

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

**Seventy-Seventh Session
April 29, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:39 p.m. on Monday, April 29, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman James Healey, Assembly District No. 35
Assemblyman Michael Sprinkle, Senatorial District No. 30

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wayne Archer, Committee Secretary

OTHERS PRESENT:

Mike Kirkman, Nevada Society of Professional Investigators
Kevin Ingram, Executive Director, Private Investigator's Licensing Board
Robert "Bobby G" Gronauer, Bobby G & Associates, LLC
John Arrascada, Nevada Justice Association
Brad Spires, Nevada Association of Realtors

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Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry

Keith Lee, State Contractors' Board

David Brown, Esq., General Counsel, State Contractors' Board

Margi A. Grein, Executive Officer, State Contractors' Board

Jack Snyder, Investigator, State Contractor's Board

Frank Horvath

Rebecca Horvath

Darren Troy Winkel, Plumbing, Heating and Cooling Contractors of Nevada

Craig Madole, Associated General Contractors of America, Inc. Nevada Chapter

Jack Mallory, International Union of Painters and Allied Trades, District
Council 15

Donald Jayne, Administrator, Division of Industrial Relations, Department of
Business and Industry

Rusty McAllister, Professional Firefighters of Nevada

Patrick T. Sanderson, Laborers International Union Local 872

D. Eric Spratley, Washoe County Sheriff's Office

John Slaughter, Washoe County

Bob Roshak, Nevada Sheriffs' and Chiefs' Association

Chuck Callaway, Las Vegas Metropolitan Police Department

Yolanda King, Clark County

Chair Atkinson:

I will open the hearing on Assembly Bill (A.B.) 306.

ASSEMBLY BILL 306 (1st Reprint): Revises provisions relating to private
investigators and related professions. (BDR 54-677)

Mike Kirkman (Nevada Society of Professional Investigators):

I am Vice President of the Nevada Society of Professional Investigators. I own Las Vegas Detectives, LLC, and I am licensed as a private investigator in Nevada and California. I support A.B. 306 because it will require all investigative work conducted in Nevada to be supervised by a licensed private investigator. Further, all employees working for a private investigator will be required to register with the Private Investigator's Licensing Board. Although a private investigator's employees are required to register with the Board, many do not register.

Assembly Bill 306 also requires private investigators to maintain all business records in Nevada and to make them available for inspection by the executive director of the Board or members of his or her staff. Many out-of-state private investigators licensed in Nevada hire employees from outside the State. It is cost prohibitive for the Board to audit records of out-of-state investigators.

Many private investigators do not obtain the appropriate State or local licenses to perform investigative work. Assembly Bill 306 will ensure investigators obtain the appropriate licenses.

Existing law does not require out-of-state private investigators to pay unemployment and workers' compensation taxes for their employees who work in Nevada. Assembly Bill 306 requires private investigators to maintain a principal place of business in this State, which will force them to pay unemployment and workers' compensation taxes.

Senator Settlemeyer:

How would A.B. 306 apply to situations where a private investigator must cross a State line?

Mr. Kirkman:

Existing law requires private investigators to obtain prior approval from the Board to conduct investigations in the State.

Senator Settlemeyer:

Does that mean a private investigator in California must stop at the State line if he or she has not received prior approval?

Mr. Kirkman:

That is correct. However, investigators may contact the Board for approval to enter the State if they anticipate a need.

Senator Settlemeyer:

Are you saying a private investigator may obtain a waiver to enter the State without obtaining a license in Nevada?

Mr. Kirkman:

That is correct.

Senator Hutchison:

Section 4, subsection 2, paragraph (a) of A.B. 306 would require each registered person employed in the State to be supervised by a licensed private investigator. Is the term "registered person" defined in State law? Which employees will need to register with the Board who are not currently registered if A.B. 306 becomes law?

Mr. Kirkman:

Licensed private investigators must register all of their employees. Those employees must pass background checks before they can perform investigative work.

Senator Hutchison:

Is there any limit to that requirement? Would a janitor be required to register with the Board?

Mr. Kirkman:

Any employee performing investigations for the licensed private investigator must register with the Board.

Kevin Ingram (Executive Director, Private Investigator's Licensing Board):

The Board supports A.B. 306 because it will standardize the way private investigators do business in the State. The State has licensed 538 private investigators, and their employees must register with the Board. These employees are "work card" employees. Of those 538 licensed investigators, 320 are based in Nevada and pay workers' compensation and unemployment taxes. There are 218 out-of-state licensees, of which 77 employ investigators in Nevada with no supervision. Obviously, an out-of-state licensee does not pay into the workers' compensation and unemployment fund. This is revenue the State does not collect.

One out-of-state licensee has 391 unsupervised employees. Assembly Bill 306 would require licensees to maintain a principal place of business in the State. Even if out-of-state licensees leave the State as a result of A.B. 306, there are plenty of other firms for which those employees could work. The work card does not identify which licensees for which an investigator can work. It only identifies registration with the Board.

Senator Hutchison:

The term principal place of business is defined in the *Nevada Revised Statutes* (NRS). What is your intent? Would this require an executive suite, or could it be a virtual office?

Mr. Ingram:

The term principal place of business is defined in other sections of NRS and in Board regulations. Private investigators will need a place to hang their business license. A post office box would not qualify. A virtual office would be sufficient. The principal place of business needs to be accessible to the Board's staff to inspect records. Whether the records are available physically or electronically does not matter.

The Board is a 100 percent self-funded agency and receives no funding from the State. Our budget is funded through the fees collected from licensing, registration and fines. The Board does not have sufficient funding to send investigators to other states to audit licensees.

Robert "Bobby G" Gronauer (Bobby G & Associates, LLC):

I own Bobby G and Associates, a private investigation firm. I am licensed as a private investigator, a private patrol officer and a private process server. The annual licensing fee for each of these licenses is \$500. My insurance premium for eight employees was \$14,000 last year. Out-of-state private investigators do not pay this insurance. Nor do they pay for the applicable State, county and local business licenses. This is lost revenue for the State. Assembly Bill 306 will level the playing field.

Private investigators handle private and confidential information. Assembly Bill 306 would protect the public by ensuring private investigators are licensed and supervised. Every private investigator who works in Nevada should be licensed by the State.

Senator Hutchison:

Can you describe the scope of the problem? Out of the 538 licensees, 218 are based outside of the State. What percentage of investigations is performed by out-of-state private investigators?

Mr. Ingram:

I cannot tell you the exact percentage.

Senator Hutchison:

Are there more in-State companies performing this work or more out-of-State?

Mr. Ingram:

Most of this work is performed by in-State private investigators. There are 77 licensed out-of-state licensees with no presence in the State. These firms generally provide private armed security and mystery shopping services.

Senator Denis:

Section 2, subsection 15 of A.B. 306 would exempt individuals who perform computer repairs. Why are they exempted?

Mr. Ingram:

Some individuals, such as the Geek Squad at Best Buy, only repair and service computers. If some illegal material is discovered through the course of this activity, the individual performing the work is required to turn the computer over to law enforcement. Individuals performing this type of work will not need to be licensed by the State. On the other hand, individuals who perform computer forensics will be required to obtain a license in Nevada.

John Arrascada (Nevada Justice Association):

I am an unpaid lobbyist for the Nevada Justice Association. I support A.B. 306 and have proposed a friendly amendment with the support of the sponsor (Exhibit C). The proposed amendment would lower the cost of litigation and allow litigants to locate expert witnesses for the purposes of litigation whether they be in State or out-of-State.

Chair Atkinson:

I will now close the hearing on A.B. 306 and open the hearing on A.B. 334.

ASSEMBLY BILL 334 (1st Reprint): Provides certain exemptions from provisions relating to contractors. (BDR 54-921)

Assemblyman James Healey (Assembly District No. 35):

Assembly District No. 35 has the third highest rate of real estate foreclosures in the State. Assembly Bill 334 will make more homes available for sale and fill these homes with families. Real estate agents, subcontractors, homebuilders and contractors came together to amend this bill in the Assembly. As a result, it is a much stronger bill. With the exception of the State Contractors' Board, all

the professional organizations support A.B. 334. The Assembly Committee on Commerce and Labor accepted several of their amendments in the Assembly, but in the end the Contractors' Board opposed the bill. It is my understanding the Contractors' Board plans on proposing an unfriendly amendment that will gut A.B. 334.

Assembly Bill 334 will allow licensed real estate agents or property managers to prepare their properties to be sold or leased in a condition that is acceptable to a buyer. Many homes need minor improvements before they can be sold. This can include changing carpet, painting walls, cleaning up yards and pools, fixing toilets and other types of repairs that do not require a building permit. Assembly Bill 334 does not include those items that require a building permit, which would require a general contractor to orchestrate the work under his or her license.

This practice has been going on for many years. General contractors have been so busy they have been unable to accept these smaller projects. Now that the market has slowed down, property managers and real estate agents who have performed these repairs are receiving cease and desist orders. Under State law, if repair or maintenance work requires more than two trades, the property manager or real estate agent must hire a general contractor to manage the repair process.

Consider a scenario where a home requires repainting, new carpeting and repairs to the yard and the pool. This involves four or five trades. Under State law, the real estate agent would be required to hire a general contractor. This is not efficient. A new subsection 11 would be added to NRS 624.031 allowing licensed real estate agents and property managers acting within the scope of their license to assist a client in performing repair or maintenance work on a property pursuant to a written agreement with the client. The key things here are that the real estate agent or property manager must be licensed and may only hire a licensed contractor to perform repairs, and the cost of the work must not exceed \$10,000. Any work coordinated by a real estate agent must be completed within 6 months. While real estate agents and property managers may coordinate this work, they are not permitted to perform the work, and they may not profit from arranging the work. A licensed real estate professional or a property manager who violates these provisions could lose his or her license. The Real Estate Division, Department of Business and Industry, participated in the discussions, and its leadership supports A.B. 334. The intent of A.B. 334 is

to ensure we can fill the abandoned homes in our communities and make it easier for real estate agents to sell homes.

Chair Atkinson:

Who is proposing the unfriendly amendment, and have they briefed you on the proposed changes?

Assemblyman Healey:

The State Contractors' Board has proposed an amendment that will gut the bill. They dropped it off to me this morning.

Chair Atkinson:

Why did the Contractors' Board not address its concerns with you in the Assembly?

Assemblyman Healey:

That is a great question. I am disappointed because the Contractors' Board was involved in the discussions in the Assembly. I understand the Contractors' Board needed to oppose A.B. 334 because it did not address all of its concerns, but many of the requests have been incorporated into the bill. I do not know of the Board's intent.

Senator Settlemeyer:

Having built my own home using subcontractors, I am concerned about liability for construction defects. Would the real estate agent be liable since he or she would be acting as the general contractor, or would subcontractors be liable for defects?

Brad Spires (Nevada Association of Realtors):

Realtors are required to hire only licensed contractors. For example, if a well inspector found a well to be defective, a Realtor would hire a licensed contractor to repair the well. The inspector would then reinspect the well. The Realtor would maintain the bill in case there would ever be a problem.

Senator Settlemeyer:

If a window needed to be replaced in an abandoned home and was not replaced correctly, would the contractor be liable or would the real estate agent be responsible?

Mr. Spires:

A Realtor would have no knowledge of what had happened in an abandoned home. If the home had been managed by a professional property manager or a home that had been listed for sale by a licensed Realtor, he or she would be responsible for hiring to do the job correctly. In your example, the property law principle is "buyer beware." Inspections are done before we bring in a buyer.

Assemblyman Healey:

In the scenario described by Senator Settelmeyer, where a real estate agent arranged the work, a buyer could go back to the real estate agent who would then hold the licensed contractor responsible.

Senator Hutchison:

In addition to holding the contractor responsible, a buyer could pursue litigation against a real estate agent if he or she is negligent. The intent of A.B. 334 is not to limit any individual's obligation whether acting negligently or not. Is that a fair interpretation?

Mr. Spires:

Prior to listing a home, a Realtor will identify any repairs or maintenance that must be done. At that point, a Realtor will provide the owners with a list of licensed contractors or let them pick their own licensed contractor. The Realtor will schedule the inspections. In Douglas County, it is not uncommon for buyers to request inspections of wells, water systems and septic tanks, and for radon, pests and mold. Realtors hire people who are licensed to perform this work. After the inspections are complete, the Realtor will schedule licensed contractors to make the needed repairs. The homes are reinspected once the repairs are completed. When the inspectors and the buyers and sellers sign off on the repairs, then the parties move to close the sale. Under the provision of NRS 645, this process is part of my job. I do not charge extra for this service. Property managers follow a similar process for the properties they manage.

If a repair requires a permit, a real estate agent or a property manager must ensure the contractor making the repair has the appropriate license. This prevents contractors from making repairs outside the fields of their expertise.

Senator Hutchison:

Who determines whether a permit is needed? What happens if the decision is incorrect?

Mr. Spires:

The inspectors may identify a specific item or system to be repaired. The Realtor will then hire the contractor to make the repair.

Senator Hutchison:

Are you saying the inspectors determine whether a permit is needed to make a repair?

Mr. Spires:

The home inspector will indicate in writing whether a repair requires a specific type of licensed contractor. For example, a home inspector would indicate a licensed roof inspector would be needed if they were unsure about the safety of a roof. That is what home inspectors are licensed to do. It is incumbent upon Realtors to hire contractors that meet the standards identified by the inspector.

Senator Hutchison:

Does the homeowner or the real estate agent enter into contracts for repairs?

Mr. Spires:

The principals involved would enter into the contract. Depending on who orders the repairs, it could be the seller or the buyer. It is difficult to get home sales closed, particularly under a short sale. Homes go into escrow 95 percent of the time and are paid through escrow by a title company. There is a record of what repairs were made.

Gail J. Anderson (Administrator, Real Estate Division, Department of Business and Industry):

The Real Estate Division, Department of Business and Industry, supports A.B. 334. I have been working for more than a year with the Contractors' Board, and I was involved in the work session in the Assembly Committee on Commerce and Labor. Real estate licensees need the ability to coordinate certain repairs for their clients. Real estate agents have had this ability over the years. Real estate agents have contractual agreements with homeowners. Certain limitations ensure licensed contractors are used to perform repairs and maintenance. Assembly Bill 334 sets forth time limits and dollar amounts as to what a real estate agent may perform. This represents a significant market because a great number of the properties are owned by investors.

Section 2 of A.B. 334 requires real estate licensees to maintain a record of all work performed on a residential property, including who performed the work, the date, and copies of the invoice and the contract. This is important due to the \$10,000 and 6 month limits. A real estate licensee does not diagnose problems. The Real Estate Division licenses home inspectors who perform inspections and make recommendations for specialty inspections by licensed individuals. I have not seen the amendment proposed by the Contractors' Board.

Senator Hutchison:

Are you aware of the concerns the Contractors' Board has raised? Do you have any observations as to why two boards have differing views on this issue?

Ms. Anderson:

The Contractors' Board is a stand-alone board, so I am not certain. The Contractors' Board is concerned unlicensed contractors would be hired to complete the repairs. I agree work must be performed by licensed contractors or the State will have an enormous problem with post-construction defects on new properties. Assembly Bill 334 allows the Real Estate Division to verify the work was performed by a licensed contractor, and it limits the cost and length of repairs. For at least 12 years, real estate licensees have arranged for maintenance and repairs. The Contractors' Board will have to address why real estate agents must now solicit bids from general contractors.

Senator Hardy:

I do not see anything in A.B. 334 addressing bids.

Ms. Anderson:

There is not a specific requirement for the solicitation of bids, but the idea is captured in the value of the work performed. A real estate licensee would solicit bids to perform a certain repair to show the owner the work will be performed. The allowance here is a carveout from the requirement to hire a general contractor.

Keith Lee (State Contractors' Board):

This issue has been a topic of discussion between the real estate agents and the Contractors' Board for 18 months. The Contractors' Board began this discussion after the 76th Session. Our opposition to A.B. 334 has been well known and consistent throughout. I appreciate Assemblyman Healey including us in the negotiations. We were clearly in opposition to A.B. 334 during the hearing in

the Assembly Committee on Commerce and Labor. The amendment proposed in the Assembly was not presented by the Contractors' Board, but we did participate in discussions regarding the proposed changes. Some of our suggestions were included in that amendment. Nonetheless, the Contractors' Board opposes A.B. 334. The work session document presented during the hearing in the Assembly indicates the Contractors' Board opposed A.B. 334. The first reprint of A.B. 334 was taken back to the Contractors' Board last week. The Board reiterated its opposition and directed the executive officer to propose an amendment ([Exhibit D](#)), which was logged into the Nevada Electronic Legislative Information System (NELIS) in a timely manner on April 26. I also attempted to discuss the amendment with Assemblyman Healey on April 26, but he was not in the building. I met with him this morning and indicated the Contractors' Board would continue its opposition. I do not want the Committee to have the impression we are not honoring a commitment. I will read my written testimony ([Exhibit E](#)).

The amendment proposed by the Contractors' Board, [Exhibit D](#), would completely gut A.B. 334. Our amendment proposes to delete section 2 of A.B. 334. The amendment also proposes to delete section 1, subsection 11, and would insert the following language:

This chapter does not apply to a real estate licensee acting within the course and scope of his or her license under the Real Estate Brokers and Salespersons Law pursuant to Chapter 645 of Nevada Revised Statutes. However, nothing in this section shall authorize a real estate licensee or a property manager to act in the capacity of a contractor unless licensed by the State Contractors Board.

We believe the first reprint of A.B. 334 is much better than it was as introduced. The Contractors' Board believes it is an invasion of our statutory obligation to the public health, safety and welfare.

Chair Atkinson:

Are you saying the Contractors' Board expressed its concerns to Assemblyman Healey while the bill was in the Assembly?

Mr. Lee:

That is correct.

Chair Atkinson:

I have a problem with the proposed amendment because it completely guts A.B. 334. Did you discuss the amendment with Assemblyman Healey?

Mr. Lee:

I did not. As I indicated, the Contractors' Board reviewed the first reprint of A.B. 334 last week. The Contractors' Board determined it would continue its opposition to A.B. 334.

Chair Atkinson:

The proposed amendment is more than opposition. It completely guts A.B. 334. I will allow the Contractors' Board to continue to work with Assemblyman Healey, but I will not accept your amendment.

Senator Hutchison:

Can the Contractors' Board point to a specific section of A.B. 334 that negatively affects the public health, safety and welfare?

David Brown, Esq. (General Counsel, State Contractors' Board):

Assembly Bill 334 would give real estate agents authority to act in a manner that has the potential to injure the public. This problem was created by the foreclosure crisis. Real estate agents engaging in speculative purchasing are under pressure to perform repairs that go beyond the simple repairs Assemblyman Healey described. Assembly Bill 334 is much broader than that. A general contractor is responsible for a subcontractor's workmanship. Under A.B. 334, real estate agents could act in the same capacity as a general construction manager, which requires a general contractor's license. A general contractor license requires the holder to purchase insurance and bonds. Assembly Bill 334 exonerates real estate agents from any kind of responsibility or liability for poor workmanship performed by subcontractors.

Homeowners would not have the same protections if the subcontractor goes out of business. The Contractors' Board is pursuing hundreds, if not thousands, of fugitive contractors for abandonment or poor workmanship. Assembly Bill 334 is a permanent solution to a temporary problem.

Senator Hutchison raised the issue of liability. The Contractors' Board does not believe the record-keeping provision in section 2 of A.B. 334 adequately addresses liability. The Contractors' Board offered an amendment to improve

liability, but it was not included. We had also proposed an amendment that would mandate the use of a licensed general contractor and require disclosure of the scope and cost of repairs to potential buyers. The Contractors' Board also suggested language that would subject real estate agents to discipline should they misrepresent the qualifications of a contractor. We are also concerned about the time line. Even licensed contractors cut corners to meet deadlines. Throughout the discussions, the Contractors' Board participated in good faith. Our position has not changed, and we are still not satisfied that homeowners are protected. The Contractors' Board has a legislative mandate to protect the public first and foremost.

Senator Jones:

Assembly Bill 334 already requires real estate agents to use licensed contractors, and it is my understanding real estate agents must be bonded. I am concerned general contractors will not be interested in accepting these jobs because of the \$10,000 limit.

Mr. Lee:

There was certainly a time when it was difficult to find general contractors who would accept small projects. As a result, the Legislature exempted certain projects from the provisions of NRS 624. While your concern is one piece of the problem, the real issue is the expertise required to know when a permit is required. A licensed general contractor will know when a permit is required, but a real estate agent will not. This is why we are opposed to expanding this to real estate professionals.

Senator Jones:

How often are permits required for jobs that cost less than \$10,000? Would a permit be required to paint the walls or fix a pool?

Mr. Lee:

A permit is not required for painting, but a permit is required to replace a water heater or a heater on a pool. Building codes are nuanced and vary across jurisdictions.

Senator Jones:

Is a licensed subcontractor incapable of pulling a permit? Why should a subcontractor need a general contractor to do something that is fairly easy?

Mr. Brown:

Subcontractors can pull permits. The question becomes who determines whether a permit is required. The process is not intuitive. It is surprising how many things require permits. A homeowner can even pull a permit.

Senator Jones:

Why is it okay for a homeowner without any experience to pull a permit, but it is not okay for a subcontractor? That does not make sense to me.

Mr. Brown:

That is a property right afforded to homeowners. A homeowner must apply for an owner-builder permit with the Contractors' Board. Then the homeowner is on our radar.

Senator Settlemeyer:

How is the health and safety of the public compromised if real estate agents are required to hire licensed contractors to perform the work?

Mr. Brown:

There are real nuances in some of these codes. There are two aspects to this bill. A general contractor is not necessarily required. The owner could be provided the information from the real estate agent and then obtain an owner-builder permit. The statute also gets into the number of trades once the cost of the repairs exceeds a certain amount.

Senator Settlemeyer:

The Contractors' Board can revoke a contractor's license. Would the Real Estate Division be able to discipline or revoke a real estate agent's license if he or she violates the provisions in A.B. 334?

Mr. Brown:

Section 1, subsection 11 of A.B. 334 may provide some manner of discipline, but I do not believe it is express. It does not clearly delineate penalties for specific violations.

Senator Hardy:

It is my sense there is no common ground, even if much stronger accountability and liability provisions were included in A.B. 334. Is that a misconception on my part?

Mr. Lee:

We probably will never bless A.B. 334, but there are some ways the Committee could improve this bill. For instance, the Committee could include a provision requiring real estate agents to notify the Contractors' Board they would be acting in this capacity. Assembly Bill 334 does not limit the number of subcontractors a real estate agent can engage. Perhaps the number could be limited to four or five. There ought to be some disclosure of the records kept under section 2. Those documents need to be kept so homeowners will be protected if a problem is discovered in the future. There should also be some provision in NRS 645 that indicates disciplinary actions for violations of the exemptions in NRS 624.

Margi A. Grein (Executive Officer, State Contractors' Board):

I have written testimony I would like to submit for the record ([Exhibit F](#)).

Jack Snyder (Investigator, State Contractors' Board):

I am a criminal investigator with State Contractors' Board, and have been working investigations for the last 9 years. I will read a handful of case scenarios I have encountered during this time ([Exhibit G](#)).

Frank Horvath:

Last March, my wife and I purchased a home in Las Vegas from a real estate agent-broker-salesperson. The house had been vacant for some time. All of the wiring had been stripped out of the home, so the real estate agent hired an unlicensed contractor to rewire the house without a permit or an inspection. Subsequently, we learned the work was done by an unlicensed contractor. The drywall must now be removed so the electrical wiring can be inspected. This will cost us a lot of money we do not have.

Rebecca Horvath:

The real estate broker-salesperson who sold us our home owns nearly 400 other homes. The disclosure form provided by the real estate agent stated that no work had been done on the house. We rent out the house and now have to figure out where our tenant will stay because the walls have to be torn down. This was not our fault, but we have to bear the financial burden because the real estate agent did not hire a licensed contractor. This will become an even bigger problem if A.B. 334 becomes law.

Senator Hardy:

Have you filed a complaint with the Real Estate Division?

Ms. Horvath:

The Contractors' Board recently informed us of the problem, so we are early in the process. We will be filing a complaint with the Real Estate Division. Either way, my husband and I will likely end up being held responsible for covering the cost of the mitigation. I realize this is just one instance, but our real estate agent owns 400 houses. If he did this with our house, I am sure he is doing it with the rest of the houses he owns.

Senator Hutchison:

Your story is one reason real estate agents who take on these responsibilities will be held financially responsible for the work they perform.

Chair Atkinson:

Several testifiers have suggested including specific penalties, such as revoking a real estate agent's license, but that is already an available relief under NRS 645.630 and 645.633. This would apply for any violations of this chapter, including the changes proposed in A.B. 334.

Darren Troy Winkel (Plumbing, Heating and Cooling Contractors of Nevada):

I am President of the Plumbing, Heating and Cooling Contractors of Nevada, and I represent 1,200 contractors who vehemently oppose A.B. 334. I also own The Honest Plumber Heating and Air in Las Vegas. Assembly Bill 334 would allow real estate agents to engage in work that involves gas and water lines, mold, lead paint and asbestos. I am offended that an untrained real estate agent will be permitted to perform the same work I am trained to perform. Many real estate agents will not follow the new rules in A.B. 334.

I opposed A.B. 334 as introduced, but with the first reprint it is even worse.

Craig Madole (Associated General Contractors of America, Inc. Nevada Chapter):

I am concerned A.B. 334 will remove a layer of protection for homeowners. A licensed general contractor must bond the entire capacity of the project. Subcontractors also bond the work they perform. This bonding capacity would no longer exist if a real estate agent acts in the capacity of a general contractor.

Senator Hutchison:

Has the Associated General Contractors participated in the negotiations?

Mr. Madole:

We did not participate in the working group. We did attend the hearings in the Assembly, but we did not testify. Our main concern is the bonding issue.

Senator Hardy:

Does A.B. 334 prevent a real estate professional from obtaining a bond for the work they perform?

Mr. Madole:

I do not believe anything would prevent them from obtaining a bond, but there is nothing that would require a real estate agent to obtain a bond.

Jack Mallory (International Union of Painters and Allied Trades, District Council 15):

Real estate agents acting in the capacity of general contractors should be required to obtain approval for an owner-builder permit from the Contractors' Board prior to commencing rehabilitation on a property.

Senator Hutchison:

The Chair indicated the Real Estate Division's existing disciplinary authority would extend to the provisions of A.B. 334. Can the Real Estate Division provide an example of what type of disciplinary action it could pursue for violations of section 1, subsection 11 of A.B. 334?

Ms. Anderson:

Real estate licensees have an obligation to adhere to all other State laws. Licensees utilizing unlicensed contractors are violating existing law, and that will not change under A.B. 334. In fact, A.B. 334 will address their concerns. Disciplinary actions are determined and administered by the Real Estate Commission, Real Estate Division. In addition to revoking or suspending a license, the Real Estate Commission can impose a fine of up to \$10,000 per incident. Under section 2 of A.B. 334, each property for which a real estate agent failed to maintain the required records would represent a separate incident.

Senator Hutchison:

If Mr. and Mrs. Horvath file a complaint with the Real Estate Division, are you empowered to take disciplinary action against that real estate agent?

Ms. Anderson:

Yes, the Real Estate Division could take disciplinary action as long a complaint is filed and substantiated.

Dan Yu (Counsel):

I just wanted to add some additional clarification with respect to this discussion over jurisdiction and which regulatory body would actually be able to exercise disciplinary proceedings against a person who is a licensee or ought to be licensed. With respect to section 1 of the bill, it's pretty clear with respect to subsection 11 that this deals with ... well it's the exemption provision; but it's my understanding and my interpretation of the language that's provided in this bill that if it's a person who is exempted from the requirements of chapter 624 [of NRS], but then engages in the type of activity for which that person needs to be licensed by the State Contractors' Board, then it would actually be the State Contractors' Board that would be able to exercise jurisdiction and not the Real Estate Commission. Now, with respect to section 2 of the bill, the requirements that certain records be kept, that's obviously in a different chapter that's regulated by the Real Estate Commission. For a violation of that provision, it would be the Real Estate Commission that can exercise that authority. Now, with respect to Ms. Anderson's explanations with regard to the \$10,000 penalties for each violation and a combination thereof of either revocation of a license or suspension or the denial of a renewal later on down the road—any combination thereof—that's something the Real Estate Commission would be able to exercise with respect to a violation of section 2 of the bill. Again, that would not fall, at least based on my understanding and interpretation of the language here, under the jurisdiction of the Real Estate Commission with respect to section 1. That would, again, just to reiterate, would fall under the jurisdiction of the State Contractors' Board. I just wanted to add that additional clarification for the benefit of the members of this Committee.

Senator Hardy:

Are you saying that an individual who is not licensed as a contractor is still under the purview of the Contractors' Board? How would the Contractors' Board discipline an individual who is not a member?

Mr. Yu:

Perhaps a better way for me to explain this further is to use by way of example if a person engages in certain activities for which a person has to have a permit or a license. This goes with respect to just about any other licensing chapter under Title 54 of NRS. So, for example, whether you are a dentist, a physician, a mortgage broker, a salesperson, so on and so forth. For certain activities that are regulated by particular regulatory bodies in this State, before you can engage in that type of activity you must have applied for and received the applicable license or permit. And with respect to section 1 of this bill, it is an exempting provision, meaning that certain people who are involved in work as a real estate person would not fall under the provisions of what would otherwise be defined as activity as a contractor in this State. If you do cross that line of demarcation and step over onto the other side of the fence and you do engage in work for which you would need a license as a contractor, then you would fall within the jurisdiction of that appropriate body which, in this case, would be the State Contractors' Board. Now, with respect to your second question, Senator [Hardy], whether it is a misdemeanor or not, I'd have to do a closer search of NRS to see what the particular provisions or penalties would be. I am happy to get back to you on that.

Assemblyman Healey:

I want to make the point clear that most of the opposition has been focused on hypothetical situations where unlicensed contractors have been utilized. Assembly Bill 334 makes it clear that a real estate professional or property manager must use a licensed contractor. That is what this bill is about. The Horvath's story is a terrible story that we hear about all the time. Unlicensed contractors get hired to do a quick, cheap job. There are certainly real estate agents and general contractors that do not perform at the level their license requires them to perform. That is why there is a disciplinary process in State law. It is not my belief that we should set laws that pertain to the masses based

on the few. To prohibit real estate agents and property managers from providing homes in suitable condition for a new owner is wrong. Every example the opposition described involved an unlicensed contractor. There are teeth in the law already.

Chair Atkinson:

I will now close the hearing on A.B. 334 and open the hearing on A.B. 11.

ASSEMBLY BILL 11 (1st Reprint): Revises the provision requiring insurers to report to the Division of Industrial Relations of the Department of Business and Industry certain claims relating to diseases of the heart or lung and occupational diseases that are infectious or relate to cancer. (BDR 53-351)

Donald Jayne (Administrator, Division of Industrial Relations, Department of Business and Industry):

Pursuant to NRS 617.357, insurers are required to report to the Division of Industrial Relations, Department of Business and Industry, certain claims relating to heart, lung and occupational diseases that are infections or relate to cancer. After reviewing the reports, the Division discovered there had been no activity in over 10 years. As a result, the Division requested A.B. 11 to repeal NRS 617.357. Several stakeholders expressed concern about eliminating the report. Rather than repealing NRS 617.357, stakeholders suggested amending the statute to limit the scope of the reports only to those professionals covered under the conclusive presumption requirements of NRS 617.

Assembly Bill 11 was amended in the Assembly to restrict the scope of the required report to include only occupational disease claims filed on behalf of firefighters, police officers, arson investigators and emergency medical attendants. This focused the attention of the report on the subject matter that was deemed important when the statute was added to the NRS in the 71st Session. The report can be found on the Division's Website.

Senator Hardy:

How useful will the reports be in proving causation if the reports only include data collected from a sample population that is predisposed to these occupational diseases and does not include data from the general population?

Mr. Jayne:

The data elements being captured will not change. What may change under A.B. 11 are the types of procedures reported. For example, a clinic might not have to report a needle prick to the Division. If the individual who was pricked is a nursing professional, he or she may not be covered by NRS 617. The amendment narrowing the scope was proposed by Rusty McAllister, who represents the Professional Firefighters of Nevada. It is difficult to define what a police officer is because there are different definitions under the NRS. What will not be included in the report are individuals who are not eligible for presumptive benefits. They would be removed from the universe from which we are drawing data.

Senator Hardy:

Data are collected for a reason. How can the risk of acquiring an occupational disease be compared between the general public and first responders if data are not collected from the general public? I would like to see the data comparing the risk between the two groups if it exists. If it does not exist, why will the Division continue to collect the data?

Mr. Jayne:

The data the Division collects is not all encompassing. The universe of data does not include everyone who could contract heart or lung disease. We are trying to study individuals in occupations that are covered by presumptive benefits. The data collected from these individuals could be compared to the universe of other employees or the general public.

Rusty McAllister (Professional Firefighters of Nevada):

The Professional Firefighters of Nevada proposed an amendment to A.B. 11 in the Assembly so that the report would continue to be produced. The reporting requirement was created in 2001 because insurers feared every police officer or firefighter would file a claim for heart or lung coverage, and that would bankrupt every local government in the State. We did not anticipate very many claims would be filed. Additionally, we believed claims for benefits that were conclusively presumed were frivolously denied on a regular basis, a practice that continues to this day. Pursuant to NRS 617.455 and 617.457, benefits are conclusively presumed to be covered for police officers and firefighters who meet the requirements under the law. That was the strongest language we could get included. To this day, claims that are conclusively presumed in NRS 617.455 and NRS 617.457 are being frivolously denied. We presented

numerous cases in the Assembly to show these claims were being denied frivolously. In 2001, we asked for some type of reporting system to show there were not that many claims filed and that claims were being denied frivolously. Unfortunately, all employees were covered for all occupational diseases during the rule promulgation. For example, a housekeeping employee filing a claim for any occupational disease would be included in the report under NRS 617.357.

Our intent in A.B. 11 is to narrow NRS 617.357 to include only police officers and firefighters. What is being done to firefighters is criminal in nature. I represent firefighters who are forced into bankruptcy because their claims for heart and lung disease are being denied pending medical review. This gives the insurance company 2 or 3 years to promulgate the claims. During this time, the insurers deny the claims because they believe they fall under workers' compensation. The Workers' Compensation Section, Division of Industrial Relations, Department of Business and Industry, denies the claim as well. In the meantime, firefighters are paying for the claims out of their pockets. No one should have to file for bankruptcy because their claims were denied for occupational diseases conclusively presumed under NRS 617. If this is the only way we have to prove it, we will come back in 2 years and try to prove it.

Senator Hardy:

Why should injured workers who have been denied the same benefits under the workers' compensation program not be included in the report just because they are not police officers or firefighters?

Mr. McAllister:

Claims filed under the workers' compensation are filed under NRS 616A and are not conclusively presumed to be insured for benefits under NRS 617. We are trying to prove we have claims filed under NRS 617 that are being denied. There is no way to prove that without clean data. In the Assembly, one firefighter testified that after his claim for heart disease was denied, his insurance denied a claim for non-Hodgkin's lymphoma. We are frustrated, and it is unfortunate we may have to wait another 2 years to get relief.

Senator Hardy:

Have there been denials of workers' compensation benefits for the same kinds of injuries that happen to people with the same kinds of exposures? Was that in the original bill?

Mr. McAllister:

As introduced, A.B. 11 completely repealed NRS 617.357, and insurers would no longer be required to report any claims.

Senator Hardy:

Are we looking at a specific group of people and ignoring the rest of the people? Should we be looking at everybody if that was in the original intent of the bill?

Mr. McAllister:

The original intent of A.B. No. 345 of the 71st Session was to collect data for claims filed by police officers and firefighters. When the regulations were established, it required data to be collected from all claims. As a result, we never were able to get data to prove claims that police officers and firefighters were frivolously denied.

Senator Hutchison:

Section 2, subsection 1 of A.B. 11 is vague. Will you be able to get the data you need with this language?

Mr. Jayne:

The Division has collected data for this report since 2001, but we were never certain who was using it. This conversation is healthy. I will be happy to discuss the report with the Committee. We are willing to continue the report since the insurance industry has expressed its desire to have industry- and benefit-specific data. The Division has been gathering this report for 10 years and has not heard from anyone about the nature of these elements. The Division would have the ability to adjust for those elements if it is appropriate. The section being repealed is specific to NRS 617, which is why Mr. McAllister is specific to NRS 617.

Senator Hutchison:

Section 2, subsection 1 of A.B. 11 contains some very general statements. I do not know that you would be able to prove frivolous denials with the information required to be included in the report.

Mr. McAllister:

I would love to see more specific language. This has really been a problem with third-party administrators such as Cannon Cochran Management Services Incorporated (CCMSI), which covers the vast majority of public employers in the

State and routinely denies claims. On its Website, CCMSI advertises that it has a proven history of "significant claim reductions with a positive impact on aged-loss portfolios and the management of new claims." They save their clients money by denying claims and dragging out the process. Some firefighters have claims that are 3 years old that are just now going to court.

Chair Atkinson:

I will now close the hearing on [A.B. 11](#) and open the hearing on [A.B. 185](#).

