

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

**Seventy-fourth Session  
March 13, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:03 a.m. on Tuesday, March 13, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file 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 Tick Segerblom, Assembly District No. 9

**STAFF MEMBERS PRESENT:**

Laura Adler, Committee Secretary  
Kelly S. Gregory, Committee Policy Analyst  
Wil Keane, Committee Counsel  
Scott Young, Committee Policy Analyst  
Gloria Gaillard-Powell, Committee Secretary

**OTHERS PRESENT:**

John Wanderer, Attorney  
Dan R. Reaser, National Vehicle Protection Association  
D. Roger Bremner, Administrator, Division of Industrial Relations, Department of  
Business and Industry

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CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (A.B.) 47.

**ASSEMBLY BILL 47**: Revises circumstances under which an attorney is excluded from regulation as a collection agency. (BDR 54-792)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):

This bill was brought to me by a constituent of mine, John Wanderer, who is a collection attorney in Las Vegas. He is actually appearing by video from Las Vegas. I would like him to explain the bill.

JOHN WANDERER, Attorney:

I asked Assemblyman Segerblom to bring forth A.B. 47 to repeal from the *Nevada Revised Statute* (NRS) 649.020 subsection 2, paragraph (g), 18 words that end that paragraph. These words purport to potentially license attorneys as collection agencies. The bill was introduced in the Assembly and I understand it passed unanimously. The bill also has the support of Steven Kondrup, Acting Commissioner of the Division of Financial Institutions, Department of Business and Industry, and they had no problem with removing this language.

An attorney who operates a collection agency would have to be licensed. Under the existing statute, repealing these 18 words does not affect the bill. The offending language purports to require licensing by the Division of Financial Institutions for activities which are legal in nature. Attorneys are licensed by the Nevada Supreme Court. Attorneys are actually a part of the judicial system of government. We are regulated by the State Bar of Nevada under the rules of ethics. Attorneys who practice collection law are regulated by federal law, as well as by the state rules of ethics. The language gives the Division of Financial Institutions the opportunity to require attorneys to be licensed. This is most likely unconstitutional because attorneys are part of the judicial system, making it a separation-of-power issue. The current language is unnecessary since this language was inserted in a 52-page bill revamping collection agencies under the NRS 649. It was passed in 2005. I have been inundated with calls from attorneys all over the State who have some degree of collection practice. To my knowledge and after consultation with Mr. Kondrup, no attorney in the State has sought to be licensed. The Division of Financial Institutions has not sought to require any licensing. There is no state in the country which would require an attorney to be licensed by an executive branch of government for activities

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which are legal. I practice collection law, which does not mean I have a collection practice.

CHAIR TOWNSEND:

Committee, do you have any questions or need further explanation regarding the depth of this bill?

SENATOR HARDY:

I was confused when I read section 1 of the bill where it says, "'Collection agency' does not include any of the following unless they are conducting collection agencies."

MR. WANDERER:

An attorney with a law practice could also own a collection agency. His legal practice is licensed by the Nevada Supreme Court, but he would require licensing for his collection agency. If the offending 18 words were removed, an attorney would still have to be licensed if he operated a collection agency.

SENATOR HARDY:

That does clarify my questions.

CHAIR TOWNSEND:

We will close the hearing on A.B. 47 and open the hearing on Senate Bill (S.B.) 229.

**SENATE BILL 229**: Provides for the registration and regulation of warrantors of vehicle protection products and related sellers and warranty administrators of such products. (BDR 57-1137)

DAN R. REASER (National Vehicle Protection Association):

In my handout ([Exhibit C](#)) are proposed amendments to S.B. 229. The bill before you is providing a streamlined regulatory process for vehicle-protection products. Vehicle-protection products are aftermarket, antitheft products that carry warranties. They help to deter the theft of the vehicle, assist in the recovery of stolen vehicles and provide gap compensation to a person who loses the vehicle and has out-of-pocket expenses that are not covered by their auto-theft insurance. This product is in wide use throughout the United States. An example would be window etchings. The approximate cost to most of Nevada consumers is between \$100 and \$200, depending on the package they

obtain. The statistics nationally are quite impressive. Nevada has about two and a half times the car-theft rate of the national average. In jurisdictions where vehicle protection products are in fairly wide use, there is a 30- to 40-percent reduction in theft by these products being used.

The reason the legislation is being brought before you is because there is a question as to whether this product is regulated or not. Is it an insurance product, a service contract like you would obtain on a washer and dryer or is it completely unregulated? The various state insurance commissioners have been struggling with this. The National Vehicle Protection Agency has been sponsoring this legislation. It is currently in 16 states. We are here in Nevada this session to have a similar statutory scheme adopted. If we do not pass this kind of regulatory scheme, this product could be treated as insurance. The cost of regulating this product as insurance would be uneconomical to the people of the State of Nevada. Every car salesman would have to be licensed as an insurance agent because they are the ones who make the sale of this product. We are providing an effective regulatory scheme. The industry is willing to pay the \$1,000 registration cost. We think this will make the product available and provide assurance that the providers are regulated with financial stability.

SENATOR CARLTON:  
Why do we need this bill?

MR. REASER:  
The products are aftermarket, not installed by the manufacturer. They are provided by other providers of this service.

CHAIR TOWNSEND:  
Based on the Attorney General's opinion declaring this an insurance product, it would require every car salesman in Nevada to be licensed under the Division of Insurance, Department of Business and Industry, because they are selling an insurance product. That makes it financially nonviable to a consumer. They do not want to be regulated, because they do not see themselves as selling an insurance product. That is why they came here. If we left it as an insurance product, no one could afford to buy it. Then it would not allow customers a chance to protect themselves.

MR. REASER:

There are lots of products that are sold in the same manner. A surge protector on a home computer is a product sold with a protection warranty. If a vehicle protection product is an insurance product, then surge protectors would be also. It is the same legal-contract concept that is used for selling all of these products. We believe this is a good fix for the problem, trying not to avoid regulation, but trying to put it in the right regulatory box.

The proposed amendment changes are outlined in my handout. The first amendment is a clarification the Division of Insurance wanted. We used the word licensed and they would prefer we used the word authorized or eligible when we are talking about the insurer.

The second and third amendments are combined together to create financial-responsibility tests for the warrantors. The Commissioner of Insurance wanted to have a financial-responsibility test, the same test that exists under the service contract statute in the NRS 690C, which allows a small-niche player who is not part of a large organization to satisfy financial responsibility through deposits and reserve accounts.

Proposed amendments 4, 5 and 11 go together. The bill is written setting forth a number of procedures for contested cases, complaints and jurisdiction for the Commissioner. The Division of Insurance has asked that we use the same mechanism that is used in the service contract statute, which is to cite a statute instead of having a separate process for contested cases. In amendment 5, we add subsection 3, to section 16; the first one provides the Commissioner jurisdiction if someone surrenders their license or registration so they can still proceed to discipline them. Proposed amendment number 5, subsection 3, subparagraph (2) refers to NRS 679B.020 to 679B.300 which deal with the jurisdictional authority of the Commissioner and the powers of the Division. Subparagraph (3) refers to NRS 679B.310 through 679B.370, the provisions for hearings and procedures. In subparagraph (4) the statutes relate to insurance fraud which also includes forms of trade-practice violations. Subparagraph (5) is the false advertising regulation.

In proposed amendments 6, 7, and 8, they are talking about trade practice. Regulations of the insurance Commissioner would be applied to make sure they are appropriately conducting their business in a fair and competitive nature. Amendment 6 is taking the fee up to \$1,000. That is the same amount which

exists under the service contract statute. The Insurance Division believes it more fairly captures their costs.

SENATOR HARDY:

I think it is important that we establish a record of who is going to be paying the fee.

MR. REASER:

That fee will be paid by the industry. The fee is a reasonable recovery of the cost that has been determined by the Commissioner.

SENATOR HARDY:

Is it supported by those that are going to be paying?

MR. REASER:

That is correct. By comparison to being regulated as an insurance company and having all of your agents going to school for 40 hours and being annually registered, this is a very reasonable cost.

Proposed amendment 7 is clarifying language. It does not change the intent of this provision.

Proposed amendment 8 does not change the meaning of the statute as it is written. We are eliminating the stricken language so it is not interpreted to be a possible dispute with the judiciary as to their authority.

Proposed amendment 9 is an additional protection the Commissioner requested. No person can require a vehicle-protection product to be purchased as a condition of a loan or other financial transaction. It is a fair-trade, customer-protection issue.

Proposed amendment 10 is clarifying the Commissioner's authority to adopt regulations. It is discretionary and not mandatory.

Proposed amendment 11 is to remove the procedures in the bill as they exist today and place the ones that are set forth in proposed amendment 5.

In proposed amendment 12, the Commissioner asked for additional time to adopt regulations necessary to implement the act after approval by the Legislature and signing by the Governor.

We believe this bill provides an appropriate regulatory scheme. We think the amendments set before you are appropriate, and we believe the Division of Insurance does not oppose this bill.

SENATOR CARLTON:  
What does this do for the consumer?

MR. REASER:  
If this was not treated as an insurance product, it could be a completely unregulated product in Nevada. There would be no one to complain to if a consumer was not happy with their warranty under the vehicle-protection product. This bill provides that avenue. It does so in a way that is not overregulated. It provides a financial-responsibility test. You cannot just register as a company to be a warrantor of a vehicle-protection product unless you prove to the Commissioner you have the financial responsibility to service the warranties and make the payments to the consumers. It provides a set of procedures for the Commissioner and for the consumer to bring forth complaints and discipline, if the business is not conducted according to Nevada law.

SENATOR CARLTON:  
I have noticed that when someone shows up and wants to be regulated, it means they are either pulling the ladder up behind themselves or there is a future legal problem they are trying to avoid. Which is this?

MR. REASER:  
I think it is the latter, if those are my choices.

SENATOR CARLTON:  
What will happen to the small shops that sell aftermarket products that are not going to be able to prove financial responsibility? Are we going to put them out of business because they can not compete with the big guys?

MR. REASER:

That is why the Commissioner asked for amendment 3. This amendment allows someone to do this at a fairly low cost by having deposits in the bank to cover a portion of the claims.

SENATOR CARLTON:

I buy a lot of different things, and I do not have to worry about the person who sells it to me aftermarket.

MR. REASER:

Senator Carlton, as Chair Townsend indicated, if we do not come up with an alternative regulatory scheme, the scheme that will go forward in Nevada will be to regulate this as insurance. That will mean the product becomes unavailable. If I had the choice of being regulated, or not providing the product in Nevada, this is a reasonable alternative. It is an alternative with which my client has gone to 16 jurisdictions. We are working on four other jurisdictions this year.

CHAIR TOWNSEND:

What is the purpose of the regulation? If you are talking about the club or an etching, that is the product. This is for the warranty that is triggered as a result of an action against the product. This is not what they are selling, but it is about the loss you are going to suffer. I think this is an important step forward to get the right kind of regulation to make sure the consumer has a place to go if there is a problem and still allow the product to be competitively priced.

SENATOR HARDY:

This is probably the best document I have seen since I have been here. This is a helpful description of a very complex issue and I want to thank you for it.

CHAIR TOWNSEND:

We will close the hearing on S.B. 229.

SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 229.

SENATOR HARDY SECONDED THE MOTION.



THE MOTION CARRIED. (SENATOR CARLTON ABSTAINED FROM THE VOTE.)

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CHAIR TOWNSEND:

The 18-word offensive language removal should clean up all questions.

SENATOR HARDY MOVED TO DO PASS A.B. 47.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

Senator Heck, I believe you have an action to discuss regarding S.B. 20.

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

SENATOR HECK MOVED TO RESCIND THE PREVIOUS ACTION TAKEN ON S.B. 20.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR HECK:

We last took action on S.B. 20 on March 7, 2007. All the previous changes to the bill were stricken with the exception of changing the time frame from 90 days to 120 days. At that time, I had questioned information that was brought up originally by Mr. Wiles regarding the requirement to file a notification of intent to file a claim. This was a concern of theirs because they felt it was a piece of paper with which they did nothing. Mr. Bremner came to me and said it

was something they wanted to pursue. It was paperwork that did nothing for them. Mr. Bremner and Mr. Ostrovsky came up with the amendment. This amendment removes the requirement of "shall notify" about a pending claim and just says "shall submit the claim."

CHAIR TOWNSEND:

This is not a claim by the claimant. This does not affect an injured worker or claimant. This is the argument between the employer and the fund. The paperwork is in the way of accepting a claim against the fund.

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

A subsequent-injury claim is a claim for reimbursement from the fund for a claim that has already been paid.

SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 20.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Townsend:

I will take a motion to introduce Bill Draft Request (BDR) 54-303, BDR 54-624, and BDR 53-1136.

**BILL DRAFT REQUEST 54-303**: Revises provisions related to patients' bills. (Later introduced as [Senate Bill 280](#).)

**BILL DRAFT REQUEST 54-624**: Provides express authority for the State Contractors' Board to collect and disseminate data and to conduct investigations. (Later introduced as [Senate Bill 279](#).)

**BILL DRAFT REQUEST 53-1136**: Revises provisions governing industrial insurance. (Later introduced as [Senate Bill 281](#).)

SENATOR HARDY MOVED TO INTRODUCE BDR 54-303, BDR 54-624 AND BDR 53-1136.

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SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR TOWNSEND:

The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 8:50 a.m.

RESPECTFULLY SUBMITTED:

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Gloria Gaillard-Powell,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

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