

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

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

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 9:10 a.m. on Wednesday, May 31, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Pat Spearman, Vice Chair
Senator Nicole J. Cannizzaro
Senator Yvanna D. Cancela
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi S. Gansert

GUEST LEGISLATORS PRESENT:

Assemblywoman Sandra Jauregui, Assembly District No. 41
Assemblyman William McCurdy II, Assembly District No. 6
Assemblywoman Dina Neal, Assembly District No. 7
Assemblyman Keith Pickard, Assembly District No. 22

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Bryan Fernley, Counsel
Christine Miner, Committee Secretary

OTHERS PRESENT:

Marcus Conklin, Nevada Mortgage Lenders Association
Carlos Hernandez

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Stacey Shinn, Progressive Leadership Alliance of Nevada
Erika Washington, State Director, Make It Work Campaign; Make It Work Action
Elisa Cafferata, Nevada Advocates for Planned Parenthood Affiliates, Inc.
Marlene Lockard, Service Employees International Union Local 1107; Las Vegas
Police Protective Association Civilian Employees; Nevada Women's Lobby
Jared Busker, Children's Advocacy Alliance
Jim Sullivan, Culinary Workers Union Local 226
Ruben Murillo, President, Nevada State Education Association
Annette Magnus, Battle Born Progress
Paul Moradkhan, Las Vegas Metro Chamber of Commerce
Tray Abney, The Chamber
Bob Ostrovsky, Nevada Resort Association
Peter Guzman, Latin Chamber of Commerce Nevada
Lea Tauchen, Retail Association of Nevada
Randi Thompson, Nevada State Director, National Federation of Independent
Business
Irma Fernandez
Misty Grimmer, State Contractors' Board
Edith Duarte, Board of Dental Examiners of Nevada
Keith Lee, Board of Medical Examiners
Michael Hillerby, Nevada State Board of Accountancy; State Board of Nursing;
State Board of Pharmacy
Susan Fisher, State Board of Osteopathic Medicine; State Board of Professional
Engineers and Land Surveyors
Mendy Elliott, Chiropractic Physicians' Board of Nevada; Board of Homeopathic
Medical Examiners
Liz MacMenamin, Retail Association of Nevada
Christopher Sewell, Assistant to the Director, Administration Division,
Department of Employment, Training and Rehabilitation

CHAIR ATKINSON:

We will open the hearing on Assembly Bill (A.B.) 468.

ASSEMBLY BILL 468 (1st Reprint): Revises provisions relating to mortgage
brokers, mortgage agents and mortgage bankers. (BDR 54-1028)

ASSEMBLYWOMAN SANDRA JAUREGUI (Assembly District No. 41):

I am a conduit for A.B. 468 and am happy to support it for the mortgage
lending industry.

MARCUS CONKLIN (Nevada Mortgage Lenders Association):

I will present A.B. 468. If the Committee recalls, Senate Bill (S.B.) 498 which passed out of this Committee earlier this Session, contained a large portion of what was in A.B. 468 in its original form. It was not by design, so S.B. 498 was amended to present a clean Senate bill.

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

The sole purpose of A.B. 468 is to eliminate chapter 645E of the *Nevada Revised Statutes* (NRS), the mortgage bankers' license, and combine it into chapter 645B of NRS, the mortgage brokers' license. There are 4,000 licensees, of which 60 to 80 are licensed under chapter 645E of NRS. A number of those licensees have licenses under both statutes. The bill modernizes the statute, combining chapters 645B and 645E of NRS to create one licensing statute. The licenses will be a mortgage company license for a company entity and a mortgage loan originator license for an individual entity. The bill creates clarity and one set of mortgage lending rules instead of two.

There is one policy consideration beyond combining the licensures in the bill. Section 88.5, subsection 3 was amended in the Assembly to add paragraphs (c) and (d). In 2007, this language was left out of the foreign LLC statute. This added language requires a foreign LLC to abide by Nevada statutes if conducting mortgage loans in our State. This provision closes a loophole. If an LLC from another state does business in Nevada, it clarifies the requirement to abide by Nevada mortgage lending laws.

There is an amendment submitted by Nevada Mortgage Lenders Association ([Exhibit C](#)) to add language to section 2.3. In S.B. 498, section 5, language was added to NRS 645E.030 to true up the commercial loan language to comply with federal regulations. The definition in A.B. 468 has the old chapter 645E of NRS definition. To avoid creating a conflict, the amendment, [Exhibit C](#), requests the definition passed in S.B. 498 be put in A.B. 468. It adds to the definition of commercial mortgage loan the words "primarily for a business, commercial or agricultural purpose" after the words "means a loan" and before the word "that." This is an attempt to true up these two bills to avoid a trailer bill should both bills pass.

Section 113 identifies two effective dates. The foreign LLC component goes into effect October 1. The remainder of the provisions in the bill go into effect January 1, 2020. This allows the Division of Mortgage Lending the time to review all of its regulations and put together everything necessary for a smooth transition to a single licensure. It also allows opportunity for identifying any problems before the next Legislative Session.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 468 WITH THE NEVADA MORTGAGE LENDERS ASSOCIATION AMENDMENT.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR ATKINSON:

We will open the hearing on A.B. 175.

ASSEMBLY BILL 175 (2nd Reprint): Prescribes certain requirements for health benefits for the purpose of determining the minimum wage paid to employees in private employment in this State. (BDR 53-866)

ASSEMBLYMAN WILLIAM MCCURDY II (Assembly District No. 6):

I will present A.B. 175. Under the Nevada Constitution, each employer in our State is required to pay a minimum wage of \$8.25 per hour unless the employer offers health insurance to the employee at which point the minimum wage is lowered to \$7.25 per hour.

Assembly Bill 175, as amended, sets out to establish what the level of health insurance would look like in order for an employer to be authorized to offer the lower hourly minimum wage.

