

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

**Seventy-fourth Session
March 7, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Wednesday, March 7, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Assemblyman David R. Parks, Assembly District No. 41

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Jeanine Wittenberg, Committee Secretary
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Shawn Spanier, SSafe Mortgage, Incorporated
Mendy K. Elliott, Director, Department of Business and Industry
Mike Giusti
Diane Schramel, President, National Association of Professional Mortgage Women Las Vegas
John P. Sande, IV, Nevada Collectors Association
Marel Giolito, President, Nevada Collectors Association

Senate Committee on Commerce and Labor
March 7, 2007
Page 2

Randy Robison, Nevada Credit Union League
Wally Murray, Vice Chairman, Nevada Credit Union League
John Wanderer
Steven Kondrup, Acting Commissioner, Division of Financial Institutions,
Department of Business and Industry
John P. Sande, III, Nevada Collectors Association
Robert L. Crowell, Nevada Association of Mortgage Professionals
Robert A. Ostrovsky, Employers Insurance
D. Roger Bremner, Administrator, Division of Industrial Relations, Department of
Business and Industry
Gary E. Milliken, Builders Insurance Company

CHAIR TOWNSEND:
I will open the hearing on Senate Bill (S.B.) 160.

SENATE BILL 160: Makes various changes relating to mortgage lending.
(BDR 54-705)

SHAWN SPANIER (SSafe Mortgage, Incorporated):
I support this bill, which would create a Commission on Mortgage Investments and Lending. We are going in the right direction for the mortgage industry. A commission has worked well for the real estate industry and other industries across the country, and it is high time the mortgage industry had one of its own. It would strengthen the Division of Mortgage Lending (DML), Department of Business and Industry, and increase their ability to collect fines.

CHAIR TOWNSEND:
If this bill had been in place before now, would it have had a greater chance of protecting the public against the problems southern Nevada is currently facing in the mortgage industry?

MR. SPANIER:
Yes. A commission would have strengthened the DML's ability to put bad actors out of business while giving redress to those unfairly fined.

MENDY K. ELLIOTT (Director, Department of Business and Industry):
I am neutral on this bill. I am willing to work with the Committee and the industry on this bill. It is imperative that the regulatory process continue to work for everyone, and we are always looking for ways to improve the way we

execute our responsibilities. However, we need to be sure we are not simply adding another layer of unnecessary regulation. The Governor has asked me to be sure consumers are protected, and that we are not overburdening the industry with regulations.

My main concern with S.B. 160 is that it has the potential to allow unscrupulous actors to continue their abuse of consumers after Scott Bice, the Commissioner of the DML, has determined they have violated the law. Currently, Mr. Bice can shut down a lender immediately if he discovers a problem. This bill would allow the lender to file an appeal with the Commission, thereby staying the Commissioner's decision. When we see wrongdoing, we need to act quickly and judiciously. I am not certain this bill represents a step forward.

The DML has held numerous hearings. Mr. Bice issued 262 mortgage agent denial orders between September 2004 and February 2007. He has set and held 40 hearings on these denials; 3 had to be continued, and many were no-shows. We have 22 pending agent denial hearings; however, Mr. Bice has just issued 18 denials and anticipates more hearings. Only one agent filed in district court after affirmation of the mortgage agent denial pursuant to *Nevada Revised Statute* (NRS) 233B; however, we are entering into a settlement, and the matter never went to hearing.

The intent of the bill is a good one. The process as it currently exists works, and we have the ability to ensure that Nevadans are protected.

SENATOR CARLTON:

I had understood the Commission would be self-funded. Do you know how this would work?

MRS. ELLIOTT:

I have not been asked for a fiscal note. I can make an assumption that the cost of administration would be passed on to the industry through fees.

SENATOR CARLTON:

What problem are we trying to solve with this bill?

