

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

**Seventy-Third Session  
April 20, 2005**

The Committee on Commerce and Labor was called to order at 2:46 p.m., on Wednesday, April 20, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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 S. Gansert  
Ms. Chris Giunchigliani  
Ms. Kathy McClain  
Mr. David Parks  
Mr. Richard Perkins  
Mr. Bob Seale  
Mr. Rod Sherer

**COMMITTEE MEMBERS ABSENT:**

Mr. Lynn Hettrick (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Warren B. Hardy II, Clark County Senatorial District No. 12  
Senator Maggie Carlton, Clark County Senatorial District No. 2

**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:**

Susan L. Fisher, Legislative Advocate, representing the Chiropractic Physicians Board of Nevada and Washoe County Employees Association  
Donald H. Miner, Secretary, State Board of Chiropractic Examiners  
Cindy Wade, Executive Director, State Board of Chiropractic Examiners  
Berlyn Miller, Legislative Advocate, representing Nevada Chiropractic Association  
John Sande, Legislative Advocate, representing Direct Buy  
Mike Alonso, Legislative Advocate, representing Direct Buy  
Dave Noble, Assistant Staff Counsel, Public Utilities Commission of Nevada  
Craig Steele, Manager, Safety Division, Public Utilities Commission of Nevada  
Bob Ostrovsky, Legislative Advocate, representing Employers Insurance Company of Nevada  
Rusty McAllister, President, Professional Fire Fighters of Nevada

**Chairwoman Buckley:**

[Called meeting to order.] We have four bills on our agenda today, and we are also going to revisit and clarify A.B. 186. We will open the hearing on S.B. 174.

**Senate Bill 174: Makes various changes relating to chiropractic. (BDR 54-699)**

**Susan L. Fisher, Legislative Advocate, representing the Chiropractic Physicians Board of Nevada:**

We are not proposing any amendments to the bill that you have before you. These are changes to the current statute that we are proposing. Under Section 1 of the bill, we are proposing to require professional liability insurance at a minimal amount of \$100,000. On page 4 of the bill, Section 2, subsection 16 (a), we are suggesting a one word change from "and" to "or." This relates to investigations of complaints against chiropractors.

**Donald H. Miner, Secretary, State Board of Chiropractic Examiners:**

The reason for the change was that it required both items to be performed prior to giving a professional opinion, which may result in a reduction in fees being reimbursed by the carrier. We wanted to clarify that to say, "Records reviews do not require a physical examination of a patient." They are merely a review of the existing medical records.

**Susan Fisher:**

When we met with the Chiropractic Association, we assured them that we will be putting into regs some language that will clarify when it is appropriate to do both the record review and the physical review. It will not be mandatory to do both, unless it is warranted.

Under Section 3, paragraph 1, we are proposing to add one additional Board member. At this time we have six; we would like to change it to seven so that we have an odd number. Currently, we have one person who represents the general public on the Board. Our proposal is to make the additional Board member another representative of the general public as well.

In Section 4, we are proposing to raise several of our fees; for example, the annual renewal fee to practice. We have not raised our fees since 1995, and other costs of ours have gone up, the overhead and the background investigation. We are raising the cap. The fees will be raised some, probably not all the way to the cap. We didn't want to wait another two years for that opportunity.

At this time, we are one of the few boards in the state that is not allowed to share information with other investigatory bodies. If the FBI [U.S. Federal Bureau of Investigation] calls us and says that they are investigating somebody, we cannot share any information that we have received through background checks or some other investigation that we have done on our own. Most of the other medically related boards do have this information-sharing clause, and we just wanted to include that in Section 5 as a consumer protection. Those are the only things that we are proposing to change in statute.

**Assemblyman Conklin:**

On page 5, I am looking at the fee increases, and I am curious why the chiropractor's assistant fee is raised 100 percent and all the rest of them less. Maybe the chiropractic office pays all of the fees, but it would seem that would be the person least likely to be able to absorb a fee increase.

**Cindy Wade, Executive Director, State Board of Chiropractic Examiners:**

You are referring to the annual renewal. This is the fee least likely to be raised, but we want to have the ability to do so. Right now, the chiropractic assistants don't have to pay a license or certificate fee, whereas the doctors do. It costs them \$185 to become certified and then the \$50 annual fee. We didn't feel that raising the cap \$200 was really out of line. It is probably the last one that we will raise, if we have to raise any fees.

**Assemblyman Conklin:**

I thought I heard you say that right now they pay no fees.

**Cindy Wade:**

Yes, they do. They pay a \$50 annual renewal fee.

**Assemblyman Conklin:**

So right now they are capped out.

**Cindy Wade:**

Yes.

**Assemblywoman Giunchigliani:**

How do you compete? What are your charges in relation to osteopaths, M.D.s and so forth, as far as what they charge for their licenses?

**Assemblyman Seale:**

We just had A.B. 203 here for the osteopaths, and this is in line with that.

**Berlyn Miller, Legislative Advocate, representing Nevada Chiropractic Association:**

The Association is in support of the Board and their request for S.B. 174. We are in agreement.

**Chairwoman Buckley:**

I will close the public hearing on S.B. 174 and open the hearing on S.B. 44.

**Senate Bill 44 (1st Reprint): Revises provisions regulating organizations for buying goods or services at discount. (BDR 52-763)**

**John Sande, Legislative Advocate, representing Direct Buy:**

We are handing out some information about Direct Buy ([Exhibit B](#) and [Exhibit C](#)). They do business in about 30 states. They fall within our definition of an

organization for buying goods and services at a discount, which is a law passed by the Legislature in 1985. It regulates companies that take fees from buyers and then sell goods to them at a discount. Direct Buy sells discount home products and has been very successful around the United States. In order for them to compete in Nevada, they need some changes to Nevada law so that it is economic. They are regulated by the Consumer Affairs Division of the State of Nevada. We met with them and made some agreements as far as what they wanted to change in the bill. We adopted every suggested change that they had.

[John Sande, continued.] Under existing law, if you are subject to these provisions, you must set up a separate trust account and have an independent trustee. When you receive any payments from a buyer, you must deposit those amounts into a trust account. You can only withdraw a certain amount each quarter of the contract, or six months, whichever is a shorter period of time. For example, if you had a two-year contract, every six months you could take out one-quarter of the payments you received from that buyer. You also must post a \$50,000 bond with the Consumer Affairs Division.

We are proposing an amendment to the law. It would say that if you are a parent business entity, which is defined as some business that has been in existence for 5 years or longer and had at least 15 franchises, then you would be subject to different requirements. We originally were proposing a 10-year period with 25 franchises, but the Consumer Affairs Division thought that might be a little too difficult for people to qualify under these provisions, so it was cut back to 5 years and 15 franchises. You would be required to post with the Consumer Affairs Division a \$250,000 bond. You as the parent could act as a trustee of accounts for your franchise in the state. You would be able to withdraw during the first quarter of the contract one-half of the buyer's payment. During the second quarter, or 6 months, whichever is less, you could withdraw the remaining half that the buyer deposited. In our case, unless you had a fairly substantial amount that you wanted to buy, it would not make sense. If you make a prepayment to buy under them, you get any items you order at wholesale plus shipping. They don't make any money on that part; they only make money on the fee that is paid up front.

Finally, the bill beefs up the disclosure requirements, which were amended in at the request of the Consumer Affairs Division. It also addresses some of the rights of a buyer when an organization moves its place of business more than 20 miles farther from the buyer's residence. There are some provisions in there that we also worked out with the Consumer Affairs Division.

**Assemblyman Seale:**

Do we have a physical location planned in the state, or is this a mail-order kind of thing? How does that work?

**John Sande:**

It is a franchise. You can do it on the Internet, but they envisioned that you would have one franchise location in northern Nevada and two in the Las Vegas area. That is what they anticipate based upon the population at this time. You can go into the facility and look at samples or paint, or if you want you can do it over the Internet.

**Assemblyman Seale:**

Who is the trustee for the money put into trust? Is that the company itself, putting it into their own trust account?

**John Sande:**

Yes, that would be the parent company.

**Assemblyman Seale:**

That bond with the State is a surety rather than a cash bond.

**John Sande:**

It is a surety. We broadened what could be covered by that. In Section 2 they have the changes. The security must be conditioned on compliance by the organization with the provisions of NRS 598.840 to 598.930, inclusive, the terms of the buyer's contract for membership in the organization, and the terms of any contract with the buyer for the purchase of goods or services. Each franchisee would have to deposit \$50,000, also subject to the buyer going after if there was some type of default.

