

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

**Seventy-Third Session
February 21, 2005**

The Committee on Commerce and Labor was called to order at 2:01 p.m., on Monday, February 21, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Ocegüera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst
Russell Guindon, Deputy Fiscal Analyst
Keith Norberg, Deputy Fiscal Analyst
Sarah Gibson, Committee Attaché

OTHERS PRESENT:

Raymond Badger, Member, Nevada Trial Lawyers Association
Jack Jeffrey, Legislative Advocate, representing Southern Nevada
Building and Construction Trades Council
John O'Connor, Legislative Advocate, representing Nevadans for Equal
Parenting
Gary Wolff, Legislative Advocate, representing Teamsters Union,
Local 14, Las Vegas, Nevada
Nancy Ann Leeder, Nevada Attorney for Injured Workers
Don Jayne, Legislative Advocate, representing Nevada Self Insured
Association
Gary Milliken, Legislative Advocate, representing Nevada Contractors
Insurance Company
Ray Bacon, Legislative Advocate, representing Nevada Manufacturers
Association
Bob Ostrovsky, Legislative Advocate, representing Employers Insurance
Company of Nevada
Jim Fry, Deputy Risk Manager, Department of Administration, State of
Nevada

Chairwoman Buckley:

[Meeting called to order and roll called.] We have one bill on today. We are fortunate to have the Vice Chair of the Interim Committee on Workers' Compensation present with us to talk for a minute about the Interim Committee's work and to present this bill draft.

**Assembly Bill 58: Enacts various provisions relating to industrial insurance.
(BDR 53-250)**

Assemblyman John Ocegüera, Assembly District No.16, Clark County:

I'm here today to provide some brief introductory remarks on Assembly Bill 58. Before I begin, I'd like to note that this bill was one of the four measures that were recommended during the interim by the Committee to study Nevada's Industrial Insurance Program. Since the Senator who chaired that Committee

was not re-elected to the Legislature and because I served as that Vice Chair, it is my pleasure to present the bill. I have provided you with a copy of the final report ([Exhibit B](#)) of the Committee for your review.

A.B. 58 makes two changes to Nevada's Industrial Insurance Act. The first change relates to insurance adjusters who handle workers' compensation claims. This bill requires that these adjusters be licensed in a manner similar to other insurance adjusters who currently are required to be licensed by the Commissioner of Insurance under Chapter 648 of the *Nevada Revised Statutes*. This change to Nevada's law was suggested by Raymond Badger of Badger and Baker, Attorneys at Law. In his testimony before the Committee, Mr. Badger indicated that licensing of adjusters of workers' compensation claims would help ensure that they have basic knowledge of Nevada's workers' compensation laws and would provide for greater accountability if they ignore the law.

The second part of the bill relates to the payment of compensation when an injured worker has returned to work but needs follow-up medical treatment. This change was suggested by John O'Connor, who noted that injured workers who live in rural parts of Nevada often are compelled to lose a full day's pay when they have to travel several hours each direction to obtain necessary medical treatment for their work-related injuries. Many of these folks are hourly workers who do not receive paid leave and who do not get paid a wage when they miss work. The bill entitles these injured employees to be paid an additional amount of workers' compensation to cover their lost wages if they must miss work and travel more than twenty miles one way from their home or work place to receive medical treatment for an injury or disease. This bill also prohibits the employer from requiring the injured employee to use sick leave or any other type of personal leave while the employee is receiving such medical treatment.

Raymond Badger, Member, Nevada Trial Lawyers Association:

Thank you. Organized labor and the Nevada Trial Lawyers Committee on Workers' Compensation put together the proposal before you regarding licensing adjusters. We believe the biggest problem facing injured workers in this state is payment delayed or not made without legitimate reason.

The second biggest problem is that things are not done timely. We like to think that we are going to get our paycheck every two weeks, and when it's delayed two or three weeks without reason, it affects most people strongly. We believe this provision requires a basic licensing with the Insurance Commissioner. Perhaps this would stop or weed out some bad apples. As I understand it, presently there are absolutely no rules, no licensing, and no watchdog at all of adjusters. Yes, one could make a complaint about adjuster A, and their company would be subject to some action by the Department of Industrial

Relations, but the individual adjuster would not. We have a special licensing for the other professionals in the field—doctors, lawyers, and anybody who represents people at hearings. This would just apply that to adjusters as well.

Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council:

Today I am representing Danny Thompson's [American Federation of Labor-Congress of Industrial Workers] position on this bill also. He is in Las Vegas and was not able to get back up here today. We are in strong support of this bill. I think Ray did a pretty good job of explaining it. The major problem we do have, I think, is with third-party administrators and their employees. Since the Legislature saw fit in 1993 to do away with bad-faith lawsuits in favor of benefit penalties, the third-party administrators have really been running amok. In fact, one of the attorneys in Las Vegas that practices in this area told me that in an argument with a third party administrator claims adjuster, he asked why they were making the kind of decision they were making, it didn't make any sense. The answer was, "Because we can." There were no repercussions for that adjuster at all. We think this measure would go a long way toward getting a handle on the adjusters that are handling these claims. I don't think it's the total answer; it may be some time before we get that figured out. I think it is at least a good first step.

Chairwoman Buckley:

Thank you. With regard to the other provisions in the bill, are you going to touch on those a little bit with regard to the distance from work and those?

John O'Connor, Legislative Advocate, representing Nevadans for Equal Parenting:

This is my legislation. It looks good to me. Assemblyman Ocegueda has done a great job introducing it. It's a step in the right direction. Twenty miles is a good start. We are actually almost an hour away from the nearest hospital from where we work. I had my own injury right now where I have had to go to a neurologist in Reno, so it was actually a 2 1/2 hour drive. I had to take a day off from work. It turns into a 12 hour day by the time you get there and everything else. This is good start in the right direction.

Chairwoman Buckley:

I was looking for what the law is now, what the law would be. We received a letter from someone saying that there already exists in the statutory scheme a method by which all employees are entitled to compensation following their return from temporary/partial disability. Does this work with that, not work with that? There are a lot of Committee members who have never been on the Committee before, so tell us how it really works, how it works for a worker

who is far away from a hospital, what they are paid for now, what they would be paid for in the bill, and fill in those gaps.

Raymond Badger:

Under present law, workers' compensation doesn't pay anybody for missed time from work unless they have missed a total of five whole days. Then it is very common that people are able to return to some work, but the medical treatment is not completed. So what happens for people is that it is very hard to find after-hours doctor's offices or therapy. You're going to get an appointment sometime during eight to five. You leave your place of work, and depending on the distance traveled and how busy the medical facility is, you're going to be away from work. Unless your employer has specific bargained or governmental rights, there's nothing in the labor code that says your employer is responsible to give you sick leave or anything. There are some people that immediately start losing pay for the time it takes to go to the medical treatment that is required for your injury if they're back to work. How much one misses obviously can vary. In John's case, these people are driving for over an hour just to get to any medical facility, if you need to see any specialist.

The other problem that I hear is that if you are in a bigger community and you get an appointment for the wrong day and your doctor has surgery, you may sit and wait an hour and a half before you see a physician. I have actually had clients who have been written up by their employers and counseled about possible discipline because of time missed from work to go to medical treatment that they are mandated to have.

This bill would not help people driving less than 20 miles one way to a doctor's facility. The Committee limited it to people who had to drive farther and it would require payment by the hour. If you are gone for an hour and a half, it would be payment of an hour and a half of what workers' compensation pays you when you are off. That workers' compensation payment is, under law, two-thirds of your pay.

I think the other part of the bill that I know forbids an employer to force somebody to use leave that they have accumulated. It also says that if an employer would have paid you anyway, then you wouldn't get this payment. It's just for the people who get no compensation at all for missed time from work. As I listened to Assemblyman Ocegueda testify, I realized that there are employees that work other than 8 to 5 hours; I think this problem for some of them could possibly compound. If they work the night shift, they are going to be forced to see a doctor at another time. Unless they bargain for it, they will have no payment for their time. I think that's what this bill tries to take care of.

Assemblyman Ocegüera:

Mr. Badger, I think we were talking in my office before you came in and I'll give that example for the Committee. For instance, in my profession someone may get injured in the middle of the night at a fire scene. They wake up in the morning and they say to me, "Chief, Captain, my back or my leg is injured, and I need to go to the doctor." Immediately I fill out the information and send them to the doctor. We get off at 8:00 in the morning after working all night. They may be at the doctor all day. They don't get compensated for that at all when they got injured on the job. Then they have to come back to the job and give a release, saying either they can come back to work or they can't on their own time.

Assemblywoman Giunchigliani:

It's probably more of a drafting issue, but for Section 5, as you go through the layout of the TPA [third party administrator] having to apply for a license with the Insurance Commissioner, it looks like most of this is what they have to actually do in order to be licensed. Is that how I'm reading it?

Raymond Badger:

This would apply to an individual person/adjuster versus the companies.

Assemblywoman Giunchigliani:

We are trying to get away from the use of Social Security numbers, and so we may just want to take a look at a different identifier within there, maybe brainstorm that part of it. The 20 miles was tied to what rationale?

John O'Connor:

The 20 miles is based on from where we work. We were really just hoping for no mileage at all, but to get this thing peddled through, they wanted some mileage on it. We concurred on 20 miles.

Assemblywoman Giunchigliani:

Okay, if you're coming from Austin . . .

John O'Connor:

Yes, or Austin or just anywhere outside. "As the crow flies" is kind of how we called it. 20 miles.

Assemblywoman Giunchigliani:

If that becomes an issue we can take a look at that. The initial piece would be no mileage. You are off work . . .

John O'Connor:

Right. The only other thing that I would like to add to this is that our employer told us that we're not going to pick up light duty pay because there's no law compelling us to. That's just how it's been for the last six years with us. Until there is a law telling us we have to do it, we're not going to do it. We've tried negotiating our CBAs [collective bargaining agreements] through the union, and nothing. Thank you.

Assemblyman Conklin:

Just to follow up with the gentleman on the light duty, your current situation, you say, has been going on for several years. Your employer said that it's not a requirement for them to provide you with light duty, and that's the sole reason. Is that correct?

John O'Connor:

Correct.

Assemblyman Conklin:

Since you're off and not on light duty, are you being compensated through the insurance carrier for being off, because there was no light duty offered?

John O'Connor:

No, once you're put on light duty and return back to work, if you have to take time off you have to use your sick leave or take a no-pay from work. You're either on full disability or you are not. If you're on light duty and you're back to work, they will not pay you to go miss a day, period.

Assemblyman Conklin:

Just so that I understand correctly, let's suppose you're at work and you have a strained back. You go to your doctor. Your doctor says you can work, but you can't lift more than 5 pounds, which is not currently in your job description. In other words, you may move 20 pounds consistently. What you are telling me is that in your current situation, you would have to stay home from work because there is no light duty.

John O'Connor:

Well, no. They will do light duty out there and they will give it to you, but if you have to take a day off for therapy and you're on duty out there, behind a desk filing papers whatever, you're going to have to take a no-pay from work unless you have comp time established.

Assemblyman Conklin:

They will do light duty for you, but not on the day that you need to take off for the doctor?

John O'Connor:

They will return you back to work on light duty. I mean, for months and months and months you'll file paperwork, whatever they need done around there. The whole idea is if you have to miss a day of work to go see the physical therapist, then you have to take a no-pay or use your comp time. That's what it is. It's missing that day of work to go see that doctor or therapist.

Assemblywoman Gansert:

Can you get a note from your therapist or physician that you're going to have ongoing requests once a month or once every two weeks, that you need that time off, or are you still not allowed that time off with the physician's permission?

John O'Connor:

If you get a note from the doctor, they will do it. If you can't lift anything more than a feather up, they will concur with that, but if you have to leave work, you will not get paid for that time off for therapy.

Assemblywoman Gansert:

My question is, even if you are assigned light duty, if you have to go visit a physician or a therapist, you still can't get the time off with a note? You have a note to get off, but you still are not going to be covered?

John O'Connor:

Right. You won't be covered financially.

Assemblywoman Gansert:

Even with a physician's note?

John O'Connor:

Even with a physician's note.

Assemblyman Hettrick:

One of the things I guess that bothers me a little bit is Section 9, line 5: "An injured employee who receives medical treatment for his injury after he returns to work is entitled to compensation pursuant to this subsection for each hour he is absent from work to receive such medical treatment." If we are 20 miles, and we have the first appointment in the morning, we get up before we would have gone to work, common to what I do.

[Assemblyman Hettrick, continued.] I go early so I can get to the doctor when it opens. I'm the first appointment, so I'm not going to sit there an hour and a half waiting. I'm there 20 minutes, whatever I am, and I'm 20 minutes back to work. Nothing here says that I have to return to work that day. Nothing says whether it's for the whole day. It just says I'm going to get paid by the hour for as long as on that day I had a medical treatment. What's to assure the person is going back to work or just doesn't take the whole day off for 8 hours?

Raymond Badger:

I agree that this bill does not attempt to define how one would compute the hour. I'm sure there could be disputes. A lot of my clients generally don't leave the doctor's office with a punched time card saying when they were there and when they weren't. They could go to Woolworth's and ask the employer to pay them. My suggestion would be that would normally be something you put in a regulation form, because there are probably actual situations we couldn't even sit here today, but that will come up. I agree that it is not covered.

Assemblyman Hettrick:

The problem with that is that they may not be able to foresee all of the possibilities and regulation, either. We are still going to write this in and say that you have to pay them. In the law, at this part which is fixed, not in regulation, it says you'll have to pay them for each hour he's absent from work. It doesn't say "absent from work", with the stipulation that he must return or prove that he had the appointment that day. I have some concerns with the language; the part we put in the law says you will pay, the part we'll put in regulation is going to be the part you can't interpret very well. That bothers me a little bit. I think we need to do something here that demonstrates when they are going to return to work if we are going to mandate that they have to pay them.

Jack Jeffrey:

If you take a close look at that sentence, I don't think it was the intent of the Committee, and I don't think that it is our intent, to have somebody take a day off when they have got an hour at the doctor and be paid for a day. If you go down to lines 7 through 11, "is entitled to compensation pursuant to the subsection for each hour he is absent from work to receive such medical treatment." I think that language alone would preclude somebody from taking the full day off if they weren't entitled to it. Mr. Badger's side of it takes regulation or further language to clear that up. I don't think we would have an objection to that. I think the language says, as it is, he's got to take time off to receive medical treatment. It doesn't say medical treatment and go shopping.

Assemblyman Hettrick:

Again, I understand. It just bothers me that I don't think it's very clear. The other thing that bothers me a little is that it says "more than 20 miles one way from his residence or place of employment." Does the employee get to choose which one he wants to decide to go from? Because he may chose to go from his home because it's 20, but if he went to work it may only be 5.

Jack Jeffrey:

It may be an either/or thing. If he leaves from work, he should be paid from work. If he leaves from home, he should be paid from home.

Assemblyman Hettrick:

Again, it doesn't say which one he gets to choose or not choose. It says either, and I don't know who chooses.

Chairwoman Buckley:

If we're going to process this bill, we can certainly clean up language. We have the best drafter and legal minds. There is nothing this Committee can't do.

Gary Wolff, Legislative Advocate, representing Teamsters Union, Local 14, Las Vegas, Nevada:

I just want to give you a little incident that happened two years ago when I was active. I had one of my motorcycle officers take out a brand-new Harley-Davidson motorcycle we had just fixed. He was making a U-turn, the motorcycle tipped over, and the floorboards came under his ankle and severed his foot almost in half. Most of you know that we passed that bill here years ago, where they don't lose any sick leave when they are injured in the line of duty. However, when this guy came back to work, he had to do exactly that. He was working in the office. I understand your concerns, Mr. Hettrick; I think that should be changed. Maybe a note from the doctor when they leave or something. He would come to work for two or three hours working in the dispatch center, and when he would leave for an hour or two hours to go to physical therapy, he did, in fact, have to use his sick leave or a portion thereof. I always thought that was not fair. The guy is doing his job—maybe not a motorcycle police officer or a firefighter that is hurt; it could be a personal landscaper working on a tree, falls out of a tree, and breaks a limb. I think if you are hurt on duty, then something should be done for the employee when they go for their therapy, without loss, within some reasonable amount of money. You don't want to break the bank. I have known people that have back injuries for the rest of their lives. I'm here to support this bill, and like you said, Madam Chair, I think with your legal minds you can clean it out.

Nancy Ann Leeder, Nevada Attorney for Injured Workers:

This would certainly help many of our clients. The biggest problem appears to be in physical therapy, because that is frequently three times a week. One of my clients, in particular, needed to go three times a week. When she found out that, in fact, her sick leave was being taken, she attempted to change the hours, because the insurer is the one who sets up the appointments. So she was told what time she was supposed to go to the appointment and therefore went to the appointment during her work day. When she found out that her sick leave was being taken in order for her to go to these appointments for physical therapy, then she attempted to change the hours that she went to physical therapy. The physical therapist that she was assigned to didn't work in the evenings, so she had to change physical therapists. The new physical therapist that she ultimately changed to so that she was going in the evening, not during her normal work day, could not do all of the physical therapy that the prior physical therapist had been doing, so she got less service and didn't heal quite so well. This bill would help in many instances.

