

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

**Seventy-fourth Session
April 4, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:31 a.m. on Wednesday, April 4, 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
Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Gloria Gaillard-Powell, Committee Secretary

OTHERS PRESENT:

Jenny N. Welsh, Carrara Nevada; Nevada Association of Realtors
Stephen Haley, Nevada Association of Realtors
Teresa McKee, Nevada Association of Realtors
James T. Endres, McDonald Carano Wilson, LLP
Jeffery L. Siri, President and Chief Executive Officer, Club Cal Neva; Trustee
Independent Gaming Operators
Jack Kim, Nevada Association of Health Plans; Sierra Health Services,
Incorporated
Van Mouradian, Life/Health Section, Division of Insurance, Department of
Business and Industry

Senate Committee on Commerce and Labor
April 4, 2007
Page 2

Charles B. Knaus, Property and Casualty Section, Division of Insurance,
Department of Business and Industry
James J. Jackson, American Health Insurance Plans
Robert L. Compan, Farmers Insurance
Nelson L. Cohen, Bremer, Whyte, Brown, and O'Meara; Farmers Insurance
K. Neena Laxalt, Nevada Chiropractic Association
Tony Jensen, D.C., Nevada Chiropractic Association
Susan Fisher, State Board of Chiropractic Physicians
Rocky Finseth, Nevada Physical Therapy Association
Dan Musgrove, University Medical Center of Southern Nevada
James Wadhams, American Insurance Association
Jim Spinello, Progressive Insurance
Michael D. Geeser, AAA Nevada
Jeanette K. Belz, Property Casualty Insurers Association of Nevada
Alan M. Kaplan, Attorneys' Investigative Consultants
Mechele Ray, Executive Director, Private Investigator's Licensing Board, Office
of the Attorney General
Mike Kirkman, Vice President, Nevada Society of Professional Investigators
James D. Earl, Executive Director, Advisory Board for the Nevada Task Force for
Technological Crime, Office of the Attorney General
James R. Elste, CISSP, CISM, Chief Information Security Officer, Office of
Information Security, Department of Information Technology
Ira Victor, Data Clone Labs, Incorporated
Bert Goodrich, Licensed Private Investigator
Christopher Campbell, Ph.D., Chief Executive Officer, United States Medical and
Legal Foundation, Incorporated
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner,
Department of Business and Industry
Kathleen E. Delaney, Senior Deputy Attorney General, Bureau of Consumer
Protection, Office of the Attorney General
Leslie James
William R. Uffelman, Nevada Bankers Association

CHAIR TOWNSEND:

I will open the hearing on Senate Bill (S.B.) 403.

SENATE BILL 403: Revises provisions relating to group health insurance.
(BDR 57-778)

JENNY N. WELSH (Carrara Nevada; Nevada Association of Realtors):

The goal of S.B. 403 is to provide low cost group insurance with competitive rates and coverage for our Realtor members and members of other large associations in Nevada. We have been working with Sierra Health Services, Incorporated to try to address our concerns.

STEPHEN HALEY (Nevada Association of Realtors):

I am here to testify in support of S.B. 403. I would like to thank Senator Washington for bringing this bill forward. It is designed to provide affordable health insurance for small business owners throughout the State. I wrote in my testimony ([Exhibit C](#)) the rising cost of health insurance is getting so prohibitive with our members that in 1996, 13 percent of the Realtors were without health insurance nationwide. This last year, 28 percent of the Realtors nationwide were without health insurance. In Nevada, 14,120 are without any health insurance. A few years ago, I attempted to join the builders association to obtain group health insurance. I was quoted a rate with my wife of \$320 a month. I was denied because I was a Realtor. I have a policy I purchased that costs me \$960 a month. That is almost \$7,200 a year difference. We have 20,000 members in the State. Approximately 28 percent of our members are uninsured. We feel this bill would provide us the opportunity to pool our members and negotiate a better rate. We are independent contractors, not salaried, and setting up a payment structure would be difficult to satisfy the insurance carriers. If we have the opportunity to negotiate for our members with the insurance companies, we feel this bill will provide a stopgap for an increasing problem.

CHAIR TOWNSEND:

Counsel, will you please go through the bill and state why we call this a guaranteed association.

TERESA MCKEE (Nevada Association of Realtors):

Section 1, subsection 1, states "an insurer may offer a policy of group health insurance to a guaranteed association" The guaranteed association is defined in subsection 6. Guaranteed association means an association has constitutional bylaws and was organized and maintained in good faith for purposes other than that of obtaining insurance. The Nevada Association of Realtors has been in existence since 1951. We have no problem with "in existence for one year." We would like to offer this to other associations which have expressed interest.

CHAIR TOWNSEND:

What other organizations might be captured by this to allow them to participate?

MS. MCKEE:

It would be any type of association. One of the casinos has an association of membership. The Nevada State Bar Association should be interested in this.

MS. WELSH:

It would be any association that could guarantee 500 or more members.

CHAIR TOWNSEND:

Do you have any idea who that might be?

JAMES T. ENDRES (McDonald Carano Wilson, LLP):

I am here today with Jeff Siri, general manager of the Cal Neva in Reno and, he is also one of the trustees of the Independent Gaming Operators, a newly formed organization. They do qualify for this proposed bill.

JEFFERY L. SIRI (President and Chief Executive Officer, Club Cal Neva; Trustee, Independent Gaming Operators):

The association, Independent Gaming Operators (IGO) was formed approximately two years ago in an effort to have an organized and united voice for issues involving small gaming properties. Currently, IGO has approximately 80 casino members. These 80 casinos have an estimated 16,000 employees. In addition to our 80 casinos which are IGO members, there are approximately 230 other casinos that would be eligible to join our organization. The small casino industry employs approximately 62,000 Nevadans. This is an average of about 200 employees a casino property. The numbers are important because they represent buying power when it comes to purchasing health insurance. The casino business is about risk and any casino operator will tell you the best way to offset risk is to have more volume. In this case, the more volume means less volatility and the less chance of large losses. This would give us a greater buying power as an organization to be able to buy health insurance with a large number of employees. At the Club Cal Neva, our health insurance costs have spiraled over the last five years. We have seen double-digit increases in each of the last five years. The casino business in Washoe County has not seen the same increase in revenues. The revenues in 2001 after the tragedy of

September 11, 2001 (9/11) have decreased and it has taken until 2006 for them to come back to the level they were in 2001. We cannot continue to absorb double-digit increases in the cost of our health insurance. We need your help. If association members are allowed to pool their employees and purchase health insurance as one large group, then we will have the same buying power of large employers. This should result in lower health insurance cost or substantially reduce the increases that we have been experiencing. This would allow associations to purchase health insurance that will benefit their employers, resulting in better health coverage and the ability to continue health insurance for employees. Health insurance is an important benefit we want to be able to continue to offer our employees. We need the ability to purchase insurance coverage that is affordable. We need the same buying power that large employers have. This bill will assist the members of IGO in offering improved health coverage to their employees and will benefit the estimated 16,000 employees of IGO members. We urge your support of this bill.

SENATOR CARLTON:

What size casinos are you talking about?

MR. SIRI:

Members of IGO are defined as casinos with less than \$50 million in annual revenue. The revenue goes from \$1 million to close to \$50 million.

CHAIR TOWNSEND:

How many of your members are not covered by health insurance?

MR. SIRI:

I do not have that information at this time.

MR. ENDRES:

There is another bill we are working on in conjunction with this bill. We have collected a substantial amount of information about the organization and its members. Around 80 percent of our members do have health insurance.

I was in Yerington talking to former Speaker Joe Dini of the Nevada Assembly. The Lucky Club in Yerington has health insurance. The health insurance applies to management personnel. He is very excited about the opportunity to provide health insurance to all of his employees. He sees this bill as being beneficial.

CHAIR TOWNSEND:

So this is an opportunity to cover those additional employees that are not currently covered and perhaps reducing costs. In regard to subsection 6, the definition of guaranteed association means an association which has a constitution and bylaws, organized and maintained in good faith for the purpose other than obtaining insurance and has been in existence for at least a year. It is my understanding the policy has to be for 500 or more people. Is that correct?

MR. ENDRES:

That is correct.

JACK KIM (Nevada Association of Health Plans):

I have had a number of conversations with the Realtors Association and tried to outline questions and comments about this bill. Our association is neutral on this bill. We think any bill we can process that will help people get health insurance is a positive thing.

From an overall policy, this sets up an association that is mostly independent contractors. They are not employees. This brings its own challenges including how they are going to administer this. The association will collect monies from the independent contractors then submit them to the insurance company as payment for their insurance coverage. In that case they are acting like the employer. Questions come if one or two of the members do not pay the premium. Are they going to cover those expenses? Those are the things the association is going to have to work through. We are not opposed to that, I just wanted the Committee to be aware of possible issues.

Another concern I have is with the impact on Consolidated Omnibus Budget Reconciliation Act (COBRA). Insurance under COBRA is offered to employees by employers. Under this bill, some of those employees would be eligible for COBRA but the independent employees would not. Those are technical issues.

CHAIR TOWNSEND:

We will get a legal opinion on that issue.

MR. KIM:

In section 1, subsection 2, there are provisions that state the insurer should take the entire group. When we underwrite this group we would have to consider all factors, including health factors. We want to clarify for the record

this does not prevent us from coming up with an actuarial premium based on the factors that are involved. When you are dealing with independent contractors, you will have a broad range of people coming into this group. We want to look at all factors to determine rates.

CHAIR TOWNSEND:

I am a bit confused with subsection 2, line 11, and in subsection 3. It talks about coverage "shall establish rates for premiums as follows."

MR. KIM:

That also is my question. How are we supposed to do this? My understanding is this is intending to mean in section 1, subsection 2, we have to take everyone in the group. We do not take into consideration their health factors; just take them if they are a member.

Section 3 means we can consider their health factors and every other factor to determine what the rate should be.

CHAIR TOWNSEND:

Ms. McKee, is that what you take this to mean? They will take everyone under this, but when they go to set the premiums they can include risk factors.

MR. KIM:

That is our impression also. We wanted to have this clarified so there would be no confusion.

CHAIR TOWNSEND:

If we process this bill the way it is drafted, we will have to have a statement in the record to make sure there is no misunderstanding.

Another concern was subsection 3, regarding actuarial statements. The question is whether an actuarial statement is enough for the Division of Insurance, Department of Business and Industry. We should present that question to them.

VAN MOURADIAN (Life/Health Section, Division of Insurance, Department of Business and Industry):

The Division of Insurance would like an actuarial memorandum that lays out how the premiums are set forth for this association, not just a certification. We

would want this detailing how the premium was derived. We have another statute that states the associations need a rate filing reviewed by the Commissioner to ensure the premiums being charged are reasonable.

CHAIR TOWNSEND:

The term, "as established by the American Academy of Actuaries," is referenced again. We do not usually state it that way. We usually say "or its successor" because they could go out of business. Is this in statute anywhere else, using this term?

MR. MOURADIAN:

I am not aware of any.

CHARLES B. KNAUS (Property and Casualty Section, Division of Insurance, Department of Business and Industry):

This could easily be broadened to include any competent actuarial group, including the Casualty Actuarial Society.

MR. MOURADIAN:

This creates a new class of employee by considering independent contractors to be contract employees. Currently under federal law and our statutes, contract employees are not considered employees of an organization. Associations can come forth under *Nevada Revised Statute* (NRS) 689B.026 and can go to a carrier. The carrier can set up a specific program and file with the division. If the association includes individual members, then we would apply the individual rating statutes, under NRS chapter 689A. If it is a true employer organization that files under that statute, then we would rate them under the employer statutes whether they are a small group or not. That is our only technical issue.

