

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

**Seventy-Fourth Session  
May 7, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:40 p.m., on Monday, May 7, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman John Ocegüera, Chair  
Assemblyman Marcus Conklin, Vice Chair  
Assemblywoman Francis Allen  
Assemblyman Bernie Anderson  
Assemblyman Morse Arberry Jr.  
Assemblywoman Barbara E. Buckley  
Assemblyman Chad Christensen  
Assemblywoman Heidi S. Gansert  
Assemblyman William Horne  
Assemblywoman Marilyn Kirkpatrick  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman David R. Parks  
Assemblyman James Settelmeyer

**GUEST LEGISLATORS PRESENT:**

Senator Bob Coffin, Clark County Senatorial District No. 10  
Senator Joseph J. Heck, Clark County Senatorial District No. 5  
Senator Steven A. Horsford, Clark County Senatorial District No. 4

Minutes ID: 1233



Senator Michael A. Schneider, Clark County Senatorial District No. 11  
Senator Dina Titus, Clark County Senatorial District No. 7  
Senator Maurice E. Washington, Washoe County Senatorial District No. 2

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Committee Counsel  
Dave Ziegler, Committee Policy Analyst  
Patricia Blackburn, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Jon Bauman, representing *Sha Na Na* and Truth In Music  
Sonny Turner, representing the Platters recording group  
Donald Riggio, Private Citizen, Las Vegas, Nevada  
Lewis Musgrove, Chairman, Governor's Prostate Cancer Task Force  
Fred Hillerby, representing Nevada Association of Health Plans  
Michael Hackett, representing American Cancer Society  
Robert Compan, representing Farmers Insurance  
Michael Geeser, Media/Government Relations, American Automobile  
Association of Nevada  
Matthew Sharp, representing Nevada Trial Lawyers Association  
Brad Spires, real estate broker, ReMax Realty Affiliates  
Teresa McKee, General Counsel for Nevada Association of Realtors  
Vera Barnes, representing One Source Realty and Management  
Alicia Peters, Intern for Senator Dina Titus  
Scott Burns, Senior Region Manager, Health Policy, Public Health  
& Medical Affairs, Merck & Company  
Patty Elzy, Director of Legislative Affairs, Planned Parenthood,  
Mar Monte, Nevada  
Julianna Ormsby, representing Nevada Women's Lobby  
Rena Meyers-Dahlkamp, representing Progressive Leadership Alliance of  
Nevada  
Helen Foley, representing PacifiCare

[The roll was taken and a quorum was present.]

**Chair Ocegüera:**

We will open the hearing on Senate Bill 53 (1st Reprint).

**Senate Bill 53 (1st Reprint): Provides that advertising or conducting a live musical performance or production through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group constitutes a deceptive trade practice. (BDR 52-220)**

**Senator Joseph J. Heck, Clark County Senatorial District No. 5:**

This bill has been called the "Truth in Music" bill. I became involved in this effort at a philanthropic event about one year ago when I was approached by Mary Wilson, formerly of the Supremes, who lives in southern Nevada. She explained an issue that she and other musicians from the 50s and the 60s were experiencing with people utilizing the name of their performing group or alluding to some relationship with the former performing group in order to perpetrate what is a deceitful trade practice. She recounted to me the trials that she had been through, the cost to her personally and emotionally, and she told me that there was a coalition of performers around the United States that was trying to pass legislation to make this an illegal act. Subsequently, I put in a bill draft request (BDR) and found out that Senator Horsford had a constituent and friend who had the same issue, so we decided to become joint sponsors. I will let Senator Horsford explain his involvement with the bill.

**Senator Steven H. Horsford, Clark County Senatorial District No. 4:**

In the spirit of being brief, all of us know that Nevada, and Las Vegas in particular, is the entertainment capital of the world. We have 38 million visitors that come to our city and about 50 million to the State. When they come here and purchase tickets to the types of shows and venues we offer, they expect to see the people who are advertised as performing and not someone who is not part of that original group. That is why this bill is being brought forward. It is not only for the protection of the entertainers, but also for the consumers. We have heard from constituents who have paid \$50 or \$60 to see a certain type of group perform and realized that everyone performing was an imposter. This bill has been brought forward in the spirit of consumer protection as well as helping to protect those who are part of the original group, trying to maintain their rights to their property. We have heard from Mr. Sonny Turner that in many instances these imposters are being paid significantly less than what the original group would otherwise be paid. It is not in the original performers best interests. We worked with members of the gaming community on the Senate side to ensure that they were protected, and we ask for this Committee's consideration of the bill.

**Senator Heck:**

While I am not of the age to have enjoyed the music when it was first performed, my parents are, and I grew up on the music that we will hear about today. I remember watching the show *Sha Na Na*, and with that I will introduce the gentleman who will provide the predominate testimony on this bill.

**Chair Oceguera:**

We have some prominent entertainment lawyers in Las Vegas, at the law school for that matter. Was there any testimony on the Senate side from people like that validating what we are doing here?

**Senator Heck:**

No. We had no testimony from those individuals, but this is a national movement, and the witnesses will tell you what has been done in other states and how it got to the point of coming to Nevada. One of the reasons we did not have those issues here is they specifically waited until they worked out the kinks in other jurisdictions to make sure they had it right when they came here. The only testimony we heard was from the Nevada Resort Association, and we worked out an amendment with them.

**Jon "Bowzer" Bauman, representing *Sha Na Na*, and Truth In Music:**

I am chairman of the Truth in Music Committee at the Vocal Group Hall of Fame, which is the overall sponsor of this bill. I am best known as "Bowzer" formerly of *Sha Na Na*, currently Bowzer's Rock and Roll Party. For years these imposter musical groups have been duping consumers out of their hard-earned entertainment dollars and stealing the legacy of the pioneers of rock and roll and in particularly doo-wop music. The bottom line from our point of view at the Vocal Group Hall of Fame is that the imposter groups need to "yip, yip, yip, yip, yip, yip, boom, boom, boom, boom, boom, boom, get a job." It has been going on way too long, and it is nationwide. It has been going on to a particularly alarming extent in Nevada. It is a sophisticated form of identity theft.

In answer to your question, Mr. Chairman, we have had expert legal advice from all over the country with regard to this bill, and we have passed this law in nine states. Bills were signed in New Jersey, Pennsylvania, Connecticut, Illinois, Michigan, Massachusetts, Virginia, South Carolina, and North Dakota. We have passed legislation in both chambers in Florida as of last week, with more to pass the second chamber in Tennessee and New York. We expect to have legislation passed in half the country by the end of 2007.

Unscrupulous promoters make specious claims, which they cannot back up, to the names of famous groups, put out multiple, under priced, units which net them huge amounts of money, and then dare anyone to try to stop them. Unfortunately, existing law has failed miserably in that regard which is the reason for this new bill, S.B. 53 (R1). This bill shifts the burden to the imposters to either back up their claims of association with the authentic groups or to stop duping the public. That is the essence of why we are here. Today, we address perhaps the most important state of all, Nevada, because this is the live entertainment capital of the world. There has been a lot of imposter group activity here in Nevada including one show that has played in Las Vegas for years in which every group in it would be defined as an imposter group.

What was interesting on the Senate side, was that the gaming community showed up and asked for something that, as Chair of the Truth in Music Committee, I had no trouble giving them, an amendment that had to do with whether the venues were actually liable. Our belief is that the venues are victims 99 percent of the time. They do not really know what they are getting. I had no problem giving them that, and with that one amendment, the Nevada Resort Association was completely in favor of this bill. The Nevada Resort Association stated they were tired of competing with casinos that are putting out tribute shows and pretending they are real. They pay outrageously low prices for these groups; they sell them to the public as if they are the real group. Consequently, someone is making a lot of money. It is an unlevel playing field for casino buyers who are trying to do the right thing. That is why the Nevada Resort Association was happy to come out in support of the bill. This will create more work for the venues to do better due diligence, so I never thought they would support the bill. I thought, at best, they would be neutral. We are very gratified by that, and we are thankful for their support.

This bill will protect Nevada concert goers from being duped by imposters and the unscrupulous promoters who foist them on the public without revealing who they truly are or who they truly are not. We hope you will support us. We will be happy to answer any questions. In advance, I would like to say "bom a bom, bom, bom a bom, bom, dang, a dang, dang, ding a ding, ding, thank you." That is "youse" for the record.

We have enjoyed going around the country mixing a little bit of entertainment with a lot of serious talk on this subject. This bill is a consumer law. It serves both purposes to protect the consumer and create a fair and level playing field for the authentic artists. One of those artists from one of the groups that has been most damaged by this is with me today. This is Sonny Turner of the Platters. He was the lead singer, and he will tell you what a difficult time this has been for the real artist.

**Sonny Turner, representing the Platters recording group:**

I echo most of Jon's comments. We have been very much affected by this, especially monetarily. We, as a group of entertainers, are not interested in putting other entertainers out of work, as they have done to us, but it is important that the consumers understand and know when they put their money down to see a show, they are seeing the actual performer. We are trying to get this bill passed so that we can work at our chosen professions. This is our life's work. I have been in this business for 45 years and have recorded a number of hit records with the original Platters, and I take a great deal of pride in being a member of the Rock and Roll Hall of Fame and the Vocal Group Hall of Fame. It stands for something in my mind and it has been my life's work and has been recognized by the consumers. We would love to have this bill passed, and as Jon said, musically "Only you can pass this bill for us, only you can do it without a fuss." We really hope you understand and consider this for us. We lost the original female vocalist on The Platters just last week. That is another reason that we should all have the opportunity to give the correct accolades and promotion to the right people.

**Jon Bauman:**

There is some urgency. I think we have someone to testify from Las Vegas. Mr. Riggio is not just a fan; he has been very active and vocal about the imposter group problem for many years.

**Donald Riggio, Private Citizen, Las Vegas, Nevada:**

I would like to thank you for letting me speak on behalf of the "Truth in Music" bill. I have been an avid fan of rock and roll music since my years as a teenager in the Bronx in New York, back when we all wanted to sing like Elvis and play the guitar like Chuck Berry. We bought 45 rpm records and listened to our transistor radios, never getting enough of songs by the Platters, the Coasters, or the Drifters, just to name a few of the groups. In 1962, when I was 14 years old, I danced my first slow dance with a girl at a grammar school graduation party to the song "Baby It's You" by a group called the Shirelles. Today, 45 years later, that song still jogs that memory whenever I hear it. The music truly does provide the soundtrack for my life. That is why the "Truth in Music" bill is important to me, to protect us, the public, from promoters and producers seeking to present imposter groups, passing them off as the authentic performers of those classic songs. I take it as a personal affront to have these "fakers" heaped upon me and the other members of the sometimes unsuspecting audience without calling them what they are, a tribute band or review. This bill will remedy this situation by ensuring that consumers are

presented with a performing act that contains at least one original member. I continue to urge the passage of this important bill to set the record straight and protect the thousands of fans, like myself, who love and cherish the music of the original, authentic performers.

**Chair Ocegüera:**

Thank you. Are there any questions from the Committee? I see none. Senator Horsford, the only thing I am concerned about is that no one has gone through the bill for us.

**Jon Bauman:**

I can go through the bill quickly for you. This bill shifts the burden to the imposter. The bill addresses live performances only. It defines the recording group; those are the people who are on the records, that made the group famous, but people who have not left the group. These would be the people who continue to have rights by virtue of use or operation to the name. We have had excellent trademark law advice. We are very careful to stay out of conflict with trademark law. The definition is for those who have not severed their association with the name. It defines the performing group, the people who are on stage that night. The bill says that you need to have a member of the recording group in the performing group unless you are the holder of a valid federally registered trademark for that name. If you hold that trademark, we would not be in conflict. We know of instances in which there are ill-begotten trademarks, and we are handling those at another level. Another exception would be if you advertise yourself clearly and unconfusingly as a salute or a tribute. We are not after tribute groups or salutes. That is the essence of the bill. It is clear and simple and should solve this problem.

**Assemblyman Mabey:**

When I was a young man growing up, I listened to the Lettermen all the time. The Lettermen have changed so that now only one of the original members is still part of the group. When that last member passes, would they be caught under this, or would they still continue to be the Lettermen?

**Jon Bauman:**

We are not going to overturn all the business practices in America, nor should we. Ironically, you bring up a group that is Tony Butala, the founder of the Vocal Group Hall of Fame. Among our community we have trademark holders and non-trademark holders. Tony is the trademark holder of the name The Lettermen. Tony can pass that name on, provided that he does so properly

and legally and the presumption on the part of the public is that there will be quality control, which is one of the most important aspects of trademark law, as that name is passed on. What we are after with this bill is people putting out multiple imposter units with no quality control whatsoever and no actual claims to that name. The Lettermen will continue to go on.

**Assemblywoman Allen:**

In the bill there are criminal penalties of misdemeanor and gross misdemeanor; there are civil penalties, \$5,000 for each violation. It says in the bill the person has willfully engaged in a deceptive trade practice. Is that the person on stage or is it the casino hosting it? Who, potentially, is liable?

**Jon Bauman:**

It specifically is not the casino hosting it, as per the amendment, unless the casino hosting it is the producer and owner of the show. You cannot let the venues off the hook if they are the people who know what they are doing and are putting the show on. Otherwise, the venue is largely the victim of agents or promoters who know exactly what they are selling and just continue to sell it. The biggest weapon in this bill is the ability to enjoin the show. The ability for law enforcement to go in and say you are in violation of truth in music here, we are going to ask for an injunction to stop the show before the show goes on and before consumers are duped. Who is ultimately liable will be determined by the courts. In some cases it may be the group itself. Every case will be a little different. It is hard to legislate who it will be.

**Assemblyman Horne:**

Who will be enforcing this bill? I cannot imagine law enforcement looking at marquees to determine who is legal. I see the Temptations appearing everywhere. I could not drag my uncle to one of these shows because he knows there are none of the original group around.

**Jon Bauman:**

Actually, in some cases they are part of a group.

**Assemblyman Horne:**

As far as my uncle is concerned, the group is no more. How is it enforced in other jurisdictions?

**Jon Bauman:**

Every state is a little different. We have had two enforcement actions in Pennsylvania, which was the first state to pass the bill in its present form. The Attorney General's Office for Consumer Affairs carried the ball there. It went to the Deputy Attorney General for that district. Consumers



complained, and they responded. The shows were not enjoined because the contracts were signed before the law went into effect. The shows were forced to turn into a tribute or salute, people were offered their money back, and one of the most interesting things was that the venue called the complaining consumers within an hour, to say "Oh my God, we had no idea, we are so sorry, we did not know." We know that law enforcement has better things to do than run around after phony musical groups. This is a nasty, nagging little issue that has created problems for consumers and for artists. The best thing about it is that it is easily fixed. It seems to have had a tremendous deterrent effect. We have noticed that there are a lot fewer imposter group shows in states that have passed the bill. The venues will be the first line of defense. They do not want the phone calls. We think they will be doing better due diligence once the law is in place. The law's very existence will do a lot in stopping the problem.

**Chair Ocegüera:**

Are there any questions? I see none. Thank you. Is there anyone else wishing to testify on S.B. 53 (R1)? I see none. Anyone opposed? I see none. We will close the hearing on S.B. 53 (R1).

We will open the hearing on Senate Bill 113 (1st Reprint).

**Senate Bill 113 (1st Reprint): Requires certain policies of health insurance and health care plans to provide coverage for screenings for prostate cancer in certain circumstances. (BDR 57-333)**

**Chair Ocegüera:**

I do not see Senator Coffin at this time.

**Lewis Musgrove, Chairman, Governor's Prostate Cancer Task Force:**

The mission of the Task Force is to raise awareness, education, and encourage screening for the men of Nevada. Senate Bill 113 (R1) does exactly that. I would like to read to you a very brief description put out by William Catalona of Northwestern University who is one of the top five research people and urologists in the country. He recently published this, and I thought it was interesting because it certainly fits the bill. "Prostate cancer is an insidious disease that arises silently, passes through a curable phase silently, and becomes incurable silently. If you wait for symptoms to signal its presence, it is too late to cure it."

Prostate cancer is a silent killer, and the only way to detect its presence in the body is through a Prostate Specific Antigen (PSA) or Digital Rectal Exam (DRE). Men take better care of their cars than they do their bodies, and so a

"yes" vote on S.B. 113 (R1) would save lives through early detection. We have found that over the past ten years 41,800 men per year died because of prostate cancer. In 2006 that figure dropped to 27,050 or a decrease of 14,450. There have been no magic bullets since 1998 that have suddenly created this drop except early detection. [Submitted a two-page document with statistics ([Exhibit C](#)).]

**Chair Ocegueda:**

Are there any questions?

**Assemblyman Mabey:**

Are there insurance companies that do not cover a PSA or a DRE?

**Lewis Musgrove:**

Yes, they are covered if a doctor recommends it. The problem is that many doctors might do a DRE and, if that is fine, they do not order a PSA test. Unfortunately, the DRE covers only 30 percent of the prostate. If you were to go to any prostate cancer support group and ask the question of how the men found out they had cancer, 75 to 80 percent of those people would say through a PSA test. If you then ask them if they wished they had found the cancer earlier, the answer would be 90 percent yes. The prostate is the size of a golf ball to a walnut. If it is perfect, it is smooth and soft and pliable. When it gets hard and lumpy, then it is in trouble. It is an insidious disease that arises silently, passes through the curable state silently, and becomes incurable silently.

**Assemblyman Mabey:**

Under this bill would a biopsy also be covered?

**Lewis Musgrove:**

We hope to establish a baseline PSA over the years. If there is a change in that number it is more important than the number itself. I am a 15-year survivor of prostate cancer. Before taking a PSA test, the doctor should make sure that the person did not have sex the night before the test, that he did not have a DRE before the test, and that he does not have prostatitis or infection of the urinary tract. We should not get carried away with biopsies.

**Chair Ocegueda:**

Senator Coffin, we started the bill without you.

**Senator Bob Coffin, Clark County Senatorial District No. 10:**

Mr. Musgrove and I talked about this bill six months ago, and it has been a long time coming. The bill has had a lot of work done on it in the Senate. I urge you to give this bill your support. I will be here to answer any questions you might have. Mr. Musgrove is the expert having served on the Governor's Commission. If you have not made a decision by the end of today, Dan Musgrove, Lewis Musgrove's personal representative, and me, could be of assistance.

**Chair Oceguera:**

Are there any questions?

**Assemblyman Settlemeyer:**

This bill states that they will use either the American Cancer Society guidelines or other guidelines. What happens if the two guidelines are not the same?

**Lewis Musgrove:**

The American Cancer Society guidelines will be followed; however, there have been a number of prominent research organizations that are moving towards a lower age because early detection does save lives and that is the whole purpose of the bill. It is my understanding that further discussion would be undertaken if this bill were passed.

**Assemblyman Settlemeyer:**

I am concerned that they would have two numbers that are not the same. Another question I have concerns the unfunded mandate to the local governments.

**Lewis Musgrove:**

I cannot speak to that.

**Senator Coffin:**

I am not sure what the question is. I was present for part of the testimony in the Senate but not the work session. I think that may have come up, but I am not sure what the answer would be. You mentioned two numbers, but I believe Dr. Mabey would understand better than I. We are talking about two different sources the American Cancer Society and ...

**Assemblyman Settlemeyer:**

It states "other guidelines." What other guidelines would be utilized, and if you adopt two different guidelines, how will a policy of health insurance know which one to follow.

**Lewis Musgrove:**

I can answer that one. The wording is the same in the colorectal bill in 2001 as well as the cervical cancer bill that was passed. The reason for that is to allow flexibility. We are trying to do the American Cancer Society procedure which is to screen 50 year-olds and 45 year-olds. I should explain that the 45 age is for high risk, which is defined as African-American and those with bloodline relatives and those with indeterminate family background. For example, an adopted son would need to start five years earlier.

**Assemblyman Horne:**

What about people who would want screening earlier than that? I started at the age of 35. The doctor told me that it was not indicated at that age, but I demanded it. If someone took that precaution, would this bill allow him to do that?

**Lewis Musgrove:**

Congratulations. I would hope that the insurance companies were farsighted enough to understand that preventing prostate cancer is a lot cheaper than having to cover medical costs when it has developed. The change in the PSA number is more important than the number itself. I hope you are watching yours on an annual basis and watching that number.

**Chair Oceguera:**

We just negotiated coverage for PSA screening in our last contract in the North Las Vegas Fire Department.

**Senator Coffin:**

I would like to introduce Fred Hillerby who was in the negotiations in the Senate. I think he can give you more particular answers to some of these questions.

**Fred Hillerby, representing Nevada Association of Health Plans:**

I would like to first respond to Mr. Settlemeyer's question. The reason that there is some flexibility in the bill is these standards change fairly quickly. It is difficult when you put a standard in statute because since we meet only every other year, we cannot change the standard in time.

To answer Mr. Horne's question, if your doctor orders the tests, even if it is at your insistence, it would be covered. The biopsy, if it is medically necessary and ordered by a doctor, would be covered, Dr. Mabey. The underlying principle is not the guideline, it is the fact that it is medically indicated and ordered by your doctor.

**Chair Ocegüera:**

Are there further questions from the Committee? I see none. Are there others wishing to testify in favor of this bill?

**Michael Hackett, representing American Cancer Society:**

I have provided written testimony to the Committee ([Exhibit D](#)), and I will summarize it for you. The American Cancer Society supports this bill. Early detection is a critical step in dealing with prostate cancer, and requiring screenings to be covered under health care plans is very important to achieve that end.

Prostate cancer is the second most common type of cancer found in men. It is also the second leading cause of cancer death in men. Thanks to concerted efforts to promote early detection and treatment, advances in methods of diagnosis and treating prostate cancer, the death rate for this type of cancer has gone down. It has dropped about 3 1/2 percent in recent years.

Hand-in-hand with that, survival rates of prostate cancer have improved as well. Current statistics show that 99 percent who are diagnosed survive for at least five years, 92 percent survive for at least 10 years, and 61 percent survive for at least 15 years. However, when prostate cancer is not detected early and it is found to have spread to other parts of the body, that survival rate for five years goes down to only 34 percent. Again, the American Cancer Society is in full support of S.B. 113 (R1).

**Chair Ocegüera:**

Are there any questions? I see none. Do you have more testimony?

**Michael Hackett, representing Nevada State Medical Association:**

I am now representing the Nevada State Medical Association. We would like to go on record as being in support of this bill, as well.

**Chair Ocegüera:**

Is there anyone else wishing to testify in support, in opposition, or neutral? I see none. We will close the hearing on S.B. 113 (R1).

We will open the hearing on Senate Bill 359 (1st Reprint).

**Senate Bill 359 (1st Reprint): Revises provisions governing claims made under policies of insurance for motor vehicles. (BDR 57-1135)**

**Senator Michael Schneider, Clark County Senatorial District No. 11:**

During the interim I was meeting with my insurance agent, and that is how this bill came about. The insurance companies get demands for payouts that come too quickly. This will not take away any insured's right to file a lawsuit, it just gives the insurance company more time to look at the claim. The intent is for the insurance company to make a more knowledgeable decision, and with that the insurance companies believe they can save some money, and hopefully that savings would be passed along to the insureds. It deals only with the time frame. On the Senate side, the trial lawyers came in with concerns. We feel that we have met their concerns on this bill. With me today is Robert Compan from Farmers Insurance.

**Chair Ocegueda:**

Are there any questions from the Committee?

**Assemblywoman Buckley:**

Why would you want the written authorization to contain the names and addresses of all the providers? It would seem that you are violating the medical privacy rights of the individual. Because, for instance, they find out I went to Dr. Mabey, I went to Dr. Allen. Right now the authorizations are permitted to be done in blank, and then the insureds mail them out. What is the rationale for the change?

**Robert Compan, representing Farmers Insurance:**

The rationale for the change is to clarify the information that we need to provide to accurately investigate and evaluate the claim. If we get a blank medical authorization and we do not know the names and addresses of the providers, then we cannot obtain that information to get the files in order to properly evaluate the claim.

**Assemblywoman Buckley:**

But, there are two separate things. If your point is that you need a complete record of every provider seen as well as an authorization, the names of the providers do not need to be in the authorization, you just need both.

**Robert Compan:**

Yes, I agree. The purpose is to get the information that is relevant to the claim that is at hand. We are not going on a fact finding mission to find other damages that are not related to this claim.

**Assemblywoman Buckley:**

Okay, say someone is in a car accident, and there is only one provider. That provider has all the medical records. Someone sends you a letter saying

settle this claim within two weeks or 30 days, there was only one medical provider, here is the full and complete copy of the records, we would like to settle the claim for \$1,500. So, by adding (b) here do you still have to get a written authorization? Can you say this is a reasonable demand and settle it? Are these both required or is it either/or? What if the lawyer provides you the records, would you need to get them again pursuant to the authorization?

**Robert Compan:**

It is not the intent of the bill to delay claims. The goal is to get the information and settle a claim as soon as possible. We are asking that we get the information. Giving an additional 30 days to investigate the claim before a time limit demand will not delay the claim. It is not the intent of the bill. The insurance industry, as a whole, wants to pay claims as soon as possible. The problem that we are seeing is that we are getting 10-day time limit demands before the commencement of a civil action. This changes the make-up of the claim. At that time, we have 10 days to respond or face a chance of the case going to litigation. The current statute requires that we get medical information every 90 days upon request. During that 90-day period, we are providing the attorney an outline of what our policy limits are. If it is a minimum Nevada policy of 15/30, we are giving them our limits. In this case we are saying here are our limits, please provide us this medical information every 90 days. In many cases we are not getting that information. We will get, perhaps, the emergency room bill only. So, then we receive a time limit demand that gives us 10 days to decide in order to prevent it from going into a litigated file. If we do not settle within 10 days, they can file suit. This bill in no way prevents an attorney or claimant from filing civil action at any time. But, with the threat of a 10-day time limit demand over us, we have to make a decision without the proper information or take our chances in litigation and go through the discovery period to try to get this information at that time. This changes the whole make-up of the claim. Now, our customers are faced with a litigated file that is potentially more costly. Some attorneys will change their contingency fee from 33 to 50 percent if the claim goes to trial. The whole make-up of the claim is changed.

The basic genesis of the bill is that we want to get the medical information so we can properly represent our customers. Once we have that information, then we need some time to look at that information. We might need an independent medical examination for an injury that may not have been a result of this accident. It is just giving us that time frame to properly represent our customers.

**Chair Oceguera:**

Are there further questions? Mr. Compan, did you want to give more testimony?

**Robert Compan:**

Well, I already gave the gist of my testimony. I urge your support on this bill because we need to represent the interests of our customers. We are not telling anyone how to handle the legal aspects of a claim, we are not trying to deny the claim, we are not trying to set precedents about how much a claim should be worth, and we are not saying that you cannot at any time during the statute of limitations file a civil action. It is just giving us the avenue we need to protect our customers. [Distributed sample letters and authorization forms ([Exhibit E](#)).]

**Chair Oceguera:**

Are there any questions? I see none. Are there others wishing to testify in favor of this bill?

**Michael Geeser, Media/Government Relations, American Automobile Association of Nevada:**

We too support the bill. We believe that S.B. 359 (R1) will give insurers adequate time to investigate a claim which not only will be more fair to us, but more fair to the customer as well. We ask that we go from 10 days to 30 days.

**Chair Oceguera:**

Are there questions for Mr. Geeser? I see none. Are there others wishing to testify in favor of this bill? I see none. Are there others wishing to oppose?

**Matthew Sharp, representing Nevada Trial Lawyers Association:**

We are opposed to S.B. 359 (R1). We do not feel the bill is necessary. In existing law, when an insurance company receives notice of a claim, upon receiving that notice, the company has the obligation to conduct a prompt investigation. The standard, under Nevada law, is payment must be made when liability is reasonably clear. We do not live in an absolute world, so at the point where liability is reasonably clear, the insurance company has an obligation affirmatively to effect a prompt settlement of the claim. The problem with a bill like this is that it pigeon-holes all the claims into the rare claims that Farmers Insurance is discussing today. It makes every claim fall into this 30-day process. As an example, I recently had a case involving a young lady who sustained a very serious brain injury. The medical bills were approximately \$500,000. She was hit by somebody with \$15,000 worth of insurance. If you follow this bill, she could not just submit her bill. If you review this statute, it would literally require me to get all the medical records pertaining to the



neurosurgeon, the rehabilitation hospital, and the hospital. In the meantime, time is wasting for a woman who needs compensation. I think this would add more costs for her to get an attorney. It will add more time to the system and will not bring about a quick resolution.

Currently, the insurance company is protected in the event of the examples that were given to you by the insurance companies. If I am representing an injured party, and I do not provide sufficient information to the insurance company to pay the claim, there are solutions to deny the claim and not pay. No one is forcing them to do anything. What you are doing here is giving a situation where the insurance company gets a leg up on catastrophic claims with no counter side. It would be one thing if you had a standard like this with a counter that if the insurance company fails to pay within 30 days, there would be some kind of penalty imposed. This bill puts the insurance company in a better position than the claimant. I do not think that is fair.

I would like to point out also that in the natural process of claims, every claim is unique. Where some of the dispute comes into play is what portion of the medical providers are relevant to the case at hand. For example, in the case I pointed out earlier, my client's obstetrician's records are not relevant to that. But, if you read Farmer Insurance's form letter that apparently has triggered this bill, they are asking, as a matter of course on every case, for your client's treating physician records for a five-year period prior to the accident. Certainly, if you are talking about a back injury that has been exacerbated, an insurance company is entitled to a reasonable degree of prior medical history and five years in that context does not seem unreasonable. I do not think this is a situation where the Legislature needs to regulate this process. It functions, and there is protection for both sides currently under law, and I would urge your opposition to the bill.

**Chair Oceguela:**

Are there any questions from the Committee?

**Assemblywoman Buckley:**

It sounds like what the insurance representatives are concerned about is getting a routine demand letter to settle a personal injury case and only being given ten days and not being able to get through their bureaucracy in those ten days. Nothing, of course, would prohibit them on the 11th or 12th day continuing to review the claim. Even if the lawyer does file suit within the next two weeks, which may be unlikely, nothing precludes settlement from still going on. In fact,

most lawyers would welcome that opportunity. But, what if you had not the best in our legal profession, who have their contingency rates jump up, and the insurance company does want a chance, but it cannot do it within ten days, is there something that can be done to meet that concern?

**Matthew Sharp:**

Current law protects insurance companies. The only reason I can see for making the ten-day demand would be the policy limit demand where an insurance company, if it has a reasonable amount of information and that information indicates that their customer's or their insured's liability exceeds their policy limit, the insurance company has a duty to pay that policy limit, and if it does not, the penalty is they must pay all of the damages. The key to any of these demands under existing law is that it has to be reasonable. The horror stories that were provided from the insurance industry do not seem unreasonable decisions on the insurance company's part to deny the claims.

Taking the reverse, where you have a catastrophic case with several hundred thousand dollars in medical bills, clear liability and a \$15,000 policy limit, there would be no reason why you could not pay that claim in ten days. I think that under the existing law of duty of good faith and of fair dealing, the insurance company and the injured party are both protected.

**Assemblyman Mabey:**

Mr. Sharp, concerning the written authorization that must include the name, et cetera, are you opposed to that part?

**Matthew Sharp:**

I do not understand why it is needed. The practice in my office is to provide the records, we do not provide authorizations. Each case is different; however, from our complex cases I do not provide a written authorization. I am not obligated to. I represent my client; I do not represent the insurance company. I provide those records and believe the firms that provide written authorizations also provide that information, so I do not know why this part of the bill is necessary. It seems like overkill to me.

**Senator Schneider:**

I think Mr. Sharp made the case, and that is the attack on the policy limits—the demand coming so quickly. His argument on the traumatic brain injury case that somehow going from 10 to 30 days is going to be a significant thing, I would argue that a traumatic brain injury case that runs into the hundreds of thousands of dollars is not your average case. That will take a lot of experts and probably be litigated. What this bill is all about is the short demand on the policy limits, and I think Speaker Buckley was correct when she said that large

companies with bureaucracy are being penalized right now by these quick demands. Nothing changes here, no limits change, nothing at all changes. It gives the insurance company more time to look at a claim and hopefully, our rates will come down if they make better decisions.

**Chair Ocegüera:**

Are there further questions from the Committee? I see none.

**Matthew Sharp:**

One thing I can indicate is if the Committee desires to have some kind of quantified time limit, you also have to consider within the context some kind of provision in the law that allows the consumer some protection. If an insurance company fails to accept a time limit demand, they should be responsible and pay all damages rendered, which is the current law.

**Chair Ocegüera:**

Are there further questions? I see none. Are there others in opposition? I see none. Is there anyone wishing to testify as neutral? I see none. I will close the hearing on S.B. 359 (R1).

I will open the hearing on Senate Bill 403 (1st Reprint).

**Senate Bill 403 (1st Reprint): Revises provisions relating to group health insurance. (BDR 57-778)**

**Brad Spires, real estate broker, ReMax Realty Affiliates:**

I chaired the Legislative Committee for the Nevada Association of Realtors. This bill is designed to provide affordable health insurance to small business owners across Nevada and would allow associations to pool their members together to provide affordable health insurance under a group policy. One of the reasons we drove this as realtors is because we are unique in many ways. The difference in our business is we are not employees. We are independent contractors; we do not have the ability to get insurance through employers, and we are exempt from most group policies because there is not a group policy that exists.

Hopefully, this will allow us to access, as associations, affordable premiums and better coverage. Using myself as an example, my wife and I are in our mid 50s, and nonsmokers, we pay \$775 a month for a \$10,000 deductible, catastrophic coverage with no dental or vision coverage and no early detection or testing.

That is a lot of money to spend for just coverage in a catastrophic event. The Association of Realtors has been working on this at the federal level, and in the absence of having any ability to come up with a solution, we have appealed to you to help us out in this area. We think that pooling the membership through the individual associations will be of benefit to members of all associations throughout the State.

**Chair Ocegueda:**

Are there any questions from the Committee? I see none.

**Teresa McKee, General Counsel for Nevada Association of Realtors:**

We have a small amendment that we need to address ([Exhibit F](#)). We wanted to add on page 2, paragraph 7, line 43, that this is a statewide association that would be covered. It would protect the smaller counties and smaller areas of the State if one of the larger areas on a local level would qualify for this type of association insurance and do it on a statewide level because many of the smaller areas would not be able to find insurance on their own. It adds a greater protection for more members of this State to fund on a statewide level. Other than that, I am happy to address any questions the Committee may have.

**Chair Ocegueda:**

What line was that?

**Teresa McKee:**

Line 43, it would read (a) "Guaranteed association" means a statewide association.

**Assemblywoman Buckley:**

With regard to that amendment, what if the Las Vegas group of realtors wanted to do their own association because they could get a better quote, why preclude options?

**Teresa McKee:**

We believe that if the Las Vegas association was to do that on their own, no other association would have enough people to cover the limits of 500 or more members. It would be very difficult, given the small number of realtors outside the Las Vegas area, to meet that requirement. It is a protection for the rest of the members in the State.

**Assemblywoman Buckley:**

My concern would be that this applies to everybody, not just realtors. Let us say there is an association of archeologists that decide they want to do their

own health insurance, but there is only one. They do not have a statewide group, the only archeologists are in Clark County. So, in order to get affordable health insurance they need to form a statewide association? Health insurance is already hard enough and expensive enough, why put up more barriers?

**Teresa McKee:**

I believe the only thing they would be required to do is open their membership on a statewide basis, not to limit their locality to Clark County, but to say that anyone in the State who wants to join their association can do so.

**Assemblyman Anderson:**

Why is there a 500-member requirement? Is that an actuarial number?

**Teresa McKee:**

This particular legislation was crafted after something done in Oregon. They have been through this process and dealt with the insurance company at length in developing the legislation, and the 500-member level does kick in. I do not know if it is an actuarial cut-off line. That is the size group they need in order to get the better rates under the group coverage.

**Chair Ocegüera:**

Are there further questions from the Committee?

**Assemblyman Conklin:**

I echo the comments of my two colleagues as areas of concern, and I am left wondering the point of the bill. The language is permissive, it says an insurance company may offer a policy of group health insurance, but they may not. It seems a lot of trouble to go through for potentially nothing. What was the thought behind it?

**Teresa McKee:**

We have been in contact with insurance brokers, agents, and carriers and find that there is an interest in providing this coverage to an association that could carry the numbers that we are looking at here. Right now, insurance companies are not allowed through Nevada law to cover a group of independent contractors except on an individual health plan basis. This bill would allow them to create groups that are grouped because they are independent contractors. They may or may not provide coverage, but we are getting some interest.

**Assemblyman Anderson:**

I thought the Nevada Association of Realtors was a statewide association.

**Teresa McKee:**

Yes. When you join the realtor membership you are a member of all three levels, national, state, and local.

**Assemblyman Anderson:**

So, regardless of whether you were a realtor in one of the smaller communities or the largest community in Nevada, you would be able to be part of the State organization if the State organization decided to offer that, is that correct? I am trying to understand the amendment.

**Teresa McKee:**

Our concern is if one local association offers coverage the remaining local associations would be too small to qualify.

**Assemblyman Mabey:**

Why is the number 500 instead of 250 or 100 if an insurance company wants to do this?

**Teresa McKee:**

We crafted this after looking at the Oregon legislation. That is the number they used.

**Assemblyman Mabey:**

However, we could still make it 250 instead of 500. I understand that the more in the plan the cheaper it would be, but it seems like 500 is too high.

**Assemblywoman Buckley:**

In your explanation about a statewide organization, I understand where you are going. It would be better to cover everybody. But, sometimes our geographic distinctions are great, and it would be difficult to negotiate a plan that would cover some providers in Clark County, and then deal with Washoe County and the rurals. There is a lot more to negotiate than a specific region. Sometimes, when you have to do that, it becomes more unaffordable because you are buying coverage in every part of the State.

**Senator Maurice E. Washington, Washoe County Senatorial District No. 2:**

I apologize for being late. The intent behind this bill is to provide coverage to those associations that do not have the opportunity to provide coverage for their members. It is once again an attempt to address the issue that Nevada has been battling for some years, and that is the uninsured. Fortunately for us, there are people who are independent, are working, and are providing a living for themselves and their families, but the cost of insuring themselves is very costly. Some of the members may not have insurance. This provides

an opportunity for those associations to band together to provide insurance for their members.

I appreciate the question regarding regional and statewide associations. For those of us who have been here for some time, remember the debate and the conversation and ultimately the policies and procedures and the statutes that were put in place concerning workmen's compensation. We came to the conclusion that if they are like associations, with a set amount of members, we were able to band them together with a minimum and a maximum to reduce the actuarial cost and increase the risk pool. I think this is under the same premise. Once you start regionalizing it, you dilute the risk pool and create some other numbers that may not be amenable to the insurance companies. We checked with the Insurance Commissioner's Office to see if this would be something that the State of Nevada could do and should do, and they were agreeable. We hooked our wagon to the realtors to provide member associations health coverage so that they could band together and provide this coverage.

I think you have already walked through the bill. I would like to conclude that this piece of legislation is to address that uninsured pool that is working and needs to provide some coverage for their family members, as well.

**Assemblywoman Buckley:**

I think we like the bill, and we like it so much that we want to loosen it up so that more associations could use it. We would like to expand it a little bit.

**Senator Washington:**

We are not in opposition to that. There are a number of associations that have approached me. If you want to include others, we have no problem with that.

**Vera Barnes, representing One Source Realty and Management:**

I am in support of this bill. I am a single mother with two children. I am recently without insurance for personal reasons. I was recently denied coverage because I am an independent contractor. I need insurance for my family, and I would like you to support this bill.

**Chair Ocegueda:**

Are there further questions from the Committee? I see none. Are there others wishing to testify? I see none. I will close the hearing on S.B. 403 (R1).

We will open the hearing on Senate Bill 409 (1st Reprint).

**Senate Bill 409 (1st Reprint): Requires policies of health insurance and health plans to provide coverage for a vaccine to protect against cervical cancer. (BDR 57-1077)**

**Alicia Peters, Intern for Senator Dina Titus:**

I come before you today to ask for your support for S.B. 409 (R1). This bill will require health insurance companies as well as the State plan for Medicaid and Nevada Check-up to provide coverage for expenses incurred by our female population in the administration of the Human Papillomavirus vaccine (HPV) to protect against cervical cancer. As a young woman, at age 20 and with four young sisters, I find myself directly confronted with the issues of prevention and contraction of HPV. As reported by Planned Parenthood, HPV is one of the most commonly sexually transmitted infections in the United States. It is estimated that up to 20 million Americans are currently infected. Presently, we have an average of 6.2 million Americans acquiring the virus every year. In the year 2000, approximately 9.2 million young adults were infected with HPV which translated to one in every four young people in America. Yet, over 70 percent of Americans have never heard of HPV, and an additional 89 percent have never discussed the virus with their health care providers.

According to Dr. Lloyd Boardman of Brown Medical School in a recent magazine article about HPV, "It is so common among young women in their late teens and early 20s that it is actually normal to test positive." Dr. Diane Harper at Dartmouth Medical School goes on to say "you would never know you were infected because there are no signs and your immune system usually fights off the virus within a few years." The HPV has become so widespread due to the fact that the virus grows on skin. So, merely touching an infected partner can set you up for infection.

Statistically speaking, it is estimated that 80 percent of all women will have HPV by the time they are 50, and probably more than half of all the women you know have had or will have HPV. Left unchecked, the virus can lead to cervical cancer. According to the American Cancer Society, in 2007 an estimated 11,150 cervical cancer cases will be diagnosed in the United States, and about 3,670, or approximately 10 women a day, will die from this disease. As of 2006, the World Health Organization reported cervical cancer as the second most common cancer among young women worldwide, with nearly 500,000 cases diagnosed each year and as the leading cause of cancer-related mortality in women in the developing world.

To date, there are over 100 known strains of HPV, numbers 16 and 18 are the cause of about 70 percent of all cervical cancers, and number 6 and 11 are believed to cause about 90 percent of all genital warts. The HPV vaccine



Gardasil is proven to be between 95 to 100 percent effective in protecting against all four strains of HPV. In June 2006, the Food and Drug Administration (FDA) approved and the Centers for Disease Control (CDC) recommended Gardasil for females between the ages of 9 and 26 and suggested the vaccine needs to be administered before the start of sexual activity and/or at the age of 11 or 12. It is important to note that over 45 states have introduced legislation regarding HPV. The states that have introduced legislation include California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Illinois, Kansas, Kentucky, Massachusetts, Michigan, Missouri, Minnesota, Mississippi, New Jersey, Oklahoma, South Carolina, Texas, Vermont, Virginia, and West Virginia.

States that have introduced legislation requiring insurance coverage for the vaccine are Florida, Georgia, Hawaii, New Jersey, New Mexico, and Rhode Island. Currently, there are three states that have taken action at the Executive level. New Hampshire provides the vaccine free of charge through the Department of Health for girls under age 18. Also, in January 2007, the Governor of South Dakota implemented a one-year initiative to offer the HPV vaccine free to South Dakota girls from ages 11 through 18. Lastly, Texas, through Executive Order now mandates that all females entering the sixth grade will receive the vaccine with certain exceptions.

The international pharmaceutical company Merck manufactures the vaccine and it is administered in three injections at zero, two, and six month intervals at a total cost of \$360. In the audience today, we have Scott Burns who is the senior Region Manager for Merck. He would be happy to answer any questions that the Committee may have.

In addition, I have provided each of you with handouts ([Exhibit G](#)) pertaining to the vaccine and its implementation. According to the Health Division, Nevada is required to make this vaccine available to all Aid to Families with Dependent Children (AFDC) eligible children. This program provides free vaccines for children who are uninsured, Medicaid eligible, under-insured, native American, or Alaskan native. The CDC negotiates vaccine contracts with manufacturers and then makes these vaccines available at no charge to providers. There is no charge to the State for this program.

Also, Nevada receives federal Medicaid funds to match State appropriations for Nevada Check-Up recipients. The figures for covering the HPV vaccine for the eligible population in the fiscal years 2008-2009 are as follows: In 2008, 1,452 girls would be eligible and approximately 1,163 would be vaccinated. The cost to the State to purchase the three-dose series would be \$288 for a total cost of \$334,944 with the State sharing the costs at \$110,163.

In 2009, 1,489 girls would be eligible and approximately 1,191 would be vaccinated. The State cost to purchase the three-dose series would remain at \$288 for a total cost of \$343,008 with the State's share in the cost totaling \$116,245.

According to the Fiscal Analysis Division of the Legislative Counsel Bureau, these costs have been included in the vaccination budget for Medicaid and Nevada Check-Up for the next biennium. This legislation will ensure that this vaccine is always available, not just for the next biennium.

A second aspect of this bill relates to private insurers. Private insurers typically follow the Advisory Committee on Immunization Practice (ACIP) guidelines, and 97 percent currently cover the vaccine including Cigna, Aetna, Blue Cross, and Sierra Health. Although state law does not affect self-insurers under the Employment Retirement Income Security Act (ERISA) plans, several are considering coverage of the vaccine, led by the Culinary Union which currently funds the vaccine for females up to the age of 18.

Yet, the implementation of this vaccine had not gone unchallenged or without debate. According to the Kaiser Family Foundation, State efforts to require Gardasil have been criticized by some groups that are concerned it might encourage promiscuity or infringe upon parents' authority over their daughters' health care. I would like to make it exceptionally clear for the record that this bill strives to promote positive outcome of this important feminine health issue and does not, in any way, promote promiscuity. Neither does this bill seek to infringe upon the parental or individual rights of the State's citizens. This is why the bill does not mandate the receipt of this vaccine. Rather, this bill provides that if the parents and the child as well as the adult individual decide that this vaccine is right for them, that the vaccine is made readily accessible and affordable. Furthermore, under federal mandate all states allow parents to opt out of any and all vaccine requirements on medical, moral, or religious values.

Dr. Harmon J. Ayer, Chief Medical Officer of the American Cancer Society, recently stated the following in regard to the future success of the HPV vaccine:

The vaccine holds remarkable potential, but unless the staying populations of women who right now do not have access to or do not seek regular Pap tests, get this vaccine, it will have limited impact. As the HPV vaccination for the prevention of cervical cancer is introduced and promoted it remains critical that women undergo regular screenings even if they have been vaccinated.

In closing, I stand strongly and passionately in support of this piece of legislation, and I believe that Dr. Ayer truly hit the nail on the head in his statement above. It is imperative for us to fund this vaccine and fundamentally essential that we properly educate Nevada's female population on the subject of HPV. Moreover, we must continue to encourage girls and women to seek medical attention and to submit to frequent screenings. Prevention of this virus and furthermore, cervical cancer, begins with us today, right here in this room.

Hundreds, if not thousands of cases of HPV could be avoided. Cervical cancer could be prevented, and in the end potentially thousands of lives could be saved with the passage of this legislation. Also, economically speaking, this bill makes good sense as well because it is much cheaper to get the shot than to treat cervical cancer. I urge your support of this legislation. In the words of Bonnie Sorensen, the Director of Nursing for Southern Nevada Health District, in a recent news report, "I cannot think of a worse case scenario than to have your child at 30 or 35 develop cervical cancer and know that you, as a parent, had the opportunity to protect them and did not act on that."

Thank you for your time and your attention to this very important matter. I would like to note for the record that I have provided the Committee with two letters in support of this bill ([Exhibit H](#)), one from Dr. Jason Pollock, a Board Certified OB/GYN with a private practice in Las Vegas and the second letter is from Dr. Lynn Kowalski, a Gynecologic Oncologist also practicing in Las Vegas.

**Chair Ocegura:**

Thank you for your testimony. You did an excellent job.

**Assemblywoman Buckley:**

I wanted to add that you did a wonderful job. It was a very thorough and well-done presentation. My question is probably better directed to Senator Titus. I noticed earlier today that we did a bill on requiring prostate cancer screenings, and there is a section in that bill that requires local governments to provide the screening for prostate cancer, and yet the same provision is not in this bill. I support the bill and think we save so much money and so many lives in focusing on prevention. Assemblyman Arberry and I were just talking about one of our colleagues, Jan Evans, who was probably one of the best legislators this building has ever seen, and her death from cervical cancer. I am wondering why the screening is being provided by local governments for the prostate cancer but not for cervical cancer.

**Senator Dina Titus, Clark County Senatorial District No. 7:**

I completely agree with you. The State does it, and I think the local governments can do it as well. In fact, the original version of the bill had local

governments included. We received an array of fiscal notes from the various counties. For example, Elko County estimated it would cost them more than Washoe County had in its fiscal note. Douglas County said they would save money for the reason you just outlined, that it is cheaper to do preventative care rather than deal with abnormal Pap smears or cervical cancer. Clark County, which was the killer, said they did not know how much it would cost, but it would be substantial because their policy allowed the members to choose what kind of coverage they wanted to include. Clark County does, however, provide coverage for prostate cancer. I am reluctant to say there is some sexism there, but certainly the history of health care and health experimentation has looked at concerns of the male population and not the female population. I would like to see this applied across the board.

**Assemblywoman Buckley:**

I agree, there has been some disparity in the way male and female health has been looked at over the years, the classic being the fact that Viagra was covered but women's birth control was not. I do not want to see us continue down this road by saying we will cover this for prostate cancer but we will not cover this for cervical cancer. It does not seem right to me. I also do not want to amend it back into your bill without your permission, and I do not know if we should roll them all into one bill. It seems to me that the State's policy needs to be consistent.

**Senator Titus:**

I agree with that. Perhaps we can get Clark County to come back to the table. I said publicly that they ought to be ashamed of themselves, and they should be shamed for not including this. Perhaps that has had some impact on them. I can tell you that we researched the cost for screening for prostate cancer and some of the other tests that go along with that, and it is much more expensive than the three-shot series for cervical cancer. I supported the prostate cancer screening.

**Chair Ocegüera:**

Are there any questions from the Committee?

**Assemblyman Mabey:**

I have a couple of questions. I deal with this every day that I am in my office. Abnormal Pap smears are very expensive. A policy of health insurance must provide coverage for benefits payable for expenses incurred. It costs my office just \$120 per vaccine, but then there is the cost of ordering it, storage, administering it, and the cost of billing it. What rate are the insurance companies going to pay? I send patients to Planned Parenthood because I do

not order the shots yet, and Planned Parenthood does not take insurance yet. They charge clients \$150 or they do not get the shot.

**Senator Titus:**

I guess it would work the way any insurance mandate works for what has to be covered when you mandate it, similar to a mammogram. Right now most insurance companies say they are covering the vaccine. I know that Sierra Health covers it.

**Assemblyman Mabey:**

Well, they say they are going to cover it, but even Planned Parenthood does not take insurance today. They make the clients pay up front. As a physician, that is my concern. They end up paying only a portion of what the cost is. Also, what happens to a group insurance if you have major medical? If you do not want this coverage, does this have to be part of a major medical group insurance policy?

**Senator Titus:**

That is always the argument against any kind of mandate. I may not have a heart attack but I might have cancer. This would work just like any other insurance mandate works. It will become part of the whole package.

**Assemblyman Mabey:**

You mentioned the ERISA plans. I have tried to do some things with insurance, and the opposition comes back and uses the ERISA laws. Most of southern Nevada is under ERISA laws, is that correct? So this would not apply.

**Senator Titus:**

It would not apply to those self-insured companies. But, as we pointed out, the Culinary Union is one of the really big groups, and they have already voluntarily covered this.

**Assemblyman Mabey:**

What is a VCA fund? I never heard of that before.

**Alicia Peters:**

It is Vaccine for Children. It is a federal program. The State registers with the program, and they provide free vaccines for children who are uninsured, Medicaid eligible, or underinsured. The State has to provide these vaccines.

**Chair Ocegueda:**

Are there further questions?

**Assemblyman Settlemeyer:**

How long does the shot last? Will they need a booster after so many years? I had another question on a similar matter.

**Senator Titus:**

The research right now is not solid on whether you would need a booster. I think we would rather have the Merck expert tell us about the drug and how it works, rather than my trying to explain.

**Scott Burns, Senior Region Manager, Health Policy, Public Health & Medical Affairs, Merck & Company:**

The information we have to date, and this is the challenge with any new vaccine, is that it takes time to see what the level of efficacy continues to be. Is the immunity sustained, or does it wane? Currently, there are only two vaccines that do not sustain long-term immunity. They are the flu vaccine and the pneumococcal vaccine. You need boosters every year for the flu, and with pneumococcal you need boosters every five years. The data that we have right now for the Gardasil HPV vaccine is that after five years there is continued levels of efficacy and protection. We are continuing to monitor the data and evaluate the potential need for a booster dose. It is a challenge with any new vaccine, but we know that we have protection for five years. It does not mean you need a booster after five years, we know there continues to be protection. We continue to do post-marketing surveillance. We have sentinel sites with women who were in our first clinical studies who have allowed us to continue to monitor them for the remainder of their lives. Should they ever have an abnormal Pap smear or develop dysplasia, we would look at that data. If a booster was necessary, that fact would be known well ahead of time. At this time there is no booster necessary.

**Assemblyman Settlemeyer:**

I was curious about the effectiveness with different age groups. From my research, it is extremely effective on the younger age groups prior to sexual activity. This drug originally was to solve pre-cancerous lesions, and that is where it comes into effect with cervical cancer. What is the reduction in effectiveness of this drug if given to older age groups compared to the younger ones? How much less effective is it on the older groups?

**Scott Burns:**

We look at the end point of pre-cancerous lesions in the age group 16 to 26 years. For those aged 9 to 15, we simply looked at if they developed an antibody to these types of HPV that are in the vaccine. For the younger girls, that is 9 to 15, they did develop a higher level of antibodies than those who were older. The levels for the 16 to 26 year olds is still protective, we are

not sure what level of protection or antibodies is needed to have protection against cervical cancer and pre-cancerous lesions. However, we know that the level is sufficiently above natural immunity. That data is in our prescribing information, and I can leave that for the Committee as well. [Nothing was left.]

**Chair Oceguela:**

Are there further questions? Is there other testimony?

**Patty Elzy, Director of Legislative Affairs, Planned Parenthood, Mar Monte, Nevada:**

[Spoke from written testimony ([Exhibit I](#)).]

**Chair Oceguela:**

Are there questions from the Committee?

**Assemblyman Mabey:**

So, you are not a provider for any of these insurance plans?

**Patty Elzy:**

We are a provider for Medicaid. We also accept children under Nevada Check-Up, but we are not a provider for other plans.

**Assemblyman Mabey:**

So, when someone comes in, do you give them any receipt so they can send it for reimbursement from their insurance company?

**Patty Elzy:**

I do not know if they will be reimbursed, it depends on whether the plan covers it, but it is written with codes that would be acceptable as billable by the insurance companies.

**Assemblyman Mabey:**

My guess is that a lot of those insurance plans would deny it because they are out of coverage. Hopefully, they would cover it.

**Senator Titus:**

That is why we need this bill.

**Chair Oceguela:**

Are there any other questions? I see none. Are there any others wishing to testify in support of S.B. 409 (R1)?

**Julianna Ormsby, representing Nevada Women's Lobby:**

We applaud the Senator Titus and all the other sponsors for bringing this forward. We support this bill, and we hope that you will support it, as well.

**Rena Meyers-Dahlkamp, representing Progressive Leadership Alliance of Nevada:**

We too are in support of this bill.

**Chair Oceguera:**

Are there any others wishing to testify in support of this bill? I see none. Are there any wishing to testify in opposition? I see none. Any comments in the neutral?

**Helen Foley, representing PacifiCare:**

We worked with Senator Titus on this bill. I did a survey of the insurance plans in Nevada and found more than 95 percent of them did cover the HPV vaccine. I also spoke with Alex Haartz from the State Health Division and he said that this was in the Governor's budget for the State to cover. In addition, Nevada Check-Up and Medicaid currently cover it. That leaves the self-insureds, over whom you have no authority. It was regrettable that the local governments were removed because it costs too much. It seems to me that if there is a public policy, this is very good for all Nevadans.

**Assemblyman Mabey:**

Would you mind asking PacifiCare to get back to us to tell us exactly what it would reimburse, today? If a physician bills for this, how much would PacifiCare pay?

**Helen Foley:**

I will. I understand that one of the problems is that it has to be refrigerated, and that makes handling the vaccine a little more difficult than in other situations.

**Assemblyman Mabey:**

That fact makes it more expensive for us to keep.

**Helen Foley:**

I will get that information for you.

**Assemblyman Mabey:**

The other thing that I am concerned about is that some of the patients are "covered." As we have learned in this Committee, they will later determine that the patient is not covered. So, a patient comes into my office, we will verify



that she has insurance. We will give her the vaccine, we will then bill it, and a month later find out that she was not covered because she was retroactively terminated. We have discussed that. Now the physician is out the cost of the vaccine and finds out after the fact that the patient did not have insurance. I wish we could tighten this up better so that the doctor does not get burned too often. If physicians could do what Planned Parenthood does, I think it would be a better way to go.

**Patty Elzy:**

Right now with the health plans, if a doctor requests that HPV vaccine be given, then it is covered by an insurance plan. The part about whether or not someone was a member at the time is a totally different issue, and a difficult one that you have faced.

**Senator Titus:**

I am sensitive to doctors having to pay for things out of their own pockets, and I think insurance companies should pay. Let us not lose sight of what this is all about, Doctor. You should know this more than anyone. This is about cervical cancer and irregular Pap smears and saving young women's lives. We should not be talking just about how much it will cost, let us look at that side of it also. I know you must see that every day and appreciate the importance of that as much as anyone here.

**Assemblyman Mabey:**

I do. I agree with you, and I support the bill. I just want to make sure that I am not paying thousands of dollars every year for cancer prevention when I should be reimbursed for providing a service and buying a product. I do not know of any other business that does business the way that doctors do, where we have to wait and find out six months later that a patient was not covered. I just do not want to subsidize this program. I want them to get vaccinated. I am doing research to help those women who already have cervical cancer. I do not think it is fair for the doctors to have to pay for these vaccines and then not get reimbursed by the insurance companies. What is going to happen, in the long run, is that doctors will not buy the vaccine.

**Patty Elzy:**

I wanted to clarify that our affiliate in northern Nevada has not initiated HPV vaccinations yet. I do not know what the cost for the vaccination will be for the sliding scale fee for service patients. I can get back to you on what Planned Parenthood in southern Nevada may be doing with their clientele for HPV.

**Chair Ocegüera:**

Thank you. Are there further questions? I see none. Is there any further testimony? I see none. I will close the hearing on S.B. 409 (R1). Friday will be a work session.

[The meeting was adjourned at 3:42 p.m.]

RESPECTFULLY SUBMITTED:

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Patricia Blackburn  
Committee Secretary

APPROVED BY:

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Assemblyman John Ocegüera, Chair

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

**EXHIBITS**

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

**Date:** May 7, 2007

**Time of Meeting:** 1:40 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
SB 113 (R1)	C	Lewis Musgrove	Statistical information
SB 113 (R1)	D	Michael Hackett	Written Testimony
SB 359 (R1)	E	Robert Compan	Sample letters and authorization forms
SB 403 (R1)	F	Teresa McKee	Proposed Amendment
SB 409 (R1)	G	Alicia Peters	Information Packet
SB 409 (R1)	H	Alicia Peters	Letters in Support of Bill
SB 409 (R1)	I	Patty Elzy	Written Testimony