Don Jayne, Legislative Advocate, representing Nevada Self Insured Association:

I need to break the bill into two separate parts to talk to it, because there is no safe way to sign in for that. The first part of the bill, addressing the licensure of claims examiners, we really don't have any major problems with so long as we accomplish the task properly. Other claims examiners throughout the property and casualty arena are, in fact, licensed by the Division of Insurance. We think particular attention needs to be paid to how that is handled on the Division of Insurance's side and to take across the appropriate recommendations on both sides. Today, with what we have in the bill, there are probably a few things that we have that are inconsistent with what goes on within the Division of Insurance. We would like to see those elements addressed and cleaned up. From the standpoint of the certification and licensing of claims examiners, we probably don't have a major problem with it. We certainly believe we need to take a look at how much time we have to get that done. With the people who are out there today in the claims examiner roles, we need to make sure that the effective date of this bill allows an appropriate amount of time to accomplish that task.

The second part of the bill addresses the time off work. I'll go ahead and touch on that portion of the bill briefly, and then I'll be done. Again, this was discussed during the Interim Committee, as you well know. We have some concerns about the language. I think you are correct. We have enough people here that if we put our heads together, we might be able to accomplish this task in a way that works for everyone. Certainly looking at the folks have to come a long distance, there is a problem. Those folks would have to, in particular for areas of specialty or physical therapy. There are areas where the providers in

their local community, within 20 miles or some larger criteria, are not there, and they have to travel. That does present a problem that needs to be addressed. Many of the self-insured employers that I represent today already have this situation taken care of and many, in fact, do pay them full pay. We do recognize that issue and believe that it needs to be looked at. I think we believe that this bill, as written, presents some problems in particular with the distance. We would like to see some information written in to this bill that talks to the fact that if there are providers in their area within whatever the mileage criteria is, they need to see those providers rather than evoking this provision as a way out. There are some things that we need to do in order to tighten up the language in here, and hopefully, we'll get a chance to work on that.

Chairwoman Buckley:

If the language was changed to reflect that the employee had required medical appointments, and that the time off did not exceed that which was either shown by a doctor's note or inferred by travel, do you oppose that concept if the language was worked out correctly?

Don Jayne:

I would have to get back to the Self-Insured Association. But that concept is in line with a few other things that are in there, such as within the confines of the managed care network that they had. If we had a provider in that particular locality that would do this service. We need to be able to work with that person rather than say, "I think I would rather go somewhere else." If we have a provider there, let's work within some reasonable confines there. With the statement that looking at the number of miles involved, my folks will probably say that 20 miles isn't a big enough radius to look at. I think there are some things that we could find some common ground here. Yes, we can work it out.

Chairwoman Buckley:

One of my thoughts in rating it, it's amazing. For anyone who lives in or visits southern Nevada now, 20 miles is nothing. My husband, for example, had to have a medical procedure. The only place you could do it was St. Rose Parkway in Henderson. We began chugging from our work the 45 minutes if you go the wrong time of day, and you can spend just as much time in the urban areas with traffic. You can spend 2 hours in traffic, 2 hours at the doctor's office, and lose a lot of time. I agree with you; you would have to build some safeguards in to make sure it's not, "I'll pick this location. I'd rather be in my car than be at my job." You want to build that in. I see, in some cases, it can be just as big a problem in the urban areas.

Don Jayne:

We do see that there are issues here that need to be addressed. As you spoke to, the city of Las Vegas, a 20-mile criteria might not satisfy it. We certainly believe there should be some efforts between the individuals involved in this—the employer as well as the injured worker—to try to find the right provider for them to go to. Yes, it would be our desire to have them try to do that before work, or after work if that was possible. The way this is written, our fear would be the administrative nightmare that could come with it, but also that would begin to move away from the injured worker trying to arrange those appointments outside of work. I wouldn't, if this were passed. There are some issues here. We think there is some room to work on this. We recognize the issue and would appreciate that opportunity.

