

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

**Seventy-third Session  
May 26, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Thursday, May 26, 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:**

Lynn Hendricks, Committee Secretary  
Scott Young, Committee Policy Analyst  
Donna Winter, Committee Secretary

**OTHERS PRESENT:**

Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of Business and Industry  
John R. Orr, Deputy Commissioner, Division of Insurance, Department of Business and Industry  
Lisa Foster, Deputy Chief of Staff, Office of the Governor  
Don Jayne, Nevada Self Insurers Association  
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual Company  
Samuel P. McMullen, Assurant Group  
Harry Bassett, Jr., Assurant Group

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Greg Ferraro, Consumer Health Alliance  
Allen Erenbaum, Consumer Health Alliance

CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (A.B.) 338.

**ASSEMBLY BILL 338 (2nd Reprint)**: Makes various changes relating to insurance. (BDR 57-232)

ALICE A. MOLASKY-ARMAN (Commissioner, Division of Insurance, Department of Business and Industry):

I have written testimony ([Exhibit C](#)) and a PowerPoint presentation ([Exhibit D](#)). I have distributed a packet of written material ([Exhibit E](#)) addressing the proposed provisions that are shown on page 1 of [Exhibit D](#). I have also provided a section summary of A.B. 338 as reprinted with amendments adopted on May 24, 2005 ([Exhibit F](#)).

Nevada's captive insurers industry has grown by ten new captives each year in the past three years. There is a projected captive insurer growth of 20 new businesses each year if Nevada's reputation for a sound and welcoming environment is supported by the Legislature. If there is no support, we expect a growth of two captives each year. When I testified in the Assembly, I did not articulate these points very well. That is why I have amended the fiscal note ([Exhibit G](#)) to more accurately reflect the impact of the proposed fee and tax reductions. Slide 11 of [Exhibit D](#) illustrates how I have solidified the projections also.

If the bill is enacted with the Assembly's deletion of sections 62 and 63, it will harm the General Fund revenue and also those individuals seeking liability protection in a hard market. It would prove devastating to the community of professionals which has emerged to bolster Nevada's risk-retention groups (RRGs) and captive insurer industries. I have distributed five letters ([Exhibit H](#)) which confirm the economic development aspects surrounding RRGs and captives. The letters also paint a bleak picture of the future of this community without the tax and fee relief proposed in sections 62 and 63 of the bill. I strongly urge the Committee to reverse the action taken by the Assembly and pass A.B. 338 with sections 62 and 63 intact as written in my proposed amendment ([Exhibit I](#)).

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SENATOR LEE:

How many domestic companies have their home offices in Nevada?

MS. MOLASKY-ARMAN:

I will separate those between the traditional insurance companies and the captive insurers. There are approximately 40 traditional insurers. Of these 40, many are small insurers and about 10 of the 40 are fairly significant companies.

SENATOR LEE:

How many foreign companies are in Nevada?

MS. MOLASKY-ARMAN:

There are approximately 2,000 foreign companies.

SENATOR LEE:

How many alien companies are in Nevada?

MS. MOLASKY-ARMAN:

There are very few alien companies in Nevada except in the surplus line markets. We have 40 in the captive insurers and they can operate nationwide. The difference there is that with the captive insurers in Nevada which includes the RRGs, we collect premium tax based on their premiums nationally. It is not just the premiums that are generated in Nevada.

SENATOR LEE:

You said the number of captive insurers could go down if A.B. 338 does not pass. However, if the number of captive insurers goes up, it will be a significant increase. Can you give me an estimate on the number of companies by which we could increase or decrease?

MS. MOLASKY-ARMAN:

Currently, 12 of our 40 captive insurers are RRGs. If the bill is not passed, I believe we would lose half of the 12. Our expectations for this year are 20 new captive insurers and among those half will probably be RRGs. Under the present circumstances, they will not come to Nevada.

SENATOR LEE:

If the bill passes with sections 62, 63, 64 and 65, would it enhance business coming to Nevada?

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MS. MOLASKY-ARMAN:

Yes, it would maintain the business we have now and encourage other businesses to come to Nevada.

SENATOR TIFFANY:

I think Nevada would have more insurance companies wanting to come here, because we do have a growing population. This growing population would need to be insured. You are changing the fees in this bill. Do you feel the fees are the number-one reason a company would stay or move to Nevada?

MS. MOLASKY-ARMAN:

Yes, the fees are the number-one reason, with respect to the foreign RRGs whose fees in other states do not amount to more than \$300 as compared to Nevada's \$2,450 fee. Under the federal Liability Risk Retention Act of 1986 (LRRRA), those fees are prohibitive.

SENATOR TIFFANY:

It seems to me that \$2,500 is not a lot of money. The insurance fees are usually passed through as part of the premium cost.

MS. MOLASKY-ARMAN:

If you go to page 3 of [Exhibit D](#), the top slide represents a comparison of what an RRG domiciled in these particular states would pay to do business in 35 other states.

SENATOR TIFFANY:

It still seems that \$2,500 is not a lot of money.

MS. MOLASKY-ARMAN:

In order to do business in Nevada, there are retaliatory taxes and fees. Other states have the same law. Retaliatory taxes mean that if a Nevada domestic insurer does business in another state and that state's fees are \$200, that state will charge that Nevada domestic insurer \$2,450. This would be the same RRG if its domicile were in Nevada. The cost of doing business in 35 other states would be almost 10 times more.

SENATOR LEE:

So it makes them not as competitive because they have to raise their premiums to make up for the tax. This chases out people by not wanting to be domiciled in Nevada.

MS. MOLASKY-ARMAN:

Yes, and it also chases out the foreign companies. Even though Nevada is a growing state, that growth for the foreign companies is not large enough to compensate for the high taxes and fees. Those companies have a choice of 49 other jurisdictions where they can do business.

SENATOR TIFFANY:

If they wanted, they could come here and do secondary business.

MS. MOLASKY-ARMAN:

They would if our taxes and fees were decreased. Our projections are based on this.

SENATOR TIFFANY:

Is there a direct correlation between being domiciled here and having more competition here, other than anecdotal evidence, as to whether this will decrease our premiums for our doctors and contractors? Availability and cost of premiums are two concerns.

MS. MOLASKY-ARMAN:

The competition will be a cost driver insofar as the premiums are concerned.

SENATOR TIFFANY:

Do you have specific examples of this happening in other states rather than saying this is what you think will happen concerning the competition?

MS. MOLASKY-ARMAN:

No, but I do know that the RRGs are taking the medical professionals, particularly in the construction industry. The RRGs are associations of self-insurers. Every shareholder under the RRGs must be a policyholder and every policyholder is a shareholder. They are determining their own destiny and taking charge of their own future.

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SENATOR TIFFANY:

Do you believe the premiums will be reduced out of that structure?

MS. MOLASKY-ARMAN:

Based on the belief of the policyholders and the owners, the premiums will be reasonable and they will know what is necessary to protect their interest.

CHAIR TOWNSEND:

The proposal to replace that is in [Exhibit I](#) on pages 3 and 4, items 12, 13 and 14, is that correct?

MS. MOLASKY-ARMAN:

Item 15 on page 4 of [Exhibit I](#) is also included.

CHAIR TOWNSEND:

In your revised fiscal note, [Exhibit G](#), you discuss each section and what it is going to take in terms of the loss of revenue. You outline it by years and companies. Where would we find the effect on the biennia?

JOHN R. ORR (Deputy Commissioner, Division of Insurance, Department of Business and Industry):

The summary and what would traditionally be on the first page of the fiscal note is on page 4 of [Exhibit G](#).

CHAIR TOWNSEND:

What would be the effect on the General Fund?

MR. ORR:

If sections 62 and 63 and the associated sections are not replaced, the General Fund will lose \$228,800, in fiscal year (FY) 2005-2006, \$331,000 in the second biennia and in the future biennia, almost \$1 million.

If the sections are replaced, the General Fund will increase by \$222,000 in the FY 2005-2006, \$346,000 in the second year and a little over \$1.1 million in the future biennia.

CHAIR TOWNSEND:

Is there someone here from the administration to whom you have spoken about the revised fiscal note?

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MS. MOLASKY-ARMAN:  
No, we have not yet.

CHAIR TOWNSEND:  
We are trying to avoid this bill going to the Committee on Senate Finance so we can get it processed for you. If the administration is comfortable with this and notifies the Finance Committee, we may be able to avoid that.

SENATOR LEE:  
Can you explain "protected cell"?

MS. MOLASKY-ARMAN:  
"Protected cell" is a kind of captive insurer. The bill is expanding the types of captive insurers that can form here. There is a sponsor with the "protected cell" and beneath that sponsor are various companies. These companies provide their own capital in surplus under a single cell which is a sponsor. They are not subsidiaries, because they provide their own money to operate. Their losses are limited to their own level of liability and their investment. They do this under a sponsor. The Division of Insurance (DOI) would be licensing the sponsor who would be the single entity who would be the insurer. The coverage that they issue to each one of the cells is limited to the cell's investment of capital and surplus.

CHAIR TOWNSEND:  
Ms. Foster, we are reviewing A.B. 338. The commissioner has provided us with her recommended amendments, [Exhibit I](#), and an updated fiscal note, [Exhibit G](#).

LISA FOSTER (Deputy Chief of Staff, Office of the Governor):  
The Office of the Governor agreed with all the fee changes in the original bill and we will look at the changes that were placed in the bill with this amendment. I will get back to you today on that.

MS. MOLASKY-ARMAN:  
I had not intended on reviewing the remaining provisions of the bill unless you desire me to do so.

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CHAIR TOWNSEND:

You do have some additional recommendations in your amendment for purposes of technical corrections, or are they substantive changes in your proposed amendment?

MS. MOLASKY-ARMAN:

What you first see in the bill is the establishment of regulation over health-discount plans. This is necessary, because there has been a proliferation of these kinds of plans.

CHAIR TOWNSEND:

I am only speaking to your proposed amendments. I need to know what those are and then we can go back through and deal with some of the sections.

MS. MOLASKY-ARMAN:

There are the RRGs, Captive Insurers, Discount Health Plans, Nevada Insurance Guaranty Fund and the Credit Insurance amendments. I have handed out a summary of these proposed amendments ([Exhibit J](#)).

CHAIR TOWNSEND:

Can you review each page and state whether it is a technical or nontechnical amendment or a policy change?

MS. MOLASKY-ARMAN:

The substantive changes are shown on [Exhibit J](#). The proposed amendments are shown in [Exhibit I](#). I believe there is only one technical change.

CHAIR TOWNSEND:

We do not care about the technical changes right now. What are the substantive portions of the amendment that you handed out that we need to deal with? I would like to go through each amendment in your proposed amendments in [Exhibit I](#) and say whether it is technical, nontechnical, a policy change and if it is a substantive change.

MS. MOLASKY-ARMAN:

Number 1 is a technical change due to the following item 2 of the proposed amendments. Item 2 is redefined for purposes of this chapter which would be applicable to health discount plans only. A discount plan is not a health insurer. It does not apply to the entire insurance code.



Item 3 is a technical change. Item 4 reaffirms an affiliate of an insurer who conducts a discount health plan must also register that health plan. This change is substantive.

Item 5 establishes the commissioner's ability to accept, from an insurer, an affiliate of an insurer or a third-party administrator, documents that are required for registration through filing compliance under other provisions of the code. An example would be if we already have the financial statements of an insurer, biographical information on the principals of insurers, their affiliates and third-party administrators, we do not need the duplication of their submitting those documents again.

Item 6 would be substantive. The Consumer Health Alliance objected to the prohibition of the word "enrollment" in their advertising materials. I agreed to place this in section 8 of A.B. 338 which would allow use of that term if the commissioner approves the use of that term.

Item 7 is a technical change.

Item 8 was done in agreement. The language formerly required that the disclosure appear on the first page. We agreed that this would be appropriate to have it in clear language and prominently displayed.

Item 9 was at the request of the Consumer Health Alliance. Previously, we had placed in the bill that disclosures must be provided within 10 days. They asked that it be changed to 10 business days.

Item 10, the Consumer Health Alliance requested we delete that portion which gives the alternative of providing the disclosure to be printed "no smaller than the largest type on the page." They must be "printed in not less than 12-point type."

Item 11 was requested by members of the Credit Insurance Industry. This amendment adopts the language regarding refunds that is applicable to both credit-property insurance and consumer-credit insurance so they are identical.

CHAIR TOWNSEND:

Were items 12, 13, 14 and 15 discussed in your earlier testimony?

MS. MOLASKY-ARMAN:

Yes, items 13 through 15 were discussed in my earlier testimony [Exhibit J](#). Item 16 is a provision regarding claims managed by the Nevada Insurance Guaranty Association (NIGA). It was clarification language that has been deleted.

Item 17 primarily deletes the definition of compensation as it appears in [A.B. 338](#) for credit insurance. We would like to maintain the existing definition of compensation, which in the first reprint of this bill, but it was repealed. It is a far better definition of compensation.

Item 18 is a technical change. We requested it be "kinds" of insurance that could be used in replacement or as a substitute for credit insurance. Therefore, the drafters changed the words from "kinds" to "types." In the insurance code, there is a chapter that related to "kinds" of insurance not "types."

CHAIR TOWNSEND:

What is *Nevada Revised Statutes* (NRS) 690A.012?

MS. MOLASKY-ARMAN:

That is the definition of compensation for consumer credit insurance. We ask that section 92 be deleted so we can, in effect, maintain NRS 690A.012. The next one is to maintain the provision in NRS 690A.260, because it established standards where reinsurance is purchased from an unauthorized insurer for credit insurance. The Division of Insurance feels this is an important provision.

SENATOR SCHNEIDER:

I have a question on section 3 of the bill that has to do with the discount health plan. The terminology sounds like an insurance policy. Would it be better to call it a discount health program?

MS. MOLASKY-ARMAN:

Discount health plan is the terminology used nationwide. One of the reasons we are asking for this legislation is because far too often there is confusion among members of the public of these plans.

SENATOR SCHNEIDER:

Will it not confuse the public? Is it laid out so the public will understand right away what they are buying?

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MS. MOLASKY-ARMAN:

This is the terminology that is used nationally. Most of the language has been taken from the National Association of Insurance Commissioners (NAIC) Model Act. The key is the discount health plan. This is what is used primarily in the marketing and in their names.

SENATOR LEE:

In sections 77 and 78, why was it raised from a category C to a category B felony? Is there a particular reason in section 79 of the bill why we are removing those particular items?

MS. MOLASKY-ARMAN:

These provisions were the result of legislation in the 72nd Legislative Session when I asked that this Legislature criminalize unauthorized insurance. The Office of the Attorney General did not believe the provisions as placed in NRS 685B.080 were constitutional. We were mixing administrative penalties with the criminal penalties. They have been replaced in sections 77 and 78 of A.B. 338. They were raised from category C to a category B felony.

SENATOR LEE:

In section 88 of the bill, I have a question on preexisting conditions. Does this delete the fact, that since you had no knowledge of any preexisting conditions, when you signed up for coverage, are you still responsible for your health?

MS. MOLASKY-ARMAN:

No. This defines preexisting conditions. The Division was required to place this into the NRS. We were advised by the federal government that our Health Information Portability and Accountability Act (HIPAA) laws were not consistent with the federal laws and they must be. Our HIPAA laws must be approved by the federal government in order for us to maintain regulation. It does not change the HIPAA laws on insurers or Medicare organizations accepting insurers.

SENATOR CARLTON:

If you read section 3 of the bill and break it down word by word, it states: discount health plan means a business arrangement or program. I have an arrangement with my employer for my health care. Section 3 continues: "evidenced by a membership agreement in which a person, in exchange for fees, dues or any other form of consideration." You do not have to pay dues to get your health plan. But, concerning "any other form of consideration," my

employer pays for my health plan for every hour that I work. That is a form of consideration. In reviewing, "provides or arranges for members of the discount health plan to have access to providers of health care," I have a principal provider organization (PPO) list to receive those medical services from those health-care providers. You say this is standard language but I can break it down to almost apply to the health and welfare trust plan that I am covered under, even though I know that you do not mean for it to apply.

MS. MOLASKY-ARMAN:

The difference is that your plan is going to cover and pay for a portion of services you receive; discount health plans do not. The key is the last three words of section 3, "at a discount." They cannot pay that provider for their members.

SENATOR CARLTON:

If I was not on a plan and I went to a doctor, the charge would be \$125 but we are only paying \$72.50. The doctor is accepting payment at a discount.

MS. MOLASKY-ARMAN:

What you may be referring to is a co-payment.

SENATOR CARLTON:

No, I am not talking about me. I am talking about the employer. It is an employer-paid health-care system. The employer funds it totally and the employee just pays the co-payment. The employer is contracted through the health and welfare trust for care at a discount rate. If this bill passes, I do not want a lawyer coming back six months from now and saying all the health and welfare plans have to register as a discount health plan.

MS. MOLASKY-ARMAN:

No, they would not have to register. It is a different kind of arrangement.

MR. ORR:

The rate that the insurer or employer in a self-funded arrangement pays in a traditional insurance is either a negotiated rate or a contract rate. This is for a discount rate of 10 percent or 20 percent. The \$72.50 is a negotiated rate instead of the \$125 bill charge. The doctor agrees to only charge that for the insurers of that particular plan. If a member of a discount plan came in, they

would be charged \$125 less 10 percent, 20 percent or whatever the discount card was worth.

SENATOR CARLTON:

When I read this, I am looking at the back end of the system. This bill applies all to the front end. When I write the check for my health insurance, it will be a discounted rate. However, the definition of "discount health plan" is confusing.

DON JAYNE (Nevada Self Insurers Association):

I want to comment on section 81 being deleted. The reason this section was in the bill was a result of the insurance commissioner's subcommittee for self-insurance. There was testimony that we originally had some issues with the NIGA accepting claims or considering accepting claims for excess worker compensation insurance policies. This is why that was in there. I am glad to hear that it is clarification language. We were interested in that section and would have preferred it to stay in the bill. Since it is clarification language, I suppose it is something with which we can live.

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):

I believe section 81 of A.B. 338 has been deleted because there are certain segments of the property and casualty industry that believes the change was substantive. Since we never reached agreement on whether it was clarification or substantive we agreed to work on this in the future. It is not a pressing issue at the moment so we all agreed to let it go. We will continue to work with the commissioner in regard to our definition of excess insurance or reinsurance and how the two play into the guaranty fund.

MR. JAYNE:

I understand what Mr. Ostrovsky said but we do have a situation that we need to continue to work on in this next interim in order to get clarification. The excess of workers compensation insurance is a requirement to have in order to acquire a self-insurer certificate as a casualty coverage. The premium is paid by the self-insured employers. We have had a couple of excess worker compensation carriers go bankrupt. This issue will present itself to us in the future and we would like to see the clarification made on whether or not those claims for an excess worker compensation carrier would be claims that the NIGA would honor.

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MR. OSTROVSKY:

We support all of the other amendments as proposed, including the ones removing section 81 from this bill.

CHAIR TOWNSEND:

If the Committee processes the bill, we will adopt the commissioner's amendment.

SAMUEL P. McMULLEN (Assurant Group):

We have no objections to any of the commissioner's other proposed amendments. However, we have an issue with respect to the credit-insurance portions out of it.

HARRY BASSETT, JR. (Assurant Group):

I am here today for your consideration of four additional amendments ([Exhibit K](#)) that we would like to suggest for A.B. 338. In the first amendment, we are trying to go back to what we have at present. We believe NRS 690A.070, 690A.080 and 690A.110 are all excellent provisions in the existing statutory scheme and we would like to see them returned in that fashion. Alternatively, as part of that, proposed amendment 3 deletes the phrase "enrollment forms" from the existing language in the bill. An enrollment form differs from an application because there are no questions that are asked. If you have a transaction that requires a debt and you are eligible on that basis, you would simply provide your election to choose to buy it and your date of birth.

CHAIR TOWNSEND:

You started so quickly. What one are you talking about?

MR. BASSETT:

Credit insurance is a form of insurance that is elected by the insured at the time or shortly after a credit transaction is effective. For example, if you borrow money for a car, furniture, jewelry or any other credit transaction that involves a debt, we will offer insurance that covers your life. We will make the payments for you as scheduled if you are disabled or you are involuntarily unemployed.

Credit property differs to the extent that the property itself becomes the subject of the insurance. If you borrow money to buy a living room suite and if anything happened to that property that was not covered under your home owners

insurance, we would pay off or cover most of the remaining debt so as not to obligate the remainder of the family.

Nevada has had an excellent statutory scheme since the original major overhaul in the 69th Legislative Session. It seemed fit to come forward and reconfigure the proposals we could find. We would like to see the parts of the law that have gone well be kept to the extent possible. To the extent that the changes are desired, we would only offer in these four amendments those sections that would allow us to offer the products to Nevadans who need and want to buy them. This is optional and not a requirement to buy.

In the second amendment, we are suggesting a statutory language that would provide for how rates are set for this line of insurance. Every other form of insurance in this State uses these factors to come up with a rate and we do not think credit insurance is that much different. We would like to have the same thing as everyone else. My experiences in other states without these specific guidelines are that some commissioners have chosen to make public policy through regulation. This has caused extremely large numbers of court cases and has cost the states and insurance companies a great deal of money. In some cases, it has also reduced the availability of the product to the consumer.

For those reasons, we would ask the Committee for their consideration and support of the four proposed amendments, [Exhibit K](#), we placed before you. The average premium for this kind of insurance runs about \$75 to \$100 a year. If you break this down on a monthly basis, it is a very small amount. We have thousands and thousands of transactions. Therefore, we are a low-dollar, high-volume insurer as opposed to a high-dollar, low-volume insurer such as home owners and the like. That is the fundamental difference between our groups.

CHAIR TOWNSEND:

Mr. McMullen, can you go to point 4 of [Exhibit K](#) that amends section 54 of the bill and discuss the need for that?

MR. McMULLEN:

As you can see from the amendment we passed out, there have been a number of people who we have tried to work with to try to distill these concerns in these last four that have not been acceptable at this point. This is why we are asking for these amendments. The amendment to section 54 of the bill is there

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because the DOI wants us to use the annual statement which is a national form. That form has blank areas on it for the total reporting of everything nationally. The group's feeling was that we were happy to report business we do inside the State of Nevada. Regarding the business they do nationally, that would be filed on their annual statement. We thought all that would be necessary was reporting the insurance business done in Nevada.

SENATOR TIFFANY:

On the first amendment, where you said to retain the following sections, were those sections deleted? If so, what was the reason?

MR. BASSETT:

Yes, they were deleted. The reason was that the prepackaged language that went in to the bill from the NAIC models changed those and provided other types of definitions and other types of wording.

SENATOR TIFFANY:

So, we took a model from NAIC and put it into this bill which replaced ours. Are ours actually better than what the state model would be?

MR. BASSETT:

Yes, we believe they are.

SENATOR TIFFANY:

Did the insurance commissioner recommend we put the model in the bill?

MR. McMULLEN:

There was a request from the Assembly for some credit-insurance language that was different from what we have currently. There were NAIC models available and I know staff worked very hard to adapt those in a short time frame. It is wholesale substitution of the provisions we have that were general to both properties, credit insurance as well as life and disability. We split those two apart; now there are two separate chapters. One deals with property and one deals with consumer credit, which is life, disability and involuntary unemployment insurance (IUI).

SENATOR TIFFANY:

Does your insurance couple them together? It seems the credit insurance was the most amended in the original bill; is that true?



MR. BASSETT:

Yes, our insurance couples them together. It is true the credit insurance was the most amended in the original bill.

SENATOR TIFFANY:

It was amended because someone in the Assembly had a question about it. In order to answer the question, staff went back and created an amendment to put this in. Would that be the right history?

MR. BASSETT:

I think that is a fair summary. I do not want to speak of things in which I was not personally involved.

SENATOR TIFFANY:

Ms. Molasky-Arman, do you agree with the statement that the original sections fit Nevada better compared to a model that is used throughout the United States?

MS. MOLASKY-ARMAN:

The Assembly Committee on Commerce and Labor asked us to place those provisions in our bill after it was initially heard. We were asked to replace the existing chapter with the language from the two NAIC models. Our staff did not have time to compare those provisions. If we had the proper amount of time to do a real evaluation, we would have changed existing provisions. However, in our haste, we still eliminated some provisions that I feel were very good.

SENATOR TIFFANY:

Do you want to see a blend of the national model and what has worked well in Nevada? If so, your staff has not completed the blend yet?

MS. MOLASKY-ARMAN:

Yes, we would like to see a blend. We have not done any kind of true evaluation or side-by-side comparison. Effectively, what we produced for the Assembly was to repeal the existing chapter and replace it with the NAIC model language. This was done due to the haste because we only had 24 hours.

SENATOR TIFFANY:

The national models sometimes do not fit Nevada. The industry was comfortable with this but I wanted to make sure the Commissioner was comfortable with this except for some technical changes.

MS. MOLASKY-ARMAN:

I am comfortable with the new language as well. I understand why they are seeking some of the amendments in [Exhibit K](#). These amendments could be accomplished through the regulation process. I have also heard of the experience in other states. Nevada does have a strict overview of regulations and that is conducted by our Legislative Counsel Bureau (LCB).

SENATOR TIFFANY:

If we did not amend the language, could you meet some of their requirements through regulations?

MS. MOLASKY-ARMAN:

I do not understand the amendment to section 54 of the bill. That is current law insofar as reports by an insurer to any state in which they are doing business that they have to provide this information. What is referred to there are the instructions about annual statements that are published by the NAIC and those apply to all insurers.

SENATOR TIFFANY:

Is it redundant?

MS. MOLASKY-ARMAN:

I do not know why there is a request to change it so that the report for Nevada would have to be different from the reports that are provided to other states.

SENATOR TIFFANY:

Do you have problems with the definition in item 2 of [Exhibit K](#) on how to set rates in statute versus regulations?

MS. MOLASKY-ARMAN:

The rate-review-process provision that was initially introduced in the Assembly was changed so we would apply the current standards that apply to all insurers under NRS 686B.050 and NRS 686B.060. This is in the bill. The other elements listed could be accomplished again through the regulatory process.

SENATOR TIFFANY:

Do you have problems with them in the statute as opposed to regulation?

MS. MOLASKY-ARMAN:

I am not certain that I understand the meaning of the manner in which premiums are charged. Instead of a laundry list, I would prefer the components decided under NRS 685B.050 and NRS 685B.060 which are applicable to all insurers.

CHAIR TOWNSEND:

What is not in regulation now that is problematic for this particular component of the industry?

MR. McMULLEN:

In the changes, where we are taking out current chapter 690A of the NRS and going to this new model, the clear change is that there were rates set in the statute. We are changing to a model where rates will be set that will be reasonable in relationship to the premiums incurred. There is discomfort in trying to understand how the rules will be forever as we go through this. In fact, when we change to a model where there is going to be rates set through regulation or through administrative process, we wanted to make sure that there was some comfort about the factors that would be reviewed. It does not weight these, or require any particular factor be more important than another. When you set rates, these are the important components of the rates for credit insurance and they must be part of the dynamic. It is really to set forth factors and know what the factors are that will be considered in the rate setting. We are happy to adapt the factors if they need to be changed.

SENATOR TIFFANY:

Mr. Bassett, did you think NRS 685B is too subjective?

MR. BASSETT:

Yes

SENATOR TIFFANY:

Mr. Bassett made a comment that he loves the commissioner and our regulators. However, he was very concerned that the statutes not be reflected in personality-driven outcomes as opposed to being defined in statute. If these

people are not here tomorrow, then chapter 685B of the NRS is too subjective. Is that accurate?

MR. BASSETT:

Yes, Senator, that is correct.

SENATOR LEE:

Earlier in this Session, we had the mortgage industry here. We had retaliatory amendments and a change in leadership and it was very uncomfortable for the industry to work with the commissioner. I believe we should have things in statute, too. They make a point here and had I not seen that other testimony, I might not have been so persuaded. This is a good amendment for the future.

MS. MOLASKY-ARMAN:

This amendment also requires that the commissioner establish the rates.

SENATOR CARLTON:

The only problem I read in the first paragraph of item 2 in [Exhibit K](#) is on the last line, "the commissioner shall consider and apply." There is no flexibility; we have made it mandatory instead of permissive. In item (E), investment income, if the company should make a bad investment that could be considered in part of the rates in the future. That person who bought the credit insurance will now have their insurance go up because of a decision that was outside of their control. If it states, "shall consider these in setting rates" if that company loses money, we are back to where we were a few years ago with medical-liability insurance and premiums. This gives me some concern.

MR. BASSETT:

The investment income that is used in this term was used in terms when there was single-premium credit insurance. There is investment income on the amount that is paid up front. It is generally factored in to suppress the rates because of the additional income, not the other way around.

SENATOR CARLTON:

Does it not mean that the company as a whole has made an investment?

MR. BASSETT

No, Senator, it does not.

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CHAIR TOWNSEND:

It is an inclusive list. When you throw in item (L) on the list, you have scooped in anything else you could not think of for purposes of analyzing what is necessary to set an acceptable rate.

GREG FERRARO (Consumer Health Alliance):

We have been working with the commissioner in her office for the past three to four weeks. We would like to indicate that we are in full support of the amendments that were submitted today, at least those sections that apply to discount health plans.

ALLEN ERENBAUM (Consumer Health Alliance):

The Consumer Health Alliance is the national trade association of the discount health-care industry. We are noninsurance programs that make available access to health care at discounted rates. We support the thrust of the legislation and almost all of its provisions, particularly after the commissioner's amendments made in the Assembly and the amendments made here today.

There are a couple of issues on which we are still working. One has to do with marketing entities which are entities marketing these plans but not operating them. We share the commissioner's goal of providing her with the maximum amount of authority to deter fraudulent marketers from coming into the State and pursuing and punishing those who do. The other issue relates to the prohibition on the use of certain words, certain insurance-related terms for the most part. We hope to further refine the prohibition on the use of those terms in advertising and marketing materials.

We appreciate the commissioner's willingness to work through a great number of the issues with A.B. 338 as introduced. We hope to reach an agreement on a way to proceed with the remaining issues. We want Nevada to have a good bill that regulates our industry and allows legitimate companies to continue to offer access to discounted health care to Nevada citizens.

SENATOR TIFFANY:

Did you say concerning the marketing entities that you have seen a trend start in California that could come to Nevada, but we have not seen it yet?

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MR. ERENBAUM:

Nevada has seen what every other state has seen. The faxes advertising discount health programs frequently come from offshore entities. These entities are selling fraudulent plans or they may be selling legitimate plans but using somewhat deceptive advertising to do it. The commissioner has seen these on her fax machine and so have I. We are committed to stop this activity, as is the commissioner.

SENATOR TIFFANY:

When I return home after being gone for a week, my fax machine is stacked with these advertisements. Is that to what you refer?

MR. ERENBAUM:

Yes, that is exactly our reference. There are about 17 states this year alone that are working on legislation to directly regulate the discount health industry.

SENATOR TIFFANY:

Do you feel the commissioner has enough authority with the amendments we have talked about?

MR. ERENBAUM:

We want to make sure Ms. Molasky-Arman has enough authority she needs in order to go after the bad programs.

SENATOR TIFFANY:

If there is a deceptive trade, does that get handled through the Insurance Commissioner's Division, the consumer advocate or the Office of Attorney General (OAG)?

MS. MOLASKY-ARMAN:

The purpose of A.B. 338 is to place this under the authority of the insurance commissioner. We would seek disciplinary action over these clients.

SENATOR TIFFANY:

Is this new or does it just define it?

MS. MOLASKY-ARMAN:

This is relatively new. There have been no actions to date taken by anyone. We do have approximately 27 of these plans under current investigation. One of the

problems has been in pursuing those whom we do not see as appearing to be unauthorized insurers. We have difficulty taking administrative or criminal action against them. That has been our biggest problem because we do not have current authority to pursue those we wish to pursue.

SENATOR TIFFANY:  
Will this give you the authority?

MS. MOLASKY-ARMAN:  
There are others who may not be appearing as an unauthorized insurer or misrepresenting the insurer but they are misrepresenting their product to the public. This is what we are trying to cure with this bill, confusion among the public as to what they are purchasing. We want to make sure they receive what they are paying for also.

SENATOR TIFFANY:  
Your next step would be the OAG?

MS. MOLASKY-ARMAN:  
Yes, after administrative action.

SENATOR CARLTON:  
Why did we choose the word "plan" rather than "program?"

MS. MOLASKY-ARMAN:  
This is the terminology that is nationally used.

SENATOR CARLTON:  
Are we not trying to clear up the confusion for the consumer and not let the companies misrepresent themselves?

MS. MOLASKY-ARMAN:  
That is exactly why we have the prohibitions in the bill for using certain words. There is no reason for them to use words such as preferred-provider organization. It should not even apply to them. What we have in the bill are terms with which the public is very familiar in the setting of insurance.

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SENATOR CARLTON:

Why are we allowing them to call themselves a health plan? When people see that word, they assume they are getting one thing when really they are not. Why can we not say that you are not a health plan because you are not?

MS. MOLASKY-ARMAN:

We could do that but we would not be in step with the other states. I agree with you that what one state does may not necessarily be good for Nevada. I also agree the terminology could be confusing but, for better or worse, that is how they are nationally termed.

MR. ERENBAUM:

We agree with the commissioner that any legitimate plan should do everything that is possible to make it clear that what is being sold is not insurance. This is the primary way people are being deceived. A number of our companies will put in bold print on each page of their materials, "this is not insurance." The language used to market these should not make the reader think that what they are buying is insurance because often it is not. This does not help the industry.

CHAIR TOWNSEND:

Since we have not received the bill, we cannot take action on the bill. We should receive the bill on the Senate floor today.



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The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 9:41 a.m.

RESPECTFULLY SUBMITTED:

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Donna Winter,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

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