the U.S. Department of Labor and asked for continued recognition as a State Apprenticeship Agency for Nevada. This was done pending the completion of the changes required to make the Council either an advisory or a regulatory body. Regardless of whether it is an advisory body or a regulatory body, you still need a State Apprenticeship Director or a State Apprenticeship Agency—this is one of the main issues in this discussion. The State Director or Agency is ultimately responsible for decisions to approve or cancel apprenticeship programs or to make changes to the standards. Page 8 (Exhibit F) shows the exact language from the federal government regarding this situation.

New regulations require State Apprenticeship Agencies to have a direct tie-in to economic development. This is a key change. State Apprenticeship Agencies now need to work collaboratively with other entities involved in economic development. These can be colleges, the Office of Economic Development, Office of the Governor (GOED); the Department of Employment, Training, and Rehabilitation (DETR); or others.

We have not the made the changes required to meet that mandate. Based on the current makeup of the Council, it is uncertain that we have an acceptable tie-in to either workforce or economic development. We do not have members from GOED or from the Nevada System of Higher Education (NSHE) or from outside employment organizations on the Council. This is an area of concern. We are looking for guidance from this body as to which direction to take the Council, and what this should look like.

Assemblywoman Carlton:
There are programs in this state that coordinate with community colleges; they share staff and time. The College of Southern Nevada (CSN) has a program like this. When people leave their apprenticeship, they also have an associate's degree. It is a very close relationship. Those relationships do not count? We can document the number of participants, the money paid from the apprenticeship to the community college, or from the state to the community college, and use that data to meet the federal requirements for apprenticeship programs. Are you saying that programs like this do not meet the federal requirements for State Apprenticeship Agencies?

Shannon Chambers:
I think that the issue the federal government could raise is the fact that there is no link to the Council. Those tie-ins are certainly valid, but the State Apprenticeship Council does not have a representative from NSHE to represent the tie-ins you are describing.

Assemblywoman Carlton:
The work to connect apprenticeships and education does not count. If someone from NSHE sits on the State Apprenticeship Council does that makes a difference?

Shannon Chambers:
I do not want to say that work does not count. However, based on my communications with the federal government, my understanding is that they want members on the Council who actually represent economic development agencies.

Assemblywoman Carlton:
You are saying that collaboration between NSHE and apprenticeship programs may be effective, but it does not meet the requirements of the federal government as far as State Apprenticeship Agencies are concerned?

Shannon Chambers:
Correct. Page 9 (Exhibit F) shows the differences between advisory and regulatory councils. As the name implies, an advisory council advises the State Director of Apprenticeship. A regulatory council means that the council could actually promulgate regulations at the direction of the State Director of Apprenticeship. These are the two options allowed under federal regulation.

When the federal government made these changes in 2010, the Labor Commissioner asked for continued recognition of the State Apprenticeship Council. This was done to give Nevada time to make the changes necessary in order to bring the State Apprenticeship Agency in Nevada into compliance with federal law. In 2013, Assembly Bill 36 of the 77th Session (Exhibit G) was introduced in an attempt to bring Nevada into compliance with federal regulations. That bill did not pass.

In 2014, the Sunset Subcommittee of the Legislative Commission asked for a review of the State Apprenticeship Council. They wanted the Council to justify its existence and explain

the role it plays in apprenticeships. A report was filed with the Sunset Subcommittee [(Exhibit H) and (Exhibit I)]. It identified the unique nature of the Council and the role that it plays in terms of apprenticeships within Nevada. We again asked for a continuation in order to bring the state into compliance with the new federal requirements. We are now in 2017, and there is a proposal to move the State Apprenticeship Council out of the Office of Labor Commissioner and into the Office of Workforce Innovation, Office of the Governor.

Putting that aside, there is still the issue of federal compliance. We are not in 100 percent compliance with the new federal regulations. Page 12 (Exhibit F) lists the options available to this body. Two options are to go back to *Nevada Revised Statutes* (NRS) Chapter 610 and make the changes required to create an advisory council, or go into NRS Chapter 610 and create a regulatory council. Either way, we need to make changes to conform to federal law.

Another option is to amend NRS Chapter 610 to create an advisory council and keep the stricter apprenticeship standards that we have in this state. In Nevada, apprentices have appeal rights and there is a requirement for a construction minimum wage. These are not required under federal regulations. Nevada has other, additional requirements as far as granting of credit, denials of applications, ratios, and standards of qualifications. We can create an advisory council and ask to keep these additional, stricter standards. The federal government would have to sign off on that as meeting meaningful compliance.

