

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

**Seventy-Fourth Session
April 25, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:42 p.m., on Wednesday, April 25, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman David R. Parks
Assemblyman James Settelmeyer

GUEST LEGISLATORS PRESENT:

Senator Maggie Carlton, Clark County Senatorial District No. 2
Senator Joseph (Joe) J. Heck, Clark County Senatorial District No. 5

Minutes ID: 1102



STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Judith Coolbaugh, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Ruth Kaplan, Private Citizen, Las Vegas, Nevada
Mechele Ray, Executive Director, Private Investigator's Licensing Board
Amy Oddo, Executive Director, Medical Education and Research Institute of Nevada (MERIN)
Susan Fisher, representing the Chiropractic Physicians' Board of Nevada
Cindy Wade, Executive Director, Chiropractic Physicians' Board of Nevada
Alan Kaplan, Private Citizen, Las Vegas, Nevada
Mike Kirkman, Vice President, Nevada Society of Professional Investigators
Ira Victor, Sierra Nevada InfraGard
John P. Sande, IV, representing the Nevada Collectors Association
Mendy K. Elliott, Director, Department of Business and Industry
Randy Robison, representing the Nevada Credit Union League
Marel Giolito, Owner, Credit Bureau Central, and President, Nevada Collectors Association
John P. Wanderer, Private Citizen, Las Vegas, Nevada
Jan Steger, Executive Director, California Association of Collectors and the Association of Credit and Collection Professionals International

Chair Ocegüera:

[Roll called.] I am opening the hearing on Senate Bill 410 (1st Reprint).

Senate Bill 410 (1st Reprint): Provides for the licensure and regulation of computer forensics examiners. (BDR 54-886)

Senator Maggie Carlton, Clark County Senatorial District No. 2:

This bill is for private investigators. In its Senate hearing, there were some concerns. Representatives of law enforcement, the bill's proponents, the licensees, and the licensing Board compromised, and agreed to the provisions in this revised bill. When things go awry in business, one of the ways to find out what happened is to "follow the money." This bill would recognize and certify forensic examiners who "follow the money." Having certified forensic examiners is important to the legal profession. The forensic examiners need to

maintain their reputation and quality of their work. Oftentimes, following the money is the key part of a case. Mr. Kaplan, an honorary constituent, brought this request to me, and he will testify today.

Ruth Kaplan, Private Citizen, Las Vegas, Nevada:

I will attempt to assist you in answering questions on the bill. I am in support of the passage of this legislation.

Senator Carlton:

I was under the impression Mr. Kaplan would be available in Las Vegas to walk the Committee through the bill.

Ruth Kaplan:

We do expect him to be here, and he has signed in to testify. Mr. Mayhew from the Nevada Society of Professional Investigators was also expected to testify.

Senator Carlton:

Mr. Chairman, I apologize. Did Mr. Kaplan provide the Committee with the briefing material? If there are any questions I can answer, I would be happy to do so.

Chair Oceguera:

No problem. They are in the Las Vegas building somewhere because they signed in. Are there any questions?

Mechele Ray, Executive Director, Private Investigator's Licensing Board:

Mr. Kaplan presented his proposed bill to the Board in December, 2006. The Board was in support, and all the parties worked on language that was acceptable to everyone.

Chair Oceguera:

We do have the briefing material in our folders. In Las Vegas, is there anyone else in support of the bill who wishes to testify? I am going to close the hearing on S.B. 410 (R1), and we will watch for your witnesses in Las Vegas. When they arrive, I can re-open the hearing. I am opening the hearing on Senate Bill 227.

[Senate Bill 227](#): Clarifies provisions relating to the disciplinary powers of the Nevada State Funeral Board. (BDR 54-975)

Senator Joseph (Joe) J. Heck, Clark County Senatorial District No. 5:

Last session, the Legislature passed legislation that added a phrase to the *Nevada Revised Statutes* (NRS) 451.400, which established the Committee on Anatomical Dissection. It is this Committee, sponsored by the Legislature, which receives unclaimed deceased bodies for use in medical research. The phrase that was added reads, "or its designee." The designee would be authorized to take delivery, or be notified of the availability of a body for medical research. Individuals responsible for making that notification include funeral homes. There was difficulty and misunderstandings between the funeral homes in southern Nevada and the southern Nevada designee, as to whether or not the designee, which is the Medical Education and Research Institute of Nevada (MERIN), should have the bodies for medical research purposes.

We went to the Nevada State Funeral Board to ask them to intervene, and convince their licensees to comply with the law. The Funeral Board said the provision was not specific in their chapter of the NRS, so they did not have the power to intervene. This bill adds that authority to NRS 451.400, which is the Funeral Board chapter, by stating that failure to comply is grounds for disciplinary action, without limitation, for those who violate its provisions. With the inclusion of this language in their chapter of the NRS, the Funeral Board can contact the funeral parlors, and instruct them to notify the designee of the availability of a body. They will also deliver the body, if so desired. If they fail to comply, they will be liable for disciplinary action.

Chair Ocegüera:

Are there any questions? We will go to Las Vegas for testimony.

Amy Oddo, Executive Director, Medical Education and Research Institute of Nevada (MERIN):

I have submitted a copy of my testimony for the record ([Exhibit C](#)). We are the southern Nevada agent designated by the Committee on Anatomical Dissection. When we tried to work with the funeral homes in southern Nevada, we discovered that there was no entity in the law for enforcement of the law's provisions. We are asking that this statute, NRS 451.400, be enforced by the Funeral Board. To give the Board the authority for enforcement, our suggested language would add the words, "...including, without limitation, NRS 451.400," in NRS 642.480, Section 1, subsection 12.

Chair Ocegüera:

Are there any questions? Is there anyone else wishing to testify in favor? Is there anyone opposed to S.B. 227? Does anyone wish to speak from a neutral position? Seeing none, I am closing the hearing on S.B. 227, and opening the hearing on Senate Bill 19 (1st Reprint).

Senate Bill 19 (1st Reprint): Revises provisions relating to the Chiropractic Physicians' Board of Nevada. (BDR 54-573)

Susan Fisher, representing the Chiropractic Physicians' Board of Nevada:

This bill requests some changes that will permit the Chiropractic Board to operate more efficiently. In Section 1, we are requesting clarification language for chiropractic licenses. In the past, a license was automatically suspended if the licensee disappeared, or did not renew their license. If the licensee has been away for awhile and he wishes to return to practice, the Board needs a mechanism for the licensee to prove to us that he has been in active practice, and is current with his continuing education requirements (CEs). Also, the licensees need to prove that they have no disciplinary actions against them. If the licensees cannot prove these requirements, we would like the option to administer a test for renewal of their license. It would not be the full chiropractic licensing test, but a refresher examination to ensure they know what they are doing.

We are also requesting an increase in the number of CEs that we require. Currently, the licensee needs 12 per year. The Board would like to raise that figure to 18, which is the national average. In addition, we would like to change from an annual renewal of their license to a biennial renewal. It would save the Board money because fewer resources and staff time would be utilized. The suggested fee schedule is listed on pages 4 and 5 of the bill. It appears that we are increasing the cap from \$500 per year to \$1,000, but the change will only reflect the new biennial renewal period. That is why the fee appears to have doubled although it is not increasing. At the top of page 5, there is a fee for verification and issuance of a certificate for good standing. The Board receives hundreds of annual requests from insurance companies and preferred providers for a letter verifying that a chiropractor is licensed and/or in good standing. We do not have a mechanism in place to charge for that service to recoup our costs.

We also have a lot of requests for continuing education course reviews. We do not have any mechanism to charge for that process, and the reviews are labor intensive and time-consuming. We are proposing a three-tier schedule of charges. The cap would be \$25, which the Board can waive, for chiropractic associations because many of these organizations use the reviews for fund raisers. For a certified chiropractic school or college, we propose a cap of \$200. The last level of charge would be for commercial organizations, which charge high fees for the courses, and make a lot of money administering them. Other states charge up to \$5,000, but we are requesting a cap of \$500 for those reviews.

The final portion of the bill is a proposal to amend Section 4, subsection 2. We would like to delete that language. The Board currently has to file an order with county recorders to certify a chiropractic license has been suspended or revoked. We are the only Board in the State that still has this provision in their statute. It is a time-consuming process, and does not seem to serve any purpose.

We have submitted for the record ([Exhibit D](#)) a copy of a letter from the Nevada Chiropractic Association to Governor Gibbons in support of the bill. I do not have a definitive answer from the Governor's Office, but their normal policy is to support a fee increase if the increase is supported by those who will bear the cost. If an industry pays the fee, an increase is considered more favorable by the Governor's Office. The fee increases at this level would be paid for by industry. I would be happy to answer any questions.

Chair Ocegüera:

Are there any questions?

Assemblywoman Gansert:

A lot of national organizations approve the courses and reviews for continuing education requirements in their specialties. Why is this Board doing the approvals?

Cindy Wade, Executive Director, Chiropractic Physicians' Board of Nevada:

There is a recently formed national organization instituted by the Federation of Chiropractic Licensing Boards for the purpose of meeting continuing education requirements. They have high fees, and we have not yet adopted their program. We prefer to keep the reviews and the approval of the CEs with our Board.

Susan Fisher:

This is an example of an organization that often charges up to \$5,000 for the CEs. If we maintain our program, we are able to keep the costs down for the licensees.

Cindy Wade:

There is an inconsistency in state requirements. Not all states have the same regulations that we require for approval of CEs.

Assemblywoman Gansert:

It surprises me that the chiropractic organizations have not been doing this for years. Most of the other professional medical associations do have tests that

are applicable on a national basis. Do you have people coming to you for continuing education approvals just for the State of Nevada?

Cindy Wade:

Yes, we do.

Assemblyman Settlemeyer:

I have a question on the fee schedule on page 5, lines 25-40. How many people a year come to you for these reviews? Some chiropractors may not be interested in teaching these courses in Nevada because of the higher fees.

Cindy Wade:

Right now we average between 250 to 300 seminar approvals yearly, and it is time-consuming for the Board to complete the reviews. It is doubtful that the frequency of these courses will be reduced by the increased fees. Las Vegas is a popular place for people to come and put on their seminars, and we are having more commercial entities coming to us for approval. We have a provision that a company in the industry can get the sponsorship of a seminar from a chiropractic college. Then the college submits the CEs to us for review. If the commercial entities come directly to us, they avoid paying the chiropractic college's sponsorship fees. With the fee increase, there would be little difference between what the commercial entities have been paying the chiropractic colleges, and what they would be paying us.

Assemblyman Settlemeyer:

The rest of the bill has merit. Perhaps some of the fee increases should be eliminated, so the bill itself is not jeopardized.

Assemblyman Mabey:

My question is on the written verification of licensure or issuance of a certificate of good standing. Is that a standard other boards use?

Cindy Wade:

Yes, they do.

Assemblyman Mabey:

Do other organizations, like the Medical Board, charge managed care organizations a fee for the certificate?

Cindy Wade:

I believe it is in their statute.

Susan Fisher:

I will verify that and get back to you.

Chair Ocegueda:

Are there any other questions?

Assemblyman Anderson:

On page 4, Section 3, line 34, why is there a fee increase for a chiropractor's assistant? Is that a person who has specialized training?

Cindy Wade:

We require certification of chiropractic assistants. They have to have 12 months schooling in X-ray and physiotherapy, or the equivalent of 6 months on-the-job training with a doctor who is responsible for their training and supervision. We also test the chiropractic assistants when their training is complete.

Assemblyman Anderson:

Is there a big turnover in chiropractic assistants? This fee seems high for the biennial renewal of a license.

Cindy Wade:

The \$200 biennial fee is a cap. By regulation, we currently charge a \$50 renewal fee. It would double to \$100 every two years. There is a turnover in chiropractic assistants. We are stringent in the training and enforcement of regulations. If chiropractic assistants fail the test twice, they have to go through a training program approved by the Board. However, we are reducing the turnover.

Assemblyman Anderson:

I was thinking of the position as an entry-level occupation. A \$200 fee seems substantial for a job that a person would be locked into for two years. I am concerned about that.

Chair Ocegueda:

Are there other questions? Are there others in favor? Is there anyone wishing to speak in opposition? Is there anyone speaking from a neutral position? Seeing none, I am closing the hearing on S.B. 19 (R1), and re-opening the hearing on S.B. 410 (R1).

Alan Kaplan, Private Citizen, Las Vegas, Nevada:

I have submitted a packet of briefing materials for the record ([Exhibit E](#)). This bill recognizes the fact that computers have become a way of life. The

Supreme Court of the United States has told lawyers to handle computer forensic discovery early in a case, and to do it properly. Lawyers are becoming more involved in computer forensics, and a lawyer that does retrieve computer data germane to a case may be guilty of malpractice. The information on a computer can be subpoenaed by the courts, or it can be used to help in a legal or administrative matter. Who can go into a computer and look at its contents? We have people who are skilled and trained in data retrieval. It is private information, and some of the material may not be relevant to a particular issue. We want people who are doing the retrieval to be trustworthy, competent, and honest. It is an important area, and the public needs to be protected. We need to recruit people for data retrieval who will submit to a full background investigation, licensing, and competency checking.

Nevada is first to request a Computer Forensic Examiner (CFE) license. Other states have substituted people who have a private investigator's license, and that is what Nevada is doing today. It does not work. The CFEs are information age technicians that this State needs. This bill would place CFEs under the scrutiny of the Private Investigator's Licensing Board (PILB). Not only will this bill permit practical certification of CFEs, but also it will sharply delineate the differences between Private Investigators (PIs) and CFEs. I will answer any questions.

Assemblyman Anderson:

Have you discussed this issue with the Attorney General's Cyber Crime Task Force? If it was discussed, did they agree that this was an issue they felt needed to be addressed?

Alan Kaplan:

Yes, what you asked is partially true. We met with two gentlemen from the Task Force in Carson City. The result of that conference is the bill you have before you.

Chair Ocegueda:

Are there other questions? Are there others in favor?

Mike Kirkman, Vice President, Nevada Society of Professional Investigators:

This bill was brought before our membership and the PILB. It was fully supported by both groups, and it will protect the public.

Assemblyman Settlemeyer:

Would this licensing requirement restrict the ability of qualified computer experts to practice in this field? Will this requirement deter highly-skilled individuals from assisting law enforcement?

Alan Kaplan:

The scope of this bill does not cover law enforcement, nor does it cover employees of other entities. For example, if the MGM Mirage has computer examiner experts on their payroll, they would not be covered by this bill. The only people covered in this bill are independent contractors. There is no restriction on law enforcement to call in computer forensic experts for consultations.

Chair Oceguera:

Is there anyone wishing to testify in opposition to this bill?

Ira Victor, Sierra Nevada InfraGard:

I am a computer security specialist working out of Reno. I have multiple certifications in computer security. Sierra Nevada InfraGard is a public/private partnership among the Federal Bureau of Investigation (FBI), local law enforcement groups, and local security experts. We are the largest information security organization in northern Nevada. I have submitted a copy of my testimony for the record ([Exhibit F](#)).

Our organization is strongly opposed to this bill. There is currently a severe shortage of computer security professionals in Nevada. There is a small pool of computer specialists in Nevada who can do this work, and they were shocked to learn that a bill of this nature was even being considered. There is a procedure already in place to vet them through the court systems. Mr. James Elste, the State Chief Information Security Officer, who could not be here today, has testified in opposition to this bill, even with the new amendments.

The shortage of computer security professionals is nationwide. Recently, I was hired by two major Nevada law firms that were on opposing sides of the same case. I was hired to do evidence recovery from six hard drives that were an issue of dispute. It seemed unorthodox for opposing law firms in the same case to share an expert. The lawyer who first contacted me told me they could not find any other experts in the State or nationwide who were available any sooner than three months hence. So, they mutually agreed to hire me.

I picked up the *Wall Street Journal* on my way here to testify. [Mr. Victor held the paper up for the Committee to see.] As you can see, the front page article is a story of a man who deleted information on his computer that could affect the pensions of millions of people. He was involved in Security Exchange Commission (SEC) fraud. It is necessary for law enforcement to determine if people are engaged in computer information actions that can result in a civil or a criminal wrongdoing. By restricting the number of people who can do the

computer investigations, we will potentially raise the cost of litigation, and perhaps put innocent people in jail.

Nevada businesses and Nevada citizens have not yet begun to feel the effect of a large and growing number of laws and regulations that could, in the near future, cause them to face fines, lawsuits, and even jail time. There is also a possibility that if this bill passes the work will be sent out of State because other states, as Mr. Kaplan pointed out, do not have this type of law. That action could hurt someone in Nevada who might be capable and qualified by the court standards to do a computer data investigation. Cyber crime and identity theft is running rampant. In one case alone, T. J. Max Marshalls had the identities of nearly 50 million people stolen. We do not want to limit the number of experts that law enforcement and civil litigators have available to them.

At the Senate hearing on this bill, Mr. Elste testified to the lack of a coherent standard in computer forensics. There is no definition of a computer forensic examiner in the bill. Even the industry is working on an acceptable definition and standard for computer forensics. It could be injurious at this point for the State to license or certify people for a standard that has not yet been determined. I understand how Senator Carlton and Mr. Kaplan are well-meaning in trying to prevent confidential information from becoming available to computer data retrieval experts. It is important, but we already have the means to do that. For example, anyone can join the FBI InfraGard system free of charge. As a member, a person completes a FBI background check. That process does not cost a computer expert any money. Sierra Nevada InfraGard is working on an education project, and we would welcome Senator Carlton or Mr. Kaplan to work with us to educate people on how to protect their computer data. I just found out that there is an opposition petition being circulated by the Information Technology departments of some major companies in Nevada because of their concerns over this bill. I urge you to vote "no" on this bill.

Assemblyman Horne:

I would like some clarity. You stated in your testimony that requiring licensing of computer forensic examiners would be restrictive because there are already qualified experts in the field in Nevada. However, you said there is a shortage of experts in Nevada and people would hire experts from outside of the State, which implies we do not have them here. You also indicated that experts such as yourself could not qualify for licensing if we had a licensing standard. Have you spoken with Senator Carlton and Mr. Kaplan about creating a licensing standard?

Ira Victor:

There are people currently working in the profession who could meet the licensing requirements proposed in this bill. This bill only covers one area of computer forensics. If there is a license requirement for only one portion of an investigation, experts would simply not do that type of work, but continue to perform all the other kinds. There are people in the profession who "moonlight." They have a full-time day job, but do this work in their off-hours. They do not need to get a license because there is so much work out there. It will restrict the amount of people available to do this work. There is another organization called the Sands Institute, which operates nationwide, that is working on developing a standard of practice for this field.

Chair Oceguera:

Did you voice your concerns on the Senate side?

Ira Victor:

Yes, I did voice my concerns although, at the time, I represented myself because we did not have time to have an InfraGard meeting.

Assemblywoman Gansert:

What process are the courts currently using to identify qualified computer forensic experts?

Ira Victor:

I am not an attorney, so I will relate my experience anecdotally. I have to go through a process of being vetted by the courts before anything I do is accepted into evidence. The first part of that process is being vetted by an attorney. He wants someone who is qualified to ensure that his information will stand up to the scrutiny of the court. There is so much at stake that only qualified individuals do this kind of work. If the issue is getting access to confidential information and that is Mr. Kaplan's concern, I would urge that this bill not be passed because we need as many people as possible in the field to help keep this type of information confidential. This bill would have the opposite of its intended effect.

Assemblywoman Gansert:

You mentioned that you hold a number of certifications. Do you have the Certified Computer Examiner certification through the International Society of Forensic Computer Examiners mentioned in this bill? Is that a common certification? Are there others?

Ira Victor:

There are many others. That is not a certification that I have. The others are parallel to that certification. The first draft of the bill suggested using a certain vendor to process the certification. The language is now vague about what the Board will and will not accept as certification. Would it be a certain vendor, would it be done using software, or would designated independent bodies be doing the certification process? There are a number of independent bodies that train people in the field of computer forensics.

Chair Ocegüera:

Are there other questions? Are there others opposed to the bill? I do not see any. Senator Carlton, do you have any closing comments?

Senator Carlton:

I will try and answer a few of the concerns expressed. Mr. Elste and the other gentleman mentioned earlier were the people present at the conference. We discussed this bill for about an hour, and it was my impression that the language in this bill was agreed to by all the parties in attendance. I was surprised to hear that Mr. Elste is uncomfortable with this bill. I would have assumed that he would have contacted me if he had a problem. If there are still problems, I would be happy to work on them. We tried to come up with the best definition we could for a computer forensic examiner under Section 1. I do not see the requirements for certification as being overly onerous. We are here to protect the public, and if this information is going to be looked at and used in legal proceedings, we want to make sure that the people looking at it are qualified. I have not heard of InfraGard until today. I feel comfortable with the work that we have done on this bill. I knew of Mr. Victor's opposition, but I was unaware of some of the other information until today.

Chair Ocegüera:

Are there any questions for Senator Carlton? Seeing none, I am closing the hearing on S.B. 410 (R1), and opening the hearing on Senate Bill 159 (1st Reprint).

[Senate Bill 159 \(1st Reprint\)](#): Revises provisions governing collection agencies. (BDR 54-541)

John P. Sande, IV, representing the Nevada Collectors Association:

This bill will correct some of the changes that were made in the last session. The law now has three categories for licensing collection agencies. There is a regular license, a certificate of registration, and an exemption for foreign collection agencies. We have found that out-of-state collection agencies have been able to come into the State under an exemption, and go unnoticed by the

Division of Financial Institutions. They have been able to solicit business within the State. Some states do not have collection agency licensing requirements, so it is hard for Nevada collection agencies to compete in pricing. There is a significant cost in meeting the Nevada licensing requirements.

We propose deleting Section 1, subsection 2, which is the foreign exemption, and move to a system that only has two types of licenses. One will be the regular license, and the other will be the certificate of registration for foreign collection agencies, or out-of-state collection agencies. The Division of Financial Institutions' certificate of registration will allow limited activities in this State by out-of-state collection agencies. The full license requirements and those for the certificate of registration are similar. The bill does promote the licensing of all collection agencies, which is in everyone's best interests. It would give the Division of Financial Institutions a contact person within a collection agency, and permit them to enforce the regulations that a collection agency is required to follow in this State.

The bill does promote consumer and debtor protection for Nevadans. If we allow foreign collection agencies to work here on an exempt basis, there is no authority or regulations governing their activities. With this bill, if a consumer has a complaint, he can call the Division of Financial Institutions. The Division will have a contact person within the collection agency. It will level the playing field for all collection agencies. It is unfair for Nevada collection agencies to have to meet certain requirements that other collection agencies do not have.

At the Senate hearing some amendments were made to the bill. One concern was the physical presence requirement. In the first version of the bill, a collection agency was required to maintain a presence in the State with an office. We compromised by having a collection agency maintain an office, but it does not have to be within the State. The other issue was some due process concerns with foreign collection agencies that are currently operating under an exempt basis. We agreed to stagger the implementation of the bill by having Sections 1.5 and 2 become effective upon passage of the bill, which would prohibit new foreign collection agencies from obtaining an exemption. It would delay the implementation of Section 1 until January 1, 2008 to allow the foreign collection agencies time to get a certificate of registration, or a regular license.

The final portion that was amended is in Section 2, subsection 2 (2) on lines 28-31. We included language that says, "...unless the bid, proposal or invitation is for the collection of claims owed by residents of another state." This language was for clarification purposes. A foreign collection agency collecting an out-of-state debt does not need to maintain a certificate of

registration. There was some discussion about the word "primarily" in the original bill language because it would create an enforcement issue. The word "primarily" made the clause in the bill ambiguous, and it would require litigation to determine what the true meaning of "primarily" was. I will answer any questions.

Assemblywoman Kirkpatrick:

I have a question on Section 2, subsection 2 (2). One of my constituents had a problem with an out-of-state collection agency, and we approached the Attorney General's Office for remediation. They told us there was nothing they could do because the collection agency was from out-of-state. How would this section's language help the consumer? It would help the debt collector. Is that correct?

John Sande, IV:

If considered in its entirety, the bill would help your constituent because the debtor is located in Nevada. The agency would have to become licensed in this State.

Assemblywoman Kirkpatrick:

I do not see that in the bill. On page 3, line 3, the language says, "...or one or more offices in another state...." Where are you reading your interpretation of the language?

John Sande, IV:

That language deals with the certificate of registration for the foreign collection agencies, which limits their activities. The language in Section 2, subsection 2 (2) states the foreign collection agencies are going to certify that they are not soliciting Nevada creditors to do their debt collection for them. In order to do that, they would have to obtain a regular license.

Assemblyman Horne:

Section 2, subsection 2 (2) is a prohibition stating what a foreign collection agency shall not do. It says the "collection of claims owed by residents of another state." Why would a collection agency come to Nevada to collect a debt from a person who is not a resident of this State?

John Sande, IV:

The language is to cover foreign collection agencies coming to Nevada and soliciting a Nevada collection agency to collect a debt on their behalf. If they want to do that, they have to have a regular license.

Assemblyman Horne:

If the people who owe money are not residents of the State, a foreign collection agency can come and collect the debt here. Is that correct?

John Sande, IV:

That is correct.

Chair Oceguera:

Are there other questions?

Mendy K. Elliott, Director, Department of Business and Industry:

I am just here for clarification if required.

Chair Oceguera:

Are there others wishing to testify in favor?

Randy Robison, representing the Nevada Credit Union League:

We support the bill as amended.

Marel Giolito, Owner, Credit Bureau Central, and President, Nevada Collectors Association:

I want to clarify the difference between a certificate of registration and a regular license since there is still confusion. A certificate of registration is for a foreign collection agency that is attempting to collect a debt for its own state's creditors. The debtor may have moved to Nevada. A regular license would be required for all other collection agencies. Another concession made in this amended version of the bill was to remove the requirement for an in-state office for out-of-state agencies that wish to be licensed in Nevada. It would allow the collection from a remote office location. This bill will improve protection for consumers. With this bill, a consumer can go to the Division of Financial Institutions and file a complaint, and have his complaint processed because the Division will be able to identify the collection agency. This bill will also increase funds coming into the State. I just renewed my own company's license for \$375. We are also licensed in Arizona, which is very restrictive, and that license costs \$600 annually. Nevada licensing is less rigorous.

Chair Oceguera:

Are there any questions? Are there others in favor? Is there anyone opposed to the bill?

John P. Wanderer, Private Citizen, Las Vegas, Nevada:

I testified on this bill at the Senate hearing. I raised two concerns I had with the bill, and I tried to work with Mr. Sande to resolve them. One issue is the need

for a transition period because the State has issued over 100 exemptions to collection agencies. I was concerned that these agencies were being cut-off with no input. Also, the bill will make it difficult for them to take any action to fulfill any contractual arrangements that they had made with Nevada creditors. Southern Nevada has approximately 24 national call centers. Companies, such as Ford Motor Credit, Household Bank, and Emerson Electric, are nationwide creditors. This bill will adversely impact them.

During my discussions with Mr. Sande about the transition period, it was his choice that the effective date for this legislation be the 2008 date. I submitted language to require the Division of Financial Institutions to notify those companies with exemptions, and advise them that their license would not be renewed. I also requested a 90 day period for them to apply for a certificate of foreign registration, or a regular agency license. In addition, they would be allowed to continue to do business under their exemption if they had filed for licensing, and until such time as their license was either approved or rejected. I asked for this provision because I was told that licensing had to be vetted through the FBI, and there was no way to estimate how long it would take to complete the process. Mr. Sande said that proposal could be handled through regulation.

Another issue I had was with the certificate of foreign registration. This bill recognizes that an out-of-state business can conduct business in Nevada under interstate commerce provisions. However, in Section 2, subsection 2 (2), the language is designed to be anti-competitive. Nevada collection agencies do not want to compete with out-of-state ones. What if a foreign collection agency wants to respond to a bid or proposal from Ford Motor Company to collect claims held primarily by creditors outside of the State? Mr. Sande refused to use the word, "primarily" in the language of the bill.

In its current version, this bill is a disaster. It should be rejected. This is not a bill that originated with the Division of Financial Institutions. If they had problems with foreign collection agencies and complaints from consumers, they would have tried to correct the problems with legislation. This bill has been put forth by private enterprises that want to keep other collection agencies out of the State. The Division can already contact the foreign collection agencies because that information is on their letter of exemption. Lawyers from other states often send letters or call across state lines on behalf of their clients. That activity is circumscribed by this bill. Lawyers are exempt from licensing in Nevada as a collection agency if they are a licensed Nevada attorney. The only requirement different for obtaining a certificate of foreign registration is the applicant does not have to maintain a physical office in the State. All the other

requirements that a regular license has apply to the certificate of foreign registration.

Chair Oceguera:

I apologize for interrupting. We try and keep time allotted for testimony even between the proponents and the opponents of the bill. Can you summarize the rest of your testimony for us?

John Wanderer:

There are a couple of more points I need to make. The requirement for maintaining an office is under the requirements for full licensing in the State, but a collection agency can get licensed in Nevada without maintaining an office in the State. That is not what the proponents intended, but it is in the bill. I will answer any questions.

Chair Oceguera:

Are there any questions? Are there others wishing to testify in opposition?

Jan Steger, Executive Director, California Association of Collectors and the Association of Credit and Collection Professionals International:

We are supportive of the amendment that eliminates the in-state office requirement for fully licensed collection agencies located out-of-state. However, we strongly oppose the elimination of the certificate of exemption. The certificate of exemption plays an important role for out-of-state collection agencies. They are registered with the Division of Financial Institutions, and their collection activity in the State is limited. If an out-of-state debtor moves to Nevada, the collection agency will be unable to communicate with that debtor. The certificate of exemption gives the Division all the contact information. It is too much of a burden to require a collection agency to obtain a foreign license just to contact a Nevada debtor. All collection agencies in the United States are governed by the Federal Debt Collection Practices Act (FDCPA) and the Foreign Contribution Regulation Act (FCRA), and monitored by the Federal Trade Commission (FTC).

The certificate of foreign registration places undue restrictions on out-of-state collection agencies. Contacting a debtor should not require an agency to maintain a \$35,000 bond and trust accounting, which is done to protect the creditor. We request that Section 1, subsection 2 be retained in the bill. If that was done, we would be in full support of the bill.

Chair Oceguera:

Are there any questions? I see none. Mr. Sande, it looks like you have some work to do. Are there others wishing to testify in support or opposition to the bill?

Marel Giolito:

I would like to speak to Mr. Wanderer's accusation about our motivation for bringing this bill forward. It was brought forward by private businesses at the request of the former Commissioner of the Division of Financial Institutions. The foreign certificates of registration were added last session by someone else. Our organizations had nothing to do with them. We have no preference whether foreign certificates or exemptions are removed. Mr. Wanderer is an attorney, so he is not required to have a Nevada collection agency license. However, he collects commercial debts, so I am not sure what his motivation is.

John Sande, IV:

The purpose of the certificate of foreign registration has been mischaracterized. The certificate is for out-of-state collection agencies that already have creditors out-of-state that need to collect debts in Nevada. What they cannot do is come to Nevada and solicit bids from Nevada creditors or respond to bids from Nevada creditors. If they want to do that, they need to apply for a regular license. It does not impose any undue burdens on companies engaged in interstate commerce. Attorneys have to be licensed in the state where they do business. The State is trying to protect its citizens. By having the certificate of foreign registration available, we are trying to minimize the negative impact on foreign collection agencies. The State could require everyone to be fully licensed, and maybe it would be justified in doing so. I will answer any questions.

Chair Ocegüera:

Are there any questions? Seeing none, I am closing the hearing on S.B. 159 (R1). There will be no hearing on this Friday because Ways and Means has a heavy schedule of bills to hear.

[The meeting was adjourned at 3:17 p.m.)

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblyman John Ocegüera, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 25, 2007

Time of Meeting: 1:42 p.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|--|--------------------|
| | A | | Agenda |
| | B | | Attendance Roster |
| SB 227 | C | Amy Oddo, Medical Education and Research Institute of Nevada | Testimony |
| SB 19 (R1) | D | Cindy Wade, Chiropractic Physicians' Board of Nevada | Letter of Support |
| SB 410 (R1) | E | Alan Kaplan, Private Citizen | Testimony |
| SB 410 (R1) | F | Ira Victor, Sierra Nevada InfraGard | Testimony |