MINUTES OF THE SENATE COMMITTEE ON COMMERCE AND LABOR

Eighty-second Session April 17, 2023

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:40 a.m. on Monday, April 17, 2023, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Pat Spearman, Chair Senator Melanie Scheible Senator Skip Daly Senator Julie Pazina Senator Scott Hammond Senator Carrie A. Buck Senator Jeff Stone

COMMITTEE MEMBERS ABSENT:

Senator Roberta Lange, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Tracy Brown-May, Assembly District No. 42

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst Bryan Fernley, Counsel Veda Wooley, Counsel Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Margi Grein, Executive Officer, State Contractors' Board

David Behar, Director of Investigations, State Contractors' Board John T. Jones, Jr., Nevada District Attorneys Association Chase Whittemore, Nevada Builders Alliance

Mikaela Rezaei, Nevada Home Builders Association; Southern Nevada Home Builders Association; Builders Association of Northern Nevada

Steven Cohen

Dora Martinez

Mary Pierczynski, State of Nevada Association of Providers Lindsay Knox, Southern Nevada Home Builders Association

CHAIR SPEARMAN:

I will open the hearing on Assembly Bill (A.B.) 22.

ASSEMBLY BILL 22 (1st Reprint): Revises provisions governing the issuance of cease and desist orders for unlicensed activity by the State Contractors' Board. (BDR 54-267)

MARGI GREIN (Executive Director, State Contractors' Board):

Assembly Bill 22 clarifies the process the State Contractors' Board must adhere to when issuing cease and desist orders pursuant to *Nevada Revised Statutes* (NRS) 624.212. Under existing law, the Board shall issue a cease and desist order to any person acting as a contractor or submitting a bid in Nevada without a valid contractor's license. These orders are issued to unlicensed contractors only and are written specific to the person committing the illegal activity, the activity itself and the location of the activity. Current law segregates the authoritative actions of the Board following issuance of a cease and desist order based on the Board's determination of a contractor's compliance.

The proposed language in A.B. 22 continues this authority but in a more direct manner, which we feel will help streamline the process and better clarify potential options to address unlicensed activity. Under the single procedure set forth in this bill, after a cease and desist order is issued, the Board shall issue an administrative citation for the first offense that does not involve theft or fraud. When it is a second or subsequent violation, the Board shall issue an administrative citation or report the violation for possible criminal prosecution pursuant to NRS 624.700.

Following issuance of a cease and desist order, A.B. 22 retains the existing authority of the Board to consider requiring the person to submit an application

for a contractor's license. If the person is not compliant with the order, the Board is to apply for injunctive relief through *Nevada Rules of Civil Procedure*. This bill eliminates distinctions in existing statutory procedures that are based on the number of previous violations and the value of the unlicensed work.

Let me help you understand the pervasiveness of this issue. The Board has issued 924 cease and desist orders over the past 3 years, of which 90 percent were for unlawful construction work that was either abandoned or completed with workmanship concerns noted and reported by the homeowner. All persons who received the order either complied with it and were issued an administrative citation, or their cases were filed with the district attorney's office for criminal prosecution, pursuant to NRS 624.700.

Regarding the issuance of administrative citations and the total fines and investigative fees paid as a result, there is a stark contrast between the compliance of licensed contractors versus unlicensed contractors. From fiscal year 2019-2020 through March 27, 2023, administrative citation fines and costs totaled roughly \$347,000 per year with approximately 77 percent of licensed contractors complying with payments. During the same period, administrative citation fines and costs against unlicensed contractors totaled approximately \$617,500 per year, with only 29 percent of the individuals complying with payments.

I would also like to note that there have been several large commercial construction projects in Nevada where unlicensed contractors were utilized as subcontractors. Once the Board was advised of this unlicensed activity, the Board took appropriate action in the issuance of cease and desist orders to the unlicensed contractors while also issuing citations to the general contractors for contracting with unlicensed contractors.

Again, I would like to make it clear that <u>A.B. 22</u> simply realigns the existing authority of the Board under NRS 624.212 to provide a single procedure subsequent to the issuance of a cease and desist order that is consistent with our authority under NRS 624.700 and NRS 624.710. We worked with the Nevada District Attorneys Association in the Assembly to amend the bill with their recommendations.