Senate Committee on Commerce and Labor
March 7, 2007
Page 4

MRS. ELLIOTT:

From the DML's point of view, there is no problem. As things stand, I can shut someone down today if they are doing bad things. A commission could delay the process and keep a bad actor open for business. This bill is a move in the wrong direction.

SENATOR CARLTON:

In the Legislative Counsel's Digest of this bill, line 7 of page 1 says, "the Commission is given the sole power to create regulations relating to appeals hearings and continuing education requirements" Does that take away the requirement that those regulations come back to the Legislative Counsel Bureau (LCB) for review?

WIL KEANE (Committee Counsel):

No. Regulations will still go through LCB the regular way. It's just that the existing regulations will become regulations of the new commission, and the new commission would have the power to modify those regulations or change them.

SENATOR CARLTON:

Would they still have to come back to us for approval?

MR. KEANE:

"Yes. The current process would stay in place."

CHAIR TOWNSEND:

What level of audits do you feel the DML should conduct in order to help the investing public?

MRS. ELLIOTT:

Current statute states every mortgage entity needs to be audited on an annual basis. This sets us up to fail, since this is far too many audits for us to complete in a year. A tiered schedule would be more achievable, with good actors being audited every 24 or 30 months and providing us with financial updates every 3 to 6 months. If we get a complaint about individual lenders, they would be moved back to the 12-month schedule. That would enable us to focus on new companies and hard-money lenders, and thus my examiners would be able to act much more quickly if we hear of something going on. We are hoping to hire

an additional 28 examiners over the next 2 years. If we can alter the schedule for audits, we might not need to hire as many examiners.

MIKE GIUSTI:

I am a Nevada real estate broker and a mortgage banker. I would like to share my experiences with the Real Estate Commission as an example of how the commission proposed in this bill might work. When I have business before the Commission, I must get the information to them 60 to 90 days in advance of their hearing. When the hearing is held, I am not guaranteed that I will be able to appear at the hearing and be heard. If my business is denied or modified by the Commission, I must wait another 60 to 90 days until I have the opportunity to pay the expense to travel to Las Vegas where I might have the chance to appear.

I have an exhibit ([Exhibit C](#)) showing the efforts of the Commission to adopt regulations regarding how business brokerages are regulated. Something as simple as trying to sell a business has had four sets of regulation interpretations. The people on the Commission are not lawmakers. We are in the business of selling houses and making loans; we are not in the business of making laws. This shows in the fact that emergency regulations were required.

With regard to the Commission being the authority to approve continuing education, that is within my bailiwick as the education director for the Nevada Mortgage Bankers Association since 1996. We have received national awards for the classes and educational events we have sponsored. I would ask that we be considered as one of the entities that can provide these classes because we do a great job, and we can prove it.

DIANE SCHRAMEL (President, National Association of Professional Mortgage Women Las Vegas):

I am opposed to this bill. When I first came into the business about 12 years ago, mortgage lenders were under the Division of Financial Institutions (DFI), Department of Business and Industry, and it was a hostile environment. We struggled to understand what we were supposed to do; there was little direction, enforcement or dialogue from the person who was the head of the DFI at that time. Since the formation of the DML, the industry as a whole understands what it is we are supposed to be doing. We now have regulations regarding advertising, licensing for loan officers and a complaint process. In past years, when someone would call the DFI to complain about an officer, the

complaint simply went into a file; the broker or banker often did not know that a complaint existed. Today, we have regulations and we know what they are, and the industry is better off for it. More importantly, we have seen enforcement of disciplinary actions against companies that come from out of the State and take away business from Nevadans.

A commission that would add another layer of bureaucracy to the process seems self-defeating. Of the 7 members of the commission, 2 of them will represent the more than 11,000 individuals in the mortgage side of the industry, 2 will represent the 49 individuals in the escrow side of the industry, 2 will represent the 250 individuals in the banking side of the industry, and 1 member will represent the public. This is unbalanced.