[ASSEMBLY BILL 185 \(1st Reprint\)](#): Revises provisions to increase the cooperation between the Labor Commissioner and the United States Department of Labor to promote compliance with labor laws of common concern. (BDR 53-795)

Mr. Mallory:

I will read my written testimony ([Exhibit H](#)).

Senator Hutchison:

Why is the labor commissioner unable to enter into such an agreement without legislation?

Mr. Mallory:

The NRS 607 does not explicitly state whether the labor commissioner can enter into a formal agreement. It does state that he or she shall cooperate with the federal departments that share common concerns with the ability to enter into an agreement with the United States Department of Labor (USDOL), Wage and Hour Division, the labor commissioner would be able to establish those parameters. Under existing law, the USDOL can conduct an investigation of a particular industry, such as the dry cleaning industry. Rather than investigate individual complaints, USDOL would perform a compliance audit with multiple employers in a single industry. While the labor commissioner wanted to cooperate with the USDOL, he or she does not have the resources or capacities to do so. The labor commissioner's ability to enter into a formal agreement is not expressly stated in statute.

Patrick T. Sanderson (Laborers International Union Local 872):

I support [A.B. 185](#) because it expands the scope of what can be done in wage and hour complaints.

Chair Atkinson:

I will close the hearing on A.B. 185 and open the hearing on A.B. 206.

ASSEMBLY BILL 206: Provides that volunteer members of a county search and rescue organization shall be deemed to be employees of the county at a specified wage for purposes of industrial insurance. (BDR 53-959)

Assemblyman Michael Sprinkle (Assembly District No. 30):

Assembly Bill 206 establishes provisions for volunteers of county search and rescue teams to receive industrial insurance based on the deemed wage of \$2,000 per month. Assembly Bill 206 is similar to legislation proposed in previous sessions that awarded the same benefits to volunteer firefighters. At present, volunteers receive benefits based on a deemed wage of between \$200 and \$900 per month depending on the jurisdiction. A volunteer receives this benefit if he or she is injured or killed while participating in a search and rescue operation or training. These missions are inherently dangerous activities, and volunteers put their lives in danger while trying to save the lives of others. Using volunteers has resulted in a cost savings of over \$900,000 for Washoe County in 2012. This bill does not award presumptive benefits to volunteers with search and rescue teams, including heart and lung disease.

D. Eric Spratley (Washoe County Sheriff's Office):

I am a Lieutenant with the Washoe County Sheriff's Office. Assembly Bill 206 does not propose to pay volunteers any wage, but will compensate them if they are injured in the course of service. Under NRS 616A.130, a volunteer who is injured in the course of service is technically covered as a standard volunteer worker. A volunteer in the mailroom who is injured is covered under this statute at a rate of \$100 per month based on the extent of his or her injuries. A volunteer on a rescue mission is at much greater risk of injury, and we are asking that our volunteers be covered at the same rate of volunteer firefighters.

Senator Settlemeyer:

Is the compensation based on the extent of the injury or the activity in which they are engaged?

Mr. Spratley:

Volunteers are only eligible for benefits when they are injured in the course of service, and the payment is based on the extent of the disability. The maximum disability rating is 66.67 percent.

Senator Settlemeyer:

Would any search and rescue volunteer be eligible for the full payment, or would it depend on what activity in which he or she was engaged? For instance, would a search and rescue volunteer be eligible for the full payment because of slipping in the parking lot while they were in the course of service?

Mr. Spratley:

Yes, a volunteer would be covered as long as he or she is activated on a search and rescue mission.

Senator Settlemeyer:

I am concerned about the effect on counties because the local government fiscal notes range from a few dollars to several hundred. How many claims are filed by search and rescue volunteers?

Mr. Spratley:

I am only aware of three filed in Washoe County. The Las Vegas Metropolitan Police Department had only had five claims, which totaled \$8,633. The counties have indicated this is a cost they are willing to absorb because volunteers provide a significant cost savings.

Senator Hutchison:

My understanding is that Assembly Bill 206 adopts a rating system for industrial insurance. A volunteer does not need to be 100 percent disabled to receive the benefit. Rather, their disability would be rated based on the schedule outlined in State law.

Mr. Spratley:

That is correct. Assembly Bill 206 follows the schedule in NRS 616A. This affords search and rescue volunteers the higher rate due to the level of risk involved in their work.

John Slaughter (Washoe County):

Washoe County supports Assembly Bill 206. We did not include a fiscal note because the cost imposed on Washoe County would be so small. With regard to the injuries, I want to point out the three claims Mr. Spratley mentioned were filed over a number of years.

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Bob Roshak (Nevada Sheriffs' and Chiefs' Association):

The Nevada Sheriffs' and Chiefs' Association supports A.B. 206.

Chuck Callaway (Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department supports A.B. 206.

Yolanda King (Clark County):

We support A.B. 206. The cost to Clark County would be less than \$5,000. As indicated earlier, there were about five cases in the Las Vegas Metropolitan Police Department.

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Chair Atkinson:

I will close the hearing on A.B. 206. The meeting is adjourned at 4:18 p.m.

RESPECTFULLY SUBMITTED:

Wayne Archer,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	6		Attendance Roster
A.B.306	C	1	John Arrascada	Proposed Amendment
A.B. 334	D	1	Keith Lee	Proposed Amendment
A.B. 334	E	2	Keith Lee	Written Testimony
A.B. 334	F	2	Margi Grein	Written Testimony
A.B. 334	G	1	Jack Snyder	Case Scenarios
A.B. 185	H	1	Jack Mallory	Written Testimony