DAVID BEHAR (Director of Investigations, State Contractors' Board): I am here today to provide testimony in support of <u>A.B. 22</u>, which outlines the process the Board must adhere to when using an administrative citation.

We are an agency entrusted with the responsibility of protecting the health, safety and welfare of the public. With that in mind, I wish to highlight several examples of why the Board is seeking to include language that allows for prosecution of first-time offenders.

In December 2022, the Board received a first-time offense complaint against an unlicensed contractor for abandoning a project involving two seniors who had a variety of significant health issues, including dementia, strokes and respiratory issues that required the use of an oxygen tank. During the investigation, it was learned that the unlicensed contractor received approximately \$14,000 from these homeowners for the removal and abatement of mold in their residence in April 2022. During the initial abatement process, the unlicensed contractor conducted extensive demolition throughout the property and allegedly uncovered the locations of leaks throughout the residence. As a result, the unlicensed contractor conspired with a licensed plumber to help complete the work. Shortly thereafter, the company conducted additional demolition work at the location, which resulted in the residence becoming completely infested by rats and ultimately uninhabitable. In addition to the money paid to the original unlicensed contractor, these homeowners were then forced to pay an additional \$12,000 in hopes of having their residence repaired. Sadly, once this payment had been received, the project was completely abandoned, and the two senior homeowners were forced to move into a small casita in the rear of their property that did not have running water.

A second example I would like to bring to your attention also involved a first-time offense committed by an unlicensed contractor who entered into a written agreement with a disabled homeowner in January 2022. In this instance, the homeowner paid over \$235,000 to the unlicensed contractor for work that included plumbing, electrical, gas, cabinetry, painting, drywall, flooring, framing and wallcoverings. During the course of this investigation, it was learned that the unlicensed contractor significantly damaged the interior of the residence. This included the destruction of a stairwell and a safety barrier of a single-person elevator that was needed to move between floors because the occupant was an amputee. Because the project was ultimately abandoned, the

disabled homeowner was forced to retain a third-party group to assist with repairs that totaled close to \$500,000 to make the property habitable again.

The Board looks forward to continue working with the Nevada District Attorneys Association and other concerned parties regarding A.B. 22.

SENATOR DALY:

Can you explain what is not working in the process we have had since 2019? Why is it not working?

Ms. Grein:

Often, an administrative fine through a citation is not enough of a deterrent for these folks because they are not paying the fine. We can turn it over for collection, but without the ability to turn it over to the district attorney for prosecution, some of these unlicensed individuals are simply getting away with continued fraud against seniors and other vulnerable communities without any kind of record. Having the ability to go directly to the district attorney in cases involving theft or fraud would serve as more of a deterrent than an administrative fine that in most cases they do not pay anyway.

SENATOR DALY:

I agree that we should prosecute these cases to the fullest extent.

This bill removes section 1, subsection 3, which spelled out the repercussions if the cease and desist order was not complied with, including that the person would not be allowed to complete the work. It also established harsher repercussions if the value of the unfinished work was over \$50,000. I do not see that in the current revision.

Ms. Grein:

I believe we still have that authority under our administrative regulations to impose a steeper penalty for projects in excess of 500,000. We do not allow an unlicensed contractor to go back and complete any work regardless of whether it is residential or commercial. I do not believe the changes in <u>A.B. 22</u> would have any effect on that.

Mr. Behar:

Currently, the administrative citation amounts are from \$1,000 to \$50,000. With regard to commercial projects, we would be willing to consider that if it is something you want.

SENATOR DALY:

I understand 80 percent or more of your complaints are on residential construction and smaller projects. On the commercial side, these people know what they are doing, and they were not mistakes. They should not be able to benefit from that in any shape or form.

You said <u>A.B. 22</u> applies to unlicensed contractors only, and I would like a little better explanation of that. If someone does not have a contractor's license, they are unlicensed. That is clear. But if a contractor is licensed but working outside their scope or license, is that considered unlicensed in the context of this? If it is, do we need to clarify that? Contractors can be performing work outside of their scope. If contractors are licensed for concrete but doing plumbing work, they would be unlicensed for the plumbing work. Does that need to be clarified?

Ms. Grein:

I apologize if my testimony was not clear on that. Under NRS 624.212, we "shall issue an order to cease and desist to any person: (a) Acting as a contractor, including, without limitation, commencing work as a contractor; or (b) submitting a bid on a job situated in this State, without a valid license issued" It also states that the person has to have an active license.

I believe there have been cases where we can issue a cease and desist to a licensed contractor working outside the scope of his or her license. I do not know how often we have done that, but I think the statute referring to it is NRS 624.212. I am happy to look at that further and give you a more definitive answer on that.

SENATOR DALY:

If we can look at those two things, about not being able to continue work and citing for working outside the scope of the license, I would appreciate it.

SENATOR SCHEIBLE:

Can you give us an idea of the scope of this bill? How many people are you currently sending cease and desist orders to? How many of those turned into open cases? How many were referred to the District Attorney's Office?

Mr. Behar:

Between 2019 and 2022, we sent a total of 1,636 cease and desist orders Statewide.

SENATOR STONE:

What kind of educational campaign have you been undertaking to protect consumers from the nefarious people who are taking advantage of them? The presenter said one of the minimum fines was \$1,000. There should be a higher fine for those who knowingly participate in work they know they are not licensed to do. Is that not so?

I worry about consumers, especially the elderly and vulnerable. Do they know what to ask for and what a valid contractor's license looks like? Is it possible that a licensee or an alleged licensee could be showing a false license to defraud the customer?

Ms. Grein:

Regarding educating consumers, we have an extensive public education program with the Board. However, it is difficult, and we face an ongoing battle all the time. We make presentations at home shows and senior events. We have town hall meetings. We have information on our website, which is available at <www.nvcontractorsboard.com>. We are currently doing a variety of commercials on TV to educate consumers. We distribute flyers and brochures at senior events. It is an ongoing battle that we face, partly because Nevada's population is so transient. A lot of people do not even realize a contractor's license is required. So we are continuing our efforts and outreach. We work with different associations and hold a variety of events to educate consumers on the dangers of hiring unlicensed contractors. We cannot do enough, but we continue to try to reach as many people as possible.

Regarding fines and penalties, they depend on the violation. They range from \$1,000 to \$50,000 for the first offense. In the situations Mr. Behar described in his presentation, we went after the maximum fine. We might seek the minimum fine when the person did something small, like a painting job that cost \$1,500.

The fine would be in accordance. If the person is a repeat offender or the victim is elderly or otherwise vulnerable, we would go after the higher penalty. Did I answer your questions?

SENATOR STONE:

Yes. It seems to me that the \$1,000 fine is de minimis, small enough that the perpetrators might be willing to just write it off. I can picture someone saying, "Yeah, I got five jobs right now, and \$1,000 isn't going to stop me." You might want to consider a minimum fine of \$5,000 to give yourselves a bigger stick to protect these vulnerable populations.

I appreciate your educational campaign. I know it is tough, but I recommend a couple of things. There are a lot of senior-only communities here and in southern Nevada. Maybe a fact sheet can be given to homeowners associations to be passed on to their members showing the dangers that can happen if they do not check the contractor's license.

I heard of a situation where an unlicensed person installed an air conditioner, and an hour later it caused a fire that almost destroyed the entire home. Unlicensed or unqualified contractors can cause devastating accidents. I hope you will reconsider those minimum fines and expanding those educational campaigns to the senior-only communities.

Ms. Grein:

Thank you, Senator. We will continue to increase our efforts.

SENATOR BUCK:

I agree with my colleague that \$1,000 seems minimal when you defrauded someone for \$14,000. Is there a platform where you list these bad actors, so people are aware of the habitual offenders?

Ms. Grein:

Yes, we keep a list on our website of our most wanted offenders. We have to wait for the process to play out to a final citation before we can list them.

Educating consumers about who to look out for is an ongoing effort. Consumers may think they are hiring a licensed contractor because that person gives them a business license number, but a business license is not a contractor's license.

We appreciate all your efforts to understand this problem we are trying to address.

SENATOR BUCK:

Is there a number that you can call to verify a contractor's license, especially for the elderly?

Ms. Grein:

Yes, we have a fraud hotline for unlicensed contractors. We encourage people to call it to make sure their contractor is licensed. We also have a mobile application for this purpose. Many seniors do not use those sorts of things, but we encourage them to call and verify that the contractor they are getting a bid from is in fact licensed.

CHAIR SPEARMAN:

I am trying to figure out if there are ways to catch these people before consumers are harmed, but I am not sure it can be done without a Ouija board.

Mr. Behar:

One of the easiest ways is to use our website. That is easier for some than for others, but we are happy to walk people through the process if they call us. It is very simple to click on our website and do a license search. You can search by the contractor's name, the license number or the company name to verify their license, see if any complaints have been filed against them and get other information.

CHAIR SPEARMAN:

Are you collaborating with the Office of the Attorney General (OAG)? They have an expanded role now for consumer protection.

Mr. Behar:

Yes. We recently created a task force working with the OAG and other partner agencies. Our efforts are focused on unlicensed contracting to be a force multiplier and go after them in a variety of different ways. The OAG will also be working with us in the future to go after unlicensed contractors when it is deemed appropriate.

CHAIR SPEARMAN:

How do you get the word out? In southern Nevada, you can walk through just about any neighborhood casino in the afternoon and see the bingo room filled with seniors. There might be a way to work with the gaming industry to put this information out there. Another possibility is to work with homeowners' associations to put the information out at every meeting.

With regard to the de minimis question, there is an enhanced penalty when a crime is committed against someone age 62 or older. Someone who defrauds a senior and destroys their home has certainly earned themselves a severe penalty.

SENATOR SCHEIBLE:

While we were having this discussion, I Googled "Nevada contractor license," and it took me directly to your website. I was able to search by name and confirm that Melanie Scheible does not have a contractor's license, but Ira Hansen does. It was quick and easy to find that information. We just need to find a way to get more people to do that before they hire a contractor.

SENATOR STONE:

When a licensed contractor knowingly contracts with an unlicensed subcontractor, that is pretty egregious. Consumers trust their contractor and assume that anyone working for that contractor is also licensed. Are there enhanced penalties for those who knowingly hire unlicensed subcontractors to the detriment of their clients?

Ms. Grein:

Yes, there are. The biggest penalty we can put on a licensed contractor is to revoke their license. That is usually enough to get people to comply with the law, but we have more tools we can use against licensed contractors who violate the law than we do against unlicensed people.

JOHN T. JONES, JR. (Nevada District Attorneys Association):

I am here in support of A.B. 22. I want to thank the State Contractors' Board for working with us on our concerns in the Assembly.

I know Senator Daly was a leader in the effort to beef up the administrative citation process with respect to unlicensed contractors, while still leaving the criminal system to address criminal behavior. This continues that effort. To the

extent we need to enhance the administrative citation process and enhance the enforcement mechanisms, we are more than willing to work with the Board to focus on that.

When that behavior tips over into fraud, that is conduct that should be charged criminally. When someone claims to be a licensed contractor and induces somebody to sign a contract with them when in fact they are not licensed, or when someone accepts a \$10,000 down payment and then performs no work and provides no refund, the situation now involves fraud or theft, and the criminal justice system should be involved.

SENATOR DALY:

I was looking at the original language and the language in this bill. In your mind, what is the difference between the two? How do you decide when it is time for you to get involved? Before, if they did not obey the cease and desist order, the issue was referred to the district attorney. Now it says they can continue with an administrative citation even on the second complaint or send it to you. Where do you see the difference there? How do you decide whether to prosecute?

Mr. Jones:

My understanding was that there was some confusion about whether a case could be submitted to us on a first-time violation if there is evidence of fraud or theft. This bill clarifies that the case can be submitted to us on a first-time violation when those elements are present.

There may also be a situation where somebody comes before the Board with a second unlicensed activity, and the Board feels the administrative process is sufficient to punish or curb that behavior. I do not want to tie the Board's hands in that situation. I want to give them as much flexibility as they need to handle this unlicensed conduct.

CHASE WHITTEMORE (Nevada Builders Alliance):

We support <u>A.B. 22</u>. We supported it in its original form, and we support the revised version. Unfortunately, there are some bad actors in the construction industry. This bill adds some clarity to the procedures and gives proper tools to the Board to go after those bad actors.

MIKAELA REZAEI (Nevada Home Builders Association; Southern Nevada Home Builders Association; Builders Association of Northern Nevada):

We support this bill. As the previous speaker said, there are bad actors in the industry, and we support giving the Board the authority to go after them.

CHAIR SPEARMAN:

I will close the hearing on A.B. 22 and open the hearing on A.B. 78.

ASSEMBLY BILL 78: Exempts certain providers of jobs and day training services from licensure as nurses. (BDR 54-12)

ASSEMBLYWOMAN TRACY BROWN-MAY (Assembly District No. 42):

<u>Assembly Bill 78</u> exempts certain providers of jobs and day training (JDT) services from licensure as nurses, which is why it is here in front of you today.

I would like to start by talking a little bit about my background. Many of you are already aware that I have spent 20 years in disability advocacy and disability support services working for a JDT organization. In that capacity, I have learned a lot about barriers people with disabilities experience when accessing the community. This bill is meant to eliminate one of those barriers.

Nearly one in four Americans is currently living with a disability. For too long, people with disabilities have been denied equitable access to social, educational and professional opportunities. Community integration gives people with disabilities the opportunity to achieve an overall healthier life and well-being. Jobs and day training services are essential as an asset in assisting people with disabilities to access and obtain meaningful skills and life employment.

Certain JDT services are currently restricted by an existing law that requires staff to be licensed by the State Board of Nursing to administer medication to individuals who may require it while participating in these programs. This bill changes that law to allow JDT providers the opportunity to train their staff in medication administration, which then helps people gain access to the community.

I will give you a scenario. You are a person with a profound disability who also has epilepsy, and you require medication to be administered throughout the course of the day to prevent seizures. Your group of people are going to go into the community today—to see a movie, go bowling, go shopping or go to a

volunteer activity—from 10:30 a.m. to 1:30 p.m., and your medication is required at noon. No nurse from the provider organization is free to go with you. That means you cannot go, because there will be no one on that trip qualified to administer your medication.

This bill will allow JDT providers to certify their staff in medication administration. That means the direct support professional who is going with your group into the community can administer your medication while you are out in a community setting. You get your medication, and you also get to join your group in today's community activity. It is really that easy.

This provision already exists in the NRS for supported living arrangement providers and has been there for a number of years. <u>Assembly Bill 78</u> brings parity between the provider organizations that serve people in their living arrangements and provider organizations that serve people in their day activities. It means you do not have to see a medical professional to get your medication; you can instead receive it from a certified agency direct support professional.

I worked on this bill closely with Jessica Adams, Deputy Administrator for the Aging and Disability Services Division, Nevada Department of Health and Human Services. I believe she is available to answer questions, if needed.

SENATOR SCHEIBLE:

I like this bill. It sounds like common sense to me.

Let me see if I understand. If the person who needs the medication is accompanied by a family member, the law does not prevent that that family member from carrying and administering the medication when needed. However, the JDT staff cannot do this because they are professionals and have a professional relationship with the person with the disability. Is that right?

ASSEMBLYWOMAN BROWN-MAY:

That is exactly the case. Jobs and day training providers are certified and licensed; they are regulated by the Aging and Disability Services Division and must comply with a number of training provisions. They cannot administer or even provide medication, a task that requires a nurse. Family members can do this because they have no contractual relationship to maintain.

SENATOR SCHEIBLE:

If the staff person was not in that professional relationship with the person with a disability, giving the person medication would not otherwise be illegal, unlawful or wrong. A person with a disability can often be helped by people who accompany them, carry their medication, help administer it, keep track of time, put an alarm on their clock and so on. There is nothing wrong or illegal about that. It is only because they share a professional relationship that a barrier is erected to prevent the JDT provider from doing these things.

ASSEMBLYWOMAN BROWN-MAY:

That is correct. That is my understanding.

STEVEN COHEN:

I support A.B. 78.

DORA MARTINEZ:

I support this bill.

MARY PIERCZYNSKI (State of Nevada Association of Providers):

I represent the State of Nevada Association of Providers (SNAP). Members of SNAP partner with the Aging and Disability Services Division and carry out programs such as the supported living arrangements and the JDT program for intellectually and developmentally disabled Nevadans. We serve almost 80 percent of Nevadans who are disabled.

We are in strong support of <u>A.B. 78</u>. Supported living arrangements staff are allowed to distribute medications once they are trained. The JDT people currently cannot do that. They need more flexibility. It will be helpful for those in JDT training to be able to participate in more activities. We are asking for that same flexibility for the JDT people.

ASSEMBLYWOMAN BROWN-MAY:

Thank you for the opportunity to present this measure for your consideration. It will help people gain access to community integration and more equity in our society.

CHAIR SPEARMAN:

I will close the hearing on A.B. 78 and open the hearing on A.B. 29.

ASSEMBLY BILL 29 (1st Reprint): Revises the grounds for disciplinary action against a licensed contractor. (BDR 54-268)

Ms. Grein:

Assembly Bill 29 clarifies the language for disciplinary action against a licensed contractor. The State Contractors' Board seeks to expand the language in NRS 624.3016 by including a cause for disciplinary action against a licensee for making a false or misleading statement or representation or omitting a material fact in connection with the application of another person. The experience validation process often relies on references or employment verification by other contractors. For that reason, preserving the integrity of this process is important and is in the best interest of the industry and Nevada consumers. This bill will provide the Board with an additional tool to deter falsification of experience and documentation. It also reinforces and underscores the importance of each person's role and obligations in the licensure process.

Based on the discussion and testimony before the Assembly Committee on Commerce and Labor, the bill was amended to clarify that the provisions apply only to statements provided by "a licensee who is a natural person, an owner of a license, a managing officer of a licensee or any person who qualifies on behalf of a licensee pursuant to subsection 2 of NRS 624.260."

Mr. Behar:

Assembly Bill 29 outlines the process the Board utilizes to establish the experience of a licensure applicant. Currently, our Board utilizes several methods to verify the accuracy of experience submitted by a licensee, including in-person and videoconference interviews. We document requests to confirm and vet the legitimacy of industry experience provided by references related to specific work or projects. These methods of due diligence are obtained by members of the Board's investigative unit as part of our current practice to corroborate the experience of a licensee.

As part of this process, members of the Board's investigative unit often encounter false or misleading information that was provided by other licensees, managing officers of licenses or other qualified individuals. When questioned by the Board for further verification, often they are unable to verify this information, or they do not provide supporting documentation to corroborate the alleged experience of the applicants. Explanations for this lack have included projects in foreign countries, claims of documents being destroyed and lack of

payroll records that could be used to authenticate hours and the scope of work completed.

Because our mission is to protect the health, safety and welfare of the public, we feel <u>A.B. 29</u> allows measures to be implemented to deter and prevent false or misleading information when we are trying to corroborate the experience of licensing applicants.

SENATOR PAZINA:

How frequently have you found false or misleading statements on contractor applications?

Mr. Behar:

I do not have an exact percentage in front of me, but I can research that and get back to you if you would like. When we do come across them, we find that it is often because they are trying to help the person become licensed. Often they have a personal or family relationship.

Mr. Whittemore:

We support this bill. It is another tool in the Board's tool belt to help them go after the bad actors.

LINDSAY KNOX (Southern Nevada Home Builders Association); We support this bill, as it protects the integrity of the construction industry.

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Chair Spearman: I will close the hearing on $\underline{A.B.\ 29}$. Is there any we are adjourned at 9:37 a.m.	public comment? Hearing none,
	RESPECTFULLY SUBMITTED:
	Lynn Hendricks, Committee Secretary
APPROVED BY:	
Senator Pat Spearman, Chair	_

DATE:_____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	Α	1		Agenda
	В	1		Attendance Roster