

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

**Eightieth Session
March 29, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:52 p.m. on Friday, March 29, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel

Minutes ID: 708



Katelyn Malone, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Aaron Ford, Attorney General
Elliot Malin, representing EM, Inc.
J. Kyle Dalpe, Interim Executive Director of Legislative Affairs, Nevada System of Higher Education
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Jon D. Ponder, Founder/Chief Executive Officer, HOPE for Prisoners
Atty Garfinkel-Berry, Private Citizen, Reno, Nevada
Paul Rozario, Director of Investigations, State Contractors' Board
Nancy Mathias, Licensing Administrator, State Contractors' Board
Joseph (J.D.) Decker, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles
Mindy McKay, Records Bureau Chief, Records, Communications and Compliance Division, Department of Public Safety
Keith L. Lee, representing Board of Medical Examiners
Jasmine K. Mehta, Deputy Executive Director, Board of Medical Examiners

Chair Spiegel:

[Roll was taken. Committee rules and protocols were explained.] We will begin with public comment.

Aaron Ford, Attorney General:

I am here today to testify in support of Assembly Bill 319, which revises provisions governing professional licensing. I want to thank Assemblywoman Tolles for bringing this bill forward, and for continuing to work with stakeholders, such as the occupational licensing boards. The subject matter of this bill is very important to me, and I am delighted to see that it is being brought forward. I have always felt that criminal justice reform should be a bipartisan issue. I am a Democrat, and I am glad to see a Republican sponsoring this bill, because this is a bipartisan issue and it is important that we address it as such.

The job of the Office of the Attorney General is justice. One part of justice is ensuring that those who have paid their debt to society are able to rejoin our community and experience the dignity of working. Having a job and being able to provide for yourself and your family is an important part of the human experience. Being able to obtain employment and the independence it brings with it will further discourage recidivism. Although it is important that certain boards have the ability to restrict licenses for appropriate individuals, this bill also improves public safety by providing those with a criminal history the opportunity to gain

employment and lead productive lives. On behalf of the Attorney General's Office, I am here to unequivocally declare our support for Assembly Bill 319.

Chair Spiegel:

Is there anyone else who wishes to provide public comment at this time? [There was no one.] We will open the hearing on Assembly Bill 319.

Assembly Bill 319: Revises provisions governing professional licensing. (BDR 54-314)

Assemblywoman Jill Tolles, Assembly District No. 25:

During the interim, I had the pleasure of working with several legislators on the Occupational Licensing Learning Consortium, hosted by the National Conference of State Legislatures, The Council of State Governments, and the National Governors Association. Nevada was selected as one of eleven states for this Consortium. As part of our participation, Nevada established a goal to identify and implement licensing best practices that deliver high-quality services, achieve the state's goals of a skilled workforce, and remove barriers to entry. After several meetings, the Consortium decided to refine the scope of the project. Rather than focusing on individual occupations, we decided instead to consider policies and barriers to labor market entry for certain populations, including military families, veterans, and people with criminal records.

In the spirit of the Consortium's work, Assembly Bill 319 offers language to reform occupational licensing regulations, specifically barriers that may prevent people with criminal records from obtaining an occupational license. Unfortunately, one-third of Nevadans have a criminal history, and 30 percent of our professions require an individual to be licensed through an occupational licensing board. According to the National Institute of Justice, employment barriers for people with past convictions amounted to a loss of at least 1.7 million workers from the workforce nationwide, and a loss of at least \$78 billion to the economy in 2014. In 2016, economist Stephen Slivinski found that having a good job reduces the likelihood that a former offender will recidivate. Individuals with a criminal record are more likely to succeed and less likely to reoffend if they have a job. However, people with a criminal record can be denied occupational licenses in half the states in the United States, including Nevada.

Assembly Bill 319 is a combination of model legislation from the National Institute of Justice and the state of Texas. Texas established a program in 2009 that created a process to allow persons with criminal history to petition a licensing board at any time, including before enrolling in any required training, to determine if their history would be a disqualifying factor in obtaining a license. The policy intends to alleviate individuals with criminal history from the cost and time associated with enrolling in an education program, as well as applying and qualifying for an occupational license. In 2018, seven states—Arizona, Indiana, Kansas, Nebraska, New Hampshire, Tennessee, and Wisconsin—passed similar legislation.

I would now like to summarize the sections of the bill. Please note that there is an amendment ([Exhibit C](#)) to the bill that has been posted on the Nevada Electronic Legislative Information System. I will incorporate the amended language as I outline the bill. I would like to thank the stakeholders for their input as well. Going forward, I will continue to work with stakeholders to ensure we have the right language in the final version.

Section 1 of the bill establishes the process for a person to petition a regulatory body. The provisions are replicated in multiple sections of the bill as well. Section 1, subsection 1 requires a regulatory body to develop and implement a process by which a person with a criminal history may petition the regulatory body to review their criminal history to determine if the criminal history disqualifies them from obtaining a license from a regulatory body. Section 1, subsection 2 requires a regulatory body to inform the person of the determination of the regulatory body as to whether the person's criminal history is a disqualification from obtaining a license no later than 60 days after a petition is submitted. A regulatory body is authorized to rescind a determination of disqualification or qualification at any time. One of the concerns was whether the determination would be binding, but this language clearly states that the determination is nonbinding and is instructive in nature. Some boards who meet quarterly have expressed their concern that the 60-day time frame would be a limitation for them, and I am happy to address those concerns in the final version of the bill. The conceptual amendment ([Exhibit C](#)) to section 1, subsection 2 clarifies that the regulatory body may rescind a determination at any time, and that the regulatory body is not bound by its determination of qualification or disqualification.

Section 1, subsection 3 authorizes a regulatory body to provide instructions to a person who receives a disqualifying determination to remedy the determination. A disqualified applicant will be granted another chance to remedy and perhaps change the outcome. Section 1, subsection 4 establishes that a person with a criminal history may petition the regulatory body at any time, including, and without limitation, prior to obtaining education or paying a fee required to obtain a license. Section 1, subsection 5 authorizes a person to submit a new petition to the regulatory body, no sooner than two years after the final determination of the initial petition is submitted to the regulatory body. Section 1, subsection 6 authorizes a regulatory body to impose a fee to fund the administrative costs of the body. The amendment increases the fee to \$50, based on the feedback received from some boards that felt that \$25 was not enough to cover their administrative costs. The model language authorized a regulatory body to charge up to \$100, but we felt that it was too steep a cost and may deter people from applying. Additionally, a regulatory body may waive the fees or allow the fees to be covered by funds from a scholarship or grant. Many representatives from reentry programs in the state have told me that they are willing to help pay for the cost of the administrative fee if it is applied. Section 1, subsection 7 establishes information for a regulatory body to post on its website, such as the requirements to obtain a license from the regulatory body, and a list of any crimes that would disqualify a person from obtaining a license. The conceptual amendment changes "shall" to "may" to address any potential fiscal impact of posting the information on a website. The language also addresses concerns that "shall" may create an additional deterrent.

The conceptual amendment ([Exhibit C](#)) to section 1 of the bill, and to other replicated sections, also adds two new subsections. First, it authorizes that a regulatory body may request from a person that submits a petition either a state of Nevada criminal history record from the Nevada Criminal History Repository, or an Identity History Summary, often referred to as a criminal history record, listing certain information from fingerprint submissions kept by the Federal Bureau of Investigation (FBI), or both. These criminal history reports can be requested by an individual from the Nevada Criminal History Repository or the FBI. The individual is responsible for paying the application fee, if required. Second, it requires that a person who submits a petition to a regulatory body for determination must not falsify or provide misleading information to the regulatory body.

Section 2 of the bill amends the report that a regulatory body is currently required to submit to the director of the Legislative Counsel Bureau. The bill requires that the report include the number of petitions submitted to the regulatory body, the number of determinations of disqualification made by the regulatory body, and the reasons for such determinations. This will provide us the opportunity to assess the success of the program and the areas in which we can continue to improve.

Section 6 of the bill requires that the Legislative Commission's Sunset Subcommittee conduct a review of each professional or occupational licensing board and regulatory body in the state to determine whether the restrictions on the criminal history of an applicant for an occupational or professional license are appropriate. Additionally, section 8 requires that the Legislative Commission's Sunset Subcommittee include any recommendations made on the appropriateness of a restriction and suggestions for legislative action.

Lastly, the conceptual amendment ([Exhibit C](#)) intends for the provisions of the bill to apply only to a regulatory body that issues an occupational or professional license. The bill is intended specifically for professional licenses and does not apply to business licenses, gaming licenses, or the Board of Athletic Trainers.

Elliot Malin, representing EM, Inc.:

Assembly Bill 319 will help those with past criminal convictions with the opportunity to establish a career and make a better life for themselves and their family. First, I want to thank Assemblywoman Tolles for working with me on this legislation over the past few years. I want to thank the cosponsors of the bill: Assemblymen Yeager, Hansen, Leavitt, and Roberts, as well as Senators Denis, Kieckhefer, Brooks, and Seevers Gansert. I also want to thank the various regulatory bodies that have been open, honest, and transparent with us in the discussions we have had about the bill. I look forward to continuing these discussions moving forward. I am not here today on behalf of a client, but rather because I have the unique privilege to work in this building. Many Nevadans are not so fortunate to have this opportunity, and I want to do something today to help all Nevadans, from all backgrounds, get ahead.

Roughly one-third of Nevadans require a license to work. Per a 2015 study from the Brennan Center for Justice, about one-third of working-age adults have criminal convictions on their records. This bill aims to return opportunity to this portion of the population and get them back on their feet so they can have not just a job, but a career. Reforming Nevada's occupational licensing laws to ensure that regulatory bodies are not rejecting individuals with past criminal convictions without cause or reason related to their career will allow for upward mobility, increased wages, and reduced recidivism. We also want to ensure that the various boards' advanced public safety goals are held to the highest standard. This bill allows licensing boards the ability to reject individuals who have due cause for rejection. Additionally, if a board determines that an individual's previous conviction does not prohibit his or her ability to obtain a license, this would not be the final determination. The legislation would allow them the opportunity to reject a license for misrepresentation of facts, forgery, lying, and reconvictions. The bill also authorizes the boards to charge a fee for the administrative cost of reviewing these records in order to alleviate the burden on the boards. These fees, per this legislation, could be covered by grants, scholarships, and other monetary awards.

Assembly Bill 319 allows individuals with past criminal convictions to petition boards as to their standing before they invest the education, time, energy, money, lost opportunity, and lost wages that are associated with obtaining licensure. It also requires the regulatory bodies to report the rejections due to criminal convictions, and the reason for the rejections, to the Legislative Commission's Sunset Subcommittee. If necessary, the Legislative Commission's Sunset Subcommittee can recommend policy changes and appropriate legislative action to ensure a desirable outcome for modifications, continuations, or removals of restrictions. By allowing people the opportunity to see where they stand—to ensure that they will not be rejected because they have a conviction—we allow them the opportunity to lead a more fulfilling life. We will also work to reduce recidivism, which will further advance the criminal justice system's purpose: rehabilitation. Furthermore, by requiring regulatory bodies to report rejections due to criminal convictions to the Legislative Commission's Sunset Subcommittee, we will have a better understanding of what is excluding people from a career, and whether those exclusions are appropriate. This gives the Legislature more control and ensures that public safety is a priority, while also demonstrating that the system is working as intended.

We, as a society, need to stop treating individuals with past convictions as damaged goods and start treating them as human beings who are full of opportunity. Thank you for hearing this bill today, and I hope to see this enacted into law very soon.

Chair Spiegel:

If someone serves time in prison for embezzlement, for example, an industry board might disqualify him or her from working in banking, accounting, or in an industry related to the crime. Is that correct?

Assemblywoman Tolles:

This provision does not mandate a board's requirements for qualification or disqualification. The initial bill draft request excluded financial institutions, law enforcement, and education professionals from the bill.

Assemblyman Kramer:

I am assuming that a board can only rescind their determination for a license for cause. Is that correct?

Assemblywoman Tolles:

The letter is nonbinding, which is made very clear in the amendment. It is instructive in that it lets a person know if there is anything in his or her criminal history that would be an automatic disqualifier for a license. If that were the case, applicants could request that the board grant them an opportunity to remedy it, and later determine if the remedy addressed their concerns. On the other hand, this is in no way a binding letter that automatically guarantees their licensure either. More than anything, the letter clarifies that there is a disqualifier and if there are any remedies.

Assemblyman Kramer:

If a board can change their mind, it seems to me that there ought to be a reason for rescinding their decision. I can understand rescinding their decision if an applicant reoffended, but there is nothing in the language that states that a board must change their mind with cause or reason.

Elliot Malin:

The reason for rejection must be for reconviction, forgery, lying, or redacting a criminal history record.

Assemblywoman Tolles:

To further clarify, those reasons for rejection would be reasons for a board to automatically reject an applicant. However, the board can reject for many other reasons as well, since the language is nonbinding.

Assemblywoman Carlton:

Who are you including and excluding from these provisions?

Assemblywoman Tolles:

It was an unintended error that all boards were included in the initial draft. The bill specifically applies to professional and occupational licensing boards. I currently do not have a complete list, but I will provide it to the Committee once it is complete.

Assemblywoman Carlton:

I am concerned about excluding the Secretary of State from these provisions because people need business licenses. If this bill will have a positive impact on professional licenses, why would it not have a positive impact on business licenses? People are denied business licenses for a number of reasons.

Assemblywoman Tolles:

It is my understanding that criminal records are not required to obtain a business license. I can confirm that with the Secretary of State, but those records are not a basis for denial or rejection of a business license. Therefore, this law is not applicable. This bill applies to people who have served their time and are receiving a second chance. They may have past criminal histories but are not necessarily currently defined as criminals.

Assemblywoman Carlton:

Would a person under the supervision of the Division of Parole and Probation, Department of Public Safety be disqualified from applying for a license?

Assemblywoman Tolles:

No, not as I interpret the bill.

Assemblywoman Carlton:

A person could be under their supervision and apply for a license. Is that correct?

Assemblywoman Tolles:

Yes.

Assemblywoman Carlton:

After supervision, could they apply for a license if they were dishonorably discharged?

Assemblywoman Tolles:

Yes, and the board would determine how to handle that case. I would advocate that this population of people—in reentry programs and often under the supervision of the Division of Parole and Probation—is working hard to rehabilitate, receive a second chance, get a high-paying job, and start over. We definitely want to include these people.

Assemblywoman Carlton:

I would like to understand the basic premise of the imposed fee, which I see in your conceptual amendment is to be \$50. Every board has an application fee, which can be significantly greater than \$50. We would essentially be asking the boards to perform the investigation for much less money, which would impact all other licensees, because the boards are self-funded. Why would we essentially impose a preapplication fee? Why would we not collect the application fee first, and then investigate the applicant? Second, why would a fingerprint card be required to be submitted with the fee?

Assemblywoman Tolles:

This process is not a thorough application process, but it is targeted at an applicant's criminal record and his or her potential impact. I would certainly imagine that the occupational boards are asking more thorough questions at the time of application, but this process is much more limited. The amendment grants the boards the ability to have applicants request their criminal records from the Criminal History Repository and the FBI to submit with their application. The applicant is responsible for paying the fee to request those records. It is the board's responsibility to request any additional identifying information during the application process. If that needs to be more clearly written, I am more than happy to do so.

Assemblywoman Carlton:

I was unclear as to whether individuals could request their criminal record from the Criminal History Repository. There is a fee to do it, and it is not easy to do. I would like to weigh the cost versus the ease of doing so. Oftentimes, it can take longer than 60 days to get fingerprints back, especially from the FBI. I have a concern that the record requests will take longer than the 60-day time frame required for a decision. We do not want to set a board up for litigation because they did not provide an answer in the required amount of time or because they provided the wrong answer, and we do not want to incentivize boards to automatically deny the applicant because they cannot receive answers in 60 days.

Assemblywoman Tolles:

I have been informed that, yes, individuals can pay the fee to request their own criminal records. I believe it costs \$23.50 at the state level and \$18 at the federal level.

Assemblyman Yeager:

You are absolutely correct in that having access to employment and housing are the two biggest factors in determining whether someone will be successful after incarceration. I think this bill brings forward a very important issue to consider. Do you have any knowledge of the dollar amount that individuals have spent, either in Nevada or nationwide, on schooling or applications for professional licenses, only to be rejected because of their criminal history? I do not assume that the intent of the bill is to make people spend money on schooling or certificates that they ultimately will not be eligible for. Is there any indication as to the financial burden of these situations?

Assemblywoman Tolles:

We have some information that was collected nationwide on the collateral consequences and impact that this has. I would be happy to submit the data to the Committee. I do not believe that we have any data specific to Nevada. I have heard many personal stories from people who have embarked on this process and ultimately did not qualify for the job. That is exactly what the bill seeks to prevent. We want to partner with individuals who are seeking a second chance, starting their lives over, and seeking higher-paying jobs. As part of a much larger discussion, we want to help reduce recidivism and impact the criminal justice system as a whole.

Assemblyman McCurdy:

Thank you for bringing this very important bill forward. I love what it aims to do, and I love who it will help, so much so that I would like to be included as a cosponsor.

Assemblywoman Tolles:

I would be honored, thank you.

Assemblywoman Neal:

My question comes from section 26. I am trying to remember what the marijuana prohibition in statute is currently. I thought there was a prohibition in the ballot question that certain crimes cannot be repealed until a certain month in 2019. Can you speak to that?

Assemblywoman Tolles:

If I understand your question, it is a question of what boards may or may not consider as disqualifying factors, which is outside the scope of this bill. This bill provides a process for boards to explain what the disqualifying factors are, and to implement the process. It does not prohibit or direct boards in regard to disqualifying specific criminal histories.

Assemblywoman Carlton:

Per my previous question, I believe we determined that *Nevada Revised Statutes* Chapter 453A is no longer included in the bill since the bill only applies to occupational boards. Is that correct?

Assemblywoman Tolles:

Thank you for the clarification. I will verify, but I believe you are correct. We are excluding boards that are not occupational or professional licensing boards.

Chair Spiegel:

Are there any additional questions from Committee members? [There were none.] We will now hear testimony in support.

J. Kyle Dalpe, Interim Executive Director of Legislative Affairs, Nevada System of Higher Education:

As we seek to prepare students for various career paths, we find that many paths lead to occupational licensure. When we work with our reentry population, including those with criminal backgrounds, we want to ensure that students are on a path to not only what they want to do, but to what they can practically do. We support this bill for those reasons, and to ensure that students are in an educational program in which they can ultimately find work.

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:

Since 2015, 19 states have reformed their occupational licensing laws to make it easier for people with past convictions to find work in state-licensed fields. Ten of those states have policies like A.B. 319, allowing someone to petition a regulatory body at any time to determine if their record would be disqualifying. Because obtaining the training and qualifications for licensure can be time-intensive and expensive, this provision would allow

someone to plan appropriately for their education and career choices. Last session the state took a step forward to help Nevadans with a criminal history have a fair chance at employment with "Ban the Box" legislation. Assembly Bill 319 is the next logical step that will continue to reduce recidivism, develop qualified employees, and increase economic investment in the state. We are in favor of this bill.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:

I want to thank Assemblywoman Tolles for bringing this bill forward, and I want to commend Mr. Malin for his work in ensuring that this bill is ready to be passed this session. I am immensely proud of our lawmakers, as we are at a turning point in this state and are making so much progress on a bipartisan front. I believe Assemblywoman Tolles' bill complements the progress we are making as a state. It is imperative that offenders are given opportunities throughout their time in the criminal justice system. It is important that we conduct workplace training in our prisons so that when a person is released, he or she knows what opportunities are afforded them and how to obtain a professional license. This enables offenders to plan for and improve their lives and be productive members of society. For these reasons, we strongly support this legislation.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:

I am here on behalf of myself, my office, and the Clark County Public Defender's Office. We appreciate Assemblywoman Tolles for meeting with us and for bringing this bill forward. When clients plead to a felony, or when I see them after they have been released or discharged from parole, it is very discouraging to see that they cannot have the same career that they had before, or to see that they would like to better themselves or have been presented with a great opportunity but have had a door slammed in their face because of their past. I think this bill will help open doors, provide opportunities, and benefit the community. We need more people employed in careers that can afford these opportunities, not just in jobs that barely earn minimum wage.

Jon D. Ponder, Founder/Chief Executive Officer, HOPE for Prisoners:

I am here in full support of A.B. 319. I want to thank Assemblywoman Tolles and the cosponsors for bringing this bill forward and all who have testified today, including Attorney General Aaron Ford. Our organization is dedicated to helping formerly incarcerated citizens with reentry, including steady employment, life skills, mentoring, and connections to community leaders such as local law enforcement entities. One of the greatest challenges that our program's participants encounter is employment. They do not necessarily struggle to gain employment, but they do struggle to build a career in a field that they are passionate about, skilled in, and that will provide them with the opportunity to adequately support themselves and their families. Restrictions on occupational licenses prevent skilled men and women from entering a career field that meets the above criteria. Our organization has experienced much success, and our recidivism rate is among the lowest in the country. It is legislation like this that will continue to move our society forward and ensure that we have opportunities available for those who have paid their debt to society. We are dedicated to removing the stigmatization and ensuring that our occupational licensing laws afford these

opportunities to all people despite the blemishes on their background, and afford them a chance to live the American dream. I urge the members to consider voting in support of this important legislation. It is time that we provide equal opportunities to all our citizens, and this bill is a critical step toward accomplishing that goal. This will help us in our efforts to accomplish the goal of putting the people that we serve on the road to the middle class.

Chair Spiegel:

Thank you, Mr. Ponder, for all your efforts and for the work that you do with people who have been incarcerated.

Atty Garfinkel-Berry, Private Citizen, Reno, Nevada:

I work with college students, and I have had students who have been in this situation who are now pursuing different degrees after receiving vocational education that they were unable to utilize. If we are going to commit to our society, we have to commit to all of the people in our society, including those who have made mistakes. Part of making a mistake is being able to move forward after that mistake. I would implore you to support this bill.

Chair Spiegel:

We will now hear testimony in opposition.

Paul Rozario, Director of Investigations, State Contractors' Board:

On behalf of the State Contractors' Board, I appreciate the opportunity to testify before you today in opposition to A.B. 319. As written, the Board cannot support the bill, but is willing to work with the sponsor to revise the bill to address our concerns. The proposed legislation requires the Board to address character issues prior to a perspective applicant expending efforts and monies to be educated in a particular trade, occupation, or profession, and to ensure that a criminal history will not result in licensure denial.

I will first provide an overview of how the Board currently reviews and assesses an applicant's criminal history for licensure. First, it must be noted that the Board licenses the entity, not the individual. Owners, principals, and qualified employees must submit an application to include fingerprints and a signed Department of Public Safety (DPS) fingerprint waiver form, which allows the Board to review the criminal history of the individual and conduct a background investigation. Workers and employees are not licensed. Additionally, education is not a requirement for licensure in Nevada. In the application process, all applicants must indicate if they have been convicted of a crime and, if so, provide a written narrative of the conviction and associated sentence. The Board only reviews the applicant's criminal convictions. Arrests that do not result in conviction are not considered in the process.

The Board receives approximately 4,000 applications for licensure per year. Approximately 1,000 applicants, or 25 percent, have criminal history records. Of the 1,000 applicants, approximately 900, or 90 percent, are approved for licensure after the background investigation is conducted. Once the convictions are identified, the applicant is asked to provide corresponding court and police records of the respective conviction. These

documents are very important in determining the factors relating to the conviction, the evidence collected, and the accuracy of the applicant's statement to the Board. Upon receipt of the documentation, the file is reviewed by the Director of Investigations, and a determination is made to recommend for licensing staff to either approve, deny, or interview the applicant. There is no crime that, if convicted, will result in an applicant's automatic disqualification or prevent an applicant from submitting an application.

Applicants with a felony conviction, a criminal conviction for a violent act, or a conviction related to a property crime, such as theft, fraud, or embezzlement, will be interviewed. Individuals with multiple convictions may be interviewed. The interview process allows the Board to better identify the factors related to the convictions, such as drug or alcohol abuse, and determine the applicant's remorsefulness of the crime and their acceptance of responsibility for their actions. On average, the Board conducts approximately 120 interviews of this nature per year. Last year, of the 120 applicants interviewed, approximately 76 percent were recommended for approval. Interviews take approximately 45 minutes, and the written report takes about 30 minutes to complete after the interview. In the event that applicants are denied licensure at the staff level, they can appeal the decision to the Board, which will be heard at an application denial hearing. If the Board confirms the staff's recommendation for denial, the applicant can appeal the Board's decision in court.

The Board understands what A.B. 319 seeks to accomplish; however, we believe the proposed legislation will not benefit the preapplicant other than to give them an idea of how a board may rule in terms of the character of the applicant. We have several concerns about A.B. 319. First, the amendment does not hold a board to its decision on the preapplication. It allows a board to change its mind at a later date. We believe this is a good thing, but it places a burden on staff to conduct the background investigation a second time once the application is filed. Second, the amendment allows a board to request for a preapplicant to submit criminal history documents, but the amendment does not define criminal history as convictions, or arrests and convictions.

We would like to add a board's ability to request court and arrest reports, as well as fingerprint submission and related criminal history. A DPS fingerprint waiver form must be submitted by the preapplicant as part of the submission of fingerprints. This waiver form allows a board to receive criminal history in the application process. Submission of fingerprints, specifically through a live scan, before the form is signed and submitted, places the board in violation of DPS policy relative to the receipt of criminal history.

Third, it is unclear who will make the decision on the preapplicant. Will staff be able to make the decision, or must a board make the decision at a public meeting? The State Contractors' Board meets monthly, which would not provide ample time to complete a background investigation, potentially schedule an interview, and schedule a hearing within 60 days.

Thank you again for the opportunity to address the Committee. I would like to reemphasize that we would like to work with the sponsor of the bill.

Assemblyman Yeager:

You mentioned that the State Contractors' Board does not license individuals but licenses companies. I think the bill intends to affect individuals who put an application forward. Do you feel that this bill applies to your board?

Paul Rozario:

As I stated, we license the entity. The principals on a license for a plumbing company, for example, would be required to submit applications for licensure under the business. The entity itself would receive the license. Background investigations would be conducted for the principals, and the principals would each submit an application for licensure.

Assemblyman Yeager:

How many other boards operate this way, as opposed to licensing individuals? Do you have any idea of whether this practice is common or whether it is unique to your board?

Nancy Mathias, Licensing Administrator, State Contractors' Board:

I do not know with certainty, but I believe that our licensure model is somewhat unique.

Chair Spiegel:

Is there anyone else who wishes to provide testimony in opposition? [There was no one.] We will now hear neutral testimony.

Joseph (J.D.) Decker, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles:

As the State Contractors' Board stated, we were also concerned about the impact this bill would have on our agreements with the National Crime Information Center and the Nevada Criminal Justice Information System. However, after hearing Attorney General Ford's testimony in support, I am confident that there is no issue, since his office is where we seek answers to those questions. Lastly, I want to bring to the Committee's attention that most regulatory agencies are not impacted the same way that those with category II peace officers are in that we are obligated to act on warrants searches, whether someone has applied for a license or is checking their eligibility as outlined in the bill, which can result in the arrest of the preapplicant.

Mindy McKay, Records Bureau Chief, Records, Communications and Compliance Division, Department of Public Safety:

Hopefully, I will be able to answer Assemblywoman Carlton's question in regard to the process identification process, which this bill aims to make a prescreening process. Prior to applying for a license, the applicant can submit, as an individual, his or her fingerprint card, payment in the amount of \$23.50, and a Records of Criminal History Form (DPS-006 form) to the Criminal History Repository. It takes approximately two weeks to respond. The FBI has the same process in place but requires payment in the amount of \$18, and they respond in

approximately 10 to 12 weeks. These are personal identification checks. The response, whether it proves a negative or positive record, is sent back to the person who requested it because it belongs to them, and they can do whatever they want with it. If the criminal history record request is part of an application process, it is the responsibility of the occupational licensing board to submit the request under their account number. We can submit the request to the FBI as well and charge the licensing board the fee.

Assemblywoman Carlton:

When someone requests criminal history records from the Criminal History Repository, they will only receive records from Nevada and not from anywhere else in the country. Is that correct?

Mindy McKay:

That is correct. When fingerprints are submitted to the Criminal History Repository, the only records received are those in Nevada. When fingerprints are submitted to the FBI, you will receive records nationwide.

Assemblywoman Carlton:

Without both records, you would not be able to fully understand someone's criminal history.

Mindy McKay:

That is correct.

Assemblywoman Carlton:

This has been a roadblock to accessing licensure and has been for the last decade. We cannot force the FBI to respond to requests any faster, and we have tried. The lead time for responses was five or six months at one time, so at least it has decreased since then.

Chair Spiegel:

Is there anyone else who wishes to provide neutral testimony? [There was no one.]

Assemblywoman Tolles:

I would like to thank Attorney General Ford for his opening remarks in support of this legislation and for pointing out that this is a bipartisan effort. I appreciate all of the cosponsors for advocating for this legislation. I will work with the opposition, and anyone else, to address their concerns. We will address the concerns about the 60-day period for review, but I want to clarify, particularly for boards who meet quarterly, that the request for criminal history records from the state or the FBI can be done prior to the application. The 60-day time frame to review the applicant's criminal history can commence after the individual has received the reports and submitted them with their application.

Lastly, I am the sister of two police officers and have a high regard for the law. I am also a higher education instructor and have had many students with criminal histories pursue education at the community college and the university. Their education was a major part of their pursuit of a new future. I was reflecting on a verse from Micah 6:8 that says: ". . . what

is good . . . act justly and to love mercy." I think this legislation strikes that balance wonderfully, and I urge your support.

Chair Spiegel:

We will close the hearing on Assembly Bill 319 and open the hearing on Assembly Bill 334.

**Assembly Bill 334: Makes various changes relating to the Board of Medical Examiners.
(BDR 54-943)**

Assemblywoman Sandra Jauregui, Assembly District No. 41:

I am happy to carry Assembly Bill 334 on behalf of the Board of Medical Examiners. It was a great learning experience for me.

Keith L. Lee, representing Board of Medical Examiners:

I want to thank Assemblywoman Jauregui for bringing this bill forward on our behalf. We appreciate the effort that has been put into this bill by staff and Assemblywomen Carlton and Jauregui.

Jasmine K. Mehta, Deputy Executive Director, Board of Medical Examiners:

Thank you for the opportunity to speak to you today about A.B. 334. The bill is a general housekeeping bill that addresses some issues that have recently been brought to the Board's attention. The genesis for the proposed statutory change in section 1 of the bill stemmed from a recent challenge regarding the ability to obtain reimbursement of costs associated with the use of hearing officers in the Board's administrative hearings. The argument that was presented was specifically that hearing officer costs were not enumerated in *Nevada Revised Statutes* (NRS) 622.400, which is the statute that allows agencies to recover administrative costs. Hence, we seek to add hearing officers to the definition of recoverable costs.

Section 2 provides some breathing room for the Board in the event of technology issues. Currently, we hold all of our quarterly board meetings via videoconference between the Reno and Las Vegas offices. However, we have had to reschedule a meeting when the equipment failed to work, which is a considerable time commitment and expense to the Board, as well as to the applicants and licensees who have traveled to attend the board meeting. We are unaware of any other NRS Title 54 occupational licensing board that is required to have a venue set in both locations. We are seeking the flexibility to set a single venue, in the event of such technology issues, so long as we are able to provide a phone number for the public to attend the meeting via teleconference.

Section 3 of the bill would expand the grounds for disciplinary action to include the State Board of Pharmacy's regulations and statutes. The jurisdiction over our licensees' conduct that violates the State Board of Pharmacy's regulations was added in statute in 1987. In the 2017 Session, several provisions regarding the prescribing of controlled substances were added to the State Board of Pharmacy's statute, but as currently written, the Board of Medical Examiners cannot institute disciplinary proceedings against our licensees who violate those

provisions. Section 3, subsection 1, paragraph (k) would remove the reporting requirement of a disciplinary action when the action is originated by the Board of Medical Examiners. There is no need for a licensee to report the action to the Board because it is our action. It is unnecessary, and is a burden on the licensee.

Finally, section 4 cleans up the practicality of the hearing process. The Board is rarely able to adjudicate a matter within 30 days of the conclusion of an administrative hearing due to the Board's quarterly meeting schedule. This section revises that the final order be issued within 30 days of the adjudication, rather than 30 days of the hearing.

Assemblyman Daly:

Does the Board of Medical Examiners employ in-house hearing officers?

Jasmine Mehta:

We independently contract with our hearing officers, so they are not in-house. Typically, they are attorneys who preside over the hearings. We have always had the understanding that the costs are reimbursable administrative costs that we would recover in the event of disciplinary action.

Chair Spiegel:

Seeing no other questions, is there anyone who wishes to testify in support of Assembly Bill 334? [There was no one.] Is there anyone who wishes to testify in opposition? [There was no one.] Is there anyone who wishes to provide neutral testimony? [There was no one.]

We will close the hearing on Assembly Bill 334 and open the work session for Assembly Bill 29.

**Assembly Bill 29: Repeals certain provisions relating to general building contractors.
(BDR 54-241)**

Patrick Ashton, Committee Policy Analyst:

Assembly Bill 29 repeals a provision that requires a general building contractor to be a prime contractor. There is a memorandum and a conceptual amendment from the State Contractors' Board attached to the work session document ([Exhibit D](#)).

Margi A. Grein, Executive Officer of the State Contractors' Board, proposes the following amendments to A.B. 29:

1. Add a definition of "prime contractor" to Chapter 624 of *Nevada Revised Statutes* (NRS) and include a requirement that, except as otherwise allowed, every construction project shall have a licensed prime contractor who is responsible for certain services for the project;

In section 1 of the bill:

2. Revise subsection 3 of NRS 624.215 by adding "Except as otherwise provided in subsection 6 and subsection 7," at the beginning of the subsection. Furthermore, retain the phrase "upon which he or she is a prime contractor and" in lines 18 and 19, which was deleted in the original bill;
3. Add a new subsection 6 to NRS 624.215 that allows a general building contractor to contract to provide management and counseling services on a construction project for a fee and to hire one other general building contractor to provide certain services on a single construction project;
4. Add a new subsection 7 to NRS 624.215 that allows a general engineering contractor who is also a prime contractor on an engineering project to hire one general building contractor to provide certain services on a single construction project; and
5. Add a new subsection to NRS 624.215 that a single construction project shall not have more than one general building contractor who performs management and counseling services for a professional fee and one general building contractor who provides equipment, materials, or work.

Chair Spiegel:

Are there any questions from Committee members?

Assemblywoman Carlton:

I want to make sure that I understand exactly what it means to add the definition of a prime contractor to "include a requirement that, except as otherwise allowed, every construction project shall have a licensed prime contractor who is responsible for certain services." Also, what is the exception?

Nancy Mathias, Licensing Administrator, State Contractors' Board:

The definition was added because the Building and Construction Trades Council of Northern Nevada expressed their concern for the specific language that required every project to have a building contractor who was the prime contractor so that there was a responsible party on every project. The exceptions that are contemplated in section 2, subsection 4 include a specialty contractor who contracts with an owner to provide work within their licensed trade or craft, but does not do work for two or more unrelated trades. The other exception is for someone who is exempt from the chapter under the provisions of NRS 624.031.

Assemblywoman Carlton:

If I am remodeling a rental home, and I have three or four different contractors performing work for me—one each for plumbing, electrical work, roofing, and cabinets—would I be required to hire a prime contractor in order to do work on the residence?

Nancy Mathias:

You would not need to hire a prime contractor if the project is exempt under the provisions of NRS 624.031. There is an exemption for the owner of a single-family residence. Rental properties are typically not exempt from the provisions of the statute, so in this example, you would need to hire a prime contractor.

Assemblywoman Carlton:

I believe the bill was originally intended to affect large projects, and I am concerned that the bill might affect small projects as well.

Assemblyman Daly:

It is my understanding that a homeowner would be exempt from the provisions as cited. Homeowners can self-perform work at their own house without a license, or they can hire a contractor. If it is a rental or commercial property, the owner would need to hire a contractor per the language that currently exists in statute. This bill does not change what I understand to already be the requirement.

Nancy Mathias:

That is my understanding as well.

Assemblywoman Carlton:

In my example, I would currently be required to hire a prime contractor for the job. Is that correct? Two sessions ago, I remember having a similar discussion about flipping houses, but in that case, a general contractor had to be hired, not a prime contractor.

Nancy Mathias:

You are correct. We have had issues with people flipping homes, and when they hire multiple trades to work on their project, they are essentially acting in the capacity of a general, or prime, contractor.

Chair Spiegel:

Are the terms "general contractor" and "prime contractor" interchangeable?

Nancy Mathias:

No, they are not. Typically, a prime contractor must contract with the owner of the project. A general contractor, especially under the provisions that we are proposing, may not.

Assemblywoman Carlton:

Does this bill create a new requirement for the contractors doing work as I described?

Nancy Mathias:

I do not believe that it does.

Wil Keane, Committee Counsel:

As written, my understanding of the State Contractors' Board amendment is that a contractor who contracts with an owner is the prime contractor. If an owner contracts with a specialty contractor, then the specialty contractor is the prime contractor. However, if the specialty contractor is performing all the work himself, it may not be significant, but the specialty contractor is his own prime contractor. With the added prime contractor definition, every contract will have a licensed prime contractor, whether that is a general engineering contractor, a general building contractor, a specialty contractor, or a general building contractor and a general engineering contractor who work together on unique public works projects.

The only exceptions that I am aware of are the exceptions to the applicability of the chapter. If a homeowner is exempt from the provisions of the chapter, then the homeowner would not have to hire a prime contractor; however, each contractor with whom the homeowner enters into a contract is essentially the contract's prime contractor. If a homeowner has four contractors, he or she would have four prime contractors because there are four contracts. Homeowners are subject to statutory restrictions as to how soon they could sell their home after the work is done. I believe the statute provides that if the owners sell their home within one year, there is a rebuttable presumption that they were intending to sell it all along. In this case, they would have needed to hire a prime contractor, because they are presumed to be flipping their house, and therefore not exempt. But if a homeowner is performing work on their own home, with the intention to reside in it for at least one year, they can contract with numerous contractors for work on the house, the owner does not have to be licensed, and they do not have to hire a prime contractor to supervise.

Chair Spiegel:

What if the home is a rental property?

Wil Keane:

If the home is a rental property, then the owner is not exempt from the provisions of the chapter. If the owners needed to hire a plumber, for example, they would contract with the specialty contractor who would be the prime contractor because he would be performing the work. If the owners needed to hire five different trades to do work on the rental property, they would need to hire a prime contractor who would contract with the specialty contractors or, in certain exceptions, the prime contractor is a general contractor who can do the work himself. There are few specialties where that is not possible, but oftentimes a general contractor can do much of the work himself or contract out to others.

Assemblywoman Carlton:

What you described is how the statute is written currently, so this bill is not an added burden. Is that correct?

Wil Keane:

As I understand it, NRS 624.215, as currently written, seems to prevent general contractors from hiring other general contractors. It seems to require that, every time a general

contractor is involved in a project, the general contractor has to be the prime contractor. That was the genesis of the bill. It would allow a general contractor, under the restrictions of the bill, to hire other general contractors. The bill does not add any additional requirements. There is no additional burden on a homeowner pursuant to this bill.

Assemblywoman Carlton:

The amendment states that "every construction project shall have a licensed prime contractor" [page 1, ([Exhibit D](#))]. This indicates that it is not an option, but it is mandatory to hire someone else. The contractor could not operate himself as the general contractor and the prime contractor.

Wil Keane:

"Construction project" is not defined in the bill. I interpret each small project to be its own construction project. For example, if a homeowner hires four contractors for four projects, each contract is its own construction project. The prime contractor is essentially the contractor that the homeowner contracts with to complete the work. From a homeowner's perspective, this would not be different than it is now. Whether or not a contractor is designated to be a prime contractor, for the purposes of this statute, would be fairly opaque to homeowners, and I would not think that they would notice anything different.

Assemblyman Daly:

We reviewed the language several times to ensure we had accounted for every possible outcome. A prime contractor does not have to be the general contractor, but if a contractor hires a specialty contractor for plumbing work, for example, then that contractor is the prime contractor. A specialty contractor, under this definition, can be the prime contractor on a project. The Building and Construction Trades Council of Northern Nevada wanted a responsible person to be designated as the prime contractor, so if wages or benefits are not paid, the Labor Commissioner could contact the prime contractor directly. If a plumber is hired to perform work on a project, he can be his own prime contractor. The subcontractor would not be the prime contractor for that project unless he had contracted directly with the homeowner to do the work.

Assemblywoman Neal:

How many prime contractors are allowed on a job site?

Assemblyman Daly:

Only one contractor will be the prime contractor. A property owner, who is a general building contractor, can hire another general building contractor for a large project. If the contractor is hired for management services, then they are not the prime contractor; but if the owner hires a general building contractor for material and construction work, then they are the prime contractor. Prime contractors will always hire subcontractors. In this example, the subcontractors will sign contracts with the prime general contractor, not the owner of the property. The language is written in such a way that there can only be one prime contractor and one construction services contractor per project, and there cannot be multiple general building contractors performing specialty work.

Chair Spiegel:

I will entertain a motion to amend and do pass Assembly Bill 29.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 29.

ASSEMBLYMAN YEAGER SECONDED THE MOTION.

THE MOTION PASSED.

I will assign the floor statement to Assemblyman Daly.

The meeting is adjourned [at 2:22 p.m.].

RESPECTFULLY SUBMITTED:

Katelyn Malone
Committee Secretary

APPROVED BY:

Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to Assembly Bill 319 presented by Assemblywoman Jill Tolles, Assembly District No. 25.

[Exhibit D](#) is the Work Session Document, presented by Patrick Ashton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.