

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

**Seventy-Fifth Session
April 29, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:46 p.m. on Wednesday, April 29, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chairman
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3
Senator Michael A. Schneider, Clark County Senatorial District No. 11
Senator David R. Parks, Clark County Senatorial District No. 7
Senator Maggie Carlton, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Karen Fox, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

James D. Earl, Executive Director, Advisory Board for the Nevada Task Force for Technological Crime, Carson City, Nevada
James R. Elste, Director, IS Security and Internal Controls, International Game Technology, Reno, Nevada
Paul Freeman, Intern for Senator Michael A. Schneider, Clark County Senatorial District No. 11
James D. Salo, Deputy Executive Director, Colorado River Commission of Nevada, Las Vegas, Nevada
James Jackson, representing Consumer Data Industry Association, Las Vegas, Nevada
Paul J. Enos, Chief Executive Officer, Nevada Motor Transport Association, Reno, Nevada
Robert Tekniepe, Ph.D., Principal Management Analyst/Assistant Planning Manager, Department of Air Quality and Environmental Management, Clark County, Las Vegas, Nevada
David Kallas, representing the Las Vegas Police Protective Association and Southern Nevada Conference of Police and Sheriffs, Las Vegas, Nevada
Lee Rowland, representing the American Civil Liberties Union of Nevada, Reno, Nevada
Danny Thompson, representing the AFL-CIO, Henderson, Nevada
Gary Milliken, representing the Las Vegas Chapter of the Associated General Contractors, Las Vegas, Nevada
Steve Redlinger, representing the Southern Nevada Building and Construction Trades Council, Las Vegas, Nevada

Donald E. Jayne, Administrator, Division of Industrial Relations,
Department of Business and Industry

Raymond L. Badger Jr., representing Nevada Justice Association,
Carson City, Nevada

John E. Jeffrey, representing the Laborers' International Union of North
America Local 872 and International Union of Operating Engineers
Local 12, Henderson, Nevada

Dean A. Hardy, representing Nevada Justice Association,
Carson City, Nevada

George Ross, representing the Nevada Self-Insurers Association and the
Las Vegas Chamber of Commerce, Las Vegas, Nevada

Christopher Brigham, M.D., Senior Contributing Editor of the *AMA Guides
to the Evaluation of Permanent Impairment-Sixth Edition*,
Portland, Maine

Jennifer Gomez, representing the Nevada Agriculture Network Self
Insured Group, the Nevada Auto Network Self Insured Group, the
Nevada Retail Network Self Insured Group, and the Nevada
Transportation Network Self Insured Group, Carson City, Nevada

Daniel Markels, representing the National Federation of Independent
Business, San Carlos, California

Bryan Wachter, representing the Retail Association of Nevada,
Carson City, Nevada

Nicole Rourke, Director of Intergovernmental Relations, Community and
Government Relations, Clark County School District,
Las Vegas, Nevada

Robert Ostrovsky, representing the Employers Insurance Group and the
Nevada Resort Association, Las Vegas, Nevada

Chairman Conklin:

[Roll was taken.] We will start the meeting as a subcommittee. We will open
the meeting on Senate Bill 227 (1st Reprint).

Senate Bill 227 (1st Reprint): Revises certain provisions concerning identity
theft. (BDR 52-72)

Senator Valerie Wiener, Clark County Senatorial District No. 3:

In an earlier session we passed a measure that did not have the effective
language and protection we needed. With S.B. 227 (R1) I have a substantial
working group of representatives who know how to explain this much better
than I. Today we have some amendatory language to present to the
Committee. Encryption is a critical component of protecting the identities of the
people we serve and the people in the state we care about. I know you have
received a letter (Exhibit C) that includes some concerns from an organization in

Washington, D.C. For the record, I want you to know I have had extensive telephone communication with this organization in every attempt to address their concerns. Many of the members who participate in their activities are persons who may not benefit from the passage of this important legislation, the intent of which is to protect personal identities from intrusion and stop putting people's lives at risk in many ways regarding their financial information and other important data connected to their personal identity. This particular organization may not have the same best interest of the people of Nevada in mind as the people who came to the table to work on ways to address the encryption needs of information transferred. We have worked with those who have concerns with some of the amendments that we brought forward and they will appear before the Committee. I urge your support of S.B. 227 (R1).

Chairman Conklin:

Are there any questions from the Committee? [There were none.]