Another other option is to make no changes to NRS Chapter 610 or *Nevada Administrative Code* (NAC) Chapter 610 and keep things as they are. If we do this, we may risk potential federal funding. We risk not being able to get federal funding because we have not met federal requirements. In the past, that has never been an issue because the State Apprenticeship Council never received federal funds for apprenticeships.

It is now becoming an issue because apprenticeship grants were given to Nevada in 2015 and 2016 through the Obama Administration. It is the opinion of the U.S. Department of Labor that Nevada needs to be in compliance in order to continue receiving these funds.

The next page [page 13, (Exhibit F)] shows the 26 states in partial compliance with the federal apprenticeship programs requirements. Only eight states are in full compliance with the new regulations. Of these eight states, seven have advisory State Apprenticeship Councils; Washington State has the only regulatory State Apprenticeship Council. Both Wisconsin and South Carolina are considered strong states in terms of apprenticeship programs, even though South Carolina does not have a State Apprenticeship Agency. In 2016 alone, Wisconsin appropriated $500,000 for its apprenticeship program. South Carolina appropriated $2 million. Nevada's apprenticeship programs have traditionally been underfunded.

The approval of apprenticeship programs is governed by NRS 610.144. Our office provides assistance to entities seeking to start new apprenticeship programs. We have a checklist. Page 14 (Exhibit F) shows some of the items on this checklist. We help these entities

develop standards and programs. Like any new program or venture, there are times when proposed standards brought before the Council need changes and revisions. We supply expertise. Most of the time we are able to work through issues, get programs to meet the standards and requirements, and approve them.

In Nevada, in order to be exempt from the prevailing wage, an apprenticeship program has to have the approval of the State Apprenticeship Agency. It has to be a state-approved program and the apprentice has to be registered in a state program. We are talking about prevailing wage jobs or public works jobs. These are funded by state money and the state has to approve the program; this is set forth in NRS 338.080 [page 14, (Exhibit F)].

Page 15 (Exhibit F) provides information on apprenticeship programs in Nevada. Currently, we have 81 approved programs. Seventy-seven of these are state programs and four are federal programs. We had 2,833 active apprentices in 2016. The latest data shows we have over 3,000 apprentices in 2017. Part of the reason for this increase is that the economy, including building, is improving. Currently, we have 321 registered veterans serving apprenticeships in Nevada. Of the 81 approved programs, 45 have direct entry methods for honorably discharged veterans. This may be an area that could be expanded to include more veterans [page 16, (Exhibit F)].

We get our data from the federal government and our system does not lump minorities into one group. There are individual groups for male, female, and other categories. Page 17 (Exhibit F) shows some of the information we post on our website to help people who are seeking an apprenticeship. The information we provide includes a list of frequently asked questions.

We are always happy to meet with individuals and entities to discuss the requirements of apprenticeship programs. We are always looking for ways to increase our outreach. Every November there is a National Apprenticeship Week. We coordinate with the U.S. Department of Labor to conduct additional outreach in conjunction with National Apprenticeship Week. This is a broad overview of the State Apprenticeship Council. It includes the status of the federal compliance and the options that are available to this body.

Assemblyman Daly:
I have several question and comments. How many apprentices were registered in Nevada prior to the recession?

Shannon Chambers:
My understanding is that there were over 4,000.

Assemblyman Daly:
We are rebuilding after the recession. I am quite familiar with the State Apprenticeship Agency. I worked on Assembly Bill 36 of the 77th Session. I understand how the

State Apprenticeship Agency works. In Nevada, we have higher standards. Are these prohibited by federal law?

Shannon Chambers:
No, nothing prohibits states from having higher standards.

Assemblyman Daly:
Nationally, several states have approved federal apprenticeship programs. Recently, when the federal government checked on the performance of some of these programs, they had dismal graduation rates and were very low-performing. Many of these programs have been decertified because they were really a sham to pay low wages.

We have not seen this in Nevada. Our apprenticeship programs, whether you want to call them advisory or regulatory, have high standards. People have to meet both federal requirements and those contained in NRS Chapter 610 and NAC Chapter 610. Do you know of any apprenticeship programs in Nevada that have not graduated apprentices or failed to provide relevant curriculum? In other words, do the apprenticeship programs under the State Apprenticeship Council's supervision perform well? Is that a fair statement?

Shannon Chambers:
That is a fair statement. I pulled data regarding complaints against apprenticeship programs in Nevada. In the past two years, we had nine complaints; all of these were against one particular program. The State Apprenticeship Agency investigated all nine complaints. In the five years prior to this, we had two complaints against apprenticeship programs. These were made by individuals who failed a test to get into a program. When they did not pass the test, they filed a complaint. These complaints were found to be invalid. We do not see rogue apprenticeship agencies in Nevada.

Assemblyman Daly:
In 2013, we tried to pass Assembly Bill 36 of the 77th Session. We were trying to meet all the federal requirements necessary in order to be recognized as a State Apprenticeship Agency. We wanted to receive all the benefits and possible grants. We also wanted apprentices to have reciprocity across state lines. Any changes or proposals in the statutes were conditional upon the federal government recognizing the State Apprenticeship Agency. I hope we take that type of approach again. We will not change our state laws until we know that the federal government is going to recognize our State Apprenticeship Agency.

Shannon Chambers:
There are choices before this body now. I work for an administration that, I believe, feels that continued recognition as a State Apprenticeship Agency is critical not only to expand apprenticeship programs, but also in terms of workforce development. I would like to point out that there are going to be changes on the federal level. We will soon have a new U.S. Secretary of Labor. I do not know what changes will take place. Soon, I will be attending a Chair and Directors meeting at the U.S. Department of Labor where, I hope, they will give us more direction. I do not know what will be happening on the federal level.

Assemblyman Brooks:
We are not in compliance with federal regulations concerning State Apprenticeship Councils. Is there a deadline or a benchmark where if we do not come into compliance, then those dollars that are either potentially available or those we are currently receiving will go away? Can you provide information on what those dollars are? What does that represent?

Shannon Chambers:
In terms of a benchmark, as you can see on page 13 (Exhibit F), only eight states have come into compliance. As the State Apprenticeship Director, I have not been given a directive that says we must be in compliance by a certain date or we are no longer a recognized State Apprenticeship Agency. I do not know if the new U.S. Secretary of Labor will take a different approach and give us a deadline. That might happen. In terms of the federal grant funds, those funds went to the Department of Employment, Training and Rehabilitation (DETR). Some of that money went to community colleges. My understanding is that funds totaled between $700,000 and $1 million. Our office did not receive those grant funds, so I do not have the exact dollar amount.

Chair Bustamante Adams:
The federal monies went to DETR. However, when I asked the trades if they knew about this money for apprenticeships, they had no knowledge of these funds. I was concerned when the trades did not know about this money. This speaks to the question; do we have the right people on the Council? You indicated that there have not been changes to the makeup of the Council since 1939. Assemblywoman Carlton alluded to this earlier. My question is, which would be more beneficial—an advisory or a regulatory apprenticeship council? Would either of those choices hurt the relationships the trades have with the College of Southern Nevada (CSN) and other entities offering apprenticeship programs?

Shannon Chambers:
In my opinion, neither choice hurts those relationships. I think that there has been a disconnect in terms of who received those grant funds and the trades' knowledge of this funding. In my opinion, everybody should be working together. We are all working towards the same thing. It has been a rare opportunity to have federal money come to the state for apprenticeships.

I think there is room to grow, not only new programs but existing programs as well. I worked with DETR on those grant applications. Our office's ability to manage these grant funds is one of the reasons why they did not come to us. We do not have the staff to manage millions of dollars of grants on behalf of the Council. The issue now is how we all work together to utilize these grant funds—not only for the trades, but for the universities and the community colleges and new industries in the state.

Chair Bustamante Adams:
I want to go back to the makeup of the current Council. Page 2 (Exhibit F) says we need to have three employee representatives and three employer representatives. Can you tell me who serves on the Council right now? What industries do the employer representatives come from?

Shannon Chambers:
If you look at the organizational chart [page 4, (Exhibit F)], Mr. Pfundstein is a private painting contractor. Michele Daugherty is an employee of the Associated Builders and Contractors. Nanette Quitt is a representative of NV Energy. These are the three employer representatives.

Chair Bustamante Adams:
Can you tell us about the employee representatives?

Shannon Chambers:
Mr. Canale is a representative of the pipefitters and plumbers union. Mr. Gouker is a union representative, and the third is currently vacant. The current chair, Kevin B. Christensen, is the member from the public.

Assemblywoman Neal:
Can you provide me with background information on Assembly Bill 36 of the 77th Session? Why did it not pass? Have there been any efforts between then and now to pass legislation to bring us into compliance with the federal regulations?

