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

Seventy-Ninth Session
March 1, 2017

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 1:33 p.m. on Wednesday, March 1, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen B. Spiegel, Assembly District No. 20
Assemblywoman Olivia Diaz, Assembly District No. 11

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Wil Keane, Committee Counsel
Pamela Carter, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, and representing Legal Aid Center of Southern Nevada
Stephanie McDonald, Attorney, Family Law Self-Help Center, Legal Aid Center of Southern Nevada
Marlene Lockard, representing Nevada Women's Lobby
Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
Randy Soltero, Organizer, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720
John T. Gorey, Business Representative, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720
Marielle "Apple" Thorne, Business Agent, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720
Fran Almaraz, representing Teamsters Local 986, Teamsters Local 631
Joseph (JD) Decker, Administrator, Division of Industrial Relations, Department of Business and Industry
Jess Lankford, Chief Administrative Officer, Nevada Occupational Safety and Health Administration, Division of Industrial Relations, Department of Business and Industry
Priscilla Maloney, representing American Federation of State, County, and Municipal Employees, Local 4041
Rob Benner, Business Representative, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Misty Grimmer, representing Nevada Resort Association
Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Nick Vassiliadis, representing Southwest Regional Council of Carpenters
Jerry Helmuth, President, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720
J. R. Reid, Private Citizen, Las Vegas, Nevada
Matthew Kimball, Private Citizen, Las Vegas, Nevada
C. Joseph Guild III, representing Motion Picture Association of America

Chris Ferrari, representing Nevada Dental Association
Richard J. Dragon, DMD, Vice President, Nevada Dental Association
James L. Wadhams, representing Anthem Incorporated and its Affiliates Including Amerigroup Nevada and Nevada Association of Health Plans
Regan J. Comis, representing Nevada Association of Health Plans
Chelsea Capurro, representing Health Services Coalition
Helen Foley, representing Delta Dental Plans Association
Elizabeth "Betsy" Aiello, Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Barbara Richardson, Commissioner of Insurance, Division of Insurance, Department of Business and Industry

Chair Bustamante Adams:
Meeting is called to order. [The roll was called.] I would like to open the hearing on Assembly Bill 128.

Assembly Bill 128: Exempts certain unpaid individuals from the requirement to obtain licensure as a process server. (BDR 54-700)

Assemblywoman Ellen B. Spiegel, Assembly District No. 20:
Currently some judges interpret *Nevada Revised Statutes* to require every person who serves a legal document to be a licensed process server. This becomes an especially huge burden in family court where a lot of people represent themselves, and they must go out and hire a process server to perform this service for them (Exhibit C).

This bill will exempt unpaid process servers from the requirement to become licensed process servers (Exhibit D). This way, the people who are taking action in family court will be able to abide by our legal requirements through basic services such as having a neutral friend serve papers, which gives them big relief in the litigation process.

I would like to introduce Jon Sasser to present the rest of Assembly Bill 128. One thing I would like to add is that I understand there are some concerns from a judge in southern Nevada, and I am open to a friendly, conceptual amendment.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, and representing Legal Aid Center of Southern Nevada:
The idea for A.B. 128 came from Stephanie McDonald, the attorney who heads the Family Law Self-Help Center for the Legal Aid Center of Southern Nevada in Las Vegas, Nevada. She is sitting at the witness table in Las Vegas. With the Chair's permission, I would like her to explain the background of this bill and walk you through it. If you could then come back to me, I will explain the concern expressed by the judge in southern Nevada and the accommodation I think we have reached.

Stephanie McDonald, Attorney, Family Law Self-Help Center, Legal Aid Center of Southern Nevada:

The Self-Help Center seeks to increase informed access to the legal system by providing information and forms to those who represent themselves in family law cases. We see almost 49,000 people a year who are struggling to make sense of the system, and a big stumbling block for them is having documents served properly. I am here to explain the current legal requirements for service of process; how unrepresented litigants are being adversely affected; and how A.B. 128 would alleviate some of that burden.

Whenever a person files a new legal case, the summons and complaint must be personally served on the defendant. The Nevada Rules of Civil Procedure describe how the requirements for personal service should be handled and who may serve a summons and complaint. Under the statewide court rules, any person who is not a party to the case and who is over 18 years of age may serve process. A professional process server is not required; however, there are a number of professional process servers who charge for their services and are regulated by *Nevada Revised Statutes* (NRS) Chapter 648. That chapter requires any person engaged in the business of serving legal papers to be licensed with the state. The chapter also defines a process server as one who is engaged in the business of serving legal process. The strict requirements of NRS Chapter 648 were intended to apply to professional process servers only and not meant to affect the occasional disinterested person serving papers for no fee.

The distinction between professional process servers and the occasional unlicensed server was discussed during the 2011 Session when new penalties were imposed for professionals who violate the statute, as the Legislature wanted to ensure they were not imposing any requirements that would affect the average unlicensed server. Unfortunately, the occasional unlicensed servers are being affected. *Nevada Revised Statutes* (NRS) 648.063 states, "An unlicensed person who performs a single act for which a license is required has engaged in the business for which that license is required . . . ." Judges have interpreted this to mean that anyone who serves legal papers even one time must be licensed. Because of this, some judges require every litigant in every case to hire a professional process server who is licensed by the state. Hiring a professional server is not always an option for those who do not have attorneys. Often the reason a person does not have an attorney and does not use a professional server is because he or she cannot afford them. In 2016 the Family Law Self-Help Center in Clark County saw 48,743 people. Of those, just over half had a total household income of less than $20,000.

The people I see every day are the people who cannot afford professional legal assistance and are forced to prosecute their family law case on their own out of necessity. For these people the only viable way to serve legal papers is by asking a neutral, disinterested person to hand the papers to the other party. This is done at no cost to them and is allowed under the state rules. The disinterested person serves the papers, fills out an affidavit detailing who they are; who they served; and what they served, when and where. The affidavit is filed with the court, allowing the case to proceed to the next step. If a judge has any questions about service, the judge has the server's information right there and can directly ask the server.

The situation I just described was traditionally allowed until judges started to wonder about the language in NRS 648.063. Now affidavits of service from disinterested third parties are being thrown out and litigants are told to hire a professional process server to serve the papers instead, which many cannot afford to do. Assembly Bill 128 seeks to remedy the catch-22; it specifically exempts a natural person who serves legal process without a fee from being required to be licensed. Again, this is not new. Anyone who wants to charge for services will still be regulated by NRS Chapter 648. Assembly Bill 128 simply restores the full effect of Nevada Rules of Civil Procedure, which allows a disinterested person 18 years and older who is not a professional to occasionally serve papers without compensation.

Jon Sasser:
I received a call this morning from Justice of the Peace Melissa A. Saragosa in Las Vegas who is with the Las Vegas Justice Court, Department Four. She completely understood the purpose behind the bill to allow amateur, unpaid persons to serve papers, especially in family cases. She did have some concern about the possibility for abuse of the process. The reason we have these requirements today is because of a scandal in Las Vegas in 2010 or 2011, where professional process servers were being paid, throwing the papers in the gutter, and not serving people—primarily people who had taken out payday loans, which resulted in a lot of default judgments.

After discussion with the judge, we agreed upon a concept to limit the application of A.B. 128 to people who serve papers only three times a year or less and to private litigants, so that businesses like payday lenders could not say somebody was serving for them for free. Judge Saragosa said within the past couple of weeks she had a problem with a payday lender in southern Nevada and had to throw out approximately 100 default judgments she was not convinced had proper service. She said with those few changes, she would be fine with the bill. I promise to sit down with her and formulate the exact language to bring back to you before work session.

Assemblywoman Carlton:
My idea behind A.B. 128 was this is going to be just someone who is doing it for someone else. What was the discussion around the three times?

Jon Sasser:
This was to avoid abuse of the system to ensure we are talking about amateurs or friends serving for people on a one-time basis and not serving over and over again for people and maybe paid in cash under the table.

Assemblywoman Carlton:
And they would be able to track that because they would still have to fill out the affidavit, so if it was more than three times, they could figure it out?

Jon Sasser:
That is correct.

Chair Bustamante Adams:
What is the cost to become a licensed process server?

Jon Sasser:
I am unsure, but basically there is a fee for the license and a bond that you post.

Stephanie McDonald:
In NRS Chapter 648, there is a $100 application fee that is submitted to the state with the application to become a process server. There is an examination required. Once those requirements are met, they are regulated by a state board. Those are the requirements to become licensed, and then a person is governed by all of the restrictions within NRS Chapter 648.

Chair Bustamante Adams:
Ms. McDonald, do you know about the bond and what the amount is they have to carry?

Stephanie McDonald:
I do not, unfortunately.

Assemblyman Ohrenschall:
Do most of the citizens you help at the Self-Help Center have the resources to hire a private process server, or is this something that is really limiting access to the courts without the changes in A.B. 128?

Stephanie McDonald:
It is a big barrier to the people who are being told they need to hire a process server. As you know, most of the people who are using the Family Law Self-Help Center are doing it out of pure necessity because they cannot afford the legal professionals to do this the way the court and everyone would like to see it done. They are often dealing with people who are hard to get served. Once the person is served by an unlicensed server and the court throws out that affidavit of service and tells them to go out and hire and pay someone, it is a double burden to come up with the cash, which can range anywhere from $45 to $100, depending on how many documents have to be served and how far away the person lives. They also may not be able to locate that person again, so they may be unable, even if they come up with the money, to duplicate service the second time. It has resulted in a number of cases being stalled because the inability to hire a process server to get someone served under NRS Chapter 648 is leading to some dismissed cases where process has not been served within a 120-day deadline.

Assemblyman Ohrenschall:
I cannot imagine that is good for the families trying to get a resolution to the custody and divorce issues.

Assemblywoman Tolles:
I can appreciate the value of this, particularly for the sheer volume of litigants requiring these services. Is there any additional protection over the sensitive material that may be served under a licensed process server versus using this new methodology?

Stephanie McDonald:
The documents being served in family court cases are public documents right now. There are no restrictions I am aware of on a licensed server versus an unlicensed server. It is just a matter of getting the documents, locating the defendant, handing them over, and filling out an affidavit. Other than that, the procedures are the same and the documents, regardless of their sensitive nature, are still treated exactly the same.

Assemblyman Paul Anderson:
If I have an unpaid process server who is injured, I am wondering about the liability if they are not employed by someone or just an intern. Who would cover them, because sometimes people being served do not like being served, so I am wondering about the safety issues. Is there a limitation on the types of services they can render? What would stop everyone from using unlicensed, untrained process servers who are not bonded?

Jon Sasser:
This is not new; service under Nevada Rules of Civil Procedure 4(a) has allowed this type of service since day one. That was always the norm; we always had this type of service available to people. Because of the scandal with the paid process servers in Las Vegas and tightening the regulation, I think it was an unintended consequence to eliminate this type of service that had always been available to people. To my knowledge, a couple of judges in Las Vegas have been interpreting it this way. Washoe County and other places still routinely use this service all the time.

In terms of liability, I do not know that a private process server has any liability for its employees. I am unaware of that being part of a requirement of the license. If someone is doing me a favor and is injured while serving the documents, there is no law that requires them to be covered. That is why this limitation is for amateurs who are not making a business of this, which is what the current statute says. It only applies to the business of it. What would keep a business from using unlicensed process servers all the time? One is the amendment that Judge Saragosa would like to have limiting this to individual cases not in service by business and two, the sheer volume.