James D. Earl, Executive Director, Advisory Board for the Nevada Task Force for Technological Crime, Carson City, Nevada:

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

Chairman Conklin:

Mr. Earl, could I get you to wrap this up, since there are eight people who would like to speak on this as well?

James Earl:

Since the Senate vote, Senator Wiener has been approached by a variety of groups with proposed amendments. In an endeavor to assist Senator Wiener and the Committee, I have tabulated those amendments which I will explain now. Amendment A is designed to meet the expressed concerns of telecommunications carriers in Nevada. Option one, listed under Amendment A, is broader and has implications for other portions of Nevada statutes; my understanding is that it originated with Verizon and was transmitted to me through a data coalition. Option two was proposed by T-Mobile. Those representatives are present in the room and I would assume they are among the speakers who have signed up to address you.

Chairman Conklin:

Mr. Earl, as far as you are concerned, do options one and two accomplish the same goal?

James Earl:

Both options in my view accomplish the same goal.

Chairman Conklin:

Are they acceptable to you, other members of the task force, and Senator Wiener?

James Earl:

They are acceptable to me, I believe they are acceptable to the two gentlemen sitting at the table, and I can represent that they are acceptable to Nevada's Chief Information Security Officer.

Chairman Conklin:

Is there a substantive difference between the two?

James Earl:

Substantively as they affect an active provision of S.B. 227 (R1), the answer to that is no, because the first option modifies the definition of data collector. That has some general implications for the scope of application of *Nevada Revised Statutes* (NRS) Chapter 603A. If you are looking for a quick fix dealing with consequential implications, your best choice is option two.

Chairman Conklin:

Please proceed to Amendment B.

James Earl:

The first option of Amendment B was submitted by Mr. Bill Uffelman, President/CEO of the Nevada Bankers Association and member of the Technological Crime Advisory Board. His concern is self-evident from the text. I do not know what "remote deposit capture" is. The second option addresses different concerns and is proposed by a different industry group dealing with consumer industry data. Option one and option two are not mutually exclusive and in both cases I defer to the industry groups to answer specific questions. The issue of a secure private communications channel is left undefined and I am not sure of the scope of some of the language regarding a consumer.

Amendment C came to me from the American Express representative and modifies American Express proposed language which was incorporated on the Senate floor and in the floor amendment. It identifies those portions of the Payment Card Industry (PCI) Standard that the retailer has to comply with in order to enjoy the "safe harbor" provision. We have no objection to Amendment C.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Kirkpatrick:

On page 2, line 26, how is this bill different from other states? What I have found is when we refer to the federal government standards they do not have mechanisms in place to implement them. Who would do that, and do other states do this? On line 37, I do not know what Group 3 or Group 4 digital formats are or what T.4 or T.38 standards are.

James Earl:

There are no good parallels to the laws of other states. Massachusetts and Connecticut have attempted to deal with encryption requirements regarding personal information. Nevada broke ground when the Nevada Legislature in 2005 passed what is now the existing law. Massachusetts has a far more complex law that requires a very complex regulatory regime. As a result of that complexity, a significant number of Massachusetts state workers have been involved in the process of promulgating regulations. The implementation of certain portions of the Massachusetts law as a consequence has been delayed not once but several times because of regulatory concerns.

The PCI standard is not a federal standard. The PCI security standard is an industry standard that is generated by the companies that are involved in debit and credit card transactions. That particular standard is implemented through a series of contracts that various banks and credit card issuers have with retail merchants. If you or I go to Costco and have our card swiped through the card reader, Costco is required by its contract with whoever provides the functionality on the other end—be it VISA, MasterCard, or American Express—to conform to the PCI standard. This is an industry group that sets the standards. The most recent set of standards, which was promulgated last fall, considerably updated and changed the safety requirements dealing with the card swipe readers and the transmission pass.