**Assemblyman Seale:**

The earnings from the trust fund go to whom?

**John Sande:**

In this case, the earnings would go to the parent company. If they are holding funds for the affiliate, then it would go to them.

**Assemblyman Conklin:**

What other companies are caught up under the current statute? Are Sam's Club and Costco the same type of company where you pay a membership and then you have the right to purchase, or is this a totally different statute?

**John Sande:**

I do not believe it affects them.

**Chairwoman Buckley:**

I have that same question. Who is currently regulated under this chapter? Who has bonds posted, who is operating under it?

**Mike Alonso, Legislative Advocate, representing Direct Buy:**

I believe that they are covered under this statute. From the 1985 statute, the intent and part of the reason this was enacted was because some of these health clubs that provided something in addition to the workout facility. That created a problem because they take these membership fees and then close down shortly after. I think that is why the law went into place; it was covering all sorts of membership clubs. We haven't heard from any of the other membership organizations on this bill in the Senate side at all. We are dealing with the Consumer Affairs Division only.

**Chairwoman Buckley:**

I don't know what [wholesale stores] like Sam's Club charge membership-wise, but the chapter limits it to \$50 or less in NRS 598.845. The portion of the chapter with regard to the trust fund made me think it was going to be something different. In Costco, you buy something, exchange your cash, and walk out with the product. This business is different, and that is why you need a trust account. It is not the company's money until the goods are shipped. I assume that is why a trust account was created in original statute. The consumer puts their money up, and it has to stay in the trust account until you give them the products?

**Mike Alonso:**

Part of that is correct. You join the membership and have the right to go to their showroom, get their catalogues, and shop for these things on the Internet that you are going to get at wholesale. The way the bill reads, you still have this contract between the franchise and the customer. Under that contract, this could be two or three years because this may be a long process. Someone could be furnishing an entire home or remodeling. It is not that they get the payments when the goods are purchased; they are buying this right to access these things and buy the products at a discount.

**Chairwoman Buckley:**

How much is the monthly fee? Or is it a one-time fee?

**John Sande:**

Usually a two-year contract would be typical and it is a fairly substantial fee in the thousands of dollars. I believe it is paid up front. This is a unique service. If you were buying a substantial amount of furniture, fixtures, or something for your home, this would be an ideal way of doing it. They make their money on the up-front payment for the membership fee. From then on, you have the right to access.

**Chairwoman Buckley:**

Is the money in Section 3, the provisions with regard to the trust accounts, payment for the goods?

**John Sande:**

No. They are payments for the right to utilize their membership and be able to buy from various manufacturers at a price that is below retail. You would be depositing that. Under the change in the law, they could take it out sooner. They would not have to wait for one quarter each quarter of the contract. They could start taking it out during the first and second quarter.

**Assemblywoman Allen:**

It is my understanding that the trust is where the money goes up front, other states can access it more readily. They want to be able to access that capital because that is where they make their money. They don't make their money off the goods because they are sold at wholesale.

**Assemblyman Conklin:**

I think I have a better handle on it now. You have to post a bond for the protection of the consumer so you guys don't leave town. How much of the trust are you going to be able to take out under this statute?

**John Sande:**

If you look on page 3 of the bill, during the first quarter of the term of the buyer's contract, or for the first 6 months, whichever period is shorter, the trustee shall withdraw not more than one-half of the buyer's payments under the contract from the trust account and pay the amount to the affiliate organization. That would be the franchisee. During the second quarter of the term of the buyer's contract, or the second 6 months, whichever period is shorter, the trustee shall withdraw the remaining balance of the buyer's payments under the contract. Under a normal buyer-seller situation, you would have no obligation to put anything into a separate trust account, but because of the 1985 change in law to protect consumers when they are buying goods from these types of organizations, they put in there that you can only take out a quarter during each quarter of the contract. Our client has indicated that since



they do not make any money on the actual sale of the goods, if that were to occur, it is not economic for them to do business in the state of Nevada. So we are changing it a little bit, but it is conditioned upon a posting of a bond and also someone that has been in existence for a substantial period of time with a substantial number of franchisees.

**Assemblyman Conklin:**

You said in earlier testimony, most of these contracts are for two years, but the money in the trust will be gone after the first year, correct?

**John Sande:**

That is correct.

**Assemblywoman Giunchigliani:**

I am far more literal. North Carolina, for example, has a huge place you can go and get their catalogues to buy furniture for entire houses and such. Now, in southern Nevada, they are building the furniture marts, so that may have an impingement. Do those types of stores have a trust account or have this type of situation? Or do they have different statutes? This would then align with that.

**Mike Alonso:**

I think the stores you are talking about—the furniture marts—really act more like retailers. They are buying in large quantities from a lot of manufacturers, so they are offering quote on quote lower prices, but you go buy it there. You make your transaction and walk away. Here you have the ability to join a company as a member, and they are affiliated with 850 manufacturers of home products like glassware, china, and furniture. Under that contract, you have the right to access their showroom, their catalogs, and their Internet site to order on your own time. It would be shipped to your home, and you pay the discounted price plus the shipping cost.

**Assemblywoman Giunchigliani:**

You are basically putting a down payment on the product itself.

**Mike Alonso:**

No, you are paying for the right to be able to buy these products at a discount from your home without having to go to the store. It is basically just the ability to do this, either on the Internet or through a catalogue. They can access 850 manufacturers for a wide variety of products.

**Assemblywoman Giunchigliani:**

How much money is in this trust account?

**Mike Alonso:**

It would depend on how well they do and how many members they have as to how much money is flowing through the trust account.

**Assemblyman Seale:**

I understand what you are doing with the trust fund and why you are doing that, but that doesn't really square with generally accepted accounting principles. I am not quite sure that I understand how they are going to do that, unless they are just looking for the cash flow. They are not going to be able to take that into income. They are going to have to take it into income over the two-year period. That is the difference between accrual and cash basis, I guess.

**Mike Alonso:**

I think the issue from an accounting standpoint is that they would have to reserve something. You and I have entered into a contract and you are paying for the right to access these manufacturers. I have fulfilled my contract by giving you that access, so I am not sure if, under generally accepted accounting principles, I can take it all into income or have to reserve for it. Probably some reserve has to be there. The economic side of this is that the organization and its affiliates make their money off the membership fees, whether or not the person actually buys anything. You may enter into this contract and never use their services even though you paid for the right to do it.

**Chairwoman Buckley:**

On the consumer protection side, let's say that it is a two-year contract, but the company goes out of business after the first year. If you can take everybody's money out in the first year, then in that second year, there is nothing left except the \$250,000 bond. What if the claims on it exceed that amount? What would happen then?

**John Sande:**

First of all, under existing law, you can take a quarter each quarter of the contract, so you would be taking a lot out over the period of the contract. In these circumstances, you would not only have the \$250,000 bond, but each franchisee must post \$50,000. If you have a lot of franchisees out there, they will have posted a bond.

We are talking about who would join this type of thing. From my standpoint, I wouldn't join unless I had the intention of utilizing it and buying at wholesale, because our client does not make any money except on the membership fee. They don't make any money each time someone makes an order. So you wouldn't really join unless you had the desire to buy a fairly substantial amount of goods over a fairly short period of time. In the case of our client, there is

really not much chance that someone would be out there and not utilizing it unless they were not a very smart buyer.

**Chairwoman Buckley:**

No, that is not what I am asking at all. My point is, if someone is in a two-year contract, and you have taken all their money the first year, then you go out of business. In that second year, what do they have left if there are more claims than \$250,000? Right now, the way it works is during each quarter, the trustee shall withdraw one-quarter of the payments. It's pretty clean. Now we have two years and all of the money is gone after a year. Correct?

**John Sande:**

That is correct. All of the money from that particular buyer is gone for that year.

**Chairwoman Buckley:**

I guess I wouldn't have as much concern if the bond amount was clearly covering the amount that you did business for. Maybe \$250,000 does, maybe it doesn't. It could be \$1 million.

**Mike Alonso:**

I think we tried to cover that with the Division through the definition of a parent business entity. The idea was that this is an entity that has been in business for at least 5 years and has 15 affiliates. The attempt was to get some company that has been around for a while and is reputable with a business background. We started out with 25 organizations and 10 years; that was our language and they cut it back. I think they thought it was too limiting and only doing this for our client. It would give you some comfort in addition to the \$250,000 bond.

**Chairwoman Buckley:**

Sometimes it assures that and sometimes it doesn't. There are companies that have been in business for years and years and still go under.

**Assemblyman Seale:**

Is this company listed on any of the stock exchanges?

**John Sande:**

No.

**Chairwoman Buckley:**

We will go ahead and close the public hearing on S.B. 44 and open the hearing on S.B. 3.

**Senate Bill 3 (1st Reprint): Revises certain provisions relating to regulation of public utilities. (BDR 58-656)**

**Dave Noble, Assistant Staff Counsel, Public Utilities Commission of Nevada (PUC):**

Senate Bill 3 has two provisions. Section 1 deals with the federal Natural Gas Pipeline Safety Act [49 U.S.C. §§ 1671 et seq.]. In December 2002, Congress amended that Act to increase the fine penalties from \$10,000 for each day of a violation of the federal regulation and \$500,000 for any series of related events, up to \$1 million respectively.

Pursuant to NRS 703.168 and 703.153, the Commission has entered into an agreement with the Office of Pipeline Safety to conduct inspections of natural gas pipelines in Nevada. We currently have three inspectors who perform those inspections. Pursuant to that agreement with the Office of Pipeline Safety, 50 percent of the monies for that program are reimbursed by the federal government. They audit our operations yearly. One of the things that they have noted is that in NRS 704.595, the fine amounts are not equated to the amendments to the Natural Gas Pipeline Safety Act. They have requested that we increase those amounts to make them consistent with the federal guidelines. We believe this is important because the federal government can use that in their audit to withhold some of the monies from reimbursement for our program. Last year, we were reimbursed \$203,000. That is why we are requesting an increase in fine amounts in NRS 704.595.

Originally, we had taken a look at the railroad statutes in NRS 704 and 705 and realized that many of them had not been changed since 1919 when they were first adopted. Several of them dealt with commerce and safety issues, which were preempted by the Interstate Commerce Commission Termination Act [49 U.S.C. 10101-16106] and the Federal Railroad Safety Act [49 U.S.C. 20101 et seq]. We had attempted to repeal those. In discussions with the Senate, they were not amenable to repealing those. Instead, they requested and we agreed to put into place the federal preemption language in Section 2. That would codify the federal preemption laws with regard to those statutes. That was the reason for having that language in place.

**Assemblyman Anderson:**

My concern rests with the Railroad Safety Act, in terms of people who are employed by railroads and how they go about reporting to you. Do they have to report to you? When there is a violation of state law, are they precluded from going to you?

**Craig Steele, Manager, Safety Division, Public Utilities Commission of Nevada:**

I oversee the railroad and the pipeline safety programs. I don't believe that there is anything that precludes the Commission or our inspectors from receiving complaints from the employees of the railroad with respect to whether a violation has occurred. Our inspectors are empowered by the FRA [Federal Railroad Administration] to investigate what they find on their own or what is reported to them. There is nothing that prevents us from conducting those investigations, working with the FRA specialists, filing the violations if we find those, and allowing the FRA to move forward with the enforcement or settlements associated with those violations.

**Assemblyman Anderson:**

How many people in your department have knowledge of the railroad industry, other than yourself?

**Craig Steele:**

They all have more experience than I with respect to the railroads. I have four employees; they are employed in four different specialties. We have a hazmat [hazardous materials] inspector, an automotive power equipment inspector, a track inspector, and an operating practices inspector. Three of those people have had employment with the railroads.

**Assemblyman Anderson:**

It's an area of the law that I am particularly concerned about because of the lack of vigorous enforcement. I am anxiously awaiting what you are going to do here. I believe others are too.

**Assemblywoman Giunchigliani:**

I think there was an article just recently in southern Nevada about the trains going through the downtown area and that there was no oversight. People were able to walk up to them with hazardous materials on them. How would this bill protect the citizens?

**Dave Noble:**

This bill would not address those issues in that article from two days ago by the *Las Vegas Review-Journal*. Those dealt with security issues, which the Department of Homeland Security handles. The Commission deals with safety of the track, cargo, and employees' conduct of railroad operations in the state.

**Assemblywoman Giunchigliani:**

So the cargo could be carrying hazardous waste and we don't even know about it, and furthermore, you would not have any say-so over that?

**Dave Noble:**

The regulations which we have the authority to enforce do include hazardous materials. They are fairly extensive, but the regulations that we enforce have to do with "placarding," securement, the condition of the cars, and so on. We are not enforcing anything with respect to the protection of those cars from terrorist acts. This bill does not address that issue.

**Assemblywoman Giunchigliani:**

I was told by a constituent that part of the problem, at least with the track in Las Vegas where it crosses over and tends to stop traffic, is that they don't pull all the way into the yard to do employee switch times. The train just sits there and bottlenecks traffic. Is that accurate? You mentioned that you had jurisdiction over the employees as well.

**Craig Steele:**

Some states have blocked crossing laws and limit the amount of time that crossings can be blocked. I do not believe Nevada has that authority. We do regulate crossings, but it is the construction, design, maintenance, and repair or alteration of crossings that we do regulate.

**Chairwoman Buckley:**

We will close the public hearing on S.B. 3. Assembly Bill 186 was a bill that we already voted out of Committee. As Legal was drafting the amendment, they had a couple of questions and clarifications. They thought it would be good to get the Committee's intent on the record with regard to that clarification.

**Brenda Erdoes, Legislative Counsel:**

I believe we are going to amend A.B. 186, the first reprint, to change the bill to provide for an annual payment to certain persons who are entitled to receive compensation for permanent total disability under industrial insurance, in an amount that will be determined by an administrator, to be each claimant's prorated share of \$500,000 annually, not to exceed \$1,200 per year, which must be calculated by the administrator pursuant to a regulation that he would have to adopt, which provides for the payments that result in the largest proportional share of the money being paid to claimants and dependents who receive the lowest amount of compensation pursuant to NRS Chapters 616A to 617, inclusive. Those payments are required to be paid from the interest earned on the uninsured employer's claim account if sufficient money is available from that source. If sufficient money is not available, then the administrator would be required to impose an assessment on insurers for that purpose for that year.

We would include in that language a provision that would require an insurer to charge policyholders a fee to cover the assessment if one is made.

**Chairwoman Buckley:**

One of the things we had talked about in the hearing was that we would have no net impact and balance things out. There was already enough money in the fund so that the employer would receive no net increase, because they would get a decrease and then an increase. It would all stay level and take care of this stranded group of employees. Is that the way it would work?

**Brenda Erdoes:**

I am not sure I have enough information to tell you the effect of this. I can tell you what we are doing with the amendment, but as to how it would affect the employers under it, I do not have that information.

**Assemblywoman Gansert:**

The way I understood it is that we backed out the \$500,000, that it was off the top, and we were not adding any additional fees. I think that is what was suggested by someone who testified.

**Assemblyman Conklin:**

I was to also understand that since last session, anyone who falls under this statute is already covered. This was here to get the people who were injured prior to its passage, and that dollar amount would diminish year after year until it is completely gone. The way I understood the amendment from Ms. Erdoes is that this amount will continue forever and ever. I don't know if I misinterpreted it, but those seem to be different than what I understood.

**Brenda Erdoes:**

I think I just didn't say it very well. It is a limited group that you are paying it to. As those people pass away, the amount would go down. As a result of that, the \$500,000 would become a lesser amount because we are talking about \$1,200 per year, per claimant who is left. At the end, when no one is left, it will be done. It would reduce it each year as more people were passing away out of this group.

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

It is our understanding that this account is partly interest-rate sensitive. We have made this payment in the past on the earnings that this fund had because the fund has over \$13 million in it. If interest rates are low, you may not get the \$500,000. If interest rates are high, you may get more than that and you accumulate interest in the fund. We think there is adequate money in there from current interest and accumulated interest to make this payment without an assessment. There is no guarantee that in any given year that there will be, so we have to put the assessment language in, because there is the potential that

you would have to assess employers for this someday. The other alternative is to reduce the amount in the fund. We assess to make sure that the fund is healthy, too. If you take money out of the fund, you end up assessing through the Uninsured Employer's Claim Fund. It is our hope that interest rates will be significant enough to make this payment. The \$500,000 will go down over the years, but there are probably some years that an assessment will take place.

**Assemblyman Ocegüera:**

Currently, they have the ability to assess. Already in statute they can assess and have done that in the past. In the last two years, they have not assessed because that fund has been so healthy.

