

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

**Seventy-fourth Session  
February 6, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:01 a.m. on Tuesday, February 6, 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

**STAFF MEMBERS PRESENT:**

Laura Adler, Committee Secretary  
Marie Cavin, Committee Manager  
Gloria Gaillard-Powell, Committee Secretary  
Tedra Gavin, Assistant to Committee Manager  
Kelly Gregory, Committee Policy Analyst  
Lori Johnson, Committee Secretary  
Wil Keane, Committee Counsel  
Jeanine Wittenberg, Committee Secretary  
Scott Young, Committee Policy Analyst  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

D. Roger Bremner, Administrator, Division of Industrial Relations, Department of  
Business and Industry  
Charles J. Verre, Chief Administrative Officer, Division of Industrial Relations,  
Department of Business and Industry

Senate Committee on Commerce and Labor  
February 6, 2007  
Page 2

Bryan A. Nix, Senior Appeals Officer, Hearings Division, Department of  
Administration  
Brett J. Barratt, Insurance Counsel, Division of Insurance, Department of  
Business and Industry  
Craig Michie  
Robin Drew  
John O'Connor  
Virginia Boosh  
Rosemary Flores  
John F. Wiles, Division Counsel, Division of Industrial Relations, Department of  
Business and Industry  
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual  
Company  
George A. Ross, Nevada Self-Insurers Association, Incorporated  
J. Michael Livermore, Alternative Service Concepts, LLC  
Lea Lipscomb, Retail Association of Nevada  
Jeanette K. Belz, Property Casualty Insurers Association of America  
David Oakden, Builders Insurance Company

CHAIR TOWNSEND:

I would like a motion on the Senate Committee on Commerce and Labor  
Committee Rules for the 74th Legislative Session ([Exhibit C](#)).

SENATOR HARDY MOVED TO ADOPT THE COMMITTEE RULES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS SCHNEIDER AND HECK WERE  
ABSENT FOR THE VOTE.)

\* \* \* \* \*

CHAIR TOWNSEND:

Since the Committee has fewer members than in previous legislative sessions,  
we have reconfigured the subcommittees ([Exhibit D](#)).

We will start the meeting with a presentation regarding the responsibilities of  
the Division of Industrial Relations and the fines and benefit penalties imposed

against insurers and third-party administrators (TPAs), as required by the provisions of A.B. No. 58 of the 73rd Session.

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

I am submitting the Division of Industrial Relations' Annual Enforcement Report ([Exhibit E](#), original is on file in the Research Library). In addition to the required data, this report contains information regarding a proactive program we started called the Hearing Officer or Appeals Officer Review (HO-AO Review). This program is a means of encouraging insurers and TPAs to comply with payments required by hearing officers, appeal officers, courts of competent jurisdiction, written settlement agreements or written stipulations. This program is designed to defray the need for complaints filed by injured workers. Most of the complaints we get have to do with the lack of timely payment of benefits.

SENATOR CARLTON:

Table III on page 2 of [Exhibit E](#) notes 73 pending appeals. This is the largest number in this table. What period of time does this cover?

CHARLES J. VERRE (Chief Administrative Officer, Division of Industrial Relations, Department of Business and Industry):

This category includes cases in which no decision has been rendered or there has been a stay and we do not know the disposition. I do not have specific information on the individual cases involved.

SENATOR HECK:

Has the amount assessed for benefit penalties increased or decreased from previous years because of A.B. No. 58 of the 73rd Session?

MR. VERRE:

There is a definite increase as a result of the legislation passed.

MR. BREMNER:

We are hopeful that the HO-AO Review will bring about a decrease in complaints and benefit penalties. Insurers and TPAs are going to know that after the time limitation has run and they have to comply, we will be there overseeing.

Senate Committee on Commerce and Labor  
February 6, 2007  
Page 4

CHAIR TOWNSEND:

Is the information in this report helpful to you?

MR. BREMNER:

The data is helpful, but the process is time-consuming. The Division currently compiles between 40 and 50 separate databases by hand. We do not have an overall system to do this. We have a request before the budget committees to allow us to develop this type of system.

BRYAN A. NIX (Senior Appeals Officer, Hearings Division, Department of Administration):

I have two reports to submit. The first is the "Insurers and Third-Party Administrators Annual Report" ([Exhibit F](#), original is on file in the Research Library), and the second is the "Insurers and Third-Party Administrators *Nevada Revised Statutes* (NRS) 616C.295 Report" ([Exhibit G](#), original is on file in the Research Library). These are the reports required by provisions of A.B. No. 58 of the 73rd Session. The process of gathering this data is time-consuming, but it is helpful in that it forces us to look at the kind of data we are collecting and gauge its accuracy. When we were audited last year by the auditors of the Executive Branch, they found our data was 100 percent accurate.

Another result of preparing this report was discovering better indicators of performance than those required to be in the report. Knowing that a case was confirmed or reversed does not tell you much about the nature of the decision originally made in that case. It might have been reversed because new information became available, rather than because there was a problem with the original decision. Also, insurers who do not show up at hearings or provide evidence to support their determinations present a significant problem, and tracking that kind of data would be highly valuable to us.

SENATOR HARDY:

In the Annual Report, [Exhibit F](#), the breakdown for each insurer includes the category "other." This statistic has little value if the term is not defined. Is it possible to break that number down further?

MR. NIX:

Typically, the "other" category includes cases that have been settled or dismissed. We collected them under the heading "other" because there were

too many categories to list them separately. I can get you information about each individual case if you would like.

SENATOR HARDY:

I am more concerned that you have this information in a useful format for analysis. I want to make sure the data is not being lumped together to be ignored, since in most of the listings in [Exhibit F](#), "other" is the largest category. You cannot make meaningful policy decisions if half of your data is unspecified.

MR. NIX:

Although over 3,000 appeals were opened, only 1,200 decisions were actually rendered. In the remaining cases, the parties resolved the issues before the hearing. These proportions have not changed over time. If you look at our data from ten years ago, you will probably see the same percentages on the issues with some small changes. The types of issues and outcomes are the same. Even with the amazing growth of the State's population in the last 10 years, our caseload has only grown 2 percent or less per year.

SENATOR HARDY:

Are you saying it is not particularly helpful to gather this information on an ongoing basis? Are we better off gathering the information only periodically?

MR. NIX:

We are happy to provide any information requested. The process was more time-consuming this first time than it will be in the future because of the process of setting it up. This year it took us 10 to 16 weeks; next year we should be able to do it in a week.

SENATOR HARDY:

I would like to look at this again next session to test the hypothesis that nothing changes.

SENATOR CARLTON:

What can we do about the insurers who do not show up for hearings or complete other requirements? That may be why the statistics are static.

MR. NIX:

We will be better able to track the bad actors when we start tracking things like appearances, submission of documents and compliance with rules to the extent

we can. Part of the problem is the number of new players in the industry from all over the country. Some of these insurance companies and TPAs have only been doing business in Nevada for a short time.

SENATOR CARLTON:

If they come into the State to do business, they need to learn the requirements. We would not accept this laxity from a car insurance company.

MR. NIX:

We have no power to penalize insurers for failing to appear at hearings or submit evidence. Even a small fine of \$100 would get their attention.

CHAIR TOWNSEND:

When someone does not show up for a hearing, whether the insurer, the TPA, or the claimant, it wastes everyone's time. Could you figure out the cost of a missed hearing?

MR. NIX:

Yes. We could calculate the cost to schedule, prepare for, and hold a hearing. We are not interested in getting into the fining business, but my experience suggests fines would be a good way to get people to attend hearings.

CHAIR TOWNSEND:

The Committee needs to consider this.

BRETT J. BARRATT (Insurance Counsel, Division of Insurance, Department of Business and Industry):

I have written testimony ([Exhibit H](#)) to accompany the required annual report by the Division of Insurance ([Exhibit I](#), original is on file in the Research Library).

CRAIG MICHIE:

I am an injured worker. I have a question about [Exhibit E](#). It seems to indicate 60 percent of the cases under the HO-AO Reviews are in appeal, and there is no information as to the result of the appeals.

MR. BREMNER:

Since this is the first year we have gathered this information, we do not yet know the outcome of the cases listed here as being under appeal. We will know more about the outcome of these specific cases with the next report.

SENATOR HECK:

Table 1 of [Exhibit E](#) indicates over \$1 million in benefit penalties. Does that include the amount awarded in cases subsequent to appeal, or is it the amount for closed cases only?

MR. BREMNER:

That is the amount we have levied, including cases still under appeal.

ROBIN DREW:

I am an injured worker. I have written testimony to submit ([Exhibit J](#)). I would like to know which of the assessed fines noted in [Exhibit E](#) have actually been paid. The report also does not indicate when hearings have been requested but not scheduled by the Hearings Division. I would also be interested in seeing which insurers received which penalties, since it seems that some insurers always receive the minimum penalty allowed by law.

MR. MICHIE:

Knowing which insurers have received penalties would also help with enforcement of NRS 616D.120, which deals with consequences for repeat violations by insurers and TPAs.

JOHN O'CONNOR:

I am an injured worker. Insurers do not play fair with injured workers; they use loopholes in the statutes to close claims prematurely.

VIRGINIA BOOSH:

I am an injured worker. I was hurt on the job in 1987 and have been fighting for my rights since then. I testified in the last session for a cost-of-living increase for injured workers, and we received a one-time payment of about \$200.

ROSEMARY FLORES:

I am an injured worker. Thousands of injured workers are not being compensated as they should be.

CHAIR TOWNSEND:

Your experiences are deeply saddening. I apologize for the things you have had to go through.

I will open the hearing on Senate Bill (S.B.) 20.

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

JOHN F. WILES (Division Counsel, Division of Industrial Relations, Department of Business and Industry):

We have had discussions with some of the interested parties with regard to this bill. We are willing to work with those who have concerns.

I will walk you through the bill. Sections 1 and 2 deal with self-insured employers, sections 3 and 4 deal with associations of self-insured employers, and sections 5 and 6 deal with private carriers. The bill makes the same three changes to the statutory scheme in those three areas. First, we are eliminating the requirement for a notice of potential claim to be submitted. This notice is an extra piece of paper for the insurer to send and for the Division of Industrial Relations to file and track, and it serves little purpose.

Second, we are extending the time for the Division to review subsequent injury submittals from 90 days to 120 days. The current time limit is adequate when dealing with private carriers. However, when a board for self-insured employers is involved, they have public meeting notice requirements and scheduling issues, and 90 days is often not enough time for them to call the board together and consider the matter.

Third, we would like to set a deadline or statute of repose for the submission of claims to the Subsequent Injury Accounts. Often the insurer learns of the preexisting impairment at or during treatment for the subsequent injury. The bill would allow 100 weeks after the occurrence of the subsequent injury for the insurer to submit a claim to the Subsequent Injury Account. This provision would prevent situations such as the case I currently have on my desk, in which the subsequent injury occurred in 1999, we received notice of a possible claim in 2001, and the actual claim was filed in 2006. This seven-year stretch creates issues such as tracing records, as well as bringing up legal concerns about which guidelines to use.

SENATOR HECK:

As I understand it, the Subsequent Injury Account is a reimbursement account for insurers. This means that this extension of deadlines will not delay reimbursement to injured workers, is that correct?

Senate Committee on Commerce and Labor  
February 6, 2007  
Page 9

MR. WILES:  
Yes.

SENATOR CARLTON:  
What problem is being solved by eliminating the notification of a possible claim?

MR. WILES:  
We found that insurers were submitting a notice of possible claim even when there would not be a subsequent injury claim. They were doing it as a mechanism to protect themselves for a future occurrence, and we were getting many more notices of possible claims than actual claims. When we receive such a notice, it is filed and checked when a claim does come in, because the timeline is tied to the date of notice rather than the date of subsequent injury. Our goal is to eliminate unnecessary work and avoid fighting over when the notice was sent out. The claim is important; the notice is not. This would save work for the Division and also for the insurers, who would no longer need to worry about what might happen. The bill would give them almost two years after the subsequent injury to file a claim.

SENATOR CARLTON:  
Is there any way this change could have an impact on the injured worker?

MR. WILES:  
I cannot conceive of a way changes to reimbursement of insurers could affect reimbursement to injured workers.

SENATOR HARDY:  
Why are you removing the phrase "as soon as practicable" from subsection 5 of sections 1, 3 and 5?

MR. WILES:  
I do not know why that change was made, though the phrase is vague and unenforceable. It seems to mean, "Do it when you get around to it."

SENATOR HARDY:  
I agree. However, removing the phrase sends the message that we do not care when the work is done.

MR. WILES:

There is a self-correcting mechanism in this statutory scheme, in that insurers who do not submit claims do not get reimbursed.

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

We have some concerns about this bill which I have shared with the Division. The funds in the Subsequent Injury Account come from assessments paid by the insurance industry. We do not want to give up the right to go after what is, in essence, our own money. With regard to the change from 90 days to 120 days, the reasoning for this does not apply to us. I am hopeful that we can reach agreement on these issues with the Division.

GEORGE A. ROSS (Nevada Self-Insurers Association, Incorporated):

We are opposed to the bill as currently written. We are willing to work with the Division to solve their problems without denying employers the chance to obtain money they have been paying into the fund. Subsequent injuries may not appear within the deadline this bill proposes. We are comfortable with current law.

J. MICHAEL LIVERMORE (Alternative Service Concepts, LLC):

Our one concern regarding this bill has to do with claims on which we have given notice but have not yet filed a claim to the Subsequent Injury Account. We would like to see an amendment allowing cases for which a notice has already been submitted more time to file.

LEA LIPSCOMB (Retail Association of Nevada):

We share Mr. Ostrovsky's concerns. We would like to express our interest in working with the Division on this bill.

JEANETTE K. BELZ (Property Casualty Insurers Association of America):

We share Mr. Ostrovsky's concerns. We would like to work with the Division on this bill.

DAVID OAKDEN (BUILDERS INSURANCE COMPANY):

We share Mr. Ostrovsky's concerns. The purpose of the Subsequent Injury Accounts was to serve as an incentive to employers to hire people with preexisting injuries. The time frames proposed are unreasonable. We support eliminating the requirement for early notification. Employers whose workers are sent by the union do not have a screening process to determine if a person has

a preexisting impairment. This bill appears to be a matter of convenience for the regulators; it serves no purpose for either the injured worker or the employer.

MR. MICHIE:

Line 15, page 3, of the bill refers to the cases in which the "employee knowingly made a false representation as to his physical condition at the time he was hired ... " This reinforces the idea that employees are the only ones who lie, when employers, insurance companies and attorneys also lie.

CHAIR TOWNSEND:

Is there any further testimony? Hearing none, I will close the hearing on S.B. 20 and adjourn this meeting at 9:54 a.m.

RESPECTFULLY SUBMITTED:

---

Lynn Hendricks,  
Committee Secretary

APPROVED BY:

---

Senator Randolph J. Townsend, Chair

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