The health insurance plan must provide coverage for services in the following categories and the items and services covered within these categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative

services and devices; laboratory services; preventive and wellness services and chronic disease management; pediatric services, including oral and vision care; and any other health care service or coverage level required to be included in an individual or group health insurance plan, pursuant to any applicable provision of NRS 689A or NRS 689B.

Assembly Bill 175 was originally intended to incrementally raise Nevada's minimum wage as an important step toward bridging the widening gap between income and opportunity inequality. However, there are a number of ways to bridge that income and opportunity gap. Establishing a set of guidelines for health care being offered to minimum wage employees is a great step forward.

SENATOR GANSERT:

Please explain what it means in section 1, subsection 1, paragraph (a), subparagraph (2) stating, "Provides a level of coverage that is designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan ..."

ASSEMBLYMAN MCCURDY:

It refers to the type of services the plan is required to offer. Section 1, subsection 1, paragraph (b), subparagraphs (1) and (2), and subsection 2 state:

Health benefits pursuant to a Taft-Harley trust which is formed pursuant to 29 U.S.C. § 186(c)(5) and qualifies as an employee welfare benefits plan pursuant to: (1) The Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.; or (2) The provisions of the Internal Revenue Code; and 2. Does not provide health benefits as described in Section 16 of Article 15 of the Nevada Constitution if the employer makes available to the employee and the employee's dependents a hospital-indemnity insurance plan or fixed-indemnity insurance plan unless the employer separately makes available to the employee and the employee's dependents at least one health insurance plan that complies with the requirements of subsection 1.

I am not an expert on this matter, I will defer to legal counsel for an explanation.

BRYAN FERNLEY (Counsel):

I am not sure how the actuarial value is calculated and what that means for benefits. I will look into it and provide the information to the Committee.

SENATOR HARDY:

I am interested in the formularies of what is covered and what is not. What are the parameters when it refers to "other health care service or coverage"? It is rather a broad list for health care coverage and seems all encompassing. Is there a comprehensive list on what prescription drugs are covered?

ASSEMBLYMAN MCCURDY:

There is not a list of covered prescription drugs. It would be dependent upon the type of plan a person enrolls in. The various insurance companies could identify what drugs they cover. The services listed is how the bill was drafted.

CHAIR ATKINSON:

In section 1, subsection 1, paragraph (a), subparagraph (2) states "Provides a level of coverage that is designed to provide benefits that are actuarially equivalent to" I suggest the words "at least" be added after "equivalent to."

ASSEMBLYMAN MCCURDY:

I will consider this.

MR. FERNLEY:

Adding the phrase "at least" would mean to qualify to pay at the lower minimum wage, the employer could provide the 60 percent level or a greater level. It would have to be at least 60 percent.

ASSEMBLYMAN MCCURDY:

We are looking to set the ground level for what needs to be provided in order for an employer to offer the lower \$7.25 per hour minimum wage. I am okay with adding "at least" as you suggest.

MR. FERNLEY:

I just looked up what it would mean. The 60 percent language would mean for a standard population, the plan pays 60 percent of the health care expenses of the covered employee, and the covered employee pays 40 percent through some combination of deductibles, copays and coinsurance.

SENATOR GANSERT:

Section 1, subsection 1 reads "... if the employer makes available to the employee" If the employer makes health care available and offers to pay 60 percent of the benefit, would the employer qualify for the lower minimum wage even if the employee did not take advantage of the health care offer?

MR. FERNLEY:

Yes, that is accurate. The employer has to make the plan available to the employees. If an employee chooses not to sign up under the plan, the employer still qualifies to pay the lower minimum wage to that employee.

SENATOR SETTELMAYER:

When this was on the ballot, the idea was to encourage employers to provide health insurance. I understand the bare-bones plans being offered now are not substantial for the needs of today's society. Do you know how many people being paid an hourly wage are offered health care plans?

ASSEMBLYMAN MCCURDY:

No, I will get that information for you. The idea and the thought process behind this bill is for employees to be offered better health insurance plans or get an increase in wages. It may be much cheaper for an employer to pay the higher minimum wage than to offer health insurance.

SENATOR SETTELMAYER:

I think that is the problem. The differential of \$1 per hour wage does not cover the cost of health care plans. I wonder how many people actually ever get offered a bare-bones plan and then weigh in what the difference in cost is between what the bill is seeking and what a bare-bones plan is. The bill proposes the employer pick up the costs of at least 60 percent of the plan.

SENATOR SPEARMAN:

In 2015 during the State of the State Address, Governor Brian Sandoval said he anticipated there would be more Nevadans signing up for social services. During a discussion in the Senate Committee on Revenue and Economic Development last Session, an analysis was done by a research company indicating whenever employers do not pay employees a living wage, costs shift to the rest of the taxpayers. The employees who do not make a living wage qualify for social services. By default, when an employer does not pay health care or does not offer the right kind of health care plan, more government funds are used. This

was one of the biggest issues from last Session in discussions about creating different revenue structures.

CARLOS HERNANDEZ:

I support A.B. 175. It seeks to raise employer-provided health insurance standards to ensure employees are provided basic and essential health care benefits by employers if they are paid below the State minimum wage. Some of these benefits include maternity and newborn care services, mental health and emergency services. These services are not only beneficial to the employee, but are balanced solutions toward giving employers a choice. An employer can choose to either provide minimum health care benefits to their employees who make less than the State minimum wage or simply pay their employees according to the State minimum wage law. This bill will help workers and families who may be working below the State minimum wage receive health care benefits. I urge the Committee support to A.B. 175.

STACEY SHINN (Progressive Leadership Alliance of Nevada):
Progressive Leadership Alliance of Nevada supports A.B. 175.

ERIKA WASHINGTON (State Director, Make It Work Campaign; Make It Work Action):
Make It Work Campaign and Make It Work Action support A.B. 175.

