

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

**Seventy-third Session
April 5, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Tuesday, April 5, 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 J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

STAFF MEMBERS PRESENT:

Kelly Gregory, Committee Policy Analyst
Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Shirley Parks, Committee Secretary

OTHERS PRESENT:

Raymond L. Badger, Nevada Trial Lawyers Association
Marvin Gross, Nevada Trial Lawyers Association
John (Jack) E. Jeffrey, Southern Nevada Building and Construction Trades
Danny L. Thompson, Nevada State American Federation of Labor - Congress of Industrial Organizations
Nancyann Leeder, Nevada Attorney for Injured Workers, Department of Business and Industry
Robert A. Ostrovsky, Employer's Insurance Company of Nevada, a Mutual Company

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Don Jayne, Nevada Self Insurers Association
Paul J. Enos, Retail Association of Nevada
Daryl E. Capurro, Nevada Motor Transport Association
James Wilcher, International Association of Rehabilitation Professionals
Bobbette Bond, Hotel Employees and Restaurant Employees International Union
Welfare Fund
David Kallas, Las Vegas Police Protective Association; Police Managers and
Supervisors Association
Raymond McAllister, Professional Firefighters of Nevada
Ronald P. Dreher, Peace Officers Research Association of Nevada
Bill Welch, Nevada Hospital Association
Marilyn Skibinski, Regulatory Manager, Bureau of Consumer Protection, Office
of the Attorney General
Kathleen Delaney, Deputy Attorney General, Bureau of Consumer Protection,
Office of the Attorney General
James Jackson, Consumer Data Industry Association
Cheryl Blomstrom, Nevada Consumer Finance Association
Chris MacKenzie, American Express
William R. Uffelman, Nevada Bankers Association
James F. Nadeau, Nevada Association of Realtors
Renny Ashleman, Southern Nevada Home Builders Association
Richard L. Peel, Mechanical Contractors of America of Southern Nevada,
Incorporated
Steve G. Holloway, Associated General Contractors, Las Vegas Chapter
Richard Lisle, Mechanical Contractors of America of Southern Nevada,
Incorporated
Berlyn D. Miller, Nevada Contractors Association
William Buzz Harris, Nevada State Contractors' Board

CHAIR TOWNSEND:

I will open the hearing on Senate Bill (S.B.) 225

SENATE BILL 225: Making various changes relating to industrial insurance.
(BDR 53-975)

RAYMOND L. BADGER (Nevada Trial Lawyers Association):

I am an attorney in Carson City. I have Marvin Gross of Las Vegas with me. He is an attorney who practices primarily with injured workers. He will present a

part of the bill that deals with independent medical examinations, and I will present the part on vocational rehabilitation.

MARVIN GROSS (Nevada Trial Lawyers Association):

The provisions of this bill would accomplish two things. They would allow the injured worker to seek an independent evaluation if denied continuing medical treatment, compensation for temporary total disability or vocational rehabilitation benefits. It also allows the results of an independent medical examination admitted and considered as evidence for proof of the same issue. The law as it currently exists does not allow a hearing officer or a appeals officer to rely on any other evidence the injured worker may provide indicating the need for additional treatment.

Sections 7 and 10 of the bill show proof under the *Nevada Revised Statutes* (NRS) 616C.475 and 616C.590 that additional compensation benefits for inability to return to a former occupation can only be made by the individual previously designated as the injured person's treating physician. This section of S.B. 225 would allow the injured worker to seek an opinion from another doctor. If there is a recommendation from the doctor stating the need for more treatment, this opinion would be given equal weight with the original doctor's position. This bill would bring a fairer approach to the injured worker's follow-up treatment.

MR. BADGER:

The remainder of the bill deals with vocational rehabilitation. This is an important benefit to the injured worker who has become permanently unable to return to the workplace. There was some work on this issue during the Interim. The Committee has two ideas on vocational rehabilitation. First, insurers cannot hire their own employee to provide vocational services to the injured worker. The second idea in the bill is vocational assessments are to be done when a person is off work 60 days or less and should be optional instead of mandatory. There were some major changes with vocational rehabilitation in 1993 with regard to out-of-state rehabilitation. Senator Hardy introduced a bill modifying this. We totally agree with Senator Hardy and support the abolishment of restrictions on out-of-state vocational rehabilitation. To do this, there needs to be a repeal of the NRS 616C.580. This is not necessarily a mandate in the employee's favor, but it will open new options for the worker. Section 4 of the bill may need a drafting change. Vocational counselors walk a tightrope. They are hired by someone who has money, such as an insurance company. They

give their service to the permanently injured worker and represent the insurance company as well. Their professional code of ethics states their primary obligation is to do their best for the injured worker. There are examples of vocational rehabilitation misrepresentation. This issue is covered in the bill. Another item in the bill along the same track is section 9 that mandates vocational assessments be conducted by certified vocational counselors. There is a certification process for vocational counselors demonstrating they have experience and education. Their national board deals with accountability issues. Certification should be a requirement. The vocational assessment begins the whole process. It is important to get the necessary assessment which basically gives a history of work experience and prior education and begins the rehabilitation process.

Section 8 of the bill brings up an issue for northern Nevada. It states, "Insurers must employ vocational rehabilitation counselors who are regularly available to provide services in person within the geographical area where the injured worker resides." For example, Carson City has a small local office with four counselors. There is a much better chance for rehabilitation when a worker is close to the resources of computer-generated jobs, education and many other means of support. There are occasions when a Las Vegas vocational rehabilitation office is called upon to do the same things for Carson City people. Obviously, Las Vegas logistically cannot give the same "hands on" approach as local offices. Possibly the most controversial part of the bill is this last item, the section of the bill allowing the worker to choose their own vocational counselor. We are open to any ideas to make this part of the bill more helpful. There may be other ways to do this. One suggestion is a complete vocational counselor list to be circulated among the insurer's offices to use as a resource. The worker would be able to choose a counselor from this list. The Division of Industrial Relations (DIR) would need and use the list as well.