**Bob Ostrovsky:**

The entire budget for the DIR [Division of Industrial Relations] is in fact an assessment, about \$29 million a year, broken up in various funds from the administration to the Uninsured Employers' Claim Fund. This is the Subsequent Injury Fund. Insurers are assessed annually; that eventually finds its way into the premium cost. The assessment is calculated every year on the total number of dollars the Division needs broken up into various segments. From the employer's point of view, I don't know if the assessment will go up or down this year. A lot depends on the total operation of all the funds over there. I haven't looked at the budget. I know, for example, we gave \$190,000 last year to the Governor's Office for health care assistance. This year's number is only \$57,000, so that assessment is going to go down. On balance, I don't know exactly what is going to happen to employer costs this year. They go up and down each year, but they are always around \$27 million to \$29 million.

**Rusty McAllister, President, Professional Fire Fighters of Nevada:**

The administrator shall be allowed to reduce the amount of assessment charges annually to each insurer for the Uninsured Employers' Fund in an amount equal to the assessment charged to each insurer for permanent total disability payments. In other words, he could reduce this down to pay for that. I tried to put that in the form of an amendment. There is another idea to take that uninsured claims account and just amend into it by saying that you could use that uninsured claims account to do this and this, so that the assessment would be for both. You could just pay out of that fund for both purposes up to \$500,000 a year for the permanent total disability, rather than taking interest and reducing this assessment. Why don't we just amend that statute to say that you could accomplish these two things out of that same fund? If you had that permanent total disability payment encompassed within that fund, there would be no additional assessment because it would all be encompassed within one fund.



**Chairwoman Buckley:**

I thought there was some testimony in the first hearing that we didn't want to do that because it really isn't uninsured. I thought that came from you, Mr. Ostrovsky. It is more like an underinsured.

**Bob Ostrovsky:**

In some sense, these are uninsured claims. We collected premiums to pay a certain benefit; all insurers did. In most cases, a lot of these were old industrial insurance system claims. They go back to 1942. We still have some people from 1942 still collecting benefits. Because we didn't collect a premium, this benefit was uninsured. We never collected any money. This is in a sense an uninsured benefit increase that we have given. I think all the parties agree that it is needed. We have made some increases over the years, but we have people who are totally and permanently disabled, and they cannot work. Their wages were set in 1955, and this is pretty tough when you go to the grocery store. We thought this was very fair; it is just finding the funding mechanism. A comment was made that there is some risk that the Governor could view this as an increase.

**Chairwoman Buckley:**

I talked to him and he was very sympathetic.

**Bob Ostrovsky:**

I would think that he would be sympathetic, given the situation.

**Chairwoman Buckley:**

What is the bottom line? What is your recommendation? Do we do it from the Uninsured Fund? Do we try to do some sort of assessment language that reflects that it is supposed to be an offset, but we might not have enough of a guarantee? It might be cleaner if we did the Uninsured Fund.

**Bob Ostrovsky:**

I like the assessment. I think it is appropriate, because it is a little different than what we have done before, and I think we ought to at least account for that way. I know the Self-Insured Employers Association wants that accounting done also. Otherwise, it gets lost in a much bigger pool and we could potentially lose a handle on what we have done.

**Assemblywoman Gansert:**

In reading the original bill, it seemed that this was a one-time payment of additional compensation. I did understand that we had enough funds to cover the two years. I think the problem is that we are trying to extend it beyond the two years and we don't know whether we have the funding. That is why we

are questioning whether to have an assessment. If we go for the two years, we don't have an assessment at all because the money is already there.

**Chairwoman Buckley:**

Yes, but isn't the problem, though, that what we would be doing is giving people increases to reflect today's wages? How do you go back and take the payment away in two years? Wouldn't that be a problem?

**Bob Ostrovsky:**

I am not sure if I understand the question. We intend to make this a permanent annual payment until all of these claimants are no longer eligible. The only way you lose eligibility is by dying. These are going to go on for many years.

**Chairwoman Buckley:**

What would the payment be? For example, if someone is receiving an amount now per month, is it indexed? How is the increase seen?

**Bob Ostrovsky:**

The Division of Industrial Relations adopted regulations for the last payment. They did a weighted average of some kind, which essentially said that if you are only getting \$600 a month, you are going to get a larger lump-sum check than someone who is earning \$1,600 a month. They tried to weight it to bring up the average so that everyone would be earning about the same. It is complicated because they had to evaluate each and every claimant to determine how much they would receive. By the time they did all of that, 6 or 7 of the claimants had passed away. This is a continuing problem. It is a convoluted method to try to average out these folks and bring them up to some standard of living. It was a mistake we made years ago, not indexing these people. We have indexed all future claims. We are just trying to find a way to help these poor folks who have been out there for a long time.

**Chairwoman Buckley:**

It looks like we have two choices: the Uninsured Fund or adding this in. If we do it for two years, we can come back and see what the data reflects to make sure that we didn't make a mistake. If assessments have gone up, we could consider putting it under the uninsured portion. It is not over; we are here every two years. It sounds like some of these folks are so old; it is sad. It may not be that much of a hit in four to six years as people begin dying. It is sad, but true.

**Assemblyman Ocegueda:**

I would propose that we don't come back in two years, but take care of this once and for all. I have looked at the figures for the last five years. The interest on that account ranged between \$300,000 and \$500,000 every year for the

last five years. All we are asking for is that interest. Unless there is some catastrophic event, we could give these people some of this. We are not talking about very much money at all. I would rather we try and solve this problem than just doing another one-shot thing.

**Chairwoman Buckley:**

I was just pointing out that we meet every two years, so if our assumptions are wrong and we wanted to shift the funding mechanism, we could. I was suggesting that we solve it permanently.

**Assemblywoman Gansert:**

It seems to me that interest rates are very low right now, so I am thinking that those figures, the \$300,000 to \$500,000, we could always implement this for now and make it a function of the interest. We could always use that interest to fund additional dollars. It should fluctuate with what we are earning.

**Chairwoman Buckley:**

It looks like we have two options here. We can always come back in two years and see how it is working and make sure that it is ok. I do not have a preference. I trust Mr. Ostrovsky has some sense in his recommendation of how the Senate might view it, assuming that was part of his recommendation. Pleasure of the Committee. The Chair will take a motion to clarify our amendment as suggested by Mr. Ostrovsky.

ASSEMBLYMAN PERKINS MOVED TO CLARIFY THE AMENDMENT.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hettrick was not present for the vote.)

**Assemblywoman Gansert:**

I am an aye with a reservation.

**Chairwoman Buckley:**

I will open the hearing on S.B. 66.

**Senate Bill 66 (1st Reprint): Authorizes injured employee who lives in Nevada to receive vocational rehabilitation services outside of Nevada under certain circumstances. (BDR 53-254)**

**Senator Warren B. Hardy II, Clark County Senatorial District No. 12:**

This legislation was brought to me by a constituent from Mesquite. As we did research on it, we discovered that this individual had a problem we thought we had resolved in past legislative sessions. This individual resides in Mesquite, worked in Las Vegas, and was injured in Las Vegas on the job. He was eligible for vocational training and sought that training outside of the state in St. George because it is about a 25-minute drive from his home, as opposed to an 80-mile drive to Las Vegas, or ultimately about a 120-mile drive to Henderson, where he was advised to go.

The language in Section 1 was changed to "...reside outside of the state." We initially believed that where it says, "An injured worker who lives within 50 miles of any border of the state," took care of this problem. It has been interpreted by the courts and hearing officers to indicate that means within 50 miles outside of the state. We seek to clarify this to provide that an injured employee who resides in this state can receive vocational training within 50 miles of their residence, even if it is outside of the state. There was no opposition to this; there was actually significant support. We had representatives of labor speaking in favor.

**Susan L. Fisher, Legislative Advocate, representing Washoe County Employees Association:**

On behalf of our 1,250 members, we are in support of this bill as well. We have some employees who live in Truckee, California, and just across the border in Doyle, California, but work in Washoe County. We are in full support.

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

I am here to support the legislation. We worked with the various parties to resolve the border state issue. We think this bill will make it easier for injured workers who are in this border situation to get vocational rehabilitation.

**Chairwoman Buckley:**

I will close the public hearing on S.B. 66. I think we could move with it if someone would like to make a motion.

ASSEMBLYMAN SEALE MOVED TO DO PASS S.B. 66.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblymen Hettrick and Sherer were not present for the vote.)

**Chairwoman Buckley:**

Seeing no other business to come before the Committee, we are adjourned [at 3:54 p.m.].

RESPECTFULLY SUBMITTED:

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Sarah Gibson  
Committee Attaché

APPROVED BY:

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Assemblywoman Barbara Buckley, Chairwoman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** April 20, 2005

**Time of Meeting:** 2:00 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
S.B. 44	B	John Sande, Direct Buy	Color Pamphlet
44	C	John Sande, Direct Buy	Future of Buying pamphlet