

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

**Seventy-Ninth Session
April 14, 2017**

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 12:40 p.m. on Friday, April 14, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28
Assemblywoman Ellen B. Spiegel, Assembly District No. 20
Assemblyman Richard Carrillo, Assembly District No. 18



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Alisa Nave-Worth, representing MultiState Associates, Inc.
Kirsten Coulombe, Deputy Administrator of Administrative Services, Division of
Public and Behavioral Health, Department of Health and Human Services
Lea Tauchen, Senior Director of Government Affairs, Grocery and General
Merchandise, Retail Association of Nevada

Chair Bustamante Adams:

[Roll was called. Committee rules and protocol were explained.] Today, all we have on the agenda is a work session. We are going to take some of the work session items out of order. I want to let the Committee know that we included the language "possible work session on measures previously considered" on the agenda, so we have added three bills. They are in your binders, and we are going to take it slow, so do not worry.

I also want to go through some housekeeping items. We only have a limited amount of time, so unless there is a question about a bill or motion, there will not be any need for commentary or explanation of votes by members. Also, there is no need to reserve your right to change your mind. That right always exists, so if a member who votes a certain way decides to change it on the floor, they just need to inform the sponsor and the Chair in a timely manner that they will vote differently. I just wanted to mention that so that we have a great flow in our work session process.

The first bill we are going to consider is Assembly Bill 161.

**Assembly Bill 161: Requires the notarization of certain rental agreements.
(BDR 10-733)**

Kelly Richard, Committee Policy Analyst:

Assembly Bill 161 requires a written rental agreement for a single-family residence to be notarized ([Exhibit C](#)). There is an amendment attached for the members' review.

The amendment removes the requirement that a written rental agreement for a single-family residence be notarized. Instead, it requires any written rental agreement for a single-family residence to include a disclosure at the top of the first page of the agreement, and in a font size at least two times larger than any other font used in the rest of the agreement, advising the tenant that the lack of notarization creates a rebuttable

presumption that the tenant does not have a lawful right to occupancy of the dwelling unit or premises, and does not render the agreement invalid, and the landlord may enforce the agreement without regard to whether it is notarized.

The amendment also adds in a proposal from the original mock-up on the bill, which you heard in this Committee on March 6, 2017. It adds a provision in *Nevada Revised Statutes* (NRS) 205.0813 and NRS 205.0817, specifying a person is presumed to know entry into a home is without the permission of the owner of the dwelling or the owner's agent, unless the person provides a rental agreement that is notarized and includes the current address and telephone number of the owner or authorized representative.

Chair Bustamante Adams:

Is there any discussion? [There was none.] I will entertain a motion to amend and do pass A.B 161.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 161.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

Assemblyman Kramer:

I actually like this bill—knowing what it is for—but I received some pushback from people who do electronic leases. Would Assemblyman Flores accept an amendment on paragraph 4 where it says ". . . any written rental agreement for a single-family residence must be notarized," to add "notarized either manually or digitally, or be signed by an electronic signature registered with the Secretary of State"?

Assemblyman Edgar Flores, Assembly District No. 28:

We amended that language, so the section you are looking at is actually no longer included in the bill. I amended the notarization requirement. We completely got rid of that, and all we have now is a rebuttable presumption that persons are not in the property with authorization if it is not notarized.

Chair Bustamante Adams:

Is there any further discussion from the members? [There was none.]

THE MOTION PASSED. (ASSEMBLYMAN PAUL ANDERSON WAS
ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Flores. The next bill we are going to consider is Assembly Bill 163.

**Assembly Bill 163: Revises provisions governing certain short-term loans.
(BDR 52-737)**

Kelly Richard, Committee Policy Analyst:

Assembly Bill 163 is sponsored by Assemblyman Flores. It was heard in Committee on March 15, 2017 ([Exhibit D](#)).

The bill requires a deferred deposit, high interest, or title lender to determine whether a person has the ability to repay a loan before the loan is made, and establishes the factors that the lender must use to make that determination. In addition, it prohibits a title lender from making a loan to a person who does not legally own the vehicle being used to secure the loan; and considering the income of anyone who is not the legal owner of the vehicle in determining a customer's ability to repay. The bill also specifies that a customer defaults on a loan whenever he or she fails to make a scheduled payment; clarifies the difference between a grace period and a loan extension; and limits the actions a lender can take with regard to a grace period. Finally, A.B. 163 imposes notice requirements related to collection actions and the filing of complaints.

There is a mock-up amendment attached for your review that was submitted by the sponsor [page 3, [Exhibit D](#)]. The amendment specifies a lender may use a customer's pay stub or certificate of deposit as evidence of current employment status; removes the requirement that a lender consider and verify the customer's monthly income, monthly payments on other obligations owed by the customer, and other current debt obligations owed by the customer, including alimony and child support; adds the consideration of other evidence, including bank statements and written representations to the underwriting factors a lender must consider; and prohibits a lender from considering the ability of any other person besides the customer to repay the loan.

The amendment allows a customer to enter into an extended repayment plan if the customer has not entered into an extended repayment plan for the original loan during the immediately preceding 12 months and requests an extended repayment plan prior to the time the original loan is due. It also imposes certain requirements on such a plan.

