

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

**Seventy-third Session
February 22, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:00 a.m. on Tuesday, February 22, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Jane Tetherton, Committee Secretary
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Samuel P. McMullen, Nevada Subcontractor's Association
Robert L. Crowell, Nevada Trial Lawyers Association
Margi A. Grein, Executive Officer, State Contractors Board
Roland D. Westergard, C.E., Chairman, State Board of Professional Engineers
and Land Surveyors
Bruce Arkell, Nevada Association of Land Surveyors
Russell Rowe, American Council of Engineering Companies of Nevada
Justin Engel, Universal Underwriters Group
John P. Sande III, Nevada Franchised Automobile Dealers Association

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Robert A. Ostrovsky, Hertz Corporation
Alice Molasky-Arman, Commissioner, Division of Insurance, Department of
Business and Industry

CHAIR TOWNSEND:
We have a bill draft request (BDR) to consider.

BILL DRAFT REQUEST 53-320: Revises requirements for submission to
Employment Security Division of Department of Employment, Training
and Rehabilitation evidence related to claims for unemployment
compensation. (Later introduced as [Senate Bill 111](#).)

SENATOR CARLTON MOVED TO INTRODUCE BDR 53-320.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS SCHNEIDER AND TIFFANY WERE
ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
We will open the hearing on Senate Bill (S.B.) 58.

SENATE BILL 58: Prohibits certain contractors from repairing constructional
defect. (BDR 54-719)

SAMUEL P. McMULLEN (Nevada Subcontractor's Association):
This bill was written in response to concerns about fraud surrounding
construction defects. It prevents contractors who testify in an action regarding
construction defects from repairing those defects, regardless of whether they
are paid for testifying.

A construction defect case starts with an expert opinion, a contractor hired to
investigate a property for defects. There is a temptation for contractors to
exaggerate defects or search for more defects to create business for themselves
when they make repairs. This increases the cost of filing a construction defect
claim, since attorney's fees and other costs are often based on the cost of the

expert opinion. In one instance, the expert fee was \$1 million for evaluation of 10 units.

We have an amendment to offer ([Exhibit C](#)). This adds language to section 1, subsection 1 of the bill to ensure the word "action" is not interpreted as meaning only litigation. It should also be applied to notice of defect under *Nevada Revised Statutes* (NRS) 40.600. It also precludes companies with which the contractor is affiliated or employed from making the repairs.

SENATOR CARLTON:

Your amendment seems to prevent anyone receiving notice of a defect from making repairs. This would seem to eliminate all qualified contractors.

MR. McMULLEN:

The intention was to preclude only the person rendering the expert opinion, rather than everyone who receives the notice of defect.

SENATOR LEE:

I am a tile and marble contractor. Sometimes we work with a product that turns out to be substandard. In those circumstances, we are called back to explain the problem and redo the work. Would this bill prevent us from redoing our work?

MR. McMULLEN:

The bill was not intended to cover warranty repairs. The language may be overbroad.

ROBERT L. CROWELL (Nevada Trial Lawyers Association):

I am opposed to this bill. As drafted, it would have the unintended consequence of operating against the legitimate contractor and homeowner. In the larger cases to which Mr. McMullen indicates this bill was intended to apply, contractors generally are not called as expert witnesses to prove the existence of a defect, but to estimate the cost of repairing the defect. Under this bill, this contractor would be precluded from being hired to do the work. Also, when a homeowner is having work done and the contractor discovers a problem, this bill would require the contractor to tell the homeowner, "If I go to the State Contractors' Board to tell them about this defect, I will be taken off the job." This appears to be an unintended consequence. Neither the contractor nor the homeowner should be penalized for identifying a defect.

The Contractors' Board already has the necessary authority to take action against contractors who fraudulently exaggerate defects. Subsection 1 of NRS 624.3016 allows disciplinary action for "Any fraudulent or deceitful act committed in the capacity of a contractor, including, without limitation, misrepresentation or the omission of a material fact."

SENATOR SCHNEIDER:

Most construction defect cases are made by homeowners associations rather than by individual homeowners. In those cases, the contractor discovering the defects is hired by the attorney to find defects. After the case is settled, the homeowners association will hire a different firm to repair the defects. This is an excellent balance.

MR. CROWELL:

As I read it, this bill only applies to those who assist in proving a defect either before the Contractors' Board or in a court of law. Someone who discusses a defect outside of those venues is not affected. A contractor who points out a legitimate defect should not be precluded from participating in the repair of that defect. I do not believe the bill as written will stop the fraudulent practices described from occurring.

CHAIR TOWNSEND:

Perhaps the situation Senator Schneider is describing could be resolved by allowing the homeowners association to choose to go with the original contractor. The intent is to keep the work from being done by the original contractor automatically.

MR. CROWELL:

I would agree to this.

CHAIR TOWNSEND:

I would like Senator Carlton, who is the chair of the subcommittee that will deal with this issue, to meet with the parties to find if there is common ground on these issues.

MARGI A. GREIN (Executive Officer, State Contractors' Board):

I have an amendment to offer ([Exhibit D](#)). I also have prepared testimony ([Exhibit E](#)) regarding the amendment and stating our concerns about this bill. I am happy to meet with the parties involved to resolve this issue.

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CHAIR TOWNSEND:

I will close the hearing on S.B. 58 and open the hearing on S.B. 59.

SENATE BILL 59: Revises provisions governing regulation and licensure of professional engineers and land surveyors. (BDR 54-176)

ROLAND D. WESTERGARD, C.E. (Chairman, State Board of Professional Engineers and Land Surveyors):

This bill has two purposes. The first is to increase the State Board of Professional Engineers and Land Surveyors from seven members to nine, the two additional members to be practicing or teaching engineers. The current composition is four engineers, two land surveyors and one member of the public. We are suggesting this change because the number of engineers is dramatically increasing, especially in southern Nevada. More Board members are needed to process the applications for licensure and hold disciplinary hearings. We receive all our funding from licensing and application fees. Our staff inform us we will need no additional staff if the Board is increased by two members.

SENATOR TIFFANY:

Which disciplines are expanding?

MR. WESTERGARD:

The biggest growth is in environmental, structural and mining engineering. We do not currently have a structural engineer on the Board. We do not want a statute defining which disciplines are to be represented on the board; we would rather have flexibility in this.

CHAIR TOWNSEND:

The Board oversees both engineers and land surveyors. How many licensees are there in each group?

MR. WESTERGARD:

There are currently approximately 8,000 engineers and 900 land surveyors, of whom 2,400 engineers and 400 land surveyors are residents of Nevada.

CHAIR TOWNSEND:

I would be hesitant to endorse the idea of adding specific disciplines to the Board. This can lead to a situation in which a disciplinary action is challenged because the licensee's discipline is not specifically represented on the Board.

The Governor has the prerogative to choose who will serve on the boards to best protect the public.

SENATOR CARLTON:

I have discussed this bill with the parties involved, and our conclusion was that this is the best solution to the problem at hand. This Board has been fiscally responsible and submitted all reports on time, and I support their request.

MR. WESTERGARD:

The second action of the bill would be to change the requirements to take the professional practice exam. Currently, applicants for licensure must have four years of experience in the field before they are allowed to take the eight-hour professional practice exam. We would like to change this to allow applicants to take the exam upon graduation, since the exam is academic in nature and will be easier to pass when the applicant is recently graduated. Applicants would still be required to accumulate four years of experience before being licensed. Less than 20 percent of engineering graduates currently go on to become licensed. We believe this change will increase this figure.

We have received a suggested amendment ([Exhibit F](#)) from Timothy Russell. This would remove the provision allowing applicants to substitute education in fields other than engineering for experience, and replace it with experience credit for graduate degrees. We have no objection to this change.

KEVIN POWERS (Committee Counsel):

Just for clarification, the proposed amendment removes the existing [paragraph (a), subsection 4 of section 3] and replaces it with new language. The amendment discussed by those who approached the Committee was to keep the existing language and add the language for the professional degrees and say not more than two years can be from that educational requirement.

SENATOR TIFFANY:

What is the practice in the other states in this regard?

MR. WESTERGARD:

All other states require four years' experience before taking the exam, except for California. In other states making this change, there has been no increase in violations resulting in harm to the public.

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BRUCE ARKELL (Nevada Association of Land Surveyors):
We support this bill.

RUSSELL ROWE (American Council of Engineering Companies of Nevada):
We support this bill.

CHAIR TOWNSEND:
We will close the hearing on S.B. 59.

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 59 WITH THE AMENDMENT PROPOSED BY TIMOTHY RUSSELL AND AMENDED BY THE COMMITTEE.

SENATOR HARDY SECONDED THE MOTION.

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

CHAIR TOWNSEND:
We will open the hearing on S.B. 61.

SENATE BILL 61: Revises provisions relating to sale of credit insurance by motor vehicle dealers and their employees. (BDR 57-435)

JUSTIN ENGEL (Universal Underwriters Group):
I have written testimony ([Exhibit G](#)). This bill would permit an employee of a motor vehicle dealer to sell certain types of credit insurance to customers without being licensed by the Division of Insurance. The rationale behind this is credit insurance is an incidental sale to the primary sale of a car. When a new finance manager is hired, he is expected to sell credit insurance from his first day even though his license is not yet in hand. If one employee at a dealership offers credit insurance and another does not, this is considered a discrimination issue.

CHAIR TOWNSEND:
This has been a common practice in the automobile industry for 60 years. Why is this being brought up now?

MR. ENGEL:

I noticed the discrepancy when I moved to Nevada a few years ago. This is an area with little oversight in the past.

SENATOR CARLTON:

According to NRS 683A.221, the only people exempted from licensure are those who sell insurance without receiving a commission. Are you saying it has been the practice of automobile dealerships to have unlicensed employees sell credit insurance?

MR. ENGEL:

Yes, in some cases. Most finance managers are licensed in a timely manner. However, many licensees have been in temporary violation of the law because they sell insurance while waiting to receive their licenses. It may take eight weeks for the license to arrive in the mail.

SENATOR CARLTON:

Do they receive a commission for these sales?

MR. ENGEL:

Yes. We are open to other solutions to the problem, such as a grace period of 90 days to allow the license to arrive.

SENATOR CARLTON:

I have serious concerns about the validity of credit insurance in general and specifically about the commission aspect of this.

JOHN P. SANDE III (Nevada Franchised Automobile Dealers Association):

The Division of Insurance has expressed concern about this bill. Our main concern is finance managers working for short periods without being licensed. The dealers are not trying to get out of any licensing requirements.

CHAIR TOWNSEND:

Have there been problems? Has the consumer been harmed by this?

MR. ENGEL:

Not to my knowledge. There is another statute, NRS 482.363, subsection 7, paragraph (b), which exempts sellers of insurance on rental cars. We would like to be included in this exemption.

CHAIR TOWNSEND:

Mr. Ostrovsky, are commissions or bonuses paid to the rental car agent who sells supplemental insurance?

ROBERT A. OSTROVSKY (Hertz Corporation):

The collision damage waiver is not considered to be insurance by the Insurance Commissioner because there is no underwriting involved. My understanding is that it is not a commissioned product for the sales agent at the counter. We are required to have a licensed person at the location, usually a station manager or assistant manager. I do not know if this is industry practice; I will research this and get back to you.

ALICE MOLASKY-ARMAN (Commissioner, Division of Insurance, Department of Business and Industry):

I am a strong proponent of licensure for sellers of all types of insurance, and I am troubled by this bill. I do not want to see the exception become the rule, particularly with this type of credit insurance. Nevada does not have the most sterling reputation in regard to credit insurance. In a 2001 report by the Consumer Federation of America, Nevada was identified as having the most excessive charges in the United States. I am considering regulation, similar to that recently passed in the state of Washington, requiring disclosure of the actual cost of credit insurance and alternatives to credit insurance.

Licensure protects the industry as well as consumers. The Violent Crime Control and Law Enforcement Act of 1994, Public Law No. 103-322, prohibits insurers from employing anyone who has been convicted of a crime of deceit. The licensing process screens applications for criminal history. The public has the right to know the person selling them insurance is competent.

SENATOR HARDY:

I would caution against overregulating this industry. My preference would be to find some way to statutorily define what they are doing.

MS. MOLASKY-ARMAN:

I appreciate your position. However, this regulation has existed for some time.

CHAIR TOWNSEND:

This bill provides exemption from licensure for individual employees providing the manager is licensed. Would you like all employees selling an insurance

product to be individually licensed, rather than just a filing of names so you can run a background check?

Ms. MOLASKY-ARMAN:

Yes. The law requires that they be individually licensed. The fact of its being an incidental sale to the purchase of a car is irrelevant. Everyone who sells insurance should be competent and qualified.

CHAIR TOWNSEND:

There are 92 automobile dealerships in Nevada, each of which has perhaps 5 employees in this position. How long would it take the Division of Insurance to process 460 license applications?

Ms. MOLASKY-ARMAN:

If the entire licensure department worked on nothing else, it could be done in two weeks.

CHAIR TOWNSEND:

Do you license the dealer principal for purposes of selling credit insurance?

Ms. MOLASKY-ARMAN:

I am not sure.

CHAIR TOWNSEND:

If a salesperson is licensed at one dealership, can he take that license with him to a new dealership?

MR. ENGEL:

No. My understanding is the corporation is the agent, and the individual is appointed under that dealership. When the individual leaves that dealership, the dealership is responsible for returning that person's license back to the Division of Insurance. When the person goes to a new dealership, they must apply for an appointment there.

CHAIR TOWNSEND:

This does not agree with Ms. Molasky-Arman's statement that she does not issue corporate licenses. You need to meet with her to reconcile this discrepancy.

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MR. ENGLE:

I am happy to do so.

Chair Townsend:

If there are no further comments, I will close the hearing on S.B. 61. The meeting is adjourned at 9:53 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____