ELISA CAFFERATA (Nevada Advocates for Planned Parenthood Affiliates, Inc.):
Assembly Bill 175 provides for an employer to offer at least a bronze level plan as provided by the Affordable Care Act (ACA). The 60 percent actuarial value refers to a bronze level plan. It is a way cost-sharing happens between the insurance premium and what the insured person pays. It cannot be a catastrophic or an extreme bare-bones insurance plan to qualify for the lower minimum wage payment. The plan needs to be at least a bronze level plan to provide some robust coverage for those who choose to receive it. The list of benefits covered in the bill are the essential health benefits required to be a qualified health plan in Nevada.

MARLENE LOCKARD (Service Employees International Union Local 1107; Las Vegas Police Protective Association Civilian Employees; Nevada Women's Lobby):

The Service Employees International Union Local 1107, the Las Vegas Police Protective Association Civilian Employees and the Nevada Women's Lobby support A.B. 175.

JARED BUSKER (Children's Advocacy Alliance):

The Children's Advocacy Alliance supports A.B. 175.

JIM SULLIVAN (Culinary Workers Union Local 226):

The Culinary Workers Union Local 226 supports A.B. 175.

RUBEN MURILLO (President, Nevada State Education Association):

The Nevada State Education Association supports A.B. 175.

ANNETTE MAGNUS (Battle Born Progress):

Battle Born Progress represents over 15,000 people in Nevada and supports raising the minimum wage and A.B. 175.

PAUL MORADKHAN (Las Vegas Metro Chamber of Commerce):

The Las Vegas Metro Chamber of Commerce opposes A.B. 175. Its concerns are the potential impact the bill may have on its employers and employees. In section 1, subsection 1, paragraph (a), the Chamber is concerned with the list of requirements for health insurance plans and how this compares to the health plans currently available to employers and employees because of the flux we are seeing at the federal level and what health care networks may be available and what services they include. The ability to justify the costs are also concerning because of the uncertainty of health care plans at the federal level. The Chamber is also concerned with the effective date of the bill, which is upon passage and approval. Any changes for employer requirements should provide time for employers to meet the requirements.

TRAY ABNEY (The Chamber):

The Chamber opposes A.B. 175. Its concerns mirror the comments of the Las Vegas Metro Chamber of Commerce. The Chamber is concerned this bill will make insurance coverage unaffordable or unavailable for the employees it is trying to help. The provisions in the bill force employers to pay the higher wage and make it more expensive to hire the employees the bill is concerned about.

This will not provide insurance coverage for any more employees and will not allow for more jobs to be created.

CHAIR ATKINSON:

Are you suggesting because employers are required to pay more for a healthy workforce, they are not going to be able to hire more employees?

MR. ABNEY:

The coverage outlined in the bill is unaffordable and even unavailable. Which means the employer will just pay the higher wage. The employer will not provide the insurance coverage to pay the lower wage. Paying a higher wage makes it more expensive to hire employees.

BOB OSTROVSKY (Nevada Resort Association):

The Nevada Resort Association worked with leadership in the Assembly and offered amendments which were rejected. The Nevada Resort Association opposes A.B. 175. The Association is committed to working with the sponsor and those who have an interest in the bill. Minimum standards of insurance by law must be met. There are 51 insurance mandates in Nevada. The insurance requirements in this bill are similar to what the ACA requires under the employer mandates which never came into effect. The effective date for employer mandates continues to be postponed. It appears the mandates may never come into effect as originally proposed. The language for insurance requirements in the bill goes beyond what is mandated. Dental and vision care, without limitation, is included in the bill. I am unaware of any dental or vision plan in Nevada that does not have limits. There is no product available that would meet the requirements of the bill. The bill does not allow an employer to offer an HMO plan. I have offered amendments to include HMO plans, which have been rejected by the Assembly.

The final section of the bill which is written in the negative language "does not provide health benefits" is confusing, and I do not know what the intent is. It is unusual to find negative language in statute. Lastly, the 60 percent actuarial equivalent has nothing to do with what the employee pays. It is the actuarial value of what the insurance company pays out in benefits. They develop risk corridors under the ACA that require insurance companies to spend a certain amount of the premium on benefits. That is what this is referring to, not the amount the employee will be charged. Our Constitution already limits how much an employee can be charged for insurance based on his or her household

income. It says the total cost for premiums cannot be more than 10 percent of the employee's gross taxable income.

The Association does not oppose defining in the law what an adequate plan is; the bill does not get there yet. I will continue to offer language to try to find better definitions. There has to be a reasonable line or employers will never buy insurance. They will pay the higher minimum wage and then there will be more uninsured people at the minimum wage level who end up on the rolls of Medicaid. I do not think that is the intent.

CHAIR ATKINSON:

What will get you to an agreement on the bill?

PETER GUZMAN (Latin Chamber of Commerce Nevada):

The Latin Chamber of Commerce Nevada opposes A.B. 175. I echo the comments of my colleagues. The bill has the opposite effect of its good intentions. I would encourage more conversations with entrepreneurs and business owners. Together, we could come up with answers producing a positive effect. We must keep the entrepreneurs at the table. They are in the trenches every day and know what it takes to run businesses. There is nothing simple about making payroll. Entrepreneurs and business owners want to hire more people and offer insurance. It is important these people be part of the dialogue on this issue.

MR. OSTROVSKY:

The two sentences the Nevada Resort Association offered to the Assembly are:

The Labor Commissioner shall adopt regulations that define the minimum health benefits necessary to conform to the requirements of section 16 of the Nevada Constitution. The Labor Commissioner shall consider the requirements of NRS 689B, NRS 689C and NRS 695C when establishing new regulations.

These are referencing small group plans, group plans and HMOs. It is so complicated that a public hearing on regulatory requirements is appropriate to determine what should be included in the plan.

MR. MORADKHAN:

The Las Vegas Metro Chamber is open to having further discussions to move our position.

