MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
May 18, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:04 a.m. on Wednesday, May 18, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Fred L. Hillerby, MasterCard International, Incorporated; Washoe County Regional Transportation Commission
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry

Kimberly Everett, Actuary, Division of Insurance, Department of Business and Industry
Ernie Adler, American Massage Therapy Association, Nevada Chapter
James F. Nadeau, Nevada Association of Realtors
Ann Price McCarthy, President, State Bar of Nevada
Lisa Black, Nevada Nurses Association
John Wiles, Senior Attorney Industrial Relations, Division of Industrial Relations, Department of Business and Industry
Raymond McAllister, Professional Firefighters of Nevada
Jennifer Lazovich, Focus Property Group
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual Company
Jeanette Belz, Property and Casualty Insurance Association of America
Patrick T. Sanderson, Laborers Local No. 872
Michael S. Trudell, Caughlin Ranch Homeowners Association
Buffy J. Dreiling, Nevada Association of Realtors
John (Jack) E. Jeffrey, Southern Nevada Building and Construction Trades
Keith Lee, Consumer Lending Alliance
Carol Tidd, Commissioner, Division of Financial Institutions, Department of Business and Industry
Raymond Bacon, Nevada Manufacturers Association
Paul D. McKenzie, Operating Engineers Local No. 3

CHAIR TOWNSEND:
I now open the meeting to discuss Assembly Bill (A.B.) 19. We have a mock-up amendment (Exhibit C).

ASSEMBLY BILL 19 (1st Reprint): Prohibits, under certain circumstances, issuance of gift certificate that contains expiration date and prohibits, under certain circumstances, issuer of gift certificate from charging certain fees to buyer or holder of gift certificate. (BDR 52-558)

SENATOR LEE:
There were two amendments we heard as a Committee on this bill. One was from Chris MacKenzie and one was from Fred Hillerby. Their concerns were the ten-point font on the national gift cards, which were not the type of gift cards that we were trying to capture in this bill. We stayed with the current font used nationally. I went to the State Treasurer to see if we could get an expiration date before it was escheated, but was unable to do that. We are

bringing this bill back with the amendments approved by the subcommittee. Next Legislative Session the two sponsors of the bill will work with the Retail Association of Nevada to see if they can do more with this bill.

CHAIR TOWNSEND:
Mr. Hillerby, do you have any issues with what was just stated?

FRED L. HILLERBY (MasterCard International, Incorporated):
No.

CHAIR TOWNSEND:
I think the key is adding the two words on page 2, line 17 of Exhibit C. I am looking at the bottom of page 2, lines 42, 43, 44 and 45. There has to be an expiration date on the card somewhere. Is that correct Senator Lee?

SENATOR LEE:
Yes.

SENATOR LEE MOVED TO AMEND AND DO PASS A.B. 19.

SENATOR HARDY SECONDED THE MOTION.

CHAIR TOWNSEND:
Is there any discussion?

SENATOR TIFFANY:
We previously discussed expiration dates and service fees. What was the outcome of those issues in subcommittee?

SENATOR LEE:
The service fee is on page 1, line 15 of Exhibit C. If you do not use the card after 12 months, there is a $2 service fee. That is already happening with these cards.

The expiration date is on page 1, line 5. We could not come to terms on a certain expiration date. Because there were so many people involved, the sponsors of the bill decided they would wait until the next Legislative Session to come back with new language for the expiration-date issues.

SENATOR TIFFANY:
They do not expire and the $2 service fee runs out the card. What is the frequency of the service charge?

SENATOR LEE:
They will eventually term out with the application of $2 service fees.

SENATOR TIFFANY:
What is the frequency of the service charge?

SENATOR LEE:
The service fee is $2 every month. There are many national companies that do not charge the service fee or expire the cards. The thought is that the industry will correct itself.

SENATOR TIFFANY:
Do certificates from a fund-raiser or silent auction fall into an exempt category for expiration dates?

SENATOR LEE:
We did not encompass the private-event programs. That issue may be covered on page 2, line 17.

CHAIR TOWNSEND:
It may be the language on page 2, beginning on line 19.

SENATOR LEE:
I would say that addresses the issue.

SENATOR TIFFANY:
If someone donated a spa certificate, would the expiration date be 30 days?

SENATOR LEE:
Yes.

CHAIR TOWNSEND:
It says the provisions of this section do not apply, “if the expiration date of the gift certificate is not more than 30 days after the date of sale ... .”

KEVIN POWERS (Committee Counsel):

> ... We have to start with the premise in subsection 1. Expiration dates are not prohibited by this bill. They are only prohibited if the issuer of the gift certificate doesn't provide the disclosure necessary on the gift certificate, which is required by the bill. ... Essentially, this is a disclosure bill and if you are going to have an expiration date, you have to provide these disclosures. ... Certain types of gift certificates and gift cards in subsection 2, on page 2, are excluded from those disclosure requirements. ... In the case we are talking about, the nonprofit or charitable organization, if the expiration date on the gift certificate is not more than 30 days after date of sale, then they are not subject to disclosure requirements. They can just give the gift certificate. If the expiration date is beyond that 30-day period, then they would be subject to disclosure requirements in subsection 1.

SENATOR TIFFANY:

That is not good. I think we should not put a 30-day limit on something like that. The Boys and Girls Club sometimes purchases things in bulk at a discount rate.

CHAIR TOWNSEND:

Mr. Powers, how would that affect a nonprofit or charitable organization that either receives free or purchases something at a discount for purposes of selling at a later date?

MR. POWERS:

> ... I believe the answer to the question would turn on the date that it is used at the charitable event ... when it gets into the hands of the ultimate holder. ... If the gift certificate, when it is given to the ultimate holder ... will expire in less than 30 days, there would be no additional disclosure requirements ... by this bill. If when the holder got the gift certificate, it expired in 6 months or a year, all the gift certificate would have to do under subsection 1 is disclose that expiration date in a certain font and provide other information.

SENATOR TIFFANY:
I do not think that is currently done. I do not want to catch the nonprofits under these circumstances when they are trying to raise money for kids.

CHAIR TOWNSEND:
There are two to three of those events a week in this State. It is my understanding that most of them do not state clearly whether or not it is in ten-point font.

SENATOR TIFFANY:
Some of them do not even have expiration dates and there certainly is not disclosure on them.

SENATOR LEE:
Would it be your pleasure to change that to 90 days?

SENATOR TIFFANY:
My pleasure would be to have no expiration date, font size or disclosure.

SENATOR HARDY:
Would the certificate still expire?

SENATOR TIFFANY:
If they did indicate an expiration date, it would expire.

SENATOR HARDY:
I think that is what this bill states.

SENATOR TIFFANY:
Some of the certificates do not have an expiration date.

SENATOR HARDY:
So then it would not expire.

MR. POWERS:
"… If the gift certificate does not expire, then the provisions of this bill would not affect that gift certificate."

SENATOR TIFFANY:
If they do have one that expires in six months, someone at that nonprofit has to know that so they can relate that it has to be a certain font size with disclosure. I do not think that will happen.

SENATOR HARDY:
If something expires, it always has an expiration date.

SENATOR TIFFANY:
Some do and some do not.

CHAIR TOWNSEND:
Some of them do not, particularly, if they are given by a national organization.

SENATOR HARDY:
I think that is the point of the bill. If you are getting something that expires, it should be disclosed.

SENATOR LEE:
I see your point, Senator Tiffany. I think it is incumbent upon the business to notify the nonprofit of the time limitations on the donated item.

SENATOR HARDY:
If it does not expire, it is not required to have anything on it. I think that creates an assumption that if an expiration date is not present, it does not expire. I am okay with the language as it is.

SENATOR TIFFANY:
I think it should be specific that nonprofits and silent auctions should be exempt from everything. They do not have to have ten-point font, may or may not have an expiration date and they do not have to document proof.

SENATOR CARLTON:
Businesses do not do separate gift certificates for different entities. They just cut a box of certificates. The business ultimately makes the decision, when they are making the donation through the legislation, how to handle the gift certificates for everyone. If that gift certificate had been donated to the Girl Scouts of America, I had gone to the luncheon and bid on it, it would have been what the business had decided to do for expiration.

SENATOR TIFFANY:
Small businesses may not have that type of policy. I do not want to create a problem for the innocent small business that is donating to a good cause.

CHAIR TOWNSEND:
If the expiration date of the gift certificate is not more than 30 days, they are exempt. If it is after 30 days, then they fall under the language of the bill. Small businesses just have to give gift certificates that expire in 30 days or less to be exempt. I have a motion from Senator Lee and a second from Senator Hardy.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now hear A.B. 44. We have a mock-up amendment (Exhibit D). Mr. Hillerby has offered an amendment that is in the mock-up. This has to do with people earning one-and-a-half times minimum wage and whether the federal government or the labor commissioner would be the arbiter for certain groups. The attempt of the bill was to let any of these labor issues with regard to overtime be handled at the Office of Labor Commissioner level.

ASSEMBLY BILL 44 (1st Reprint): Revises provisions governing payment of overtime to certain employees. (BDR 53-761)

FRED L. HILLERBY (Washoe County Regional Transportation Commission):
We support the notion of the bill to put the overtime issues under our labor commissioner. We did not want it to be under federal law. Our law has read for a number of years that anyone who received compensation over one-and-a-half times the minimum wage was exempt from the overtime laws of this State. The only place to go with a concern was to the United States Department of Labor. Because of the flexibility that is allowed when you only have the 40 hours, which mirrors federal law, that should be good for any employee and employer as they negotiate how often they want to work and how to get in the 40 hours. In light of the ballot issue that will be before the public in 2006, there is a possibility that the minimum wage will increase and we will capture more people who will not be making more than one-and-a-half times.

Therefore, we thought mirroring the federal law was good. I think we are one of a handful of states that still does something other than federal law.

SENATOR CARLTON:
I am confused about your reference to federal law. It is my understanding that the majority of federal law applies to public-safety personnel such as fire and law enforcement. I do not recollect a federal provision outside of those occupations.

MR. HILLERBY:
Federal law is beyond my level of expertise. It is my understanding that the standard is 40 hours. There may be some exceptions to that, but under the Fair Labor Standards Act (FLSA) anything over a 40-hour work week requires overtime wages. That is the standard used by the vast majority of the states.

The labor commissioner may more appropriately answer your question.

MICHAEL TANCHEK (Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry):
I am not 100-percent sure because of the federal provisions. I think we may be discussing apples and oranges. Mr. Hillerby is discussing the FLSA standard 40-hour work week. I have heard discussion of possible expansion that would spread that over an 80-hour 2-week period. In terms of public-safety personnel, there is an exception that deals with that because of the unique nature of that business.

SENATOR CARLTON:
Are you ready for the phone calls when people want to know why they do not get their overtime after eight hours?

MR. TANCHEK:
I discussed that matter in depth with my investigators yesterday. I think what Mr. Hillerby is looking at is essentially going with anything over 40 hours regardless of the pay scale. I have not seen Exhibit D so I do not know the exact language. We are preparing ourselves internally for this change.

SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 44.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR TOWNSEND:
I now open the meeting to A.B. 63. Are there any amendments on this bill?

ASSEMBLY BILL 63 (1st Reprint): Prohibits certain practices by health insurers with regard to injuries sustained while under influence of alcohol or controlled substance. (BDR 57-207)

SCOTT YOUNG (Committee Policy Analyst):
There were no amendments. The Division of Insurance (DOI), Department of Business and Industry, is in attendance to clarify any questions the Committee may have on this bill.

SENATOR HECK:
At what point would the DOI allow a health-care insurer to deny payment based upon the presence of drug or alcohol in someone's system?

KIMBERLY EVERETT (Actuary, Division of Insurance, Department of Business and Industry):
I am an actuary in the life and health section of the DOI. Under chapter 689A of the *Nevada Revised Statutes* (NRS), there is permissive language that allows a carrier to deny a claim if the person has been convicted of an offense that involves alcohol and drug abuse. Under the small group insurance chapter of the NRS, there is no such language. However, it is the DOI's position that the language be fair and that a conviction is also required in order for a carrier to deny coverage.

SENATOR HECK:
If an individual was brought to a hospital and tested positive for alcohol with no conviction or law enforcement involvement, only a note in the patient chart, would the insurance company be required to pay that claim if it was appealed to the DOI?

MS. EVERETT:
Yes.

SENATOR CARLTON:
I understand the purpose of the bill is to prevent this from happening any longer; so physicians and professionals will test for drugs and alcohol rather than ignore the fact of their presence. As an actuary and understanding the bill, it seems to me a lot of your data may not be true, because physicians are not testing for those things right now. They are afraid if they do, they will be denied payment for services. How can you come up with a policy on something when it seems you are dealing with the back end, and the bill is dealing with the front end of the problem?

MS. EVERETT:
We do not capture data at the DOI. We receive filings from companies with policy language and review language to ensure compliance with the law.

SENATOR CARLTON:
So you are totally out of that loop and you are just dealing with the review of filing forms from companies to make sure they are compliant with the law.

SENATOR TIFFANY:
What happens if the insurer's policy states that claims will be denied if the claimant was under the influence and tested positive with no conviction?

MS. EVERETT:
In the plan documents, the evidence of coverage (EOC) or any plan language, we examine the exclusions and look for language that specifically states that the person must be convicted.

SENATOR TIFFANY:
If it does not state in the EOC that they have to be convicted, but they do say intoxicated, maybe even an intoxication level, but it is clearly in the policy, can they then deny coverage even though it does not match our statutes? Does contract law supercede statute?

MR. POWERS:
> ... Starting with what is in the bill ... if you look on the last page of the bill, page 9, the section being repealed ... is existing law. ...

> It specifically allows an insurer to put a provision in a policy whereby the insurer can deny an insured's claim if the insured is injured while intoxicated or under the influence of a narcotic, unless administered under the advice of a physician. In addition, an insurer also is allowed to put in a policy an exclusion where they can deny claims if the insured is convicted of a felony as well. They are two different provisions. ... The felony-conviction provision that can be in an insurance policy obviously requires a conviction. However, under existing law in [NRS] 689A.280, insurers can put a provision in to deny claims if the insured is under the influence of a narcotic or intoxicating liquor. To answer Senator Heck's question ... because it is in the policy, and is permitted by Nevada law, the question would turn on contract-law interpretation principles. Under those common-law principles, a contract interpretation, you do not need a specific level of blood-alcohol content in order to be determined intoxicated or under the influence of a narcotic. You just have to be able to prove by the evidence that the person was impaired. ... That is similar also to the DUI [driving under the influence] context, although the DUI statutes do contain a 0.08 level, they also allow you to prove that a driver was intoxicated without a blood-alcohol content, based on the circumstances surrounding the accident and what other evidence you have. ... That would be the same in the contract-law context. If the insurance company can prove through the evidence before it, that would be through witnesses and behavior and any reported evidence they have, that the individual was intoxicated and the policy allows them to deny the claim based on that intoxication under existing law, they could do that.

SENATOR HECK:
My concern, based on that interpretation, is that there is no defined standard for what constitutes impairment. What was brought up in the previous hearing was that someone who had a glass of wine at dinner and walked outside, slipped on the sidewalk and broke their wrist, may have had a 0.01 blood-alcohol level could theoretically be denied coverage of that injury. I am concerned for that person who would be denied coverage. However, the initial intent of this bill was more of a drug-and alcohol-screening tool to identify those with abuse problems who were showing up at trauma centers in which tests were not done for fear of nonpayment. I disagree with the bill in that

regard because I am a firm believer in personal responsibility. I was originally opposed to this bill, but because of the provision of the possibility that someone who does not meet that other criteria could be denied payment, I would be more inclined to support the bill at this time.

SENATOR TIFFANY:
Senator Heck, if an individual comes into the emergency room after having a glass of wine and slipping, are the chances of doing any kind of testing slim?

SENATOR HECK:
Yes. What may be documented in the chart such as alcohol on breath or something in that regard, whether in the history and physician's or nurse's notes, could result in the denial of the claim. You are right, if someone slipped and came in with a broken ankle, they do not get screened for drug and alcohol abuse.

SENATOR TIFFANY:
The emergency-room personnel see much worse things than just someone who has had a few glasses of wine with a slip and fall injury.

SENATOR HECK:
That is true. However, since there is no defined standard, if medical personnel document the patient's chart with that type of information, is it enough to deny the claim? Ideally, I would like to see the exclusion defined.

SENATOR TIFFANY:
I would too and that is part of the problem I am having with this bill. I agree with Senator Heck on personal responsibility. The emergency room is not the appropriate environment for making staff do the screening panel for dual diagnosing.

CHAIR TOWNSEND:
We will meet again on Friday. That will give Senator Heck and Senator Tiffany time to find appropriate language for the Committee.

We will now hear A.B. 250.

ASSEMBLY BILL 250 (1st Reprint): Provides for licensing and regulation of massage therapists. (BDR 54-733)

ERNIE ADLER (American Massage Therapy Association, Nevada Chapter):
The Committee has been provided with a mock-up amendment (Exhibit E). This amendment is a result of discussions in subcommittee. We reviewed these with the Las Vegas Metropolitan Police Department and concerned parties; I think the amendments present an improvement in the bill. We really had no dissent to these amendments from the subcommittee, and they support the proposed amendments.

SENATOR CARLTON:
I have not had the opportunity to review Exhibit E and would like to defer action on this until Friday's meeting.

CHAIR TOWNSEND:
We will take up this bill on Friday.

MR. POWERS:

> ... I finished this ... [amendment] last night at 2:30 a.m. ... there could be some rough patches. ... As the individuals and parties read that [amendment], let them know that we will be refining the language and after I talk to Senator Carlton we can finish the details.

CHAIR TOWNSEND:
We will now hear A.B. 114. Is there a proposed amendment to this bill? I need to disclose that my wife is a licensee, but I am not sure she will get into this business.

ASSEMBLY BILL 114 (1st Reprint): Revises provisions governing manufactured homes, mobile homes and Real Estate Education, Research and Recovery Fund. (BDR 43-1162)

JAMES F. NADEAU (Nevada Association of Realtors):
We have no amendments. It is a straightforward bill.

CHAIR TOWNSEND:
Are there no amendments from the Real Estate Division, Department of Business and Industry?

MR. NADEAU:
There are none.

SENATOR SCHNEIDER MOVED TO DO PASS A.B. 114.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now hear A.B. 137.

ASSEMBLY BILL 137: Revises provisions governing insurance payments in settlement of certain third-party liability claims. (BDR 57-503)

ANN PRICE MCCARTHY (President, State Bar of Nevada):
This is a State Bar of Nevada bill and is also supported unanimously by every member of our client security fund (CSF). A portion of every active attorney's dues in this State goes to fund the CSF which exists to try to reimburse clients who have been harmed by an attorney's defalcation. We only have a handful of attorney's every year who we have to discipline for this, but unfortunately, each claim tends to be large. By the time we catch up with them for discipline, the money is gone. Many of the reasons this occurs is that the clients do not know their cases were settled. This usually occurs with the attorneys because of an addiction, gambling, drug or alcohol problem. We feel strongly that if the client were notified of case settlement, it may halt that behavior. We think this is an important consumer-protection bill and urge passage.

SENATOR SCHNEIDER MOVED TO DO PASS A.B. 137.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now hear A.B. 183. We have a mock-up amendment (Exhibit F). We have captured all those who provide nursing services as established under chapter 632 of the NRS and narrowed it to the facilities under chapter 449 of the NRS.

ASSEMBLY BILL 183 (2nd Reprint): Prohibits employers and certain other persons from retaliating or discriminating unfairly against certain nurses and nursing assistants for refusing to provide nursing services under certain circumstances. (BDR 54-927)

LISA BLACK (Nevada Nurses Association):
That is correct and summarizes the language changes that were made in the hearing last week before this Committee.

SENATOR CARLTON MOVED TO AMEND AND DO PASS A.B. 183.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TIFFANY VOTED NO.)

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CHAIR TOWNSEND:
We will now hear A.B. 186. We have a mock-up amendment (Exhibit G). I believe Mr. Ostrovsky and Mr. McAllister had conversations with the Governor related to this bill; if there was an assessment, it would constitute a fee or tax and, therefore, was not acceptable to the Administration. The mock-up is prepared in a manner that interest alone would support this fund.

ASSEMBLY BILL 186 (2nd Reprint): Authorizes payment of additional compensation for permanent total disability to certain injured employees and their dependents. (BDR S-251)

JOHN WILES (Senior Attorney Industrial Relations, Division of Industrial Relations, Department of Business and Industry):
I anticipated that the mock-up amendment might change the effective date for regulatory effort. Page 4, line 5 states no later than October 1 of each year. We are looking for some consistency with the prior version of the bill which provided for a June 30 effective date so we can adopt the methodology.

CHAIR TOWNSEND:
You want a year to implement this? These folks need help, why would we wait a year?

MR. WILES:
Then I would request January 1. In section 2, subsection 3, the adoption of regulations, it is my understanding that you want us to adopt one set of regulations and apply them consistently throughout the payments that are made on an annual basis rather than go back to the regulatory process each year. It is more complex, more than a fixed amount and a fixed pool. We are hoping to develop a methodology initially that will apply continuously throughout the anticipated payment periods.

RAYMOND MCALLISTER (Professional Firefighters of Nevada):
Page 3, line 42 uses the word assessment; I would hate for the Governor to see the use of the word assessment.

CHAIR TOWNSEND:
Mr. Powers, is the term assessment being used in conjunction with acquiring the interest from the fund or was it left in from the previous assessment language?

MR. POWERS:

> ... This mock-up was prepared by the Research Division so the Legal Division has not had a chance to look at it. ... They have done a fine job presenting it in conceptual form and yes we will consider that and review the entire bill to determine what appropriate changes are necessary. ... I believe that does need to be changed.
>
> SENATOR CARLTON MOVED TO AMEND AND DO PASS A.B. 186.
>
> SENATOR SCHNEIDER SECONDED THE MOTION.

SENATOR HARDY:
I want to make sure we can accommodate Mr. Wiles' concern with the January 1 date.

SENATOR CARLTON:
Would the suggestion to the motion be under section 3, page 4, "This act becomes effective on July 1"? By changing the date, would they lose an adjustment?

CHAIR TOWNSEND:
Mr. Wiles, the current language in the proposal is that the administrator shall make the payment required by this section to each claimant and dependent of a claimant who is entitled to the payment not later than October 1 of each year. Meaning, the DOI has to make a payment under this bill before October 1.

MR. WILES:
Yes, that is the way I read it. We would be required to make a payment by October 1, 2005.

CHAIR TOWNSEND:
Is this for everyone who qualifies?

MR. WILES:
Yes, and then periodically on October 1 of each year thereafter.

SENATOR CARLTON:
If we change the date to January 1, 2006, will there be a payment in 2005?

MR. WILES:
Yes. I was not actually requesting that you change the effective date. We want to start the regulatory process and payments as soon as possible, but we are concerned that we may not have an adopted regulation in time. It takes some time to develop methodology and regulation. We anticipate the October 1, 2005, date to be problematic; subsequent years will not be problematic. We do not want to put off the payments.

MR. POWERS:
To accommodate those, we could add a transitory provision that essentially says not withstanding the provisions of subsection 5 of section 2 the first payment required in this bill must not be made later than December 31, 2005. Giving them an additional

three months in order to make the payment. Every year after, it would be October 1 beginning in 2006.

SENATOR CARLTON:
That sounds reasonable.

MR. WILES:
We anticipate that we will be developing a methodology that would apply throughout the payment period and making the first payment before December 31, 2005. The next payment would be on or before October 1, 2006.

CHAIR TOWNSEND:
The current payment will be adjusted based on the formula you develop in the regulatory process. What is the frequency of payment?

MR. WILES:
This bill would provide for an annual payment in addition to the regular insurer payments.

CHAIR TOWNSEND:
I want to make sure with the transitory language it will be paid in 2005.

MR. WILES:
It will.

SENATOR CARLTON WITHDREW HER MOTION ON A.B. 186.

SENATOR SCHNEIDER WITHDREW HIS SECOND.

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SENATOR CARLTON MOVED TO AMEND AND DO PASS A.B. 186 USING THE TRANSITORY LANGUAGE PROVIDED BY MR. POWERS.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now hear A.B. 193.

ASSEMBLY BILL 193 (1st Reprint): Revises provisions relating to contractors. (BDR 54-920)

MR. POWERS:

> ... We will go to the mock-up dated May 4, 2005 (Exhibit H). That was presented to the Committee when the bill was first heard and at that same time the second document you have dated March 10, 2005 (Exhibit I) from Mr. Richard Peel, titled "Amendment to First Reprint," that was also presented on the date of the hearing. The Committee voted to adopt the multi-colored mock-up as modified by Mr. Peel's document (Exhibit I). The Committee did vote to amend and do pass. Today, Mr. Peel along with several other individuals ... are presenting an additional amendment (Exhibit J) asking the Committee to reconsider the prior vote of amend and do pass and to adjust one part of the bill. That part would be in the mock-up (Exhibit H) ... page 2, lines 34 through 43 ... what subsection 5 does is amend the definition of contractor and the issue was to exclude from the definition of contractor certain owners of planned-unit developments. ... The single sheet of paper presented today dated May 12, 2005, from Mr. Peel (Exhibit J) would replace subsection 5 that is in the mock-up (Exhibit H) with the language you see on that piece of paper (Exhibit J).

CHAIR TOWNSEND:
Mr. Powers, is Exhibit I already incorporated into the mock-up amendment, Exhibit H?

MR. POWERS:
"… We can disregard … Exhibit I and just work off the mock-up (Exhibit H) and … (Exhibit J)."

JENNIFER LAZOVICH (Focus Property Group):
It is my understanding that after the Committee heard this bill last week there were still two parties that had objections to the bill, Northern Nevada Associated General Contractors (NNAGC) and the State Contactors' Board. Subsequent to the hearing on this bill, we worked with NNAGC and everyone else named on the top of Exhibit J. That is the language upon which we agree and are presenting today.

CHAIR TOWNSEND:
Is there anyone in attendance who does not believe that is an accurate statement?

In order to accommodate the amendment, we would have to move to rescind our original action whereby we previously voted to amend and do pass.

> SENATOR HARDY MOVED TO RESCIND THE PREVIOUS ACTION OF AMEND AND DO PASS A.B. 193.
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> SENATOR SCHNEIDER SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
Now that we possess the bill again, we would have to amend and do pass Exhibit H including the amended paragraph language replacing section 6, subsection 5 in Exhibit J.

SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 193.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now hear A.B. 364. This bill has to do with reports and the time frame that they are submitted.

ASSEMBLY BILL 364 (1st Reprint): Makes various changes relating to industrial insurance. (BDR 53-249)

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):
After this Committee previously voted on this bill, I was able to reach agreement with the Nevada Trial Lawyers Association and representatives of organized labor relative to an amendment you will find in the mock-up amendment (Exhibit K). If you recall, we originally discussed quarterly reports. There is now an agreement amongst the parties that it would be an annual report with the caveat found in section 5, subsection 2. Basically, it says that the injured worker can request a written report at any time and the insurer must respond in 30 days. Additionally, every insurer is required to provide an annual statement to the injured worker. That was acceptable for all involved.

CHAIR TOWNSEND:
Do we need to regain control of the bill again?

MR. POWERS:
"Yes, since this is not a substantive change to what was discussed before. ... I have control of all of the amendments ... so the Committee may reconsider and amend and do pass."

SENATOR HARDY MOVED TO RESCIND THE PREVIOUS ACTION TAKEN ON A.B. 364.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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JEANETTE BELZ (Property and Casualty Insurance Association of America):
When the Committee considered the original amendment, it had to do with section 6 of the bill and vocational rehabilitation counselors. At that time, it was testified that we only knew of one situation of a company that provided disability services that was under the umbrella of a company that provided administration of claims.

This amendment (Exhibit L) says that if there is a relationship between those two companies, that must be disclosed to the injured worker and the injured worker would then have the opportunity to choose another vocational-rehabilitation counselor.

MR. OSTROVSKY:
Employers Insurance Company of Nevada does not provide vocational-rehabilitation counseling services directly, nor do we indirectly provide them through a subsidiary company. We would still support this amendment based on the fact that we may provide these services in the future.

CHAIR TOWNSEND:
Is there anyone who objects to today's proposed amendment, Exhibit L?

PATRICK T. SANDERSON (Laborers Local No. 872):
I would request that we check with Mr. Jeffrey before voting on the inclusion of Exhibit L.

CHAIR TOWNSEND:
We will postpone voting on this bill until Mr. Jeffrey can be located and has the opportunity to testify.

We will now hear A.B. 260. We have a mock-up amendment (Exhibit M).

ASSEMBLY BILL 260 (2nd Reprint): Revises provisions relating to environmental health specialists. (BDR 54-855)

SENATOR HECK:
Exhibit M does several things, first of which it deletes all references to a basic certificate. That will no longer be part of the registration process. It also revises the definitions of environmental health which makes it, in my opinion, a much cleaner definition without a laundry list of different activities. It added two other exemptions to those who are not included in the field of environmental health and those are on page 3, lines 16 through 20. It also enacts a grandfather clause by not requiring registration until July 1, 2007. While the act becomes effective July 1, 2005, and the process will begin, registrations are not required until July 1, 2007. We have also added background checks with fingerprinting to the application process. Page 7, lines 41 through 47 would be deleted, because language for that is already in another section of the bill.

SENATOR TIFFANY:
With the massage-therapy board, we allowed student applicants the opportunity to apply for the background check and fingerprinting to get the process started. Will this bill have the same provisional-licensing period?

SENATOR HECK:
There is no provisional period. They have to go through the entire background check and receive clearance to complete the registration process to be issued their certificate. The idea of not requiring the registration until July 1, 2007, would allow those currently working to complete the process and then be registered without having any downtime.

SENATOR TIFFANY:
I am referring to new people coming out of school who are going to be certified.

SENATOR HECK:
That was not discussed. Historically, we are trying to get away from allowing people to work until they have completed the background check. That was not requested by the environmental-health specialists.

SENATOR TIFFANY:
I am concerned with why we should have a six-month waiting period due to a backlog if they are qualified to be working.

SENATOR CARLTON:
I believe, unless you prohibit someone, anyone can go ahead and submit their background information to the board. There is no prohibition from doing that. It may not become approved until after schooling is finished, but unless you put in a prohibition on that, then I do not think we really need to worry about that.

MR. POWERS:

> ... I would agree with Senator Carlton's interpretation. ... Someone who is nearing completion of their education may apply beforehand under the regulations of the board so that when they do complete their education, the application process has been finalized. ... . In addition, right now under the provisions of the bill, no one would have to have the certificate until July 1, 2007, but they are permitted now to make their applications. ... There would also be that entire two-year period that would transition to the mandatory licensing.

SENATOR CARLTON:
I am still uncomfortable with this bill. It may be the history of the board that gives me a level of trepidation. The only thing that brings me to the point of being able to partially support this bill is the fact that it will not become effective until July 1, 2007. That will give us time to evaluate and provide guidance to the board.

SENATOR TIFFANY:
We discovered that the concerns of Senator Carlton were unfounded. The environmental-health specialists had provided reporting and did do what they were asked. It was a misconception that they had not.

SENATOR HECK:
In working with Mr. Allen and Mr. Maxson, they provided confirmation from the Legislative Counsel Bureau (LCB) that all of their filings over the last several years were timely and complete. There have been no problems since those two gentlemen have taken over direction of the board. I would not foresee any problems in the future having worked with them. While the

July 1, 2007, effective date alleviates most of the concerns that may have been there, I am sure that by 2007, this board will be charging ahead.

SENATOR CARLTON:
I feel I must respond. My concerns were based on investigation and information I had and if that was wrong, I apologize. In this case, I do not believe all of the information was truly done in the fashion it was supposed to be done. I do not believe everything we discussed in that subcommittee was unfounded.

MR. YOUNG:
I was the one who supplied the information to Senator Carlton. To my knowledge, in checking with the Director's Office, Administrative Division of the LCB, all of the audits have been turned in although there were some that were untimely. I will stand corrected if this is proven to be incorrect. The reports required under the NRS 622.110 were not available to the director of the LCB when I inquired. If that is no longer the case, and they were turned in, that would be fine. I still have not seen those reports. I offer that for the board's help, if they have not been turned in. There are a number of reports that all boards must provide and I think sometimes there is confusion. They do not understand all of the requirements, but it would be personally helpful to me if they could double-check to make sure they have turned in the reports required by the NRS 622.110.

> SENATOR HECK MOVED TO AMEND AND DO PASS A.B. 260 USING EXHIBIT M AND STRIKING THE LANGUAGE OF SECTION 19, SUBSECTION 2 OF EXHIBIT M.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR TOWNSEND:
We will recess until 10:45 a.m.

The meeting will come back to order at 10:45 a.m. We will now hear A.B. 290 and we have a mock-up amendment (Exhibit N). This was a result of a change

requested by Mr. Maddox and Mr. Nadeau on sections 3 and 7. It is also necessary to amend language in sections 10 and 11 to conform to language we passed in S.B. 325 sections 76 and 77.

ASSEMBLY BILL 290 (1st Reprint): Makes various changes to provisions relating to common-interest communities. (BDR 10-951)

SENATE BILL 325 (1st Reprint): Makes various changes concerning common-interest communities. (BDR 10-20)

CHAIR TOWNSEND:
A number of people who work in this industry have questioned the provisions in section 3, subsection 1 of the amendment, "... an association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease the unit." In the same section, subsection 2 reads, "The provisions of this section do not prohibit an association from enforcing any provisions which govern the renting or leasing of units and which are contained in this chapter or in any other applicable federal, state or local laws or regulations." If the covenants, conditions and restrictions (CC&Rs) are silent on the issue of renting or leasing, and they do not want them to remain silent and they go to a normal board meeting, meet all of the requirements and make those changes, does this supercede subsection 2?

MR. NADEAU:
As I understand, there is case law that allows for an association through their CC&Rs or declarations to prohibit renting totally, limit the percentage of rentals or a variety of other things. It is my understanding, in this legislation, that if they go back to their association and through their normal changes within their CC&Rs, they do a change to their CC&Rs, then that will hold. To just prohibit or do something of that nature by board action would preclude them from changing such provisions.

MICHAEL S. TRUDELL (Caughlin Ranch Homeowners Association):
The board of directors cannot act on rental provisions without an amendment to the CC&Rs and it may require a super majority of the membership of the homeowners association to amend the governing documents. In our case, it is 70 percent. So, a super majority would be required to amend the declaration. We were involved in a lawsuit, Caughlin Club versus Caughlin Ranch. The State of Nevada is very much a property-rights state. If you had the ability to

rent your unit under the current CC&Rs and the CC&Rs were amended to remove that right, I would think that would be a property right that could be adjudicated; there could be a determination based on case law that the property right cannot be removed.

CHAIR TOWNSEND:
The issue before this Committee, for two separate Legislative Sessions, was on short-term rentals inside an association. I believe the question was 30 days or less. Have we maintained the right of associations to prevent those short-term situations?

MR. NADEAU:
If A.B. 290 were amended as specified in Exhibit N, that would still be protected. Under section 7, our amendment would bring that back to only counties with a population of 400,000 or more. That is within statute; it was specifically intended to allow what they call transient commercial users, 30 days or less by definition.

CHAIR TOWNSEND:
We do not want to allow them.

MR. NADEAU:
That definition allows precluding them.

CHAIR TOWNSEND:
In Clark County, we allow them to preclude those if the association sees fit.

MR. NADEAU:
The right to preclude is still protected under this bill.

CHAIR TOWNSEND:
Referring to page 2, section 4 of the mock-ups, has that agreement been accepted by all of the people who work in this arena? There are a number of people who have contacted me to say that is not the way it works. The board does not want to meet twice on the bids.

MR. TRUDELL:
This amendment would allow the board of directors to direct the manager to obtain bids for a specific job the board has authorized. The manager would not need to come back to the board for approval of a specific bid.

CHAIR TOWNSEND:
That is not what I am reading. I am reading that if an association solicits bids for an association project, they may do that directly as a board through their manager or a management company. When the bids come back, they must be opened by a representative of the association at a time and place specified in a written notice to bidders. Is that representative a board member, property manager or someone who is a member of the association?

MR. TRUDELL:
I believe it is the representative of the homeowners association, either the manager or board-appointed person.

CHAIR TOWNSEND:
Mr. Powers, that is not how I read it; the language is confusing. What are we trying to accomplish?

SENATOR SCHNEIDER:
Some of the homeowners want the bids to be opened at a meeting to provide input and ask questions. If the bid was opened at a meeting, which Mr. Maddox suggested we take out, then the managers could always make the report for the next meeting and evaluate the different bids. Part of it was for the bids to be opened at a meeting, and then they could act on them. After that, the managers could evaluate the bids and make a report.

CHAIR TOWNSEND:
Who is Mr. Maddox representing?

SENATOR SCHNEIDER:
He is representing himself and the Community Association Institute (CAI), but I am not sure the CAI has had much input on this.

MR. POWERS:
I stand in the same place you are. I agree with Senator Schneider as originally conceived in A.B. 290. Section 4 was directed to

> provide the members of the homeowners association the ability to be at an open meeting of the executive board while the bids are opened. ... I am not certain what he [Mr. Maddox] is trying to achieve with his language, but it does seem to provide some benefit to the bidders, because they are provided with written notice when those bids are going to be opened. ... It doesn't say that those bidders have to be allowed to be at the meeting or where they will be opened. I am not certain, as you are, exactly what the intent of the proposed amendment is.

SENATOR SCHNEIDER:
I would say that these bids would be for major work with large expenses.

SENATOR HARDY:
My recollection of the discussion was that you accurately described the circumstances they were trying to address. From testimony, they wanted to be able to open these bids in advance of the executive meetings so they could prepare a report. If this language does not allow that or is too broad, maybe, we should go back to that premise and try to craft language that accomplishes that without being overly broad.

SENATOR HECK:
I appreciate the original intent as explained by Senator Schneider. We heard testimony from Ms. Harvey of Las Vegas who basically talked about the exact situation that happened with them and to what Senator Schneider alluded. We only heard one person say that the reason not to do it was to have a report created in advance of the executive-board meeting. I would agree with Senator Schneider. If bids are opened at a meeting of the association or the executive board, that report could always be generated for a future meeting in an open process so all the homeowners could see the bids.

CHAIR TOWNSEND:
I like that better than the language here.

MR. TRUDELL:
What if on line 2, section 4 of the amendment, it says the bids "may" be opened by a representative and then the word "must" be approved by a board at a meeting of the executive board. I do not know the intent of Mr. Maddox,

but it would seem that if there was a necessary report, you would need to have some idea of what the bids were before the board meeting.

CHAIR TOWNSEND:
I think you are better off opening them at the board level. If it takes an extra month for a report to be written, so be it. I think we are trying to bring credibility to this process. Unfortunately, there are some boards that are creating problems. This is supposed to be a transparent process where bids are solicited and received; then the board or association gets together at a normal meeting to open the bids and have legitimate discussions. That is what this is meant to deal with.

MR. TRUDELL:
I do not have a problem with the original language; I was just offering ideas.

CHAIR TOWNSEND:
Does the Nevada Association of Realtors have a problem with the language in section 10, subsection 2?

BUFFY J. DREILING (Nevada Association of Realtors):
We actually proposed that language. The previous language basically said that the contract has to be provided before it becomes binding; then they can cancel. The bill as previously written did not have any set time frames and the amendment clarifies it for both sides.

CHAIR TOWNSEND:
This is an important component because people need to know this information.

MR. POWERS:

> ... As I understand it, section 3 [of the bill] would be modified so that it is identical to section 42 of Senate Bill 325. Section 4 would stay the same as it currently exists in A.B. 290. Section 7 would be modified in the amendment to restore the language in a county whose population is 400,000 or more ... . There has been a mock-up from the working group of common-interest communities on S.B. 325. ... I have worked with Senator Schneider and that working group so that as I understand it, sections 10 and 11 would not reflect the first reprint of [S.B.] 325, but would reflect the first reprint as modified by the mock-up from the working group.

CHAIR TOWNSEND:
Committee, we are trying to conform this bill to S.B. 325 with the change in section 4.

SENATOR SCHNEIDER:
What is the effective date?

MR. POWERS:
"The bill does not have an effective date; so by statute the default date is October 1, 2005."

SENATOR SCHNEIDER:
Do the realtors have a preferred effective date?

MS. DREILING:
October 1, 2005, would be fine.

CHAIR TOWNSEND:
I need to disclose that my wife is a property manager.

> SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS A.B. 290 WITH THE EXPLANATION OF CHANGES BY MR. POWERS.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now continue with A.B. 364. There was a proposed amendment brought forward by Ms. Belz that Mr. Jeffrey had not seen.

JOHN (JACK) E. JEFFREY (Southern Nevada Building and Construction Trades):
I am opposed to this amendment. I think, as well-meaning as it may be, this would tend to circumvent the whole idea of the change we made originally; that concept being, vocational-rehabilitation counselors could not work for the insurance company paying the claims. The best I can determine, we are trying

to help one vocational-rehabilitation counselor. This provision would open the statute to the point that any insurer could use this.

CHAIR TOWNSEND:
Is it the disclosure issue that you do not like?

MR. JEFFREY:
I do not think it makes any difference. Once that vocational-rehabilitation program has started, you are stuck with it, because the decision has to be made by the employee before vocational-rehabilitation services begin.

MR. OSTROVSKY:
Exhibit K contains the amendment I proposed. It is a consensus agreement and everything has been agreed to by the parties. The only outstanding issue I know of is the amendment request from Ms. Belz.

SENATOR TIFFANY:
I spoke to Ms. Belz a number of times even prior to her bringing forward Exhibit L. I think it is a reasonable solution, particularly for this one situation. I do not believe it is a problem or conflict as long as the individual who is using the services is notified and has the option to opt out.

SENATOR TIFFANY MOVED TO AMEND AND DO PASS A.B. 364.

SENATOR HECK SECONDED THE MOTION.

SENATOR CARLTON:
If we are going to be considering the amendment, I think we need to review it more closely. In the amendment it does say, "may make a written request," but it does not deal with time frames, who to make the request to or what happens if they are denied. There are no guarantees in this amendment that just with the disclosure, the employee is taken out of harm's way. I do not believe the amendment is thorough enough to address the employee's concerns. Disclosures are fine, but why give disclosure if there is no mechanism to allow them to go somewhere else?

MS. BELZ:
I do not think the issue is to deny anyone their ability to go to a vocational-rehabilitation counselor. The time frame would be prior to the

commencement of services. If desired, the person would have the ability to request another vocational-rehabilitation counselor.

SENATOR CARLTON:
The amendment does not say they get another one. It just says they can request one and does not say the request must be granted.

CHAIR TOWNSEND:
Whether it was Mr. Jeffrey or Senator Carlton, what they are trying to say is, if the injured worker makes the request, what is the next step? Are they guaranteed a new counselor and how long does that take? That language is not in the proposed amendment.

MR. YOUNG:
I believe the regulations provide that if you make any kind of a request, you have 30 days to respond. If you do not respond at all, it is deemed to be denied. Then, whether it is denied outright or by default, the worker has the right to request a hearing. Perhaps, Mr. Wiles can explain if that is a correct statement.

MR. WILES:
Mr. Young is correct. There is a de facto denial provision in the hearing process that is in chapter 616C of the NRS. It protects the injured worker if the insurer does not respond to any issue for which the worker made a request. It is a generic provision applicable to the broad range of benefits under workers' compensation.

CHAIR TOWNSEND:
Are you saying, although this is generically written, there are regulations that define what happens?

MR. WILES:
Not exactly, I am saying there is a statutory provision that provides an appeals mechanism for an injured worker who does not get a response from an insurer or third-party administrator. That provision is generic and operates across the broad spectrum of benefits.

You are discussing a very specific provision related to vocational-rehabilitation benefits that has its own section within chapter 616C of the NRS. If there are

specific provisions you want to apply in this circumstance, in terms of timing, rejection and those sorts of things, this is the place to do it, because the other applies across the board and does not require a response.

SENATOR HECK:
I appreciate the concerns. No one wants someone to have to go through a drawn out appeals process. I would ask Mr. Powers if we could add something to the effect that "an injured worker to whom such a disclosure has been made may make a written request and the insurer or third-party administrator shall authorize an alternative vocational-rehabilitation counselor." That way if they make the request, they get a different vocational-rehabilitation counselor which I think is the intent. Nobody is trying to say if they make the request, it will be denied. If you make a request for a different vocational-rehabilitation counselor, you get one.

SENATOR CARLTON:
A vocational-rehabilitation counselor outside of the company and the goal would be met to protect the injured worker.

CHAIR TOWNSEND:
Yes. Ms. Belz is that what you were trying to state?

MS. BELZ:
Yes.

CHAIR TOWNSEND:
Mr. Powers, did you understand Senator Heck's and Senator Carlton's dialogue that would change Ms. Belz's proposed amendment, Exhibit L?

MR. POWERS:

> I do, Mr. Chairman and Senator Heck is right on point. The general provisions with regard to the denial of benefits and the hearings and appeals process involves a situation where the insurer is making the denial based on the exercise of discretion, judgment and different factual situations. What this is creating is an absolute right of the employee to have an alternate vocational-rehabilitation counselor. ... We need to build those provisions into this section to make it clear that the employee has that right and ... the insurer has to ... accomplish that right within a specific period of time.

CHAIR TOWNSEND:
We have a motion on the table. Based on the previous discussion, does the maker of the motion wish to include the language of Senator Heck and Senator Carlton?

SENATOR TIFFANY WITHDREW HER PREVIOUS MOTION ON A.B. 364.

SENATOR HECK WITHDREW HIS SECOND.

* * * * *

SENATOR TIFFANY MOVED TO AMEND AND DO PASS A.B. 364 WITH AMENDED LANGUAGE FROM SENATOR HECK AND AMENDMENTS FROM MR. OSTROVSKY AND MS. BELZ.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON ABSTAINED FROM THE VOTE. SENATOR LEE WAS ABSENT FOR THE VOTE.)

* * * * *

SENATOR CARLTON:
I would like to wait to see the amended language in the bill.

CHAIR TOWNSEND:
We will now hear A.B. 496. This bill had two components. One was the authorization of those who wanted to apply to the State Board of Cosmetology (SBOC) for a limited-time license if they were licensed in another jurisdiction. The limited-time license was originally restricted, to resort hotels. That discussion led us to every licensee or every establishment could make that application. The second component had to do with those who provide the unique service outside of the country and would like to come into the State without having to get two licenses.

ASSEMBLY BILL 496 (1st Reprint): Revises certain provisions governing licensing and regulation of cosmetology. (BDR 54-1182)

SENATOR CARLTON:
After we met on this bill, I discussed the difficulty of defining spa or salon with Mr. Powers. I believe what he did will allow the board to define spa or salon. That is fine if the Committee is comfortable with that. If not, resort hotel is fine. If we think it is too difficult to define spa, we could start with resort hotel and in two years revisit the issue.

CHAIR TOWNSEND:
Committee, if we were going to allow the board to define it, that sets up one option. Senator Carlton did state that we could leave it at resort hotel and revisit the issue in two years. As much as I would like to expand it to any spa, I do not know who could afford to do that. These people are extremely expensive.

SENATOR TIFFANY:
What if a salon wants to bring in a celebrity for a week? That is not unusual in a chain salon that has the clientele and money to do that. We also have some high-rises and mixed-use communities that are high-end and may not be considered resort hotels, but may want to take advantage of bringing in someone. I do not want to limit it to just the resort hotels, knowing we have other situations in southern Nevada and high-end clientele who can take advantage of and afford the service. I am okay with regulations through the SBOC.

CHAIR TOWNSEND:
In the mock-up amendment (Exhibit O), could we add language for establishments other than resort hotels?

MR. POWERS:
"... That provision is already in the mock-up as it stands now, [section 3,] subsection 8, line 26 through 28. 'The board shall adopt by regulation a definition of the term health spa as that term is used in this section.' ... ."

CHAIR TOWNSEND:
The problem I have with that is we are telling the SBOC they are going to do regulations. I think Senator Tiffany's point is that we have to be ahead of the curve. Let us assume it is a new high-rise with a licensed cosmetology establishment that is not a health spa. It is just for nails and hair. Why would we want to narrow that? For us to predetermine it is a health spa causes me

concern. I think the changing marketplace in southern Nevada may require the board to encompass a lot of things. Not everyone has a Ritz Carlton health spa. I could see one of the expensive high-rise facilities bringing someone in more than I could see one of the chain salons doing that.

SENATOR HARDY:
As I read this, it leaves it wide open. By regulation, they could define an automotive facility as a health spa. They could define a health spa as a hair and nail place in a high-rise building.

CHAIR TOWNSEND:
I do not disagree. What you are doing is automatically determining something as a health spa as opposed to saying that the board shall draft regulations for purposes of letting others do this.

MR. POWERS:

> Mr. Chairman, I understand where you are going, and I think essentially we are going to just say the board shall adopt regulations identifying other locations where it is appropriate for a holder of a limited license to practice cosmetology under that limited license.

CHAIR TOWNSEND:
In my opinion, you do not want to be too narrow.

CHAIR CARLTON:
In trying to be fair to applicants, I did not realize the definitions would be so difficult for what we were trying to accomplish. I was concerned about opening up the definitions, because we did not know where this was going and what the SBOC was going to do with it.

SENATOR SCHNEIDER:
I brought a high-rise bill through this Committee earlier in the Session and we actually had a piece in it about proxies. An Australian group is building the tallest residential tower in the United States in southern Nevada. Eight hundred of the rooms will be in a hotel rental pool even though they are full condominiums. Another 100-plus will be 100-percent occupied condominiums. It will be very high-end and expensive. We need things like this to stay ahead of the market.

CHAIR TOWNSEND:
Referring to page 3, section 3, subsection 8 of Exhibit O, we need to decide on the word "shall," which means they will definitely adopt regulations. You have to decide whether you want to say, yes, they are going to do this or allow them to do this. I would not use the term health spa and use other locations or something such as Mr. Powers said if that is the Committee's desire.

SENATOR TIFFANY:
I think "shall" instead of "may" is great and have no problem with that. I think "other location" would be all-encompassing and that would also give the board some flexibility. The use of the words "locations" and "shall" are good for me.

SENATOR CARLTON:
I see some unintended consequences in that. When we talk about other locations, in essence, we will be granting a de facto license for people to come into this State and practice at any chain such as Super Cuts. If they are qualified, this does not say it has to be a high-rise or someone expensive. These regulations could apply to someone in California who wants to come here for a week. They could work for a little bit of money and then go back to California without ever obtaining a state license. I believe the original intent of the bill was to limit the use of such a license so it would not become a de facto license. In my unintended consequence, I opened a can of worms by talking about spas and day salons. It was never my intention to allow someone to be able to come into Nevada and go to Super Cuts or somewhere else to work.

CHAIR TOWNSEND:
I understand your point to not let every licensee in the surrounding states come to Nevada and go to a Super Cuts to practice five times a year. However, would not that be the jurisdiction of the SBOC to make such a decision?

SENATOR CARLTON:
My concern is that with no guidance that could possibly happen. That is why we were looking at spa, day spa, health spa and salons. Now, we have come full circle and have run into definition issues again.

CHAIR TOWNSEND:
You can narrow it enough.

SENATOR CARLTON:
What will happen without guidance in the bill?

CHAIR TOWNSEND:
What I am saying is that you can narrow it in this bill. First of all, under this bill, they have to be a licensed cosmetologist. You can give the SBOC the authority to narrow this even further to two times a year if it is a non-resort hotel. You could do things such as that to give guidance to them. I cannot speak for the SBOC, but I do not think the SBOC wants to license many of these people.

SENATOR CARLTON:
We are saying to them that they "shall" do this, not "may." We are mandating them to do something, and they have to treat everyone equally or someone will complain.

SENATOR HARDY:
I think the language in section 3 with regard to limiting the use to not more than five periods of 10 days each will resolve Senator Carlton's concerns.

I need to disclose that my wife is a licensed cosmetologist and owns a small salon.

SENATOR CARLTON:
I wanted to make sure the Committee understood why we wrestled with the terminology. We will see what happens in two years.

CHAIR TOWNSEND:
As I remember the bill, it allows the SBOC to set a fee for obtaining a limited license. They could limit the amount of applicants with a significant licensing fee.

SENATOR CARLTON:
If I remember correctly, the fee would mirror another license fee that was only $75 to $100.

MR. POWERS:
"... On page 3 ... lines 5 and 13, it is $100 fee for the application and a $100 fee for the annual renewal."

CHAIR TOWNSEND:
Senator Carlton, would it make you more comfortable to put in an application fee of "not more than" with a higher number and letting the SBOC establish a higher renewable fee of "not more than"?

SENATOR CARLTON:
Those numbers will be fine and I do not think we should treat one group of people differently.

CHAIR TOWNSEND:
We know what we are trying to accomplish with this bill.

MR. POWERS:
"I will work on the language."

SENATOR CARLTON:
We did not discuss section 2, subsection 1. I want to point out those language changes to the Committee. If A.B. 250 passes, there will be a conflict with that language.

CHAIR TOWNSEND:
We should leave it and deal with the conflict amendment if we need to do so.

SENATOR TIFFANY MOVED TO AMEND AND DO PASS A.B. 496.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We will now hear A.B. 384. We have four mock-up amendments (Exhibit P), (Exhibit Q), (Exhibit R) and (Exhibit S). I have a recommended change for Exhibit P. I do not like the 18 months and would recommend that we go back to one year. Are there any more amendments for this bill?

ASSEMBLY BILL 384 (1st Reprint): Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

MR. POWERS:

> ... The two documents we have, one is a larger document dated May 16, 2005 [Exhibit P] and one is a smaller mini mock-up dated May 16, 2005 [Exhibit Q]. We will call these the purple changes. ... What you are being passed out are two other documents, one done in pink [Exhibit R] and one done in orange [Exhibit S]. ... What the pink represents is an additional proposed revision that [Assemblywoman] Buckley worked out with members of the industry. What the orange represents is Keith Lee's proposed revisions based on his discussions with the auto-title loan industry. ... [Assemblywoman] Buckley has seen and approved those as well. ... Just for the record, all four documents could be fused together without any difficulty ... .

CHAIR TOWNSEND:
I would like Assemblywoman Buckley to explain the amendments to the Committee.

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):
There are two types of lenders still working on this bill: those who are convinced that change is necessary and those who continue to obfuscate.

Those convinced that change is necessary continue to work with us and legal counsel to ensure well-crafted bill language. That is what is represented in Exhibit Q and Exhibit R. These amendments do not conflict. We have worked arduously on this with the interested parties and that is why there are so many continued refinements to the original bill.

SENATOR HARDY:
You spoke about Exhibit R, and we also have one from Mr. Lee, Exhibit S. Did you want to address Mr. Lee's exhibit, or do you want him to explain it?

ASSEMBLYWOMAN BUCKLEY:
I worked with Mr. Lee and support his amendment.

KEITH LEE (Consumer Lending Alliance):
My clients have signed off on the amendments that Assemblywoman Buckley has presented today.

CHAIR TOWNSEND:
Ms. Tidd, have you had time to review the amendments proposed by Assemblywoman Buckley?

CAROL TIDD (Commissioner, Division of Financial Institutions, Department of Business and Industry):
I was just now given a copy and have not had time to review the amendments.

CHAIR TOWNSEND:
When this bill is processed and reprinted, we would like you to provide us with your opinion on your role and how things will be dealt with based on the new policy.

MS. TIDD:
I have no problem supporting that.

CHAIR TOWNSEND:
There was also another mock-up amendment (Exhibit T) brought forth from another faction of the industry. I have not reviewed that. Assemblywoman Buckley, have you seen that amendment?

ASSEMBLYWOMAN BUCKLEY:
I did receive a copy of Exhibit T yesterday. This gentleman had two issues. His first issue was that he thought the loan-to-value ratio on the income was not clear or could hurt his business. That was already corrected in Exhibit R. The second issue was that he loans to small businesses and manufactured homes in excess of 40 percent. He felt this would hurt the ability to do high-cost loans. I believe this individual was invited to our meetings throughout the last 18 months and never attended. To him I say: do not pile on illegal charges, offer a written agreement that states terms and do not threaten to imprison or criminalize someone when they cannot pay their debt.

Our working group has met over the last 18 months and has addressed every legitimate concern raised.

CHAIR TOWNSEND:
People work very diligently on bills like this in the 18-month interim period. We will always try to be respectful and considerate to those who bring forth amendments in the last hour, but there has been a process going on for two years.

Ms. Tidd, the goal is for you to tell us exactly how you plan to deal with this for the future. We need to make sure your Division implements and uses the law to benefit the public.

MS. TIDD:
That was one of the reasons that S.B. 431 came forward. It would give us some authority for fining capability and we are considering personnel changes to allow us to get out into the field. We have had some breakthroughs on hiring. Right now we are budgeted for additional staff and I think the fining capability will help things immensely.

SENATE BILL 431 (1st Reprint): Makes various changes to provisions governing financial institutions and related business entities. (BDR55-361)

CHAIR TOWNSEND:
You know who are the bad actors. If there is a trend, you need to exercise your authority. We want people to change behavior and play by the rules.

ASSEMBLYWOMAN BUCKLEY:
I have meetings scheduled with someone from the Office of the Governor and Ms. Tidd on the topic of enforcement.

SENATOR CARLTON:
We are substituting the word "licensee" with "person" under section 74 of Exhibit P. Is that person really the licensee and we are just changing the name?

MR. POWERS:
... The change from licensee to person was done as a drafting change by the Legal Division in this mock-up. ... The reason being is that one of the sections that section 74 covers, ... section 29, deals with unlicensed activity and so a person who is engaging in unlicensed activity would not be a licensee. ... The change to person was too broad in scope to

> make sure because a licensee is a person. There is no escaping that. ... If the Committee is more comfortable, I certainly could return to any licensee or other person. ... Person captures the licensee and the idea was to make sure, since section 29 dealt with unlicensed individuals, that the term person captured those individuals as well.

ASSEMBLYWOMAN BUCKLEY:
I do not have a problem with the language "person."

CHAIR TOWNSEND:
I think it is better.

ASSEMBLYWOMAN BUCKLEY:
If you are working with Exhibit P, we could go through the eggplant colored changes that I had never seen before. Basically, there was an addition of a $25 bad-check fee to people who do not use checks. I did not approve of that. Twenty five dollars is for bad checks and if you do not use a bad check, you do not get the money. That seemed very clear to me. In the damaged section which is section 74, this was one of the most contested sections of the bill. The original section that everybody had agreed on, two days later no one agreed on it. This is when the substituted eggplant colored language in Exhibit P was submitted. I watered it down so much; I do not think it is effective anymore. We met again yesterday and had e-mail correspondences this morning and I think we have come to an agreement to combine Exhibit P and Exhibit Q in a way that will work for us and the good lenders.

CHAIR TOWNSEND:
Would it be your intention to offer that so we could put that as an amendment on the floor or would you want to do that in conference?

ASSEMBLYWOMAN BUCKLEY:
However you prefer to do it.

CHAIR TOWNSEND:
The reason I want to move this bill today is to give Mr. Powers the necessary time to complete this. We may later find some technical things we would want to adjust after all of the amendments come together in the bill.

SENATOR TIFFANY:
In section 74, it appears as if in a civil penalty there can be actual consequential damages. There is also a statutory damage. Could you explain those?

ASSEMBLYWOMAN BUCKLEY:
Actual and consequential damages usually reflect out-of-pocket expenses. Punitive damages follow our punitive-damages statutes. If it is an intentional, willful action and you can prove that, you will be awarded damages. If the court deems legal and equitable relief, it would be related to garnishing wages. Statutory damages are utilized by the Legislature when sometimes those other damages are elusive.

MR. POWERS:

> I agree with ... [Assemblywoman] Buckley's assessment that the type of damages that you are talking about, Senator Tiffany, flow from tort to personal injuries. ... These damages flow from a contract. Essentially, what consequential damages are under a contract action are damages that were reasonably foreseeable from the contractual relationship. For example: If you ... had a construction contract and one party breached the construction contract requiring the other party to go out and get a new contractor and pay a higher price, that would be a foreseeable consequence of the breach of contract and therefore be consequential damages. In the case of these types of lenders, [they] would be any damages that were reasonably foreseeable from the lender's actions. So if the lender was engaging in abusive credit practices that resulted in the loss of the employee's ability to go to work for a few days, those would be a reasonably foreseeable consequence of the abusive lender's practices.

SENATOR TIFFANY:
Can it go as far as he loses his car, gets a divorce and the whole family is disrupted on consequential damages?

ASSEMBLYWOMAN BUCKLEY:
No. That is a different type of damage that is not applicable here.

SENATOR TIFFANY:
It appears that no matter what happens, if you go to court, you would end up paying.

ASSEMBLYWOMAN BUCKLEY:
These items are available in most actions. They are specified in this bill.

SENATOR TIFFANY:
Will there be changes to section 74?

ASSEMBLYWOMAN BUCKLEY:
Yes, we are going to see the amendments melded together. We want the penalties to be used as a tool to weed out the bad actors.

CHAIR TOWNSEND:
Legal counsel has indicated that Exhibit P, Exhibit Q, Exhibit R and Exhibit S do not conflict, and we would anticipate language from the sponsor of the bill regarding section 74. I still think one year is sufficient under the definition of a short-term loan. Eighteen months starts to get into a gray area.

SENATOR CARLTON:
I do not think we discussed Exhibit Q.

CHAIR TOWNSEND:
Assemblywoman Buckley brought Exhibit Q for purposes of clarifying a number of areas; I think she did an excellent job.

ASSEMBLYWOMAN BUCKLEY:
Exhibit Q is what I presented at a previous hearing, and I agreed with and approved those changes.

The only other question I have is in Exhibit P, section 44.5, which allows the onetime late fee and the insufficient-funds fee of $25. I believe everyone has agreed to remove that.

CHAIR TOWNSEND:
We are talking about removing section 44.5 from the mock-up amendment Exhibit P. Assemblywoman Buckley and the industry will bring back language

on section 74. We will meld Exhibit P, Exhibit Q, Exhibit R, and Exhibit S into this as well as the change in section 17 under definition of a short-term loan.

MR. POWERS:

> ... There is just one more change discussed ... in the larger purple mock-up [Exhibit P] for the [section] 16. That is page 32, and it is the change in the transitory language. ... I just want the Committee to be aware that this language here changes the transitory [language] slightly allowing an individual licensee to request approval from the commissioner to extend compliance deadlines to January 1, 2006, for certain components of the bill.

CHAIR TOWNSEND:
That has to do with, "requiring changes to or replacement of existing computer software or major modifications to existing business processes, as determined by the Commissioner"?

MR. POWERS:
"That is correct."

ASSEMBLYWOMAN BUCKLEY:
I am supportive of that as long as it is understood that substantive portions of the bill and the consumer protections are going into effect July 1, 2006, but also allow a company to present their case if there is a major problem.

CHAIR TOWNSEND:
Is there someone who the State is comfortable with when they read a Hispanic contract? Is it the same as one that is presented in English? How do we deal with that?

ASSEMBLYWOMAN BUCKLEY:
It will be more difficult because we have a uniform retail-installment contract that is set forth in the *Nevada Administrative Code* with regard to vehicles. We found someone to translate and everyone felt comfortable with it. I tried to get a uniform contract on payday loans, because it would prevent the imaginative variations, but the industry was not willing to agree to that. That is not required and I think will be problematic in that we will still have 175 different versions of payday loan contracts. It will be tougher for the commissioner of financial institutions. My guess is, in a practical sense, what will happen is the

company will utilize its best efforts to have an interpreter translate. It will be up to the consumer to complain to the commissioner if it does not meet acceptable standards.

CHAIR TOWNSEND:
In the interim, we can encourage the industry to do what the vehicle industry does, because it is good for consumers and there is no misunderstanding over what is in the contract.

I would recommend that we take the three amendments from Assemblywoman Buckley, remove section 42.5, wait for the language on section 74 and change the short-term loan from 18 months to 1 year.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS A.B. 384.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

SENATOR SCHNEIDER:
I do not know why, when we have the lowest interest rates in three generations, these businesses are so profitable. I think over the interim we need to look at the real estate market softening, the possible rate of foreclosure and the impact of that to this industry.

CHAIR TOWNSEND:
We will now hear A.B. 540. The mock-up amendment (Exhibit U) before us deals with a narrowing of standards and procedures of operating a crane. The language change begins on the bottom of page 1, subsection 2. I would like the definition of this lifting device.

ASSEMBLY BILL 540 (1st Reprint): Revises provisions governing certification of crane operators. (BDR 53-1341)

MR. YOUNG:
We invited Mr. Wiles to return, because he has greater technical knowledge. It is my understanding that the language in section 1, subsection 3, paragraph (a) would take care of the concern about forklifts and other equipment.

MR. WILES:
The language you see in the mock-up amendment on the second page, line 15, is language that I put together based on previous concerns of the Committee regarding lifting devices. There are a variety of lifting devices that have booms and might conceivably fall under the scope of the proposed statutory change. I offered that to Mr. Bacon, he forwarded that to your office and that was part of the mock-up. I believe that addresses the concerns of some Committee members.

RAYMOND BACON (Nevada Manufacturers Association):
I spoke with the sponsors of the bill and they are comfortable that this accomplishes the intention of the bill. This language makes it clearer, and they are comfortable with that.

CHAIR TOWNSEND:
On page 2, line 13, are we talking about cable, telephone, electric or gas companies with the term utility line truck? Will that be a problem?

MR. WILES:
To the extent that an electric or utility truck could be defined more precisely in the bill, or some other statute to refer to, we would appreciate that.

CHAIR TOWNSEND:
We will have you, Mr. Bacon and representatives of the utility companies get together and adjust that language so it is not so open. That would be helpful to the bill and the DIR.

PAUL D. MCKENZIE (Operating Engineers Local No. 3):
That language was specific to the trucks that are utilized to maintain and erect power lines. The definition currently exists in the federal Occupational Safety and Health Administration (OSHA) regulations.

CHAIR TOWNSEND:
I think holding this bill over for another day to get consensus on that language would be helpful.

SENATOR LEE:
Is enforcement directed at the owner of the crane or the operator?

MR. WILES:
Normally, under the OSHA standards, the employer is responsible for the conduct of its employees. I see nothing in this bill that would change that.

SENATOR LEE:
Is it incumbent upon the operator to obtain certification and if you show up at a job site, must the operator carry certification?

MR. WILES:
We do issue certifications but we generally do not cite employees. We believe it is the employer's responsibility that the OSHA standards and related aspects are in compliance.

CHAIR TOWNSEND:
We will take up this bill again on Friday.

The meeting of the Senate Committee on Commerce and Labor is now adjourned at 11:43 a.m.

RESPECTFULLY SUBMITTED:

Jeanine M. Wittenberg,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: