MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
February 24, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:00 a.m. on Thursday, February 24, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Donna Winter, Committee Secretary
Scott Young, Committee Policy Analyst
Jeanine M. Wittenberg, Committee Secretary

OTHERS PRESENT:

Fred L. Hillerby, Nevada State Board of Dental Examiners
R. Michael Sanders, D.M.D., Ed.M., Director, Patient Care Services, School of Dental Medicine, University of Nevada, Las Vegas
Bobbette Bond, Hotel Employees and Restaurant Employees International Union Welfare fund

James Wadhams, Nevada Dental Association
Stephen C. Vaughn, D.D.S., Board of Dental Examiners of Nevada
Tony Guillen, D.D.S., President, Board of Dental Examiners of Nevada
Peter DiGrazia, D.M.D., President, Nevada Dental Association
Jack Kim, Sierra Health Services, Incorporated
Robert A. Ostrovsky, Nevada Resort Association
Caroline Ford, M.P.H., Assistant Dean/Director, Office of Rural Health, University of Nevada School of Medicine
Joseph V. Hamilton, D.M.D.
Terry L. Johnson, Deputy Director, Department of Employment, Training and Rehabilitation
Cynthia A. Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Jon L. Sasser, Nevada Legal Services
John (Jack) E. Jeffrey, Southern Nevada Building and Construction Trades
Fred Suwe, Deputy Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
George A. Ross, Las Vegas Chamber of Commerce; Retail Association of Nevada
Rose E. McKinney-James, Clark County School District
Margi A. Grein, Executive Officer, State Contractors' Board
George Lyford, Director, Investigations, State Contractors' Board
Michael G. Alonso, Direct Buy Incorporated
John P. Sande, III, Direct Buy Incorporated
Kathleen Delaney, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General

CHAIR TOWNSEND:
I open the hearing on Senate Bill (S.B.) 85.

SENATE BILL 85: Revises provisions governing practice of dentistry. (BDR 54-179)

SENATOR MAGGIE CARLTON (Clark County Senatorial District No. 2):
I am here to present S.B 85. We have worked diligently in the interim to deliver a comprehensive package that will deal with very contentious dental issues. I am providing you with the proposed amendment this morning (Exhibit C, original is on file in the Research Library).

Initial discussions were about the direction that we wanted to take with S.B. No. 133 of the 71st Session. As a result of those discussions, I took the comments and suggestions to the Legislative Counsel Bureau and had a bill drafted. Afterward there were still concerns, and things were deleted. I will now go through the changes between the two bills in Exhibit C.

SENATOR LEE:
Are all of the board examinations the same regardless of the region in the nation?

SENATOR CARLTON:
There are four separate board regions. This subject was heatedly debated and that is why we chose the Western Regional Examining Board (WREB).

FRED L. HILLERBY (Nevada State Board of Dental Examiners):
I am providing the Committee with a four-year data printout (Exhibit D), which should help Senator Lee with his question. Utilizing the WREB is geographically convenient for the Board of Dental Examiners of Nevada (BDEN) and for the dental students in our State.

SENATOR LEE:
Does the BDEN have any input on the content of the examination?

MR. HILLERBY:
That will be answered later in testimony.

SENATOR LEE:
Dr. Sanders, is there a demonstration that will still cover some of these students?

R. MICHAEL SANDERS, D.M.D., ED.M. (Director, Patient Care Services, School of Dental Medicine, University of Nevada, Las Vegas):
Yes, Nevada will have input on the content of this board examination as a member of the regional board. All of the examiners of the WREB are actually members of the participating states' dental boards. Examiners in the State who wish to participate in an active examination process can participate as examiners and in the committees of the WREB that formulate the content and the process of that examination. The clinical component of testing skills is

present in all of the examining boards. It is important to understand that each board has the right to determine the content of that board examination.

SENATOR HECK:
Is the WREB content that is currently tested comparative to what is being done in our own State examination? Do they test the same areas and are the pass requirements the same?

DR. SANDERS:
Slightly in the area of content, Nevada is one of the few states that kept the denture component. The other components such as the psychomotor skills testing, which is important in terms of demonstration of mechanical abilities are fairly consistent. There is a periodontal component that is similar to the one that has been placed in the Nevada board. There is probably an 80-percent content comparison with some slight Nevada variation.

SENATOR HECK:
Is the pass requirement for both board examinations the same?

DR. SANDERS:
There are two types of grading that the boards do, one is conjunctive and one is compensatory. One requires you pass all the sections, and one requires you have a passing average. Each board makes a determination as to what they want. The WREB has adopted the passing-average format. The criteria is well defined for both the BDEN and the WREB. Both have fairly explicit criteria of performance, and are blind graded so that there is no biased grading. There is a high degree of consistency between the two administrations on the examinations.

SENATOR HECK:
Mr. Hillerby, on Exhibit D, the licensure data, is that the number of people actively holding that type of license in that given year?

MR. HILLERBY:
That is the actual number that year. The running total is in the middle of page 1 under total figures of Exhibit D.

SENATOR HARDY:
As I understood the testimony Senator Carlton, you said that the date July 1, 2006, was chosen because the western regional exam would be available after that date. Are you concerned there may be a delay in the offering of that examination which could become problematic with a specific date listed?

SENATOR CARLTON:
I have been assured by Dr. Sanders that he will be giving the examination in Spring 2006.

MR. HILLERBY:
I want to clarify Senator Hardy's question to Senator Carlton. The way the bill reads, effective July 1, 2005, the BDEN will accept anyone who has passed the western board examination in the last five years for licensure. July 1, 2006, is when the BDEN stops performing credentialing.

SENATOR CARLTON:
That was one of the reasons why the "national exam" language was removed. We can reevaluate it at a later date when there is more detailed information available.

BOBBETTE BOND: (Hotel Employees and Restaurant Employees International Union Welfare fund):
I would like to acknowledge the progress and efforts that have been made on the amendments proposed in S.B. 85.

MR. HILLERBY:
I have a question for Mr. Powers. In section 12, page 12, the effective date for the WREB is July 1, 2005, yet the sunset of S.B. No. 133 of the 71st Session is not until September 30, 2005. Is there an overlap or does this take precedence over the sunset provision?

KEVIN POWERS:
The effective date of the bill is July 1, 2005. However, the bill amends the original sunset provision from S.B. 133 so that it no longer sunsets on September 30, 2005. It changes it so that temporary licenses cannot be issued after July 1, 2006.

MR. HILLERBY:
The BDEN has to apply and be accepted into the WREB. That does not mean, the way the statute reads, that we cannot accept someone who has already passed the test. Our involvement in that board may be as soon as being a member and may or may not happen as soon as July 1, 2005. I am not sure if that will cause friction; I need that to be on the record because we will start applying right away in anticipation of passage of this bill.

JAMES WADHAMS (Nevada Dental Association):
I think this bill is attempting to preserve the quality of health care in the practice of dentistry. Sadly, we leave some unfinished business on the table, in terms of the underserved who require public assistance. The programs that provide dentistry to the poor and uninsured are going to have to be addressed through the Western Interstate Commission for Higher Education (WICHE) program and others. That is the other component to access of care. Addressing the licensing and quality of the professionals is only part of the answer. The real answer lies in the proper funding of care through Medicaid and other programs.

SENATOR CARLTON:
In Exhibit C, the "Keep America Smiling" report, the State of Nevada received an F grade in Medicaid access. Now that I have completed the amendment process, access, Medicaid and WICHE in the rural areas of Nevada will be my next project.

CHAIR TOWNSEND:
Committee, look at the portion of Exhibit C that Senator Carlton referenced regarding Dental Board Policies. The BDEN and the Nevada Dental Association (NDA) are to be commended for these significant efforts and grades. I do not understand hygienist licensure by credentials column. Although we have a C grade, I am not exactly sure what that means. Is there something we could do to help bring up that grade? Could we hear from the President of BDEN and the President of NDA regarding that?

STEPHEN C. VAUGHN, D.D.S. (Board of Dental Examiners of Nevada):
I believe the C grade is coming from the fact that we have only been credentialing hygienists for the past year. That requirement was left out of the original S.B. No. 133 of the 71st Session and was addressed in the 72nd Session. That would explain the lower grade.

TONY GUILLEN, D.D.S. (President, Board of Dental Examiners of Nevada):
I would like to address some of the previous questions from the Committee. We can apply to the WREB as a member and would have some input to that board or we could just accept it. We are going to apply as a member so we will have input. There are seven sections in that board examination. It not only covers what we currently cover, but also covers other sections such as endodontics and periodontal. The grading is the same as ours.

PETER DIGRAZIA, D.M.D. (President, Nevada Dental Association):
There are approximately 800 dentists in the State. The NDA represents about 80 percent of the dentists. With the amendments of S.B. 85, I am certain that the NDA can support it.