Gary Milliken, Legislative Advocate, representing Nevada Contractors Insurance Company:

We have the same questions for Section 9, subsection 1, that Assemblyman Hettrick and Mr. Jayne made. We just need to clarify that. The way Clark County has expanded now, if you drive from Summerlin to Henderson, we are going to be getting a debate about wanting 18 miles or 20 miles. How many miles do we actually go? I think we need to clarify that also.

Ray Bacon, Legislative Advocate, representing Nevada Manufacturers Association:

I think all of the comments have pretty much been laid out. The only additional thing that we might add is the way this is worded. If you wind up with an employer that already has a policy where they pay people when they are off on doctor's appointments, it's unclear as to whether you might wind up with a secondary claim coming in on the insurance side. It doesn't specify where the person gets compensated from. They can be compensated under the temporary partial disability, or they can be compensated directly by their employer. We certainly don't want people double-dipping on that. That would just add insult to injury. The language needs to work, but you've heard all of the explanations. Thank you.

Bob Ostrovsky, Legislative Advocate, representing Employers Insurance Company of Nevada:

I signed in but I didn't mark yes or no. I'm sorry I didn't do that. I have a few comments. Again, as some of the others indicated, I will break into two pieces because the bill addresses really two completely different issues. On the issue of licensing, it was alluded to earlier that the insurance companies or the self-insured employer each have a license that is always at risk if they mishandle claims. I don't have a complete history of what has happened relative

to mishandled claims, so I can't tell you that licenses have been pulled. I don't know that for a fact. They are subject to that. There was some testimony that the real problem is third-party administrators. If that is the case, then I think this section should really be geared at third-party administrators and asked to look at the issue of licensing third-party administrators who are adjusters, as opposed to adjusters who are employees of the insurance company.

[Bob Ostrovsky, continued.] Just an issue we might talk about away from the table, because there might be some debate about that, and the question over which employees would be covered and which would not. Two points: if you chose to work through the early parts of this bill and decide to pass it, I would indicate to you that missing from those who are not covered by this act should be licensed private investigators. Under the definition as this bill is drafted, people who investigate a claim will be required to have this license. Many insurers use private investigators in Nevada, licensed under the *Nevada Revised Statutes*. I think those individuals should continue to be able to be hired to investigate these without having to get this secondary license for adjusters. They are really not adjusting the claim. They are collecting information which then the adjuster uses to make some decision about that claim.

Again, the question of when this should be enacted if you chose to move this section into law. We would suggest that they be given adequate time for the Insurance Commissioner's Office to adopt regulations and to train and license all of the individuals involved. This bill, as written, would require that all be done by January 1, 2006. We think that is inadequate time and that more time should be given, at least until July 2006. We suspect that, given the way the regulatory process works, it would be some time later this year that a regulation would be adopted, and then all of those individuals would have to be trained in some very few months. We think that would be rather difficult to achieve.

Relative to the section on time away from work, I just want the Committee to understand that you are creating a substantially new benefit under the law which has never existed before. Injured workers are entitled to and receive medical treatments paid for by their insurer, therefore paid for by their employer who pays their premium. As it was stated earlier, if you recall, if you miss five days from work, you are entitled to lost time benefits for which you receive compensation for being away from work. That's the way the statute has been for as long as I can remember, going back to the Labor and Management Committee.

What you are doing is creating a benefit for time away from work. Just understand that benefit has a dollar value. I haven't heard any testimony relative to that. I don't know what the dollar value is, but it is substantial. We have a lot

of injuries, we have a lot of individual injured employees who seek medical treatment, and there is going to be considerable time away from work. So there is a dollar value. From a public policy point of view, that may be a dollar value that this Committee believes should be the burden of the employer who employed that individual who was injured at that work site. But understand that there is a substantial dollar value. We would suggest that if you want to do this, give us a little time to rate this in terms of what premiums employers will have to pay. Again, we are suggesting the effective date for that, July 1, 2005, is inadequate for the purposes of determining what the appropriate premiums should be.

[Bob Ostrovsky, continued.] I have two other things relative to that. This problem was brought to us as a rural issue. I would suggest the 20 miles as discussed earlier is the wrong number. The 20 miles, my best guess, came from old rules in the statute. Long ago the rule was you didn't have to travel 20 miles to get medical treatment. The purpose of that statute was to protect Carson City from having to go to Reno. That was clearly why that was in the statute; it had been there for years and years. It was finally removed partly because the roads became better, because you can get to Reno faster than you can get halfway across the city of Las Vegas. So that rule became antiquated and was removed from the statute. I think, from a structure point of view, that's the 20-mile rule, as we knew it then. It's now being converted to this new 20-mile rule which applies in a completely different kind of capacity, and I would suggest that 20 miles is not adequate to get that done.

The other point just so you know, EICON [Employers Insurance Company of Nevada] will take the position that it should be the place of employment, not the place of residence, from which you measure the distance. The place of employment is a fixed place that we know about. We have an address; we have done the underwriting work to determine what the risk is at that place of employment. We don't know where the residence of the employee is. The residence can move. Just for the purpose of trying to establish some kind of mechanism procedurally to handle this, it would be a lot easier for us if we had a fixed point. That fixed point is easy to establish at the place of employment. We would suggest the words "residence or" be struck from the proposed statute.

I would be happy to answer any questions. I would also be happy to work with the other individuals who have indicated that there is some cleanup work that could help make these statutes work properly for everyone.

Assemblyman Anderson:

I would think that you would want treatment to be as close to the injured worker as possible. Recognizing the dramatic difference in distances, the 90 miles from Lovelock into Reno or Sparks, clearly there is one question. What happens if you are somebody who lives in Fernley or several other work areas, but not at a work site like Belamie or Lovelock Correctional Center or Rochester, one of those out by Lovelock? Wouldn't you prefer them to be from the shortest distance rather than the greatest distance, regardless of whether it is worksite or home?

Bob Ostrovsky:

It would be nice if we could take the shortest distance. That would be the advantage to the employer and the insurer. I just think administratively, because that place can move, it becomes very difficult for an adjuster, every time you have to make one of these claims, to have to look to measure that distance. We do have claimants who move from different parts of the state. They move to other areas. It's just a matter of administrative burden, not anything else. We have a statute which requires if you provide managed care, for example, which I think everyone does now, that you have choices in the managed care system, so that the injured worker doesn't get forced to go to a single physician. So there are some choices that they can make, hopefully closer to their home or place of work.

The real problem comes up in specialists. I think the problem in the rural areas is, you might be able to get quite adequate immediate care, but if you are looking for a surgeon who does just hands or wrists, or if you have a particular need when it comes to some kind of physical therapy, there may be very few choices because there are some specialties that are hard to come by. If we ask a claimant now to fly to Reno for a particular service—a hand surgeon, for example—we used to pay all of that travel time and pay to put them up in a hotel, and so on. That didn't address the issue of lost time if they didn't lose five days.

Assemblyman Anderson:

You have not given up on the question we heard several years ago. The speedier an injured worker receives his treatment and the follow-up required, the less likelihood that he is going to turn into a malingerer—and I use that term very guardedly—and thus he will be able to return to full employment. So proximity is a very important part of how we get people fixed who have been injured at work. Even though it may be difficult to measure that distance, it would be in the best interest of the worker and, in the long run, of the employer to make sure that happened rapidly.

Bob Ostrovsky:

I totally agree. The sooner you get someone back to work, the shorter the claim will get. People who stay out for a long time continue to stay out longer. I understand your question, but let's do something statutorily that furthers the ability to keep that worker on the job, back to work as soon as possible if they did lose time as a result of the injury, or back to work as soon as possible if they have to take temporary time off for purposes of medical treatment. I agree. If we can make it work we'll find a way. I think you people with better expertise in administering claims should be coming to the table or do a little work session to talk about how to do that. I haven't administered claims in years but most claims are fairly easy and simple, and then there are always the tough ones.

Assemblywoman Giunchigliani:

Refresh my memory. You're paid your TPD [temporary partial disability] in some cases while you are back on light duty. Correct? Or you can be?

Bob Ostrovsky:

If you are temporarily totally disabled, you get a payment—66 and 2/3 of your wage, up to the State's average wage, which has been increasing. I don't know what it is today. It goes up every year. If you return on light duty, there are very particular and special rules which apply to you. You can get no less than the 66 and 2/3, in some cases more, but that's the new floor that is established.

Now in the case of an injured worker who loses less than five days, the insurance company or third-party administrator doesn't even calculate what that benefit is. It's only calculated when they get to the point of saying, "We owe you a check." Under these rules, I guess we are going to have to start calculating from day one, because you are creating here a day one benefit. It doesn't say anything about being out five days. It says if I miss any time—my reading and understanding of that would be including the day of injury—you are entitled to some payment. So we are going to have to calculate that wage payment on each and every claim now, which is something that we didn't do in the past. I don't know if that answered your question or not.

Assemblywoman Giunchigliani:

It gets me closer, and I think if you are going to do a work group that will be part of it. I also wanted to share that Ms. [Rose] McKinney-James is in Las Vegas and they can't teleconference, and they would be happy to work with whatever work group as well.

Chairwoman Buckley:

The Vice Chairman of the Interim Committee, Mr. Ocegüera, has volunteered, even though it is not his bill, to shepherd the various work groups to try to

accomplish all that. There have been a number of very good points made about lots of things, and he will be happy to do that.

Assemblyman Hettrick:

Just a comment. It can be handled in Committee. I think a part of the one question that was asked by Mr. Anderson at one point is—if they are on their five days of time off, they would be going from home anyway. They would be off five days and paid for that. If they were back to work and taking time off, then they would be back at work and taking time off to go to the doctor's appointment. So the "from work" would seem to be appropriate to me. Finally, you could have somebody commuting the opposite direction. We want to remember somebody could live in Lovelock and commute to work in Reno, and the doctor's office is in Reno. We can't be calculating from home. They're going to go to work anyway on light duty. I believe work makes sense. You have to have a fixed point at which to calculate from, some time into the future. That makes sense to me. In terms of scheduling, somebody could be working four tens and have every Wednesday off and be available to go to the doctor on Wednesday anyway. I think you have to realize that you can't schedule the appointment on Tuesday when you have Wednesday off anyhow and you are getting full pay for the week. Again, you expect to get paid for time that you could say, "I'm just going to move the appointment to Tuesday so I can get paid for being absent from work." I think you have to take into account the job scheduling as well, when you calculate when the appointment is made and whether or not you have to compensate.

Chairwoman Buckley:

We will let Mr. Ocegüera wrestle with all of this. I think it can be done. I think we all know what we want. I mean, you wouldn't want someone getting paid when they live at home and they are coming from their work and that is a shorter distance. I think Mr. Ocegüera can make all of this work for us. So we will look forward to that. Is there anyone else that would like to provide testimony on this bill whose points have not already been so ably made?

Jim Fry, Deputy Risk Manager, Department of Administration, State of Nevada:

I have a fiscal note ([Exhibit C](#)) based upon my best estimate of what this would cost per annum. We did this by taking the total number of occurrences, or bills paid that would require time away from work, by the total number of claims over a two-year period, giving us an average of 5.96 visits per claim. Then I took the average number of claims per year, which is 1,365, and took that times the average hourly wage for a State employee, which is \$21.63 according to the Department of Personnel. So you take all those and you end up with the man hours lost away from work. Multiply that times the wage, times 66 and 2/3, and this roughly comes up to \$234,597 per

year. Now there was no way for me to separate out which ones were more than 20 miles or less than 20 miles; however, I only took two hours away from work. If someone is more than 20 miles, and especially in some of our areas of Ely, Elko, Lovelock, or Indian Springs, that's going to be four to five hours away from work. I just needed to present this on behalf of the State.

Chairwoman Buckley:

This is just for the State of Nevada's own budget, correct?

Jim Fry:

Yes, Madam Chair.

Chairwoman Buckley:

A couple of people have submitted comments and testimony which they said they did not want to read, in light of the fact that it is going to be worked on further, so I will ask that it be distributed, as well as put in the record for today ([Exhibit D](#)). With that, I will close the public hearing on Assembly Bill 58. Other matters to come before the Committee? Seeing none, we are adjourned [at 2:58 p.m.].

RESPECTFULLY SUBMITTED:

Sarah Gibson
Committee Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Commerce and Labor

Date: 2/21/05 **Time of Meeting:** 2:00 p.m.

Bill #	Exhibit ID	Witness	Dept.	Description
A.B 58	B	Assemblyman Ocegueda		Study of Nevada's Industrial Insurance Program
58	C	Jim Fry	Admin.	Worksheet/Fiscal note
58	D	James Livermore	ASC	Three page testimony