Assemblywoman Neal:
You mentioned there are a number of cases that are stalled. How many are stalled because of this activity? What is the bond for, and what does it cover?

Stephanie McDonald:
I do not have exact numbers for you on how many are stalled; I can tell you not every judge is requiring this to happen. We have 20 family court division judges in southern Nevada. Some of them require licensed process servers within those departments. I would have to

check to find out what those numbers are. Many judges follow the Nevada Rules of Civil Procedure 4(a), which allows a disinterested party to serve, but there are a number of people from certain judicial departments who are having their cases dismissed. I cannot give you an exact number, but we do see a recurring string of people coming in to the Self-Help Center wondering what they can do to resolve the issue being required of them. I am unfamiliar with the bond requirements for the licensed servers. We are here to advocate for the people who have always been allowed to serve prior to legislative amendments that have these unintended consequences.

Assemblyman Kramer:
This is interesting to me because years ago, I was asked by an out-of-town owner of property in Carson City to serve some papers in a landlord-tenant dispute. When I arrived to serve the papers, I was asked whether I was a licensed process server. I said no. They said it does not mean anything anyway; they are not going to stand up in court. I did not know the law on whether I could or could not serve the papers, so I paid $60 to have a process server serve the papers. I would like to help set the record straight—if it is one way or another, we should know.

Assemblyman Frierson:
In my experience in family court, the difference in practice had been the value of the licensed process server was, if they were unable to serve, they could certify that they did all of these other things to try to show the court that they were unable to serve the papers. They could do a diligent search and have a private investigator check utility records. For people who cannot afford that type of service, and they are in court for an adoption and the biological father shows up after a year, they have to serve him and it delays an adoption for six months. If you have a disinterested party who can serve him and sign a document, you do not hold up the adoption or termination of parental rights. I am surprised to hear some judges are interpreting the law as requiring the server to be licensed, because in family court, it is frequently the person who cannot afford the process server, and they do not need the diligent search and the private investigator. They just need someone to hand the father a document that says you have not paid child support in a year. Is the intent of A.B. 128 to prevent this type of circumstance from occurring?

Stephanie McDonald:
Yes, it is intended to ensure these family court cases are not getting held up in procedural barriers, because when it comes to family court, the issues pending are very near and dear to families' hearts. It concerns children, their well-being, child support and a number of things that affect the overall health of children and families. When cases need to be filed, and people generally do not want to file a case, they file a case out of necessity because of personal crises going on. The longer it takes for those procedural avenues to be met even to get their case heard by a judge, the longer that family is in limbo and in crisis without a lot of guidance. The better people are able to move their case along from step to step, the quicker they are going to get the justice they need from our courts.

Chair Bustamante Adams:
Are there any other questions? [There were none.] We will hear support for A.B. 128.

Marlene Lockard, representing Nevada Women's Lobby:
We support this measure exactly for the reasons Speaker Frierson outlined. This impacts low income and the vulnerable population more than others. We hope you will give A.B. 128 positive consideration.

Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:
We represent the domestic and sexual violence programs and service providers around the state, and we are here in support of A.B. 128. In 1994, the Violence Against Women Act stated that protection orders had to be served free of charge for victims as a part of their victim rights; however, the cost for any additional items needing to be served such as divorce papers, child custody papers, and paternity papers for child support reasons have fallen to the victims. We have women who live in shelters, in cars, and with friends; they are trying to get out of their situation and free from their abuser, and they are left with the burden of fees for process servers. When there seems to be availability, it seems they should have the right to have a friend serve those papers. We hope you support A.B. 128.

Chair Bustamante Adams:
Is there anyone else in support of A.B. 128? [There was no one.] Is there anyone in opposition of A.B. 128? [There was no one.] Is there anyone neutral on A.B. 128? [There was no one.]

Assemblywoman Spiegel, do you have any closing remarks on A.B. 128?

Assemblywoman Spiegel:
Thank you, Madam Chair, and to the Committee for your consideration. I look forward to returning with an amendment that addresses the concerns of Judge Saragosa. I will also be getting back to you, Madam Chair, and Assemblywoman Neal with the answers to your questions about the bond process and what the bond covers.

I stand corrected. The amount of the bond is $200,000, and I will get back to you, Assemblywoman Neal, about what the bond covers.

[(Exhibit E) was submitted but not discussed and will become part of the record.]

Chair Bustamante Adams:
Let us close the hearing on A.B. 128. We are going into our work session, and our policy analyst will start with Assembly Bill 35.

Assembly Bill 35: Makes various changes relating to insurance. (BDR 57-466)

Kelly Richard, Committee Policy Analyst:
The first bill before you in work session is Assembly Bill 35. It was heard in this Committee on February 10, 2017. The bill expands the authority of the Commissioner of Insurance to examine and supervise certain insurers. It adopts portions of the National Association of Insurance Commissioners (NAIC) Corporate Governance Annual Disclosure Model Act, which increases the disclosure requirements for all insurers domiciled in this state. It also adopts portions of the NAIC's Insurance Holding Company System Regulatory Act, which allows the Commissioner to act as a supervisor for an internationally active insurance group under certain circumstances. Assembly Bill 35 also makes some minor changes to provisions governing risk retention groups.

There was an amendment submitted during the hearing by the Division of Insurance that is attached to the work session document (Exhibit F). Section 5 of A.B. 35 clarifies the types of insurers required to submit the required reports.

Chair Bustamante Adams:
I will entertain a motion to amend and do pass Assembly Bill 35.

> ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS ASSEMBLY BILL 35.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will move to Assembly Bill 61.

Assembly Bill 61: Revises provisions governing trust companies. (BDR 55-162)

Kelly Richard, Committee Policy Analyst:
Assembly Bill 61 allows the Commissioner of Financial Institutions to authorize a foreign independent trust company licensed in another state to act as a fiduciary and solicit business in Nevada without first obtaining a license if certain criteria are met. During the hearing on the bill, there was an amendment submitted by Mr. Alonso on behalf of the Nevada Trust Company Association. The amendment before you today (Exhibit G) differs slightly because there was a little mix-up in the beginning of the amendment that was originally submitted. If you look at the top of the first page referencing section 10, they are striking a reference to subsection 3 and inserting a reference to section 12 of A.B. 61. The amendment also removes the provision in section 16 that a spendthrift trust administration must occur within Nevada and instead modifies the definition of trust company in that section to include foreign independent trust companies that engage in the solicitation of trust company business in Nevada, which is outlined in section 8.

Chair Bustamante Adams:
I will entertain a motion to amend and do pass A.B. 61.

> ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 61.
>
> ASSEMBLYMAN FRIERSON SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Bustamante Adams:
I would like to come out of work session and open the hearing for Assembly Bill 190. I invite Assemblywoman Olivia Diaz to the witness table.

Assembly Bill 190: Requires certain health and safety training for entertainment industry workers and supervisors. (BDR 53-151)

Assemblywoman Olivia Diaz, Assembly District No. 11:
I am here to present Assembly Bill 190 for your consideration. With me today is Randy Soltero, representing the International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada. He will tell you why this bill is needed. We also have John Gorey, Marielle Thorne, and Fran Almaraz who will provide the specific details about how the bill will affect workers in each sector of the entertainment industry.

The background on A.B. 190 (Exhibit H) requires certain workers and supervisory employees within the entertainment industry to complete safety and health hazard recognition and prevention training. This training is also known as Occupational Safety and Health Administration (OSHA)-10 and OSHA-30. This bill is nearly identical to Assembly Bill 148 of the 75th Session, which was passed in 2009 and applies to workers and supervisors in the construction industry. I will introduce Randy Soltero to speak on behalf of A.B. 190.

Randy Soltero, Organizer, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720:
Thank you for the opportunity to present A.B. 190. Fran Almaraz and I are grateful to have had the opportunity to speak with everyone on this Committee to discuss this bill. Today we will be hearing from industry professionals who will talk about the need for this legislation. You will also hear from representatives from the construction industry who will tell you how similar legislation passed in 2009 has benefitted their industry. First, I would like to introduce John Gorey representing workers from the motion picture and television industry.

John T. Gorey, Business Representative, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720:
I have worked in the entertainment industry for over 20 years. I currently represent workers in the motion picture and television industry in Nevada. Workers in the industry construct sets and stage props, work with and around high-voltage electricity for lighting, sound, and theatrical effects. On some productions, they work with pyrotechnics to produce what you eventually see on both the big and small screen. Similar to the construction industry, accidents do happen. Medical teams on movie sets are on site during the entire production phase in case of a medical emergency. We believe that a safety-trained workforce would positively impact the industry. Other states, including California, New Mexico, South Carolina, Louisiana, Georgia, and New York, have similar safety requirements for workers in the industry. On behalf of the professionals who work in the motion picture and television industry in Nevada, I urge you to support A.B. 190.

Randy Soltero:
I would like to introduce Marielle Thorne, representing showroom and theater workers in the industry.

Marielle "Apple" Thorne, Business Agent, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720:
I have worked in the entertainment industry for over 18 years and now represent workers in showrooms, lounges, theatrical stages, and arenas primarily on the Las Vegas Strip in southern Nevada. Similar to workers in the motion picture industry, theatrical workers construct sets and stage props, work around high-voltage electricity for lighting, sound, and theatrical effects including pyrotechnics, but in a chimney-shaped work environment. Much of this work is done on grids 50 feet or more above the stage or near open elevators that drop 20 feet or more into the basement. On behalf of the professionals who work in the showrooms, theatrical stages, lounges, and arenas in Nevada, I urge you to support A.B. 190.

Randy Soltero:
I would like to introduce Fran Almaraz, representing motion picture, television, and transportation workers.

Fran Almaraz, representing Teamsters Local 986, Teamsters Local 631:
I would like to reiterate what my colleagues have already said. This legislation would have a positive effect on the safety of the workers in the entertainment industry. I urge you to support A.B. 190.

Randy Soltero:
Assemblywoman Diaz will now walk through A.B. 190 for the Committee.

Assemblywoman Diaz:
It is my belief that one life lost is one too many, and this bill seeks to protect all of the employees in this industry from the one potentially fatal event.

Sections 3 through 7 of A.B. 190 provide the definitions needed to carry out the bill. Section 8 allows the Division of Industrial Relations of the Department of Business and Industry to adopt regulations. Section 9 requires the Division to approve the OSHA-10 and OSHA-30 courses required to carry out the bill. Section 10 requires trainers to display an OSHA trainer card conspicuously at the location in which the training is being provided.

Section 11 specifies the appropriate training must take place within 15 days of hire. Section 11 also allows employees to satisfy the safety training requirements by completing an alternative course provided by an employer. Section 12 requires an employer to suspend or terminate any employee who does not complete the required training within the 15-day window. Section 13 provides that an employer who fails to suspend or terminate an employee as required is subject to an administrative fine. Sections 14 through 16 provide for a sunset of the alternative training option on December 31, 2018. Beginning January 1, 2019, each worker or supervisory employee must complete the training approved by the Division of Industrial Relations.

Chair Bustamante Adams:
Let us look at sections 1 through 10. Are there any questions on sections 1 through 10?

Assemblyman Daly:
In section 9 regarding continuing education: Once you take the class and get the certificate, the card is issued by OSHA, which is the federal government, and whoever takes the class has to have an OSHA instructor sign the certificate, send it to OSHA, and OSHA sends back a little card. The card says it does not expire. If you lose the card, up to three years after that you can pay a fee for a new card. After three years, you have to take the class again to get a new card. The continuing education requirement is difficult for OSHA to enforce. I do not know whether you want to learn from prior experiences and not require the continuing education refresher course every five years.

Joseph (JD) Decker, Administrator, Division of Industrial Relations, Department of Business and Industry:
The requirement for renewal of the OSHA card was removed in 2015 in Senate Bill 233 of the 78th Session. The Occupational Safety and Health Administration had a couple of specific problems with the renewal. One was the fraudulent production of cards and people showing up to receive renewal training whose original cards were not valid, and there were some technical issues.

The Occupational Safety and Health Administration's feeling is the OSHA-10 and OSHA-30 training is general industry hazard training. After five years on the job, which would be when the former renewal period would expire, OSHA would prefer job-specific or

occupational-specific training be obtained rather than going through a second general industry hazard course which is not necessarily specific to the hazards employees face at that period of time in their career. To clarify, the renewal requirement was removed and currently does not exist as outlined in section 11, subsection 4 in A.B. 190.

Assemblyman Daly:
Does this bill have the continuing education requirement? It seems the continuing education requirement has been removed from the construction side but would not be removed here.

Joseph Decker:
That is correct. Section 11, subsection 4 of A.B. 190 includes a renewal requirement which has already been removed from other industries that are required to have OSHA-10 and OSHA-30 cards. Other industries do not have to have a renewal, but section 11, subsection 4 of A.B. 190 does include a renewal requirement.

Assemblyman Daly:
My understanding is the OSHA-10 and OSHA-30 training will be under the general standards in Part 1910 of the *Code of Federal Regulations*, which is different from the construction standards in Part 1926 of the *Code of Federal Regulations*. I know that on certain sets and productions, there are contractors who hire construction workers who would have the OSHA-10 training under Part 1926 construction standards. I am curious whether there will be any type of reciprocity or will construction workers be required to take the general standards training? I know under Part 1926 construction standards they list several sections that have to be taught and there are four optional sections; you can choose the sections for which you will train. Is there any reciprocity or is it all the same training?

Joseph Decker:
As I understand it, the training is standard. It is general hazard recognition, which is geared toward the construction industry with a variety of general hazards in the initial training, which is the only required training currently in the marketplace.

Assemblyman Daly:
So what you are saying is the OSHA-10 and OSHA-30 training requirements and standards for training are the same as those under both general industry in Part 1910 and construction standards in Part 1926 in the *Code of Federal Regulations*.

Joseph Decker:
That is correct. I was previously referring to section 11, subsection 3 of A.B. 190.

Randy Soltero:
Regarding the training requirement, we spoke to people in the construction industry and there was no appetite at all to do the re-training program or the continuing education program in the construction industry. We feel it is important for the entertainment industry because there are new things that come out all the time. One of the things you will not see in this bill is drones, which are really coming about because you see them during football games and

different events. We believe as new things come out in the industry we will encourage and require our people to be trained in the new areas as they develop.

Assemblywoman Tolles:
My questions relate to sections 5 and 7. In section 5, what sites are included? In section 7, what workers are covered in this language? Would this apply to Burning Man or other smaller venues like dance halls? Does this include training for those who work at sporting events like football games at the University of Nevada, Reno (UNR) and University of Nevada, Las Vegas (UNLV)? Who would be required to take this type of training?

Randy Soltero:
Section 5 relating to the site is described in the proposed language. We have been talking to people from the Clark County School District and the Southern Nevada Water Authority that have volunteers at the Springs Preserve in Las Vegas. We are going to get together with them to talk about OSHA training and whether there is a need for it. Our primary focus is for motion picture production, television production, event theater, and sporting events at major arenas. Yes, sporting events at UNR and UNLV would be included for the people and their supervisors who work those events. I will refer to Marielle Thorne to talk about stadiums and arenas and what type of work those people would be performing at those types of events. This bill is more for the industry doing production work in a professional setting rather than a child's recital where someone is opening and closing a curtain. Marielle Thorne will speak further about stadiums and arenas and the work performed there.

Marielle Thorne:
Certainly if there is a concert or halftime show, there will be a stage setup, dressing, lights, and audio. Even during an actual sporting event, there will be broadcasting with camera operators, video switchers, and spotlight operators.

Randy Soltero:
Those people would be covered under this bill.

Assemblywoman Tolles:
Thank you. Back to the Burning Man question, because it has such a large impact, and we do have pop-up performances there and other places. Have you reached out to them about how this might apply in those circumstances?

Randy Soltero:
We have not spoken to anyone regarding Burning Man. I have spoken today to the people at the Springs Preserve in Las Vegas. They have people who work events, and they also have volunteers who might come in to help the workers, but we are not requiring OSHA-10 training for those who work specialized events.

Assemblyman Hansen:
Like Assemblyman Daly, I have an OSHA-30 card, and I took a 30-hour class. As I recall in 2009, the genesis of Assembly Bill 148 of the 75th Session was because there were a series of construction deaths on a major project in Clark County. Like many who went through the class, there was a feeling of going through the motions to get our 30 hours. We did not feel this was the best training we ever had, and now, I feel so much safer on a job site. In the construction industry, are there any statistics on a substantial reduction of injuries or any proof that the required training has done that much good? If it has done a lot of good, why did we eliminate the retraining for every five years, which is what we were originally told we were required to do?

Joseph Decker:
The renewal requirement went away for a number of administrative reasons, including problems with renewals and verification of original cards versus retraining being requested. The Occupational Safety and Health Administration also felt in order to comply and be consistent with the federal program where the card was good for life, we wanted to concentrate on subsequent job-specific training. For example, if you have an OSHA-30 card for general industry hazards, but in five years you find you are an electrician, we would rather you get training specifically on hazards in that industry.

Jess Lankford, Chief Administrative Officer, Nevada Occupational Safety and Health Administration, Division of Industrial Relations, Department of Business and Industry:
Assemblyman Hansen, could you repeat your question about statistics?

Assemblyman Hansen:
I have been in construction since the late 1970s, and I have not noticed a dramatic decline in injuries. We are pretty safe in our industry, and there is quite a bit of self-regulation in it. After everyone in the construction industry had to get an OSHA-10 or OSHA-30 card, has there been statistically significant numbers of reductions in injuries or is this just another "feel good" program where we show our cards and know how to put up ladders correctly?

Jess Lankford:
We have seen a sizable reduction of injuries in construction, but it has been attributed to a reduction of construction activities in the state. It is my opinion the use of the OSHA-10 and OSHA-30 cards in construction has likely led to some reduction in injury in construction, but the reduction would be noticed in our state days away, restricted or transferred (DART) rate that we monitor which includes all industries. At this time, I am unable to give you an exact statistic on reductions of injuries.

Assemblyman Hansen:
I agree with the bill's sponsor. If you prevent one death, that is significant. I certainly do not want to come across as not believing in protecting workers as much as is reasonably possible. Have there recently been any accidents in the theatrical industry that would indicate a need for additional training or that current practices are coming up short?

Jess Lankford:
I am unaware of any fatality or injury spikes, but I can tell you that the entertainment industry does have a certain low-lying churn of injury. We did have a fatality that received national attention associated with one of the shows in Las Vegas over the past few years. My experience with the entertainment industry has been they consistently have a substantial injury rate due to the type of entertainment, the scale, and the background work by the phenomenal number of people who support the process. In this industry, I think the training is good.

Assemblyman Paul Anderson:
In section 5, you gave some good examples defining the site. I am wondering if this can be interpreted to very small venues like the Springs Preserve in Las Vegas and Red Rock Canyon in Las Vegas where they have an amphitheater or someone's back yard; anything that would be an unpaid event such as an amphitheater, whether it is downtown Las Vegas or Reno. Would those also apply and be defined as a site under this definition?

Randy Soltero:
The intent of A.B. 190 is not to have those types of venues be required to have their workers take the training. There are many organizations that are volunteer groups; I know the Boy Scouts have rallies and events, and we certainly are not asking they be trained in OSHA-10 safety training at those events.

Assemblyman Paul Anderson:
I recognize the intent but the interpretation of section 5 may lead to some confusion when it is trying to be enforced. In section 7 regarding wardrobe, hair, and makeup, how will OSHA-10 or OSHA-30 training be beneficial?

Randy Soltero:
What we see on a movie set, location, or on a sound stage is a very chaotic work site. There are many people going back and forth, and there are actors who may be having repairs to their hair or makeup while work is being done around them. Mr. Gorey represents those people, including hair, makeup, and wardrobe people. We feel it is important for these people to have this training.

John Gorey:
When you are on a film set or a shoot, it is not segregated; everyone is on the set at the same time when they are shooting.

Assemblyman Brooks:
I appreciate your doing this because I have lost friends in the construction industry, and I have been injured myself. My mother worked in theatrical wardrobe in shows on The Strip, and it can be incredibly dangerous with lions, tigers, and moving props, all in the dark. It is a very well-orchestrated machine.

In section 7, using the example of Burning Man where they have some amazing sets and theatrical productions, many of those people are not necessarily employed. They are professionals in their field but many do it as volunteers. I think there are a lot of dangers out there, and they should be protected. Would they be covered under this as well if they are working but not necessarily employed by a company?

Randy Soltero:
If you look at section 7 it says, " 'Worker' means a person employed to perform work on a site, including, without limitation, the construction, installation, maintenance, operation, repair . . . ." Again, it goes back to the people who may be volunteering or the Boy Scouts. This bill covers people who are employed in the industry and not volunteers or Boy Scouts.

Assemblyman Kramer:
Picture the gunfighters in Virginia City who put on the show with the bleachers. I am sure someone is making money because they have a gate, but I am unsure the actors are employed. To my mind it fits with the definition of site, and I understand the need for this when you have high-voltage cables, cameras moving around, heavy props, holes in the ground, and 50 feet up. I am thinking it does not apply to the other sites I can imagine. I would feel better if your site was better described to include number of people, budget of project, or something that would limit it. It is another level of paperwork and bookkeeping for a small business.

To me, safety is an issue from the top down. You are representing workers, and that is great, but if management is not on the same page saying we are going to protect our workers and make this a safer place to work, that is half the argument. Is there a cost attached to this? Is this fully endorsed by management of the firms that do this?

Randy Soltero:
In the scenario you were describing at Virginia City, they would be classified as performers, and they are not covered by this. This bill covers those who are below the line, people who work in the industry, putting hammer to nail, working with electricity, and those kinds of things. Regarding management, we have spoken to people during this entire process and they are in agreement with A.B. 190. One group is the Boyd Group, and they do training. They initiated this issue on their own. So far we have not had anyone say this is not good for the industry.

John Gorey:
We had a fatality a few years back, rest her soul, Sarah Jones was killed on a film set because one of her supervisors had her in a certain position at the time, and she got hit by an actual train. Managers should be in agreement, and you are right, because it should come from the top down.

Assemblyman Daly:
Can you point to a certain statistic that reveals a decrease in injuries? One thing I can tell you is once this has been put in place in the construction industry, employers can say,

"Only send me someone who has had the OSHA-10 or OSHA-30 training." Every single person who joins now, rather than going out to the job green and fresh, it is the first class they take when they are an apprentice. The first class they have to take if they can get onto the journeyman list, we ask for an OSHA-10 card. The training has benefited everyone who has received it before heading out to their first job. The training has also been beneficial to the industry; employees are going to come in with the baseline of safety training on the general industry standards.

Assemblyman Marchant:
How do you handle independent contractors, like a photographer, if you hire them?

Randy Soltero:
If A.B. 190 passes and becomes law in Nevada, whether you are an independent contractor or not, if you work in this industry you will be required to do this. This is similar to needing a driver's license to drive a car. When we did this in the construction industry in 2009, it helped. We think it is going to help here. Whether a person is an independent contractor or anything else, if they are working in the industry, they are required, as much as anything else like providing their tools or having the skills of their profession, to take the OSHA-10 training.

Chair Bustamante Adams:
We are now moving on to the last portions of the bill, sections 11 through 16.

Assemblywoman Neal:
In Section 13, subsection 1, paragraph (c) it says upon the third and each subsequent violation imposed is a willful violation. When I was looking at the existing statute under NRS 618.635, it does not read that way. You are saying it is a willful violation upon the third violation, so I am curious about how this works.

Jess Lankford:
This bill was drafted in unison with the bill where we brought in the construction standards. I was not involved in drafting the bill. Willful violations are usually when Nevada OSHA can identify that an employer knew the standard existed. The way this bill is drafted, by the time there is a third repetition of an offense, it is going to be determined to be a willful violation of the standard.

Assemblywoman Neal:
Nevada Revised Statutes (NRS) 618.715 says each violation is a separate and distinct offense. I would like to know how this language compares with the existing statutory provision, which says that each violation is separate and distinct. There are two things happening, and I need clarification. In section 13, you say all offenses occurring in a day constitute one offense. You then impose a willful violation upon the third offense. I am trying to understand what happens to the separate and continuing offense language in NRS 618.715.

Jess Lankford:
When OSHA does a field investigation at any particular location, the situations they find and address there would be consistent with a single violation of standard. They may have five or six instances of a violation that may be written as a single violation or singular citation. If you go back out after the final order for that particular citation is completed and find a similar situation, it will either be a repeat violation or a willful violation of standard. In a singular inspection when compliance officers are doing their work, they will not look at three different violations of standard under the same scope or statute and say the third violation is going to be a willful violation. It is considered one violation and then it will escalate. We have to go through the final order process. Each individual inspection will come to its fruition and stop, and if we find it again at a later date, it is considered a repeat violation.

Assemblywoman Neal:
You have administrative fines of not more than $500 and $1,000, but when you look at the existing language in NRS 618.635, the administrative fees are very different. It says not less than $5,000 for each willful violation. I am trying to understand what fine will be assessed for a willful violation that occurs at the appearance of the third offense.

Jess Lankford:
The penalties you refer to in NRS Chapter 618 apply to the *Code of Federal Regulations* in Title 29, Chapter 19, Parts 1910 and 1926 when OSHA does their work in the field, they will apply those penalty rates. When we have a citation of a regulatory statute in Nevada, we hold the penalties to a maximum of $1,000, unless it is a willful violation and it can be multiplied ten times. For any violation of NRS Chapter 618, the maximum penalty would be $1,000. If it is a violation of the *Code of Federal Regulations* to provide helpful and safe workplaces through OSHA, the penalties range from $5,000 to $7,000 per citation and multiply from there for repeat or willful offenses.

Assemblywoman Neal:
I appreciate that clarification. NRS Chapter 618 states, " . . . any standard rule, regulation, or order promulgated or prescribed pursuant to this chapter . . . ," so that seemed to encompass a lot of different subsections, which did not seem to delineate between a regulation violation versus anything else.

Assemblywoman Jauregui:
Section 11, subsection 2 (b) says "Complete an OSHA-30 alternative course, which is offered by his or her employer." Does the alternative course also have to be conducted by your definition of a "trainer" as defined in section 10, subsection 3?

Jess Lankford:
When the construction requirements came out for the OSHA-10 and OSHA-30 cards, the bill was drafted to have a one-year rollout period. I believe this represents the same rollout period, so for one year an employer can either get the card from an approved outreach trainer who will provide an OSHA card, or the employer can provide an alternative course for

the employee created by the employer and put the employee through the course, which would be considered training for that particular time. This is what the alternative course language means.

Assemblywoman Jauregui:
Are you saying the employer offering the alternative training course would not have to go through the same OSHA 501 course? A trainer would have to go through the course?

Jess Lankford:
That is correct. The employer would be responsible for getting the correct curriculum from OSHA or Safety Consultation and Training Section (SCATS) and set up a course to train their employees using that curriculum. We require them to get the outreach training curriculum, which is online. You can use their curriculum to train your employees for a year; after a year of rollout, during the second year, the card is required. Everyone would have to go through a course with a trainer.

Chair Bustamante Adams:
Are there any other questions? [There were none.] We are going to move into support for A.B. 190.

Priscilla Maloney, representing American Federation of State, County, Municipal Employees, Local 4041:
I remember the legislative discussions on A.B. 148 of the 75th Session in light of the MGM Mirage's CityCenter deaths in 2008. We are in support of A.B. 190. We recognize there have been good discussions about some things needing to be addressed, especially the issue of the continuing education requirement. I am confident the bill sponsors will be able to work out the issue from a common sense point of view with Las Vegas being the entertainment capital of the world. This bill makes sense. We are in full support of this bill.

Rob Benner, Business Representative, Building and Construction Trades Council of Northern Nevada, AFL-CIO:
We are in support of A.B. 190. We have seen a decrease in construction accidents and fatalities since making OSHA-10 mandatory in Nevada. Studies have also shown in states having mandatory OSHA-10 requirements for construction, there has been a decrease in accidents. In states that do not have the OSHA-10 requirement, there have been increases in accidents. When accidents decrease, companies save money through reduced legal fees, lost time, and lower insurance rates. Construction job sites can be dangerous, especially for new workers. Requiring OSHA-10 guarantees everyone on the job has a general awareness of safety. When I was on a job site, it did not matter how safe my actions were or how much safety training I had. My safety depended on what others around me were doing and how safe they were. I would support any industry that would want to implement OSHA-10 or OSHA-30 training to ensure the safety of their workers.

Misty Grimmer, representing Nevada Resort Association:
We are in favor of A.B. 190. We worked with the proponents to clarify the definitions of site as not including convention space and to clarify this bill does not cover performers. We, too, are in support of this bill.

Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO:
I am here today to speak on behalf of the southern Nevada building trades at their request. They would like to convey to the Committee their support for A.B. 190 for all of the reasons Mr. Benner has mentioned.

Nick Vassiliadis, representing Southwest Regional Council of Carpenters:
We are in support of A.B. 190 as well.

Jerry Helmuth, President, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of United States and Canada, Local 720:
I would like to thank Assemblywoman Diaz for sponsoring this vital piece of legislation. Every day, workers in the entertainment industry are exposed to potential safety hazards in their workplace. I believe this legislation will help make all worksites a safer environment for those workers. I am in full support, and I urge you to support A.B. 190.

J. R. Reid, Private Citizen, Las Vegas, Nevada:
I have been a member of the entertainment community since 1968, working on stages, in arenas, and in the motion picture industry. Safety is something we should take seriously, and I believe a lot of this is very important. Having safety standards for our workers is a very good idea, especially for below-the-line workers. I support anything we can do to make the work environment safer for below-the-line workers, and I understand the questions about the five-year renewal. As a business owner, I am wondering the same thing: How do I get my employees to renew at five years? Once that is addressed, I would fully support A.B. 190.

Matthew Kimball, Private Citizen, Las Vegas, Nevada:
I am here in support of this measure because it not only protects me but workers around me when I am on a job site. Job sites can be very chaotic from cameras on cranes to people in bucket lifts with cameras.

Chair Bustamante Adams:
Is there anyone else in support of A.B. 190? [There was no one.] We will hear opposition to A.B. 190, which means you do not like the bill as it is written, but you might want to make a change to it.

C. Joseph Guild III, representing the Motion Picture Association of America:
I commend the primary sponsor of A.B. 190, Ms. Diaz, in bringing it forward. No organization is more concerned with safety than the member companies of the Motion Picture Association of America. I am not here to oppose the bill for its purposes. I have had conversations with Assemblywoman Diaz, Mr. Soltero, Chair Bustamante Adams, and members of Assemblywoman Diaz's staff.

The industry I represent is unique in many ways, but the member companies do require safety training of all their employees. They do that under OSHA-10 and OSHA-30 standards or through the International Alliance of Theatrical Stage Employees Training Trust Fund. When a lighting technician comes to a shoot site in Nevada from California, they carry an OSHA-10 or OSHA-30 card. Our concern is a duplication of training requirements. Without belaboring the issue, I have spoken to people I represent about this amendment, and I believe the Committee attaché sent an electronic copy to you (Exhibit I).

We are concerned with the requirements I think can be solved in section 11. I propose an amendment in section 11, subsection 1, the word "not" be started in lowercase. Prior to that, the sentence should begin, "Unless in possession of a completion card from another state complying with the minimum standards of an OSHA-10 course, not later than 15 days after the date . . . ." In subsection 2, the sentence should read, "Unless in possession of a completion card from another state complying with the minimum standards of an OSHA-30 course, not later than 15 days after the date . . . ."

If the lighting technician comes to Nevada from California for a shoot, which does occur because these people are highly trained, they might be in Nevada this week and New Mexico or Louisiana next week on a movie set. If they carry the OSHA-10 or OSHA-30 card to Nevada, and they have been trained and have the evidence of that training, the requirements under A.B. 190 are not be applicable to them.

Assemblywoman Carlton:
I would like to ensure that the amendment is substantially equivalent, if not a higher standard. I would also like to know how we would verify the validity of the OSHA-10 and OSHA-30 cards, because we have heard concerns earlier, even on the renewal, about ensuring the cards are valid. Is there an electronic way for Nevada to ensure the cards are valid? Can Nevada and California talk to each other, because I do not want someone copying cards and bringing those cards into Nevada.

Joe Guild:
It is my understanding the training is at least to the standards that are required in A.B. 190, OSHA-10, 10 hours of training or OSHA-30, 30 hours of training. The training I mentioned provided by the International Alliance of Theatrical Stage Employees Training Trust Fund is substantially higher in its standards than the OSHA-10 and OSHA-30 training. At least these people are trained to the minimum standards, as my proposed amendment states, but it is my understanding there is continuing education in safety standards. The studios that hire them, like Sony and Disney, are very concerned about safety on the sets. Someone said

earlier the sets are chaotic, there are crazy things happening, and somehow it all comes together. The industry is taking safety to heart; they are very concerned about ensuring their employees are trained.

Joseph Decker:
The card is not state-specific; it is issued by federal OSHA. There are local trainers who are sanctioned by OSHA, and while the state program does enforce the possession of the card, we do not issue it, and we do not require a Nevada-specific card. A federal OSHA card from any state will be valid in Nevada.

Regarding the validity of the OSHA-10 and OSHA-30 cards, the instructors OSHA sanctions throughout the country are as available to us as they would be to a worker who obtained training. We do not anticipate we would have any problem with validating a card coming from out of state. The instructors are generally available to us. This is similar to verifying whether training was provided in the state.

Chair Bustamante Adams:
Is there anyone else in opposition? [There was no one.] Is there anyone in neutral position? [There was no one.] I would like to ask Assemblywoman Diaz to give closing remarks and clarify whether she accepts the proposed amendment.

Assemblywoman Diaz:
Thank you, Madam Chair, and members of the Committee. I appreciate your indulgence in hearing A.B. 190 before you today for consideration. I am thinking about the amendment, and I am unsure whether it is friendly. I do not know if California will recognize and validate their training when Nevada entertainment industry persons go to California. The same goes for New Mexico. I need to find out if there is reciprocity and if other states are accepting our workforce before I consider that amendment. I would like to make it clear to the Committee the OSHA-10 and OSHA-30 certification training is intended to capture persons who are employed in the entertainment industry in Nevada in professional movie and filmmaking, professional television production, and theaters and showrooms to entertain broader audiences. It is not intended to capture schools, plays, or other smaller productions in the community. I want to ensure it is clear who will comply with this training.

Randy Soltero:
Thank you for hearing this bill today. We feel this is important for our industry. In speaking earlier with Mr. Gorey about reciprocity, we will continue that discussion with Assemblywoman Diaz, but I can tell you if someone from Nevada goes to California to work, California will not accept their certification unless it is a California safety passport card. The same is true in New Mexico. One of the things we knew would be one of the unintended consequences of A.B. 190 is we train Nevada workers to have Nevada jobs. This will encourage production companies to hire Nevadans because they have Nevada training. This is a big deal that we help create jobs in Nevada for Nevadans. We will continue working with Assemblywoman Diaz.

Chair Bustamante Adams:
We will close the hearing on A.B. 190. We will open the hearing on Assembly Bill 213.

Assembly Bill 213: Revises provisions relating to dental care. (BDR 57-288)

Assemblyman James Ohrenschall, Assembly District No. 12:
It is a pleasure to present a bill before this Committee. Thank you for taking the time to hear Assembly Bill 213 on this day. Today is Oral Health Awareness Day, and there are many dental professionals and dental students visiting us from all over the state, including the University of Nevada, Las Vegas School of Dental Medicine. I am the Assemblyman for District 12, which includes Henderson and unincorporated Clark County. With me are Mr. Chris Ferrari, Dr. Richard Dragon, and Ms. Amy Gavin. Dr. Dragon is a dentist who practices in Douglas County, and Miss Gavin is his office manager. Mr. Ferrari is the legislative advocate for the Nevada Dental Association.

The focus of A.B. 213 is to ensure consumers receive the dental benefit coverage for which they have paid and the provider, the dentist, receives payment for the services provided, eliminating the confusion for consumers about what is and what is not within their dental benefit. Assembly Bill 213 streamlines the definition of a covered service and alleviates the confusing terminology that results in denial of services to the consumer and nonpayment to the provider. This bill disallows insurance companies from setting fees on services which are not covered and attempting to preserve the doctor-patient relationship.

Section 2 of A.B. 213 states that a provider of dental benefits—an insurance company—may not require a dentist to provide services at a set fee unless the service is a covered service and part of the actual policy. Legislation on this topic passed in 2013, and Senate Bill 497 of the 77th Session did accomplish this. It disallowed insurers from setting fees on services that were not covered, but S.B. 497 of the 77th Session was only applicable to *Nevada Revised Statutes* (NRS) Chapter 695D. Assembly Bill 213 expands that provision to apply to all chapters of NRS where dental insurance is referenced. Subsection 2 of section 2 states that an insurer may not set a nominal or de minimis fee for a covered service.

Recently in Virginia, a very large dental insurance company offered a de minimis reimbursement rate to providers, 10 percent of the contracted rate. This means the patient had a copay of 90 percent, and the dentist was required to write off the difference as the service was now covered. Passage of this language would prevent this from happening in Nevada. Section 3 requires an insurer provide notification and coverage details to the person insured, informing them a dentist can charge usual and customary fees on services that are not included in the policy. There is a lot of repetition in this bill because there are so many different chapters for different kinds of insurance.

Sections 4 through 29 apply the changes outlined in sections 2 and 3 of A.B. 213 to all of the NRS chapters that offer dental plans: NRS Chapter 689A Individual Health Insurance; NRS Chapter 689B Group and Blanket Health Insurance; NRS Chapter 689C Health Insurance for Small Employers; NRS Chapter 695B Nonprofit Corporations

for Hospital, Medical and Dental Service; NRS Chapter 695C Health Maintenance Organizations; NRS Chapter 695D Plans for Dental Care; NRS Chapter 695G Managed Care; and NRS Chapter 287 Programs for Public Employees.

Section 20 redefines a covered service by incorporating a nationally accepted definition and eliminating terms that create hurdles for receipt and delivery of care and making them applicable to all chapters offering dental plans.

Section 24 exempts Medicaid from the provisions of this bill. Subsection 6 of section 28 exempts trust funds, Employment Retirement Income Security Act (ERISA) plans established prior to October 1, 2013. Section 30 prohibits a dentist from charging more for dental care than the usual and customary rate. The reference to this rate as used in A.B. 213 is the American Dental Association's 2016 survey of dental fees. It also requires the dentist to post notice that services not covered by dental policy will be billed at the dentist's usual and customary rate. Section 31 removes the requirement that a dentist offer the negotiated rate on services when a patient exceeds the plan maximum for the year.

There are two amendments on the Nevada Electronic Legislative Information System (NELIS), and they are friendly amendments that I have had a chance to review with the proposers of the amendments [(Exhibit J) and (Exhibit K)].

Chris Ferrari, representing the Nevada Dental Association:
I am appearing in support of A.B. 213. We are trying to fix a system that is not working for your constituents. Patients are being denied services, providers are being denied payment, and the doctor-patient relationship is eroding. I have a brief 60-second clip (Exhibit L) I would like to play for the Committee that addresses some of the challenges we are trying to fix in A.B. 213.

[Adobe video presentation (Exhibit L) from the Nevada Dental Association is playing with background music and no narrative.]

Thank you for your indulgence. I would like to thank everyone on the Committee and several people in the audience. Each of the Committee members took time to meet with us to discuss this bill; we would like to thank you for that. We have also met with the Division of Insurance, Medicaid, representatives from the Health Services Coalition, Clark County and Clark County Fire, and major insurers. I would also like to extend a special thank you to Delta Dental, one of whose leaders spent approximately 30 to 45 minutes with us on the phone last week talking about some of their concerns. As we all know in this building, and many of us have been here a very long time, we find our friends in insurance have some creative solutions and ideas that end up making better bills. Our objective is always to work together.

As we indicated, we have a broken system [page 2, (Exhibit M)]. The good news is we have a lot of dentists [page 3]. From 2005 to 2015, dentists per 100,000 residents in Nevada increased by almost 17 percent [page 4]. That is the third-highest increase of any

state in the nation. According to Legislative Counsel Bureau statistics, Nevada was thirty-first in 2011, so it was a fairly significant increase [page 4, (Exhibit M)]. Certainly some legislators from the rural areas still have challenges finding access, but there are many different pro bono events geared toward ensuring coverage and help for those populations. The bad news is from 2005 to 2015, payments to dentists from insurance companies decreased by 18 percent [page 6, (Exhibit M)]. As you can see, dental benefits have not changed in 54 years [page 7]. They remain at approximately $1,000 in coverage.

What does this bill do [page 8, (Exhibit M)] to fix that and ensure your constituents get the coverage for which they are paying and ensure our members are receiving compensation to which they have agreed with the dental insurance companies? Assembly Bill 213 streamlines the definition of a noncovered service closing loopholes that allow plans to avoid paying for services covered by a policy. Insurance companies will oppose our suggested changes to this section because, regrettably, we agreed to these four years ago in S.B. 497 of the 77th Session when this body almost unanimously adopted language from the National Conference of Insurance Legislators.

We are going to prevent a dental insurance plan from setting fees on services not covered within a plan [page 8, (Exhibit M)], as addressed in S.B. 497 of the 77th Session. We are going to prevent a dental plan from setting a de minimis fee for services. Again, that is something my friends in insurance expressed some concern about. I would like to provide the Committee with an example. If a fee for a service on average is $1,000, and an insurance company comes in and says we are going to call it a covered service, but we are only going to reimburse at $100, that is a de minimis fee. Our objective for the record is not to "get out" in any way of providing contractual services after signing an agreement. We want to ensure this does not occur as it did in Virginia, where the Legislature had to return to close this loophole.

It also requires dental plans to notify consumers about what is covered and not covered in their plans. We heard from the county and some others that they might already have some level of notification going to their insurers, so it could be duplicative. We are very comfortable working with everyone from a friendly amendment perspective.

Under Assembly Bill 213, we require that dentists notify their patients once they are charging usual and customary rates [page 8, (Exhibit M)]. This bill also allows a dentist to charge usual and customary rates after an annual policy maximum is met. In S.B. 497 of the 77th Session, part of the National Conference of Insurance Legislators language mandated that dentists extend the terms of their fee agreement with the insured past the benefit maximum, so if you have $1,000 in benefits and you need a higher level of service under current law, Dr. Dragon has to extend his covered rate to you, then negotiate an insurance rate rather than charge his usual and customary rate. I will tell you why that is important as we move forward.

The current definition of a covered service [page 9, Exhibit M)], and this appears in your bill, is found in NRS 695D.227 (3). I am looking at ". . . waiting period, . . . frequency limitation, alternative benefit payment . . . any other limitation." The definition currently mentions the word "limitation" four times. We are trying to enable consumers to have access to their coverage, not limit it. We are proposing the following definition: " . . . 'covered service' means dental care for which reimbursement is provided on a dental procedure code published by the American Dental Association . . . ." [page 10, (Exhibit M)]. The codes are common practice industry standard Code on Dental Procedures and Nomenclature (CDT). Rather than having every possible out under the sun to deny a claim, we would like to streamline it so those who are purchasing dental coverage get what they are paying for.

We have identified that dental plans average from $750 to $1,200 annual maximum, and 64 percent of the U.S. population have dental benefits [page 11, (Exhibit M)].

I would like to run through a couple of examples of situations that are affecting your constituents. From a waiting period perspective, a patient goes to the dentist in pain with a toothache. The dentist and the patient decide the tooth has to be removed. The dentist removes the tooth and then is denied payment [page 12, (Exhibit M)]. This example is an emergent, acute situation. Tooth removal is a covered service, but because during that visit the dentist is only able, according to the plan, to assess and would have had to leave that patient in pain otherwise, the provider was denied payment. What happens in that situation from a consumer perspective is the provider goes in, Miss Gavin tells them what they will be covered for, and all of a sudden, they receive a bill in the mail. The dentist does not get paid, and no one knows what really happened. This is a real problem, but our goal is to provide the care our patients need at the time of need, especially when they are within their plan coverage.

Example two is insurance interference [page 13, (Exhibit M)]. A patient needed treatment for gum disease. In this case, the dentist determined the treatment was necessary by using a periodontal probe to measure the pocket space, known as the sulcus, between the tooth and the gums. This is considered the "gold standard" of identifying periodontal disease. A healthy sulcus measures 3 millimeters or less and does not bleed. As the disease progresses, the pocket gets deeper, endangering the bone of the tooth. The insurance company denied the claim saying an X-ray was needed to show that 30 percent of the bone had deteriorated. This is a situation where the dental provider would have to say, Assemblywoman, we will have you return in a couple of months when you reach 30 percent loss and show the insurance company on an X-ray that is happening rather than our professional opinion. We do not believe this is good policy, and we do not believe it is good for the consumer.

From a coordination of benefits perspective [page 14, (Exhibit M)], we are trying to achieve consumer coverage. If patients pay for a policy that is $1,000 worth of coverage, they should be able to use it when they want and how they want, as determined between the patient and the dental provider. In this example, the patient has primary and secondary coverage, so the Chairwoman and her husband each have a separate policy. She sees the dentist for

$210 worth of dental work; the primary insurance covers $152, and the secondary insurance denies it. The $58 is coming out of pocket, and the insurance policy was not accessed. We do not understand why people cannot access the coverage they purchase.

You will hear as well that dentists are being greedy [page 15, (Exhibit M)], so let us look at some statistics. An average student graduating from dental school faces $261,000 in debt. For many students in the room, some of whom are here in the white coats, I am guessing they will have a little more debt than that with living and other expenses. The average cost of opening an office is $350,000 to $550,000. I am not looking for sympathy; this is a business where you have to open a practice, and you need education to do it. All we are asking is that we are compensated according to the policy terms.

The first dental policy was offered in 1963 for $1,000 in coverage; you could buy a little more in 1963 than you can 54 years later. That has not changed, but premiums have gone up. Payments to dentists in Nevada have decreased 18 percent over the last decade [page 15, (Exhibit M)], and the question is, is it wrong to do what is in the best interest of the patient, work out a plan with them, and expect to be compensated for services provided?

Another thing you are going to hear is if they do not like the terms of the contract, they should not sign the contract [page 16, (Exhibit M)]. I understand the Legislature's hesitation to intervene in contractual obligations. This is not Assemblyman Anderson signing a technology contract with an individual client; this is an entire market. If we look at between 63 to 65 percent of the nation's population having coverage, there is not much a dental provider can do to negotiate; you are in or you are out.

As I have reiterated too many times, we are trying to ensure with this new definition that there are less loopholes and people cannot be denied coverage if it is within their contract of insurance. Premiums are increasing and benefits are decreasing. This is truly a losing formula for everyone in Nevada [page 18, (Exhibit M)]. We believe your constituents and their providers should be able to discuss a course of treatment. We believe your constituents should be able to access the benefits they pay for. We believe our members should be compensated at the agreed-upon rate for services, and we have offered to all of our friends in insurance that if someone has a better idea, we are amenable and willing to work with them to solve this problem.

Thank you, Madam Chair, for your indulgence, and I think Dr. Dragon has a few words for us.

Richard Dragon, DMD, Vice President, Nevada Dental Association:
I have been a practicing dentist for 31 years in Gardnerville, Nevada. I am the current Vice President of the Nevada Dental Association, and I am here today to request that you support and vote yes on A.B. 213 (Exhibit N).

Due to the economic recession, members of our community are in a struggle. They have less money for discretionary spending when compared with prior years. Patients are becoming

more dependent on what is covered in their insurance policies as well as limiting their dental visits and needed treatment to the maximum benefits allowed per calendar year. For most policies, this maximum is approximately $1,000 a year, a number that has not significantly changed in 54 years. Dentists have also struggled during the recession. Dentists have very few options other than signing on with network providers, controlled by the insurance industry, that have contracted with the local businesses in their communities.

In 1965 if patients had a maximum yearly benefit of $1,000, their coverage would allow for an extensive amount of needed treatment. Today at $1,000, patients can barely afford a single crown, which leaves little or nothing for yearly cleanings and exams. As we all know, insurance premiums only increase. It also can be safely assumed that dental patients are finding it increasingly difficult to receive necessary treatment when the maximum benefits allowed have virtually stayed stagnant for a half-century.

Dentists have overhead consisting of rent, equipment leasing, payroll, labs, supplies, and taxes just like any other business in our community. Stagnant reimbursement controlled by the insurance industry and a continual increase in the cost of doing business make the ability to conduct the business of dentistry more difficult. An unhealthy economic environment as well as economic pressure has developed in the dental industry. It is still the responsibility of the government as well as the licensed dental professionals to ensure patients can safely assume their dental health care providers will place patient health and well-being as their first priority and will be willing to set aside any intrusion by any third party such as a dental benefits provider.

Contrary to what the insurance industry would have you believe, it is the insurance industry that has tipped the scales in their favor, not the providers. They do this on the backs of businesses, enrollees, as well as the providers. As being demonstrated today, Nevada dentists are a generous, courteous, and giving group of practitioners who care about their communities, employees, patients, and the underserved in Nevada. Nevada dentists are concerned with the quality of care being delivered and that high standards be continuously maintained and built upon. We respectfully request the Committee consider the dynamics of the dental practice, the hours of pro bono services dentists provide as well as the programs Nevada dentists have adopted, when reviewing and considering support for A.B. 213.

Chris Ferrari:
Ms. Gavin is with us today; she is the office administrator for Dr. Dragon. From a technical perspective, if there are questions regarding the processing of claims, she performs this task on a daily basis.

Chair Bustamante Adams:
We are going to start with sections 3 and 4 of A.B. 213 because they are the primary focus that sets up the other sections.

Assemblywoman Carlton:
I would like to ensure I understand everything, Mr. Ferrari. Basically what we are looking at is, I pay my insurance premium every month, and I have a dental benefit up to $1,000. What you are proposing is, after the $1,000, I no longer get the contracted rate, correct?

Chris Ferrari:
That is correct.

Assemblywoman Carlton:
Since the contracted rate is usually the best rate because that is the negotiated rate, by going to usual and customary rates, that number could increase or it could decrease. There is no guarantee, correct?

Chris Ferrari:
That is correct. The reason for the request is based on what is happening in the dental industry overall and the lack of claims payment. The dentists are trying to be made whole along the way while providing the best possible care to their patients.

Assemblywoman Carlton:
My concern, Madam Chair, is our state employees have a very similar plan, because we do not have a good dental benefit for state employees. They are paying their monthly premium, which is not inexpensive if you are on the HMO or the consumer-driven health plan, so they would only get up to $1,000 on a contracted rate. If they needed to finish, the rate could increase. I have concerns we would be setting them up for dental care they could not afford. I do not see any limits in here, and payment would come out of our employees' pockets. We are looking out for our constituents, and when we get to the end of the bill, I have concerns about the repealed language, and I want to ensure I understand the process we are working through.

Chris Ferrari:
To my knowledge, only the text of the repealed section on page 13 of A.B. 213 addresses that particular issue. Nothing else within the prior sections addresses the consumer's ability to have a fair covered rate. Let me clarify my response: The text of the repealed section enables the dentist, after a consumer reaches the policy limit, to begin charging the usual and customary fee, which is why we added it in section 30 as well—that strict notification process we placed upon the provider to ensure there are no questions about what is going on.

Assemblywoman Carlton:
Mr. Ferrari, could you possibly give to the Committee some contracted rates and usual and customary rates, so we have some numbers to look at for a comparison?

Chris Ferrari:
There are some rates submitted today; they are the average rates. I will have to get some contracted rates. Your question on contracted rates is probably a better question for the insurance people. I can get you the usual and customary rates.

Chair Bustamante Adams:
We will look at sections 2 and 3 rather than sections 3 and 4.

Assemblywoman Jauregui:
In section 2, would you clarify subsections 1 and 3, because it sounds like you do not want the insurance company to be able to set the prices for the items they are not covering. For example, the insurance company might not cover teeth whitening, and when I request teeth whitening, they tell me they can charge only $50 rather than what they usually charge. Can you give me some examples of the difference in costs for some services not normally covered by insurance companies and the cost you would like to charge?

Richard Dragon:
It is my understanding because of the McCarran-Ferguson Act, the insurance companies are allowed to share data and fees while we are not because it is considered collusion on our part. For us to gather fee schedules of our usual and customary fees is something we legally cannot do. If you see my fee schedule, it is not going to represent someone else's fee schedule because we are not supposed to talk to each other. We do not even have data to go to, so we are in the dark. This is why we are seeing our profitability is less and less because we have no leverage.

Assemblywoman Jauregui:
Do you think because of the discrepancy in charges between offices, the insurance companies set a flat rate for the protection of the consumer?

Richard Dragon:
The insurance companies set a flat rate for the protection of the insurance companies. The dentists are interested in protecting the consumer. Today we list a lot of record-keeping regarding pro bono services given and programs we offer. What is not listed is what we do on a daily basis for people because we do not report or give out that information. Most of the dentists I know are very compassionate people. We do a lot of things for no charge when I could charge for them, but my patients are long-standing patients whom I care about—I care about their health and well-being. I am unsure how much longer I can do this. Who has the most interest in the well-being of the patient? I dare say the dentist.

Assemblywoman Jauregui:
Why would insurance companies want to set a fee for an item they do not cover? How is that beneficial to anyone in any way, because it is not beneficial to them since they are not getting the money back in reimbursement?

Chris Ferrari:
There is not an objective for them to do that. I believe, and I certainly do not want to speak for the insurance companies, that they have objection to that. It was a component of Senate Bill 497 of the 77th Session, which was largely agreed upon, but again, I do not want to speak on their behalf.

Chair Bustamante Adams:
Are there any questions?

Assemblyman Araujo:
I looked at the NRS definition of "covered service" and while looking at it, it cites that reimbursement would be available for several different purposes. I am hoping you will be able to expand on a few of them: waiting period, frequency of limitation, alternative benefit payments, or any other limitations. The only reason I bring up waiting period is because at the beginning of the presentation we heard people are often asked to return for additional services. I would like to ensure everything is in line, and you may be able to provide more clarification on that definition.

Chris Ferrari:
I appreciate the question, and it is one of the examples we provided to the Committee (Exhibit O). Under that emergent situation where the pulling of the tooth was required, only an evaluation was covered. I cannot speak to the terminology in terms of which one it would specifically affect, but I suggest you ask the insurance panel what waiting period, or any other limitation or frequency limitation, there is. In this case, the provider wanted to take care of the patient. They could not very well send the patient home with an acute situation. The fact that coverage was denied and the consumer was declined access to the coverage for which they had paid, we see as problematic, which is why we are trying to streamline the definition.

Assemblyman Araujo:
Perhaps the insurance panel can clarify that a little bit more.

Assemblyman Daly:
I am trying to understand a couple of things that I would like clarified. I have some concerns about after the end of the contract and if you agree, you should still give that person the discount. You said there is a definition or a way to determine the usual and customary rates, based on national averages and other things. I know Dr. Dragon testified they cannot really talk to each other about what is in each other's contracts. Is there a difference between what different doctors charge; one doctor could say he offers a cleaning for $200, and another competitor charges $150 and another charges $250, but the "usual and customary" on the average is higher than one dentist and lower than the other. Which rate are they going to charge, the lowest rate, the standard rate, the usual and customary rate, and is the dentist who charges more than the usual and customary rate going to go down to that rate?

Chris Ferrari:
It is a very good question, and as Dr. Dragon indicated, the discussion of rates or contractual items within their individual contracts is precluded by federal law and is considered collusion. What we do have is the American Dental Association survey of rates (Exhibit P). It is a pretty good document because it goes through all of the CDT codes, which I mentioned previously are the industry standard for all procedures by region. That is on NELIS and we would be happy to get it to the Committee, so you can see how they vary. Regarding your

question on what rate is going to be charged by that dentist to the patient, a dentist is very much a service-oriented business. I hope you have a positive relationship with your dentist, and if you do not, you find a new one. I have a good list for you. In section 30 of A.B. 213, we are mandating rates are posted and clearly displayed in the office. I cannot fathom if you came to me, Assemblyman Daly, and I charged you $1,000 for a teeth cleaning because that is my usual and customary rate, that you would pay it or ever come back. There is certainly some level of service associated, therewith, but I appreciate your concern for the consumer.

Assemblyman Daly:
I have seen the term "usual and customary," and I am not trying to disparage dentists or anyone else, but we have seen this with other providers: They say this is the usual and customary rate, and it is a lot higher than what people normally would charge. Regarding charging outside of the contract rate, my insurance plan, which is an ERISA-exempted plan, has a $2,000 limit. We contract rates with doctors because they know we will refer patients to them. You are right, we have a lot of good dentists, but there are some dentists we have fired out of the plan because they were not good providers.

Assemblyman Ohrenschall:
On page 8 of A.B. 213, section 20, there is an amendment to the language in NRS 695D.227, which provides the definition of "covered service." It is specifically saying it would have to be something that is agreed upon between the dentist and the insurance company. I am not sure that is your answer, but if not, hopefully we can get you the answer. I wanted to point out this section to Assemblyman Araujo.

Assemblyman Daly:
Back to my point, I guess there are bad actors on both sides. The insurance companies are trying to take advantage for their benefit; there are some dentists trying to take advantage for their benefit; and we are now trying to figure out language that is universal that fits and is fair for everyone. The questions are: How is it really going to come out? How is it going to be administered? What are the rates? What is the consumer supposed to look at? You are saying the provider has to tell them what is covered and not covered. You need to know what you signed; what the rules and regulations are; and what is covered and not covered. We do try to direct people to that, and part of the benefit is to continue to get the discount even after the limitation is done.

Chris Ferrari:
I very much respect what you are saying, and I understand the nature of the questions and concern over consumers having to pay the usual and customary rate after they reach their maximum policy benefit, which is a policy decision this Committee has to consider and that is why we are here before you today. I would like to point the Committee to the current definition. Let us take that topic off the table for a moment; that particular topic we understand. I think the sentiment of the Committee is very clear on that particular topic. This is not working for patients. If we get that part out and this is still in place, we have a problem.

In speaking with some insurance companies about this, it is National Conference of Insurance Legislators' language, and we understand. I cannot give you exactly how many states, but this was the cool thing four or six years ago; a lot of states did this. Many states are looking at undoing it because of the impact on the consumer. What we have heard on this is we operate in so many states, we have algorithms for claim processing, and this is going to be a real challenge because we are going to have to reprogram those algorithms.

If that means consumers are going to have access to their benefit with a nice, clean definition that says it has to be a CDT code, I think it is money well spent, and I think it is an absolute consumer benefit.

I appreciate where the group is on permitting dentists to charge their usual and customary rates, but I ask that you take a look at this from a definitional perspective and also consider the de minimis issue, which with respect to Nevadans, has not come up yet. If someone goes in thinking they have a benefit, and they find out they have a 90 percent copay, that is not much of a benefit.

Assemblyman Paul Anderson:
I need clarification on what was changed in NRS Chapter 695D during 2013 in S.B. 497 of the 77th Session. Can you give me a little background and intent on that piece?

Chris Ferrari:
The objective in 2013 was quite similar; there was frustration that the setting of fees on services not covered in a plan was being used as a marketing tool. If you sign up for my plan, I am going to give you a $20 teeth whitening. Perhaps the hard cost to the provider is $100. I cannot offer that service to my patients at that rate and take an $80 hit. I cannot afford to lose that level of revenue on a service that costs me that much. We are trying to ensure those were not being set, and to the credit of most of our insurers in Nevada, they were not doing that. As we have heard, there are always bad actors in each industry, and that was occurring. While we have found a remedy in NRS Chapter 695D, it did not reach all of the chapters that offer dental plans.

Assemblyman Paul Anderson:
Is the language from NRS Chapter 695D similar, and we are just spreading it across all of the separate sections?

Chris Ferrari:
As it pertains to disallowing the setting of fees on services not covered, it is.

Assemblyman Paul Anderson:
On the usual and customary fees, I did see that you attached a rate on NELIS (Exhibit P). I am wondering how often is it updated? Is it a national survey? Does it pertain to Nevada specifically? A dentist obviously is not bound by those rates. How often is it used by a dentist? If I do not feel, as a consumer, that I am getting the usual and customary rates, what is my recourse?

Chris Ferrari:
My understanding is rates are updated annually. I have not reviewed all of the pages, but if you look through this document, it is sectioned off by region. I do not know that the rate information is provided by state, but they try to look at averages on a regional basis.

From a recourse perspective as a consumer, if there is ever any type of fraudulent overbilling practice or otherwise, the Insurance Division is typically the outlet for a consumer to seek justice.

Assemblyman Paul Anderson:
Are there other states that have similar language, are we mirroring things in practice somewhere else, and do we have evidence it has not harmed the consumer?

Chris Ferrari:
The National Conference of Insurance Legislators language was the national sentiment approximately four years ago. As it pertains to the definition, everyone will be going back to the definition to see what it is doing. I cannot speak to what aspects of National Conference of Insurance Legislators individual states are looking to repeal. What I will do is inquire with the American Dental Association, which keeps statistics on what is happening on a national basis and get that to the Committee members.

Chair Bustamante Adams:
Are there any other questions on those sections? [There were none.] We will take the last two sections, sections 30 and 31. I do have a question in section 30. You talked about the survey, and I think Assemblyman Anderson asked the same question. Are you able to pull out Nevada? When you say regional, is that West Coast? What does that mean?

Chris Ferrari:
Let me review that document in more detail, and I will get back to you with that information.

Chair Bustamante Adams:
Are there any more questions in sections 30 and 31? [There were none.]

Assemblyman Ohrenschall, I know you kept talking about the next panel, is that all insurance people? Are they in opposition?

Assemblyman Ohrenschall:
I think there might be people who want to testify in support. If not, I am happy to move on to neutral position and opposition.

Chair Bustamante Adams:
I will take support. I will then have the Commissioner of Insurance come up in neutral on an informational basis. Let us move into support for A.B. 213.

Chris Ferrari:
As you can see behind me we have a number of dentists and dental students. In the interest and respect for your Committee's time, they have all signed in, in support of A.B. 213, so they do not need to come forward and formally be on the record, if that is okay with you.

Chair Bustamante Adams:
Yes, that is okay. I appreciate the courtesy of that, but if you are a dental student, could you please stand up if you are in support of A.B. 213 so I can have a visual? Is there anyone who wants to testify on the record in support of A.B. 213? [There was no one.]

We will move to opposition for those who want to amend, make a change, or do not like the bill as is. Please come forward.

James L. Wadhams, representing Anthem Incorporated and its Affiliates Including Amerigroup Nevada and Nevada Association of Health Plans:
Briefly, I would like to address this bill. As the Committee has noted, it is a pattern bill, which deals with several different chapters. Rather than talk about each different chapter, I will focus on the language in sections 2 through 4. The problem I am noting with this is the definition of covered service. It appears that is set up in section 2, lines 3 through 7, particularly the last six words: ". . . unless the dental care is a covered service." That becomes the critical piece of this bill. In section 2, subsection 2 states, "Dental care shall be deemed a covered service only if the negotiated rate . . . is an amount that is reasonable and is not nominal or de minimis."

Subsection 4 states, ". . . covered service has the meaning . . . in NRS 695D.227." *Nevada Revised Statutes* (NRS) 695D.227 says, ". . . covered service means dental care for which reimbursement is available . . . under a member's policy, or for which reimbursement would be available . . . ." In section 20, subsection 4, ". . . covered service means dental care for which reimbursement is provided on a dental procedure code . . . ." We really have four definitions of "covered service," which is a little confusing. I think there are some drafting issues we would like to see clarified.

Generally in the insurance world, health insurance policies have to provide an indication of what is covered and make it clear. Any exceptions or limitations on it have to be provided on the face of the policy. The policies, at this point in time, are filed in conformity with the Affordable Care Act. The State of Nevada has required that both policies sold on and off of the Silver State Health Insurance Exchange conform with the Affordable Care Act. Things like waiting periods are not pertinent; we have an open enrollment period and the coverage kicks in. The problem we have is with these various definitions of "covered services," it can completely negate the policy. It is not clear to me how one determines whether that fee is reasonable, nominal, or de minimis. I am sitting here with a contract expecting to get my teeth cleaned, and the dentist says that fee is not reasonable; my coverage has just disappeared in my hands. It tends to cloud the issue of the consumer understanding the contract.

Over the course of time, health insurance contracts, particularly in NRS Chapter 689A, the individual health insurance, every consumer has a ten-day free look at that policy under the statutes passed by the Legislature. The idea is to give the consumer an opportunity to read the policy, see what is covered, and act upon that. We now have definitions that are different from what might be in the contract regarding services covered and not covered, and it may be situational when you arrive at one dentist office as opposed to another. I think there needs to be some work on the language, correlating and conforming the definition of "covered service" in a way that is consistent.

Subsection 3 is also problematic. It says, "an insurer," and it may have been intended that the dentist shall provide to the insurer the notice about their usual and customary rate. It would seem inappropriate for the insurer, if the dentist is going to charge whatever rates they have determined they want to charge to a patient, that an insurer, any insurer, would have a declaration that it is "usual and customary." As was pointed out in an earlier question, their "going rate," their "market rate," may not be "usual and customary." Perhaps the intent of this language is what is "usual and customary" for one dentist may be different than what is "usual and customary" for another. I think there is a drafting problem in placing that burden on identifying what is usual and customary should be the obligation of the person who is going to charge the rate.

I would repeat that on the same chapters. This, to me, is not clear and it changes many sections of the laws. As this Committee is well aware when bill drafting does the work, they really only identify the sections in which language is either changed or deleted. The chapters dealing with the insurance laws are very substantial and have a significant amount of required disclosures. I think the concern is this language is so confusing regarding patient contracts. Patients may be unsure what it says until they find out whether the dentist thinks the fee is reasonable.

The second element to note is a statute, NRS 689A.035, which does not appear in this bill but has a requirement that health insurers have to provide a copy of their proposed contract with their provider to the provider and disclose the proposed payments, so the provider can decide whether it is a reasonable contract to accept. As the Committee considers A.B. 213 in more detail, I think there are some elements that can use more drafting. Until that is done, Anthem has to appear in opposition to A.B. 213. I am not sure what it does; the testimony was very compelling, but the bill is very simple and pivots around the notion of covered services. I think we need to figure out the intent of this bill.

Chair Bustamante Adams:
Mr. Wadhams, have you already approached the bill sponsor with your concerns?

James Wadhams:
I have not, but my client has, yes.

Regan J. Comis, representing the Nevada Association of Health Plans:
Mr. Wadhams shares our concerns with this bill. We have approached the sponsor and the proponents of the bill; we will continue to see if can work with them. We were unaware of the amendments, so we cannot speak to those, but we will take an opportunity to review them.

Chelsea Capurro, representing the Health Services Coalition:
The Health Services Coalition represents 350,000 lives, and the member groups are some of the largest health-funded employers and union-based health trust funds in Nevada. I am not going to repeat what Mr. Wadhams said, but we share the same concerns. We have spoken with the sponsor about those concerns, and we have not seen the amendments, so we will be happy to look at that. At this moment, we are opposed to A.B. 213.

Helen Foley, representing Delta Dental Plans Association:
While we normally have an excellent relationship with the dentists, and our head of government affairs has been talking to them, we do have some issues with A.B. 213, primarily the National Conference of Insurance Legislators language that is attempting to be deleted. We want to work together, look at the proposed amendments, and try to work this out.

Chair Bustamante Adams:
Are there any questions for this group? [There were none.] Is there anyone else in opposition? [There was no one.] Is there anyone in neutral?

Elizabeth "Betsy" Aiello, Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services:
I have been working with the bill sponsor, and we did submit a proposed amendment to the Committee. We are testifying neutral because it is our understanding the amendment is a friendly amendment and is acceptable. This bill exempts health maintenance organizations and managed care organizations that provide health care services to recipients of Medicaid and the children's health insurance. It does not exempt any other dental benefit administrator-type regulation. This is where we have a concern. Currently, most of our dental services are provided through managed care organizations, but we are moving forward to adjust that to add a dental benefit administrator to the Medicaid plan. We want to put on record we have submitted a friendly amendment to this bill.

Chair Bustamante Adams:
Miss Richardson, can you explain what National Conference of Insurance Legislators is for the Committee?

Barbara Richardson, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:
The National Council of Insurance Legislators meets quarterly in order to discuss insurance legislation that might be beneficial to be shared across the nation, specifically on those items they feel are going to not only be affecting those in their states but might affect others in other states.

Chair Bustamante Adams:
If you could elaborate for informational purposes on section 30. Previous testimony said a consumer could have recourse through the Division of Insurance if there was an issue. Is that correct?

Barbara Richardson:
Yes, that is one of the reasons we are here. We did work with the bill sponsor, and one of our concerns is the "usual and customary" rates, which is what you have been talking about. Our hope is at some point the legislators, insurance carriers, and dental carriers can get together and make a decision on what that frame is. We do not know or have enough information on the Code on Dental Procedures and Nomenclature, but we will certainly be looking into it. That is where they would come to ask, is this a proper allowance? This is why we are looking for some type of standard that will be helpful.

Assemblywoman Neal:
What do you understand "covered services" to mean?

Barbara Richardson:
Covered services are usually under the contract, depending on how the contract terms are written. It will change for every type of health insurance contract.

Assemblywoman Neal:
Is the contract negotiated at the beginning and then it is covered for a period of time?

Barbara Richardson:
That is exactly right. It is going to be under the contract.

Assemblywoman Neal:
Regarding the "usual and customary rate," you are not clear on the definition of what fits in the frame of what is customary. Is there no common practice at play?

Barbara Richardson:
We do not know of any common practice at play, and that is our concern. The industry is the best driver for getting that information. As insurance regulator, that is not something we would have in our back pocket for information. Health insurance and health claims information is much easier for us to access than dental information. If the code being provided will do the trick, then we will not be concerned. We do not have that information currently.

Assemblywoman Neal:
If a dental practice is covered under Medicaid and they are seeking to get a dental manager, what is the common practice or customary way you see it working? There must be some commonality in order for you to cover it.

Betsy Aiello:
Our current dental benefit under Medicaid is probably different than a lot of insurance dental benefits. For our children, under the Medicaid regulation Early Periodic Screening Diagnosis and Treatment, we cover all of the medically necessary dental procedures, so the current procedural terminology (CPT) codes if it is medically necessary for a child. Our adult coverage is just emergency coverage; we do not have regular adult preventive dental coverage in Nevada. Our current dental benefit is operated under fee-for-service program if the individual is in fee-for-service Medicaid. For individuals in managed care, dental services are covered in their managed care plan. We have new managed care contracts starting July 1, 2017, and the dental benefit has been carved out of it. We are soon to release a request for proposal for a dental benefit administrator. We are going to have it as a stand-alone entity for those individuals in managed care.

Assemblywoman Neal:
Clearly in private practice it is different because what is "medically necessary" may also be what is aesthetically pleasing, but in order for you to carve out what is "medically necessary" or what is an emergency for an adult, you must have looked at a list of options you have decided to eliminate or add in to create your "medically necessary" category for Medicaid. The reason I am asking is because I am trying to figure out how difficult is it to find common practice—what is customary in usage within the dental practice. We are trying to figure out what is hidden. Is this correct?

Betsy Aiello:
Are you asking, could we run our claims payment to see which billing codes we have been paying as they have been determined "medically necessary"? We have rates tables for the billing codes.

Assemblywoman Neal:
In the process of exclusion, there must be a list of services out there that private practice is using or have a list of services dentists are performing on a consistent basis. You are in a different position because you have carved out what is "medically necessary." There are only a certain number of services you are going to pay because Medicaid is Medicaid.

Betsy Aiello:
"Medically necessary" is not the list of billing codes, it is what the child needs. We have the option for children; all of the dental billing codes are listed by the American Dental Association. The child would have to have a certain diagnosis or certain demonstrated issues for the billing code to be determined "medically necessary." We do not track the private insurance market.

Chris Ferrari:
There is no intent from private dentists not to disclose fees. Dr. Dragon mentioned a federal act called the McCarran-Ferguson Act. I have been to a number of American Dental Association conferences, and there was always a notation at the beginning of the conference to remind attendees they cannot have this dialogue. The act is also known as *United States Code*, Title 15, Section 1011, that exempts the business of insurance from most federal regulation, including federal antitrust laws to a limited extent. When you talk about setting rates, there is definitely a significant advantage from an insurance perspective to be able to come together and talk about them. This is the reason for my initial suggestion that the Committee request this information from the panel in opposition.

Assemblyman Daly:
I am sympathetic to the situation we have. I am trying to understand it. When I look at section 2, subsection 2, where it says, "Dental care shall be deemed a covered service only if the negotiated rate . . . by the dentist and insurer is an amount that is reasonable and not nominal or de minimis." My understanding is these are laws that you cover. This is a negotiation between the two of them. Are you going to have to settle that dispute? If you are, because one is going to say it is reasonable and the other will say it is not, how are you going to determine reasonable, nominal, and de minimis? Is there a standard?

Barbara Richardson:
That is exactly what we are struggling with. This is why we are looking for some kind of general practice whether it is with the American Dental Association, or the Code on Dental Procedures and Nomenclature. Then we will be more comfortable. I do not think we feel comfortable deciding what is reasonable, nominal, or de minimis without that information to go on.

Chair Bustamante Adams:
Is there anyone else in neutral? [There was no one.] Assemblyman Ohrenschall, do you have closing remarks on A.B. 213?

Assemblyman Ohrenschall:
There are certainly a lot of people with concerns about this bill; however, I think there is a lot of common ground. I think most everyone I have talked with, and I do appreciate how many people have come to speak with me about their concerns with the bill, agrees with anything that limits patient access to certain non-covered services, whether it is teeth-whitening or some other type of elective procedure, because the dentist feels it is not something they can do based on those set prices, I think there is agreement that legislation similar to what passed in 2013 should hit those other chapters. I think the other areas of concern will be discussed with the dentists to work out their concerns. I have relayed those concerns to the Nevada Dental Association, and I sense they are willing to work with those groups. I hope we are able to work together to come up with some good policy from this bill. Thank you for hearing this bill, for your excellent questions, and for your attention to A.B. 213.

Chair Bustamante Adams:
We will close the hearing on A.B. 213. We will move into public comment. Is there anyone for public comment? [There was no one.] The meeting is adjourned [at 4:20 p.m.].

RESPECTFULLY SUBMITTED:

_____
Pamela Carter
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 summary regarding Assembly Bill 128, written and submitted by Assemblywoman Ellen Spiegel, Assembly District No. 20.

Exhibit D is an explanation for bill draft language proposed for Assembly Bill 128, written and submitted by Assemblywoman Ellen Spiegel, Assembly District No. 20.

Exhibit E is explanatory material regarding Assembly Bill 128, submitted by Angel De Fazio, Private Citizen, Las Vegas, Nevada, consisting of the following:

1. Clark County Justice Court, Las Vegas Township, form, "Proof of Service (for use by Plaintiffs in Small Claims Cases)," LVJCVL Form - 118, Revised 1/17.
2. Clark County Justice Court, Las Vegas Township, form "Proof of Service," LVJCVL Form - 22 Revised 7/11.
3. Nevada Eighth Judicial District Court, Clark County, form, "Affidavit/Declaration of Service."

Exhibit F is the Work Session Document and proposed amendment to Assembly Bill 35, dated February 10, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit G is the Work Session Document and proposed amendment to Assembly Bill 61, dated February 17, 2017, presented by Alfredo Alonso on behalf of Nevada Trust Company Association.

Exhibit H is a summary of Assembly Bill 190, written and submitted by Assemblywoman Olivia Diaz, Assembly District No. 11.

Exhibit I is a document titled "Comments on A.B. 190, by the Motion Picture Association of America," dated February 28, 2017, submitted by C. Joseph Guild III, representing the Motion Picture Association of America.

Exhibit J is a proposed amendment to Assembly Bill 213, submitted by Chris Ferrari, representing the Nevada Dental Association.

Exhibit K is a proposed amendment to Assembly Bill 213, submitted by Marta Jensen, Acting Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services.

Exhibit L is a video presentation regarding Assembly Bill 213, submitted by Chris Ferrari, representing the Nevada Dental Association.

Exhibit M is a PowerPoint presentation titled, "Premiums are increasing and benefits are decreasing. A losing formula for Nevada patients and providers. Please Support A.B. 213," presented by Chris Ferrari, representing the Nevada Dental Association.

Exhibit N is written testimony submitted by Richard Dragon, DMD, Vice President, Nevada Dental Association, dated March 1, 2017, regarding Assembly Bill 213.

Exhibit O is a document regarding Assembly Bill 213 outlining ten examples of "insurance companies denying payment on services that are covered in the patient's policy," authored by Brian Reeder, Ferrari Public Affairs, submitted by Chris Ferrari, representing the Nevada Dental Association.

Exhibit P is document titled "Data Trends in Dentistry, Dental Fees, Results from the 2016 Survey of Dental Fees, ADA Center for Professional Success, Health Policy Institute, ADA American Dental Association," copyright 2016, authored by the American Dental Association and submitted by Chris Ferrari, representing the Nevada Dental Association regarding Assembly Bill 213.