The amendment further modifies the definition of "default"; includes a contract for the lease of an animal for a purpose other than a business, commercial, or agricultural purpose in the definition of a "high-interest loan"; prohibits a lender from reinstating an electronic debit transaction that has been returned by a customer's bank except in accordance with the rules prescribed by the National Automated Clearing House Association or its successor; and for title loans, allows a lender to consider a customer's community income and the income of any other customers who consent to the loan and enter into the loan agreement; and clarifies that a lender may not make a loan secured by a vehicle with multiple owners without the consent of each owner.

Chair Bustamante Adams:

I will have the bill sponsor make a statement on the record. This is an opportunity to make sure that we have the bill right and to ask questions before we take the vote. Once we take the vote, we cannot make any further amendments.

Assemblyman Edgar Flores, Assembly District No. 28:

It has been a long, tedious, and painful process getting here, but we are here—and I mean that. I am being serious; it has been very painful, but I am very grateful for everybody sitting at the table with me and for ensuring that we can get both the good actors in this industry and the Legal Aid Center of Southern Nevada to be able to come together and compromise. I also want to let the Committee know that everything included in this mock-up has been agreed upon on both sides of the table, with one exception. In my original presentation of the bill, it was my intent that if a person does not own an asset, he or she cannot get the loan contingent upon someone else's asset. In a hypothetical situation where I am married, my wife's income cannot be taken into account when I am trying to get a loan. That was my intent. There was a question about the language, and this mock-up addresses this in the section about the ability to repay. The industry just has to run that back to their teams to make sure they are 100 percent on board. Absent that, however, we are in agreement on everything else.

If I could have Mr. Sasser or Mr. Horne quickly walk the Committee through the amended language, I would appreciate it. I could do it myself, but I would like them to do it because they worked so hard on it.

Alisa Nave-Worth, representing MultiState Associates, Inc.:

For the Committee's education, MultiState Associates, Inc., represents Moneytree, Check-Into-Cash, Cash City, CQ Financial, and USA Cash, all of which are listed under the banner of MultiState Associates. On behalf of our organization and Mr. Horne, I want to say we are very grateful to Assemblyman Flores. He has been incredibly engaged in this process. He has been very thoughtful and very willing to engage with the industry to have substantive conversations about things that we believe should happen. He has been a true leader, and we really are grateful to him. We are also grateful to the Legal Aid Center of Southern Nevada; we have deep respect for them. Jon Sasser and his team—and Tennille Pereira—have been very wonderful and good to work with, and we look forward to having ongoing conversations with them in the future.

Next, I want to walk the Committee through the changes to the bill. Section 1 addresses the ability to repay in statute and includes mutually agreed-upon language by Legal Aid and the industry. Section 1.3, subsection 2(c) removes from the original draft the monthly residual income of a customer. We also removed section 1.3, subsection 2(f), which addresses any monthly payments, and subsection 2(g), which is other current debt obligations owed by the customer. We removed these sections because they lacked legal precision, and we felt they would create unnecessary liability to industry members. We suggested, on behalf of the industry, to add both "pay stub" and "bank statements" into the ability to repay statute, which are actually tangible products that a lender could evaluate. It is also

a best practice of some of our members in the industry so it should just be an institution of best practices. The closest thing to a tangible profit and loss statement is a person's bank statement—what goes in and what comes out. The other evidence, which is subsection 2(e), has been added as well, and is meant to say a person does not have to have a printed bank statement. In today's modern age, a person can use an iPhone and that is enough. That is the point of that provision.

Chair Bustamante Adams:

I did not see that. Can you tell me where that is?

Alisa Nave-Worth:

It is in section 1.3, subsection 2(e). I am looking at the compromise language. I just received the mock-up.

Chair Bustamante Adams:

Okay, thank you.

Alisa Nave-Worth:

The mock-up does not track exactly from the compromise language, but it has the compromise language in it. We actually recommended that there would be some electronic evidence as well, and it seems that did not make it into the final version, but the purpose of that was so customers could look at it on their phones.

Section 1.3, subsection 3, is the one area that is of some concern, and we have to just check it with our clients. We think that there is a solution that was actually introduced later on, with regard to title associated with community property. I will explain that there, if that is okay.

Section 1.7 is brand new language suggested to Assemblyman Flores on behalf of the entire industry. This is actually one of the national industry's best practices called an extended payment plan. This provision says that someone who takes out a loan has the right to go to the lender and request an extended payment plan once in a 12-month period. That would give them the right to still pay the contracted amount in its entirety, but over an extended period of 60 days. With an extended payment plan, the customer does not owe additional interest. It does not extend the interest, but it says consumers have more time to pay without going into default. Therefore, consumers avoid the consequences of default, and they have more time to pay. Many of the best actors in the industry already do this, so this is instituting a national best practice into Nevada law. We brought that to Assemblyman Flores because we thought it would be a new consumer protection tool that we use nationally and should be codified in Nevada law.

Assemblywoman Carlton:

If I remember correctly, when the consumer goes into default, there are actual conditions that apply to the default. By not allowing consumers to go into default, are they losing anything?

Alisa Nave-Worth:

This does not eliminate any of the protections under default or the options of default. This simply says that a consumer can choose to go into default and go through the process and the mechanisms associated with default—prime plus ten, which is not in any way changed or eliminated. Alternatively, consumers can invoke their right for a new tool, which is the extended payment plan that says, "No, I want to pay the fully contracted value that I took the money for; I just need more time to do it."

Assemblywoman Carlton:

It is good to have that on the record.

Assemblywoman Neal:

I have a question about the statement that was just made. I thought Assemblyman Flores' original intent was to eliminate this constant extension of the loan. Section 3, subsection 2 says the grace period ". . . does not include an extension of a loan." It looks as if, in another part of the bill, you are still trying to keep the customer extending the loan. You say the customer has the option to default, but as a regular person, you would choose to extend the loan. I thought that was what we were trying to avoid with this bill.

Assemblyman Flores:

If I can draw your attention to section 1.7, subsection 3 it states, "An extended payment plan entered pursuant to subsection 1 must not: (a) Increase or decrease the amount owed under the original loan; or (b) Include any interest or fees in addition to those charged under the terms of the original loan." This is actually 100 percent in tune with the original spirit of the bill I presented. We are not going to have more fees; we are not going to increase the amount owed. The reason we have that language in there is because we were trying to avoid a scenario where a customer gets a loan and then takes out a second loan to pay the first loan from the same company. We are also trying to avoid the scenario where we have super-high interest rates that keep pushing over for months after the terms of the original loan have passed.

Even with the compromise and all the stakeholders working together, the compromise is just clarifying language. The original intent of the bill has not been distorted in any way. We are addressing the issue of default. We are addressing the issue of owning the asset before a person can get a loan on it, and we are addressing the issue of ability to repay.

Assemblywoman Neal:

We are assuming that everybody is going to be a good actor, which is great, but what if they extend the loan and there is an increase or decrease, or an increase actually in the amount owed through some kind of fee or charge? What then is the penalty associated with that if they create a fee, and it was not encompassed in this language?

Alisa Nave-Worth:

That would not be legal, and the penalties would be the penalties associated with the other chapter. If someone were to charge a fee under the extended payment plan that would not be allowed by law, the penalties would be similar to any of the other provisions under the statute that are not encompassed within this bill.

Assemblyman Flores:

I would just add to that that it would be void. There are already mechanisms in place. Legal Aid addresses these concerns all the time. They go to court and take care of it.

Chair Bustamante Adams:

Are there any other questions? Thank you for your leadership, Assemblyman Flores. I appreciate the work that you have done with the stakeholders. Therefore, I am going to call for a motion to amend and do pass A.B 163 with the amendments read by Ms. Richard.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 163.

ASSEMBLYMAN ARAUJO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblyman Flores. The next bill we will consider is Assembly Bill 109.

Assembly Bill 109: Revises provisions relating to public utilities. (BDR 58-622)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 109 is sponsored by Assemblyman Ellison and Senator Goicoechea. It was heard in Committee on March 22, 2017 ([Exhibit E](#)).

The bill requires the Public Utilities Commission of Nevada to conduct a general consumer session in Elko County. The bill also requires the Consumer's Advocate of the Bureau of Consumer Protection of the Office of the Attorney General to intervene and represent the public interest in a general rate case filed by a water or sewage disposal service utility with an annual gross operating revenue of \$2 million or more.

The sponsors proposed the attached amendment [page 2, ([Exhibit E](#))] during the hearing on the bill. The amendment requires the Consumer's Advocate to intervene and represent the public interest in a general rate case filed by a water utility which has annual gross operating revenue of \$2 million or more in a county whose population is less than 100,000—currently Elko County only.

Chair Bustamante Adams:

Are there any questions? [There were none.] I will entertain a motion to amend and do pass A.B. 109.

ASSEMBLYMAN PAUL ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 109.

ASSEMBLYMAN KRAMER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblyman Ellison. The next bill for consideration is Assembly Bill 361.

Assembly Bill 361: Revises provisions governing business practices. (BDR 52-320)

I will invite Assemblyman Carrillo to the table as well. Are any of the members having problems with the Nevada Electronic Legislative Information System (NELIS)? Assemblyman Carrillo, because NELIS is not functioning at its best, I will make copies of your amendment. In the meantime, we will move on to Assembly Bill 354.

Assembly Bill 354: Revises provisions relating to employment practices. (BDR 53-275)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 354 was sponsored by Assemblywoman Neal and was heard in Committee on April 3, 2017 ([Exhibit F](#)).

The bill requires the Employment Security Division of the Department of Employment, Training and Rehabilitation (DETR) to gather information related to race, gender, and other demographics from a claimant for unemployment insurance. The bill further requires the administrator of the Division to gather aggregate data from the claims and report it to the Governor's Office of Economic Development and the Director of the Legislative Counsel Bureau, as well as other persons who wish to provide workforce recruitment, assessment and training programs.

There is a mock-up amendment attached for your review that was submitted by the sponsor [page 2, ([Exhibit F](#))]. The amendment deletes sections 1 through 4 of the bill. It amends section 5 to require the Director of DETR to provide the Director of the Legislative Counsel Bureau with a quarterly report containing the unemployment rate of residents of this state by county, and for each county, the unemployment rate disaggregated by demographic factors including age, race, and gender. It also requires the Governor's Workforce Investment Board to coordinate efforts to reduce the unemployment rate of a demographic group if that group's unemployment rate meets certain criteria. The amendment further requires the Office of Workforce Innovation to submit an annual report on the statewide longitudinal data system.

Chair Bustamante Adams:

Are there any questions? [There were none.] I will entertain a motion to amend and do pass A.B. 354 with the amendments read on the record.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 354.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Neal. The next bill up for consideration is Assembly Bill 255.

Assembly Bill 255: Provides that provisions governing certain short-term loans apply only to consumer loans. (BDR 52-921)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 255 was sponsored by Assemblyman Hambrick and was heard in Committee on April 10, 2017 ([Exhibit G](#)).