CHAIR TOWNSEND:

Mr. Keane, you might want to look at the issue for the purposes of this section only, the language regarding the people as employees only.

MR. KIM:

In section 4, they are talking about individuals when they leave an association. As it currently states, if someone leaves after six months, they are prohibited from getting back into the group health plan for another 12 months. They would be missing their open enrollment. An adjustment might need to be made to allow them to come back the next open enrollment instead of waiting 12

months. By doing this, you would prevent the person from coming back for up to two years. I do not think that was the intent of this bill.

CHAIR TOWNSEND:

Ms. McKee, did you realize this?

MS. MCKEE:

That was not our intent.

MR. KIM:

Also, you may want a notice requirement so the association notifies the insurers on a timely basis when someone has left. Otherwise, they may be on the record as having coverage when they do not.

In section 6, they are talking about being in existence for one year. In the insurance chapters we have something called bona fide associations. They require those associations to be in existence for five years. You may want to harmonize those two sections to the same year, to five-year time periods.

JAMES J. JACKSON (American Health Insurance Plans):

I can only echo the comments and concerns of Mr. Kim on behalf of the association. I have a printout from America's Health Insurance Plans (AHIP) ([Exhibit D](#)) regarding association health plans. Some of the concerns that were raised by the Chair are set forth in this printout. The concern is how they are going to be rated. It sometimes results in higher premiums than can be obtained through other sources. Because our association supports the idea of increasing accessibility to affordable health care, we are in a neutral position. This bill addresses some of the concerns in the printout.

MR. SIRI:

Our organization, IGO, has been in existence a little over two years and we are here for the long run. We would like to see the language stay at one year.

SENATOR HECK:

In section 1, subsection 1, where it talks about coverage for 500 or more members, does that mean there have to be 500 members at the association, or is it 500 people including dependents or just anyone they can enroll?

WIL KEANE (Committee Counsel):

The number 500 in the statute refers to the number of enrollees, who can be members, employees of members or employees of the guaranteed association or their dependents.

SENATOR HECK:

For the record, Mr. Chair, the Legislative Health Care Committee during the interim spent a long time talking about health insurance and the working uninsured. Mr. Kim was a large part of those discussions and this was one of the issues discussed in great detail about allowing associations to be able to pool their members to access affordable health care. It was one of the answers trying to lessen the pool of 450,000 Nevadans that currently are uninsured or underinsured.

Chair Townsend:

"For the record, my wife is a licensee and a Realtor, but she is covered under my insurance plan."

Committee, it would be my recommendation we clear up the legislative intent that I believe was articulated by Mr. Kim regarding the facts. Mr. Keane, you might give this some thought, they would take all enrollees without regard to actual or expected health status. When they go to establish rates for premiums they are allowed to include that. There needs to be a statement regarding the memorandum as required by the Division of Insurance as opposed to actuarially certifying. I would also add successor on line 9. The issue of the 12 months was of some concern. It might read 12 months or next open enrollment, whichever comes sooner. Mr. Kim talked about subsection 6, the bona fide association. We need to look at that. We should put those on our list to analyze as we move through this.

Mr. Jackson, is there a particular component in your handout that we should include when we discuss this?

MR. JACKSON:

I think the biggest concern is paying attention to how they are rated and "actuarialized" and the regulation of the entity. I think as I read the bill, those are in there. This is a background educational piece.

CHAIR TOWNSEND:

That is a very lengthy chapter. In order to qualify they will have to abide by that.

MR. JACKSON:

That is why we took a position of neutrality on this bill, because it seems to address so many of the concerns that are not addressed in other states and their association-type plans.

CHAIR TOWNSEND:

I will close the hearing on S.B. 403. I will open the hearing on S.B. 359.

SENATE BILL 359: Revises provisions governing claims made under policies of insurance for motor vehicles. (BDR 57-11335)

SENATOR SCHNEIDER:

I was talking with people in the insurance industry. The bill changes the timeframe only. It does not change any coverage or affect any policyholder. It should save the insurance companies money in the future. This bill should help reduce rates without affecting any coverage.

ROBERT L. COMPAN (Farmers Insurance):

I am here in support of S.B. 359. This bill will give our claims professionals the ability to properly serve the interest of our Nevada customers in the evaluation of bodily injury claims by outlining requirements of the claimants or their attorney's representation. *Nevada Revised Statute* 690B.042 is enhanced by clearly outlining requirements and providing required information already required by the statute in subsection 2 of this bill. Farmers Insurance has strict guidelines in the investigation of bodily injury claims. Current statute provides that, at the request of the insurer, medical reports, records and bills concerning the claim be provided every 90 days. This information is critical in the investigation and proper evaluation of the claim. According to Nevada statute, we are required to set reserves on all claims. These reserves are completed in order to show our company's solvency. Without proper documentation, these reserves cannot be properly addressed. Farmers Insurance is Nevada's largest writer of automobile and home owners insurance with over 253,000 automobiles and 154,000 home owners' policies representing over 250,000 Nevada households. Farmers Insurance takes pride in giving our customers peace of mind when representing their interests concerning

investigation of payment of claims. Our customer restoration network and procedures set forth by our liability claims teams are challenged by the current loopholes within the *Nevada Revised Statutes* which jeopardizes our ability to represent our Nevada customers.

MR. COMPAN:

I am providing the Committee my proposed amendment ([Exhibit E](#)). Subsection 2 of the bill clarifies provisions that are already in statute by clearly spelling out the required information to properly evaluate claims for our Nevada customers. Current language has been interpreted by some as only needing to provide limited information. Without this information as outlined in lines 14 through 17, our customers' best interests may not be addressed properly. Our claims professionals have experienced these problems and received only limited information in certain cases. An example would be the statute of limitation period. We send our requests every 90 days which is allowed by statute. I have presented the Committee with copies of letters we send out to representative parties [Exhibit E](#), requesting this information. I also attached a copy of our additional follow-up requests for information in 90 days. In your packet is a copy of the computer generated system which notifies our claims professionals every 90 days of requirements and system generated requests to send to the attorneys or representatives of claimants to request the information. It is not uncommon to receive only one piece of information during the 90-day period. This information could be limited to a medical emergency room bill.

Subsection 3 of the bill provides our claim personnel with much needed time to investigate and evaluate the claims. Our professionals will be afforded 90 days after this information has been provided before a civil action may be commenced. Also attached is a suggested amendment that is addressed in the statute.

Senate Bill 359 will allow us to represent our Nevada customers and provide them with a layer of protection and peace of mind when they are involved in an automobile accident.

SENATOR CARLTON:

When my daughter had her car accident, if I had to figure out every person she had a medical bill with, I would not have known until six to eight months later. She went to several facilities for treatment and tests. I received bills for multiple

providers six months later. If I had not listed these providers on your form, would that automatically kick the claim out?

MR. COMPAN:

If you do not have the information, it cannot be provided. We are asking that every 90 days, if you have the information, you provide it to us.

SENATOR CARLTON:

The burden is on the claimant, not on the insurance company.

MR. COMPAN:

If you provide the insurance company with a medical authorization, we will attempt to find that information.

NELSON L. COHEN (Bremer, Whyte, Brown and O'Meara; Farmers insurance):

I am asking for your support of S.B. 359. This bill will not interfere or prevent injured claimants from bringing a claim forward or filing a suit. The purpose is to require claimants to provide medical records and reports so the insurance carriers can make informed decisions and provide fast resolution of claims. All that is required is written authorization to the carrier. The authorization is essentially meaningless if the carriers are not informed of what medical providers they are to seek medical records from. This is seeking all independent providers so the carrier knows where the claimant sought treatment. There is zero cost to the State. If the information is given in a timely manner, the insurance carrier could settle for the policy limits. The purpose of this bill is to provide the insurance carriers the opportunity to timely and properly evaluate the claim. It does not prevent any claimant or litigant from filing a claim or a suit.

SENATOR CARLTON:

Do you agree this does postpone the opportunity to hire a lawyer and take it into litigation because you have to wait the 90 days?

MR. NELSON:

It does not postpone the ability to retain a lawyer. The lawyer would need the medical information before he could provide an evaluation.

SENATOR CARLTON:

My daughter was in an accident which was not her fault and we could not get a lawyer to address the issues because he did not want to take the case. It was not a big enough case for him. I need my concerns dispelled before I can go any further on his bill.

MR. COMPAN:

This bill is not changing the make-up of a claim or possible litigation. It is giving our customers through the insurance company the ability to investigate the claim. It outlines in statute that we need to get the information to best represent our customers. We cannot properly address the issues and set reserves as required by statute when our arms are tied.

Once the medical authorization is given and the bills received, we can then investigate the claim and represent our customer as to claim value.

SENATOR SCHNEIDER:

Accidents do affect your ratings. This legislation will make sure the insurance companies are representing you properly. It will allow the insurance company to evaluate the situation and not rush, paying money that might not need to be paid. Can you give us an indication of the savings with passage of this bill?

MR. COMPAN:

I could research the amount if you like. In some case, if we do not have the information by the deadline, we have to make an immediate decision regarding honoring the demands for the claim.

SENATOR SCHNEIDER:

I was looking at anything to help my constituents. This gave the insurance company a longer period of time to evaluate the claim. If this will help my constituents lower their monthly insurance premium on their automobile, I want to look at this.

CHAIR TOWNSEND:

We will close the hearing on S.B. 359 and open the hearing on S.B. 475.

SENATE BILL 475: Revises certain provisions governing policies of insurance for motor vehicles. (BDR 57-1133)

K. NEENA LAXALT (Nevada Chiropractic Association):

Senate Bill 475 would require insurance policies for motor vehicles to provide coverage for medical payment of not less than \$15,000 a person. I realize this is mandated, but we see it as a societal mandate to have it. There already are mandates in place for motor vehicle insurance. This extends insurance to provide a mandate for medical payment. April 23 through April 29, 2007 has been proclaimed by Nevada as Cover the Uninsured Week. This legislation is to protect the uninsured and make sure they get the medical services they need. If the costs are out of the realm, they do not give up their livelihoods and homes due to bankruptcy by having to pay medical fees. I have provided the Committee a handout of accident statistics. ([Exhibit F](#), original on file in the Research Library.)

TONY JENSEN, D.C. (Nevada Chiropractic Association):

Senate Bill 475 is for the people of Nevada and those taking care of someone involved in a motor vehicle accident. I have a couple of cases I would like to present. When a person gets in an accident, they are taken to the hospital for primary care and then you are referred for secondary care. For a person who has medical payment insurance, the bill is covered. In my case, the insurance company made a mistake and put medical payment on one vehicle and not on the other vehicle. This caused havoc in my life. They were trying to bring things against me and tried to ruin my credit. My wife did have insurance and got the care she needed. When I refer a patient for orthopedic care, unless they have good medical payment insurance, I cannot find a physician to take over their care. The referring physicians will not accept the patient without insurance.

A person without medical payment insurance can go to the hospital and get the initial care they need. This becomes the primary care but secondary care is not given because they do not have money. Without secondary care, the patient's problem could become chronic in nature and go untreated.

I share the lobby with a dentist who has to fix faces from people injured in automobile accidents. Dentists and optometrists are affected as they treat injured patients.

Everyone has been saying that health insurance is outrageously expensive. Twenty-one percent of Nevadans are not insured. The costs of people who do not pay their bills are picked up by those that do pay their bills.

Senate Committee on Commerce and Labor
April 4, 2007
Page 16

CHAIR TOWNSEND:
Please address subsection 3, page 2.

MR. JENSEN:
We are talking about health care. An insurance company cannot hook up with a Health Maintenance Organization (HMO) and make people jump through those hoops to get coverage. I am paying top dollar for my medical payment insurance because I want a choice as to who treats me.

CHAIR TOWNSEND:
Do you know of any organization or company that offers the opportunity to choose your medical payment, whether it is a HMO, or open enrollment?

MR. JENSEN:
I do not know of anyone who offers medical payment through a group.

SUSAN FISHER (State Board of Chiropractic Physicians):
The State Board of Chiropractic Physicians supports this bill. We feel this is a good public protection piece. It is not a chiropractic-only bill.

ROCKY FINSETH (Nevada Physical Therapy Association):
The Nevada Physical Therapy Association wants to be on record supporting this bill.

DAN MUSGROVE (University Medical Center of Southern Nevada):
We see many people who are uninsured and we think this is a great expansion of coverage. We would appreciate your support.

MR. COMPAN:
In Nevada we have the fourteenth highest insurance rates in the country. We are the sixth highest in the nation in bodily injury claims. This bill lends itself to the affordability of medical payment insurance. This bill would make it mandatory for \$15,000 to be afforded every insurer in the State. This would average about \$200 a year additional for each average consumer in the State. Farmers Insurance does not enter into any contracts. The bill states we could never do that and the coverage is mandatory for \$15,000.

SENATOR CARLTON:

Under the culinary scheme, if something would happen to me, I would have to sign a subrogation agreement. If I got money from another source, the culinary would not cover it. If one bill is going to save us money and this bill will cost a little, would this be a zero-percent increase?

MR. COMPAN:

That is a hard question to answer. Medical payment in most instances cannot be subrogated in Nevada. The customer has the option of buying medical coverage.

JAMES WADHAMS (American Insurance Association):

We are opposed to the bill. The issue is the consumers' choice. In 1985, we considered repealing compulsory insurance and giving the choice totally to the consumers. To make it mandatory at a \$15,000 level will increase the cost. I am troubled by "any willing provider" component. I would suggest, if we are going to look at mandatory automobile insurance we look at the bigger picture of the liability limits. The American Insurance Association is opposed to this.

JIM SPINELLO (Progressive Insurance):

I agree with the previous statements and we speak in opposition to the bill. There would be an increase in premiums. It would affect those who buy liability-only insurance. In some cases, it could be a 50-percent to a 100-percent increase in their current premium. This could force some people to become uninsured motorists.

MICHAEL D. GEESER (AAA Nevada):

We also oppose the bill. I spoke with a couple of agents yesterday to find out what they are seeing on the front lines. A story related to me is they are not looking to sign up certain people for too much insurance just because they want to see them continue to make payments. If you are going to raise the premiums, they do not want to see them for two months and then go away. This speaks to the uninsured motorist problem in Nevada.

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

We are also opposed to this bill. We will be able to provide you numbers later this week as to how much this would cost.

MR. KNAUS:

We have done preliminary pricing for the low-cost insurers. In the high rated territory we think it will be close to \$300 a year. There are some insurers currently in the higher-priced insurance market that have offered a maximum of \$5,000 of medical payments coverage. One point I think you should be careful of is the wording, motor vehicle insurer. Motor vehicles include motorcycles and big, commercial semitrailer trucks. The way the law is written now it uses the term passenger car for medical payments. At the maximum, approximately 70 percent of the preferred low-cost insurance market elects to buy medical payments coverage at some limit. I choose to buy a very high limit of medical payment coverage as a personal choice on my automobiles because I do not know who is going to be riding in them and I do not know what their insurance circumstance is. I choose to buy medical payments not only for myself and family, but also for the people who might be riding in my car.

CHAIR TOWNSEND:

We will close the hearing on S.B. 475 and open the hearing on S.B. 410. "For the record, I need to disclose the company in which I am a partner, shareholder, and president, owns a company that does forensic computer accounting."

SENATE BILL 410: Provides for the licensure and regulation of computer forensics examiners. (BDR 54-886)

ALAN M. KAPLAN (Attorneys' Investigative Consultants):

I have my biography as a handout ([Exhibit G](#)) for the Committee. Your company under the *Nevada Revised Statute* is not affected by this bill. Your company could be sued and your computers subpoenaed. You have the right to know the person looking at your computers is competent and of good character. There is nothing in the NRS that covers this issue. Georgia made a mistake by licensing the computer people as private investigators. Some of the people had been police officers, but many of them could not get a license because they did not have five years experience as a private investigator. You can see where there is discrimination and no way to make it work without putting them together. They need to work together, be licensed and define their responsibilities.

CHAIR TOWNSEND:

The bill includes in the private investigator chapter of NRS covering computer forensic examiners. It defines who that person is. In section 6 of the bill, it

states specifically that the person must be certified under the following requirements as listed on page 5, lines 12 through 23.

A number of years ago a case involving Merrill Lynch went all the way to the U.S. Supreme Court. This case involved a great deal of money. One of the law firms was held liable because they did not exchange documents or go into the computers and pull off the information for their client and the other side. They lost their law license and were fined a billion dollars. Because of that case, the U.S. Supreme Court decided to change the rules of civil procedure. December 31, those rules were put in place. During the last year we had to follow suit. It was retiring Justice Rose who tried to help our rules of civil procedure correspond to those and give guidance to those licensed by the bar on what they had to do on behalf of their clients. Our company gets called in to do forensic accounting, forensic analysis and computer forensics on behalf of whoever decides they need the kind of services we provide.

MR. KAPLAN:

I would like to cover the evaluation procedure. We have EnCase Forensic, AccessData, and Certified Computer Examiner which are giants of the industry that certify people. They have been around for years. The employees are being trained and rated. A certification and rating by these facilities is good. We are not talking about experience in this case but qualification.

MECHELE RAY (Executive Director, Private Investigator's Licensing Board Office of the Attorney General):

Mr. Kaplan presented his bill in front of the Private Investigator's Licensing Board in December and they supported the bill as it was written.

SENATOR CARLTON:

This Committee wants to hear the problem and the solution with prepared language. Mr. Kaplan has outlined the problem and the solution in his handout.

CHAIR TOWNSEND:

What are the two-thirds? Is that in another section, Mr. Keane? Are they under regulation?

WIL KEANE (Committee Counsel):

The two-thirds vote is on section 5. Section 5 simply adds a computer forensics examiner as someone who has to have a license. There is another section of NRS which we did not amend, so it does not appear in the bill that has a fee for applying for a license.

CHAIR TOWNSEND:

Do you have an idea of how many people might be affected in Nevada?

MR. KAPLAN:

I do not.

MIKE KIRKMAN (Vice President, Nevada Society of Professional Investigators):

This bill was presented to our group and is totally supported. We urge you to give it the same consideration.

JAMES D. EARL (Executive Director, Advisory Board for the Nevada Task Force for Technological Crime, Office of the Attorney General):

The Advisory Board for the Nevada Task Force for Technical Crime is a joint executive/legislative specialized agency established by statute. We are here today to explain and suggest some ways in which the text of S.B. 410 might be improved in order to do two things. The first is to be sure it could not be interpreted to cover government law enforcement and information technology personnel and secondly to suggest how the certification requirements might be improved consistent with the continuing public interest.

My presence is prompted because of the question raised by one of the lead personnel in a law enforcement agency. He asked if we want district attorneys across Nevada faced with defense expert witnesses in forensic computer matters who are not experts. You do have a handout ([Exhibit H](#)) which suggests the bill as proposed might be amended to more clearly eliminate any potential coverage for government law enforcement and information technology personnel. It is a fairly simple word change in the bill. The exception that I would propose would read "except as to polygraphic examiners and interns" this chapter does not apply to any "detective or officer, special agent, investigator, examiner, or other specialized employee belonging to the law enforcement or information technology agencies of the State of Nevada or the United States, or of any county or city of the State of Nevada while the

employee is engaged in the performance of his official duties." In the criminal field, 80 percent or more of the computer forensic examination of suspect electronic devices is performed by federal personnel. They are not called detectives or officers, they are called special agents. They may also be called investigators or examiners. The Attorney General has requested full-time positions to augment the one full-time computer forensic examiner that the State presently employs who is neither fully trained nor certified. We suggest that the Committee consider adding an educational or work experience in some time of related-field requirement to the certification qualifications for computer forensic examiner.

JAMES R. ELSTE, CISSP, CISM, (Chief Information Security Officer, Office of Information Security, Department of Information Technology):

I will share my credentials and background. The purpose of being here today is to highlight my professional concerns with S.B. 410. I am an information technology professional with over 20 years of experience. In the last 10 years, I have specialized in the practice of information security. I hold two internationally recognized certifications, CISSP, or Certified Information Systems Security Professional and CISM, or Certified information Security Manager. Over the course of my career, I have worked as an informational security consultant.

My concerns with S.B. 410 are threefold. First, I am concerned with the definition of computer forensic examiner. I believe that definition is overly broad and there is a complete absence of a definition for the term computer forensics. Secondary, I am concerned that the approach to qualify computer forensic examiners is overly narrow. Thirdly, this legislation will reduce the ability of private industry and the legal community to secure the services of qualified computer forensic specialists and information security professionals. I think it is important that any regulation of computer forensics draws a clear line of who is regulated and who is not regulated. That line must be narrowly drawn to encompass specialized professionals without precluding computer technology or information security professions who are not forensic specialists from providing the expertise in responding to computer security breaches. Forensics by definition is the use of scientific knowledge to collect, analyze and present evidence to the court. It literally means "bring to the court." This implies the need for legal as well as technical training. Computer forensics is the use of specialized techniques for the recovery, authentication and analysis of electronic data with the intent of preserving the evidentiary quality of that information.

As currently defined in S.B. 410, the definition of computer forensics examiner could apply to an information technology auditor who is performing an evaluation of an organization's compliance, or to an information security professional who is attempting to identify the source of an information security breach.

MR. ELSTE:

My recommendation to the Committee is that we develop a more specific definition and eliminate any potential confusion that might be created by incorporating the forensic nature of this activity. I am willing to work with the Committee to formulate a more comprehensive and accurate definition. I am concerned the approach to qualify computer forensic examiners is too narrow. Currently, there are no recognized professional bodies overseeing any of these designations. There is no curriculum, common body of knowledge and no standardized training. The state of the computer forensic industry is proprietary and fragmented. There is no uniformity between the certification requirements, testing or the admission requirements for these certifications. It is also inappropriate to include vendor certifications in legislation as it creates an endorsement. My recommendation is to incorporate language that provides an accommodation for academic programs and the emergence of an international or national certification body. This legislation will reduce the ability of private industry in the legal communities to secure the services of qualified forensic specialists and information security professionals. Cyber crime and security incidents are significant challenges that affect the private sector, public sector and private citizens. It is imperative we enhance the field of information security.

I recommend the definitions be narrowed and explicitly define computer forensics; the qualification methodology be expanded to accommodate academic programs and changes to the computer forensic industry and we foster and develop the professionals and information security in computer forensics by reevaluating and refining S.B. 410. I have provided a handout ([Exhibit I](#)) on recognized certifications within the information security field.

IRA VICTOR (Data Clone Labs, Incorporated):

I am here as a private citizen and I am a computer security professional working in the private sector in Reno. I have extensive experience in computer security and have multiple certifications in information security. I have prepared written testimony ([Exhibit J](#)) which outlines my concerns regarding S.B. 410. Creating

more barriers to entry in the computer security profession will only hurt an already understaffed area in the Nevada economy.

Mr. Kaplan did mention the issue of buyers of the services not knowing who the qualified people are. It is important to look to the standard bodies because they give guidance, help refer people who are qualified and it goes above and beyond just being certified in a particular application.

The Committee needs to know this problem goes above forensics and this bill will not cure that problem. It could make it worse because we need more of the professionals to help mitigate the problem.

MR. EARL:

There is one full-time computer forensic examiner on the State payroll. That person works with the southern task force. He is presently not certified. He was not hired as a computer forensic examiner, but was converted to do computer forensics from being a network management person. He has attended the training.

MR. VICTOR:

If the State cannot find enough qualified people, the private industry also is faced with that very same problem. I want Nevada to be a leader in this area, rather than a laggard.

SENATOR CARLTON:

We were trying to do everything you just said with this bill. It is a new field, we want more people in the field, but we do not want counsel using opposing experts who are not really experts. When people come in the State we want to make sure they are qualified. We need to have a way to make sure a person is who they say they are and have the qualifications to back them up.

MR. VICTOR:

I recommend we wait on this bill. We need to build up a bigger body of professionals so we can start to set those boundaries. If we do it now, we may prevent the growing industry we need in this State.

BERT GOODRICH (Licensed Private Investigator):

I am not a computer forensic examiner. I was a criminal investigator, special agent with the Internal Revenue Service for 23 years. I retired and obtained my private investigator license.

I had a case where the attorneys did not know anything about computer forensics. No one had any idea how to defend their clients. I was given the assignment to locate a computer forensic person to assist in defending the clients. I tried to locate a computer forensic specialist in Nevada. I was able to contact one person, who actually worked for a police department. He told me he could not participate in a defense of a criminal defendant. I expanded my search on the Internet. I found a couple of highly qualified experts in California. Because we were able to hire these experts, the remaining defendants in that case got misdemeanors with no jail time. It is important we have qualified people available. If we had to rely on the experts in Nevada, I am not sure what would have happened to the defendants.

CHAIR TOWNSEND:

We will close the hearing on S.B. 410. We will open the hearing on S.B. 472.

SENATE BILL 472: Clarifies the provisions governing the licensing requirements for employment agencies. (BDR 53-1465)

CHRISTOPHER CAMPBELL, PH.D. (Chief Executive Officer, United States Medical and Legal Foundation, Incorporated):

I have been working with physicians to relocate them to chronically underserved medical communities. Almost all of Nevada qualifies as a chronic medically underserved community. Because of collection litigation, we contacted the Office of Labor Commissioner, Department of Business and Industry, and asked for an interpretation of the employment agency statute. We were referred to Internet-based services. We are exclusively Internet-based. Physicians contact us and we build a private Website for them. We disseminate the information to qualified, underserved communities, nationwide and until recently, in Nevada. The physicians receive callbacks directly from the hiring entity, independently from us. In most situations we do not make contact with the hospital or medical group.

Senate Committee on Commerce and Labor
April 4, 2007
Page 25

CHAIR TOWNSEND:

Are you saying your agency got caught up being an employment agency because of the way you do business?

DR. CAMPBELL:

Senate Bill 472 would exempt us and there would be no question regarding health care providers.

SENATOR CARLTON:

I am trying to understand exactly what you do and how you got caught up in this.

DR. CAMPBELL:

We do not subcontract with other agencies. If we were to adhere to NRS 611, we would be operating at 70 percent below cost. There is a cap on the fees we can charge.

MICHAEL TANCHEK (Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry):

One of my responsibilities is regulating employment agencies. If you are out of work and need a job, you come to me. I will find you a job and you will pay me some money. That is what an employment agency does. A reference was made to the Internet being exempt. We have found that this business should be licensed. I am opposed to the bill. The language is overly broad and refers to health care providers. We are actually talking about physicians.

DR. CAMPBELL:

There are still bugs in the design of Websites and sometimes people decide not to pay their bill when they have been successfully placed.

The applications we have submitted to Mr. Tanchek have been rejected twice. We refuse to compromise on our contract and work for less than cost. Under his contract, our fees would be about \$7,000. The cost to develop and relocate a physician to an underserved community in Nevada is closer to \$5,000. Since we have not yielded on the contract, they continue to reject the application. Under NRS chapter 611 they do not have a lot of flexibility in what they can do. The people who are suffering because of lumping in a "one-size-fits-all" employment agency are the citizens of Nevada.

CHAIR TOWNSEND:

We will close the hearing on S.B. 472 and open the hearing on S.B. 538.

SENATE BILL 538: Revises provisions regarding trade practices. (BDR 52-501)

KATHLEEN E. DELANEY (Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):

This bill was proposed through the Attorney General's allotment of 25 bills of the Bureau of Consumer Protection. I take full responsibility for the text of the bill. Our goal was to put a prohibition on unconscionable trade practices. There are 16 other states including the District of Columbia that recognized unconscionable trade practices as a necessary component to their consumer protection laws. The majority of those states do have standards. We are talking about transactions where there is an absence of good faith, honesty and fact. We found the Uniform Consumer Sales Practices Act that was adopted by both the National Conference of Commissioners on Uniform State Laws and the American Bar Association.

Section 2 is adopted in its entirety from the Uniform State Law. Section 3 was adopted from the state of Ohio which put into place needed recognition that there are unfair dealings in the area of mortgage lending. There are other components to the bill that we feel are important. We wanted to clarify some confidentiality parameters that would allow us to fully investigate our cases by ensuring if documents come to us as confidential documents from other states, we have the ability to retain them as confidential. We also wanted to clarify the Attorney General's office; Bureau of Consumer Protection can initiate both civil and criminal cases depending on what investigations it conducts. Right now, those civil cases have to be started with a written request from the Division of Consumer Affairs Division. We want to clarify language in the unfair trade practice chapter, *Nevada Revised Statute* 598A, which is the antitrust chapter. We want to make sure we comply as closely as possible with federal law.

SENATOR SCHNEIDER:

What is an unconscionable trade practice? Please give me an example of one.

MS. DELANEY:

In most states that have it, they equate it to unfairness. The way unfairness is used in Nevada it strictly adheres to the antitrust conspiracy type cases. Unfairness is a consumer protection matter. An example is whether a consumer

possessed the aptitude and ability necessary to successfully benefit from a business opportunity has been deemed to be unconscionable. Trying to intimidate someone by filing a suit in a distant jurisdiction to collect questionable damages is considered unconscionable. Absence of good faith is about the simplest way I can put it in the bargaining process.

LESLIE JAMES:

I have written testimony ([Exhibit K](#)) explaining our situation. In looking at section 3, subsection 2, we were given financial advice that led us down a path and we entered into a residential mortgage transaction, "enters into the transaction knowing there exists no reasonable probability of payment of the obligation by the consumer." This made a lot of money for the mortgage broker and the real estate agent.

SENATOR TOWNSEND:

What actions have you taken? Have you gone to the Attorney General or the district attorney? For someone to fraudulently fill out your credit application is a serious crime.

Ms. JAMES:

It has taken a while to understand everything that has happened. We are trying to keep our house. We are trying to refinance our residence, and trying to figure out our first step. We are trying to sell one house, and trying to keep our renter in it to make the payment. We were advised to contact the Division of Mortgage Lending. We were told if they did increase our annual income on the application and it was deemed fraudulent, we could file a complaint. We have contacted a couple of attorneys.

CHAIR TOWNSEND:

Have you shared this with the Bureau of Consumer Protection?

Ms. JAMES:

Not yet.

CHAIR TOWNSEND:

The provisions of this bill are multifold. The Attorney General put a number of things into one. It would be important for you to provide specific information to Ms. Delaney and her office. I would like to know the details of the problem and what the current law will allow them to do. This can be done off the record.

MS. DELANEY:

We totally support incorporating any of these components in the bill.

WILLIAM R. UFFELMAN (Nevada Bankers Association):

I have given the clerk a list of concerns about this bill ([Exhibit L](#)). I contacted Ms. Delaney and will confine my remarks to section 3 of the bill, the mortgage portion. The notion of attacking predatory lending makes a lot of sense. I will go right down this list. Those are the concerns we have identified and communicated to the Attorney General's office. If we are going to have a workable law, these concerns need to be addressed.

MS. DELANEY:

I had the opportunity to speak with Mr. Uffelman and we have given our verbal agreement to make all these changes to make the bill work.

CHAIR TOWNSEND:

We will go to section 14, subsection 4 to the new language. What is generating the need to make that change?

MS. DELANEY:

This section and a parallel section in 20, relates to the antitrust chapter. This section would allow us to address the larger cases. There could be a hindrance to a state or the federal government sharing documents with us. In the case of antitrust, sometimes a business refuses to share documents because we can not assure we can keep the documents confidential in the course of the investigation and review. This provision would allow us to keep confidential investigative documents and evidence from other states and the federal government.

CHAIR TOWNSEND:

Are you adding to the antitrust information in section 18?

MS. DELANEY:

Sections 18 through 23 of the bill are all geared specifically towards NRS chapter 598A. We are trying to clarify what we already do in practice.

CHAIR TOWNSEND:

Is the language in subsection 3, page 17, out of a federal statute?

MS. DELANEY:

If you look back on page 16, lines 38 through 41, it was originally set in the part of the statute that dealt with restraint of trade. It is commonly interpreted as requiring an agreement. Monopolization can clearly happen unilaterally and we wanted to make sure it was set separately. That does mirror the federal legislation in this regard.

CHAIR TOWNSEND:

I want to go back to section 2. We have cases in mortgages without question and the Jameses are not the only people who have had problems. What generated the broad nature of section 2?

MS. DELANEY:

It was a general feeling between me and my colleagues. There were practices taking place that were unfair. Consumers were being taken advantage of and in order to address the problem based on the way deceptive trade was currently set up, we need to bring in unconscionable practices. We found 16 other states including the District of Columbia that had done so. This comes right out of the uniform law.

CHAIR TOWNSEND:

I have some concerns about lines 11 and 12 on page 2. Can any consumer claim ignorance?

MS. DELANEY:

It was brought to our attention by industry members they were also concerned. Also on line 12, people can claim that but it will have to be assessed in the totality of the circumstances.

Our goal was to make sure we had unconscionable practices as a tool to use to get at some of these where they do not quite fit the deceptive trade definition. If we need to ensure narrowness of purpose and application, we will agree to any suggested amendments that would do that.

CHAIR TOWNSEND:

We had another bill of Senator Titus's regarding price gouging. Our bill needs adjustments.

Senate Committee on Commerce and Labor
April 4, 2007
Page 30

SENATOR HARDY:

I agree. I think we should set aside section 3, because there are some problems. Section 2 takes all responsibility and all obligations away from the consumer. There needs to be some obligation on the part of the consumer to determine that for themselves. This seems to remove any obligation the consumer has across the board to think or consider the consequences. I have philosophical objections.

CHAIR TOWNSEND:

It is fair to say section 3 through the rest of the bill seems to be solid.

CHAIR TOWNSEND:

The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 11:01 a.m.

RESPECTFULLY SUBMITTED:

Gloria Gaillard-Powell,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____