CHAIR TOWNSEND:

Are there any questions of these three gentlemen?

SENATOR HECK:

This question is for Mr. Gross. This concerns the injured worker who is seen by two physicians from a managed-care organization. There is a provision in the NRS 616C.090, if an employer is not a part of a managed-care organization they can arrange to see the physicians on the panel. Are you intending this be

applied if they see two physicians through the managed-care organization or if they see two of the panel members under the other statute provision?

MR. GROSS:

This is a drafting error. The statute provides that an insurer can contract directly with a physician or a group of physicians to comprise their panel. They do not need to go through a managed-care organization. This should be amended to reflect the language of the law. In fact, contracting basically is the approach used today.

SENATOR HECK:

The way I read this provision now is that the worker has the 90-day period to change their position if they are not satisfied with the care the first physician offered. It says nothing about when a claim has been closed.

MR. GROSS:

This is correct. If the claim continues through the 90 days, the treating doctor could discontinue seeing the person. It may be in the best interest of the worker to be seen, for example, by an orthopedic specialist.

SENATOR HECK:

I understand what you may be saying, but is this the intent of this section of the bill? Are you accomplishing what is needed? Instead, this could mean the doctor is simply referring the worker to someone else.

MR. GROSS:

The problem now is the worker is limited to a panel. There are limits to asking without the right to request an assignment of care from the insurer. This bill attempts to authorize the right after 90 days to seek care. There is another statute, NRS 616C.150, which states the injured worker has the burden of proof for their case.

SENATOR HECK:

If the person has already seen two physicians and both are in agreement, this person is not entitled to any of the entities, but still wants the right to a third evaluation.

MR. GROSS:

Most injured workers are not familiar with the 90-day provision. Essentially though, the physicians say no and the carrier says no. This bill provision would give the right to get a third opinion after the 90 days.

CHAIR TOWNSEND:

Are there any other questions?

JOHN (JACK) E. JEFFREY (Southern Nevada Building and Construction Trades):

I have nothing to add about this bill. This bill will provide better care for the injured worker.

CHAIR TOWNSEND:

There seems to be a question in regard to lines 22 through 31 in section 2. I quote: "... the physician or chiropractor performing the independent evaluation" This could refer to a third person, or more, based on the previous lines in the bill. Also: "... physician or chiropractor performing the independent evaluation shall submit a report of his evaluation of the injured employee to the insurer." And in subsection 4 it states: "Upon the receipt of a report ... " —and here is the reason for the question— "... the insurer shall make a new determination regarding the entitlement of the injured employee to continue medical treatment ... " There is a reference and intimation in the drafting that can be changed if it is a disadvantage to the injured worker. What you are trying to say is it will be considered in terms of potential benefits, or is it just awkward phrasing?

MR. GROSS:

This could be awkward phrasing. There is a problem we are having in southern Nevada. We are carrying the form over substance to new heights. I have seen people who, if they do not appeal one line of a certain letter, they are then forever precluded from addressing the question. We may need to massage some of the language, but it does not require the insurer to make a decision in accordance with whatever the results of a third opinion might be. Third opinions, in some instances, could be a position the insurer would not want to follow. They are not obligated to follow.

CHAIR TOWNSEND:

It would be helpful if we do not make reference to bill drafting errors. Usually whoever submitted the draft did not give the complete and correct information

to the bill drafters. Mr. Badger, regarding section 9, on page seven, you brought up some legitimate concerns about vocational rehabilitation counselors, how they are employed and who they are. You are requesting they be certified. Then you made a reference to a national board. Right now, as you understand it, do we as a State, whether through the DIR or any of the other regulatory entities, really have no control or standards where a person could bring complaints about a vocational counselor?

MR. BADGER:

The DIR would be the best place to bring complaints. They may not feel they have the authority. We do define the term "certified rehabilitation counselor" in the NRS 616A.080. During rehabilitation, if there is a formal program of education for the worker, this has to be reviewed and signed off by a certified counselor.

CHAIR TOWNSEND:

The point that has been brought up is the fact that the identical rehabilitation training can be available outside our borders with a 6-month rather than 18-month training program and could make a difference in cost, time and effort. Do we have a place where this can be done?

MR. BADGER:

The problem I have with vocational rehabilitation is when my client is denied, I need to ask for an appeal and try to reach an agreement. This process must be done carefully or the client will receive no help. There have been insurers who say, if it is cost-effective I will ignore the law, and the client will be going to another state to receive vocational counseling.

CHAIR TOWNSEND:

Can the insurer be approached directly? This seems to make more sense.

MR. BADGER:

Yes, and I have asked for a "no" in writing. The answer is to look for a facility in State. The reason there are differences in the State is that the Las Vegas program has many general education courses to benefit the worker, but our law is designed for the worker to be retrained and reemployed quickly.

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CHAIR TOWNSEND:

We may need to look for help from the University and Community College System of Nevada.

MR. BADGER:

The best counselors, because of their history with rehabilitation, bring knowledge of the best schools and training programs. They have been doing an excellent job and need to be commended for their efforts.

CHAIR TOWNSEND:

Are there any other questions?

DANNY L. THOMPSON (Nevada State American Federation of Labor - Congress of Industrial Organizations):

Geographical areas are a concern regarding vocational rehabilitation. We recognize this as an important need for the worker. We are in support of this bill and will work with any subcommittee or group to address the problem.

CHAIR TOWNSEND:

Are there any questions for Mr. Thompson? We are trying to be proactive on this issue. A serious issue in the State is called Yucca Mountain Project. We have 1,500 people working on it. Whether we agree or disagree or think it may be stopped is not the issue. Our obligation is to understand the potential regarding the workforce if it goes forward. There could be a need for all the entities involved, your organization as well as insurers and large contractors, to think about how to deal with this issue. We all want to be ready if the project moves forward.

MR. THOMPSON:

In the past we have had a dilemma about the project. It is a union job, and there are workers in place already. We as a group oppose this project. We are not supportive of Yucca Mountain.

CHAIR TOWNSEND:

Are there any other questions for Mr. Thompson?

NANCYANN LEEDER (Nevada Attorney for Injured Workers, Department of Business and Industry):

Twice we have had rural workers who have worked in the mines and are no longer able to work in the mines. The vocational counselor from Las Vegas looked on the Internet and found jobs existed that workers could do. The counselor offered them a rehabilitation plan and these jobs did not fit. Later they found the jobs were nonexistent. The counselor had no idea of the area, or the needs of the worker. We support this bill.

ROBERT A. OSTROVSKY (Employer's Insurance Company of Nevada, a Mutual Company):

I have a comment in regard to independent medical evaluations (IME). The policy question here is, do you want to add another appeals level to the workers' compensation system? First there is a hearing officer, and this is at an appeal level. If the worker does not like the hearing officer's decision, he may go to the appeals officer. There is the option of district court. Not many cases get this far. Frequently, when an appeal comes to the hearing officer with a dispute about a medical condition or medical treatment is requested, it is relatively common that the appeals officer will order an IME. This is a third opinion. This is how some of the IMEs are requested. The process is usually the appeal, the hearing and IME in order to handle disputes. Do you want to add another layer? When there is a dispute over a medical evaluation, do you want to allow the claimant to go out for an IME, the assumption here being that it is paid for by the insurance company, which then comes back to the insurance company for another decision. Unless there is an overwhelming difference of opinion, the insurance company is likely to support its original decision. I was concerned with the testimony offered by Mr. Gross. What he said and what the bill states is different. He said, "injured worker to seek an opinion from another doctor and if there is a recommendation from the doctor stating the need for more treatment, this opinion would be given equal weight with the original doctor's position." The law states the insurer shall consider the IME. We are adding a new layer of appeal and we are adding a new layer of cost. We are returning to something eliminated years ago called "doctor shopping." In the NRS 616C.090, the panel of physicians is a huge panel from which to choose. I would think a claimant is going to go to a doctor who will agree with them. Do you want to leave the managed-care provisions in the law that was carefully crafted over many legislative sessions, or allow an injured worker to go outside of these provisions? There is criticism over the panel of doctors, but this issue should be addressed at another time. This bill will

increase litigation. We would oppose the first section of this bill for those reasons. The vocational rehabilitation is not as large a concern. We agree trained rehabilitation counselors who know how to do their job is a benefit for everyone. If the language changes lead to this, then we will support it. The geographic language is a concern, because of a lack of knowledge about what happens in the rural areas. I suppose we will need to adopt regulations as it is clear the rural areas are under-served in vocational rehabilitation. We can support a vocational counselor making decisions in the best interest of a claimant. We stand opposed to section 2 of this bill.

DON JAYNE (Nevada Self Insurers Association):

We agree with Mr. Ostrovsky on many of these issues. The language is vague as to who will pay the costs. Most of the concerns are with the expense of the IMEs. The injured worker has the right to see a doctor of his choice. An additional review takes more time and adds expense.

CHAIR TOWNSEND:

If someone has seen more than one doctor on this panel and has been ultimately denied, there is a 90-day window in which these determinations need to be made. There would be an appeal with a hearings officer. Mr. Badger stated this puts his client in jeopardy because even though he feels he could be ultimately successful, he would not appeal. What if we were to slow down the process at this point? Instead of looking for a doctor, this would at least give some time for review of the document by the hearings officer.

MR. JAYNE:

It certainly has value. We might be crossing several different issues, because the bill is so broad. This may also create a problem for the timing on rehabilitation. The claimant may have appeal rights with rehabilitation.

CHAIR TOWNSEND:

We have multiple issues with this bill.

MR. JAYNE:

The section you reference in the NRS 616C.090 is traditionally considered in the early part of the claim. The initial doctor is assigned to an injured worker and there could be any number of reasons why the claimant would want to change doctors within the original 90 days. To continue on with the second part of the bill, we have dealt with some out-of-state vocational rehabilitation issues

in the past. The reference concerning the vocational counselors in a geographic area can be looked at, and we can attempt to fix this issue. It is a difficult issue with Nevada, as rural as we are. We are not opposed to some sort of certification for vocational rehabilitation counselors. We do have some concern about the second part of the bill, but these issues can be worked out.

PAUL J. ENOS (Retail Association of Nevada):

I would echo the concerns of Mr. Jayne and Mr. Ostrovsky, especially with the issue of "doctor shopping" which could result in additional costs.

DARYL E. CAPURRO (Nevada Motor Transport Association):

I concur with the remarks made previously by Mr. Ostrovsky and Mr. Jayne. One other thing is the testimony given in favor of this provision was of the nature where one doctor disagreed with the second doctor. The language itself basically will not state any disagreement. If two physicians have the very same opinion, then it is quite possible that a third physician under this IME situation would not have a different opinion. I would say where there is a difference of opinion the hearings officer will request a third exam. The way this is drafted there could be two physicians who agree and the injured worker is still given yet another chance. With respect to rehabilitation, we would like to leave this to others. We are not sure what the term "certification" means.

JAMES WILCHER (International Association of Rehabilitation Professionals):

I am a certified rehabilitation counselor (CRC) and I have been in private practice for 15 years. I have been in industrial rehabilitation since 1984. I represent the International Association of Rehabilitation Professionals (IARP) which is a national group promoting the rehabilitation profession as well as providing standards for effective rehabilitation counseling. I am committed to the rehabilitation benefit. This is important for people who have lost the ability to do their usual occupation. There is a series of adjustments they have to go through. In the industrial insurance arena, we have time frames for developing plans to move people back to work. Typically, it is 60 days from the time they are permanent and stationary, and then we develop a plan that gets them back to work. There is importance and a benefit to this. When the person returns to work they are off the disability rolls and are paying taxes. There is a cost-benefit ratio to consider. I have a position paper from the IARP for your information ([Exhibit C](#)). I am in agreement with comments regarding the CRC. The NRS 616A defines a CRC.

CHAIR TOWNSEND:

How do we go about providing certification for everyone who is important to this process? Is there a national group or do we need to set standards here in the State? How do we do this? Do we work with DIR or is there a separate organization that could set this up? Do we need a licensing board? With regard to the section of the bill relative to the geographical areas, and the problems we face in the rural areas, if injured, how do we assure those who are working in these areas they will get the same high levels of service with vocational rehabilitation?

MR. WILCHER:

A CRC means something. There is a national board that sets the standards for ethical responsibilities for actions. There is a 40-page publication, "Canons of Ethical Responsibility," which upon review I find provides an excellent framework for this process. The certification process is already in place.

CHAIR TOWNSEND:

Line 45, on page 7, which is the first time this concept is introduced states: "... an employee for more than 90 days, a certified vocational rehabilitation counselor" Do you think this term will be enough to capture what the proponents of the bill were asking? If this section is added to the bill, are we then saying only certified people can be assigned to a claimant?

MR. BADGER:

Mr. Wilcher, how many certified and noncertified counselors are there practicing in the field?

MR. WILCHER:

There are 40 CRCs in the State. It is not an easy certification to get. I would also say if this is a strong issue, the CRC could sign off on the work of an uncertified counselor and would have the responsibility with the uncertified counselor for accountability.

CHAIR TOWNSEND:

We want to be sure and move forward carefully with these issues. It is an excellent suggestion to have CRCs sign off on uncertified counselors. How long did you say it takes for someone to receive their CRC?

MR. WILCHER:

A master's degree in rehabilitation counseling is required and then field experience.

CHAIR TOWNSEND:

These CRC resources may be difficult for the claimant to find. Mr. Badger, we may have to give this more thought. Raising the standards for CRC requirement in this bill may be impractical at this time. Mr. Wilcher, how many clients can you handle at one time?

MR. WILCHER:

Statutorily, 35 full cases.

MR. BADGER:

I like the suggestion of the counselor being supervised by the CRC.

CHAIR TOWNSEND:

We could set a date for this concept of certification for about 5 years or so ahead. We see the need to raise the standards. This gives some time to prepare for certification of counselors.

MR. BADGER:

Mr. Wilcher's firm gives services to clients who are injured while living in Elko, Fallon and Winnemucca where no resources are available.

CHAIR TOWNSEND:

If you two, along with the other interested parties, will get together and work through this issue, it would move things along to get the language to Mr. Young as soon as possible. This will be an important step, but in the meantime we do not want to interfere with claimants receiving rehabilitation counseling. Are there any questions of these two gentlemen?

MR. BADGER:

I would like to hear about Mr. Wilcher's experience in the rural areas.

MR. WILCHER:

There is an advantage to the claimant if the CRC or uncertified counselor lives in the same geographical area. When preparing a plan, it would be unethical for a CRC to develop this plan if the labor market and the community is an unknown

factor. A plan cannot be proposed if there is no understanding of the area. To be employable, the claimant must reenter the job market with new skills that can be used in the area where he lives. We travel all around the State and we are familiar with these areas, researching the markets in person. The IARP handout states that we are in agreement with the concept, but in the rural areas it is impractical and at times inaccessible. We suggest setting a standard with the CRC to provide these services. To be ethical, no one who is unqualified should be writing these plans.

CHAIR TOWNSEND:

There has been a debate about the concept and many have participated. There are many who are misled or do not understand vocational rehabilitation. Are there any other questions? It would be important for Mr. Wilcher and Mr. Badger to submit a proposal regarding the idea of a CRC supervisor to oversee a claimant's plan and then look at the long-term phasing in of the concept to move this issue to a new standard. Mr. Gross, I am uncomfortable with section 2, subsection 1 and the way it is drafted. I need clarification of the phrase, " ... an injured employee receives treatment from at least two physicians ... from one or more organizations for managed care." Why is it important to have this term in there? Does it matter whether the physician is contracted for this? I want to make sure I understand this language.

MR. GROSS:

This language probably could be changed to "managed care, or contracted in accordance with the provisions of the NRS 616C.090."

CHAIR TOWNSEND:

Are there any other questions regarding this bill? We will close the hearing on S.B. 225. We will open the hearing on Senator Carlton's bill, S.B. 226.

SENATE BILL 226: Limits amount that provider of health care is entitled to be paid for providing treatment or other services to injured employee under certain circumstances. (BDR 53-891)

SENATOR MAGGIE CARLTON (Clark County Senatorial District No. 2):

This is one of my first attempts at a bill draft. I will give you my intent, what we are trying to solve with this bill. When a worker is injured on the job, there is no choice for treatment. The employer sends the injured worker to the provider who is selected by the employer. The provider evaluates and treats the injury.

Later, the claim may be denied through workers' compensation, because the condition was not definitely caused by work. The workers' compensation provider discontinues care and the patient is billed at "billed charges." There are three different ways of billing: workers' compensation rate, contracted rate and billed charges rate. This is a large span of dollars. The patient sends the bill to the private insurance or fund or whatever carrier is insuring them. This is a large amount at the billed charges rate.

The intent here is to take the employee, the patient, out of the middle of the reimbursement issues involved in workers' compensation. When the injured worker walks into the doctor's office, he is being seen as a workers' compensation patient. There is a rate to be paid as a workers' compensation patient. If it is not workers' compensation, the patient would like the doctor to charge the contracted rate if they belong to a Preferred Provider Organization (PPO). There is an overlap. Private doctors can also be PPOs. If it is not workers' compensation and the patient has been denied workers' compensation, then the patient would like the doctor to take the same rate of pay that would have been taken if the person had just walked in for a regular appointment. There should be fairness regarding the rates. By the time the issue is resolved, there could be workers in a collection process. I want to disclose that I am a member of the culinary industry. To accompany S.B. 226, there is an outline on the workers' compensation process ([Exhibit D](#)).

SENATOR TIFFANY:

If the patient goes to the contracted or workers' compensation doctor, will the doctor tend to say "yes or no" to some circumstances? Will the doctor also have a contract with the culinary union or other such funds?

SENATOR CARLTON:

Not necessarily. In regard to the second part of the statement, if they do not have the contract with the union, then we would want to pay them the workers' compensation rate.

SENATOR TIFFANY:

Would the services that the injured worker received possibly not be covered by any of the particular plans?

SENATOR CARLTON:

I would defer my answer to Ms. Bond who is the expert on this issue.

BOBBETTE BOND (Hotel Employees and Restaurant Employees International Union Welfare Fund):

In cases where the provider has a contract with a particular union or company fund, the patients will not be trapped that often because the provider is accepting the contracted rates for care. Two problems we have are when the provider has no contract with any unions or other company funding at all. They bill the patient at the "billed charges" rate. The patient brings it to us or the patient tries to pay the billed charges rate while their case is in appeal and find they cannot afford it. The other problem is when we have a PPO benefit only, which happens often in physical therapy, we will have physical-therapy contracted rates. If our provider has no contract, we have no non-PPO contract for this, so the payment we make is zero. It is a PPO benefit only.

SENATOR TIFFANY:

It is possibly based on services as well as whether the provider has a contract.

MS. BOND:

We see many patients trapped by the billed charges rate problem. I worked in appeals for eight or nine years and, while we do have some issues with the workers' compensation system, we have some work to do on our end to make sure patients are educated and know what to do when they have an injury. We still have reimbursement problems where patients are entrapped. Using S.B. 121, which has cleared this Committee, will help people to pay costs up-front and get repaid when the case ends up as a workers' compensation case. On the other side of this, when the patient ends up accessing care through the system that is set up through the State and employers, but finds the injury is not work related, we then will have a way to reimburse the doctor what he expected to receive, or the contracted rates. The provider is being made whole, the patient is receiving care, and the health fund is contributing a fair payment to the providers.

[SENATE BILL 121 \(1st Reprint\)](#): Revises provisions governing payment of certain workers' compensation claims. (BDR 53-1021)

CHAIR TOWNSEND:

Are there any other questions?

SENATOR SCHNEIDER:

If an injured person goes for treatment on workers' compensation and is denied, but they are someone who has no contracted rate, then what happens?

Ms. BOND:

They will charge the patient the billed charges rate, then discontinue care when the denial comes through. This is what we are trying to handle here. We are not trying to make the workers' compensation provider continue to see the patient and receive pay at nonworkers' compensation rates. Usually, as soon as there is a denial of the claim, or the hearing officer's denial, all the way through to the administrative law denial, the workers' compensation doctor is no longer seeing the patient. All the while, we are working to get the patient into PPO care. This way they do not have a disruption of their care.

SENATOR LEE:

When an employee is injured at work and it is a bona fide injury, the employee is sent to the provider by the employer and treated. The doctor treats the employee and then the employee is denied by workers' compensation. Is this a natural progression for someone who is injured at work? Why would there be a denial for someone who has been injured at work? There is a grey area here about the injury at work.

SENATOR CARLTON:

Unfortunately, workers are denied more than they are not denied. The claims are weighted to the side of denial. Soft-tissue injuries are hard to establish as work related. Repetitive-motion injury is another area that is difficult to establish. Some injuries are not decisive. There is the right to appeal.

SENATOR TIFFANY:

When the physician is not contracted, for example with the Hotel Employees and Restaurant Employees International Union (HEREIU) Welfare Fund or any other plan, will the HEREIU Welfare Fund pick up the cost of this physician?

Ms. BOND:

If it is a nonculinary doctor who the patient went to see, and then when the claim is denied by workers' compensation, if the patient does not appeal, there is never going to be a time when it is decided this definitively happened at work. This will never be covered as a work-related injury. The patient will receive their billed charges and come to HEREIU if they believe they can make it

through the appeals process. Through all this time, they are appealing and we are denying their claim because we think it happened at work. Our definition of work-related injury is that this happened at work. It should be appealed.

SENATOR TIFFANY:

My question concerns a doctor outside of the HEREIU Welfare Fund plan. Will they ultimately pay this doctor?

Ms. BOND:

Yes. The HEREIU will eventually pay the plan on appeal at billed charges rate.

SENATOR TIFFANY:

Do you agree that someone outside the plan will pay a different rate than those who belong to the plan?

Ms. BOND:

On a nonwork-related injury, the worker may have the choice of PPOs. On a work-related injury, the doctor may or may not be contracted. Once the appeals process goes through, we will pay the costs at the PPO rates, then the patient appeals and ultimately the HEREIU will pay at the billed charges rate.

SENATOR TIFFANY:

If the doctor is not in your plan, what do you traditionally pay?

Ms. BOND:

If they have a contract with the HEREIU, the payment to them would be at PPO rates. If they do not have a contract, the payment would be at non-PPO rates.

SENATOR TIFFANY:

What is that rate?

Ms. BOND:

It would be 60 percent of the billed charges rate. In some cases, when the patient did not choose to access the PPO, the payment would be the total billed charges rate.

SENATOR TIFFANY:

Payment would be 100 percent of the billed charges. Actually, this bill would be a savings for the HEREIU Welfare Fund.

Ms. BOND:

Yes. Anyone who is involved in funding and trapped in this process will benefit from this legislation.

SENATOR TIFFANY:

With physical therapy, the HEREIU pays zero on the plan. Would you still pay the billed charges rate?

Ms. BOND:

Yes. This is what the HEREIU is currently doing.

CHAIR TOWNSEND:

The way I read this bill, any employer who has a plan, whether self-insurance or third-party contract, could be affected by this. It is under NRS 616C, which is the workers' compensation statute, not the insurance statute. This bill is not about just one organization. Many employers, employees, providers and physicians will be affected.

SENATOR CARLTON:

Yes. This bill will apply to other funds and health-care plans. Keep in mind the injured worker has no choice as to whom they may see and may ultimately end up receiving the bill for the treatment. This issue is addressed in a number of ways.

MR. THOMPSON:

A point I would like to make is that this bill will impact not only the HEREIU, but many others needing help with work-related injuries or those funding health care and physicians' treatment.

SENATOR CARLTON:

There are others in support of this bill who are unavailable to testify now.

CHAIR TOWNSEND:

If they come back into the meeting, we will put their names on the record.

Ms. BOND:

This bill impacts employer groups and any employee who has insurance. There are many supporters for this bill.

SENATOR HECK:

Ms. Bond, I do not see any representatives from the medical profession. I will disclose that I am a physician; however, I do not take part in workers' compensation other than as an administrator. The physician who is taking care of the patient has an expectation that they will receive the workers' compensation rate. If the claim is denied, then the rate goes up to the billed charges rate. Bringing the rates back to workers' compensation means that the physician will not recoup what they otherwise would have received under the billed charges rates. I am curious to know if you have spoken with any representatives in the medical profession.

Ms. BOND:

I spoke with Lawrence P. Matheis and Scott Craigie, both with the Nevada State Medical Association, about this issue. I wanted to give them a "heads up" this bill was coming. They were invited to participate.

MR. JEFFREY:

Actually, our plans are different. Most of the plans we work with are under the federal Taft-Hartley Act. The premiums are paid by the worker through a negotiated contract. Any money saved in the fund will also save the worker money. This bill will save money not only for the contractors and workers but for the trust funds as well.

CHAIR TOWNSEND:

Costs of health care are impacting all major corporations. We are likely to see this as a federal issue soon.

SENATOR CARLTON:

My health care is totally funded by my employer. None of the costs come from my paycheck. I am fortunate to have this provision. I pay union dues, and this is all included.

CHAIR TOWNSEND:

For the record, my wife provides real estate services periodically to the culinary industry.

MS. LEEDER:

Many of our clients are not insured. When injured, they are told to go to a particular doctor. Some would not choose to go to a doctor at all. Yet they are

directed to go to the doctor by their supervisor. For one reason or another, they are denied and the appeal has not gone in their favor. There are many reasons why. They now have a bill they would have not had but for the supervisor's encouragement to go to the doctor. They usually cannot pay this bill because of their financial situation.

CHAIR TOWNSEND:

This is a point well taken. It is not about those covered by a health plan, independent of workers' compensation. Many times, it is about those who are not covered and how to deal with that problem

DAVID KALLAS (Las Vegas Police Protective Association; Police Managers and Supervisors Association):

I am also a trustee on the Las Vegas Metropolitan Police Department Employee Health and Welfare Trust. Unlike the culinary industry which pays full charges based on appeal for an injured worker's medical cost, our trust works differently. A claim is denied on a workers' compensation issue, the trust receives a bill and pays a portion of the bill, and then the employee, depending on their circumstances for the billing, will end up with "balanced billing." This means that they will be responsible for a portion of the bill. Billed charges can be any amount. We support S.B. 226.

RAYMOND McALLISTER (Professional Firefighters of Nevada):

We are in support of S.B. 226. We also do not reimburse a non-PPO provider at 100 percent.

CHAIR TOWNSEND:

Did we understand you to say that you reimburse at some level or not at all?

MR. McALLISTER:

We do reimburse at a non-PPO provider rate. This amount is much less than someone in our network. The employee makes up the difference.

RONALD P. DREHER (Peace Officers Research Association of Nevada):

The Peace Officers Research Association of Nevada supports the intent of this bill.

BILL WELCH (Nevada Hospital Association):

The medical profession did not participate in the preparation of this bill, but the hospital community is here today. With today's explanation, we are much more comfortable with the bill. I am not absolutely sure Senator Carlton's intent is clearly defined in the bill, but we are more than happy to work with her to ensure the objectives are met. The way the bill is written, it will affect more than physicians, physical therapists and others. It affects the entire medical community. In the hospital community, if a workers' compensation claim is denied, we would originally bill at that rate, but when denied it automatically rolls over to other providers at a discounted rate if there is a contract with the hospital. I would suspect this would be in most cases, particularly in Clark County. If it is a private-pay patient, then there are provisions in the law requiring of the hospital that the patient who may pay the bill be provided a 30-percent discount. There is the Governor's ombudsman office, where the employee may go and ask for assistance in further negotiation for a discounted rate. I want to put this on the record.

CHAIR TOWNSEND:

It would be interesting to see the statistics on the uncollected debt accrued by all the hospitals in the State because of these issues. It would be good to see how large is the problem with which we are dealing, and then to put our heads together and come up with a plan to resolve it. This is a serious problem.

MR. WELCH:

I will try to get this statistical information for you. I will sample some of the hospitals and the national organization to search out data on the uninsured.

MS. BOND:

I want to make a clarification on [Exhibit D](#) that I handed out earlier. On line 36 of the amendment, it states: "... the provider is entitled to be paid not more than the amount which is allowed for the treatment" I assume this would happen if the patient is paying or if the health plan is paying. This certainly is our intent.

CHAIR TOWNSEND:

Mr. Powers, your draft with the new language for the bill is admirable. We will close the hearing on S.B. 226 and open the hearing on S.B. 435.

SENATE BILL 435: Enacts provisions relating to security of personal information. (BDR 52-571)

MARILYN SKIBINSKI (Regulatory Manager, Bureau of Consumer Protection, Office of the Attorney General):

I am here on behalf of Attorney General Brian Sandoval. He requested this bill to protect personal information held by certain businesses to address identity theft and to ensure security breaches of business databases containing personal information will be disclosed to the persons affected by the breach. The need for this bill was highlighted recently in an incident involving ChoicePoint, Incorporated, which is an Atlanta company providing consumer data services to insurance companies, other businesses and government agencies. Individuals posed as legitimate businesses in order to obtain personal information maintained in the company's database. Among the data available through the company services, and possibly accessed by the criminals, are consumers' names, addresses, social security numbers and credit reports. Several fraudulent accounts were set up and the personal information of more than 145,000 individuals was compromised; 739 of those individuals were Nevadans. When this happened, California was the only state with legislation requiring companies to notify its residents when their personal data had been compromised. Therefore, ChoicePoint, Incorporated, originally notified 35,000 California residents who were affected by the security breach that their personal data was stolen. Other states, including Nevada, became aware of the problem and were able to put pressure on ChoicePoint to notify everyone affected by the scam. The company then notified approximately 110,000 people outside the state of California that their data had been compromised. Attorney General Sandoval made a public promise to seek legislation to require businesses to provide notification of security breaches of personal data to those affected by the breach. He enlisted the help of consumer advocate Adriana Escobar-Chanos who has offered her full support and any needed assistance for passage of S.B. 435. The bill provides measures to be implemented by businesses relating to the security of personal information. This morning, Kathleen Delaney, Deputy Attorney General, Bureau of Consumer Protection, in Las Vegas is here to explain the bill and walk you through the bill if you would like.

CHAIR TOWNSEND:

Senator Wiener has a bill that is identical and is in the Senate Committee on Judiciary next week.

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MS. SKIBINSKI:

There are several bills addressing this topic. There may be some differences. I know Ms. Delaney has reviewed this bill and may be able to explain any differences between the two.

CHAIR TOWNSEND:

There are additions including penalties for defrauding the elderly and changes in requirements for credit card issuers and creating penalties for financial forgeries to laboratories. We do not want to do this twice. You might want to pull up this bill and do a quick analysis. I do not want to take away jurisdiction of the Judiciary Committee on issues much broader relative to theft.

KATHLEEN DELANEY (Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):

I will try to address the Chair's question for the purposes of S.B. 435. There is some significant overlap with these bills with regard to data collectors providing notices to consumers upon a breach of their personal information. Both bills were in the pipeline at the same time. I discussed this matter with Senator Wiener briefly. Our largest concern is that her bill did not contain two provisions we see as very important which are in our bill. The overlap occurs with the requirement to provide notification of a breach of security. With what our bill contains, we would be more than pleased if Senator Wiener is amenable to amend the provisions we are concerned about in her bill or in some way take on this responsibility in our bill with an amendment, whatever are her preferences. The two key provisions apply to data collectors and require reasonable security measures be taken to maintain the data while they have it and to ensure that anyone they contract with as a subcontractor, having access to the data, also take those reasonable measures. These are efforts to help prevent a breach rather than deal with the breach after it has occurred. The other measure applies more broadly. It requires that any business having personal data and no longer maintaining those records will take reasonable steps to dispose of the records properly. These provisions are very important, and this is why they are included in our bill. I have one minor amendment to propose based on how the bill was introduced and a miscommunication ([Exhibit E](#)).

SENATOR LEE:

Concerning section 9, subsection 1, "... following discovery or notification of the breach ... ," is there a period of time that notification takes place? Is it

immediate or within three days? I am looking for the time limit and when the notification begins.

MS. DELANEY:

In the same subsection 1 of section 9, the requirement is that the response be expedient and without unreasonable delay. We did not want to overly burden these companies to put a specific time requirement on it, because it will depend on the number of consumers whose personal information is involved and other factors. If there is no impediment with the law enforcement investigation that may be involved, notification will be done promptly.

SENATOR LEE

Is my opinion of "expedient and without reasonable delay" going to hold up in a court of law? Because I am a business owner, I would like something more defined as to my responsibility within a certain time limit. As someone whose personal data may have been breached, I would like to know the amount of time before I could expect to be notified. This is a concern of mine.

MS. DELANEY:

The understanding of not having a specific reference is an advantage to the business in order to allow the business to make its determination of the extent of the breach and to give the appropriate notification to those involved.

A point of clarification is [Exhibit E](#); the changes are to sections 7 and 8 and are underlined for clarification for the Committee. These are minor changes to effectuate the original intent of the Office of the Attorney General.

JAMES JACKSON (Consumer Data Industry Association):

I represent the Consumer Data Industry Association (CDIA). I want to apologize to the Committee; I provided a proposed amendment and did not put my name on it.

CHAIR TOWNSEND:

When paperwork is submitted by someone without a name on it, it will not be accepted by the Committee. This is a posted rule.

MR. JACKSON:

We support the concept of S.B. 435. Senate Bill 347 goes beyond this and contains criminal provisions. The document that I have provided to the

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Committee on behalf of the CDIA proposes coordination in terms of timing for distribution and content of the notices ([Exhibit F](#)). With respect to section 11 in the current draft of the bill, we are requesting the enforcement of the notification procedure in the hands of the Office of the Attorney General. Administratively, this would be correct.

SENATE BILL 347: Makes various changes concerning personal identifying information. (BDR 15-15)

CHERYL BLOMSTROM (Nevada Consumer Finance Association):

The Nevada Consumer Finance Association echoes Mr. Jackson's comments. In addition to those comments, we would add two amendments ([Exhibit G](#)). We would amend section 3, on page 2, on line 8, by adding the words, "materially compromises the security," so that we are looking at a material breach as opposed to insignificant breach. Additionally, we would like to amend section 6, page 3, on line 26, by adding, "or widely distributed media" so that information that is generally available in a broad distribution such as the Internet would not be subject to the provision. We ask that the bill be amended to include an effective date of January 1, 2006. Time will be needed to revise and execute the contracts. And, we would like a July 1, 2006, effective date to provide time for compliance to accept penalties as imposed.

CHRIS MACKENZIE (American Express):

My clients have some concern regarding this bill. In terms of operating nationwide, there has been some federal legislation recently enacted addressing these topics and more specifically to financial institutions. I have an amendment proposal ([Exhibit H](#)). The amendment seeks to unify the legislation for all businesses subject to federal legislation. If they satisfy this legislation, they would then be in compliance with sections 7 and 8 of S.B. 435. We are concerned that there will be 51 different standards, one federal standard and those of each of the 50 states. This is the basis for wanting a uniform statement. Mr. Uffelman, on behalf of the banking industry, has provided a packet with further federal information ([Exhibit I](#), original is on file at the Research Library).

WILLIAM R. UFFELMAN (Nevada Bankers Association):

I have provided an amendment today ([Exhibit J](#)). Basically, we ask you to remember that this is personal information which by the terms of the bill on page 2, line 17, speaks of encryption. If in fact, the data is encrypted and it is

not lost, you may determine internally the likelihood of a breach of data itself is very slim. This affords the opportunity of not going through the notification process. I provided you with the Federal Register notice. The three entities regulating the financial community have co-adopted a set of regulations dealing with the safety and security of consumer data and the reporting on this data as a compliance guideline.

MR. MACKENZIE:

There are a number of measures proposed on this issue. Coordination will be called for in all of the bills.

JAMES F. NADEAU (Nevada Association of Realtors):

The Nevada Association of Realtors will work with a subcommittee on any language changes.

CHAIR TOWNSEND:

We have not decided on a subcommittee as yet. We will close the hearing on S.B. 435. We will now begin a work session on S.B. 300.

SENATE BILL 300: Revises provisions governing regulation of contractors.
(BDR 54-1061)

RENNY ASHLEMAN (Southern Nevada Home Builders Association):

The Southern Nevada Home Builders Association prepared a complete redraft of the amendment ([Exhibit K](#)). We ask Richard Peel to present the amendment to S.B. 300.

RICHARD L. PEEL (Mechanical Contractors of America of Southern Nevada, Incorporated):

We would like to update the Committee on the changes that we are bringing to the NRS 624. In the 2001 Legislative Session, the right-to-stop-work statute was codified. We are going back to clean up some language and provide some additional language that will help subcontractors and contractors receive payment for work, materials and equipment they furnish toward a work of improvement. We have clarified the definition of higher-tiered contractor in section 3 of the amendment. We provided and clarified the definition of a lower-tiered subcontractor of section 4. We defined owner, prime contractor and work of improvement in section 2. We have confirmed retention to be withheld from a prime contractor or lower-tiered subcontractor cannot exceed

10 percent of the payment required to be made in sections 5 and 9 of the proposed bill. An owner would give a notice of withholding in writing, describing what the contractor and subcontractor must do to receive payment. A stop-work order may be requested if the withholding notice is inaccurate. The reference to "contract" will be changed to "agreement" throughout the document. We would modify the rate of interest from 2 percent over prime to 4 percent over prime. We are cleaning up other portions of the bill that in 2001 did not get adequately drafted. The Legislative Counsel Bureau (LCB) is doing a great job, but there are always clean-up issues as with any bill. These are some highlights of the changes we are attempting in this amendment.

SENATOR LEE:

I have a question on the 30-day change order. Is there a way to make the superintendent responsible for his directions? I will not hold up this amendment, but I do need to resolve several concerns.

MR. PEEL:

We try to set forth the ability to stop work in the event of a change-order request. The change-order request requires a 30-day period to respond. We are trying to move the project forward without long delays.

SENATOR LEE:

There are additional charges to the project such as security, water and clean-up. Has your amendment addressed this issue?

MR. PEEL:

I see nothing in the bill allowing a prime contractor to not back-charge pursuant to the terms of the agreement. It is a negotiable point.

MR. ASHLEMAN:

On both of these issues, this bill should act to make the superintendent more responsible. It provides powerful language for claims and unlawful charge backs. This amendment creates a paperwork trail and a series of timelines if people will use it.

STEVE G. HOLLOWAY (Associated General Contractors, Las Vegas Chapter):

This is a consensus amendment. The entire industry is behind it. We ask for your support.

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RICHARD LISLE (Mechanical Contractors of America of Southern Nevada, Incorporated):
The sheet metal contractors and the electrical contractors are all behind this bill. We support it.

BERLYN D. MILLER (Nevada Contractors Association):
I just want to emphasize what Mr. Holloway has said, that this is a consensus amendment in the industry. We are totally supportive of it.

WILLIAM BUZZ HARRIS (Nevada State Contractors' Board):
The Nevada State Contractors' Board is neutral on this bill.

CHAIR TOWNSEND:
We will close the hearing on S.B. 300. Mr. Young, how do you want to process this amendment?

SCOTT YOUNG (Committee Policy Analyst):
If the Committee is comfortable working with that particular document, an action may be taken and then Mr. Powers will draft the official document. It appears to be a fairly clear document.

SENATOR LEE MOVED TO AMEND AND DO PASS S.B. 300.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

Committee, there is no more business to conduct. This meeting of the Senate Committee on Commerce and Labor is adjourned at 10:35 a.m.

RESPECTFULLY SUBMITTED:

Shirley Parks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____