SENATOR SPEARMAN:

We cannot determine what the health plan should look like without including the Department of Health and Human Services (DHHS) because the Medicaid rolls should be taken into consideration. Unless we can incorporate that information in the total process, we end up looking at it through a one-dimensional lens as opposed to a three-dimensional lens. It is one thing to define what the minimum health care coverage offer should be and what the costs are. If we do not address the cost-shifting by default, everyone else is picking up the tab. The employer is either paying on the front end or all of us are paying on the back end. If we include the Labor Commissioner, then we must include DHHS and some of the nonprofit organizations that pick up the slack for what we cannot do in addressing some of our social concerns.

MR. OSTROVSKY:

I agree. I offered amendments to the Speaker of the House of the Assembly, so Assemblyman McCurdy may not be able to comment. That is who I was instructed to work with in the Assembly.

SENATOR CANCELA:

I am interested in what the average health plans look like that your members offer. Could you provide the data? What percentage of employees who would benefit from this bill have taken advantage of the health care options?

MR. OSTROVSKY:

I will ask the members of the Association. The options for low-wage workers are frequently HMO plans because these plans are in the marketplace and are the least expensive option for the employer. I do not have the numbers but will inquire and get them to you.

SENATOR HARDY:

As I passed through In-N-Out Burger, I noticed a sign asking if I wanted to work for \$11 per hour. It offered flexible time and opportunities for advancement. How many of the \$7.25 per hour employees are taking advantage of the insurance offers? How many people are at the \$7.25 per hour level in Nevada?

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MR. MORADKHAN:

According to the Department of Employment, Training and Rehabilitation (DETR), there are approximately 22,000 Nevadans at the \$7.25 per hour wage on employee payrolls. I will need to confirm that number. There is a spreadsheet from DETR I can provide.

SENATOR HARDY:

Can you explain about the spreadsheet?

MR. MORADKHAN:

There are median and mode salaries in the State. Those numbers are tracked by DETR. The mode is approximately \$16 per hour and the median is approximately \$20 per hour.

SENATOR HARDY:

Does DETR look at the entry level jobs paying under \$17 or \$18 per hour as the percentage of the 22,000 Nevadans?

MR. MORADKHAN:

I will need to check for that information. The information is broken down by industries and it is compared to the U.S. Bureau of Labor Statistics. There are variances within industries, and DETR provides an overall snapshot of each industry.

MR. ABNEY:

According to the restaurant owners I have contacted, the only employees in that industry making minimum wage are the tipped employees. These employees make \$25 to \$30 per hour with tips. The back-of-the-house employees are making approximately \$13 to \$14 per hour. The statistics do not recognize this issue.

SENATOR SPEARMAN:

I will quote from the 2015 State of the State Address by Governor Brian Sandoval:

For the coming budget cycle, the Forum projects General Fund revenues will only be slightly more than the 2005-2007 budget - ten years ago!

By contrast, in the same decade, Nevada's population increased by SOME 335,000 people, K-12 enrollment increased by OVER 55,000 students, and the number of Nevadans in many social service programs more than doubled.

That is a reality for Nevada and I do not see the concerns of employers, chambers of commerce and others as mutually exclusive from this. I propose to get more people involved in the conversation because we are going to pay one way or another.

LEA TAUCHEN (Retail Association of Nevada):

The Retail Association of Nevada opposes A.B. 175 for the reasons that have been previously testified by those in opposition.

RANDI THOMPSON (Nevada State Director, National Federation of Independent Business):

The National Federation of Independent Business opposes A.B. 175. For 30 years, the Federation has been polling its members. For 30 years, the primary issue for employers is the cost of health care. It is not an issue that is taken lightly. The Federation would like to find a solution and be at the table when discussions ensue. What is happening in Washington, D.C., is wreaking havoc on the health care system for employers, legislators and employees. How the ACA is changed will influence the situation.

ASSEMBLYMAN MCCURDY:

I am thankful for the opportunity to try to advance the lives of those who are struggling to make ends meet; struggling to get adequate health care for their families. I am having issues with those who are opposing the bill. Not one of them has approached me with a solution. Mr. Ostrovsky was the only one who approached with an offer. The opposition claims I do not understand business and that the bill is a bad one. If it is important enough to testify on this bill and is on their radar, then it should be important enough to reach out to me to offer collaboration in making it a better piece of legislation. I want to solve problems. I am open and welcome the conversations to identify solutions and advance the lives of hard-working folks. It is not fair to testify in opposition and not reach out to me in Room 4112. I spoke to only one chamber, the Las Vegas Metro Chamber of Commerce, this morning. This language has been out for some time, and I expect outreach. How am I supposed to know how this bill will affect the organizations these people represent? I will continue with my open

door policy and look forward to meeting with those in opposition to find solutions for working families.

CHAIR ATKINSON:

Mr. Ostrovsky spoke with the speaker but not you about the bill?

ASSEMBLYMAN MCCURDY:

Yes, that is fine.

CHAIR ATKINSON:

No, that is not fine. No one should operate that way. I want to clarify if he spoke to you. Is this true, you did not speak to Assemblyman McCurdy but only to the Speaker of the Assembly?

MR. OSTROVSKY:

Yes, just to the Speaker of the Assembly.

CHAIR ATKINSON:

Everyone knows how I operate and have operated for some time. The sponsor of the bill should always be contacted. People should be speaking to you, Assemblyman McCurdy, about your bill regardless of what the person's position is on the bill. I appreciate your passion for the people you serve.

I have a letter in opposition to A.B. 175 from Aviva Gordon of the Henderson Chamber of Commerce ([Exhibit D](#)). We will close the hearing on A.B. 175 and open the hearing on A.B. 328.

ASSEMBLY BILL 328 (2nd Reprint): Revises provisions relating to professional licensing boards. (BDR 54-157)

ASSEMBLYMAN KEITH PICKARD (Assembly District No. 22):

I am here to present A.B. 328 which is also sponsored by Assemblywoman Irene Bustamante Adams, Assembly District No. 42. The bill came as a result of problems experienced over the last biennium with one of our Title 54 of NRS boards. The bill does not seek to punish that board or any other. The experience of the 2016 Sunset Subcommittee of the Legislative Commission's review of the problem exposed some of the significant systemic problems that are potential issues throughout the regulatory boards. This bill seeks to address both the real and some of the optical problems that the Sunset Subcommittee

discovered. The bill also seeks to make structural adjustments to boards in order to ensure we are compliant with the U.S. Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. (2015). It requires states to adequately oversee their regulatory boards.

Title 54 of NRS houses most of our regulatory boards for professions, occupations and businesses. It houses the practice acts in NRS 622A, a set of minimum standards that all boards are expected to adhere to. All boards and agencies are required to similarly comply with NRS 233B which is the Nevada Administrative Procedure Act. *Nevada Revised Statutes* 233B and NRS 622A act to protect both the public and the practitioners in the practice of their professions. Several Sessions ago, the Legislature exempted a number of boards from the application of NRS 622A. It was understood these boards were sophisticated enough in their professions and practice acts to not need to adhere to NRS 622A. The Sunset Subcommittee discovered that some of the regulatory agencies did not interpret their practice acts in a way that appeared to meet the minimum standards under NRS 233B and NRS 622A.

Governor Sandoval, as Chairman of the State Board of Examiners, was also involved in reviewing the actions of some of the boards, leading him to propose related legislation which is currently being heard in the Assembly. He worked closely with Assemblywoman Bustamante Adams and me on this bill. The goal is ultimately to provide boards with a minimum set of standards in NRS 622A. Anytime a regulatory agency wants to make rules and regulations that are more protective of the public and the practitioners, it is welcome to do so. There is a conceptual amendment proposed by Assemblywoman Bustamante Adams ([Exhibit E](#)) which simply corrects a drafting error regarding attorney malpractice insurance. The State Contractors' Board has submitted an amendment which we have not accepted because the first portion is resolved in our conceptual amendment and the second portion is a response to resist change.

This effort began six months before the beginning of this Legislative Session. My predecessor Lynn D. Stewart and Assemblywoman Bustamante Adams began to address these issues and started the foundation of this legislation. I took over from Mr. Stewart and we met several times with all of the stakeholders, including several post-hearing meetings with the various boards and their representatives in an effort to align all concerned. The State Contractors' Board is the only board not comfortable with the bill.

The State Contractors' Board declared irreconcilable differences between its practice acts and NRS 622A. We pointed out that its acts are actually more protective to the practitioners and the public, and under the terms of this legislation, those will remain intact. There is no conflict. We are asking all boards to cooperate with the Department of Administration in adopting regulations that will standardize reporting requirements. These requirements will all be subject to the generally accepted accounting principles and additional information is not required. The goal is to standardize reporting so the Legislative Commission, the Sunset Subcommittee and the Governor's Office will get standardized information to make requisite comparisons.

IRMA FERNANDEZ:

I am here to testify on behalf of Assemblywoman Irene Bustamante Adams, Assembly District No. 42. I will highlight the primary provisions of the bill. Section 2 requires each regulatory body to contribute to the Fund for Insurance Premiums. Section 3 states that regulations shall be adopted for the financial operation and administration of the regulatory bodies, including establishing minimum levels of professional liability insurance. Section 4 establishes further requirements for the executive director or executive secretary over the regulatory body. Section 6 states that a deputy attorney general can prosecute a contested case for a regulatory body but cannot also be the legal counsel on the case. Section 7 states that an employed or retained attorney cannot prosecute a contested case while also serving as legal counsel for the regulatory body. Section 8 details which regulatory bodies are exempt from NRS 622A. Section 9 clarifies that the provisions in NRS 622A do not prohibit a regulatory body from adopting procedures already in place to prosecute cases if they adhere to certain standards. Section 12 reaffirms that the Attorney General is a legal advisor of the board, but the board may also employ legal counsel if they adhere to sections 6 and 7 of this bill.

Section 30.5, as it stands, increases the threshold for triggering an audit from \$75,000 in revenue to \$200,000 in revenue. In addition to the changes in the bill, there is an amendment to section 2, [Exhibit E](#).

SENATOR SETTELMAYER:

Regarding the conflicts the State Contractors' Board has with NRS 622A, why not allow it to be exempt under section 8 since other entities are exempt and you claim there is no conflict?

ASSEMBLYMAN PICKARD:

This is something we grappled with. Why would we not want to leave those regulatory bodies that are performing well exempt? It comes with the experience of the Sunset Subcommittee. We have had a well-functioning Board of Dental Examiners of Nevada. Because of the way it interpreted its practice act, problems were discovered. The problems were addressed in the audit of the Sunset Subcommittee and, ultimately, the Dental Board complied and has come within the purview of its practice acts as it was more generally interpreted. This raised the question of why was the Dental Board exempt in the first place? The Board was believed to be sophisticated, and not that it did anything deliberately adverse to its practitioners or to the public, mistakes were made. As we looked at the structure of each board, independent offshoots were able to work contrary to some of the principles in NRS 622A because of the way each board interpreted its practice acts.

There are two ways in which we approach regulatory boards. There are boards that fall under the oversight capacity of the Department of Administration, for example, the Real Estate Division. It is a part of and subject to the oversight of the Department of Administration. In order to meet the requirements set forth in the decision in the North Carolina Dental Board case, the oversight component may be lacking in an interpretation of that decision. How do we better incorporate oversight of the boards? We are doing this by pulling them back under NRS 622A and then going through the effort to ensure their practice acts provide that they are more protective.

SENATOR SETTELMAYER:

As the Chairman of the Sunset Subcommittee, I am familiar with the issues related to the Dental Board. These were addressed separately in a Sunset Subcommittee bill trying to reach your conclusion. Governor Sandoval was instrumental in ensuring new counsel was found in that situation to remedy the problem of that one case.

The analysis of James W. Penrose, Senior Principal Deputy Legislative Counsel on the Sunset Subcommittee, is not what you are bringing forward today. He did not see the issues you are saying exist. You have exempted certain boards. If you have agreed to exempt the Real Estate Commission and the others, why did the Contractors' Board need to be included in the nonexempt boards?

ASSEMBLYMAN PICKARD:

The Contractors' Board does not fall under the umbrella of the Department of Administration. It is a standalone regulatory board. In analyzing what the Sunset Subcommittee had done initially, focused on the Dental Board specifically, we looked at the differences between the boards that fall under the Department of Administration and those that do not. The structure of the Dental Board was such that it did not have an oversight entity that would scrutinize its performance. The Legislative Commission and the Sunset Subcommittee do not have the resources or time to look at all of the boards regularly with the type of scrutiny that was applied to the Dental Board.

By setting up minimum standards to help clarify what the practice acts minimums should be, it allowed us to go forward and deal with that as a structural consideration. Because some boards do not fall under the Department of Administration, our reasoning for this bill was well fleshed out in the many meetings we had prior to the beginning of Session.

The North Carolina Dental Board case was a concern, and the Legislative Counsel Bureau's Legal Division was on board with the idea of adding NRS 622A as a minimum set of standards, which does not change any of the practice acts, and there are no significant conflicts. The conflicts that exist are interpretive and the practice acts are more protective, so the differences between the existing practice acts and what is in NRS 622A and Assembly Bill 328, section 9, go away with the inclusion of the provision allowing boards to provide more restrictive protections.

SENATOR SETTELMAYER:

I am concerned with section 2, which prohibits an attorney from being employed as legal counsel for more than one regulatory body. Some of our regulatory bodies are small. There is some benefit to having legal counsel who are familiar with NRS and can understand the relationships of one board to another. Why such a blanket rule when some of our boards are small?

ASSEMBLYMAN PICKARD:

We have not removed the ability for an attorney to represent more than one board. We have removed the ability of attorneys to be employees of multiple boards. This was an issue brought up by the Attorney General's Office suggesting that if an attorney is an employee of multiple boards, what happens when he or she represents competing boards and the interests of one board are

contrary to the other? If an attorney does something improper in one board, does that implicate the other board? How do we prevent plaintiffs from suing both boards? The employee-employer relationship creates legal responsibility for the boards. The separation is important to reduce liability and exposure to risk for the State. The attorneys are allowed to be independent contractors for multiple boards. Malpractice insurance provides protections for the State. Attorneys will continue to represent multiple boards. In analyzing the potential for conflict of interest, it was wise to make the structural changes.

MISTY GRIMMER (State Contractors' Board):

The State Contractors' Board has concerns with the bill. It appreciates the conversations and openness of Assemblyman Pickard. The first concern has been dealt with in the amendment, [Exhibit E](#), addressing attorney requirements to name the State as a party to its contracts. The Statute Comparison Chart ([Exhibit F](#)) illustrates differences between NRS 622A and NRS 624. In most circumstances, NRS 624 is more restrictive than NRS 622A, though there are some inconsistencies. For example, the types of documents in an investigative procedure would be confidential in one circumstance and not confidential in another. Another example, NRS 622A specifically prohibits depositions from being part of the investigative process. In NRS 624, the Board uses depositions. Some of the inconsistencies may not seem that important, but the Board has 16,000 licensees. Its concern is the licensee is not going to know which statute it is subject to. A licensee's counsel will give the licensee direction and will know the law and be subject to the more restrictive of the two chapters. A lot of the Board's licensees are single practitioners and small businesses and do not hire counsel. They attempt to resolve issues on their own. They may lack the understanding of the law and what statutes they are subject to.

In 2001, the Legislature Counsel Bureau exempted certain boards from the same financial reporting as smaller boards. Part of that is because some of the larger boards, like the Contractors' Board, are self-funded. They have extensive financial reporting requirements. The Board is still subject to NRS 218G.400 requiring an annual audit. The results are submitted to the Legislature and the Governor's Office.

Section 3 requires the Department of Administration to adopt standards for financial operations and administration of regulatory bodies. The "and administration of regulatory bodies" would be separate from the financial portion. The Board requests some clarification on this.

In 2005, the Legislature chose to exempt the Contractors' Board and other boards from the provisions of NRS 622A. Legislative history clearly indicates the reason it was done is because the larger boards have attorneys, staff or contract attorneys and already have a robust regulatory framework for adopting regulations and overseeing the licensees, including the hearings and investigations. The Board respects the bill in seeking consistency within its statutes with the various operations of the boards, but if there is a reason to put in more oversight and restrictions and if the boards are doing something wrong, it makes sense to change the policy. However, if the Contractors' Board is not doing something wrong, why change the policy for it? The Board would like you to consider its proposed amendment to maintain its exemption from this chapter ([Exhibit G](#)). Margi Grein, Executive Officer of the Board, has submitted an explanation of its amendment request ([Exhibit H](#)).

SENATOR HARDY:

The deposition of witnesses as provided in NRS 624 seems to have more restrictive language than NRS 622A. How do we prevent a regulatory body from doing what the Dental Board may have done? What stopgaps does the Contractors' Board have that keeps it squeaky clean and upright in every way? What is its auditing and oversight ability?

MS. GRIMMER:

The primary oversight is the Legislature. When there were problems with the Dental Board, there was a bill brought forward to rectify the issues. All of the regulations and behaviors of the Contractors' Board are subject to the Legislative Commission and the Governor's Office. Its meetings are public. It is a regulatory body that takes direction from the Legislature.

EDITH DUARTE (Board of Dental Examiners of Nevada):

The Board of Dental Examiners of Nevada is neutral on [A.B. 328](#).

KEITH LEE (Board of Medical Examiners):

The Board of Medical Examiners is neutral on [A.B. 328](#). The Board worked with Mr. Stewart, Assemblyman Pickard and Assemblywoman Bustamante Adams on the bill. The Board supports the concepts in the bill and its statutes, regulations, policies and procedures that exceed those set forth in this bill and the amendment, [Exhibit E](#), to NRS 622A.

MICHAEL HILLERBY (Nevada State Board of Accountancy; State Board of Nursing; State Board of Pharmacy):

The Nevada State Board of Accountancy, the State Board of Nursing and the State Board of Pharmacy appreciate the provisions in section 9 of A.B. 328 which are designed to ensure all boards are operating at the same level. The Boards support the amendment, [Exhibit E](#), requiring professional liability insurance for attorneys.

SENATOR HARDY:

Are any of your boards exempt from NRS 622A or are they under NRS 624? Are those boards using depositions like the Contractors' Board does? Do you have a conflict with the statute you are under and NRS 622A? Is there going to be double regulatory body oversight?

MR. HILLERBY:

The boards I represent were historically exempt from NRS 622A and have their own set of administrative procedures. There may be some changes to regulations necessary to implement the statute, but the boards do not see this as overly burdensome. The boards appreciate that all boards maintain the same minimum level of public involvement and due process. The boards meet those minimum standards as described in section 9, subsection 3.

SENATOR HARDY:

Are your changes going to meet the July 1 deadline?

MR. HILLERBY:

The attorneys for the three boards I represent are looking at this to see if anything procedurally will need to be changed. The attorneys are looking at what changes in regulations or policies within the boards may be needed to meet compliance. The boards' rules of procedure are in NRS 628, NRS 639 and NRS 632. An analysis is underway to determine whether the procedures the boards are using now equate to those in NRS 622A.

SENATOR HARDY:

The regulatory process is not a quick process. Are your boards going to be able to comply with the regulatory standards that are not regulation yet? It must become a regulation in order to be sure the boards are complying with the provisions in the bill when it passes.

MR. HILLERBY:

I do not know. The boards are still in the process of making determinations. It is hoped that any inconsistencies will not jeopardize any upcoming proceedings.

SENATOR HARDY:

What is the compliance factor and can it be done by July 1? I have my doubts.

MS. DUARTE:

We have been working with Assemblyman Pickard from the beginning of this issue. Our executive director and legal team have been reviewing the provisions in the bill and are looking to implement them in a smooth manner. The Board of Dental Examiners of Nevada is working on other legislation brought forward by the Sunset Subcommittee as well. The hope is there will be no snags.

SENATOR HARDY:

Is the Dental Board in compliance with all of the recommendations from its audit?

MS. DUARTE:

Are you referring to S.B. 256? The Board is in compliance with this separate legislation.

SENATE BILL 256 (3rd Reprint): Revises provisions relating to the Board of Dental Examiners of Nevada. (BDR 54-549)

MR. LEE:

The Board of Medical Examiners does not take depositions during the investigatory process. The Board is still analyzing the provisions in the bill. If the Board has policies, procedures and regulations that are contrary to NRS 622A, it will be bound by the new language. It is not a problem.

SENATOR SETTELMAYER:

The only remaining factor necessary for the Dental Board to be in compliance with the audit is the establishment of the process, which could not be done because it did not have statutory authority; therefore, S.B. 256 was necessary. The Board will not be in compliance because it cannot comply without the statutory authority in S.B. 256.

SUSAN FISHER (State Board of Osteopathic Medicine; State Board of Professional Engineers and Land Surveyors):

The State Board of Osteopathic Medicine and the State Board of Professional Engineers and Land Surveyors are organized under NRS 633 and NRS 625, respectively. The Boards are neutral on the bill with the proposed amendment, [Exhibit E](#). We appreciate the cooperation with Assemblyman Pickard. I will find the answer to the questions of Senator Hardy. The boards are working to ensure they are in compliance with the Sunset Subcommittee recommendations.

SENATOR HARDY:

Will McDonald Carano Wilson LLP have to give up representation of one of the two boards you represent?

MS. FISHER:

I am not an attorney or the boards' counsel. I am a contract lobbyist working for McDonald Carano Wilson LLP. The boards' counsel is a part-time employee of several boards and will now be an independent contractor for the boards he represents. The insurance is the issue of concern. The attorney carries his own insurance, and there were some provisions in the bill that would have made it impossible to do so. The amendment, [Exhibit E](#), fixes this provision.

SENATOR HARDY:

The amendment, [Exhibit E](#), reads, "If a regulatory body employs an attorney as legal counsel, the attorney may not be employed as legal counsel of another regulatory body." Is an independent contractor an employee?

MS. FISHER:

No, an independent contractor is not an employee.

MENDY ELLIOTT (Chiropractic Physicians' Board of Nevada; Board of Homeopathic Medical Examiners):

The Chiropractic Physicians' Board of Nevada and the Board of Homeopathic Medical Examiners appreciate the sponsors for their open door policy and allowing the Boards to make changes as necessary, especially in section 2, subsection 3, paragraph (b), subparagraph (2). Our legal counsel, who is one of the individuals serving as an employee, will now be moving to the status of independent contractor if the bill is successful. Naming the State as "additional insured" to the policy is the issue. The amendment, [Exhibit E](#), has addressed this concern.

The Chiropractic Physicians' Board of Nevada is one of the self-funded Boards, and its regulatory process has been independent of NRS 622. When the bill was introduced two months ago, the Board and its attorney were advised there might be changes. They are working through the regulatory process to see what changes need to be made to be in compliance. They do not anticipate there will be any significant changes but recognize there will be some changes.

LIZ MACMENAMIN (Retail Association of Nevada):

The Retail Association of Nevada represents the licensees regulated under NRS 639. The oversight on boards by the Legislative Commission is how the boards have been regulated in the past, and the Association will look at how the oversight of the exempted boards was previously handled. The July 1 implementation date of this bill is somewhat of a concern because of what problems it will create for the licensees governed by the boards that are no longer exempt from this statute. I will speak to the sponsor of the bill.

ASSEMBLYMAN PICKARD:

The bill does not change any of the standards for any of the boards. The boards fall under a practice act which is independent of NRS 622A. This statute provides minimum standards for those boards without practice acts and sets a floor for minimum due process protections. The protections are intended to protect the practitioners in any disciplinary process. The sophisticated boards, the ones that do a good job, such as the State Contractors' Board, the Board of Medical Examiners and the State Board of Nursing operate under their own practice acts to the extent that certain small changes will be regulatory frameworks consistent with their verbiage. July 1 is an arbitrary date. The changes proposed in the bill are important given the experience of the Governor's Office that has been intimately involved in the meetings. We are amenable to making this effective October 1 to give the boards sufficient time to make changes. It is not the intention to put any of the boards under any burden. It is important to make these structural changes as outlined in A.B. 328 to prevent what happened to a different board. These rules are intended to put all boards on the same set of minimum standards from which to work.

Today is the first we have heard of the concerns of the Contractors' Board with section 3 referencing the financial and administrative regulations. The Department of Administration will only act in an oversight capacity and develop rules for financial reporting to make the reporting consistent. I do not see this as burdensome for the boards.

CHAIR ATKINSON:

We will close the hearing on A.B. 328 and open the hearing on A.B. 354.

ASSEMBLY BILL 354 (2nd Reprint): Revises provisions relating to employment practices. (BDR 18-275)

ASSEMBLYWOMAN DINA NEAL (Assembly District No. 7):

I will present A.B. 354. Section 5 of the bill asks for a written report organized in a certain way containing the rate of unemployment of residents of Nevada. This information must also be posted on the Website of DETR. The handout ([Exhibit I](#)) shows a snapshot of the Nevada Labor Market Information page from the DETR Website. It is very difficult to find the unemployment information detail on the Website. The Nevada county unemployment rate should be clearly shown on the page. The bill seeks for the manner and location in which the report is posted to be changed to allow citizens to find the information easily. The information should be readily available.

The goal is to deal with subgroups in the State that are still suffering from double-digit unemployment. The Governor's Workforce Investment Board should make a special activity or consideration occur if the rate of unemployment for a group exceeds the provisions in the bill. Section 6, subsection 5, paragraph (b) provides for what the Board will do with the report. The subparagraphs state:

(1) Is 200 percent or more of the rate of unemployment for the applicable county as a whole; (2) Is 4 or more percentage points higher than the rate of unemployment for the applicable county as a whole; or (3) Has been higher than the rate of unemployment for the applicable county as a whole for 3 or more consecutive years ...

This data is important because the local workforce agencies and the State agencies can work together for any subgroup that happens to be in double-digit unemployment or show higher unemployment than other categories. The State has seen a reduction in the unemployment rate across the board, yet there are still certain subgroups that have high unemployment numbers. Finding gainful employment for all groups helps advance families.

Section 6.5, subsection 4, paragraph (g) asks for a the most current unemployment data by the statewide longitudinal data system to be submitted

to the Director of the Legislative Counsel Bureau by the Executive Director of the Office of Workforce Innovation.

There was a \$6 million fiscal note on the bill which has been reduced to zero. The bill is about coordinating existing activities and is not requiring any workforce entity to do anything other than redistribute or change how it functions with a current or existing duty. The unemployment data for all subgroups was unclear. This bill provides for the report, requires the workforce entities to act upon the reports and creates strategies around reducing the unemployment rate.

CHAIR ATKINSON:

To find the unemployment rate on the DETR Website, do you have to go to a different page because it is not on the home page?

ASSEMBLYWOMAN NEAL:

Yes, to find it requires an extensive search.

CHAIR ATKINSON:

Where do the four or more percentage points come from in section 6, subsection 5, paragraph (b), subparagraph (2)?

ASSEMBLYWOMAN NEAL:

The statements in section 6, subsection 5, paragraph (b), subparagraphs (1), (2) or (3) are "or" statements. If any of the rates for unemployment occur as prescribed by these subparagraphs, then the workforce development services should coordinate efforts to reduce the rate of unemployment for the applicable county. These seek to capture all occurrences and act as triggers to capture any fluctuations.

CHRISTOPHER SEWELL (Assistant to the Director, Administration Division, Department of Employment, Training and Rehabilitation):

The amended version of A.B. 354 presented today satisfies the concerns DETR had with the requirements the bill is proposing. It also removed the fiscal note. This prevents DETR from gathering unnecessary information. We are neutral on the bill, and we are happy with the amendment.

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SENATOR SPEARMAN MOVED TO DO PASS A.B. 354.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY

* * * * *

CHAIR ATKINSON:

I have public comment from Steven Cohen on A.B. 175 and A.B. 328 ([Exhibit J](#)).

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CHAIR ATKINSON:

With no more business before us, I will adjourn this meeting at 10:59 a.m.

RESPECTFULLY SUBMITTED:

Christine Miner,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	6		Attendance Roster
A.B. 468	C	1	Marcus Conklin / Nevada Mortgage Lenders Association	Proposed Amendment
A.B. 175	D	1	Aviva Gordon / Henderson Chamber of Commerce	Letter in Opposition
A.B. 328	E	1	Assemblywoman Bustamante Adams	Proposed Amendment
A.B. 328	F	6	Misty Grimmer / State Contractors' Board	Statute Comparison Chart
A.B. 328	G	2	Margi Grein / State Contractors' Board	Proposed Amendment
A.B. 328	H	3	Margi Grein / State Contractor's Board	Proposed Amendment Explanation
A.B. 354	I	1	Assemblywoman Dina Neal	Handout
A.B. 175 A.B. 328	J	3	Steven Cohen	Public Comment