The mortgage industry is better now than it has ever been, and it is getting stronger. We are in favor of the DML staying as it is now. There are some individuals who would prefer to have a commission because they feel it would further the interests of their businesses. For the interests of the mortgage industry, this is not a good bill.

CHAIR TOWNSEND:

I will close the hearing on S.B. 160 and open the hearing on S.B. 159.

SENATE BILL 159: Revises provisions governing collection agencies. (BDR 54-541)

JOHN P. SANDE, IV (Nevada Collectors Association):

We support this bill. I have written testimony summarizing S.B. 159 ([Exhibit D](#)). The intent of this bill is to establish a clear licensing requirement for collection agencies. The bill would establish a licensing process whereby all collection agencies engaging in meaningful collection activities within the State must obtain a license through the DFI. In circumstances where out-of-state collection agencies are conducting limited collection activities in Nevada, they can apply for a certificate of registration as a foreign collection agency, which is a lesser requirement than a license.

This legislation serves two important policy considerations. The first is consumer protection. Currently, out-of-state collection agencies are able to conduct substantial collection activities without being regulated to the same degree as that of the in-state agencies. In some instances, the states in which

they are located do not have any licensing requirements. These companies are essentially unregulated. Licensing these companies in Nevada will protect consumers by requiring the companies to maintain records and allow the DFI to audit those records annually. They would also be required to have a qualified manager who can be contacted by the DFI if problems arise. The bill also allows for disciplinary actions for unscrupulous collection activities and requires collection agencies to maintain a bond.

The second policy consideration of this bill is to protect Nevada collection agencies. The existing licensing requirements are somewhat onerous, and compliance entails some overhead costs. Out-of-state collection agencies that do not have similar overhead costs are thus able to undercut Nevada agencies in price and solicit clients from them.

It is important to stress that this bill does not make it more burdensome for an out-of-state collection agency to conduct business in Nevada. It simply levels the playing field between in-state and out-of-state agencies.

This bill proposes other changes to statute as well. It removes the license requirement for those out-of-state collection agencies eligible for a certificate of registration. If an agency's home state does not require a license, it would be an unfair burden on them to require them to be licensed here. The bill also states that agencies operating under a certificate of registration are not allowed to solicit Nevada creditors for business. That requires a Nevada license. Out-of-state agencies are welcome to apply for such a license; we are not attempting to keep out-of-state agencies from doing business in Nevada.

SENATOR CARLTON:

Section 2, subsection 2, paragraph (d), subparagraph (2) of the bill states that a person holding a certificate of registration, "when collecting claims against debtors who are present in this State, must ... limit his activities and those of his employees and agents to the collection of claims from residents of this State on behalf of residents of another state." As I interpret this, only in-state agencies can collect on behalf of Nevada residents. Is that true?

MR. SANDE, IV:

That is true for agencies holding a certificate of registration. However, there is nothing preventing those agencies from becoming licensed here and soliciting

Senate Committee on Commerce and Labor
March 7, 2007
Page 8

business from as many Nevada residents as they can. This is current statute and is included in NRS 649.075.

SENATOR CARLTON:
Can you remind me why we put this in?

MR. SANDE, IV:
This serves as an exemption from the licensure requirement for individuals such as bank employees collecting on behalf of the bank or attorneys writing demand letters.

MAREL GIOLITO (President, Nevada Collectors Association):
I would like to add that if a Nevada resident owing money to a Nevada business moves to the state of Arizona, a Nevada collection agency is not allowed to contact that individual in any fashion without a full Arizona license. This bill simply applies this standard to Nevada, by requiring out-of-state collection agencies to be registered in Nevada before collecting debts in Nevada. The certificate of registration has several benefits for Nevada. It gives the consumer the ability to complain to the DFI if they feel there is a problem with the way the out-of-state agency is handling their case. The fee for the certificate also adds to the DFI's revenues.

We know there is a lot of unlicensed collection activity going on in Nevada, but we are not addressing that at this point. We feel this bill is a benefit to the consumer and the industry. Notifying anyone who has an exemption now is a simple matter. Most collection agencies belong to American Creditors and Collectors International, and this organization notifies its members of any changes in state law.

RANDY ROBISON (Nevada Credit Union League):
After speaking with Mr. Sande, many of our concerns about this bill have been alleviated. However, we do still have concerns with the way the bill is drafted.

WALLY MURRAY (Vice Chairman, Nevada Credit Union League):
I am the Chief Executive Officer of Greater Nevada Credit Union. Our concern is that S.B. 159 would limit our ability to partner with out-of-state collection agencies.

CHAIR TOWNSEND:

I believe the testimony was that the bill does not prevent you from using an agency from out of the State, but they must have a Nevada license. Is that how you read it?

MR. MURRAY:

Yes. We are looking to partner with an out-of-state collection agency that services credit unions. Our concern is that this bill will not allow us to partner with this agency unless they establish an office in Nevada and fulfill the other requirements of being licensed in Nevada. It would not be worth it for them to go through the trouble and expense of this process for a single client.

CHAIR TOWNSEND:

Yours is a unique situation. Have you asked the agency if they are willing to get a Nevada license? It does not appear to me to be an onerous or over-rigorous application process.

MR. MURRAY:

It is not. The issue is the expense of establishing an office with a qualified manager in the State of Nevada for the sake of a single client. We have no problems with the general intent of the bill and are willing to work on the language.

JOHN WANDERER:

I am an attorney in Las Vegas with more than 30 years of experience in the collection industry. I am in qualified opposition to this bill, though I applaud the objective of trying to protect consumers from unlicensed collection agencies from other states.

There are flaws in the bill, both in the way it may be applied and in the way it is being brought forth. Nevada has issued more than 100 exemptions to agencies around the country, and these agencies as a matter of fairness should have had some sort of notice that their exemptions will be revoked if this bill passes. Such a revocation of exemption could be traumatic for agencies that have contractual relationships with credit organizations to collect debts from people who have moved to Nevada. The effect would be to put their business relationships in a precarious position. In addition, registering as a foreign collection agency is not as easy as it seems. The process requires them to complete background investigations on employees. The only real difference

between licensing as a Nevada agency and registering as a foreign agency is that a foreign agency does not need to maintain an office in Nevada. They still need to qualify employees, post bonds, make their records available for audit and complete all the other requirements that Nevada agencies must meet. How many agencies will be willing to subject themselves to that process?

If this bill is to pass, it needs to include a transition period during which those who hold exemptions can continue to do business while they seek licensing. Also, the failure to notify agencies of the revocation of exemption may have due process issues. There are also issues of interstate commerce and whether this bill will interfere with that.

Finally, section 2, subsection 2, paragraph (c), subparagraph (2), seems purely inappropriate. Nevada is home to multinational corporations, some of which have hired collection agencies outside of the State not necessarily for doing any work in Nevada. Subparagraph (2) would preclude a Nevada corporation from doing this. The language is superfluous, as the existing language in subparagraph (1) seems to be sufficient.

CHAIR TOWNSEND:

Mr. Sande, have you given any thought to the possibility of adding a transition period to the bill?

MR. SANDE, IV:

I do not think we would have a problem delaying implementation for the annual period that the exemption normally runs. They could then choose to obtain either a license or a certificate of registration in the next cycle.

CHAIR TOWNSEND:

Mr. Keane, do you understand the suggestion?

MR. KEANE:

I understand what he's talking about, but I would have to look up the provisions to see how those certificates are renewed. I'm not familiar with them off the top of my head. But certainly, if they are on an ongoing, rolling basis, we could write something that would do that.

Senate Committee on Commerce and Labor
March 7, 2007
Page 11

CHAIR TOWNSEND:

With regard to section 2, subsection 2, paragraph (c), subparagraph (2), the language is unclear. Does it prohibit a multinational corporation located in Nevada from hiring out-of-state agencies to collect out-of-state debts?

MR. SANDE, IV:

As I read it, subparagraph (2) is qualified in the initial paragraph as prohibiting them from responding to collection activities in Nevada.

CHAIR TOWNSEND:

We have received a letter from the Commercial Law League of America ([Exhibit E](#)) laying out their opposition to the bill.

Mr. Sande, I would recommend you discuss the issue of a transition period with Mr. Keane. We could either tie the effective date to the expiration of the exemptions, or we could simply set one date for everyone. I would also like you to contact Mr. Wanderer and include him in the discussion regarding section 2, subsection 2, paragraph (c), subparagraph (2), if he is willing.

MR. WANDERER:

Certainly. My e-mail address is <jwanderer@wandererlaw.com>, and my office telephone number is (702) 382-9558.

SENATOR SCHNEIDER:

Let me disclose that I am on the board of directors of Community One Federal Credit Union, and they have some concerns about the bill.

CHAIR TOWNSEND:

Mr. Sande, I would also like you to include the credit unions in the discussion. Their situation is unique in this regard, and we want to make sure we fully understand their problem.

SENATOR HARDY:

I need to disclose that I am a former member of the board of directors of Ensign Federal Credit Union, and I am currently an advisory committee member for the Bank of North Las Vegas. Neither of these is a paid position.

I would like some clarification of the process for an out-of-state agency becoming licensed in the State of Nevada. It sounds like a difficult process if it

includes maintaining an office in Nevada. I would also like to clearly understand the distinction between a foreign collector and an out-of-state collector. I look forward to working with Mr. Sande and others on this.

CHAIR TOWNSEND:

Mr. Kondrup, could you outline the process by which someone would apply to be licensed, whether they currently have a certificate as a foreign agency or not?

STEVEN KONDRUP (Acting Commissioner, Division of Financial Institutions, Department of Business and Industry):

If a collection agency desires to collect for a client in Nevada, they have two options. The first is that they can be licensed, which requires them to have a physical office in the State with a qualified manager on-site during collection activities. There are provisions in the statute allowing companies located outside of Nevada that acquire a client in Nevada to complete the application process; they, too, must have a qualified manager licensed by Nevada on-site for collection activities conducted in Nevada. The exemption certificate allows an out-of-state agency with no clients in Nevada to collect debts from Nevada residents on behalf of out-of-state clients. The agreement is that they will attempt to collect the debt by telephone, fax or letter only.

CHAIR TOWNSEND:

What is the process for becoming licensed in Nevada, and how long does it take?

MR. KONDRUP:

The application for a license is available on the DFI's Web site. The process can take 90 to 120 days. The reason for this delay is the required background investigation, which currently has a backlog at the Federal Bureau of Investigation.

CHAIR TOWNSEND:

Are there other requirements, such as education or bonds?

MR. KONDRUP:

There is no education requirement. The bond requirements, which are set by statute, are tiered based on the agency's trust accounts. There are also requirements regarding how the collected funds are to be processed.

SENATOR HARDY:

As I understand it, if a collection agency is outside of the State and an out-of-state company wants to contract with them to collect debts inside Nevada, the only two options are for the agency to become fully licensed with an office and a qualified manager in Nevada, or to receive a certificate of registration as a foreign collection agency. Is that accurate?

MR. KONDRUP:

Yes.

SENATOR HARDY:

This bill, then, prohibits companies inside the state from contracting with agencies outside of the state to collect debts from Nevada residents. Is that correct?

MR. KONDRUP:

Yes, unless the agency is licensed in Nevada.

JOHN P. SANDE, III (Nevada Collectors Association):

With regard to the issue of interstate commerce, most problems with interstate commerce are those in which a state imposes more restrictions on out-of-state businesses than on in-state businesses to give them an unfair advantage. That is unconstitutional. I do not see that as a problem with this bill. We can tweak the requirements so out-of-state agencies do not need to maintain an office in Nevada. However, if we are going to require certain things of in-state businesses, it is not logical to say out-of-state businesses do not have to meet those requirements. It makes more sense to say if agencies are soliciting business or representing businesses in Nevada, they must be licensed. Many other businesses and professions have this sort of restriction. For example, if I wished to practice law in California, I must either have a California license or register with the court for a specific purpose and work under a licensed attorney. I think we can resolve these issues and make the bill simpler, but if licensing is required for agencies inside the State, it should be required for out-of-state agencies who wish to do business here.

MR. WANDERER:

Under the present scheme, the out-of-state agencies are not allowed to do business in the same way as the in-state agencies. Out-of-state agencies are only allowed to collect debts via telephone calls and letters through the

Senate Committee on Commerce and Labor
March 7, 2007
Page 14

U.S. mail. In-state agencies are permitted to knock on doors and use other methods to collect debts. They are not being treated the same.

CHAIR TOWNSEND:

I will close the hearing on S.B. 159 and open the hearing on Assembly Bill (A.B.) 9.

ASSEMBLY BILL 9: Authorizes the licensure of a mortgage agent on behalf of a corporation or limited-liability company. (BDR 54-729)

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):

I requested this bill on behalf of the Nevada Association of Mortgage Professionals. They are here to present the bill.

ROBERT L. CROWELL (Nevada Association of Mortgage Professionals):

This bill allows a mortgage agent to operate and be licensed as a limited-liability company (LLC) or corporation. The language is patterned after the statute allowing real estate agents to conduct business as a corporation or a single-member LLC. The bill was triggered by several requests from mortgage agents to conduct business as a business enterprise rather than as an individual. Currently, Nevada mortgage law allows an agent to be an individual, an employee or an independent contractor. To be licensed as a mortgage agent, you have to be a natural person. Under NRS 0.039, a "person" can be a corporation or a business entity. There is some confusion, however, as to whether a "person" in this context includes a natural person. This bill allows someone licensed as a "person" to be licensed as a corporation or an LLC. Other than that, the bill does not change the licensing standards of a mortgage agent.

SENATOR CARLTON:

By allowing natural persons to act as an LLC, are we giving them any more protections? Are they shielding themselves by becoming an LLC?

MR. CROWELL:

They are not shielding themselves from licensing laws or regulatory laws. The argument could be made that they would have the liability protection ordinarily accorded to a corporation or LLC. However, since the bill restricts this to corporations or LLCs with a single shareholder, I have doubts about whether there is any additional liability protection. There are business reasons why an individual might want to do that.

SENATOR CARLTON:

Would it prohibit the regulatory agency from getting information about their corporation in any way?

MR. CROWELL:

No.

MR. KEANE:

I discussed these with Mr. Parks just before the meeting, so he is aware of them. There are two minor drafting mistakes in here that we would like to fix. One is on page 2, line 15, where it says "mortgage agent in NRS 645B.0125." That actually should be "mortgage broker in NRS 645B.0127." The second issue is section 2 actually should not be in the bill. It's an internal reference that is actually not correct.

CHAIR TOWNSEND:

I will close the hearing on A.B. 9 and open the work session on S.B. 20.

SENATE BILL 20: Revises provisions governing claims against subsequent injury accounts. (BDR 53-562)

ROBERT A. OSTROVSKY (Employers Insurance):

After much discussion, the parties impacted by this bill, which are the various self-insured and insured groups, have not been able to come to terms. They are probably at an impasse regarding changing the time for reporting in section 1, subsection 5. However, they do agree that in section 1, subsection 6, the time may be changed from 90 to 120 days, to allow the administrator time to process claims. It is my understanding the Division of Industrial Relations would agree to allow the bill to go forward with subsection 6 intact and removing the other sections of the bill. These changes would apply to the three different funds referenced in the bill.

D. ROGER BREMNER (Administrator, Division of Industrial Relations, Department of Business and Industry):

We have agreed to accept the amendment as described by Mr. Ostrovsky. The purpose of the bill was to give the Division relief. Subsequent-injury claims are sometimes much more complicated than standard claims and take longer to

process. Changing the time in section 1, subsection 6, from 90 to 120 days will offer us some relief.

SENATOR HECK:

Do I understand you are taking out the provision that would eliminate the requirement for insurers to notify the Division of a possible claim?

MR. OSTROVSKY:

Yes. We have been unable to get all the parties to agree that this will not harm them. We think it will create some harm in our ability to access this fund. We understand the Division has been facing the new problem of people "data mining." That is, third parties come to a company and offer to go through their old claims looking for ways to access the self-insured fund. That has increased the number of self-insured claims, which has created an additional workload for the Division. However, we have not been able to agree that eliminating this requirement is a way to cut the workload. We will work with the Division over the interim to come up with a solution.

MR. BREMNER:

We do not believe that this type of data mining is the purpose of the subsequent-injury claim.

It was not our intent with this bill to limit or prevent people from filing subsequent-injury claims. The intent was to give us some relief with the workload. We will get together in the interim and come up with some language for the next session of the Legislature to take care of both situations. However, it may be necessary for us to add personnel in the future in order to do these claim reviews.

CHAIR TOWNSEND:

If you find a particularly unique case that would help us understand the process and why you need people and not just computers, please send that information to the Committee. We are not interested in the names of the individual, the company or the fund involved.

MR. OSTROVSKY:

Just for the record, I'd like to make sure everyone on this Committee understands that the language and the impacts of this bill affect the insurers and how they—the money flows between

them to pay for these claims. This has no impact whatsoever on any decision relative to a claimant or their claim. This process comes in much after a claim is closed. Everything is done, and it's a question of how we're going to fund the cost of those claims. So we'll make it very clear in any of the changes either that were proposed or you might approve today that have been talked about have no impact whatsoever on an individual claimant or their claim file.

CHAIR TOWNSEND:

This bill has to do with filings against the fund by the employer, not by the claimant, correct?

MR. OSTROVSKY:

The filing is done by insurers. In some cases, they are the employers if they are self-insured.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 20.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:

I will open the work session on S.B. 54.

SENATE BILL 54: Revises provisions governing industrial insurance to create a presumption of intoxication or use of a controlled substance under certain circumstances. (BDR 53-803)

GARY E. MILLIKEN (Builders Insurance Company):

Our discussion on this bill previously started with individuals who refuse to take a drug test, and it then broadened out from there. As directed, I have worked with the sponsor of the bill and its opponents to try to get some better language. We are not sure we have, but we will leave it to the Committee to decide.

SENATOR HARDY:

In our previous discussion, we talked about the drug policy of the employer, and in reality this bill does not impact that at all. This simply says if the employee refuses to take a drug test, he is presumed to be on drugs. The concern then revolved around having a uniform drug-testing policy, and that is not what this bill addresses. With that in mind, I am comfortable with the bill as it stands.

SENATOR HARDY MOVED TO DO PASS S.B. 54.

THE MOTION FAILED FOR LACK OF A SECOND.

* * * * *

CHAIR TOWNSEND:

There were two issues in this bill that stuck in our minds. One was the issue of a consistent and uniform drug policy, which this bill does not address. It would be important for those who represent management to work with those who represent labor to seek common ground on this. This might require some dialogue over the interim. For those who have negotiated contracts, those issues are dealt with there, but every business without a negotiated contract could have a different drug policy. This bill deals with employees who are likely to be working without a negotiated contract.

The other issue that came up was how to deal with someone who is incapable of deciding whether to take a drug test or not. In the case of severe injuries, a person might not be coherent or even conscious enough to make a logical or informed decision. Was there any discussion on how to deal with that situation? If a person is incapable of making the decision, are they automatically considered intoxicated?

MR. MILLIKEN:

That situation is not an issue in this bill. This bill refers to 125 specific cases in which the injured workers were conscious and refused to take a drug test. That is the category we are looking at. Some of these people were terminated because they refused to take a drug test, but the company still has all the modification factors and expenses of a workers' compensation claim. This bill is about the insurance side of the matter.

CHAIR TOWNSEND:

Perhaps we could say that if an employee refuses a drug test after an injury, it cannot be used against the employer or affect the employer's modification factors. It is an insurance issue, not a personnel issue. The employer should not be held responsible if an employee chooses not to have a drug test. Mr. Milliken, please work on the bill from that angle.

MR. MILLIKEN:
I will do that.

CHAIR TOWNSEND:

I will close the work session on S.B. 54 and open the work session on S.B. 99.

SENATE BILL 99: Revises provisions concerning consolidated insurance programs. (BDR 53-1010)

SENATOR HARDY:

We wanted to make it clear that the bill only deals with the modification factor in these cases and not with the premium or anything else following the subcontractor. It will certainly have an impact on premiums, but only to the extent that the lower or higher modification factor has an impact on premiums.

SENATOR HARDY MOVED TO DO PASS S.B. 99.

SENATOR SCHNEIDER SECONDED THE MOTION.

SENATOR CARLTON:

In discussions I have had with subcontractors recently, one of the concerns they have is about owner-controlled insurance programs (OCIPs). I want to make sure there is no unintended consequence that as these modification factors are shifted to the subcontractor, it becomes more difficult for them to get insurance.

SENATOR HARDY:

This does have an impact on a subcontractor who has difficulty with his or her safety program. The intent is to make the subcontractor concerned about safety on the job. If there are no negative consequences for accidents among their employees, they will stop being concerned about that. Currently, the general contractor and the OCIP are responsible for the safety program. Sometimes, bad

actors gravitate to those jobs because they know they do not have to worry about safety; if their employees get injured, it will not affect them. This bill simply says the subcontractor will be held responsible if their employees are not safe and rewarded if they are safe.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

I will close the work session on S.B. 99 and open the work session on S.B. 119.

SENATE BILL 119: Makes various changes to provisions relating to benefits for certain workers with injuries. (BDR 53-257)

CHAIR TOWNSEND:

Are any amendments being offered for this bill?

MR. OSTROVSKY:

No, there are no proposed amendments. At the last discussion of this bill, Senator Heck raised the issue of changing the date from the date of injury to the date of last medical service. In these small claims, that is usually relatively close to the date of injury.

SENATOR HECK:

I brought that up to try to reach some consensus between the opponents and proponents of the bill. From the opponents' position, there could conceivably be an injury for which some medical treatment was sought within days of the initial injury, but there might be some late-appearing symptom that would require treatment. That may push them over the \$1,000 limit, which would automatically extend it.

MR. OSTROVSKY:

We have no objection to the amendment. The only problem is with the administration of it. We track date of injury; we do not necessarily track the date of the last medical service.

Senate Committee on Commerce and Labor
March 7, 2007
Page 21

SENATOR HECK:

Was there any discussion with the opponents of the bill to see if that alleviated their concerns?

MR. OSTROVSKY:

No. From the testimony I heard, I do not think that is a significant issue for those who oppose this bill. Their opposition is more a philosophical discussion about whether an insurer should have the right to close a claim for life or not.

SENATOR HECK:

I would like the opportunity to discuss this with the opponents of the bill.

CHAIR TOWNSEND:

I will close the work session on S.B. 119 and open the work session on A.B. 9 with the amendments requested by Mr. Keane.

SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 9 WITH THE AMENDMENTS REQUESTED BY MR. KEANE.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Senate Committee on Commerce and Labor
March 7, 2007
Page 22

CHAIR TOWNSEND:

Is there any further business before this Committee? Hearing none, I will adjourn the meeting at 9:55 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____