The bill specifies that the provisions of *Nevada Revised Statutes* (NRS) Chapter 604A apply only to loans made primarily for personal, family, or household services.

During the hearing on the bill, the sponsor presented the attached amendment for the Committee's review [page 2, ([Exhibit G](#))]. It basically substitutes in whole for what the original bill would have contained. It provides an exemption from the provisions of NRS Chapters 604A and 675 for a person who exclusively lends credit for business, commercial, or agricultural purposes outside of this state to persons who are not residents of this state.

Chair Bustamante Adams:

Are there any questions? [There were none.] I will entertain a motion to amend and do pass A.B. 255.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 255.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN NEAL WAS ABSENT
FOR THE VOTE.)

I will assign the floor statement to Assemblyman Hambrick. The next bill up for consideration is Assembly Bill 468.

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

Kelly Richard, Committee Policy Analyst:

Assembly Bill 468 was heard in this Committee on April 12, 2017 ([Exhibit H](#)). The sponsor is Assemblywoman Jauregui. The bill combines the provisions related to the regulation of mortgage brokers and mortgage bankers in the *Nevada Revised Statutes* (NRS) into a single chapter; both professions will now be known as "mortgage loan originators."

Chair Bustamante Adams:

I know with this bill the various stakeholders involved still need a little more time. Therefore, we are going to rerefer it without recommendation. I will entertain a motion from our Chair of the Assembly Committee on Ways and Means.

Assemblywoman Carlton:

With the level and comfort of work that still needs to be done on this bill, I would make the motion to send it out of Committee without recommendation.

ASSEMBLYWOMAN CARLTON MOVED TO REREFER WITHOUT
RECOMMENDATION ASSEMBLY BILL 468.

ASSEMBLYMAN PAUL ANDERSON SECONDED THE MOTION.

Chair Bustamante Adams:

Is there any discussion?

Assemblywoman Carlton:

For the new members of the Committee, this requires no commitment from us. It just allows the work to continue with this legislation, so no matter where you are, it is not an affirmation of the bill. It is affirming that you would like the work to continue; that is what a no recommendation motion is.

Chair Bustamante Adams:

Thank you for that clarification.

Assemblyman Paul Anderson:

I also think with a 96-page bill, we need a larger summary.

Chair Bustamante Adams:

We have heard the motion; I will now call for the vote.

THE MOTION PASSED. (ASSEMBLYWOMAN NEAL WAS ABSENT
FOR THE VOTE.)

Chair Bustamante Adams:

The next bill up for consideration is Assembly Bill 381. I would like to invite our colleague, Assemblywoman Spiegel, to the table. I do not know if you want to bring the other individuals with you or not, but that is your call.

Assembly Bill 381: Revises provisions governing prescription drugs covered by policies of health insurance. (BDR 57-698)

Kelly Richard, Committee Policy Analyst:

Assembly Bill 381 is sponsored by Assemblywoman Spiegel. It was heard in this Committee on April 10, 2017 ([Exhibit I](#)).

The bill prohibits an insurer from moving a prescription drug from a lower-cost tier to a higher-cost tier before the expiration of the policy of health insurance, and expressly authorizes such a move upon renewal.

Assemblywoman Spiegel submitted several amendments to the bill, which are summarized in the attached mock-up [page 2, ([Exhibit I](#))]. The amendment provides that, for individual plans, a drug may be moved from a lower tier to a higher tier on January 1 of a calendar year, and for small employer plans, on January 1 or July 1 of a calendar year, with certain exceptions. It specifies that an insurer can remove a drug from a formulary at any time and revises the effective date so the provisions of the bill only apply to plans issued on or after January 1, 2019.

Chair Bustamante Adams:

Are there any questions? [There were none.] Assemblywoman Spiegel, would you like to add anything to the record?

Assemblywoman Ellen B. Spiegel, Assembly District No. 20:

There may be an issue with the amendment in section 1, subsection 2. We changed it so for small group plans, it could be changed on January 1 and July 1. The amendment says "and" not "or." I just wanted to point that out to the Committee.

Chair Bustamante Adams:

That is on the first bullet point of the work session document. Is that correct?

Assemblywoman Spiegel:

That is correct.

Chair Bustamante Adams:

Thank you for pointing that out. Members, if you note that first bullet point on the work session document, the third line should say, ". . . employer plans, on January 1 'and' July 1 of a calendar year, with certain exceptions." I will entertain a motion to amend and do pass A.B. 381.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 381.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Spiegel. The next bill up for consideration is Assembly Bill 211.

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

Kelly Richard, Committee Policy Analyst:

Assembly Bill 211 is sponsored by Assemblywoman Jauregui and was heard in Committee on February 27, 2017 ([Exhibit J](#)). The bill allows an employee who prevails in any action or proceeding to recover unpaid wages to be awarded treble damages.

Assemblywoman Jauregui proposes to amend the bill by removing its current provisions and inserting new provisions, which would increase the maximum amount of the administrative penalty for wage theft from \$5,000 to \$10,000; require the Labor Commissioner to publish on its website a list of those who have willfully committed wage theft; and allow the Labor Commissioner to award some or all of the administrative penalty to the complainant.

Chair Bustamante Adams:

Are there any questions? Did we get it right, Assemblywoman Jauregui?

Assemblywoman Jauregui:

Yes, Madam Chair. I just want to be clear to all the members on the Committee that we removed the treble damages portion.

Chair Bustamante Adams:

I will entertain a motion to amend and do pass Assembly Bill 211.

ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 211.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

Is there any discussion?

Assemblyman Paul Anderson:

I just want to thank the sponsor. I know this bill has been on the back burner since earlier in the session, and I appreciate her efforts.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND TOLLES
VOTED NO.)

Chair Bustamante Adams:

I will assign the floor statement to Assemblywoman Jauregui. The next bill we will consider is Assembly Bill 149.

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

Kelly Richard, Committee Policy Analyst:

Assembly Bill 149 was heard in this Committee on February 27, 2017, and was sponsored by Assemblyman Carrillo ([Exhibit K](#)).

The bill codifies the standard established by the Nevada Supreme Court to determine whether a noncompetition covenant is reasonable and enforceable. Additionally, A.B. 149 provides that a noncompetition covenant is unenforceable if it prohibits an employee from competing with or becoming employed by a competitor for more than three months.

Staff has received the attached amendment [page 2, ([Exhibit K](#))]. The amendment makes unenforceable a noncompetition covenant that prohibits an employee from pursuing a similar vocation in competition with or becoming employed by a competitor of his or her employer that is proportional to the valuable consideration supporting the noncompetition covenant. The three-month restriction is thereby removed. Additionally, the amendment specifies that an employer who negotiates, executes, or attempts to enforce a noncompetition agreement that is void and unenforceable does not violate the provisions of *Nevada Revised Statutes* (NRS) 613.200.

Chair Bustamante Adams:

Are there any questions from Committee members?

Assemblyman Paul Anderson:

We heard this bill a while back, and I have not really had a chance to digest the amendment. Perhaps this may be a question for legal, but is there anything in the amendment that is different from the Nevada Supreme Court's decision? Are we adding or subtracting from their decision when it comes to the noncompete agreements?

Wil Keane, Committee Counsel:

Section 1, subsection 1(a) through 1(c) of the proposed amendment is an exact codification of the existing Nevada Supreme Court standard. Section 1, subsection 1(d) is new, and it is tied into the new definition of "valuable consideration" at the bottom of the page. However, in my opinion, that does not really seem to change much with regard to what the Court would be doing because they would usually look at these and expect them to be proportional anyway. That is an addition, however, that is not specifically laid out in the court decision.

Section 1, subsection 2, is new and removes the employer from the criminal provisions that currently exist in NRS 613.200. In section 1, subsection 3, the new language will actually reverse the recent Nevada Supreme Court decision in *Golden Road Motor Inn, Inc. D/B/A Atlantis Casino Resort Spa v. Sumona Islam*, 132 Nev., Adv. Op. 49 (2016). In the *Atlantis* case, the court said that it would not blue-line contracts. In other words, if there is an existing noncompetition agreement and the court finds that it is overreaching, then the court would simply make it void, and it would not apply. This language would tell the court that if the court finds an existing noncompetition agreement to have gone too far, then the court would rewrite the agreement to be the most extensive it could be, while still complying with the law. That would be new and that would reverse the current state of the law. I think those are most of the operative provisions. If you have any more questions, I would be happy to answer them.

Chair Bustamante Adams:

Are there any other questions? [There were none.] Just as a reminder, if you vote one way in Committee but you later change your mind, the professional courtesy is that you let the sponsor and the Chair know in a timely manner that you have changed your vote. Sometimes there are some additional questions that you have to ask outside of the Committee and that is okay, but the rule is that you extend the professional courtesy to let the sponsor and Chair know so we do not have any surprises. I will entertain a motion to amend and do pass A.B. 149.

ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 149.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

Is there any discussion?

Assemblyman Paul Anderson:

I appreciate the clarification, Mr. Keane. I would like some time to digest this a little bit more. I am going to vote no in Committee. I actually will likely vote it out on the floor—or reverse that. Either way, I would like to see it out of Committee, but I just want some time to digest it before I commit to the floor vote.

Chair Bustamante Adams:

Assemblyman Marchant, should I mark you in that category as well?

Assemblyman Marchant:

Yes, Madam Chair.

Assemblywoman Carlton:

I am just curious, and I can ask Mr. Keane this question. The changes that are being made here would eliminate the precedent that has been set by the courts. This would be the new ground rules, and if anyone wanted to question it, they would have to go to court again. Is that correct?

Wil Keane:

I want to make sure that I answer your question correctly.

Assemblywoman Carlton:

It is because there is a court opinion that is out there right now and everyone is operating under that opinion? By putting it in statute, but with some changes, we have, in essence, possibly eliminated that precedent because there is now statute speaking on the issue. That means if anyone disagreed with it, they would have to go to court again to get the opinion to discuss what is going on here. Is that correct? I had been told, a long time ago, not to put court opinions in statute, but there is a change in this. I just want to make sure that I correctly understand what the process going forward will be for anyone who would want to question this.

Wil Keane:

I think there are three different answers to that. In the first part, I think you are specifically referring to section 1, subsection 1, paragraphs (a), (b), and (c), which is the existing state of the law, but that state of the law is purely through court decisions. By codifying it, we are putting it in statute so to the extent that it would evolve in court decisions, it will now not evolve in court decisions, unless the court were to somehow find this language to be unconstitutional or something like that. We would be freezing this state of the law in place.

The addition of paragraph (d) is a new rule, but it seems—at least in my reading of the cases—to be in line with what the court was doing anyway, although they have not specifically enunciated that as a rule. As with subsection 1 (a), (b), and (c), it would now be freezing that in place.

The new rule, in section 1, subsection 3, does reverse the court's practice. What the court does now, pursuant to the recent *Atlantis* decision, is to simply say if an agreement reaches too far, then the agreement is void. If it is void, the employee is free to do whatever he wants; the agreement does not apply to the employee anymore. Section 1, subsection 3 would reverse that by statute so in the future, the court applying the statute would take an agreement such as the one in the *Atlantis* case, and instead of simply finding it void, they would reduce the terms either in geographic distance, in the scope of the occupation, the length of time to a point where the court felt it was reasonable, and it would enforce that newly rewritten, reasonable agreement. That is a change in the law.

Assemblywoman Carlton:

I have concerns, but we can move forward.

Assemblyman Hansen:

While I am voting no on the bill, I think it is actually somewhat important. One of the big complaints that I hear is that we get frustrated with the courts legislating from the bench, and that is what I think we are actually trying to solve here. In so many cases, the courts have become legislators instead of interpreting existing statute. I think whenever we can put something in statute rather than leaving it to the arbitrary will of the courts, I think that is better.

Chair Bustamante Adams:

Is there any other discussion? [There was none.] I will call for the vote to amend and do pass A.B. 149.

THE MOTION PASSED. (ASSEMBLYMAN HANSEN VOTED NO.
ASSEMBLYWOMAN NEAL WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Carrillo. The next bill on work session is Assembly Bill 457.

**Assembly Bill 457: Revises provisions relating to certain professional licensing boards.
(BDR 54-410)**

Kelly Richard, Committee Policy Analyst:

Assembly Bill 457 revises provisions related to certain professional licensing boards (Exhibit L). It was heard in Committee on April 12, 2017, and the requestor of the bill was the Legislative Committee on Health Care.

The bill requires the Boards of Psychological Examiners, Examiners for Marriage and Family Therapists and Clinical Professional Counselors, Examiners for Social Workers, and Examiners for Alcohol, Drug and Gambling Counselors to submit certain reports to the Commission on Behavioral Health. The bill requires each new member of the boards to complete an orientation, and requires the boards to establish policies concerning compensation and reviewing the staff. Further, the bill requires the boards to enter into agreements with the Department of Health and Human Services (DHHS) to carry out or improve performance of the boards' duties.

The boards are required to adopt online application forms for the issuance or renewal of a license or certificate, and the bill provides an appeals process for persons aggrieved by a determination of the board in refusing to issue or renew a license or certificate or imposing discipline. Additionally, the bill requires the boards to adopt certain regulations, and further requires the Commission on Behavioral Health to review the regulations before they are submitted to the Legislative Commission for approval.

During the hearing on the bill on April 12, 2017, there were two amendments that were discussed. Assemblyman Oscarson submitted the attached amendment to add a preamble to the bill [page 2, (Exhibit L)].

Additionally, the boards submitted a consensus amendment [page 3, ([Exhibit L](#))], which alters the reporting requirements; makes permissive the provision relating to agreements between the boards and DHHS; modifies provisions related to the appeals process and the adoption of regulations; and changes the composition of the Commission on Behavioral Health and its role in reviewing regulations.

Additionally, it is not in your work session document, but Assemblywoman Jauregui proposed an amendment on the record to require existing members of the boards to also undergo the orientation that will be required of new members. It is the staff's understanding that the sponsor is supportive of that amendment. I believe the Chair also had an amendment that she wanted to propose.

Chair Bustamante Adams:

After some discussion with our Majority Leader, I am going to write a letter to the Sunset Subcommittee of the Legislative Commission and whoever the new chair is, and I will ask them to review these four boards. I do appreciate all who have worked to try to improve them, but there is a long way to go in these four boards and this Commission. I am going to write a letter as the Chair of the Assembly Committee on Commerce and Labor, and that was after a discussion with our Majority Leader as well.

Assemblywoman Carlton:

I received a letter from Ms. Cody Phinney because of one of my concerns. First, my fiscal concern was that state resources were going to be used to support what are supposed to be fee-driven boards, and it basically said they could bill for that. I do not see that letter attached, so I just want to make sure that is on the record and that will actually happen. Right now, it is my understanding that can happen but no one realized they could actually do it. I would like to get on the record that they will charge the fee for time and effort, and whatever resources are used.

Kirsten Coulombe, Deputy Administrator of Administrative Services, Division of Public and Behavioral Health, Department of Health and Human Services:

I am here on behalf of our senior administrator. You are correct, Assemblywoman Carlton. We would make arrangements to recoup any costs that were incurred with the boards. If you have any other questions about the information we provided in the letter, I am happy to provide that information as well.

Assemblywoman Carlton:

The only other question I would have is how often does the Commission meet? The other thing I was concerned about in the bill was regulations that would be developed would end up going to the Commission before they would come to the Legislature. I have a problem with that because it is getting in the way of the legislative body. How often does that Commission meet?

Kirsten Coulombe:

My understanding is they currently meet every three months, but they can always meet more frequently, as needed. They also have subcommittees that can meet. I think there was some discussion among the boards of potentially having a subcommittee dedicated to regulations they could look at and then report back to the full Behavioral Health Commission.

Assemblywoman Carlton:

I would just hate to see us slow down the process rather than expedite the process. I still have concerns about that because when we do these regulations, we are trying to fix the board. We want it to move as quickly as possible. I understand the filtering process and the thought process behind it; I just do not want to see it go the other way. With those answers, I just have one other thing to say. I appreciate all the work Assemblyman Oscarson has done on this bill, and for those new members of the body who have not been around, you have to be very wary of allowing the perfect to be the enemy of the good. This is good, but it is not perfect yet. We still have a ways to go, but Assemblyman Oscarson has given me his commitment that we can keep working on it, so I am happy to do that with him. I would be happy to make the motion to amend and do pass.

Chair Bustamante Adams:

I will entertain a motion to amend and do pass with all the amendments. The letter from Ms. Phinney is also on NELIS ([Exhibit M](#)) and is part of the record. Thank you for making the additional statements on the record as well.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 457.

ASSEMBLYMAN PAUL ANDERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Carlton. The next bill on work session is Assembly Bill 361.

Assembly Bill 361: Revises provisions governing business practices. (BDR 52-320)

Chair Bustamante Adams:

Since the Nevada Electronic Legislative Information System is having some functional problems, we made copies of the mock-up for Assembly Bill 361 ([Exhibit N](#)), which should be in front of you. I do not see Assemblyman Carrillo in the room, so I will ask you, Ms. Tauchen, to come to the table. If you can just be present at the witness table, I would appreciate that.

Kelly Richard, Committee Policy Analyst:

Assembly Bill 361 is sponsored by Assemblyman Carrillo ([Exhibit O](#)). It specifies that a person commits a deceptive trade practice if, in the course of his or her business or occupation, a fee is charged to update or change a person's records, including billing or credit information, or to speak with a person by telephone in lieu of using an automated or computerized telephone system. The bill also changes the font size, style, and location required for expiration dates printed on gift certificates or other materials related to gift certificates.

Assemblyman Carrillo submitted the attached amendment [page 2, ([Exhibit O](#))]. The amendment clarifies that a gift certificate issued as part of a promotion or as an incentive for potential customers must also conform to certain requirements related to expiration dates.

In addition, Assemblyman Carrillo has requested to further amend the bill by adding subsection 13 to section 1 to specify that a person engages in a deceptive trade practice when, in the course of his or her business or occupation, he or she charges a fee to a person to change or update any record that relates to that person, including, without limitation, billing or credit information, without regard to the method the person uses to communicate the change or update, including, without limitation, speaking to a natural person by telephone in lieu of using an automated or computerized telephone system.

There is also an amendment staff received just prior to the hearing ([Exhibit N](#)). I would defer to Ms. Tauchen to explain the amendment.

Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada:

The original bill, as well as our first mock-up, attempted to amend a section of statute that another bill being proposed will delete. Section 1 of proposed amendment 3855 ([Exhibit N](#)) attempts to reconcile this with the result that *Nevada Revised Statutes* (NRS) Chapter 598 will be complete. The intent in section 1 is to clarify the gift card offer provision. Additionally, I would like to point out that it was not our intention to strike section 4. Our intention was not to strike NRS 598.0921 in its entirety. I believe we would like to unstrike the language in section 4 of the amendment ([Exhibit N](#)) beginning on page 4, lines 10 through 45.

Assemblywoman Carlton:

I want to make sure we are all on the same page. We are talking about section 4, which applies to NRS 598.0921. You wanted to get rid of the new language that starts on page 3, line 43 that states, ". . . and on any brochure, leaflet, pamphlet . . ." but you wanted to leave what was in front of that. Am I correct?

Lea Tauchen:

Looking at section 4, our intention was not to strike the language beginning on line 10 of page 4 and then moving down.

Assemblywoman Carlton:

That would be section 4, subsection 1(b). Is that correct?

Lea Tauchen:

Yes. That would remain in statute, as it is currently.

Assemblywoman Carlton:

Is the new language that was proposed in the original bill in section 4, subsection 1(a) stating, ". . . any brochure, leaflet, pamphlet . . ." staying in? It looks like that language is double-struck.

Lea Tauchen:

Correct. That language would remain stricken because it is being replaced within the green language in section 1, on page 1.

Assemblywoman Carlton:

As long as our legal counsel understands, then it is okay. He is shaking his head no, that this is not working. We need a moment, please.

Chair Bustamante Adams:

Assemblyman Carrillo, can I ask you to come to the table? I want to make sure we get this right. I know you had been in some discussions with Mr. Keane as well. I just want to make sure the language you want in the bill is in the bill. Mr. Keane, which parts of this were we not sure of?

Wil Keane, Committee Counsel:

I thought we were going to add the new language from the mock-up, as it appears in the mock-up in section 1. I did not know this before, but what I am gathering from what was just said is you want to delete what was originally section 2 of the bill, amending NRS 598.0921. You want to get rid of all the changes that the bill made and then delete the existing language in subsection 1(a). Do I understand that correctly?

Assemblyman Richard Carrillo, Assembly District No. 18:

What we were looking at is, of course, the struck-out language; that is put back in. We are then going to add back all the language in section 1 of amendment 3855 ([Exhibit N](#)).

Wil Keane:

This is what I think is supposed to happen. I want to clarify it to make sure we get the language correct in the final amendment. We are adding the new section 1 from mock-up 3855 ([Exhibit N](#)), and later there will be many conforming changes that will add section 1 as an internal reference later on in the document. Were you still intending to make changes to what now appears as section 3, subsection 13 of the bill concerning NRS 598.092, or were you meaning to leave subsection 13 as it appears in the bill?

Assemblyman Carrillo:

That only applies if you have to modify any credit information or billing information. That would be where consumers would not be subjected to fees or charges if they talk to a natural person and not an automated system.

Wil Keane:

As I understand it then, you want to keep subsection 13 as it was originally drafted.

Assemblyman Carrillo:

Yes.

Wil Keane:

The last change I want to confirm is what is now in the mock-up ([Exhibit N](#)) as section 4; instead of striking that whole section, all we would be doing is eliminating any changes to NRS 598.0921 and just deleting the existing language in subsection 1(a).

Assemblyman Carrillo:

Yes, that is correct.

Wil Keane:

Thank you, Madam Chair; I have everything I need.

Chair Bustamante Adams:

I am not very clear on this. Mr. Keane, can you help us to understand what we are talking about? Can you start from the top? That would give me some comfort.

Wil Keane:

I believe I can explain everything from the mock-up proposed amendment 3855 ([Exhibit N](#)). Most of what we see in this mock-up is going to be the final amendment. Section 1, as it appears in this mock-up, will be part of the final amendment.

Chair Bustamante Adams:

Tell the Committee what section 1 does.

Wil Keane:

Section 1 is a new section having to do with gift certificates and gift cards that are received as part of a promotion, preventing them from expiring less than 90 days after the date on which the offer is made. To be exact, this section will be added in among the definitions of deceptive trade practice, so it will be considered a deceptive trade practice for businesses to engage in this action. Subsection 2 of section 1 puts forth some more limitations on those gift certificates, such as the size of the font and the information that must be contained in it. In essence, if a business is going to offer a gift certificate or a promotional offer, it needs to comply with these detailed requirements to avoid committing a deceptive trade practice. It is my understanding, as we will get to later, this bill is replacing some existing statutory language, which had more limited restrictions on gift cards.

Section 2 contains some of the internal references that I had mentioned. It is a long section, but if you scroll down to subsection 13, I clarified that we are keeping that language, as-is, from the original draft.

Moving on to the next section, I think this is where some of the confusion came up. It is identified as section 4 in the mock-up ([Exhibit N](#)), and it amends NRS 598.0921. As I understand it, the intent is to not make any of the changes that were originally made to that section. Instead, we are simply deleting subsection 1(a), which contained the more limited rules regarding gift certificates that are in existing statute. The new section 1 will replace this with more detailed requirements.

Chair Bustamante Adams:

I think that is it, correct?

Wil Keane:

Yes. I believe the rest of the bill is simply adding internal references.

Chair Bustamante Adams:

Are there any questions for the bill sponsor or Mr. Keane?

Assemblywoman Neal:

I am leery about asking this question. It is about section 3, subsection 13—the section you added back in—and the language about the service fee that will be imposed. I am not clear about why the fee is being imposed and on whom. Is this being imposed on the actual issuer of the gift certificate?

Lea Tauchen:

The service fee exists in current language. This provision directs a business that sells a gift card to inform the consumer that they will impose a service fee when the gift card is issued—should that business use that as their practice. I want to add that not all businesses charge service fees when they issue gift certificates or gift cards.

Chair Bustamante Adams:

Are there any other questions? [There were none.] I will entertain a motion to amend and do pass A.B. 361, but with the amendment as stated in the mock-up 3855 ([Exhibit N](#)), and the confirmations that the bill sponsor made on the record.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 361.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I think we are going to need a diagram to explain this bill. I will assign the floor statement to Assemblyman Carrillo.

With that, I want to inform the Committee that we will remove Assembly Bill 158 and Assembly Bill 222 from the agenda.

Assembly Bill 158: Requires the State Board of Cosmetology to allow the use of fish for pedicures. (BDR 54-812)

Assembly Bill 222: Revises provisions governing payday loans, title loans and installment loans. (BDR 52-574)

That will conclude our work session. We are going to go into recess until the call of the Chair [at 2:06 p.m.].

[The meeting was reconvened at 5:34 p.m.]

Chair Bustamante Adams:

This meeting is adjourned [at 5:35 p.m.].

RESPECTFULLY SUBMITTED:

Pamela Carter
Recording Secretary

Devon Isbell
Transcribing Secretary

APPROVED BY:

Assemblywoman Irene Bustamante Adams, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is the Work Session Document for [Assembly Bill 161](#), dated April 14, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is the Work Session Document for [Assembly Bill 163](#), dated April 13, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is the Work Session Document for [Assembly Bill 109](#), dated April 11, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit F](#) is the Work Session Document for [Assembly Bill 354](#), dated April 11, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit G](#) is the Work Session Document for [Assembly Bill 255](#), dated April 14, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit H](#) is the Work Session Document for [Assembly Bill 468](#), dated April 13, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit I](#) is the Work Session Document for [Assembly Bill 381](#), dated April 13, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit J](#) is the Work Session Document for [Assembly Bill 211](#), dated April 14, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit K](#) is the Work Session Document for [Assembly Bill 149](#), dated April 17, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit L](#) is the Work Session Document for [Assembly Bill 457](#), dated April 13, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit M](#) is a letter, dated April 13, 2017, clarifying provisions in [Assembly Bill 457](#), to Chair Bustamante Adams and members of the Assembly Committee on Commerce and Labor, authored by Cody Phinney, Administrator, Division of Public and Behavioral Health, Department of Health and Human Services.

[Exhibit N](#) is a proposed amendment to [Assembly Bill 361](#), presented by Assemblyman Richard Carrillo, Assembly District No. 18.

[Exhibit O](#) is the Work Session Document for [Assembly Bill 361](#), dated April 13, 2017, presented by Kelly Richard, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.