Shannon Chambers:
My understanding as to why Assembly Bill 36 of the 77th Session did not pass is that the Legislature did not feel the required changes were urgent. It may have also been that the language was not clear enough to get that bill passed. There was no bill draft request submitted in 2015. I began to work on this in December 2014, but the budgets were already built. I did not recommend submitting a bill draft request at that time to try to make the changes.

Assemblywoman Neal:
The statute reads that they are advisory, but in order to get into compliance we need to be regulatory. Is this correct?

Shannon Chambers:
No. This body can choose to make the State Apprenticeship Agency either a regulatory or an advisory council. There are additional changes needed in terms of definitions to conform to federal definitions, but the choice is up to this body. It is your choice.

Assemblywoman Neal:
The thing that is not clear to me is why we are choosing to stay in this abyss, or limbo. The role of the State Apprenticeship Agency is not clear. If they are not advisory and if they are not regulatory, what are they now? Does being either a regulatory or an advisory council help the state to get grants or move us away from working in silos?

Shannon Chambers:
The Council is a mix of both right now. By statute it says they are to advise the Council, but if you actually look at the details of the statutes, then the Council probably does have more power. I think the U.S. Department of Labor would view us as an advisory council. We have reached a point where the state needs to decide either/or. Either we are going to utilize all the things that we have in place and meet all the requirements to be a regulatory body and come into compliance with the federal government, or we will simply be an advisory body.

Assemblywoman Neal:
If we are a hybrid now and the federal government is requiring us to pick which type of State Apprenticeship Council we want, I guess I am not clear on the reluctance to make a decision. Can you explain this reluctance to us?

Shannon Chambers:
I cannot speak to what the reluctance is. There is interest on all sides of this issue. I cannot speak for the apprenticeship programs, but I think that some programs feel a strong regulatory council will ensure the quality of the program and the safety of the apprentices. Advocates on the other side feel that if we have an advisory council, there is greater flexibility to accomplish things quickly. This is my understanding of the issue.

Chair Bustamante Adams:
Are there any other questions? During the Assembly Committee on Ways and Means hearings, some of the trades expressed concerns about the State Apprenticeship Council and the choices it needs to make to become either a regulatory or an advisory council. Is there anybody here from the trade councils who would like to comment on this choice?

Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO:
Our preference is for the State Apprenticeship Council to become a regulatory body. We agree with the Labor Commissioner. It is confusing as things currently stand. Some of the language used by the State Apprenticeship Council alludes to it being an advisory body, but the Council has clearly acted as a regulatory body. Our preference is for a regulatory body. We think this is the best way to protect both the apprentices and the programs and maintain the integrity of both.

Nathan R. Ring, representing International Union of Operating Engineers Local 12; and Laborers International Union of North America Local 872:
We also favor making it a regulatory body, not an advisory body, and making the required changes to the statutes to clarify this. We support the safety and higher standards afforded by a regulatory body. We want to ensure that our state continues to maintain the highest quality of apprenticeship programs.

Kevin B. Christensen, Chair, State Apprenticeship Council:
I wanted to add to some of the comments made today and clarify some things. I have been on the Council for some time. Assemblyman Daly asked about the historical maximum number of apprentices. At one point, we were up to 13,000 or 14,000 apprentices. This was just before the recession. Some programs had as many as 1,000 apprentices. The numbers are directly related to what the construction trades have experienced.

The issue of federal compliance and our efforts to come into federal compliance has been raised. We have held a series of workshops regarding this issue. The Department of Labor gave us 70 or 80 requested changes to bring us into compliance with the new federal regulations. During our workshops, we agreed to conform to upwards of 60 of these requested changes.

You heard discussion today about retaining the regulatory nature of the Council. We want to be sure that safety ratios are followed, we want to preserve our construction industry's prevailing wage, and we want to preserve apprentices' ability to appeal to the Council if there is a wrong. We want to make sure these higher standards are preserved. The federal government does not have these kinds of requirements in the *Code of Federal Regulations*.

I want to provide you with additional information about two of our current Council members. Thomas Pfundstein is one of the employer representatives; he is not just a single private entity. He is Senior Executive Director at Southern Nevada PDCA/FCA; PDCA is the Painting and Decorating Contractors of America. This is a large industry association. He represents a variety of contractors in that role. Dan Gouker is also an employee representative. He previously worked for the International Brotherhood of Electrical Workers in their Electrical Joint Apprenticeship Training Center program. He retired from that some years ago and then became the Executive Director, Division of Apprenticeship Studies, College of Southern Nevada. He oversees classroom training and ensures that the curriculum offered is properly documented so that apprentices can obtain credits and receive associate degrees. We have a lot of great experience on the Council. These are people who are in full support of the State Apprenticeship Council and want to preserve it.

We have never had anything that you would consider a sufficient budget. We would welcome new money and want to come into conformity with the federal regulations.

We appeared before this body to testify regarding Assembly Bill 36 of the 77th Session in 2013. We have also appeared before the Sunset Subcommittee of the Legislative Commission. In both instances, we testified that we wanted the federal government to come

and assist us in identifying the changes it requires. We have invited representatives of the U.S. Department of Labor to all of the workshops we have held. They have never appeared. We believe we have a good working relationship with representatives of the federal government. They come to our meetings on a quarterly basis, but they have not participated in our regulatory revision workshops.

We would recommend that the requested changes, agreed to in our workshops be incorporated into any legislation in order to conform to federal regulations. We are very thoughtful in our approach. We believe in apprenticeships; we love what apprenticeship organizations mean to this state. A variety of 80 or 90 organizations concerned with apprenticeship programs are currently functioning. They play a large part in building a network of qualified workers.

I would like to bring NRS 610.095 to your attention. Subsection 1 and subsection 2, grant the Council the right to register and approve standards of apprenticeship for different programs. We can, with good cause, suspend and terminate or place a program on probation. This can be done after a hearing and opportunity to appeal to the Labor Commissioner. These two provisions are clearly regulatory.

[Exhibit J was submitted but not discussed.]

Chair Bustamante Adams:
Are there any other questions? [There were none.] Seeing no other questions, we are going to move to public comment.

Ray Bacon, representing Nevada Manufacturers Association:
In the last year and a half, a small group of manufacturers in Carson City has been working with manufacturers in Germany. They have created a joint apprenticeship program funded almost exclusively by the employers. This apprenticeship exchange program focuses on the machining field, in the machinist-type category.

If you look, almost all the apprenticeships in Nevada focus on the building trades, yet we have other fields where apprenticeships exist. For decades, the manufacturing sector in Nevada was too small to matter. Today there is increasing interest in diversifying the state's economy; this includes increasing the manufacturing sector. I have no idea how you can integrate apprenticeships in the manufacturing sector into what the State Apprenticeship Council oversees, but as you move forward, this is something that should be considered. Karsten Heise, Technology Commercialization Director, Office of Economic Development, Office of the Governor, has coordinated this program. Click Bond, Inc. and Vineburg Machining, Inc., are the two manufacturing companies in this area involved in this program. Other Nevada manufacturers are interested in this program as well. To the best of my knowledge, this is under the auspices of federal, not state, regulations.

The Nevada Manufacturers Association has no problem with the State Apprenticeship Agency; we simply want to point out that there is one more piece of this puzzle to consider.

As we move forward, we need to be inclusive and consider a wider range of apprenticeship options. Programs like this have value and need to be included in any conversations about apprenticeship programs.

Chair Bustamante Adams:
Thank you for bringing this to our attention. It is important to remember that apprenticeships go beyond the trades as well. Are there any other comments? Seeing none, the meeting is adjourned [at 4:08 p.m.].

RESPECTFULLY SUBMITTED:

_____
Kathryn Keever
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 a copy of an email dated February 28, 2017, from Ruben J. Garcia to Assemblywoman Jauregui regarding states that have passed triple damage statutes for wage claims.

Exhibit D is a reference list of Nevada Supreme Court case law concerning noncompete agreements, submitted and presented by Assemblyman Richard Carrillo, Assembly District No. 18.

Exhibit E is written testimony presented by Assemblyman Richard Carrillo, Assembly District No. 18, regarding Assembly Bill 149.

Exhibit F is a copy of a PowerPoint presentation titled "Overview of State Apprenticeship Council, Nevada Revised Statutes (NRS) 610 and Nevada Administrative Code (NAC) 610," presented by Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry.

Exhibit G is a copy of Assembly Bill 36 (1st Reprint) of the 77th Session, submitted by Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry.

Exhibit H is a copy of the report on the State Apprenticeship Council to the Sunset Subcommittee of the Legislative Commission, submitted by Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry.

Exhibit I is a copy of an addendum on the State Apprenticeship Council to a report to the Sunset Subcommittee of the Legislative Commission submitted by Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry.

Exhibit J is a list of apprenticeship programs overseen by the State Apprenticeship Council, submitted by Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry.