

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

**Seventy-fifth Session
May 15, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 2:24 p.m. on Friday, May 15, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Warren B. Hardy II

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegueda, Assembly District No. 16
Assemblyman James Ohrenschall, Assembly District No. 12
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Carol Allen, Committee Secretary

OTHERS PRESENT:

Jon L. Sasser, Washoe Legal Services, Washoe County Senior Law Project

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Samuel P. McMullen, Las Vegas Chamber of Commerce
Scott J. Kipper, Commissioner of Insurance, Division of Insurance, Department
of Business and Industry
Michael H. Phillips, Manufactured Home Community Owners' Association

Chair Maggie Carlton opened the work session with Assembly Bill (A.B.) 152.

ASSEMBLY BILL 152 (1st Reprint): Makes various changes concerning mortgage lending and related professions. (BDR 54-787)

Senator Copenig presented a mock-up of proposed amendment 4727 to A.B. 152 (Exhibit C) to address the differences between a loan modification consultant and a foreclosure consultant, including their licensing regulations, payment of fees, and provisions allowing the commissioner of mortgage lending to levy fees and conduct investigations. She said she had worked on the proposed amendment with Assemblyman Conklin; Daniel Yu, Assembly Committee Counsel; Mandy Peacock, AAA Home Rescuers and Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry, to present acceptable language for A.B. 152 to the Committee. Senator Copenig reviewed the 90-day time line for adoption of A.B. 152 regulations.

Chair Carlton had concerns that the 90-day time line might not be enough time for adoption of the regulations. Daniel Peinado, Committee Counsel, said he believed the term "adopt" referred to the act of adopting the regulations by the Division of Mortgage Lending, and then formal acceptance by legislation would be a separate act. Chair Carlton cautioned to reference the term "adopt" to the Division. Then the acceptance and processing of the regulations by the Legislative Counsel Bureau and the Division could be outside the 90-day time frame.

Senator Parks asked if the new regulations would include education and training for foreclosure consultants and loan modification consultants. Senator Copenig answered eventually education and training could be included in the regulations; it would be up to the Commissioner to determine at a later date. She said this bill only required that the regulations be in place within 90 days, not that professional licenses be in place within 90 days.

Chair Carlton called for a vote on A.B. 152.

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SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 152.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE
VOTE.)

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Chair Carlton recalled how the Committee had processed A.B. 208 with an amendment the previous week. She said, as amended, it was causing some problems, and she wanted to rescind the action. She called for a motion on A.B. 208.

ASSEMBLY BILL 208 (1st Reprint): Revises provisions governing certification of crane operators. (BDR 53-114)

SENATOR HARDY MOVED TO RESCIND THE PREVIOUS ACTION TAKEN
ON A.B. 208.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE
VOTE.)

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SENATOR HARDY MOVED TO DO PASS A.B. 208.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE
VOTE.)

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Chair Carlton opened the work session on A.B. 10.

ASSEMBLY BILL 10 (2nd Reprint): Makes various changes concerning certain health care professionals who report certain information to licensing boards or other governmental entities or who cooperate in investigations of certain health care professionals. (BDR 40-219)

Senator Hardy said he was not up to date on the bill and was going to abstain from voting on A.B. 10.

SENATOR COPENING MOVED TO DO PASS A.B. 10.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY ABSTAINED FROM THE VOTE. SENATOR RHOADS WAS ABSENT FOR THE VOTE.)

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Chair Carlton opened the work session on A.B. 22.

ASSEMBLY BILL 22 (1st Reprint): Revises provisions relating to certain trade practices. (BDR 52-428)

Chair Carlton introduced an amendment from Jason Firth, International Trademark Association (Exhibit D, original is on file in the Research Library).

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 22.

SENATOR PARKS SECONDED THE MOTION.

Senator Copening asked for clarification of the amendment. Chair Carlton said it was a modernization of Nevada's trademark law. Senator Copening suggested amending section 1, subsection 2, paragraph (b) of A.B. 22, to remove the wording "was technical in nature."

Senator Parks said the bill had been so significantly amended that it no longer refers to *Nevada Revised Statutes* (NRS) chapter 598; it now starts with chapter 600. Chair Carlton replied it was a supplemental amendment, in addition to the bill. She said it was not encapsulated, it was separate. Senator Hardy

requested Mr. Sasser give his opinion on removing the wording, "was technical in nature," to the Committee.

Jon L. Sasser, Washoe Legal Services, Washoe County Senior Law Project, explained that the bill currently reads that if a consumer wins an action pursuant to NRS chapter 598, and is seeking statutory damages, then the defendant can assert an affirmative defense as to why the defendant should not pay the statutory damages. He said the defendant would have to meet three tests in order to avoid having to pay those statutory damages: (1) it was not technical, (2) it was not intentional and (3) it was a result of a bona fide error. He further explained that some deceptive trade practices are not really technical in nature, and this amendment makes the defense easier to raise because you do not have to meet all three requirements.

Samuel P. McMullen, Las Vegas Chamber of Commerce, said A.B. 22 puts the burden of proof on the business to prove its deceptive trade practice was not intentional and that it resulted from a bona fide error. He suggested bona fide errors could mean clerical errors, calculation errors, computer malfunctions, etc. He noted the removal of the wording, "was technical in nature," would not have much affect on the intent of bill.

SENATOR HARDY WITHDREW HIS MOTION TO AMEND AND DO PASS
A.B. 22.

SENATOR PARKS WITHDREW HIS SECOND.

Senator Hardy said he supported the modernization aspect of the bill, but he did not support the additional burden that section 1 puts on businesses.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 22.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY VOTED NO.
SENATOR RHOADS WAS ABSENT FOR THE VOTE.)

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Senator Schneider said he reserved the right to change his vote on the Senate Floor. Chair Carlton opened the hearing on A.B. 84.

ASSEMBLY BILL 84 (1st Reprint): Revises provisions governing unemployment compensation. (BDR 53-546)

Chair Carlton submitted a proposed amendment to A.B. 84 on behalf of Josh Griffin and the MGM Mirage ([Exhibit E](#)).

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 84.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE VOTE.)

Chair Carlton opened the work session on A.B. 140 with a proposed amendment to A.B. 140 from Karen Dennison, American Resort Development Association ([Exhibit F](#)) and a proposed amendment from Assemblyman Marcus Conklin ([Exhibit G](#), original is on file in the Research Library).

ASSEMBLY BILL 140 (1st Reprint): Makes various changes to provisions relating to foreclosures of real property. (BDR 2-228)

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 140.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE VOTE.)

Chair Carlton opened the work session on A.B. 202 by submitting proposed Amendment 5041, which was sponsored by her ([Exhibit H](#)).

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ASSEMBLY BILL 202 (1st Reprint): Makes various changes concerning the State Board of Cosmetology. (BDR 54-681)

Chair Carlton explained her amendment would eliminate threading from licensure and leave in the required four hour educational class on infection control, but not the continuing education for cosmetologist.

Senator Hardy said he wished to disclose he had two cosmetologists in his immediate family, but it would not affect his voting on the bill.

Senator Copening voiced her concern for leaving regulated threading out of the amendment. Chair Carlton agreed that people practicing threading should be regulated, but not be required to obtain a full cosmetologist license, requiring two years of education. Senator Parks said he was reluctant to remove the threading provision from A.B. 202.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 202.

SENATOR COPENING SECONDED THE MOTION.

Senator Parks advised he would support the amendment, but reserved the right to change his vote on the Senate Floor. Chair Carlton suggested the Committee take more time to deliberate the issue.

SENATOR SCHNEIDER WITHDREW HIS MOTION TO AMEND AND DO PASS A.B. 202.

SENATOR COPENING WITHDREW HER SECOND.

Chair Carlton opened the work session on A.B. 215.

ASSEMBLY BILL 215 (1st Reprint): Requires a contractor or an applicant for an original or a renewal of a contractor's license to obtain and maintain certain liability insurance. (BDR 54-893)

Daniel Peinado, Committee Counsel, reviewed proposed amendment 4919 (Exhibit I) and proposed amendment 5040 to A.B. 215 for the Committee (Exhibit J). He said the intent was to permit contractors and applicants for

contractors' licenses to satisfy the liability insurance requirement through a self-insurance mechanism. He said the amendment also sets liability limits for self-insurance.

Assemblyman John Ocegüera, Assembly District No. 16, indicated that in order to make the requirement of mandatory insurance work for contractors, they needed to include wrap-insurance and self-insurance. The State Contractors' Board could consult with the Division of Insurance, Department of Business and Industry, to verify a business's assets were sufficient for self-insurance.

Senator Copening asked for clarification on the first page of his amendment in section 1, subsection 1, regarding proof of insurance against claims for injury from "products and completed operations." Assemblyman Ocegüera replied it referred to an end product, not each of the products used to put something together.

Senator Hardy announced he would be abstaining from voting on A.B. 215, because it impacts his industry. He pointed out the requirement to insure will force some contractors to purchase insurance, even when they have nothing tangible to insure.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 215.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY ABSTAINED FROM THE VOTE. SENATOR RHOADS WAS ABSENT FOR THE VOTE.)

Chair Carlton opened the work session on A.B. 314 and introduced an amendment submitted by the Board of Dental Examiners of Nevada ([Exhibit K](#)).

ASSEMBLY BILL 314 (1st Reprint): Makes various changes to provisions governing the practice of dentistry. (BDR 54-878)

Senator Hardy disclosed his brother-in-law is a dentist but that will not affect his vote on the bill.

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SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 314.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Carlton opened the work session on A.B. 513. She said they will exclude the construction control account from the bill.

ASSEMBLY BILL 513 (1st Reprint): Makes various changes to provisions governing licensing of escrow agencies and mortgage brokers, agents and bankers. (BDR 54-1136)

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 513.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Carlton opened the work session on A.B. 95.

ASSEMBLY BILL 95 (1st Reprint): Revises certain provisions concerning the investigation and prosecution of unfair trade practices. (BDR 52-268)

Senator Schneider identified A.B. 95 as a controversial issue with the business community. He said the Office of the Attorney General proposed a verbal amendment to remove everything in the bill except section 1.5.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS
AMENDED A.B. 95.

SENATOR PARKS SECONDED THE MOTION.

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Senator Hardy said he was uncertain as to how far-reaching the impact of the bill is, so he wanted to go on the record as not voting until he has time to study the issues, and then he will vote on the Senate Floor.

THE MOTION CARRIED. (SENATOR HARDY ABSTAINED FROM THE VOTE. SENATOR RHOADS VOTED NO.)

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Chair Carlton opened the work session on A.B. 381.

ASSEMBLY BILL 381: Revises various provisions relating to arbitration. (BDR 52-931)

Assemblyman Tick Segerblom, Assembly District No. 9, said the insurance provisions, section 20 through section 25, were being removed from the bill.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED A.B. 381.

SENATOR PARKS SECONDED THE MOTION.

Senator Hardy advised he would not vote until he has time to study the bill.

THE MOTION CARRIED. (SENATOR HARDY ABSTAINED FROM THE VOTE. SENATOR SCHNEIDER VOTED NO.)

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Senator Schneider said he was reserving the right to change his vote on the Senate Floor.

Chair Carlton opened the work session on A.B. 224.

ASSEMBLY BILL 224 (1st Reprint): Revises provisions relating to unfair practices in settling insurance claims. (BDR 57-923)

Chair Carlton said there was a verbal amendment to this bill proposing a deletion of section 2, removing the provision that has the addition of the recovery of reasonable attorney's fees.

Senator Copening asked if the commissioner of insurance could appear before the Committee. She was questioning whether section 1, subsection 1, paragraph (q) of the bill amending NRS 686A.310 was not already in statute, but not being enforced. She read the paragraph: "Except for claims involving a policy of health insurance, denying the payment of any amount due pursuant to a provision of first-party coverage under an insurance policy if that amount is not in dispute."

Scott J. Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry, replied NRS 686A.310 says that claims are to be paid fairly, but it does not address the issues around Senator Copening's question about whether the carrier is to pay those claims that are not in dispute.

Chair Carlton pointed out the bill deals with undisputed amounts. Senator Copening interpreted the "undisputed amount" to mean what the insurance company believes is a fair offer. She asked if that was correct.

Mr. Kipper explained section 1, subsection 1, paragraph (e) of NRS 686A.310 refers to a fair and equitable settlement. He said he understood that a consumer might not agree with an insurance company on what was considered to be a fair offer and therein lies the problem.

Chair Carlton pointed out the amendment to the bill is to take out the attorney fees. Senator Hardy reasoned this was government intrusion and he would not support it.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 224.

Mr. Peinado asked if the Committee were deleting subsection 2, or the new language from subsection 2 that referenced attorney's fees. Chair Carlton said it was the new language referring to attorney's fees.

THE MOTION FAILED FOR LACK OF A SECOND.

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Chair Carlton opened the work session on A.B. 281.

ASSEMBLY BILL 281 (1st Reprint): Makes various changes concerning workers' compensation. (BDR 53-57)

Senator Schneider reported a discussion with Assemblyman Marcus Conklin about A.B. 281. Assemblyman Conklin asked Senator Schneider to amend A.B. 24, which has already passed through Committee, and to amend it into A.B. 281, where it will be addressed in the Assembly.

ASSEMBLY BILL 24 (2nd Reprint): Revises provisions governing claims for compensation under industrial insurance. (BDR 53-423)

Kelly S. Gregory, Committee Policy Analyst, said the Senate passed A.B. 24 on May 12, and it is currently in transmission to the Assembly.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 281.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE VOTE.)

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Chair Carlton reopened the work session on A.B. 202.

Senator Parks restated that he preferred not to delete threading from licensure, but would not hold up the vote. Chair Carlton wanted it on the record that threading was not being carved out of the bill, it was just not included in future licensure.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 202.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE VOTE.)

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Chair Carlton opened the work session on A.B. 454.

ASSEMBLY BILL 454 (1st Reprint): Revises certain provisions relating to housing. (BDR 10-839)

Assemblyman James Ohrenschall, Assembly District No. 12, submitted his proposed amendment 4995 to A.B. 454 ([Exhibit L](#)). He asked to delete section 6 of the bill which amends NRS 40.380, dealing with the appeal bond and retain section 5, clarifying existing law as to when a tenant in a mobile home park can be evicted.

Chair Carlton read section 5, subsection 1, of the bill amending NRS 118B.200 which listed the grounds for termination. Assemblyman Ohrenschall said that according to a Legislative Counsel Bureau opinion Assemblywoman Barbara E. Buckley had asked for a few years ago, this provision was what was considered to be grounds for eviction. He said there have been two justice court decisions that have conflicted with that opinion, and this bill will clarify Nevada's stand on the issue; it does not change existing law, it reinforces it.

Senator Hardy asked if there had been an interpretation that a tenant had to commit all of the violations before they could be evicted. Jon L. Sasser, Washoe Legal Services; Washoe County Senior Law Project, said that despite the long-standing belief by everyone that a tenant could only be evicted with cause, a couple of justice courts said if a landlord just gave 45-days' notice to vacate, without the tenant having done any of the listed violations, the tenant could be evicted. He said the new language of the bill will clarify that a tenant must be guilty of one or more of the rental agreement violations and that the important language is the "or service of a notice". He said just giving the 45-days' notice is not enough to justify eviction.

Senator Hardy inquired how the mobile home park owners viewed the bill and the amendment. Michael H. Phillips, Manufactured Home Community Owners'

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Association, said he has not been able to contact his clients. Senator Hardy said he thinks it is clarifying language. Chair Carlton said she believed any opposition to the bill was actually being deleted in the amendment.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 454.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS WAS ABSENT FOR THE
VOTE. CHAIR CARLTON ABSTAINED FROM THE VOTE.)

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There being no further business, the meeting of the Senate Committee on
Commerce and Labor was adjourned at 4:10 p.m.

RESPECTFULLY SUBMITTED:

Carol Allen,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____