JACK KIM (Sierra Health Services, Incorporated):
On behalf of Sierra Health Services, Incorporated, we support S.B. 85.

ROBERT A. OSTROVSKY (Nevada Resort Association):
We would also like to express our support of S.B. 85.

CAROLINE FORD, M.P.H. (Assistant Dean/Director, Office of Rural Health, University of Nevada School of Medicine):
I am providing you with dental statistics and my comments will address several specific points of Exhibit E, from which I will read.

CHAIR TOWNSEND:
Is your focus about geographically licensure or the lack of funding for Medicaid?

MS. FORD:
I am mainly speaking to the geographically restricted license. However, my third point in Exhibit E, under the impact of the geographically restricted provision, is that I do not want it implied that the geographic license ever did anything to improve financial access to care.

CHAIR TOWNSEND:
In looking at the map you have provided in Exhibit E, it appears there is a shortage problem in Senator Rhoads' and Senator McGinness' Senatorial Districts. I would suggest that you and Senator Carlton meet with them and outline the problem so that they understand the issues within their districts.

MS. FORD:
I will certainly do that.

CHAIR TOWNSEND:
I would highly suggest you at least include Senator Rhoads, because he is on the Senate Finance Committee, and provide him with a copy of Exhibit E.

In Exhibit E, page 2, number 2 under the heading of Revisions to Dental Licensing Provisions, are you stating that it is done by county and should be done by region?

MS. FORD:
I am saying that it is currently done by county, based on recommendations by the county commission to the BDEN on behalf of the dentist. If a dentist was with a mobile dental service, or in the case where a county cannot support a full-time dentist, the dentist would have to go through the process multiple times in multiple counties. I am just bringing that to light in the way it is written now with the 30 hours' requirement.

SENATOR CARLTON:
Mr. Chair, when we passed S.B. No. 133 of the 71st Session, we struggled on how to address the problems in the geographical regions. After debate and passage, we found there are mobile dental vans that service multiple counties and realized we have created a problem by being so specific in the language. This is something we will try to clarify for the BDEN. We do not want to prohibit someone from dental care or providing dental services just because there is a county line in those geographical areas.

CHAIR TOWNSEND:
Does the 30 hours in each county meet the standard to keep our dentists at a quality level? Will we have many dentists that will be able to do that in each county?

DR. VAUGHN:
I am the member of the BDEN that represents the public and the underserved. I think the original intent of S.B. No. 133 of the 71st Session, as far as geographically restricted licenses, was that you come to Nevada and work 30 hours a week. Some of these issues regarding working in multiple counties or going from a section 1A to a section 2A license need to be worked out.

I think the BDEN intent would be to allow someone to work 30 hours whether it is in multiple counties or not. That would allow them to convert their license. Unfortunately, when the license is converted, most of them will go to Las Vegas or Reno. You then lose the licensee from the rural areas. We just wanted to make sure that they worked 30 hours a week total.

CHAIR TOWNSEND:
My point was not to interfere with the work that Senator Carlton and the group has done, but to try to figure out if the BDEN had the flexibility they need to try to work that through, so that it was not just stuck in statute.

JOSEPH V. HAMILTON, D.M.D.:
I have prepared a statement that has been forwarded to you from Las Vegas from which I will speak (Exhibit F).

SENATOR CARLTON:
A lot of the things that you discussed in your statement were part of a large debate when the original bill was passed. While I understand your concerns, in all fairness, I must commend the BDEN for the progress they have made. We are trying to accomplish what is best for the State of Nevada. In your statement you address reciprocity with other states. In protecting our public, many members of this Committee and others in the State are not comfortable with reciprocity. We will take your suggestions into consideration and I would invite you to participate in our future discussions.

CHAIR TOWNSEND:
I will close the hearing on S.B. 85 and open the hearing on S.B. 111.

SENATE BILL 111: Revises requirements for submission to Employment Security Division of Department of Employment, Training and Rehabilitation evidence related to claims for unemployment compensation. (BDR 53-320)

TERRY L. JOHNSON (Deputy Director, Department of Employment, Training and Rehabilitation):
We are here this morning to present S.B. 111. I am joined by Cynthia Jones and she will go through the bill with the Committee.

CYNTHIA A. JONES (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
I present to the Committee my written testimony (Exhibit G).

SENATOR HARDY:
What is required when you speak to "all relevant facts"?

MR. JOHNSON:
What currently happens is a person files a claim for unemployment benefits. The statute requires a notice be sent to the employer; that employer is given ten days to respond to the claim for filing and thereafter the Employment Security Division (ESD) issues a determination. A party aggrieved by that determination can appeal to the Appeal Tribunal as identified by statute. They can then go on to appeal, if aggrieved, to the board of review and then on to district court. When an employer receives a notice from the agency that a claim has been filed, they are supposed to supply the information requested. What is happening is a determination is made and the employer, on appeal, submits information to the appealing party that they did not present with the initial notice. Occasionally that causes the original determination of benefits to be reversed when payments have already been made to the claimant. What we are trying to do is to obtain the information from the employer up front with the initial notice to make the determination correctly in the beginning, as opposed to having claimants repay money they should not have collected. This assures administrative soundness in the overall process. As you know, the unemployment insurance system is a partnership between federal and state government, the federal government requires states to issue determinations within 21 days. Under *Nevada Revised Statutes* we are trying to fulfill our responsibilities on a State and federal level. All we are asking for is the information in the beginning, with the initial notice, to determine benefits.

SENATOR HARDY:
What troubles me is the prohibition against providing additional information. I would like to find a better way for the additional information to be provided when necessary.

SENATOR HECK:
I echo Senator Hardy's concern. What if the information was not known by the employing unit at the time of receipt of the initial notice? Is there some way to add that the information could be presented at the Appeal Tribunal if it could be

proven that the information was not available at the time of the initial claim filing?

MR. JOHNSON:
That is a possibility and something that we are open to discussing. As we said, the challenge is to satisfy all of the requirements placed upon the ESD to ensure that a dislocated employee has an economic benefit determination. The statute currently gives an employer ten days to respond. You would think that if an employer terminates an employee, they would know the reason for termination. We are required to send the claim notice to the employer and they are given the opportunity to respond. Additionally, ESD staff now goes above and beyond the State statute requirement and telephonically contacts the employer for determination information. We still have a number of instances where they do not supply the information up front, a determination is made, and we are left afterward trying to recover benefit payments of about $1 million a year. We are dedicating staff to try to recover those payments when we could have had the information up front to make a proper determination. I would ask the Committee to keep in mind that the underlying overall intent of these statutes is to provide economic assistance to dislocated employees. We view the statutes in every way from that angle to assist those who become unemployed through no fault of their own.

SENATOR CARLTON:
It seems to me that when you let someone go, you are doing it for a distinct reason and would have the documentation for separation at that time. Are you just asking for the documentation up front with the initial notice, so that you understand the circumstances? You are really not asking for anything more than you currently do, would you just like the time frames adjusted?

MR. JOHNSON:
That is correct. We are clarifying the time frame that is already set forth in statute. The other parts of the statute have led some to believe that additional information could be considered on appeal. We are trying to clarify that and receive all of the information provided in the beginning. Subsequent reviews of the determinations are confined to the same information that was reviewed in making the initial determination.

SENATOR CARLTON:
If an employee was let go, for misconduct that could not be proven, can an employer open up that employee's entire employment history file, which could include other things that may have not been relevant to the termination?

Mr. JOHNSON:
If I understand you correctly, there is a presumption we make that the employer has compiled documentation leading up to the discharge of the employee. At the time of termination, they have made that decision on the basis of the documentation they have accumulated. When we notify the employer that an unemployment claim has been filed, all we are asking is that they supply us with the documentation so that we may make a determination of benefits. Does that speak to your statement?

SENATOR CARLTON:
I am just apprehensive that this might cause the employer to send you someone's entire employment history rather than just the pertinent facts.

MR. JOHNSON:
That would depend on whether the facts of the documentation over the 11 years reasonably led to a discharge of employment 11 years later.

CHAIR TOWNSEND:
Were any workshops conducted with employers or employee groups to address these issues?

MS. JONES:
We have not held public workshops, but we have been in contact with various parties that have expressed interest in this bill. The Director of the Department of Employment, Training and Rehabilitation (DETR) presented this bill to an employer group in Reno recently and I have been in conversation with various interested parties.

CHAIR TOWNSEND:
I feel the concerns that many on this Committee have that this could have been resolved through workshops with employers, labor groups and associations statewide. I understand the problem you are faced with, but I am not sure this is the way to correct it.

MR. JOHNSON:
Regardless of the reason for the termination, both the employee and employer have ample opportunity upon notice or filing of the claim to provide ESD with the information that either substantiates or refutes the claim. This bill instructs them to provide the information in the initial period so that determination can be made based on the best information provided.

The Legislative Counsel Bureau (LCB) Audit Division conducted an audit of ESD that found issues with recovery of overpayments. We are trying to minimize the occurrence of overpayments by getting the information up front to make a solid determination. That is what this bill does.

CHAIR TOWNSEND:
Did you let them know in the audit that you would be introducing a bill to help solve the problem?

MR. JOHNSON:
I do not know if that was communicated to them. We did have subsequent correspondence that was transmitted to an audit supervisor that did identify the steps we were taking to address the issue of overpayments.

CHAIR TOWNSEND:
Ms. Jones, earlier you mentioned the director of your department, to whom were you referring?

MS. JONES:
Birgit K. Baker, Director, Department of Employment, Training and Rehabilitation.

CHAIR TOWNSEND:
I do not think this Committee would consider one meeting or speech to an employer group adequate enough for this issue. It should be communicated that in the future this type of issue could be presented to employers and others prior to getting to this point.

JON L. SASSER (Nevada Legal Services):
Nevada Legal Services is a nonprofit law firm that represents low-income Nevadans in civil law matters. One of the areas in which they work is providing representation in the unemployment compensation appeals process. In addition

to union representatives, we are probably one of the few representatives that actually become involved in the process because people who have just lost their jobs do not typically have the funds to hire an attorney. Over the last few years, I have had the privilege to work with Ms. Baker and her staff developing an online pamphlet that walks through the entire process and advises people representing themselves how the process works and what to do.

CHAIR TOWNSEND:
What if someone does not have access to a computer?

MR. SASSER:
That would be more appropriately answered by someone from ESD. We did have that discussion and there should be printed copies available

I am viewing the proposed bill from the aspect of a claimant. This bill basically puts forward what I think is what the law already requires under federal due process. That is to be informed, prior to a hearing, what the charges are against you. The way this normally works is that if there is a claim filed by a claimant, the employer responds and states if there are any reasons, to disqualify the claimant. If there are reasons, then they could plead for denial of benefits and an appeal follows. At the appeal, the issue of termination is discussed. The only issue at the time of the termination is the reason. The reason cannot be changed at a later date. Maybe some wording can be tightened up a bit to better clarify time frames and limitations of providing documentation.

CHAIR TOWNSEND:
I believe that with most employers, perhaps not all, if they have to terminate someone for a legitimate reason, they do not want that individual hurt in any way relative to future employment. They just cannot have that individual in their company. If the person was to have some egregious situation and they need to let them go for that reason, they would like to provide less of a statement about the egregiousness, so that if someone wants to call, at least they do not have to say that the person did this terrible thing.

How do you get around that problem? Because it says all relevant facts, if I am an employer, I will present everything I can find if it is relevant. An employer based on the stringent nature of the wording would bring in everything. I think Senator Carlton made the same point coming from a different angle.

I respect the problem that ESD has, but we also have to look at the impact to the employee and their respective employer.

MR. SASSER:
This is not talking about the right to let go of the employee. This involves whether the employee gets unemployment compensation insurance. The law reads that an employee gets it unless the employer satisfies the burden of proof. The employer does not have to contest the claim, but if they want to keep someone from getting compensation, they have the burden to prove misconduct.

JOHN (JACK) E. JEFFREY (Southern Nevada Building and Construction Trades):
We are in support of the concept of S.B. 111.

MR. OSTROVSKY:
The Nevada Resort Association (NRA) is opposed to S.B. 111 for several reasons. When the initial claim for unemployment compensation is received, a truthful and accurate effort is made to respond to the ESD. The material given is in support of what is in the employment record. Later if it goes to appeal, you may in fact go out and do a lot of work. The employer may interview witnesses, may get a timekeeper's statement, may pull the scheduling records of the employee and there may be all kinds of documents and material to produce. Whether the employer is permitted to submit that at the appeals process now becomes cloudy because the judge has to look at the language that says they cannot consider evidence submitted by the employing unit which tends to establish the fact it was not submitted. I am not even sure what "tends to establish the fact" means.

Understand when you read the law, if you go to section 1, subsection 2 of this bill, existing law, starting at line 8, where it states: "The notice of the filing of a claim must contain the claimant's name and social security number and may contain the reason for separation ... ." When you are the employer, you may in fact, get a blank request from ESD with a name and social security number only, saying this person has applied for unemployment insurance. Not only do you get that notice, but the prior employer gets that notice and has the right to respond.

CHAIR TOWNSEND:
Mr. Johnson, do you have information relative to the percentage of claims that come in with no reason for separation.

FRED SUWE (Deputy Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
The question is not whether or not they do not provide any information, they do provide some information, just enough to preserve their appeal rights. I am not talking about all employers. Sixty-eight percent of employer appeals that are reversed are done so because the employer provided subsequent information. If the Department had the information initially, we would have arrived at the same conclusion.

CHAIR TOWNSEND:
Mr. Ostrovsky has identified the "may" language as a potential problem relative to the employer's ability to respond. What percentage of claims that are filed do not have a reason for separation?

MR. SUWE:
In my opinion, none. The first thing we ask a claimant is why that person is no longer working. We then advise the employer the reason the claimant gave for no longer being employed. It is on the reverse of that form that the employer then responds as to their reason for the claimant no longer being employed with them.

What we are looking for right up front from both the claimant and the employer is the crucial question. Why is the claimant no longer working for this employer?

CHAIR TOWNSEND:
The current law says it "may" contain the reason for separation.

MR. SUWE:
By practice, our forms have that information.

CHAIR TOWNSEND:
Are you then saying that 100 percent of claimants and employers actually write down a reason?

MR. SUWE:
We take claims telephonically and over the Internet. The question is asked in a generic way, "Did you quit, were you fired, laid off for lack of work or something else?" They have to answer that question. Then the claims examiner while taking the claim, asks the question of why were you fired or why did you quit. That information is communicated; even if it was not, the employer still knows why he fired someone.

CHAIR TOWNSEND:
I understand that the employer may know, but that is not to what I am referring. There is claim filed by the claimant that says "may." I am just trying to find out if we need to change the "may" to "must."

MR. SUWE:
Even if a claimant does not know why they were fired, that is what they would say, "I was fired and I don't know why." That is why the employer is an interested party and can provide us with the information.

CHAIR TOWNSEND:
Is fired a legitimate reason to write down on the form?

MR. SUWE:
That is a conclusion and not a fact. The conclusion is that we do not know why the claimant was fired. That is what we are looking for. Even when the employer responds to us they state that the claimant was fired for violating a company policy, or was fired for excessive absenteeism. Those are conclusions. What we are looking for up front is, if the claimant was fired for excessive absenteeism, how often was that person absent? When were the absences? The question is if we know and have that information up front, we can arrive at a proper determination.

MR. OSTROVSKY:
There are many disputes that occur in the workplace as to why someone was fired. As a matter of public policy, this Legislature decided a long time ago in section 2, subsection 2 of existing law: "An Appeal Tribunal shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory or common-law rules." This makes a statement to the appeals judge that they can go anywhere they want with this to find out the facts. Unfortunately, if you pass this bill, they can go anywhere

they want with the employee but they cannot go anywhere they want with the employer. I suggest that the $1 million that they overpaid is a small percentage of the total dollars paid. Employers will spend more than millions in preparing a big case in every claim. And this has to be done in a very short time. There is a mailbox rule here that says you have ten days for these claims, from the date of the mailing of the notice. You really do not have ten days because the clock starts the date the notice is printed. You do not have a lot of time to put a case together. My concern is what the employer forgot to include that they will never have the opportunity to include. The risk is that the employer will now include everything relevant or not.

CHAIR TOWNSEND:
Ms. Jones, approximately how much was paid out in unemployment benefits last year?

MS. JONES:
Approximately $249 million in claimant benefits last year.

CHAIR TOWNSEND:
Did you state that the $1 million you did not collect is spread amongst the employer groups?

MS. JONES:
It is not spread across the employer community who are experience-rated employers.

CHAIR TOWNSEND:
Mr. Ostrovsky, your testimony is that you understand the problem. If you are going to narrow the issue for the employer to be able to respond appropriately, is the cost greater than if you just absorbed the $1 million throughout the experience-rated groups?

MR. OSTROVSKY:
That is what I suggest.

MS. JONES:
I would like to add that all proceedings related to an unemployment insurance claim are confidential and are not public record.

MR. OSTROVSKY:
My final comments are that the ESD has done an admirable job handling unemployment compensation in the State. Employers are fortunate to have the rates and rate-setting mechanisms in this State. Employers have been protected by a well-funded process without a lot of complaints about the system and process.

I am only suggesting from an employer's point of view, if this is a problem that needs resolving, and it is costing us somewhere less than a $1 million a year in benefit recovery, it is worth it. It is worth it for the ESD to lean in favor of the employee and put the check in their hand, than to try to resolve the problem at least in this method. The cost of doing this far outweighs the gain. That is my position and the position of the NRA.

GEORGE ROSS (Las Vegas Chamber of Commerce; Retail Association of Nevada):
I think Mr. Ostrovsky made an outstanding statement at the end of his comments that really captures the essence of the business communities' position on this bill. I think the comments that the Chair and other Senators have made are pertinent and to the point. I believe this would create a tremendous burden upon the employer and would be a real problem for the employee, because every aspect of their professional life would be exposed. The small business that does not have the resources to compile all the documentation in ten days is at a disadvantage.

ROSE E. MCKINNEY-JAMES (Clark County School District):
The Clark County School District (CCSD) has similar issues with the bill that have already been articulated. We are a large employer that would be challenged by the ten-day language and the change to all relevant information and implications for the appeal process. I did have an opportunity to speak to Mr. Johnson and he was extremely helpful to me in clarifying the issues that the ESD is trying to address. As this bill is written, it is extremely problematic, and we would appreciate the opportunity to participate in future discussions on this bill.

Finally, the CCSD has the additional liability of being outside of the experience-rated pool and are liable for overpayments. This is one distinction that we would like to bring to your attention.

CHAIR TOWNSEND:
Mr. Johnson, we are not trying to undermine an effort made on behalf of your responsibility to the federal government, to the employees and employers of this State. If this Committee does not process this bill, the LCB Audit Division needs to understand we made a conscious decision based on employers saying that if we are going to make a mistake, let us make it on the side of overpayments and not the side of employers.

I will now close the hearing on S.B. 111 and open the hearing on Assembly Bill (A.B.) 34.

ASSEMBLY BILL 34: Revises provisions governing Recovery Fund administered by State Contractors' Board. (BDR 54-834)

ASSEMBLYWOMAN BARBARA BUCKLEY (Assembly District No. 8):
I think most of you know very well the residential recovery fund. Basically, this was a measure adopted by the Legislature to more efficiently try to address contractors who took advantage of people. What it did, for those claims that were relatively small in the big scheme of things, was establish a more expeditious procedure in handling them. Arizona had adopted a recovery-fund model, so that instead of trying to leave people struggling to collect on a bond, those people would apply to the fund and receive money from the fund. This eliminated lawsuits and made it simpler for those who were taken advantage of by contractors. Margi Grein and George Lyford are here from the State Contractors' Board to provide you with details. All this bill does is increase the per-contractor limit from $200,000 to $400,000. When it was originally set in the 70th Session of the Legislature, we wanted to make sure that we did not exhaust the fund with one contractor and have it not available for anyone else. The fund is solvent and this can be done without any increase. There was one case that exceeded the $200,000 limit. Because of this $200,000 limit, people could not recover all of the funds. This is why the effective date allows it to go back to work on or after January 1, 2004. This is a remedial statute where no one's rights are at issue. It is just kind of a recovery fund to allow victims to claim it. I would appreciate your support.

MARGI A. GREIN (Executive Officer, State Contractors' Board):
We fully support A.B. 34.

SENATOR SCHNEIDER:
How much money is in the fund right now?

MS. GREIN:
Approximately $3.2 million and that does not include any outstanding liabilities or pending claims.

SENATOR SCHNEIDER:
I would suggest that we look into public service announcements warning people of scams and also educating them on selecting a good contractor.

MS. GREIN:
We currently do have a program that was developed and we are expanding it. We can certainly provide that information in a variety of ways and I think that is an excellent idea.

SENATOR LEE:
The language of "not to exceed $30,000," have we ever hit the maximum? The reason I ask is that building costs have increased. Is that still a realistic number?

MS. GREIN:
Most of the claims are under $30,000, with the average claim being approximately $6,500.

SENATOR LEE:
Mr. Lyford, have you had the $30,000 met by any individual home owner?

GEORGE LYFORD (State Contractors' Board):
Yes, we have had some claims for over $30,000 of which several were judgment claims awarded by the court where damages and other items were added. Others have been claims wherein the home owner has had the work done and the repair bills exceeded the $30,000. We have looked at each case individually. Some claims exceeded $30,000 but were limited to the $30,000 based on the statute at this time.

SENATOR LEE:
With the way the fund is going now with claims, can it self-fund itself to the point that we could reduce fees on contractors?

MS. GREIN:
Yes, on January 1, 2004, we reduced the fees to contractors by 50 percent.

SENATOR LEE:
This is a wonderful bill and I applaud your efforts Assemblywoman Buckley.

ASSEMBLYWOMAN BUCKLEY:
I would be supportive if you want to adjust the $30,000 limitation. When we originally set this up, we wanted to be careful not to exhaust the fund because we did not have the history to know what proper limits would be.

CHAIR TOWNSEND:
Ms. Grein, could you work with Senator Lee and staff on the possibility of increasing the $30,000 limitation in the next few days so that we could amend and move the bill next week?

MS. GREIN:
I will get that information and also look at the claims to date to identify a starting point above the $30,000.

CHAIR TOWNSEND:
I think Senator Lee's point cannot be underscored enough that building costs are escalating.

I will now close the hearing on A.B. 34 and we will hear the proposed amendment to Senate Bill 44.

SENATE BILL 44: Revises provisions regulating organizations for buying goods or services at discount. (BDR 52-763)

MICHAEL G. ALONSO (Direct Buy Incorporated):
We have no problems with the language of the amendment drafted by Mr. Powers.

CHAIR TOWNSEND:
Have you discussed this with Kathleen Delaney of the Bureau of Consumer Protection (BCP), Office of the Attorney General?

JOHN P. SANDE, III (Direct Buy Incorporated):
Yes, and all of the suggested changes were appropriate for us. Everything that was proposed by the Commissioner of the BCP was agreed to by us and as a result the amendment was drafted.

CHAIR TOWNSEND:
Committee you have in front of you the amended version (Exhibit H). What is the Committee's pleasure?

SENATOR CARLTON:
In the original discussions of this bill, it was fairly limited and it now seems to be less restrictive. Can you tell me what other entities out there will be able to benefit from it?

MR. SANDE:
I think that the BCP was worried from the standpoint of the consumer, if there was someone out there for five years and had 15 franchisees, that maybe from a competitive standpoint, if they did not make it a little less restrictive, it might be prejudicial to the consumer. We have no problem with that and I am not aware of any other company that would qualify. The BCP wanted to make sure that it was not too strict and came up with the language of 5 years and 15 years.

SENATOR CARLTON:
Mr. Powers, under franchise we have the new language, who does this apply to?

MR. POWERS:

> Unfortunately Senator Carlton, the definition of franchise included in the Code of Federal Regulations (C.F.R.) is a very complex and lengthy definition. ... In laymen terms right now I could not provide an answer.

CHAIR TOWNSEND:
If you look under the C.F.R.s, the Federal Trade Commission has promulgated a regulation that has all of that definition in it.

KATHLEEN DELANEY (Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):
I just wanted to let you know that I am present in Las Vegas if you need any questions answered.

SENATOR HECK:
When we first discussed this bill, I expressed a concern over the inability of the buyer to rescind the membership contract if the organization moves its place of business greater than 20 miles away if they offer at-home service. Am I to assume that will be clearly specified as the buyers' right to rescind and the conditions and limitations of that right? They will know in advance that if you decide to move your shop greater than 20 miles away but give them Internet ordering, that they are not going to be able to rescind their membership contract?

MR. SANDE:
Yes, it will be fully disclosed. That was one of the conditions of the original contract with the buyer. Furthermore, for example, we did add language that they could have anything shipped to their residence or an elected freight-handling facility if they choose.

SENATOR TIFFANY:
It seems to me that even in Las Vegas, 20 miles is still a reasonable distance. Do we have to be so stringent on the 20 miles?

MR. SANDE:
I think this language actually came from California law. I do not think that you will have that in southern Nevada.

SENATOR TIFFANY:
My understanding is that if they move further than the 20 miles, the person with the membership can request a refund.

MR. SANDE:
That is incorrect. They could not get a refund of the membership fee as long as the franchisee could comply with the terms of this language.

SENATOR TIFFANY:
So, moving would not be the one alternative that they could request a refund for?

MR. SANDE:
As long as the organization could comply with the terms of the language a refund is not warranted.

CHAIR TOWNSEND:
I will now take a vote on the amendment to S.B. 44.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 44.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:
Committee, we now have before us BDR 54-744.

BILL DRAFT REQUEST 54-744: Revises provisions governing certification of registered Interior Designers. (Later introduced as Senate Bill 135.)

SENATOR HARDY MOVED TO INTRODUCE BDR 54-744.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:
There being no further business before the Committee this morning, we will adjourn 10:39 a.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: