

**MINUTES OF THE 2019-2020 INTERIM
LEGISLATIVE COMMISSION**

December 28, 2020

The meeting of the Legislative Commission was called to order by Chair Cannizzaro at 1:37 p.m. Pursuant to Sections 2 to 9, inclusive, of chapter 2, Statutes of Nevada 2020, 32nd Special Session, at pages 9-11, the meeting took place via webconference and did not have a physical location.

All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole Cannizzaro, Senatorial District No. 6; Chair
Senator Julia Ratti, Senatorial District No. 13; Vice Chair
Senator Moises Denis, Senatorial District No. 2
Senator Scott Hammond, Senatorial District No. 18
Senator Joseph Hardy, Senatorial District No. 12
Senator James Settelmeyer, Senatorial District No. 17
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblyman Jason Frierson, Assembly District No. 8
Assemblywoman Lisa Krasner, Assembly District No. 26
Assemblyman Jim Wheeler, Assembly District No. 39
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Brenda Erdoes, Director, Legislative Counsel Bureau
Bryan Fernley, Legislative Counsel, Legal Division, Legislative Counsel Bureau
Kevin Powers, General Counsel, Legal Division, Legislative Counsel Bureau
Asher Killian, Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Sarah Coffman, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
Michael Stewart, Research Director, Research Division, Legislative Counsel Bureau
Roger Wilkerson, Chief, Administrative Division, Legislative Counsel Bureau
Broadcast and Production Services Staff, Administrative Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada

Shane Backman

Unidentified Commenter

Birny Birnbaum, Director, Center for Economic Justice

Taylor Altman, Staff Attorney, Legal Aid Center of Southern Nevada

Peter Alvous, Staff Attorney, Legal Aid Center of Southern Nevada

Ryan Marchesi, Check City Partnership, LLC

Jim Marchesi, Owner, Check City Partnership, LLC

Barbara Paulsen, Nevadans for the Common Good

William Horne

Brendan Perez

Neal Tomlinson, Representative, Dollar Loan Center

Laura Martin

Jesse Wadhams

Bailey Bortolin, Nevada Coalition of Legal Service Providers

Heidi Welch, Representative, USA Cash Services

Unidentified Commenter

Victoria Newman, Counsel, TitleMax of Nevada, Inc.

Dan Reid, National Rifle Association

Michael DeLong, Consumer Federation of America

Steve Aichroth, Administrator, Nevada Housing Division, Department of Business and Industry

Michelle Garton, Deputy Administrator, Division of Human Resource Management, Department of Administration

Sandy O'Laughlin, Commissioner, Financial Institutions Division, Department of Business and Industry

Mary Young, Deputy Commissioner, Financial Institutions Division, Department of Business and Industry

John Follette, Radiation Control Specialist, Division of Public and Behavioral Health, Department of Health and Human Services

Karissa Loper, Deputy Bureau Chief, Bureau of Child, Family and Community Wellness, Division of Public and Behavioral Health, Department of Health and Human Services

Dave Wuest, Executive Secretary, State Board of Pharmacy

Barbara Richardson, Insurance Commissioner, Division of Insurance, Department of Business and Industry

Jeffrey Frischmann, Division of Employment Security, Department of Employment, Training and Rehabilitation

Shannon Riedel, Chief Deputy Legislative Auditor, Audit Division, Legislative Counsel Bureau

Lisa Robin, Chief Advocacy Officer, Federation of State Medical Boards

Kevin Bohnenblust, Executive Director, Wyoming Board of Medicine

Dan Rushin, Chief Financial Officer, Legislative Counsel Bureau

Senator Nicole Cannizzaro (Senatorial District No. 6; Chair):

Thank you, everybody, for joining us for this seventh meeting in the calendar year of 2020 for the Legislative Commission. Welcome to all the Commission members. A huge thank you to our staff for being able to get us set up and for supporting us here, and thank you to everyone who is joining us virtually for this meeting. We are going to go ahead and begin with the first item on our agenda. I wanted to first begin by just welcoming everybody again. Just a couple of housekeeping items for everyone who is joining us. Anyone who is going to testify today or speak to the Commission, please make sure that you state and spell your name for the record before you testify so that we have that for us. Of course, if anyone would like to receive a copy of the Commission's agendas, minutes or reports, you may be added to our mailing list by following the links on the website of the Nevada Legislature or by providing that information to our staff. Our contact information for staff is also listed on the website, so you should be able to find that easily online. In addition, we of course accept written comments, which may be emailed or mailed before, during or after the meeting. You can always feel free to send those to us. If you have any written comments, I know that we have received some written comments for some of the items on today's agenda, and you can of course always send those after the meeting if there's some additional items that you would like to add for our information. The information regarding where to send written comments is also on the website and is on the agenda for this meeting.

With that, we're going to go ahead and move to item II on our agenda, which is our first section of public comment. If you have called in and you would like to speak during this part of the meeting, you will be notified by our Broadcast and Production Services (BPS) when you have been connected and it is your turn to speak. Please remember that comments will be limited to not more than two minutes per person, which is our common practice here for these public comment sections. You are welcome of course to submit any additional comments in writing and they will be added to the record for this meeting. Again, we have received some of those already. We may receive some after the meeting as well, and we'll certainly add those to the record for the meeting if you add those after. If you prefer to wait and speak until later in the meeting, we will also be having a second period for public comment at the end. I would remind everyone who is joining us that it is our common practice to take any comments regarding any of the regulations that are on today's agenda during this period of public comment. When we hear any of the regulations or other agenda items that we have during those portions of our agenda, we will simply be hearing from the divisions who are submitting the regulations and allow the Commission members to ask questions. If you have comments regarding any of the items that the Legislative Commission will be hearing today, now would be the time to speak, either now during public comment or you could always comment in the second portion of our public comment which will come at the end of the meeting.

With that, I'm going to go ahead and turn it over to our Broadcast and Production Services to go ahead and queue up anyone who is calling in to speak, and a member of our BPS staff will inform you when it is your turn to speak.

Christine Saunders (Policy Director, Progressive Leadership Alliance of Nevada):

I am here today in support of the swift adoption and implementation in regards to Senate Bill 201 of the 2019 Legislative Session and the creation of a centralized electronic system for tracking high interest loans. Now more than ever in the midst of a pandemic, high unemployment and housing instability, we must ensure that families must not be prey to loans that leave them worse off. Senate Bill 201 is a common sense solution to help enforce already existing consumer protection and has already been delayed too long. We ask that you take urgent action today to adopt these regulations. Thank you.

Shane Backman:

I am a Clark County resident and I don't have a lot of background on this proposed law, but from what I understand it's being proposed a new regulation that would require a public employee who is legally concealed carrying a firearm at work to notify their employer that they are doing so, and I disagree with such a proposed action (Agenda Item II A). I believe that the vetting process in Nevada is already very robust for a concealed carry permit to be issued and that the idea of concealed carry is for it to be concealed and unknown and that concealed weapons carriers are by and large extremely responsible people and there should not be an added requirement to have to notify an employer where they may face repercussions because of a difference of political viewpoints on the subject. I do not support such a change. Thank you.

Unidentified Commenter:

This is—counsel for TitleMax. I don't need to make a comment at this time. I was just calling in to listen and to comment later on LCB (Legislative Counsel Bureau) 36-20 and 37-20.

Birny Birnbaum (Director, Center for Economic Justice):

I'm the Director of the Center for Economic Justice, a consumer organization dedicated to fair access and fair treatment of insurance consumers, but with particular emphasis on communities of color (Agenda Item II B). We urge the Commission to approve R087-20, the Nevada Insurance Division's rules to protect financially vulnerable consumers from rate increases resulting from inaccurate insurance credit scores. A review of the components of an insurance credit scoring model quickly makes two things clear: one, the insurance credit scoring models became unfairly discriminatory once federal and state governments responded to the pandemic in early March 2020, and two, in the absence of the rule before you today, the economic and financial impact of the pandemic will cause tens of thousands of Nevadans to suffer lower credit-based insurance scores and higher auto and home insurance premiums due to factors outside of the control of these consumers, and that harm will fall disproportionately on communities of color. The Division's rule is a very modest effort to protect consumers. It says that insurance credit—would be discriminatory by early March. Instead of simply prohibiting the use of insurance

credit scoring, the rule protects policyholders from rate increases resulting from worsening credit scores. The rule says that if, during the period from March 2020 through the effective date, the insurer did raise rates as a result of worsening credit scores, the insurer must rescind the increase and refund the additional premium charge. We note the insurance industry is complaining that the rule is a retroactive change to their rates. This is not true, of course, since the rates became unfairly discriminatory at the beginning of March. The implication of the rule's consumer protection or the application of the rule's consumer protection from the onset of the pandemic tracks the period in which the use of the insurance credit scores became unfairly discriminatory. We believe industry opposition is both unfounded and unconscionable, and while insurance companies have been raking in windfall COVID profits since March, they oppose this modest relief for consumers. So, we urge you to approve division rule R087-20. Thank you.

Taylor Altman (Staff Attorney, Legal Aid Center of Southern Nevada):

I'd like to make a comment on regulation package R037-20, the regulation for SB (Senate Bill) 201 concerning payday lending. The regulations create a database to track all deferred deposit loans, title loans and high interest loans in the State of Nevada. Most importantly, the regulations ensure that lenders follow the law. Using the database, lenders will be required to consider a consumer's outstanding financial obligation to verify they can pay back any new loan they take. In other words, the regulations will serve as an effective way to ensure that the ability to repay requirements of NRS (Nevada Revised Statutes) Chapter 604A are enforced, and it's worth noting that this should not have any negative impact on any business already lending in accordance with state law. At the Legal Aid Center, we work with low income consumers who are impacted by these loans every day, especially now due to the pandemic and mass unemployment. The regulations are more important than ever to protect vulnerable consumers who regularly take out these loans to pay rent and meet basic household expenses. We therefore strongly support and encourage the Legislative Commission to approve the regulations. Since March of this year, the regulations have undergone numerous iterations and have passed through the alembic of an intensive public workshop process. The FID (Financial Institutions Division) considered scores of comments from the industry as well as the small business and tax survey. It responded thoughtfully to lenders' concerns, including consumer privacy risks, cost burdens and the Division exceeding its authority. The Division has addressed these and other issues more than adequately, made—any unnecessary revisions and adopted the regulations on December 9. Now, as the final step, we urge the Legislative Commission to approve these regulations. The database is an extremely important form of consumer protection and will help borrowers to avoid being trapped on the debt treadmill overburdened with loans they could never hope to pay back. This is especially true as a new spike in COVID-19 cases threaten to derail our state's economy once again. As an example, one of our clients took out 11 payday loans in a span of only 10 days and felt crushed under the weight of this enormous debt. It was heartbreaking to hear her speak of how her financial, physical and mental health had suffered. This is exactly the type of situation the database will prevent. Both Legal Aid

Center and our clients are counting on the Legislative Commission's approval of the regulations. Thank you very much for your time and consideration this afternoon.

Peter Alvous (Staff Attorney, Legal Aid Center of Southern Nevada):

I am also a staff attorney at the Legal Aid Center of Southern Nevada specializing in consumer protection and I am also commenting in support of R037-20, implementing Senate Bill 201 from the last legislative session. As my colleague mentioned, that bill requires high interest lenders to utilize a database to ensure that the loans they make comply with existing law. The opposition expressed in the written comments, and I am sure perhaps to come in the comments today, expressed by the high interest lending industry is just the most recent part of an aggressive lobbying campaign intended to frustrate the Legislature's intent to require the industry to follow existing law and to stop exploiting financially vulnerable Nevadans. Because these lenders can charge absurdly high, triple digit interest rates, they make more money when their customers default than when customers repay the loans under their original terms. That makes it very profitable for them to ignore the laws requiring basic loan underwriting and that's why they are opposing the regulations being proposed today. These regulations must be implemented as soon as possible to limit the damage this industry can inflict on Nevadans already reeling from the extended unprecedented unemployment and noted assistance from government. Otherwise, the long-term impact of these supposedly short-term loans will wreak havoc on struggling families as they try to put their lives back together. The industry cannot be allowed to continue violating the law and trapping Nevadans in a cycle of death that enriches the lenders and their lobbyists at the expense of the most vulnerable in our state. That's why I encourage you to implement these regulations as soon as possible. Thank you.

Ryan Marchesi (Check City Partnership, LLC.):

Thank you for the opportunity to provide comment today (Agenda Item II C). I am a Nevadan and I am with Check City Partnership, LLC. My comments today are in reference to LCB file number R037-20. As multiple members of our industry will likely point out today and have in the past, these proposed final regulations before you today stretch the language of SB 201 beyond recognition. Since this regulatory process began 9 months ago, my company, as well as several other members of the industry, has repeatedly requested an open dialogue forum with the FID to allow industry the opportunity to express its concerns and ultimately gain a better understanding of the FID's reasoning and rationale. We have made these requests through written comment to three public workshops, through oral public comment in those same workshops, via email to the FID leadership and via email to the Deputy Attorney General representing FID. Despite our bringing concerns to the FID's attention and trying to work constructively with them, the FID has failed to respond to or even acknowledge our concerns. The FID waited until after adoption of its final proposed regulations to remove an entire subsection regarding total obligations from the rule, and they did so via an email to an undisclosed mailing list. Now, outside of the public rulemaking process, we've learned from the information

summary for legislative review that FID actually indicated the removal of total obligations subsection was, I quote, “not considered a substantial change.” Now, while we don’t object to the removal of the total obligations subsection, no objective person could conclude that this was a nonmaterial change. It is a significant change that didn’t just move a comma or change numbering. It removed an entire subsection of a final rule. Second, according to FID, it removed the total obligation requirement to, I quote, “avoid a potential conflict between NRS 604A and NAC (Nevada Administrative Code) 604A since NRS 604A does not specifically require a customer’s total obligations when determining a customer’s ability to repay, as the chapter states for title loans.” Had FID removed the total obligation requirement during the rulemaking process and held public hearings on this modification, it would have been forced to reconcile the inconsistent treatment of the total obligations requirement and the numerous other criteria in section 13(2) of the rule, which are similarly unauthorized by SB 201. FID has been all over the board in its flagrant overreach and attempts to legislate through regulation and insert new ability to repay criteria into this final rule. In fact, earlier in the rulemaking process, FID was attempting to require licensees to obtain a customer’s net disposable income. FID tried to justify this inclusion by falsely saying that net disposable income was already in the ability to repay sections of the statutes. This is 100 percent not true. There is no requirement to consider a customer’s net disposable income in statute today. There is no requirement to consider a customer’s total obligations. Just like there were no statutory requirements for the now-removed requirements to consider net disposable income and total obligations, there are also no statutory requirements stating licensees must consider the other three new criteria remaining in section 13(2). It represents yet another attempt in a long campaign by the FID to improperly create new criteria beyond the authority granted by the Legislature in SB 201. Unlike the net disposable income and total obligations requirements that have now been removed from the final rule, and for undisclosed reasons, the FID has declined to address this concern. To put it simply, FID is attempting to create its own new law.

Chair Cannizzaro:

If you could just go ahead and finish up your comment, because we’re running a little over time.

Mr. Marchesi:

Sure, almost done. To put it simply, FID is attempting to create its own new law and wholly circumventing the Legislature. In sum, I would like to be clear on behalf of my company and others regulated by 604A. We are not asking for a veto of the entire final rule before you or the elimination of the database set forth in SB 201. Rather, we respectfully request this body return these issues to the FID for further consideration and modification of the rule to accurately reflect SB 201 as you passed it, without the overreaching and arbitrary section 13(2) provisions currently pursued by the FID. Thank you very much.

Jim Marchesi (Owner, Check City Partnership, LLC):

Thank you. I am an owner of Check City Partnership, LLC, a Nevada company (Agenda Item II D). I have lived in Las Vegas and Check City has been in business for over 21 years and operates 32 locations and an online business—State of Nevada. Check City employs approximately 300 Nevadans and has provided Nevada customers with fair, regulated access to financial services since 1999. There are many problems with the adopted rule, including the way it was promulgated. The legislation was meant to do two simple things via a database: determine if a consumer had any outstanding loans, and do those loans exceed 25 percent of the customer's monthly income. The proposed rule seeks an overbroad and burdensome amount of information not specified in the legislation and that is unrelated to the protection of the consumers. There were 9 authorized specified inputs in the database that it was required, and it's grown to over 50. Further, a key tenet to the application of the statute is a fully tested and functioning database that can be electronically queried by the licensees. The regulation cannot function without such. We have significant concerns with any attempt at enforcing a rule before the necessary database tools to comply are in place. On my comments, I'd like to focus very quickly on requirements to determine a customer's ability to repay that were not authorized in SB 201, that conflict with existing provisions in NRS 604 and are beyond the FID's statutory authority to promulgate or enforce. When the ability to repay statute was adopted, its five criteria were affirmatively drafted, debated, modified and adopted by the Legislature in 2017. In contrast, the FID attempts to bootstrap three additional criteria into law by wholly circumventing the legislative process. FID is attempting to spin the language into something that is far different than what was intended or adopted by the Legislature. It is the FID's position that, and I quote, "commissioners and licensees may obtain," and that has changed to read, "the information that the commissioner and licensees must obtain and utilize in making a determination of whether or not a customer has the ability to repay any loan in advance of originating a loan." FID does not have the statutory authority to create new ability to repay provisions. It took a legislative act to create the five ability to repay requirements that are in the current law, and that legislative act is absent here. This attempt to backdoor each of you, as members of the Legislature, is an overreach of power and authority and really an insult to the legislative process. We've already noted that we're not here to try to get this rule eliminated, rather that this body return the issue to the FID for further consideration and that it be changed to accurately reflect SB 201 as it was passed. Also, in my many years in Nevada, we've been able to work closely and cooperatively with the agency leaders, with many of you on the Legislature, and if the Legislative Committee allows this regulation to be sent back I promise to work with the FID to hand wrap these regulations and to quickly get them back to the Committee. Thank you for your time.

Barbara Paulsen (Nevadans for the Common Good):

I am speaking on behalf of Nevadans for the Common Good in regard to 037-20 (Agenda Item II E). Nevadans for the Common Good, along with other organizations and individuals, successfully advocated for the passage of SB 201 in the previous legislative

session which would establish a loan database. We have eagerly awaited its implementation and have followed the work to develop the required regulations closely. We applaud FID for its work on this. They have conducted a number of workshops, each having ample time for all stakeholders to make comments and provide feedback. The regulations before you today have been carefully developed following the appropriate process. Implementation of the important consumer protections provided through SB 201 and these regulations should not be delayed any further. Many, many people are being particularly financially vulnerable right now, and they need these protections as soon as possible. Nevadans for the Common Good strongly urges you to adopt these regulations. Thank you for your time.

William Horne:

My name is William Horne with Strategies 360 representing Enova International. I would like to place on the record that our thanks working with FID and oppose removal of the total obligation language in section 18 of the proposed regulations. We recognize also there are other concerns in the regulations and we stand willing to constructively contribute to the resolution of any other issues that exist. Thank you.

Brendan Perez:

This pertains to R123-19 ANS requiring employees carrying a concealed weapon during the performance of their job to notify their employer. My concern is mostly what this intends to address. What does the employer do with this information if they are notified? Is there a privacy requirement? Is there protection from any kind of retaliation? If an employee were to notify their employer that they are carrying a concealed firearm pursuant to the law, will they be subject to screening or really any kind of differential treatment? I suppose that's all. Thank you.

Neal Tomlinson (Representative, Dollar Loan Center):

I'm here representing Dollar Loan Center with respect to LCB file number R037-20, which relates to NRS 604A and the provisions governing the short-term loan database (Agenda Item II F). Dollar Loan Center participated at every workshop and hearing related to these regulations. We are certainly not attempting to not have regulations. We need regulations. We want to be regulated. The primary issue that we have, and which I tried to illustrate in the submittal of our written comments, is that SB 201, which we worked closely with legislators and all stakeholders on, included nine data points, and what we've gone to now within these regulations is numerous data points covering topics and issues that were considered and rejected during the legislative process. So, we've gone from nine data points to a complete laundry list of data points, which I included in our written submission. Because of the number of data points and because of some of the information that's requested within those data points, it makes it virtually impossible for Dollar Loan Center to comply. Dollar Loan Center is an industry leader that has a state-of-the-art administrative back-of-house system, and we have a concern because of the

extensiveness of the data points and the timing of the real-time entry data that it would just be physically impossible for us to comply, let alone be a reasonable expense to comply. For example, if there's a payment made any day on one of our loans, we would have to enter that into the system in real time. You are talking about over 500,000-plus transactions, unique transactions, per year for each of those payments, and this applies to numerous data points. It becomes an administrative nightmare to even attempt to comply. What we've asked for in our submission, and which we've asked for from the beginning and every time we've submitted our comments, is to actually have a real dialogue with FID. I've been a regulatory attorney for more than 22 years in Nevada. I've participated in numerous rulemaking procedures, and it's always been a back-and-forth dialogue between the stakeholders and the regulator, and unfortunately because of COVID, COVID and perhaps other reasons, it never happened in this case. Although we kept asking questions, kept submitting questions and comments, we feel like all of those questions and comments were ignored, and so we have never had that open dialogue which is common through the rulemaking process. So, that's what we're asking. We're asking just to have the opportunity to address our concerns in a reasonable manner with FID and have them respond and acknowledge and try to understand what these concerns are. Dollar Loan Center absolutely wants to comply. They've been in business for well over 20 years in Nevada. They're an industry leader and they want regulations. They were supportive of the final version of 201, but the regulations have gone well past that. As written, we don't believe we can comply, and if we can't comply, we don't believe the industry can comply with these regulations. Therefore, we respectfully request that the Commission refer these regulations back to FID so that the industry can have an actual dialogue and meaningful discussions so that we can work through all the issues that we've raised in our multiple sets of both written and oral comments and come to some reasonable regulatory solution. Thank you.

Laura Martin:

I'm calling in support of the regulations tied to Senate Bill 201, which was passed and signed into law during the 2019 Legislative Session. Senate Bill 201 provides much needed enforcement, electronic enforcement protection for consumers, and some of these protections are those that payday lenders violate every day. That's why they are trying to stop the process now. I really hope the Legislative Commission could no longer delay the inevitable and pass these regulations and start implementing SB 201, especially during the pandemic, where up close and personal I have seen people taken advantage of by payday lenders, predatory landlords and other ways that consumers are not protected. But specifically, SB 201 will help people who are in need of short-term loans, long-term loans, but shouldn't be taken advantage of just because they are low income. So really, I appeal to the Commission, please fully implement SB 201 and start enforcing these protection that we passed into law. Thank you.

Jesse Wadhams:

I'm here on behalf of the Nevada Insurance Council, the National Association of Mutual Insurance Companies and the American Property Casualty Insurance Association (Agenda Item II G). Members of the Legislative Commission, on behalf of my clients who wanted to highlight our concerns with regulation R087-20 from the Division of Insurance regarding credit scoring. I've submitted a letter to the record on behalf of industry and I'll not make the same point in this. I do want to highlight a couple of components for your consideration. The insurance industry has repeatedly offered not only suggestions solutions. We have offered specific amendments to the Nevada Administrative Code that actually accomplish the common goal between industry and the Division of Insurance. Each one of our proposals has been rejected with little or no explanation. The other thing I would like to highlight is within the materials the Division notes that the industry walked back its proposed regulation. I think that characterization is incorrect. We offered a workable concept, a workable solution and a framework that exists within the existing statutory scheme. It was in draft and it obviously needs continued workshop and to continue refinement. The Division has also stated that the regulation attempts to balance the interests. Unfortunately, I think this is belied by the fact that no consideration is given to the concerns of industry and our very workable solutions. So, we'd ask you to send regulation R087-20 back to the Division of Insurance. We will continue to work towards a very workable and common goal solution. Thank you.

Bailey Bortolin (Nevada Coalition of Legal Service Providers):

Thank you. I am commenting on the SB 201 payday lending regulation. First, I just want to say there were absolutely no lenders who supported the passage of this bill. It makes sense that there is opposition here, but the idea that they are not against this transparency and sunlight is simply false. But these databases do exist in other states, and I don't want to re-litigate what we've already been through to get to this point, but in some states the industry has successfully watered down these regulations to the point where it can do very little to be a tool to protect consumers. I think we've been through a thorough and fair process that will bring some visibility and sunlight and transparency to what is occurring while enforcing our existing consumer protection laws. That shouldn't have a negative impact on anyone that is currently following these laws. But there is absolutely a statutory basis for every single word in that regulation. SB 201 specifically says that the regulation should provide any information necessary for the regulators to do their jobs and to ensure that all the consumer protections are enforced. So, there is a reason and a meaning and a statutory basis behind every word that you see there, and we believe that compromise has been struck. The words that were removed just this month were things that I honestly thought would strengthen the bill, but I understand that we've been through a thorough process and I'm okay with the fact that they've been removed because we've all participated in a public hearing, multiple public hearings, to get it to this point. So, I would urge you to adopt these regulations without further delay. Thank you.

Heidi Welch (Representative, USA Cash Services):

My comments are referring to LCB file R037-20 and I am speaking on the regulation regarding Senate Bill 201 (Agenda Item II H). Members of our industry have repeatedly pointed out that inserting new ability to repay criteria in section 13(2) of the rule is beyond FID's statutory mandate in SB 201, and unfortunately our concerns have been disregarded. As another illustration why members of our industry have felt completely disregarded by the FID, consider its treatment of another issue, the total obligation requirement. Specifically, members of our industry submitted numerous comments, both written and oral, for the three public workshops in opposition of the FID's inclusion of total obligations in the database. Despite this, the FID forged ahead and adopted the rule on December 9, 2020 with total obligations. Then, on December 14, 2020, it sent an email to an undisclosed email list stating that the FID reconsidered public comments and would remove total obligations from the rule. FID waited until after the rulemaking process was complete to remove it. Make no mistake, we believe the removal of total obligations was completely appropriate and necessary because FID never had the authority to include it in the rule to begin with. However, this process illustrates the frustrating lack of clarity and due process that we have suffered during the FID's adoption of the rules. Removing the total obligation requirement outside of the rulemaking process did deprive the members of our industry the public opportunity to question the FID about its decision making. In particular, it deprived us of the opportunity to question the FID about why it recognized its lack of statutory authority to include the total obligations requirements in the final rule but failed to recognize the same reality when it came to the inclusion of the three new ability to repay criteria. Assemblyman Yeager, at the Assembly Committee on Commerce and Labor, May 10, 2019, you specifically asked Senator Cancela whether SB 201 was creating new law, which undoubtedly is the case with the addition of the three ability to repay criteria FID has inserted in the rule, and you were told that was not the purpose of the bill. In fact, I'll leave you with your question and the answer you received. Assemblyman Yeager, you asked, "To clarify, you are not intending that a licensee is required to do anything other than review the information in the database in order to determine whether the loan would exceed 25 percent of the consumer's gross monthly income. Is that correct?" Senator Cancela responded, "Yes, that is the intent of the language. However, the bill does not limit the lender from reviewing any other information." We respectfully request the Legislative Committee to send this regulation back to the FID to be rewritten to only include what was originally authorized by SB 201, the very law it is to regulate. Thank you for your time.

Unidentified Commenter:

I have no comment, I'm just calling in to listen. Thank you.

Victoria Newman (Counsel, TitleMax of Nevada, Inc.):

I speak on behalf of TitleMax of Nevada, Inc. We appreciate the opportunity to provide public comment today on the regulations proposed by the Financial Institutions Division

regarding Senate Bill 201, listed on your agenda as LCB number R037-20, governing Chapter 604A of the Nevada Revised Statutes. We have submitted our detailed substantive comments for inclusion in the record but take this opportunity to address two high-level points. First, TitleMax has been thoughtful in its feedback to the FID and have attended every opportunity to discuss the FID's proposed regulations. At each instance, TitleMax has stressed high-level concerns, such as the regulations require entry of information into the database that is well beyond the scope of what the statute specifically enumerates, as well as more nuanced practical implementation concerns related to the unnamed database provider and how the system may or may not interact with our software. The regulations before you today do not address any of those concerns. Second, TitleMax remains ready to work with the FID on statutorily intended regulations that benefit both the public and provide clarity to the industry. We understand the importance of these regulations and do not, and I repeat, do not wish to delay the process, but there is still much work to be done to accomplish the mission tasked to the FID by the Legislature. We therefore respectfully ask that the Legislative Commission send these regulations back to the FID for further collaboration with the industry. Thank you for your time.

Dan Reid (National Rifle Association):

Madam Chair and Members of the Committee, Dan Reid with the National Rifle Association here to voice our opposition to regulation 123-19, the regulations put forth by the Personnel Commission regarding employees who are CCW (concealed carry weapons) holders. Under current Nevada law, an employee who is employed in a public building who is not otherwise prohibited from carrying at work may do so. This regulation will now require those same employees who are permitted to carry at work to provide notice that they are in fact carrying by communicating this to the appointing authority or their designee. It's unclear what problem this regulation is attempting to address and exactly what the purpose of the notification is. In fact, one of the things that Nevada puts an emphasis on for CCW holders is privacy, protection and the—enumerated in statute, and under this regulation that confidentiality could be compromised, and there's a concern about how this information will be protected and in what fashion it may be utilized in the future. Could this be used in a retaliatory way or is this really just to discourage CCW holders from carrying at work? Additionally, this regulation lacks clear guidance on how it will work in practice, including who is the precise person someone is to notify, what kind of notification is going to be required, is it oral, is it verbal, the frequency, is this something that needs to be done daily, monthly, yearly, biannually, etc. We have a lot of concerns, and for these reasons and many others, the National Rifle Association is opposed. Thank you.

Michael DeLong (Consumer Federation of America):

This is Michael DeLong from the Consumer Federation of America ([Agenda Item II I](#)). We are here to deliver these comments in support of the regulation R087-20, adverse—credit rescoring. They strongly support this rule, which is needed to protect consumers from

being unfairly hurt by circumstances beyond their control and to prevent unnecessary insurance premium hikes that will hurt them. Auto insurance companies have recorded huge profits due to the pandemic. At the same time, vehicle miles traveled, auto crashes, insurance claims are far below normal, leading to huge profits for the insurers that do nothing—on their own. In every state—fewer accidents in the state in 2020 compared to 2019. Nevada’s experience is almost certainly similar. In the past, insurers will be able to—on customer—information has gotten worse due to circumstances beyond their control to a deadly pandemic and an economic impact. This proposed rule will provide badly needed relief to Nevadans who don’t deserve and can’t afford to see their premiums go up, and it’s a proposal we think is an essential response by the Division to meet the consumer protection mandate, and we also strongly—the provision requiring refunds back to the beginning of the pandemic because many people have already been harmed. We—swiftly approve the proposed regulation and to reject any attempts to water it down. We are happy to serve as a resource—requested. Thank you.

Broadcast and Production Services Staff (Administrative Division, Legislative Counsel Bureau):

Madam Chair, there are no more callers at this time.

Chair Cannizzaro:

Thank you. Thank you so much for helping to facilitate that. We really appreciate all of your hard work. Okay, we are going to move from item II on to the next item on our agenda, which is appointment to the Legislative Commission to replace our non-returning Assemblyman pursuant to NRS 218E.150(4) and Joint Standing Rule Number 11, Section 3. The appointment is to replace Assemblyman Skip Daly, and pursuant to that statute and rule, Mr. Daly must be replaced by an Assemblyman or an Assemblywoman of the same party as Mr. Daly. Speaker Frierson, would you like to make a motion on this item?

Assemblyman Jason Frierson (Assembly District No. 8):

Thank you, Madam Chair. I would certainly like to move that Assemblyman Steve Yeager be appointed to replace Mr. Daly.

SPEAKER FRIERSON MOVED TO APPOINT ASSEMBLYMAN STEVE YEAGER TO THE LEGISLATIVE COMMISSION.

SENATOR RATTI SECONDED THE MOTION.

Assemblyman Jim Wheeler (Assembly District No. 39):

Thank you, Madam Chair. I'm just wondering, I've never asked this question before in all the years here. In the interim, do we go by Mason's Rules or Robert's Rules? I assume it's implied Mason's, but I've never actually seen that anywhere. Is it Mason's or Robert's?

Brenda Erdoes (Director, Legislative Counsel Bureau):

Madam Chair, generally we go by Mason's Rules throughout, as far as I know. I believe that's what we quote.

Senator James Settlemeyer (Senatorial District No. 17):

Madam Chair, thank you. I was just curious. I understand the concept. I guess I'm trying to figure out a little bit of the conflict within the Joint Standing Rules under 11, because it also says prior to the aspect of appointing someone of the same party, it indicates that the representation of the body represents the representation of the Committee, and since the Assembly is no longer in the super minority doesn't that govern the discussion?

Chair Cannizzaro:

I believe Ms. Erdoes or perhaps someone from our Legal Division may be able to answer that question.

Assemblyman Frierson:

And while they're queuing up, Madam Chair, it's my understanding that our standing rules apply until we adopt new standing rules, and so the composition of the Committee and the process is based on that until next interim because we will presumably be adopting new rules for the upcoming legislative session.

Chair Cannizzaro:

I believe you are correct, Mr. Speaker. In case Ms. Erdoes wanted to weigh in or someone from Legal wanted to weigh in as well, I believe that you are correct.

Bryan Fernley (Legislative Counsel, Legal Division, Legislative Counsel Bureau):

By statute NRS 218E.150, the members of the Legislative Commission serve until their successors are appointed by resolution, which would have to be a resolution during a session of the Legislature, except that the membership of any member who does not become a candidate for reelection or is defeated for reelection, that vacancy must be filled as provided by the joint rule adopted by the Legislature. Because the Legislature is currently not in session and the joint rules continue to apply during the interim, it would be the Joint Rule 11 that applies and would determine how this vacancy is filled.

Chair Cannizzaro:

Okay, thank you. I'm not seeing any additional discussion by members of the Commission.

THE MOTION PASSED (ASSEMBLYWOMAN KRASNER, ASSEMBLYMAN WHEELER AND SENATORS HAMMOND, HARDY AND SETTELMAYER VOTED NO).

Chair Cannizzaro:

We will welcome Assemblyman Yeager to the Legislative Commission and thank him for being able to join us today. Welcome, Assemblyman, to the Legislative Commission. We are going to go ahead and move on to agenda item IV, the approval of the minutes. These are the minutes from the meeting held on October 29, 2020 (Agenda Item IV). I will note that all members of the Commission have been able to review copies of those minutes, and so I will ask if there is any discussion from members of the Commission or questions or comments on those minutes. I am not seeing any. So, with that, is there a motion to be made?

SENATOR RATTI MOVED TO APPROVE THE MINUTES OF THE MEETING HELD ON OCTOBER 29, 2020.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

We are going to go ahead and move to item V on our agenda, which is the Legislative Commission policy. We'll move through those items in order and we will have Mr. Fernley join us to help work through some of the administrative regulations that are before us for consideration. We'll move on to item V-A, which is a request by the Housing Division of the Department of Business and Industry to continue a regulation not adopted within 2 years after submission to the Legislative Counsel (Agenda Item V-A). I will turn it over to

Mr. Fernley to present that request from the Housing Division to consider that regulation adopted more than 2 years after it was submitted. Mr. Fernley, whenever you are ready, if you can help us with that request?

Mr. Fernley:

Yes, thank you, Madam Chair. Pursuant to subsection 4 of NRS 233B.040, an agency is required to adopt a regulation within 2 years after the date on which the proposed regulation is submitted to the Legislative Counsel for drafting. If it is not adopted within that period, in order to proceed with the regulation, the head of the agency is required to appear before the Legislative Commission to explain the reason that the regulation was not adopted within the 2-year period. The Legislative Commission can then proceed to determine whether to proceed with the adoption of the regulation by a majority vote. Regulation R146-18 was received by the Legislative Counsel on June 15, 2018, which means that the agency would have been required to adopt the regulation by June 15, 2020. Because the agency adopted the regulation after that date, the agency can proceed with this regulation only if the Legislative Commission approves the agency to proceed with the regulation after the 2-year deadline. Under this agenda item, the Commission's action would be to authorize the agency to proceed with the regulation more than 2 years after submission to the Legislative Counsel for drafting. Under the agenda item during which regulations are approved, the Commission would then need to vote on whether to approve the regulation. Thank you.

Chair Cannizzaro:

Great, thank you. We did have a request—this would be R146-18. We did have a request to pull this for some additional comments and questions from a member of the Committee. So, if we have someone joining us from the Housing Division of the Department of Business and Industry, we would welcome them to join us at this time, and I believe that was a request from Senator Hardy.

Steve Aichroth (Administrator, Nevada Housing Division, Department of Business and Industry):

Good afternoon, Madam Chair. I'm here to answer any questions.

Senator Joseph Hardy (Senatorial District No. 12):

Thank you, Madam Chair. Looking at that, certain fees, I had my question answered by Bryan Fernley earlier, where all of the fees that we've had so far that were presented were put in statute without coming up close to that ceiling that we put in statute, so I'm fine on that one. Thank you, Madam Chair.

Senator Settelmeyer:

Madam Chair, if you're entertaining a motion, I'd move to approve.

SENATOR SETTELMAYER MOVED TO APPROVE REGULATION R146-18.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion has been approved and the regulation will be adopted. We will go ahead and move to item V-B. It's the early review of administrative regulations submitted pursuant to NRS 233B.0681 (Agenda Item V-B). There is one regulation that we have that has been submitted for early review before it has been adopted, and so again I'm going to turn it over to Mr. Fernley to walk us through this item.

Mr. Fernley:

Thank you, Madam Chair. This is Bryan Fernley, Legislative Counsel, here to introduce the preapproval of regulation R079-20. Under NRS 233B.0681, the Legislative Commission is authorized to conduct an early review of a proposed regulation after the agency has given notice of the hearing on the regulation but before that hearing is held. With respect to this regulation, the State Sealer of Consumer Equitability has scheduled a hearing on the regulation for January 19, 2021. Because that hearing has been scheduled, the Commission can consider an early review of this regulation. If after this early review the agency adopts the regulation in identical form, the regulation will be filed with the Secretary of State and become effective at that time. Thank you.

Chair Cannizzaro:

Thank you, Mr. Fernley. I do think that we had a question on this regulation from Senator Hardy, and so if we have a representative from the State Sealer of Consumer Equitability who can join us, I do believe that there were some questions from Senator Hardy. Once we've got them, Senator Hardy, please.

Senator Hardy:

Thank you, Madam Chair. Same kind of thing when we're starting to look at fees. This is covered, so any of those questions that I had on fees were covered by Bryan Fernley, but one of the things that came up—when we approve a regulation, a 2020 regulation, does it automatically become a temporary regulation, or would this be considered like a 2018 regulation which would make it still permanent? I guess that's a question for Legal.

Mr. Fernley:

Thank you. These regulations being considered are permanent regulations. These 2020 regulations can be considered permanent regulations. That's the process that the agency has gone through. They've gone through the permanent proposed regulation process, so these regulations being considered today are permanent regulations.

Senator Hardy:

So, the even regulations and the odd regulations don't approve in all of the cases that we're going to see today?

Mr. Fernley:

Correct. The temporary regulation process is a process that agencies are authorized but not required to go through between July 1 of the even-numbered year and July 1 of the odd-numbered year. Agencies can adopt permanent regulations during this time period so long as it's been submitted to the Legislative Counsel for drafting and it goes before the Legislative Commission for approval.

Senator Hardy:

So that would include everything. If you're ready, Madam Chair, I'd move to approve.

Chair Cannizzaro:

SENATOR HARDY MOVED TO APPROVE REGULATION R079-20.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion carries and the regulation will be approved. We will move on to item V-C, which is a review of administrative regulations submitted pursuant to NRS 233B.067, and that is the balance of the regulations that the Committee should have for us to consider (Agenda Item V-C). These have been adopted since our last meeting in October, and so as is our usual method, I will ask members to identify the regulations they would like to hold for discussion and then we will vote to approve any remaining regulations. At that point, we will then go through each of the regulations that has been held and ask the agency that adopted the regulation to address the questions related to the regulation. I have received a list of regulations for requests to be considered separately. I will first go through that list, because I already have received some, and then if there are additional items that needed to be added to the list, we will go ahead and add those. So, if you're following along in your list of regulations, the first one that I have is for R123-19 for the Personnel Commission, R126-19 for the State Environmental Commission, R037-20 for the Division of Financial Institutions, R046-20 for the State Board of Health, R055-20 for the State Board of Landscape Architecture, R083-20 for the State Board of Pharmacy, R087-20 for the Commissioner of Insurance, R097-20 for the Division of Financial Institutions, R123-20 for the Administrator of the Division of State Parks of the Department of Conservation and Natural Resources, R161-20 for the Administrator of the Division of Employment Security of the Department of Employment, Training and Rehabilitation, R146-18 for the Housing Division of the Department of Business and Industry—just kidding, we already heard that, and we actually already heard this last one. So, the last one on the list for today remaining to be heard would be R126-20.

Senator Julia Ratti (Senatorial District No. 13; Vice Chair):

Madam Chair, would you like a motion?

Chair Cannizzaro:

Yes, but let's first see if there are any additional regulations that are requested to be pulled by members of the Commission. Are there any regulations that I either missed or that anyone would like to have added?

Senator Settelmeyer:

Madam Chair, I apologize. If you were holding R126-19 on my behalf, I apologize. I had given you the wrong number. So, if that one was being held for me, I have no problem with that and no questions to ask of them.

Chair Cannizzaro:

Any additional regulations from members of the Commission?

Senator Hardy:

Madam Chair, R043-20.

Chair Cannizzaro:

For the State Board of Health?

Senator Hardy:

Right, and R097-20. I think you got that, did you not?

Chair Cannizzaro:

I did, for the Division of Financial Institutions.

Senator Hardy:

And R090?

Chair Cannizzaro:

I did not have that one. For the State Board of Pharmacy?

Senator Hardy:

That's all I have. Thank you.

Chair Cannizzaro:

At this point, I'm not seeing anyone else with additional regulations to consider, so we do have a motion, I believe from Senator Ratti, and it would be to approve the remaining regulations, which are R009-19, R010-19, R048-19, R049-19, R086-19, R088-19, R126-19, R036-20, R060-20, R068-20, R080-20, R081-20, R092-20, R127-20 and R160-20. Is there a second for that motion?

Mr. Fernley:

I apologize, Madam Chair. Could we add R146-18 to that list? The previous vote would have been to authorize the adoption after 2 years, and we would need a separate vote to approve the regulation.

Chair Cannizzaro:

Yes, and we'll add R146-18 as well. Okay, a second for the motion to approve those regulations I just read?

SENATOR RATTI MOVED TO APPROVE REGULATIONS R146-18, R009-19, R010-19, R048-19, R049-19, R086-19, R088-19, R126-19, R036-20, R060-20, R068-20, R080-20, R081-20, R092-20, R127-20 and R160-20.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion has been approved. Those regulations will be adopted, and we are going to go ahead and move on with our consideration separately of the regulations that were requested to be pulled. We will begin with R123-19 for the Personnel Commission (Agenda Item V-C), and I believe that this was a request from Senators Hardy and Settlemeyer, so when either one of you would like to begin.

Senator Settlemeyer:

Thank you, Madam Chair. My question pertains—it seems that we're treating the state employees differently than regular people that are out there, meaning so that if I was to go to the Dayton State Park and if I was worried about rattlesnakes or something, and I were to have my concealed carry weapon for whatever reason, I have the ability to go to the Dayton State Park. However, if somebody works at the Dayton State Park felt uneasy and wanted to have their CCW, they first had to inform their employer, and that seemed rather wrong to treat them differently. That was my first question, and then I had a follow-up if I could, Madam Chair.

Michelle Garton (Deputy Administrator, Division of Human Resource Management, Department of Administration):

I can try to answer your question here. Really, the main reason for this regulation—it was a petition from employees who may feel uncomfortable at work for whatever reason, possibly the rattlesnake reason. That's a good example, but the main reason for the regulation change is that we wanted to bring it into alignment with NRS 202.3673, and that was the position of the employees who petitioned it, and without this then discipline

could be administered for something that's actually legal, and so if the appointing authority also does not know that an employee has a CCW then discipline could be inadvertently administered. That's the impetus of the change. I hope that answers your question.

Senator Settlemeyer:

I appreciate that, and the other question if I could, Madam Chair. I'm a little concerned about the process, and I understand that with COVID everything has changed, but in that respect I notice that you posted this with various entities, one of them being the Legislative Counsel Bureau, which is closed to the public, the Grant Sawyer Office Building, which is closed to the general public, and also the Blasdel and Nevada State Library and Archives, and I'm not sure if they're open to the general public, but then also looking at your meeting minutes, it says that it was a teleconference hearing which only one person testified at, and frankly, in my opinion, I question that. This should be sent back to have a little bit more of a hearing. This was just approved on the December 4. It came on to our agenda I think in the last 4 or 5 days. It wasn't on a preliminary list of regulations that we were to review, and I'm concerned about that. How many people was this mailed out to for comments?

Ms. Garton:

This agenda was—I'm trying to find the date right here of the agenda posting. I think the confusion is the workshop happened pre-COVID. The hearing just happened on December 4, and so we have done the same posting that we've done for the hearing that we've been doing since the beginning of COVID, and that's on Governor Sisolak's directives to post electronically. I'm trying to get to it here. The notice of public hearing was posted on October 28 and at the Legislative Counsel Bureau's website and the Nevada public notice and then our website.

Senator Settlemeyer:

I appreciate that. A constituent reached out to ask me and they were unaware of this regulation, and I guess it's just a difference of opinion. I just think it's a little bit—you didn't have enough feedback, but thank you, Madam Chair.

Ms. Garton:

I should also clarify we do send out to the listserv recipients who have signed up for our listserv for notifications like this.

Senator Hardy:

Thank you, Madam Chair. I guess I'm going to ask constitutional questions. Kevin Powers is probably locked and loaded, maybe, if I can use those words. The gun-free zones that we have, a building that has a gun-free zone—I can understand the gun-free zone building

being able to enforce as a term of employment that you should not be having a weapon of any kind that's a gun, and how does that relate to something that has not been designated as a gun-free zone with the employer knowing that somebody has—can that be construed as a constitutional issue about limiting somebody's ability to concealed carry? It's a question asking are there precedents someplace elsewhere that say you can ask or you require a person to say, "Yes, I have a concealed carry and I either am carrying or I'm not carrying, but I am a concealed carry," and how does that comport with the Constitution with the right to bear arms and vis a vis for the place that is a gun-free zone or not gun-free zone. But it's many questions in one for which I'm confused, and so you can answer however you want and help me out.

Ms. Garton:

First, I will say that none of those questions came up at the workshop or the hearing. Of course, there was no comment at the hearing. I'm not sure—

Senator Hardy:

The one that was there?

Ms. Garton:

I'm sorry?

Senator Hardy:

From the one person that was there?

Ms. Garton:

Yes. There were other people on the line for sure, but I was the only one who testified so there were no questions at the hearing. At the workshop there was discussion about we don't think that this—the employees did not think that NAC 284.650 was in line with NRS 202.3675, so that was the discussion there. But I'm not sure I can answer any constitutional questions, unfortunately. I'm not skilled enough there, I don't think.

Senator Hardy:

This is where Kevin Powers is somewhere in the background.

Assemblyman Frierson:

Madam Chair, if I may? I don't know if Kevin Powers on that end—but maybe Mr. Fernley with respect to counsel for a policy might be able to weigh in.

Mr. Fernley:

Yes, I can certainly try to answer that. I don't know that there is a—the case law that I have seen deals more with the ability to have a firearm in a person's home for self-protection. I'm not sure that there is any—I don't believe that there would be a constitutional prohibition on restricting a person's ability to carry a firearm in a public building. Under current law, it in fact can be flat-out prohibited. A person can be prohibited from carrying a firearm in a public building if the public building has posted a notice that firearms are prohibited from being carried in the building. If you can go to the point of prohibiting them in a public building, I think you can go to the point of requiring employees to—their employer that they would be carrying a concealed firearm in the building.

Senator Hardy:

Does that mean that the public building people have a right to know if the person has a concealed weapon permit?

Mr. Fernley:

I don't think you would call it “they have a right to know” in that absence of some requirement such as this regulation or a statute that the employer would have a right to know. I think it would be constitutional for the employer to ask to be told if their employees are carrying a concealed firearm.

Senator Hardy:

So if they're not allowed or don't ask “Do you have a concealed weapon permit” and then the person does carry, how would they know to ask them if they're carrying?

Mr. Fernley:

I guess how it would work under this regulation is that an employee would be required to notify their employer that they are carrying a concealed firearm. If that employee did not do so and the employer found out somehow, then there could be potential consequences on the employee for failing to notify their employer. Again, I guess it would be dependent on if the employee did not notify their employer and the employer discovered that violation.

Senator Hardy:

And then that gets me to the constitutional issue that sounds squishy at this point, so I'd let that rest. Thank you, Madam Chair.

Senator Ratti:

I was just curious if the agency could just speak to the concern expressed by the caller regarding if there would be any consequences or any discrimination or anything. What protections are there for the individual who has disclosed that they have a concealed carry permit and they are carrying once that information is known by their employer?

Ms. Garton:

Do you mean the caller into the hearing?

Senator Ratti:

I'm sorry, no. I mean the caller on today's public comment was just asking—was a person who has a concealed weapon and was a little concerned that if he shared that he was carrying that there would be potential consequences for him and so then wanted to know if there's protection or is there anything in the regulation that protects them?

Ms. Garton:

Well, we're basing the regulation on subsection 4 of NRS 284. The authority is 3673. It just says that a permittee shall not carry a concealed firearm while the permittee is on the premises of a public building that has a metal detector or a sign posted. Okay, and then it's the exception, which I think may be the protection, which is that does not apply to a permittee who was employed in the public building from carrying it while he or she is on the premises of that building. It's allowable, it's just—we're trying to work it into the regulation so, again, someone's not wrongfully disciplined. If they have a permit, then they—if as long as they notify their appointing authority.

Senator Ratti:

So, I think what I hear you saying is the fact that they have the concealed carry permit is their protection, because they would then clearly be legally carrying.

Ms. Garton:

Right, so that's—by statute.

Senator Ratti:

I guess the other question I have is that, the flip side—since this came out because of a request by a group of employees, are you concerned that there's some liability for the state because there are employees who have—some believe that it's unsafe or not comfortable in their work environment?

Ms. Garton:

I can't speak to liability. I think I'm not—I'm not concerned, and again, we did work with LCB Legal on the regulation, so I think if there was some liability concern that may have come up, but it did not come up in the workshop or the meeting at all.

Senator Ratti:

Thank you.

Senator Hardy:

Simple question. Are legislators employees of the state?

Ms. Erdoes:

Madam Chair, I think I can answer this for our purposes as Director. We do treat legislators as employees because we issue a paycheck to you during session and at other times for hearings when you're in the building, so based on OSHA (Occupational Safety and Health Administration) and some of the other regulations, we do treat legislators as employees for that purpose.

Senator Hardy:

I'm smiling now. Thank you.

Chair Cannizzaro:

I just kind of had more of a comment here, because I—in my employment there are exceptions for carrying concealed weapons where you also have to inform your employer if you're going to do so, and so I think there are other instances where this is something that is done. Certainly in my job there are provisions that would allow for that with proper notice, so this does, I think, occur in other circumstances of employment, and I guess the one thing I just wanted to clarify with respect to this regulation as I read it is that this wouldn't prohibit someone from carrying a concealed weapon if they had an appropriate permit but rather just requires notice to the employer so they're aware that there may be a weapon on premises.

Senator Scott Hammond (Senatorial District No. 18):

Madam Chair, can I ask a question please?

Chair Cannizzaro:

That was a question that I would like to have answered first, Senator.

Senator Hammond:

Sorry, I thought you were just making a statement.

Ms. Garton:

Yes, that's our interpretation as well. That's the intent.

Chair Cannizzaro:

We'll go to Senator Hammond.

Senator Hammond:

Thank you, Madam Chair. I apologize. The question I had is, during her testimony, Ms. Garton had mentioned that nobody had objected, none of the employees. I just wanted to clarify the mechanism for which you were collecting any of those, any kind of comments from your employees. Did you send out notification to them? Were they allowed to come in and take time off of work and actually testify during any kind of hearing that you may have had? I'm just curious as to how you know that you weren't getting any objections to that regulation.

Ms. Garton:

During the hearing there was no comment, so we didn't receive comments in the affirmative or the negative. It was a teleconference, so again, pre-COVID the employees did come to the workshop to provide their testimony. Again, that was during the drafting phase, so again, the methods that I listed earlier in the way that we sent it out to all the employees, or at least to the associations.

Senator Hammond:

Thank you very much, and thank you, Madam Chair.

Assemblyman Wheeler:

Thank you, Madam Chair. I've got a question. As a state employee that a legislator is, if we were to go, say, on a field trip like I've done before, as some of us have, go to Thunderbird Lodge up at Lake Tahoe as part of the interim committee, that's state property. Would we then have to notify someone, yet a civilian in the same state property would not have to notify someone?

Ms. Garton:

That type of scenario again wasn't discussed there. The regulation does allow a permittee, an employee, to carry in the building in which they work with the notification, but it's not addressing other public buildings, just their workplace.

Assemblywoman Teresa Benitez-Thompson (Assembly District No. 27):

Can I ask a clarifying question? I believe for that specific instance that that building that was mentioned is actually a nonprofit. I don't believe that is a state building.

Assemblyman Wheeler:

Well, substitute any other building for it.

Assemblywoman Benitez-Thompson:

I think this is specific to public buildings, so I—that is not a public building. It's not a state building.

Chair Cannizzaro:

Additional questions or comments from members of the Commission? I'm seeing none. Is there a motion to be made? Assemblywoman Carlton, were you making a motion to approve?

Assemblywoman Maggie Carlton (Assembly District No. 14):

No, I was just getting ready in case somebody asked a question, but if you're looking for a motion, Madam Chair, I'd be happy to move approval of this particular item.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE REGULATION R123-19.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN KRASNER, ASSEMBLYMAN WHEELER AND SENATORS HAMMOND, HARDY AND SETTELMAYER VOTED NO).

Chair Cannizzaro:

The motion passes and the regulation will be adopted. Thank you for being here to answer all of our questions. We are going to move next to our next regulation on the agenda, which is R037-20 for the Division of Financial Institutions (Agenda Item V-C), and we will go ahead and have them join us. I believe Senator Settlemeyer had a question, so we'll let you go ahead and then we'll open it up to members of the Commission for questions.

Senator Settlemeyer:

Thank you, Madam Chair. With all the discussion we had during the public comment, I think it's been pretty well laid out that there seems to be just a disagreement based upon what was passed within SB 201 and the extent that this bill has gone. I was curious how many total workshops have been done on this particular process.

Sandy O'Laughlin (Commissioner, Financial Institutions Division, Department of Business and Industry):

This is Sandy O'Laughlin, Commissioner for Financial Institutions Division, and Mary Young is with me, the Deputy Commissioner for the Financial Institutions Division. I'm a bit nervous. I'm just going to put that out there. It's my first one, so I appreciate your patience. Senator Settlemeyer, this is—we've had two public workshops and the adoption hearing.

Senator Settlemeyer:

Thank you. I appreciate that information. It just seems that it was such a contentious subject. How long were the meetings generally lasted? Were they in and out in an hour, two, three, or did you go to midnight, or how long did these meetings take?

Ms. O'Laughlin:

Approximately about an hour. They took about an hour. Approximately, maybe a little bit more, maybe a little bit less, mostly a little bit more.

Senator Settlemeyer:

You guys did pretty good. It takes us longer than that just to get through public comment. Appreciate that opportunity to ask that question, Madam Chair. Thank you.

Senator Ratti:

There were a couple references in public comment suggesting that these regulations are well outside the scope of the original NRS that was passed in the last legislative session under SB 201, I believe it was, and so I would just be interested from our legal counsel if

they have any concerns regarding these regulations being more expansive than the original law. I'm assuming the answer is no, because they're on our agenda, but since that was mentioned multiple times, I wanted to just confirm that.

Ms. Erdoes:

I'm sorry, Bryan got booted off the system and he is trying to get back on, but I think I can answer this question in terms of you're exactly right. The Legal Division—be that the Legal Division has gone through that process for this regulation and we believe that it meets the standards that are required.

Senator Ratti:

So no scope creep on this one? It's in align with the law that we passed?

Ms. Erdoes:

Yes, in the opinion of the Legal Division.

Senator Ratti:

Thank you.

Ms. Erdoes:

And me, I guess. There you go.

Assemblyman Steve Yeager (Assembly District No. 9):

Thank you, Madam Chair. I just have a couple of questions, if you'll allow me a little bit of leeway. I understand that we don't have the database yet because the regulations have to be passed before an RFP (request for proposal) can go out, and so my first question was just what is the anticipated timeline for actually contracting with someone and getting a database up and running?

Mary Young (Deputy Commissioner, Financial Institutions Division, Department of Business and Industry):

At this time I don't have a set timeframe. It goes by how quickly we can get these approved and done and we can start talking to the Nevada State Purchasing Department, and then from there it would be on their timeline and then for us to actually get to select the vendor and go from there. But we have every intent to work with the industry as well as the vendor, so that way all parties are on the same page and that we can get this done. I wish I had a set timeline for you, but unfortunately it's also in the hands of the Nevada State Purchasing Department.

Assemblyman Yeager:

Thank you. Could I ask a follow-up, Madam Chair? Thank you, Madam Chair. That makes sense, and I think you kind of just answered a little bit in the answer to that question, but the second I guess concern I had was, there are a lot of data that needs to go into the database from the licensees. There's a requirement in the regulations that that data be inputted real time. Obviously without a database being out there in the universe right now licensees can't really work on integrating their data systems to be able to input this data, so I just wondered, in your mind, once the RFP goes out, you contract with someone, is there going to be a little bit of leeway or ramp-up time so that the licensees can sort of work out the bugs to make sure that they're able to comply? Essentially, we're not just going to flip the switch and say, starting tomorrow, all this data has to be in there? I just kind of want some assurances that there'll be some additional work so that licensees won't potentially be penalized when they're in that sort of ramp-up IT (information technology) integration process.

Ms. O'Laughlin:

Absolutely. We realize it'll take a period of time. We by no means think that this will be RFP and then advance. We realize that it's going to take some time to implement.

Assemblyman Yeager:

Thank you so much, Madam Chair. I appreciate it.

Senator Hammond:

Quick question. I know that a lot of this regulation is dealing with brick-and-mortar facilities here. Can you explain to me how this regulation may affect online lenders, people who are not located within the state or maybe even offshore? How do we regulate or how do we enforce regulations on them? I just don't know much about that, if you could enlighten me on that.

Ms. Young:

Thank you for the question. Currently we license only brick-and-mortar licensees for their main location, so they have to have a—their first physical presence here in the State of Nevada so we have access to the books and records, and then they can license additional locations outside the state. We will have access to all data to a licensed lender in this state. For offshore, we don't license and regulate offshore lenders, so if we were to find that they were conducting unlicensed activity, we would take appropriate action at that time.

Senator Hammond:

Thank you very much. I guess the follow-up to that is what would be the appropriate action and can we actually enforce it?

Ms. Young:

Thank you for the question. What we would do is, per 604A we can issue cease and desist orders and administrative complaints, as well as go for administrative fines. However, our likelihood—we can only do so much, issue those orders and try to find these individuals that are part of it. But for us to find them physically when they're operating online could be difficult.

Senator Hammond:

Thank you very much. Appreciate it.

Ms. Young:

Thank you.

Senator Moises Denis (Senatorial District No. 2):

Thank you, Madam Chair. Actually, I've got a couple of questions, but I want to follow up on that last one. Have we ever gone after any of those? The unregulated, offshore, whoever? Has the state ever gone after any of those?

Ms. Young:

To my knowledge, we have tried to go for the offshore. We do have better luck for them being in the US because we can easily access them or have other regulators or secretaries of state that can assist us on that. We have issued orders for all licensed activity. But to my knowledge, it has been some time since we've had an offshore unlicensed lender that were brought to our attention.

Senator Denis:

It would be good to know if there's something that we need to do on our part as far as the Legislature to be able to go after those kind of individuals. My first question was on the regulations themselves. It seems like there's been a delay, and I know we've got COVID, but could you talk about the timeframe and why it's taken so long for these regs to come forward?

Ms. Young:

Originally we started to promulgate these regulations probably at the end of 2019 when the new Commissioner was coming here, so that took a little bit of time as well. We did do our small business impact survey in February. That's when we actually got started, got our foot down on the gas pedal and actually started the regulations. Our initial agency draft regulation was submitted to LCB on March 12, and then revisions and consideration of industry comments were submitted on June 24, and August 27 to LCB for their review to determine the regulations conform to legislative authority and intent. Then, due to COVID and the two special sessions, I know there was some delay on LCB, so we received their initial review and revised regulations on October 26, and then we had a few changes to that, so the revision that went to the adoption hearing was done on November 13. So, the process just took a little bit longer than normal due to unforeseen circumstances.

Senator Denis:

And then my last question, Madam Chair, I just wanted to—we heard a lot from folks in the industry that they felt like they weren't listened to. Can you talk about how you responded to them and their concerns in this process?

Ms. O'Laughlin:

We did address—we had multiple versions of this reg. We wrote it, rewrote it, and we took all comments into consideration, but we didn't do a one-on-one, and we did that from the very beginning. We made sure that everything was open and public. We didn't meet with anyone separately, and by not holding any private discussion it didn't impede the process. In fact, it allowed members of the industry all to have equal input. That's what we have done. We did try to take off—we did consider all comments, both written and verbal. There were more comments than questions presented to us, so our best way was to take all of those comments and we could talk with our DAG (deputy attorney general), talk internally and make those corrections. As you see in the packet (Agenda Item V-C), the big packet that we had submitted to the Commission with a lot of the changes that we did try to make those changes, but sometimes if we make too many changes it falls out of the spirit and intent of what the law was and it just doesn't comply with what we were—to, so we made the changes that we thought we could do in conjunction with our deputy attorney general.

Senator Denis:

So on those changes that you did make, was that just decisions that were made just internally with your staff to make the changes, then you just brought those forward? Is that how that works?

Ms. O’Laughlin:

Yes, so internally with our experts and our deputy attorney general, and then we also submitted those to LCB during their review so they were able to see any revisions that we had, again, to determine that it would definitely conform to legislative authority and intent.

Senator Denis:

Okay, so then that changes—when they came out, those were all available in your hearings and everybody saw them at the same time?

Ms. O’Laughlin:

Yes, that is correct. They were sent out when we noticed for the workshops, as well as the adoption hearing. They're part of the packet that was submitted to the Commission and they're on our website. All those changes are documented and was provided to the industry.

Senator Denis:

All right, thank you. Thank you, Madam Chair.

Senator Hardy:

Thank you, Madam Chair. I'm just thinking out loud right now that no matter what we do, there will still be people in need who have to have some kind of transition loan, and they may go other places. We have regulations that could become the nidus for this, and we could have other people that don't pay taxes, and I think realistically when people are in need, they're going to seek a source that may not be regulated at all. But my loan shark industry will probably be enhanced by this. I don't think this is a good idea. Thank you.

Senator Ratti:

Chair, I'll make a motion if you—I just have perhaps the opposite sentiment to Senator Hardy. Sometimes we're on the same page, sometimes we aren't, with all respect. But I actually think there's urgency to getting these in place and getting them in place as quickly as possible because so many Nevadans are experiencing financial distress right now, and while some may seek less regulated choices, I think that what we've seen is that lots and lots and lots and lots of people will go to the folks that they see on their street corner, the folks that they see advertising on their TV or their radio or their social media page over and over and over again, and we need to be careful. This is a consumer protection bill that passed in the legislative session, and we need to get this in place sooner rather than later, because I think there's an onslaught. I am already hearing it from my constituents of folks who are getting themselves in trouble, and the idea here is to make

sure that there's some responsibility to not let individuals jump from one place to another and accrue more debt than they're ever going to be able to pay off and become buried by that debt, so I would make a motion to approve and say that we do it with some—ask that the FID move forward as promptly as they can, knowing that there's going to be a lot of people out there who are under financial distress. Thank you.

SENATOR RATTI MOVED TO APPROVE REGULATION R037-20.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

Assemblywoman Carlton:

If I may, Madam Chair, just briefly, I've been listening to this issue for a very, very long time, and I remember when we were told there is no problem because there is no data, and now there's some issues with how they gather the data. You can't measure or monitor or regulate if you don't have data, so I think this is a good step forward in just knowing what issues might be out there with this industry and being able to have a fact-based conversation about the behavior of the industry and those who access it for those short-term loans. There's nothing in here about trying to get rid of the industry. We know it's going to be out there for awhile. We just want to know what's really going on. So, if you can't measure it, you can't monitor it and you can't regulate it—and as far as going to unregulated folks here in the state, if you get a loan from an unregulated lender, they can't enforce you paying it back because they're not licensed in this state, so that pretty much null and voids that contract. So, if they do go to this internet provider, what is the internet provider going to do? With that, Madam Chair, I've no problems in supporting this, and I look forward to having a real conversation about the data that we get from this. Thank you.

Senator Settlemeyer:

While I appreciate the Assemblywoman's comment, I have no discussion of having the database, and that's the same issue that we're discussing. The bill specifically authorized FID to adopt a database, yet these regs define the ability of a customer to repay. They go much further than that database, and when you do that, what I've seen around this industry is it's forcing some individuals to go—what are called tribal loans, and by going to a tribal loan, their ability to repay then is under the tribal courts, and they do have the ability to get that done and to get repayment through those courts, but that skirts all of our state laws, so I'm worried that we're just doing that, and therefore I will be opposing this regulation. Thank you.

THE MOTION PASSED (ASSEMBLYWOMAN KRASNER, ASSEMBLYMAN WHEELER AND SENATORS HAMMOND, HARDY AND SETTELMAYER VOTED NO.)

Chair Cannizzaro:

The motion passes and the regulation will be adopted. We will move on to the next item on our agenda, which is R043-20 for the State Board of Health (Agenda Item V-C). I believe that this was a request from Senator Hardy, so we will get the State Board of Health connected with us here, and then, Senator Hardy, whenever you're ready.

Senator Hardy:

Thank you. Madam Chair. Ostensibly, we're just getting rid of the gonadal protection from radiation, and I'm sure there was a rationale for that. I'd be interested to hear the rationale, otherwise I'm okay with the regulation.

John Follette (Radiation Control Specialist, Division of Public and Behavioral Health, Department of Health and Human Services):

This is John Follette for the State Board of Health. The rationale for this is the removal of this requirement is consistent with a recommendation from the American Association of Physicists in Medicine. It's been endorsed by several professional organizations in the United States and Canada, including the ACR, the American College of Radiology, the Canadian Association for Radiologists and Image Gently. The requirement to use gonadal and fetal shielding was established in the 1950s as a precaution because there was not very much information available about the reproductive or hereditary effects of radiation. Since the 1950s, we have obtained enough information to determine that radiation doses used in diagnostic imaging are not associated with measurable harm to the gonads or fetus. In addition, the use of this shielding can have a negative effect on the exams. For example, the shielding can move in between the time it is placed and the x-ray has taken, sometimes it can obscure the part that's being imaged, and it can also decrease the diagnostic quality of the image and all of these result in an x-ray having to be retaken. The modern x-ray systems use an automatic exposure control which automatically sets the amount of radiation that's required for an x-ray, and if there's any shielding within the imaging field, the automatic exposure device will compensate to penetrate through that shielding, and that will increase the dose to the patient, so it's for these reasons that these recommendations have been made.

Senator Hardy:

Madam Chair, I am willing to make a motion to accept. Appreciate the explanation. Thank you.

Mr. Follette:

Thank you.

SENATOR HARDY MOVED TO APPROVE REGULATION R043-20.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN CARLTON VOTED NO).

Chair Cannizzaro:

The motion will carry and the regulation will be adopted, and we are going to go ahead and move on to our next regulation, also for the State Board of Health, and it's R046-20 (Agenda Item V-C). We'll turn it over to Senator Hardy, who I believe had a question on this one. Senator Hardy, whenever you're ready.

Senator Hardy:

Thank you, Madam Chair. I looked at this and I was concerned about the listing of medical diagnoses, and I realized the word audit was used, and as I looked at the word audit, it was an audit of a conglomerate instead of an audit of individuals. So, if we're looking at an audit of individuals, we get into health insurance portability, protection, accountability act, and if we have—and this reached into a private school, and if we don't have health people who actually do health and are subject to the HIPAA (Health Insurance Portability and Accountability Act) violation type things, I'm uncomfortable with having to have someone say, "This is the medical diagnosis that I have," and therefore they basically had to say something that is otherwise not able to be shared appropriately, and so I realized that the audit is done by a state health officer or someone, but I'm concerned about the audit including information that people shouldn't have, and just like we don't ask when they sign a waiver that it's for religious purpose, we don't ask them, "Well, what religion are you?" Thus, we don't also say, "What's your medical condition?" So, we don't have the right to ask those questions and nor should we ask those questions, and that's where I'm coming from and would be anxious to hear the rationale from someone. Thank you.

Karissa Loper (Deputy Bureau Chief, Bureau of Child, Family and Community Wellness, Division of Public and Behavioral Health, Department of Health and Human Services):

I am the Deputy Bureau Chief for the Bureau of Child, Family and Community Wellness. We oversee the Nevada State Immunization Program. I can address your intent of your questions, I believe, Dr. Hardy. The medical exemption form is still in the development phases, and we will be working with all the stakeholders involved in this process, school nurses, other groups to develop that form. However, it would be physicians working with their patients, their patients' parents in this case, to fill out that medical exemption form and to be the ones determining that the child's condition warrants a medical exemption to the immunization requirements for public school, private school, etc. in Nevada. It is not the state's intent to make those determinations or have a school individual make those determinations. It would be made again at the physician level. The intent of these regulations was to create standardized forms that have to be used to get a religious exemption or medical exemption in the state, so it didn't do anything to those exemption laws, just created the form process, which we will now start creating that process to begin in the next school year, that official form. The audit process would only be triggered if we were to see certain percentages of medical exemptions being filed in a certain school or a school district, so it would have to reach egregious levels for us to really want to trigger that audit process, and it would be conducted only by a state health officer or a county health officer, so someone who was held liable to HIPAA protections.

Senator Hardy:

If I may, Madam Chair, as I read it, the audit is triggered by if it's less than 95 percent. Doesn't seem egregious, but the audit gets into somebody else making a decision for a physician who's already made a decision. If the audit is done by a health person, does the health person then call up the physician, call up the mom, call up the dad and say, "I don't believe you. I don't believe the doctor. I don't believe the nurse practitioner. I don't believe the PA (physician assistant) has the ability to say this person shouldn't be immunized." I think it's second guessing the people who're closest to the patient, and 95 percent—and I could be wrong, but I thought I read 95 percent being the trigger for the audit, and the audit was not defined as an audit of people. It was defined as an audit of the report of the percentage, so I think with the form not being made, the audit not being clear, the 95 percent being not egregious, the—when we talk about a herd immunity and if we're trying to get a 95 percent herd immunity with COVID, that's a far reach, so I think it's well-intentioned but I think it still has things that could be done to make it palatable and define it further without worrying about infringing on people's privacy and the professionalism that the physician said, "You should not be immunized against this particular vaccine," because some of the vaccines are different than others in a given person. I did like the concept of a yearly permission slip, because people change and people get better from their medical condition, whatever that medical condition is. Those are my concerns. Thank you, Madam Chair, and maybe we can hear people react to my reaction. Thank you.

Ms. Loper:

I would just like to add that, from the public health perspective, the audit would only allow us to catch—the purpose is to allow us to catch issues where the medical exemption form truly may be being abused. We have seen this happen in other states and we wanted to get ahead of that. We do not intend to use it on a personal basis of that nature, and we recognized during the pandemic that our school immunization rates are not going to reach the levels that they have in the past, or that we may see some dips there, and I think we will be working through that process with our public health partners to increase immunization rates rather than focusing on monitoring exemptions at that specific level while we recover from the pandemic.

Assemblyman Wheeler:

Thank you, Madam Chair. Ms. Loper, I'm just wondering, in your research on this, did you happen to talk to any of the county health officers, especially in the rurals, because when I saw this, I did, and they hadn't heard of it. Of the two that I spoke to, both thought that this was a gross HIPAA violation, so I'm just kind of stuck in between here, where you're at on it, where it's coming from.

Ms. Loper:

We engaged a variety of stakeholders. I will say perhaps we did not do a great job of individually engaging everyone. However, many listservs were sent out. There was a lot of engagement with the school community, school nurses, given the nature of the regulation, but we did hear from others in our health community in general that this could be a concern with the medical exemption form specifically, and we just wanted to get ahead of that. There were multiple avenues offered for the regulations for comment. But I will take note of that and make sure we are doing a better job of engaging with our county health officers on an individual basis.

Senator Ratti:

Right now, to get a medical exemption, if this reg were not to pass, it's just a verbal request from the family. Is that our current process?

Ms. Loper:

To receive a medical exemption currently, you do have to have something signed by a physician. It does have to come from a licensed practitioner in the State of Nevada. However, there is no standardized form that must be used, so they could write it down on theoretically anything and have that turned in to the school. What this regulation has done is given us the permission to create a standard form that will be used across all school types that a physician will sign.

Senator Ratti:

So then if you have to check into it, it's a pretty, pretty clear yes or no with not many follow-up questions. Either the form is there or the form isn't there.

Ms. Loper:

Yes.

Senator Ratti:

Okay, thank you.

Senator Hardy:

Madam Chair, this form that hasn't been created yet, is it going to say what the diagnosis is or is it going to have a doctor's signature that says "for medical reasons, this person is exempt from immunization"?

Ms. Loper:

The discussion so far has been that the form would include for the physician to review known contraindications to vaccination. However, it would not stipulate to a physician a reason to sign it, Dr. Hardy, if that's clear. It would show the reasons that the Advisory Committee on Immunization Practices currently lists as contraindications to vaccination for a physician to review, for a parent to review. But it is ultimately a physician, nurse practitioner (NP), licensed practitioner in the state of Nevada that makes the determination that the patient gets a medical exemption and is given that medical exemption to be filed at the school so the school is aware that the child is exempt.

Senator Hardy:

Which basically is what happens now with the doctor writing a note that says "this patient is exempt" on a prescription pad, signs it, it's got his phone number, it's got his address, it's got his license number, all of those kinds of things.

Ms. Loper:

I would agree, Dr. Hardy. However, we do hear from our school partners that on both religious and medical exemptions, they struggle to have a standard process and they would like a standard process for filing an exemption, whether religious or medical, and they would like it on a standard form.

Senator Hardy:

I appreciate that. Thank you.

Senator Settelmeyer:

Thank you, Madam Chair. I was concerned and I wanted to go back to section four, dealing with the audit. It says a local health officer may conduct an audit, one, involved below 95 percent, or three, the rate of exemptions is higher than the average rate. What's the definition of a local health officer, because I know when we had this whole discussion of COVID, we found out that some of the counties didn't have someone as an infectious disease specialist or quarantine officer, and so they just designated one. Do we have any people out there that fit the category that they're a local health officer but they're not a doctor?

Ms. Loper:

I don't think I can completely answer your question, sir. The county health officers that I deal with for the most part are physicians, or for example, in Elko I believe he is a dentist, but they're all medical providers.

Senator Settelmeyer:

Thank you. That unfortunately doesn't give me a lot of comfort, but thank you.

Assemblywoman Benitez-Thompson:

I have a quick question. So we're already required for the physician in NRS 392.439 to indicate with a statement of fact that the child should not be immunized. When we look at section four in the case-by-case basis, if needed, we're not talking about a child as a case-by-case basis, we're talking about the school. So, the audit is of the school and the school reporting, and so if they see an outlier in one of the schools, if they're seeing concerns about whether or not the schools are actually collecting this data, then it would be the school that they look at on that case-by-case basis, right?

Ms. Loper:

Yes, Assemblywoman. That is the intent, that we would look at the schools or the school districts using a public health model to determine if there were challenges in the county or the district that we could assist with to help their constituency, their children, access vaccinations, or if there is any other issue, we can help them investigate. It is a public health school-based reasoning.

Senator Hardy:

When the school is audited and the audit shows that 10 percent of the students haven't been vaccinated, the focus is not going to be on those students that haven't been vaccinated? How do you get around the personal approach to the students?

Ms. Loper:

We believe what it can help us determine is counties where we need to focus better vaccine messaging and better vaccine trust messaging rather than focused on any kind of a punitive-type thought process.

Senator Hardy:

But do we not already have statistics about what our schools—what the State of Nevada immunization rate is?

Ms. Loper:

Through this process with the exemption form standardization, along with last year, we adjusted our methodology with the schools for collecting immunization rates. It was a survey base, and now it is an individual census base, so we reach out to every single school to find out their data. Those are resource-intensive changes that have been made, so we do hope to have better data. So, we do have data, Dr. Hardy, but it's been very broad, generalized data that has not allowed us to focus on a school district level to find where the most challenges are, specifically with exemption rates.

Senator Hardy:

Would I be misleading—I heard the word individual, so I get confused sometimes with the word individual. When you use the word individual, you're talking about an individual school, not an individual who has or has not been immunized?

Ms. Loper:

Correct, we are talking about an individual school having the 95 percent rate. If they've dropped below that protection rate would trigger us to look at them, but it may not trigger a full audit. I hope that makes sense. It may be an expected dip. It may be small enough in an insignificant enough change in the data that we would wait another cycle to see if it was truly a trend that needed to be investigated.

Senator Hardy:

I appreciate what you're trying to do. Thank you.

Assemblywoman Lisa Krasner (Assembly District No. 26):

I just had a question regarding clarification. So on the proposed immunization form, will it be a physician or a provider? An MD (doctor of medicine), a DO (doctor of osteopathic medicine), a PA, an NP? Could you please clarify? Thank you.

Ms. Loper:

Yes, a licensed provider. I apologize. I tend to use the word for physician, but it is a licensed provider in the State of Nevada. Anyone that can prescribe vaccinations and is already signing those types of forms will stay the same.

Chair Cannizzaro:

I'm not seeing anyone else jumping up for questions or comments from members of the Commission.

SENATOR RATTI MOVED TO APPROVE REGULATION R046-20.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

Senator Settlemeyer:

Thank you, Madam Chair. The concept of the audit by local health officers is very concerning to me. I do know that one of our local health officers is a doctor. Unfortunately, he's a doctor of veterinary medicine, and I think this isn't proper to do and I will be voting no.

THE MOTION PASSED (ASSEMBLYWOMAN KRASNER, ASSEMBLYMAN WHEELER AND SENATORS HAMMOND, HARDY AND SETTELMAYER VOTED NO.)

Chair Cannizzaro:

The motion carries and the regulation will be adopted. We are going to move to our next item on our agenda, which is R055-20 for the State Board of Landscape Architecture (Agenda Item V-C), and I believe that this is also a request from Senator Hardy. Once we've got them connected, Senator Hardy, please go ahead.

Senator Hardy:

I can save you time and say this was a fee issue that's been resolved. Thank you.

Chair Cannizzaro:

Okay. I don't see anyone else jumping up with questions or comments on this regulation.

SPEAKER FRIERSON MOVED TO APPROVE REGULATION R055-20.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

Okay, the motion carries and the regulation will be adopted. We will move on to the next item on our agenda. It's R083-20 for the State Board of Pharmacy (Agenda Item V-C), and I do believe this was a request from Senator Hardy. Once we've got them connected, Senator Hardy, please go ahead.

Senator Hardy:

Thank you, Madam Chair. Is there any—the things that we're doing now with the smaller practices having to go to e-prescribe. I wonder how this will affect those that are smaller practices, and will this open a door that we can extend the deadline for e-prescribing for small practices that don't have the internet capability at this point, even through the COVID challenges that we have? Otherwise, I'm okay with the regulation.

Dave Wuest (Executive Secretary, State Board of Pharmacy):

As you know, SB 310 in the last session required e-prescribing. It did give the Board of Pharmacy the ability to provide waivers if somebody couldn't meet that need, including internet and costs and those kinds of things, and so this is the Board's regulation to allow those waivers to move forward. If this passes later today, we will post the waiver on our website and then physicians and nurse practitioners and dentists can fill out the waiver and we will process those as the regulation states.

Senator Hardy:

I would move to approve, Madam Chair, if you're ready.

Chair Cannizzaro:

I am at this point not seeing anyone else with questions or comments.

SENATOR HARDY MOVED TO APPROVE REGULATION R083-20.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

Great, thank you. Oh, Assemblyman Wheeler did just join us. Assemblyman, I apologize, I didn't see that you had stepped out when we took a vote on this Board of Pharmacy regulation, R083-20. Did you want to go ahead and record your vote?

Assemblyman Wheeler:

That was a yes, Madam Chair.

Chair Cannizzaro:

The motion carries and the regulation will be adopted. I'm actually going to take one out of order just because it is also for the State Board of Pharmacy while we've got them connected. It's R090-20 (Agenda Item V-C), and this I think was also a request from Senator Hardy. It's taking just one of our regulations out of order for the State Board of Pharmacy since they're with us. Senator Hardy, when you're ready.

Senator Hardy:

Thank you, Madam Chair. If this is about CBD, changing it, getting rid of the category V schedule, my question is, if we take the category V off, does that change the federal requirement at all? Are doctors then going to be able to write for this as a prescription but be at odds with the federal government rules?

Mr. Wuest:

I appreciate the call and I appreciate the consideration of putting my items together. This actually started with the federal government. As you know, we work very closely with DEA (Drug Enforcement Administration) and they have unscheduled it, so we're just matching them like we matched them when they scheduled it to a V. So, now they've unscheduled it so we're unscheduling it. If this pass, we'll be in step with the DEA and people with a controlled substance license or DEA would be able to prescribe it.

Senator Hardy:

Would they be able to get this over the counter?

Mr. Wuest:

It wouldn't go over the counter. It would be an RX (prescription) or a—drug, so it'd still be under FDA (Food and Drug Administration) rules for prescribing.

Senator Hardy:

Madam Chair, I'm going to make the motion if you're ready to pass.

Chair Cannizzaro:

I don't think I see anyone who is asking for additional questions or comments.

SENATOR HARDY MOVED TO APPROVE REGULATION R090-20.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion carries and the regulation will be adopted. We are going to move into the next item on our agenda. It's R087-20 for the Commissioner of Insurance (Agenda Item V-C), and I believe we had a request from Senator Settlemeyer and Senator Hardy on this one. We will let them get connected and then turn it over to Senator Settlemeyer to begin with the questions.

Senator Settlemeyer:

Thank you, Madam Chair. One of the questions was raised by email to us from one of the insurers is the concept that is this question retroactive, because the way it looks at it, it seems to be retroactive, but that is not congruent with the concept of not allowing for retroactive legislation. So, does this go backwards or does it only go from the date this regulation passes going forward?

Barbara Richardson (Insurance Commissioner, Division of Insurance, Department of Business and Industry):

Thank you, Senator Settlemeyer. Speaking of retroactively, this particular—let me get my notes up to make sure I handle everything properly. We do understand that the industry claims that this is retroactive and they're saying that we can't retroactively adjust rates that have previously been approved and that that would be an unfair—of insurance property without compensation. However, the industry is incorrectly arguing that premium derived from a specific credit-based insurance score of a consumer is the same as approved rate, which it's not. Rate approval applies to an increase or decrease of base rates that impact all policy holders as well as general classification treatments, and that would apply if a policyholder placed in a particular rating category, such as a credit-based insurance score. With the enactment of this regulation, insurers will still be using the same rates that were approved during their last rate filing. The regulation only applies to any premium increases that were solely due to the change in a policyholder's credit or consumer credit information. If a credit-based insurance score was calculated by the insurer on the basis of that information on or after March 1, 2020, when premium errors or noncompliance of underwriting rules are discovered by the Division or even by the insurers themselves—are routinely—provide refunds retroactively to rectify these errors, so this is not a new concept or a new process for the carriers, and I would also point out that even though the industry is arguing that they have concerns about retroactivity, the proposed amendment they provided to this Commission refers to a March 1, 2020 starting effective date.

Senator Settlemeyer:

I appreciate the information. I'm still concerned about it. Thank you for that information.

Senator Hardy:

I had the same kind of questions. I heard from multiple people not limited to the retroactive portion of this, but the inclusion. They wanted to include things—that or use methods, and I'm not remembering everything that they said, but that they had suggestions that weren't included and had concerns, and so I have concerns, but I'm not able to voice them quite as—if that's a new word as perhaps those that were the stakeholders. Thank you.

Ms. Richardson:

If you'd like me to address that question, the only alternative that was provided is the use of something called an extraordinary life event exception, which is found in NRS 686A.685, which is already allowable for consumers. However, when we did an informal survey of the companies themselves, they said that the amount of times that this particular statute was brought into play they could count on one hand every year, so it really wouldn't handle or deal with the fact that the consumers who are going to be affected—the massive amount of consumers are going to be affected by credit score alterations in the next couple of years. The other issue that came up which I thought was interesting is they expected a large number of Nevada consumers who may have their credit scores affected, if each of these consumers actually contacted their carrier individually, this could create a significant increase in individual request handling for each of the insurance carriers, which actually is a far greater burden on the insurance industry than the proposal that we put forward.

Senator Ratti:

Thank you for your time. Am I understanding this correctly? This only applies if there's been an error on their credit report?

Ms. Richardson:

Thank you, Senator Ratti. No, it's not an error on the report. The assumption is that the pandemic is actually going to cause a great deal of consumers in Nevada to actually have their credit scores and their insurance credit scores lowered significantly due to not being able to pay their bills, not being able to control the flow of income, and basically what the regulation itself tries to do is take care of the situation for those consumers who get affected, which does not increase their insurance risks because having your consumer—affected due to the pandemic does not alter your insurance risk, which is what the consumer credit-based insurance bill was supposed to be used for, and it also helps sort of alleviate any kind of a downward spiral where the consumers end up paying more for their insurance when in fact their risk itself has not increased to the insurance carrier.

Senator Ratti:

Okay, thank you.

Assemblywoman Carlton:

Thank you, Madam Chair. Good afternoon, Commissioner. Nice to see you. Didn't see you much last legislative session when we were talking about some of these issues. Could you kind of go over the number of hearings that you had and workshops so that we can get that on the record? And then I have a follow-up, Madam Chair.

Ms. Richardson:

Certainly. The key formal dates I'm going to give you, although there were many informal discussions we had with industry, but the formal dates were June 30, we had a discussion with the—advisory committee on R087-20 concepts, so we got information out to the—industry before we even had our first informal workshops. We had an informal workshop on August 26, then we had a formal workshop on October 5, then we had a meeting with industry stakeholders to address industry proposed amendments, and this was a two-hour meeting where we took information from them that was based on information they had provided both at the informal and the formal workshops and discussions that we had with them, and then October 20 was the hearing. November 12, we received a phone call from Mr. Wadhams discussing the time of the hearing order because he wanted to know when we thought it would be due. November 23, the Division adopts the proposed regulation, and then on December 14, we got a request from the Nevada Insurance Council for a concise statement under 233B, and then December 23 we provided that concise statement.

Assemblywoman Carlton:

Thank you very much, Madam Chair. I know that over the summer and into the fall a number of Nevadans received rebate checks from their car insurance because their carriers knew that they weren't driving. That happened across the country. What was the discussion on how these rebate checks will play into these lowering of rates, because some folks have already gotten money back. How does that work into this equation?

Ms. Richardson:

Thank you. The rebate checks that went out were for adjustments in the actual risks. For example, people were driving a lot less so it altered their risk profile. What we're talking about here is a different issue. Their credit-based insurance score has to do with whether or not it goes down, so unless your credit score actually decreases, you won't be seeing a rebate. You shouldn't be seeing a rebate in general. Basically, what it is is trying to keep you from having an increase in your premiums, so there's not a rebate being proposed unless you're talking about looking back through the March 1 period. If there had been an increase based on a decrease in insurance rates due to the pandemic between whenever the regulation gets adopted and March 1, that would be a refund, and that wouldn't have anything to do with your risk profiles, so you may get both or you may get neither.

Assemblywoman Carlton:

Okay, so let me walk myself through this a little more clearly then. Over the summer, risk-based, not driving, quarantined at home, got a rebate from my carrier, credit score does go down, and therefore they cannot raise my insurance rates because of the credit score, which is a legitimate variable, and they've already given me a rebate. So, they've given

me a rebate for the risk, but they're not allowed to adjust on the credit score because I've been at home. Am I understanding correctly?

Ms. Richardson:

It's not because you've been at home on that credit score. The credit score really has to do with things like, for example—

Assemblywoman Carlton:

I'm sorry, I misspoke. I understand how a credit score works. I misspoke. I'm just using an example so that—because I was laid off—I wasn't clear enough, sorry. Because I was laid off and at home and could not pay my bills, my credit score changed. Therefore, they're not allowed to increase my insurance for that, but they could give me a rebate on the risk?

Ms. Richardson:

Yes, that's correct.

Assemblywoman Carlton:

Okay. I guess I'm just trying to figure out how all this is going to fit together. It seems like you're trying to fix something that's not broken, so I'm just trying to figure out what the actual problem is. Thank you very much, Madam Chair.

Senator Ratti:

Thank you, Madam Chair. I thought I understood it, now I'm not so sure I understand it, so I want to try again. I apologize. So, the rate is the rate. Those rates were set before, had to be set in the past, and those rates are not changing. Because there was less usage of insurance during the pandemic, people got rebate checks because they used their insurance less. That's not changing, so now anticipating that the pandemic will affect people's finances, the Division is seeking to be proactive and say for this period of time, we don't want a credit score pit to raise somebody's rates moving forward in the future, so anticipating that, a whole bunch of Nevadans may see their credit score go down. You don't want to see, then, their cost of insurance go up because they have now fallen into a situation that they didn't have any control over. Is that basically what it is?

Ms. Richardson:

No, that's exactly what it is.

Senator Ratti:

Okay, so then is it time limited because it is sort of an emergency response to the pandemic? How does it work in that way?

Ms. Richardson:

We actually put the timing restriction on it because, at some point, you have to enable the consumers to start either climbing out on their own or showing that they're climbing out on their own. But right now, we're in the middle of a pandemic and it's going to affect people for quite some time. They're talking years before people get out from under—and I do know you all recall the Nevada recession and how hard-hit Nevada consumers were, so that's what we're trying to sort of forestall, and it's probably helpful to know that usually your insurance premium is only increased on your renewal dates. Driving these using the renewal process, which is what the insurance carriers would do, it's not like this will happen every day. It's just that at that time of renewal, if your credit score happens to have gone down, we're asking that the insurance carriers—for instituting an increase in your premiums due to that particular decrease in your credit score.

Senator Ratti:

So the only rate changes that would be prohibited by this are those that are specifically tied to credit scores? All other calculations on rate at the beginning of the year will follow the normal process?

Ms. Richardson:

That's correct.

Senator Ratti:

Thank you.

Assemblyman Wheeler:

Ms. Richardson, just having some business background here, I can't see that insurance companies are going to want to lower their premiums somewhere, or actually lower their profits is what I should say, so what other demographic—how are they going to weigh their premiums when you take this weight away from them? For instance, what I see here when we do this then is the zip code that the person lives in for car insurance, for instance. Is that going to have a heavier weight now, which is going to affect lower income neighborhoods, etc., a lot more than the credit score would?

Ms. Richardson:

No, we're talking about really in-depth rating algorithms that have been developed. It wouldn't alter the weight that was given. All that would happen is that the weight of the credit score would remain the same as it was.

Assemblyman Wheeler:

I couldn't hear Ms. Richardson's answer. I'm sorry.

Chair Cannizzaro:

Let's go back to Ms. Richardson and let her readdress that question.

Assemblyman Wheeler:

Thank you.

Ms. Richardson:

I hope I am addressing your question—if I'm not, please ask me again. The actual action by the insurance company is not to increase or decrease your premiums by using your credit score. It's basically holding the position that your credit score is in as of March 1, 2020, so it doesn't alter the percentage or the calculations against any of the other variables in the rate algorithms that are presented in their model.

Assemblyman Wheeler:

So by holding that score there, then they're going to have to use other things that are weighted a little more heavily. Thank you.

Senator Denis:

Thank you, Madam Chair. My question just goes back to a similar question I asked earlier to someone else. In the process that you went through, you had responses from the industry. My understanding was they offered an alternative. Can you talk a little bit about the process that you went through to come up with what you did versus what they were offering, why your solution was better than what they—can you talk a little bit about that?

Ms. Richardson:

Certainly, thank you. The option that was presented was the extraordinary life event exception, which is in NRS 686A.685, and I spoke a little bit about it. But basically it requires each individual insured in Nevada to be aware of the rights for asking for a review of their credit score. Either they personally have to request to the carrier or they can ask

their broker to request the carrier. They're contesting their premium increase, and that would happen again at renewal, and this then would ask them to have the carrier who would then have the option—it's not a requirement—of providing relief out of statute, and sometimes, unfortunately, the relief that is being provided is not in the consumer's best interest. For example, sometimes insurance carriers, if they individually review the consumer credit-based score, they have to put it in a neutral position under this particular statute. They can't hold it to a base spot, so neutral position is zip, you have no credit. This sometimes results in an increase in premiums for many consumers, and that was of great concern to us, and then based on the expected large amount of Nevada consumers who had their credit score affected or will continue to be affected, if each consumer actually went through this process and contacted their individual carrier, this is going to create a significant increase in individual request handling for each of the insured carriers, so we were actually trying to stop the bleeding of what insurance carriers might be seeing, unless of course the assumption is, and we never want to think this, but in discussions with industry it sometimes felt like the use of this would be basically relying on a consumer's misunderstanding or lack of information of statutes, and this to us didn't translate into a workable solution for the state consumers. It felt kind of like hide the ball from them because folks don't know about the extraordinary life event process, and even though in the past there have been promotions to tell folks about it and consumers about it, it's not been used based on our discussions with the industry itself when they said that they've only seen about a handful every year ever actually use this particular extraordinary life event process.

Senator Denis:

Thank you very much. That was helpful. Thank you, Madam Chair.

Chair Cannizzaro:

I apologize, I'm going to actually ask just a couple of questions because I want to walk through the piece that I think I may have gotten more confused on. You're probably explaining it perfectly and I just don't understand it enough to be able to understand the answer. So hypothetically, if somebody had a rate that was set, let's say back in April, and it's a rate that's in part based on their credit score, if we pass this regulation then does that automatically result in sort of us going back and saying, "Okay, this rate that was set in April, now we're going to readjust it," and either the insurance company will pay more to that person because their rate should have been more even though this was not in effect at the time, or that maybe it should have been higher and they would have to pay more. Is that how this would operate, or would this be—some of your conversation seems to be like this would be on a going forward basis, but I think there was some concern that this would be applying to even rates that had been set prior to.

Ms. Richardson:

I appreciate that. It's a little bit confusing, and one of the reasons it's confusing is because insurance carriers usually only give rate increases at renewals, so every consumer probably had—or potentially, I don't know. It's only been 9 months—potentially could have had a renewal during that time period, so it turns out that our discussions with the company themselves, they said that they don't always actually take into effect a change in a credit score, so we're talking about that. If you're going backwards, it's a very small group of people. If you're talking about going forward, it could be very large, so there is a concern about when's the perfect time to put this in place, and I think that's why we are seeking for the pandemic period and leaving it at that. The one thing that I need to make sure that people understand, which is it's complicated, and I don't mean to sort of worry with the details, but again, rates are set on a base rate position, so we're really talking about a particular factor in a consumer's—in their review at the insurance company, and one of the things that it seemed that people think is that somehow there has to be a tweak to the rest of the factors when in fact that's not true. If you had a consumer credit score of X amount, you just stick with that consumer credit score of X amount for the time of the pandemic and for the time of this period, so there is no increase or decrease or exchange or movement that would affect the other rating factors. If you put this in place, we shouldn't see a bunch of refunds. In fact, we should be seeing just a steady—and not very many increases is what we're assuming is going to happen as soon as the premiums increase, I should say. What we see will probably happen going forward because of the pandemic.

Chair Cannizzaro:

I understand that there are a number of factors that obviously weigh into what ultimately is the rate that someone's going to pay for insurance, and I guess the concern that had been raised that I was trying to get an answer to though is, let's say the credit score has changed within the time period from the Governor's declaration of an emergency in March up through now. This would require for that to get adjusted in accordance with that credit score. Let's say the credit score dropped and the rates were increased at some point. Based on that particular factor, that would have to be something that would have to be paid back to the consumer?

Ms. Richardson:

Yes, that is correct, and we've done this with other type of issues where we've seen either errors, or like I said, the company finds errors and they'll refund the consumer.

Chair Cannizzaro:

Sure, sure, and I guess an error is certainly—I don't know. In my perspective, it's a little different than a change in how something is being governed that then requires them to change their behavior thereafter. Are there other things where there have been a regulation or a policy or some other thing that's been adopted that would change how

those rates were calculated previously that would result in something like having to return money to the consumer that would not be like an error?

Ms. Richardson:

The closest would be the refunds that we just saw where the risk of the underlying insurance policy is lessened, therefore the policy doesn't actually accurately reflect the risks that the consumer brings to the insurance carrier. So yes, that's been done before.

Chair Cannizzaro:

I think you mentioned this. By your own calculations, it would be a relatively small number of folks who would need to—I think I heard you say that that would maybe fall within this, where the insurance company would have to pay a refund to the consumer.

Ms. Richardson:

Yes, I would suggest that it's very small, because we've been talking about this issue with the companies for quite a few months now. They knew it was coming and they also indicated through informal discussions with us that they didn't think that this was going to cause any great hardship for them to actually find the few people in their companies who currently might have to get a refund.

Chair Cannizzaro:

Thank you.

Assemblywoman Carlton:

Madam Chair, if I may, along the line of questioning that you just asked, will the small amount of refunds that have been discussed, will they play into future ratemaking to where those might be able to be recouped across the whole base? Will the folks whose credit scores weren't impacted end up possibly having their rates affected because these rebates were given to other folks?

Ms. Richardson:

No, those two wouldn't have anything to do with each other. Basically it stops the clock on March 1 and ends the clock in December, 2 years afterwards. In that time period, there's just no change in the credit score information. But the clock doesn't change. You can't alter anything or the rates themselves based on that information, nor would we allow that going forward.

Assemblywoman Carlton:

So if they gave rebates, they would not be able to include that in a future filing?

Ms. Richardson:

No.

Assemblywoman Carlton:

Okay.

Senator Ratti:

I'm sorry, just one more. There's been a lot of talk about refunds, and I thank you for that line of questioning, Chair, because that did help add some clarity of how back through March would work. But I guess the piece that I'm still trying to wrap my head around is that you wouldn't anticipate a significant amount of refunds because this was not income that insurance companies were planning on because they weren't planning on a pandemic, and so really it's just going to be for anybody who renewed during the pandemic period who also already has had their credit score impacted. I'm assuming there's some lag on credit scores changing too, like your credit score is not going to necessarily—March 12 there was an emergency declaration occurred, and then March 15, your credit score has been impacted. Your credit score is probably not impacted for 4 or 5 months down the road at least, so you're talking about a small window of people who may have had their renewal during that period and had their rate go up because of a change in their credit score?

Ms. Richardson:

That is correct.

Senator Ratti:

Thank you.

Chair Cannizzaro:

Any more questions or comments from members of the Commission? What is the pleasure of the Commission?

Senator Ratti:

First of all, I appreciate all the discussion. It's a complex topic, and I would just say that I'm grateful to the Commissioner for bringing this forward. I think something that I've

struggled with as an individual legislator is that there haven't been a lot of opportunities to figure out where to provide relief to individual Nevadans who are experiencing a significant financial hardship because of the pandemic, and so I do think that this is a way that we can do something that will be small but will be significant for people, who I'm assuming if their credit score is going down that they are then also experiencing a lot of other negative impacts because of the pandemic, and so this seems to me like while it is asking—I want to acknowledge that it is asking the industry to do some work and do a look back and do some things that may not be where they want to be spending their time and energy. I do think that this is a small thing that we can do that could be a big thing for individual families in Nevada, so I'm going to make a motion to approve.

SENATOR RATTI MOVED TO APPROVE REGULATION R087-20.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

Senator Hardy:

Obviously as people have pointed out, there's a lot of moving parts because of the uncertainty of the regulation's application. I'm not opposed to helping people, but I think this is going to be not as easy to interpret as it could have been, so I will be voting no at the moment and look forward to being proved wrong. Thank you.

Assemblywoman Krasner:

Thank you. I just have a quick question. Why is the period 2 years? Why not 1 year, 6 months? Why is it 2 years?

Chair Cannizzaro:

I don't know if Ms. Richardson is still with us and would be willing to answer that question.

Ms. Richardson:

Two years, to be honest with you, the reason we went for that length of time is based on information that we reviewed from the last time that Nevada was in a harsh downturn in its economic wellbeing, 2008 to 2010, so we were hoping that the pandemic would be finished at that point and people would have a chance to then get in control of their own destinies. That's really what we're hoping. One year didn't seem to be enough based on the way the pandemic was rolling and the fact that we're still probably going to see some slow-moving openings of the economy up until probably summer of 2021, so we were just worried that we weren't giving folks enough time to get out from under it if they choose to do so.

THE MOTION PASSED (ASSEMBLYWOMAN KRASNER, ASSEMBLYMAN WHEELER AND SENATORS HAMMOND, HARDY AND SETTELMAYER VOTED NO.)

Chair Cannizzaro:

The motion carries and the regulation will be adopted. We will move on to our next item on the agenda, which is R097-20 for the Division of Financial Institutions (Agenda Item V-C). I apologize, I didn't realize I had two on here for the Division of Financial Institutions, so I apologize for making you wait around. We will go ahead and connect them, and then I believe Senator Hardy had a question on this one.

Senator Hardy:

That was Senate Bill 120? I have a—look on my face right now. It's not on my list, and so I'm going to ask a dumb question. Which one was that about?

Chair Cannizzaro:

This one has to do with equal opportunity for credit reporting.

Senator Hardy:

Okay, I got it. I have it down as 97. Is that right?

Chair Cannizzaro:

That's correct.

Senator Hardy:

Okay, so the issue was the spouse. If a spouse has a bad credit rating and the other spouse then applies for credit, the good spouse takes the bad credit rating and does away with the bad credit rating, but is it a double-edged sword and the spouse may end up having to not—maybe tainted with the bad credit rating of the spouse? I know it talks about the credit rating of the spouse not being affected, but is it? In other words, when you share assets, is it going to prevent somebody who wants to get credit from getting credit as opposed to having them—does it break the link of common assets? Does it break the link of traditional partnerships, marriage? That's kind of my concern is if we're trying to get our own credit rating because we were married or partnered with somebody

else, is this adequate to make sure that the spouse line for credit is judged by his/her own standing?

Ms. O’Laughlin:

If I understand the question, is the question do we diminish the bad credit with the good credit?

Senator Hardy:

In other words, is there punitive things that could happen to the spouse that's trying to get their own credit rating by the actions of the one where they had joint accounts?

Ms. O’Laughlin:

I believe this is for an individual that has no credit. The rate is for—I believe was for no credit and so that they could establish credit if they had no credit from the spouse that had credit or the former spouse that had credit. Not poor credit, no credit.

Senator Hardy:

No. I had no credit at one point, and so I had to get a Montgomery Ward credit card and buy something on credit to get credit. If the person is applying for credit, but they “have had something in the name of their spouse,” for instance, and they had a credit card, they used the credit card but then the person broke up with the person that had the credit card, does that credit debt evaluation or the credit rating of the spouse that had the credit card get over to the person who's now applying for credit because the bank thinks that if the one gives it up that the spouse has a contract, as it were, to pay off the debt of the one that actually had the credit card in his or her name?

Ms. O’Laughlin:

I'm not positive I'm understanding the situation based on this particular SB 311. If they are using someone else's credit as a joint credit, they were together and somebody put somebody else on their credit card and they had credit, they got a credit score that way, then they would have a credit score and this wouldn't apply. This is only for if you have zero, no credit score at all.

Senator Hardy:

So this would be somebody who's never been in debt with somebody else?

Ms. O’Laughlin:

Correct. That would be a negative credit score, and this is for someone who has no credit.

Senator Hardy:

Okay, so then I'm okay with it. If it has not had a negative effect on somebody who has—even though they've been married, they're not going to assume the debt of the bad guy when they apply for their own credit.

Ms. O'Laughlin:

If their name was not on that particular Montgomery Ward or whatever the account was, they shouldn't have that negative credit reflect on them.

Senator Hardy:

So if the owner of the Montgomery Ward credit card went bust and bankrupt, does the bank go after the person or does it go after both people who happen to be married, or is the credit rating on both people?

Ms. O'Laughlin:

I don't know that this particular SB 311 has to do with that particular side of it. It is truly just for someone who does not have any credit at all whatsoever. They have no established credit at all, not negative or positive, just no credit. What you're saying is if someone was on a joint account, then I would say that yes, the negative credit would follow them, but if they were not on a joint account and just because they were married, I don't know that that's going to follow them, and it doesn't have to do with this particular bill.

Senator Hardy:

I got my question answered and assurances. Thank you, Madam Chair.

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE
REGULATION R097-20.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion carries and the regulation will be adopted. We will move on to our second to last regulation that we have. It's R123-20 for the Administrator of the Division of Parks at the Department of Conservation and Natural Resources (Agenda Item V-C), and I believe Senator Hardy again had a question on this one. Once we get connected with them, we will go ahead and turn it over to you, Senator, to ask your question.

Senator Hardy:

That again was something that's already been resolved, so I don't have any questions. Thank you.

Chair Cannizzaro:

I'm not seeing anyone else jumping up for questions or comments.

SENATOR SETTELMAYER MOVED TO APPROVE REGULATION R123-20.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion carries and the regulation will be adopted. Our last item on our agenda for regulations is R161-20 for the Administrator of the Division of Employment Security of the Department of Employment, Training and Rehabilitation (Agenda Item V-C), and I will go ahead and give it over to Senator Hardy to go ahead and ask his questions.

Senator Hardy:

The question I have is when we start looking at increasing our rates or ratios in this time of businesses going out of business, I'm concerned about increasing those ratios. Our unemployment ratios and the mathematics and that seem to me to be hurting the businesses more than helping, and that is why I'm concerned about that. Thank you, Madam Chair.

Jeffrey Frischmann (Division of Employment Security, Department of Employment, Training and Rehabilitation):

I'm not sure what your question is, Senator Hardy. Could you maybe break that down? Our rate that we're proposing is exactly the same rate that we have had from last year. We're carrying over the same rate, so the tax rate is remaining the same, the average tax rate of 1.65 percent.

Senator Hardy:

So you are not—the rate at all?

Mr. Frischmann:

We are not moving the rate at all. The average tax rate will remain at 1.65 percent, which is the lowest rate that we've had for the last approximately 10 years. We have been reducing it over the last 3 or so years, and rather to try to bring stability for our employer community we have decided to just keep it the same as last year in order to create that stability, something unfortunately the employer community hasn't had the pleasure of experiencing over the last 9 months.

Senator Hardy:

That's what I wanted to hear. Thank you, Madam Chair.

Assemblywoman Carlton:

Thank you very much, Madam Chair. I know you're not raising the rate this year, but there will be less coming in because there are fewer businesses, so the rate will remain the same but the actual dollar amount I believe is going to go down. We are being put in a loan position now with the federal government, so could you elaborate on what we're looking at and what work is being done over this next year to try to flatten any increases that might be needed, knowing that some of the businesses will not be coming back so there'll be fewer people paying.

Mr. Frischmann:

Thank you for that question. Currently—the employer base stands at about 84,000. Of that employer base, we expect at a 1.65 percent—what is projected out is approximately roughly \$560 million is what the 1.65 percent rate will bring in. Of that, and it's very interesting and I think you'll like hearing this, is of that approximate \$560 million, \$190 million of that is coming from small businesses. The small businesses make up 96 percent of our employer base, so the small businesses are going to be paying a much lesser rate for the percentage of what exists with them. As far as flattening the rate, there's really not much we can do to flatten it because it's going to be based on the unemployment rate

and what happens with that and the number of claims that are filed. However, we did have a different regulation that did not get called up in which we are offering the contributory employers of not charging them during the second and third quarters of last year. That should help flatten the rate for the employer community as well. Along with that, for our reimbursable employers through DOL (Department of Labor) through ERISA (Employee Retirement Income Security Act) Act, we are allowed to forgive a maximum of 50 percent of the reimbursable taxes that they would be responsible for, and we've also exercised that option. Hopefully that's going to bring them some relief for this year as well. However, you are right. We are beginning—I think we're in our second or third week of having to borrow, and we are going to have to face that probably in the new year and that will be a discussion. We certainly hope that you will be partners with us, and we will certainly be wanting to partner with the employer community to explore the different avenues that we can begin repaying the loans that are necessary right now.

Assemblywoman Carlton:

Thank you, Madam Chair. So, the second and third quarter that you spoke about, for those folks who went ahead and paid it because they weren't sure about the loan forgiveness, those will be applied to their—forward?

Mr. Frischmann:

They were never billed for that.

Assemblywoman Carlton:

Oh, so they just weren't billed. I know there was a lot of confusion about that for a while, so I just wanted to make sure.

Mr. Frischmann:

Yes. We did not bill them. We have not billed the reimbursable employers as we are exploring avenues. When I'm talking about reimbursable employers, what I'm talking about primarily are government entities and nonprofit organizations that qualify and choose to be reimbursable employers and pay back dollar for dollar for the benefits that are paid out. Again, for the contributory employers who paid by the—their rate is affected by the number of claims filed against them. Any claims during the second and third quarter will not be charged against their accounts, so that should help to flatten that exposure for them as well.

Assemblywoman Carlton:

Okay. Thank you very much.

Mr. Frischmann:

Thank you.

SENATOR HARDY MOVED TO APPROVE REGULATION R161-20.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion carries and the regulation will be adopted. That concludes our business under agenda item V, and we are going to go ahead and move to the next item on our agenda under item VI, the appointment of member to the Clark Regional Behavioral Health Policy Board to replace non-returning assemblywoman pursuant to NRS 433.429(2)(d). We are going to consider that appointment because we need to replace Assemblywoman Munk on that particular policy board. Speaker Frierson, do you have a motion?

SPEAKER FRIERSON MOVED TO APPOINT ASSEMBLYWOMAN NGUYEN TO THE CLARK REGIONAL BEHAVIORAL HEALTH POLICY BOARD.

ASSEMBLYMAN YEAGER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion has been approved and Assemblywoman Nguyen will be appointed to fill that spot on the Clark Regional Behavioral Health Policy Board. We will move next to item VII, which is our litigation update and report to be presented by Kevin Powers, so we will turn it over to Mr. Powers to walk us through those items.

Kevin Powers (General Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Madam Chair. Given the lateness of the hour, I will move quickly through the cases that we have before the Legislative Commission today. For those interested in more detail, the minutes from the past several meetings certainly provide extensive detail regarding each of these cases because they've been on the Legislative Commission agenda over the past several meetings. Agenda item VII-A is *Morency v. State of Nevada*. In this case, the District Court upheld AB (Assembly Bill) 458, which froze tax credits under the Nevada Educational Choice Scholarship Program. The District Court found that AB 458 did not violate the two-thirds requirement in Article 4, Section 18 in the Nevada Constitution. The parties have completely briefed this on appeal and are waiting for whether the Nevada Supreme Court will hear the matter on the brief or order oral argument in the case, and this is the first of our two pending two-thirds cases. It is possible the Nevada Supreme Court will coordinate this case with our next case we'll discuss dealing also with the two-thirds requirement in Article 4, Section 18.

We will take agenda items VII-B and VII-C together. That's *Settelmeyer v. State of Nevada* in the First Judicial District Court and on appeal. It's the *Legislature of the State of Nevada v. Settelmeyer*. The District Court held that SB 542 and sections 2, 3, 37 and 39 of SB 551 from the 2019 Legislative Session were unconstitutional and invalid in violation of the two-thirds requirement in Article 4, Section 18(2) of the Nevada Constitution. The most recent developments in this case are that on November 13, 2020, the District Court entered an order granting the Legislature and the state departments' joint motion for stay pending appeal, so the District Court proceedings will be stayed until the appeal is resolved in the Nevada Supreme Court. On October 23, 2020, the plaintiffs filed a cross-appeal. The plaintiffs are cross-appealing the District Court's decision that they are not entitled to recover attorney fees as special damages for bringing their claims for declaratory injunctive relief, and they're also going to be cross-appealing most likely the dismissal of Senator Cannizzaro and Secretary of the Senate Cliff as individual defendants. On December 7, 2020, the Nevada Supreme Court entered an order indicating that initial review of the plaintiff's cross-appeal may suffer from certain potential jurisdictional defects. Therefore, the Court directed the plaintiffs to file a response to show cause why the cross-appeal should not be dismissed for lack of jurisdiction. The Court has suspended all other briefing in the appeal until the jurisdictional issue is resolved, so that case is on a temporary stay on appeal for that jurisdictional issue. The brief is due from the plaintiffs in that matter on January 7, 2021. That covers those two cases.

Moving on to agenda item VII-D, *Nevada Policy Research Institute v. Cannizzaro*. In this case, the plaintiffs are arguing that state legislators are prohibited by the separation of powers provision in Article 3, Section 1 of the Nevada Constitution from holding positions of public employment with the state executive branch or with local governments. The recent developments are on December 8, 2020, the District Court granted the Legislature's motion to intervene. In addition, the District Court thereafter entered an order that dismissed all the individual defendant legislators who filed motions to dismiss or who joined in those motions to dismiss. Dismissal was based on NPRI's (Nevada Policy

Research Institute) lack of standing to bring its constitutional claims. In addition, after additional briefing by the parties, the District Court also dismissed all the remaining individual defendant legislators and it entered a final judgment in favor of all defendants based on NPRI's lack of standing to bring its constitutional claims. NPRI has indicated that it intends to appeal the District Court's dismissal of its lawsuit based on its lack of standing to bring its constitutional claims.

Agenda item VII-E: these are two cases that ended up being consolidated, *Lander County v. State of Nevada* and *Nevada Gold Mines v. State of Nevada* in the First Judicial District Court in Carson City. These cases involve the three joint resolutions from the 32nd Special Session proposing constitutional amendments that would deal with amendments to taxation of mines, mining claims and extracted minerals. Those three joint resolutions are SJR (Senate Joint Resolution) 1, AJR (Assembly Joint Resolution) 1 and AJR 2. On October 26, 2020, the Court approved an order that allowed the plaintiff Lander County to file an amended brief and add additional parties, so on October 29, 2020, Lander County filed an amended complaint that added Pershing County and White Pine County as additional plaintiffs. Also, on December 8, 2020 in the *Lander County* case, the District Court approved the stipulation and order allowing Elko County to intervene as a plaintiff. At the same time, Nevada Gold Mines, a private gold mining company, filed a complaint challenging the constitutionality of SJR 1, AJR 1 and AJR 2. On December 15, 2020, the District Court entered an order which consolidated the *Lander County* case and the *Nevada Gold Mines* case because both cases are challenging the same joint resolutions from the 32nd Special Session. The order of consolidation also established an expedited briefing schedule for the parties' summary judgment motions and set a hearing date on those summary judgment motions for January 14, 2021 at 1 p.m.

Finally, the last case on the agenda is agenda item VII-F. That's *Charleston v. State of Nevada*. It's in the United States Ninth Circuit Court of Appeals. In this case, the plaintiffs are challenging the constitutionality of Nevada's laws that give certain less populated counties in Nevada the local option to license and regulate legal brothels. The plaintiffs claim that the state laws and local ordinances are preempted by federal criminal laws that involve interstate travel and illegal prostitution or sex trafficking. The District Court dismissed the complaint based on the plaintiff's lack of standing. In particular, the plaintiffs, who were all residents of Texas, could not establish that Nevada's laws concerning legal brothels caused those plaintiffs any personal injury in fact that was traceable to the Nevada laws. The plaintiffs appealed to the Ninth Circuit. On December 10, 2020, the Ninth Circuit entered a decision affirming the District Court's dismissal of the plaintiff's claim for lack of standing. The Ninth Circuit held that the plaintiffs failed to show that they are under a threat of an actual or imminent injury from the challenged laws and ordinances in Nevada. The Ninth Circuit also declined to interpret the plaintiff's arguments as invoking third-party standing on behalf of other plaintiffs because the plaintiffs in this case neither expressly claimed third-party standing nor cited any relevant cases or other authorities to support third-party standing. So with this, the case is now closed.

Thank you, Madam Chair. That is an overview of the current status of the litigation in progress. I'm certainly open to any questions the Committee may have. Thank you.

Chair Cannizzaro:

Thank you. Any questions from members of the Commission? I'm not seeing any, so we will go ahead and thank Mr. Powers for his presentation and move on to the next item on our agenda, which is item VIII, the legislative audit, a performance audit of the Nevada State Board of Medical Examiners (Agenda Item VIII). That audit was performed by the Federation of State Medical Boards (FSMB) of the United States, Inc., and—that we should have Chief Deputy Legislative Auditor, Shannon Riedel, available to help introduce this item to us, so we will turn it over to her.

Shannon Riedel (Chief Deputy Legislative Auditor, Audit Division, Legislative Counsel Bureau):

In accordance with NRS 630.127, a performance audit on the Nevada State Board of Medical Examiners has been conducted for the period from July 1, 2011 to June 30, 2019. The Legislative Commission approved the request for the proposal for the Federation of State Medical Boards to complete this performance audit on December 30 of 2019. The performance audit must include, without limitation, a comprehensive review and evaluation of the methodology and efficiency of the Board in responding to complaints, conducting investigations, taking actions to remedy or deter any unprofessional conduct by licensees and the managerial and administrative efficiency of the Board. The audit conducted in accordance with NRS 630.127 is enclosed in your packets (Agenda Item VIII). Lisa Robin, the Chief Advocacy Officer with the Federation of State Medical Boards, and I believe Kevin Bohnenblust who's the Executive Director of the Wyoming State Board of Medicine, and he was a team member, will provide a brief presentation of the audit and will be available to answer any questions the Commission may have.

Lisa Robin (Chief Advocacy Officer, Federation of State Medical Boards):

Thank you. We're pleased to appear before the Legislative Commission and present an overview of this audit report dated November 30 of 2020. I served as project manager for the subject audit. I'm also joined by Mr. Kevin Bohnenblust, Executive Director of the Wyoming Board of Medicine and a member of the audit team. Other members of the team included Dr. Arthur Hengerer, former Chair of the New York State Board of Professional Medical Conduct and the Federation of State Medical Boards, Elizabeth Huntley, Deputy Director of the Minnesota Board of Medical Practice, and Rob Law, a consumer member of the Georgia Composite Medical Board. The Federation is a national nonprofit organization made up of the 71 state medical and osteopathic boards in the US, its territories, and the District of Columbia. The FSMB has offices in Euliss, Texas and Washington, DC. As stated, we were awarded a contract to conduct a performance audit of the Nevada State Board of Medical Examiners. The Federation conducted similar

performance audits in 2003 and 2012, and the audit we're discussing today pertains to the 8-year period from July 1, 2011 to June 30, 2019.

However, the audit team would be remiss if there was no mention of the COVID-19 pandemic and its impact on this audit and the Board's operations. As Shannon stated, she stated the scope of this audit, and I will certainly just highlight some of the suggestions and recommendations. The original timeframe for completion of the performance audit was January through June 30. However, due to the COVID-19 pandemic, the timeline for completion was extended to November 30. In April, the FSMB and the Legislative Counsel Bureau executed amendments to the contract to memorialize the time extension and reduce the amount of compensation due the FSMB due to the COVID-19 pandemic which rendered FSMB unable to travel and perform associated services in the original scope of work. The audit team appreciated the accommodations of the LCB and the Board in allowing the transition to a virtual format.

In conducting this audit, the audit team examined materials as listed in attachment one of the report (Agenda Item VIII) and conducted interviews to assess performance on each of the elements previously cited. A total of 12 interviews via Zoom were conducted on August 25 and 26 and September 28. Overall, the team found the Board's current operations to be appropriate and acceptable. The report offers some recommendations and suggestions to improve Board processes and efficiencies. Respectful of the time, I will not go through the report findings and rather give you a few highlights and then turn the speaker over to Mr. Bohnenblust.

Regarding their response to complaints, the audit team found the Board's response to complaints to be prompt and appropriate. The Board does not differentiate between complaints based on the source of complaints, whether it be from a consumer, a licensee, a malpractice claim or a change of clinical privileges. Complaints are prioritized based on the risk for patient harm. High-priority cases are managed by the Executive Director or the Chief of Investigations and cases are assigned to investigators based on experience and expertise in a certain area. The audit team supports efforts to cross-train investigators to maximize their capacity to investigate complaints and recommends that the Board consider external investigator training programs where available. As recommended in the 2012 audit, the Board has employed additional medical reviewers, one full-time and three part-time, which has enhanced efforts to improve consistency and manageable caseloads. The Board is flexible in how complaints may be reviewed and received, as they may be submitted through the Board website, email, fax, mail or over the telephone, and all complaints go to administrative staff to enter into the digital complaint system. Since the 2012 audit, the Board has streamlined communications with complainants to reduce redundancies and confusion and has purchased a software system that is expected to further improve efficiencies in this area. The Board has created a resource on its website for complainants to view a visual of the complaint process.

The Board investigates all medical malpractice claims regardless of the number of claims in a 12-month period. The audit team found this practice unique among state medical

boards. It should be noted that the 2012 audit suggested that the Board consider setting a threshold for initiating an investigation of a medical malpractice claim. However, the investigation of malpractice claims is currently governed by statute, and the Board believes there continues to be value in investigating all malpractice claims. The Board utilizes two investigative committees made up of two physician members and one consumer member. The caseload for each is significant and was of initial concern to the audit team. However, a review of the process and information provided to the committees reassured the team that cases were being appropriately managed. The audit team recommends that an additional investigative committee be created or an increase in the frequency of its meetings be considered if caseloads increase. The full Board meets quarterly and considers cases referred from the investigative committees. All information provided to the investigative committees and the full Board are encrypted. The audit team recommends Board members receive state-issued email addresses the same as is common practice among state medical boards and may offer added security and efficiency.

Regarding proactive efforts to deter unprofessional conduct, the audit team reviewed the Board's strategic plan and related benchmarks and found the Board's outreach is designed to deter unprofessional conduct. The Board conducts regional presentations, including at hospitals and residency programs, distributes a quarterly newsletter and maintains a listserv of licensees to—timely and pertinent information. Most recently, these communication outlets have been utilized to share COVID-19-related information. The Board's website provides resources for licensees and the public. The Board is focused on current issues of concern, including the opioid epidemic, physician wellness and physician sexual misconduct. As an example, the launch of the website knowyourpainmeds.org is designed to educate the public and licensees about prescription drug abuse.

As regards managerial and administrative efficiency, the Board is self-funded through the collection of fees and may recover costs of investigations from licensees when possible. After a review of state medical board licensing fees in the region, the Board lowered its fees in 2016 and has included a regular evaluation of licensing fees in its 2018 to 2023 strategic plan. The audit team found the Board has improved efficiencies by streamlining investigative processes, updating technology and reducing licensing times. Since the 2012 audit, the Board has increased its staff from 31 to 38, an appropriate increase given the recommendations of the 2012 audit and current case and licensing loads. The Board purchased an office building in Reno in 2018 from Board reserves. Working with state agencies, the purchase should result in a net cost savings for Board operations and provide capacity to add staff as needed. The audit team recommends the Board continue to add staff as necessary to meet its mission and improve efficiency of Board operations. Since the 2012 audit, Nevada has entered the Interstate Medical Licensure Compact, which brings additional licensees under the Board's purview, which could result in the need for additional staff.

In conclusion, as a part of the performance audit, the FSMB's research and data integration team provided an aggregate assessment of the Board's disciplinary activity as compared to medical boards of similar physician population and structure. For the period of 2010 to 2018, the Board had a ratio of 2.6 percent per 1,000 licensed physicians, slightly higher than the national average of 2.2 percent per 1,000.

Thank you, and now I'll ask Mr. Bohnenblust to provide comments on behalf of the audit team. Thank you.

Kevin Bohnenblust (Executive Director, Wyoming Board of Medicine):

Madam Chair, I was privileged to be part of the team that studied and audited the Nevada State Board of Medical Examiners. I'll spare you going through the report in any detail. You've got the paperwork, and I'm very mindful of the adage that the mind can absorb what the seat can endure, and so I'm going to keep this very short knowing you've had a long day already. As Ms. Robin said, the work group found that very good things are going on with your State Board of Medical Examiners. We felt that the answers were forthcoming. Perhaps one of the more refreshing things that I heard, and I suspect that you as members of the Legislature will hear, is when somebody says, "I don't know, but I'll get the answer for you," and I thought that was particularly refreshing, because it's very easy to try and just kind of buffalo your way through, so we appreciated that.

There were a number of very positive things. Of course, the panel focused on the statutory requirements related to complaints, discipline and those sorts of things, but as the statistics from the Federation indicate, physician discipline really only affects a very small percentage of the physician population, and fortunately a very small percentage of the patient population, and so we did go ahead and take a look very critically at the licensing aspects of what the Board is doing to ensure that positions get licensed timely and that it's doing a good job of vetting physicians before they come to practice in Nevada, and we felt that they were doing an outstanding job there. Assemblywoman Carlton, I think you might recall we chatted back in 2015 about the Interstate Medical Licensure Compact, and I have to say that Nevada has been a leader in setting it up and making it work and making it effective for all of us, most especially your state. With that, being aware of the hour, I won't carry on at all.

I will say one brief—moment. We did make a point of reviewing the previous audit findings and whether the Board had indeed met those recommendations or how they'd handled them, and we found that they were done very well and very responsive, and so we just came away feeling good. I guess my last endorsement is I'm never one to shy away from stealing a good idea, and more than once in this process I came away from our interviews and went to my staff here in Wyoming and said, "Guys, here's this great idea they're doing in Nevada. I think we need to, bluntly, steal it," and so with that, that can be probably my highest endorsement, but if we can answer particular questions now or going forward, please let us know. Otherwise, I don't want to take any more of your time than necessary.

Chair Cannizzaro:

Thank you all very much for being able to present that to us today. I will turn it over to members of the Commission if anyone has questions or comments.

Senator Hardy:

Thank you, Madam Chair. One of the things that I've noticed is that we have—a salary cap for our executive—response. Do we need to look at the salaries of our staff and reimburse them appropriately because it's tied to how much the whole salary structure of the community? Was that looked at?

Mr. Bohnenblust:

Madam Chair, unfortunately the question broke up. Could we have a reshot at that one, please?

Senator Hardy:

—to make, for instance, and was that looked at—as to the power—different than other states?

Chair Cannizzaro:

I think you've been breaking up a bit, Senator.

Senator Hardy:

The salary of our staff, are we competitive in our salary for our staff?

Mr. Bohnenblust:

Madam Chair, we didn't really observe that. I can speak anecdotally because of my experience, about no more than 13 years now, in working with a lot of state medical boards, and although we did not examine your staff salaries, it's a little hard for us to comment, but certainly you're—compared to other states isn't so much the issue as compared to employers within your state that I think you can lose people, and so my recommendation would be to take a critical view at salaries within Nevada and what that means for your investigators—of licensing specialists who have great transferable skills. Just ask the hospitals how much they'd like to hire those people to credential their people. I think that's probably the better measure, with all due respect.

Senator Hardy:

Okay. When we bought a building, are other people buying a building outright with reserves, or are we looking at maybe we're paying higher dues than somebody else or we're taking in more money from fees or from penalties? Was that looked at?

Mr. Bohnenblust:

Senator, that's an excellent question, and part of the rub with having reserves is to make sure that if you have an immediate downturn in revenues, you don't have to hit your licensees with a big fee increase to make up the difference. We deal with the same thing here in Wyoming. I know other states do. We still have obligations under state law to make sure that we're not charging more than a cost to run the program. This is an example of one of those ideas I came back and said to my staff, "We need to at least think about this," because our board leases private office space. If our landlord's listening, I think you do a great job, but I just want to say that one of the things I want to look at, because our state is looking at a tighter budget now, is can we save operational fees and avoid future license fee increases by doing so? I have to defer to the analysis that was done here, but I think that from what we gathered from the presentations and everything else that the analysis was appropriate, and I think it fit for what Nevada needed and what was going to work best for the Nevada State Medical Board's situation.

Senator Hardy:

I appreciate that, recognizing that a building you can't turn around and use it for something else. One of the challenges that we have is the word investigation. When somebody gives a complaint, however spurious it may be, in Nevada if you have a complaint of any kind it's called an investigation. Are other boards doing that, because that goes on the databank, or do they use other words such as letter of concern or something like that so doctors aren't having to put on their applications that they've "been investigated"? Was that talked about, or did that come up in your discussions?

Mr. Bohnenblust:

Madam Chair, Senator Hardy, we did have those discussions, and I think all state medical boards are sensitized to the idea that if you take a final action against someone and it's considered to be disciplinary, that will follow them on the national practitioner databank, which is good and bad, because on the one hand you want to make sure they don't go to another state and the other state doesn't know about the problem they had. On the other hand, you've got physicians who—maybe a temporary lapse of judgment, we all have those—make a mistake and the board wants to find a way to resolve it without marking their career, and I believe the panel felt that there was a good balance struck by the Nevada State Board of Medical Examiners that you gauge the cases, you look at the parties, you see what their past history was. For instance, that's why you look at so many different malpractice cases to see if it really is a true problem or if it's something else. The

sense that we got and I personally got as an Executive Director was that there is a very thoughtful approach to it in Nevada. There's not an attempt to brand somebody as, "Oh, you've been disciplined in Nevada, and you can carry that for the rest of your career." But if it matters, they're going to let other states know about it as they should, and as I hope we would.

Senator Hardy:

So what you've just said is a little different than some of the things that we've seen, so I'll have to talk to you offline, but I appreciate what you've done and look forward to reading the whole report. I didn't see it in our packet, but I will find it (Agenda Item VIII). Appreciate it. Thank you, Madam Chair.

Mr. Bohnenblust:

Senator Dr. Hardy, I would be more than happy to talk with you anytime, so please don't hesitate to contact the Board and I'm sure they can find a way to hunt me down.

Senator Hardy:

Thank you.

Chair Cannizzaro:

Any additional questions from members of the Commission? Just as a reminder, this is an informational item, so just clarifying questions if you have them. Otherwise I would suggest an offline conversation as well since we're just getting information on this. Okay, then we will move on to the next item on our agenda. We thank you very much for being willing to present us with those results, and we're going to move on to item IX, the proposed amendment to Rule 28 of the Rules and Policies of the Legislative Counsel Bureau. This is to implement section 123.5 of Assembly Bill 3 of the 31st Special Session. The text of the proposed amendment has been provided to all of the Commission members in the meeting materials and is available online (Agenda Item IX). I'm going to turn it over to Ms. Erdoes to walk us through this item. Ms. Erdoes, when you're ready.

Ms. Erdoes:

Thank you. This proposed amendment increases the amount of annual leave an employee of the Legislative Counsel Bureau can carry forward during the 2020 and 2021 calendar years from 30 days to 40 days. This change is consistent with, as the Chair said, Assembly Bill 3 for the 31st Special Session, and customarily the Legislative Commission has adopted rules and policies for the employees of the legislative branch that are the same or similar to those provided for the executive branch employees. Today we are asking for your approval of this item again. It just makes 10 more days that people can keep of annual leave.

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE THE PROPOSED AMENDMENT TO THE RULES AND POLICIES OF THE LEGISLATIVE COUNSEL BUREAU.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYMAN WHEELER WAS ABSENT FOR THE VOTE).

Chair Cannizzaro:

Thank you, and the motion will carry. I will note Assemblyman Wheeler had to step away from the meeting so we're going to go ahead and kind of move through some of these things, but he did let me know that he had to go and leave us. That motion does pass. That amendment will be adopted. That brings us to the next item on our agenda, which is item X, the presentation of the annual financial report of the Legislative Counsel Bureau, and we do have the LCB's annual financial report by our Chief Financial Officer, Dan Rushin, who we will welcome to go ahead and walk us through that item whenever you are ready.

Dan Rushin (Chief Financial Officer, Legislative Counsel Bureau):

Thank you, Madam Chair. I'm pleased to present the annual financial report of the Legislative Counsel Bureau for the fiscal year ending June 30, 2020 (Agenda Item X). During this presentation, I'll take a very high-level approach and just go through the report and briefly comment on certain key elements in each section, referencing page numbers where applicable. Anyone can stop me at any time if there's any specific questions.

The report begins with the introductory section, which contains the letter of transmittal, the organization chart and the list of principal officials. The letter of transmittal provides some basic context for the report's presentation. It includes a description of the report's format, defines management's responsibility in relation to the report and provides a definition of internal controls as they relate to the report.

The next section is the financial section, which begins with the independent auditor's report issued by the LCB's external audit firm, which is the licensed CPA (certified public accountant) firm of Eide Bailly. I'm pleased to report that Eide Bailly issued an unmodified, or clean, audit report for Fiscal Year 2020. It's important to note that this is the highest level of assurance available from the auditing profession, and it basically confirms that the LCB's financial statements are fairly presented and include all the activities for the year and correctly reflect the financial position at the end of the year. The audit report is

then followed by management's discussion and analysis. This portion of the report is drafted by LCB's management. It is intended to provide an objective and easy to understand overview of the financial statements as a whole and also provide a summary analysis of the financial performance during the year.

Moving on from management to—analysis, we actually get into the complete set of our financial statements, which include the statements themselves, the notes and the required supplementary information. As a governmental entity, the LCB's financial statements are prepared in accordance with the reporting standards issued by the Governmental Accounting Standards Board, or GASB. These standards require that we prepare multiple financial statements within the report that use different measurement focuses or bases of accounting, and those determine which transactions are recorded based on their nature. Beginning on page 10 of the report you see the statement of net position. This particular statement was prepared using the economic resources measurement focus, which basically means that the statement includes all of the long-term assets and liabilities of the LCB. The next financial statement is on page 11, which is the statement of activities. This presents the revenues and expenses of the LCB for the entire fiscal year as a whole, including the activities of the State Printing Office. As this statement reports, during the year the LCB's net position decreased by approximately \$6.5 million whereas the statement of net position shows that when we report all of the assets and liabilities of the LCB at the end of the year, our net position is approximately \$47 million.

Beginning on page 12, we move on to what are referred to as the fund financial statements. These statements are prepared using the current financial resources measurement focus, which means that we're only reporting the current or short-term assets and liabilities of the LCB. Many users, I've found, find these statements actually to be more useful than the government-wide statements because they present the activities in the same general format as our budget. Because of these different approaches, you'll find reconciliations between these two statements on pages 13 and 15. To just make a quick summary appraisal of the fund financial statements, the legislative fund, which accounts for the operations of the LCB, finished the year with a fund balance of about \$16.3 million, which represents an approximate decrease of \$1.6 million during the year. The notes to the financial statements begin on page 19. Basically they provide narrative explanations of our accounting policies and provide additional detail for the significant balances that are reported in the statements. The financial section concludes with the required supplementary information, which includes the set of schedules which provide a budget actual presentation of our legislative fund and other schedules that provide additional detail on some of our long-term liabilities related to pension and other post-employment benefits.

The last section of the report is the compliance section (Agenda Item X). This contains an additional audit report issued by Eide Bailly which provides an assurance opinion on the LCB's internal controls over financial reporting, compliance and provisions with laws, regulations and contracts. I'm pleased to report that this audit report is also unmodified

and there are no audit findings reported for Fiscal Year 2020. The finding that was noted in the prior fiscal year was corrected primarily because we prepared the annual financial report ourselves this year without any assistance or guidance from Eide Bailly. That's basically in a very short presentation our financial report for the year. If there's any questions, I can certainly answer them now.

Chair Cannizzaro:

This is also an informational item, so I will just ask if any members of the Commission have any questions at this point. I'm not seeing any, so thank you, Mr. Rushin, for your presentation. We appreciate it, and certainly if there are additional questions from members of the Commission, you can always feel free to reach out offline and get those questions answered. We are going to move to our next item on the agenda, which is item XI. It's the approval to transmit the budget for the Legislative Counsel Bureau and Interim Nevada Legislature to the Office of Finance, and I will turn this over to Ms. Erdoes to walk us through that item.

Ms. Erdoes:

Thank you. There is a memo regarding this item in the meeting materials (Agenda Item XI). While the Legislature and the judicial branch, legislative branch and judicial branches, are exempt from most of the provisions of the budget act, both branches of government are required to submit budgets for the inclusion in the Executive Budget. With that in mind, I'm not seeking the Commission's approval today of this budget or any of the components, but rather I'm seeking approval of the Legislative Commission to transmit a proposed budget for the Legislative Counsel Bureau and Interim Nevada Legislature to the Governor's Office of Finance for inclusion in the Executive Budget for 2021 and 2023. When this budget is submitted to the Legislature during session, the proposals will be reviewed by the Assembly Committee on Ways and Means and the Senate Committee on Finance, and the Legislature as a whole will determine the appropriate funding level for the LCB budget. Because of the state's current economic situation and the resulting estimated decline in future general fund revenues, the LCB's 2021-2023 biennium budget calls for a reduction in appropriations from the state general fund of \$33.4 million for Fiscal Year 2022 and \$32.6 million for Fiscal Year 2023. This total proposed biennial appropriation of \$66 million represents a decrease of \$8.9 million, or 12 percent from the appropriations approved for the current 2019-2021 biennium of \$74.8 million. Included in the aforementioned totals are the budgets of the Interim Nevada Legislature, which call for appropriations totaling approximately \$940,000 for Fiscal Year 2022 and \$750,000 for Fiscal Year 2023.

In addition to approval to transmit this budget and appropriation, today we are requesting approval to balance forward appropriated amounts from Fiscal Year 2022 to Fiscal Year 2023 as needed to ensure both fiscal years' budgets are balanced when the budget is finalized. With those remarks, I am requesting approval from the Commission today and I'd be happy to answer any questions on this item.

Chair Cannizzaro:

Any questions from members of the Commission? I'm not seeing any. We do need to take a vote if there's a motion to approve the transmittal. Again, I would remind Commission members that this is just a vote to transmit this to the Legislature for its consideration in the budget.

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE THE TRANSMITTAL OF THE BUDGET FOR THE LEGISLATIVE COUNSEL BUREAU AND THE INTERIM NEVADA LEGISLATURE TO THE OFFICE OF FINANCE.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYMAN WHEELER WAS ABSENT FOR THE VOTE).

Chair Cannizzaro:

That motion will carry and we will approve that transmittal of the information to the Office of Finance. We will next move on to our last segment of public comment under item XII. I will remind everyone who is joining us, this is now the time for public comment. If you wish to provide public comment, you can call the number that is indicated on the agenda and you will be informed by our staff of the Broadcast and Production Services when you've been connected and when it is your turn to speak. Again, we are going to limit comments to two minutes per person. Of course, you may submit additional comments in writing to be included in the record. I am now going to turn this over to our BPS staff to go ahead and queue up those who are calling in to speak, and they will inform you when it is your turn to speak.

Broadcast and Production Services Staff:

Chair, the public line is open and working. At this time, there are no callers. Would you like to take a two-minute break to allow people who are watching online to call in?

Chair Cannizzaro:

We'll do a brief two-minute break to see if we get any callers. If we could just be at ease.

Broadcast and Production Services Staff:

Chair, the public line is open and working. There are no callers at this time.

Chair Cannizzaro:

With that, we will go ahead and close out item XII on our agenda. That brings us to our final item under item XIII. Seeing no further business to come before the Legislative Commission, this meeting is adjourned at 5:56 p.m. Thank you, everybody, for your time this evening and staying late with us so that we could get through all of our questions and concerns on everything, and thank you so much.

RESPECTFULLY SUBMITTED:

Jordan Haas, Secretary

APPROVED BY:

Senator Nicole Cannizzaro, Chair

Date: _____

Agenda Item	Witness/Agency	Description
Agenda Item II A	Shane Backman	Public Comment
Agenda Item II B	Birny Birnbaum, Center for Economic Justice	Public Comment
Agenda Item II C	Ryan Marchesi, Check City Partnership, LLC	Public Comment
Agenda Item II D	Jim Marchesi, Check City Partnership, LLC	Public Comment
Agenda Item II E	Barbara Paulsen, Nevadans for the Common Good	Public Comment
Agenda Item II F	Neal Tomlinson, Dollar Loan Center	Public Comment
Agenda Item II G	Jesse Wadhams	Public Comment
Agenda Item II H	Heidi Welch, USA Cash Services	Public Comment
Agenda Item II I	Michael DeLong, Consumer Federation of America	Public Comment
Agenda Item III	Jordan Haas, Commission Secretary	Draft Minutes of the Meeting Held on October 29, 2020
Agenda Item V-A	Bryan Fernley, Legislative Counsel	Administrative Regulations to be Continued
Agenda Item V-B	Bryan Fernley, Legislative Counsel	Administrative Regulations for Early Review
Agenda Item V-C	Bryan Fernley, Legislative Counsel	Administrative Regulations for Review
Agenda Item VIII	Federation of State Medical Boards	Performance Audit of the Nevada State Board of Medical Examiners

Agenda Item IX	Brenda Erdoes, Director	Proposed Amendment to the Rules and Policies of the Legislative Counsel Bureau
Agenda Item X	Dan Rushin, Chief Financial Officer	Presentation on the Annual Financial Report of the Legislative Counsel Bureau
Agenda Item XI	Brenda Erdoes, Director	Approval to Transmit Budget for the Legislative Counsel Bureau and Interim Nevada Legislature to the Office of Finance