Virtually all fax machines that are marketed in the United States conform to International Telecommunications Union (ITU) standards. The United States and approximately 120 other countries are bound together in this entity through a series of interlocking treaty obligations. Consequently, Japan, for example, is able to produce fax machines to a standard that will inter-operate worldwide. Under S.B. 227 (R1), fax transmissions are exempt from an encryption requirement which makes sense when you have two dedicated fax machines that are speaking with one another. However, in the present era, when I send someone a fax transmission, it may not be ultimately appearing on a fax machine. It goes to a server, which does a protocol conversion as an email and ships that out as the email you see on your cell phone. The question arose, is all of the fax transmission for the purpose of satisfying Nevada state encryption law? The answer is no. Only that portion which goes between two dedicated

fax machines is protected by the fax protocols that are defined in the ITU documents. If there is a protocol conversion, where something electronically is a fax and goes to a server, something happens within that black box and spits out a product that you see as an email. The transmission path from the black box to your handheld device is not protected by the safety involved in a normal fax transmission. I apologize for making the reference to ITU standards, but there is no other way to define what one means by a fax machine. Prior to describing the ITU standards on page 2 we did insert the phrase "dedicated fax machines" to give consumers a better idea of what we are talking about.

Assemblywoman Kirkpatrick:

What I do not want to create is a cottage industry that has the only say on how this works. Section 1, lines 9 and 10 mention a "successor organization." How would a new business know how often they change their standards?

James Earl:

That is standard procedure for any retail merchant who handles credit and debit cards. Underlying their credit and debit card business is a contract with a service provider that requires them to adhere to the PCI data security standards. The banks, retailers, and issuers of credit and debit cards control that standard, and it is up to them to deal with the issues involving replacement and updating. This particular text, which is incorporated in revision one, was provided to us. Senator Wiener incorporated it as part of a floor amendment, at the request of American Express speaking for retailers in Nevada.

Assemblyman Anderson:

I am sure you are aware there is a new mode of transferring money that utilizes cards for large sums of cash for transmission. It is better to put our standards into the public marketplace to dictate rather than have the governmental regulatory agencies look at where our information and data security are held. How are we going to maintain the integrity of our encryption, making sure our data is secure, if we surrender our protocol to the payment card index link? I do not want to see money laundering taking place because I can do it in plastic.

James Earl:

You are correct to raise the issue with regards to information containing personally identifying information that the state controls. Our state agency is probably the largest holder of personally identifiable information (PII) in the State of Nevada. Essentially the state acts as a funnel where personally identifying information sometimes associated with births, deaths, marriages, medical information, driver license information, and criminal record information flows through the state, through local governments and other agencies into the federal government system. The state would be required to encrypt exactly like

private industry in order to enjoy the "safe harbor" provision. There is no exception for state and local government agencies in S.B. 227 (R1). The encryption would not be to the PCI standard. The state would use a much more secure and highly defined standard than what is contained in the documents promulgated by the National Institute of Standards and Technology. Those standards are known as the Federal Information Processing Standards, which are tiered standards. One of the tiers includes the standard that is used by the federal government with defense contractors. The State of Nevada would be using the same encryption standard, for the data it controls, that the United States would use in comparable data protection.

Assemblyman Anderson:

The reference standard here in the PCI Data Security Standard and not the protocol that is being utilized by the federal government in terms of their security, which I am not sure is all that secure.

Chairman Conklin:

Mr. Earl, I will let you respond to Mr. Anderson off the record, since we are running out of time on this bill. Are there any questions from the Committee? Is there anyone at the table who has anything to add to what we have already heard?

James R. Elste, Director, IS Security and Internal Controls, International Game Technology, Reno, Nevada:

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

Assemblywoman Buckley:

Why do some of the large and reputable companies say this is going to cost Nevada businesses tons of money, and be overkill, when your testimony is no, this is the way it has to be done?

James Elste:

I believe this is the cost of doing business today. If you collect individuals' personally identifiable information, you incur an obligation to protect it, and part of that should be clearly defined in statute as to the encryption standard I should adhere to as a businessman to be able to fulfill that obligation to the citizens of Nevada.

Assemblywoman Buckley:

If I am buying something from Amazon or eBay, are they not encrypting my credit card information?

James Elste:

It is probable that they are. In this statute we are attempting to define that clearly so that businesses know what the encryption requirement is. There are a number of businesses that do not encrypt personally identifiable information. When you consider the cost of doing business, you employ these types of technologies and security measures in order to process that person's identifiable information. In contrast to that is the cost of a security breach when you do not encrypt it. The estimate for the cost of a data breach is approximately \$202 per record. Even a very small database of 10,000 records could cost a business \$2 million for that breach, and then they are going to come back and employ security and encryption because they do not want the breach to happen again.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

Can they use a more broadly defined encryption?

James Elste:

The value of providing the standard and specifying the level of encryption does two things. We ensure the encryption is rigorous and is not easily subverted. It actually provides real security. The second piece is that by adhering to that standard it opens up the value of the "safe harbor" in this statute so we can say that by encrypting to this level, you are entitled to the "safe harbor" provisions of this statute.

Assemblyman Goedhart:

Can we define what that level is versus the particular standard?

James Elste:

The problem is that standards change. Technologies evolve very quickly. It is hard to stay specific. In six months to a year when a new technology comes out, that standard will be better than what we have today. The standards are going to continually get updated because that is what the federal government uses to base its security programs on. We will get a naturally evolving standard in this manner.

Assemblywoman Gansert:

I would like us to state it in broad terms instead of the specific terms.

Chairman Conklin:

I am going to close the hearing on S.B. 227 (R1) at this time. We will open the hearing on Senate Bill 339 (1st Reprint).

Senate Bill 339 (1st Reprint): Requires the Colorado River Commission of Nevada to review and analyze available information, studies and reports to assess the feasibility of constructing a hydrokinetic generation project below Hoover Dam. (BDR 58-1150)

Paul Freeman, Intern for Senator Michael A. Schneider, Clark County Senatorial District No. 11:

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

Chairman Conklin:

Are there any questions from the Committee?

James D. Salo, Deputy Executive Director, Colorado River Commission of Nevada, Las Vegas, Nevada:

I wanted to confirm what you were told by the previous witness and let you know that we support the reprinted version of this bill and will implement the law within our existing resources. There will be no fiscal impact.

Chairman Conklin:

Is there real potential for constructing this project?

James Salo:

We do not know yet. The task ahead of us is to see if there is.

Chairman Conklin:

Are there any questions from the Committee? We will close the hearing on S.B. 339 (R1). We will reopen the hearing on Senate Bill 227 (1st Reprint). Is there anyone else wishing to testify in support of S.B. 227 (R1)?

James Jackson, representing Consumer Data Industry Association, Las Vegas, Nevada:

On behalf of the Consumer Data Industry Association (CDIA) and its members, if option two of Amendment B is included, we would be in full support of this bill. The CDIA supports any initiatives or legislation that is designed to protect consumers' data, and particularly their identities, from theft and unauthorized use of their information.

Chairman Conklin:

Are there any questions from the Committee? There are none. We will close the hearing on S.B. 227 (R1) again. We will open the hearing on Senate Bill 327 (1st Reprint).

[Senate Bill 327 \(1st Reprint\)](#): Provides incentives for certain electrification projects. (BDR S-377)

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

[Spoke from written testimony ([Exhibit G](#)). Senator Schneider distributed an informational packet ([Exhibit H](#)).]

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Buckley:

My sole concern is the financing and the methodology. How do we pay for it and what kinds of pass-throughs will there be to consumers?

Senator Schneider:

If you were to buy a plug-in electric Chevrolet Volt that is coming out next year, hopefully there would be charging stations downtown where you work or at the shopping center where you shop. The intent is for NV Energy to hopefully make the investment to install charging stations. San Diego Gas and Electric has become very proactive by using their cash flow to install those stations in San Diego. Illinois, Massachusetts, and Connecticut are doing the same thing. In the first two years there will be absolutely no impact on the grid for plug-in electric cars, because the use will be low, but they will be able to track and learn about consumers' charging habits to see how much electricity they will use. We are trying to spur the market, and I feel that this will be a big market for the electric companies in the future as we move toward plug-in electric cars.

Assemblywoman Buckley:

If I am one of the lucky first 100 customers to apply and be selected, then what happens? Must I buy my own electric car?

Senator Schneider:

You would buy your own electric car and you would be able to use the charging stations throughout the city.

Assemblywoman Buckley:

Would NV Energy have to build the charging stations? Would they then seek recovery of the cost for building the stations from the Public Utilities Commission of Nevada (PUCN)?

Senator Schneider:

That is correct.

Assemblywoman Buckley:

How much do you think that will cost?

Senator Schneider:

The PUCN is going to do a study on that. It will not be a lot of money in the overall scope. It will probably be a million dollars or less.

Assemblywoman Buckley:

Is the only incentive for the consumer that there will not be a fee at the charging stations? Is there any incentive to buy the vehicles?

Senator Schneider:

The incentive is you will get a free charge at the docking station.

Chairman Conklin:

Are there any other questions from the Committee?

Assemblyman Settlemeyer:

I would not mind seeing that you have to at least submit a Nevada driver's license to use the charging station. I would not like the idea of having someone from another state using the stations for free.

Senator Schneider:

That could be something we can add. Most of the electric cars are not able to run on a charge long enough to travel out-of-state—unless you have a Tesla, which costs \$100,000 and can go approximately 250 miles on one charge.

There are pictures in the packet I provided you of truck stop electrification stations. This is where a driver can park his truck, and an expandable tube is placed in the window of the cab. It will blow heat on winter days or air-conditioning in the summer. The tube would include a computer screen where the driver can access the Internet, television, or a stereo system. When he spends the night in his cab he will have heat or air-conditioning. There are several of these built across the country. There is an area in Clark County, at Mountain Pass, where truckers pull over to spend the night and keep their

engines idling all night long. The diesel fumes blow into Las Vegas Valley, which is what we would like to alleviate.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Gansert:

Would the power companies be using their reserves to build these stations? It would be helpful to have data letting us know how much these stations cost.

Senator Schneider:

We could get you the data on the anticipated cost of a station. There is going to be a study on this by the PUCN. The power company would probably joint-venture with a solar company since the solar panels can be installed in a parking area above and the batteries stored below the ground. This way a vehicle can pull into the parking structure, plug into where the sun creates the electricity and stores it underground, and then the vehicle is charged. It is totally off the grid where there is no carbon footprint at all. That is why the bill refers to wind and solar power in section 1.

Assemblywoman Gansert:

How are we going to address the maintenance of the roads?

Senator Schneider:

We have had that discussion in our Committee because we know right now our tax revenue for roads is falling. Next year when General Motors' new Volt car comes out, you can travel 40 miles on electricity before you must use gas. We are getting killed on our highway funding. We are driving more miles and paying less in taxes. We have talked about a Portland Plan in our Committee, where you pull up to the gas pump and you are taxed according to the miles you have driven, the time of day, and the area you drive. As we go to total electric where you do not buy gas at all, we are going to need a whole new funding system to pay for our roads.

Assemblywoman Buckley:

If the Committee chooses to process this bill, would you mind clarifying the language to indicate the incentive is to plug in and is not the cost of the vehicle?

Assemblywoman Kirkpatrick:

Are these the same solar systems that are asking for the abatement process? How would you clarify that?

Senator Schneider:

No they would not. This is a pilot program where the PUCN approves it. There are no abatements in this program.

Assemblywoman Kirkpatrick:

In Pasadena, California, there are stations off the I-210 freeway, where you pull up and plug in for 15 minutes to get a charge to go to the next city. They charge for that. Why would we give it away?

Senator Schneider:

It is a pilot program. What I envision is that for the first two years it would be free and they would start to meter it as the usage grew. Our intent is to stimulate the sale of electric cars and then eventually the consumer will have to pay for it.

Assemblywoman Kirkpatrick:

Would people get the impression that when they buy an electric car they will be getting free electricity forever?

Senator Schneider:

It is described as a pilot program. As you know, in solar, the cost is up-front and the electricity is free after that. The cost is built right in, so it will not fluctuate with the price of oil.

Assemblyman Goedhart:

Have you looked at what they are doing in Utah with compressed natural gas (CNG)? They have a system of CNG fueling stations where the cars are readily adaptable and burn natural gas. Honda has models for sale. What seems strange is that in Utah the CNG stations are selling the compressed natural gas for approximately 30 to 40 percent less than the few stations we have here in Nevada.

Senator Schneider:

This bill does not address that, since this bill moves into the direction of getting off oil altogether, and as you know, CNG is an oil product. There were two CNG stations in Las Vegas, but they were eliminated because there was not enough demand. However, Las Vegas has a grease bus that is powered by the oil from the deep fryer of a steak house. The restaurant owner's wife also runs her car from the deep fryer oil. Because there is an array of restaurants on The Strip, we can recycle a lot of oil for grease cars.

Chair Conklin:

Are there any questions from the Committee? There are none.

Paul J. Enos, Chief Executive Officer, Nevada Motor Transport Association, Reno, Nevada:

The trucking industry does not like idling either. When you idle, it is an unproductive use of fuel, getting zero miles per gallon, which means you are not getting paid for the fuel you are burning. We like the idea of electrification of truck stops. A Petro station, in Clark County, on I-15 at exit 54, has the big yellow tubes that are inserted into the cab of a truck, like the ones in the photo in the packet given to you by Senator Schneider. The tube provides heat, air-conditioning, and a screen for Internet access, cable television, training programs, and even movies. By swiping a card through your idler system, everything is accessible. It allows a truck to be comfortable for the driver, while not idling. We have also been looking at auxiliary power units to help prevent trucks from idling. There is a law in Clark County that limits the amount of idling to 15 minutes. We feel that the electrification of truck stops is something that is good for the environment and good for our industry. We support this measure.

Chair Conklin:

Are there any questions from the Committee? There are none.

Robert Tekniepe, Ph.D., Principal Management Analyst/Assistant Planning Manager, Department of Air Quality and Environmental Management, Clark County, Las Vegas, Nevada:

I am here to reiterate Clark County's support for S.B. 327 (R1) as we did in the Senate Committee on Energy, Infrastructure, and Transportation. Senate Bill 327 (R1) compliments our existing programs in Clark County that are designed to reduce mobile source emissions by encouraging the purchase of alternative fuel vehicles and the alternative to all fuel infrastructures such as electric plug-ins and truck stop electrifications. We see mobile source emissions being reduced. We view S.B. 327 (R1) as assisting in our efforts to attain and maintain the National Ambient Air Quality Standards for "criteria" air pollutants in Clark County, those being carbon monoxide and ozone. We support this bill and we look forward to a positive vote.

Chair Conklin:

Are there any questions from the Committee? There are none. We will close the hearing on S.B. 327 (R1) and open the hearing on Senate Bill 252.

Senate Bill 252 (1st Reprint): Revises provisions relating to solicitations of charitable donations. (BDR 52-843)

David Kallas, representing the Las Vegas Police Protective Association and Southern Nevada Conference of Police and Sheriffs, Las Vegas, Nevada:

We have seen a proliferation of telemarketers, and especially with telemarketers falsely posing themselves as raising funds in support of law enforcement officers, as well as firefighters, who were hurt or killed in the line of duty. This bill would require individuals who solicit funds not only for law enforcement officers and firefighters, but also for religious purposes, to disclose certain information to the person they are soliciting in order for that person to make an educated decision on whether they want to contribute to that particular cause.

During the course of the hearings in the Senate there were some concerns about the First Amendment protections, by compelling businesses and individuals who solicit funds on the phone to provide information that they otherwise would not have to provide, if not for the provisions of this particular statute. I believe that the First Amendment protections concerning compelled speech do not apply in circumstances in which telephone solicitors and telemarketers knowingly and falsely represent information they know to be false and certainly have a reckless disregard for the truth. In the 1964 case *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the U.S. Supreme Court said there is no First Amendment protection when you knowingly make a false statement or recklessly disregard the truth when providing information to people. Based on that and the concerns about the continued falsities that are conducted by the telemarketers, we have brought this bill forward and ask for your support on S.B. 252 (R1).

Chair Conklin:

I would assume telemarketers fall under commercial free speech, which has a far more limited capacity under the First Amendment. Where does the court rule on this for nonprofit versus the act that is being done?

David Kallas:

I cannot speak to the nonprofit portion of the bill. There were concerns regarding the nonprofits, such as the Firefighters Food Drive, and others who conduct their business in person. That is why this bill was revised and amended in the Senate to deal only with telephone solicitations and not include solicitations done in person or by any other solicitation method that came under the prior statute.

Chair Conklin:

Are there any questions from the Committee?

Assemblywoman Kirkpatrick:

Does this mean the Girl Scouts, Boy Scouts, and Parent Teacher Associations always have to disclose their name, address, and who they are calling?

David Kallas:

Yes, anyone who is soliciting over the phone would be required to make this disclosure prior to soliciting funds or support for an organization.

Assemblywoman Kirkpatrick:

How are you going to enforce it?

David Kallas:

The legitimate organizations are not going to have an issue with complying with this requirement. The groups we are trying to address are those who conduct their solicitations falsely. There is an organization called the Police Protective Fund that proposes to leave 95 percent of those funds in the State of Nevada to help hurt or injured law enforcement officers, but they are in fact headquartered in Florida and have a subsidiary group in California. They happened to call me one day and I agreed to make a donation so I could get information about them. This bill is to address the telemarketers who are soliciting fraudulently.

Assemblywoman Kirkpatrick:

There are times when I need to make those phone calls on behalf of the Girl Scouts from a call list I get. If I did not disclose all of the required information each time, could I be in trouble? If I had to disclose all that information it would take two days to make the calls versus two hours. How do you enforce it?

David Kallas:

I understand how problematic that is and I do not disagree. Unfortunately, sometimes innocent people are negatively impacted by those who are committing crimes, because this body has to implement legislation to try to curb abuses and ensure that people do not become victimized. Yet, the innocent people are burdened with doing more because of the ones committing the crimes. I understand how unfortunate that is, but I am not sure how else to cure the problem that currently exists. It is not just about false solicitations for law enforcement officers and firefighters, but also about the many other phone solicitors who are raising money for fraudulent organizations, knowing the money will not go where they say it will.

Chair Conklin:

Are there any questions from the Committee?

Assemblyman Settelmeyer:

We had a bill similar to this last session and I believe the fine for the first time is a misdemeanor, the second time it is a gross misdemeanor, and the third time it is a felony. I do not know if you have researched as to what chapter of the *Nevada Revised Statutes* (NRS) this would violate, but I believe it falls under the same one that the Assemblyman from Washoe County brought forth last session. This will only affect Nevada-based entities because someone calling from out-of-state would not be prosecuted by the Attorney General. How effective do you think this will be if it will not stop the solicitors calling from out-of-state?

David Kallas:

I would disagree because there is always a deterrent whenever restrictions or hurdles are imposed on any group doing something illegal. When this bill was originally proposed it fell under a criminal penalty with some opposition from the American Civil Liberties Union (ACLU) in regards to whatever was compelled speech that violated the protections of the First Amendment. That is why it has been moved to this Chapter of the NRS, which is consistent with the current fraudulent activities provisions in NRS enforced by the Attorney General in regards to telemarketing.

Chair Conklin:

Are there any questions from the Committee? There are none.

Lee Rowland, representing the American Civil Liberties Union of Nevada, Reno, Nevada:

I do not think there is any question that we are talking about compelled speech. I have included for you in my written testimony ([Exhibit I](#)) citations to a Supreme Court case which I urge you and legal counsel to look at, as it dealt with a strikingly similar requirement in another state which required professional fundraisers to disclose the percentage of charitable donations that went to the actual state they were calling. The United States Supreme Court said the reason that it is unconstitutional is because compelled speech tends to be a rather awkward fit, which is just what we have heard at the testimony today. We are not going to actually be able to enforce this against people who are committing fraudulent acts; instead what is more likely to happen is that restrictions and requirements will be placed on individuals who are already playing by the rules in a way that violates the Supreme Court rule, while at the same time creating meaningless restrictions on individuals who are soliciting outside of Nevada.

What the Supreme Court said in that case is that the state should focus on its fraud prevention by putting clearer statements in law about what is not

permitted. As Assemblyman Settlemeyer noted, those provisions are in the existing law. I would be interested to know if there have been any prosecutions under those provisions, which I asked at the prior hearing but my question was never answered. From my point of view that is a very big question, not only with policy but legally, because the Supreme Court in its opinion made clear that if the state is not using criminal-justice resources available at its fingertips, then it has very little of an argument in stating it needs to get into the First Amendment area by requiring people to say particular words. I will refer you to my written testimony for the details on that court case, but certainly the details are strikingly similar to what you are being asked to pass. I think you are walking into a constitutional trap. The Supreme Court case is very clear that compelled speech needs to be an option of last resort for the state and only in the most compelling interest. I do not think the testimony today meets those criteria.

Chair Conklin:

Are there any questions from the Committee? There are none. We will continue the hearing on Senate Bill 252 (1st Reprint), since the bill sponsor has arrived.

Senator David R. Parks, Clark County Senatorial District No. 7:

I come before you to ask for your consideration of S.B. 252 (R1), which provides for certain disclosures to be made by a person who solicits contributions for or on behalf of a charitable organization. Simply stated, if an organization benefits law enforcement officers or professional firefighters, then the person making the solicitation must also disclose the percentage of total contributions that benefit the law enforcement officers or professional firefighters within the solicited state.

Chair Conklin:

Are there any questions from the Committee? We close the hearing on S.B. 252 (R1) and open the hearing on Senate Bill 288 (1st Reprint).

[Senate Bill 288 \(1st Reprint\)](#): Revises provisions relating to occupational safety and health. (BDR 53-163)

Senator Maggie Carlton, Clark County Senatorial District No. 2:

Thank you, Mr. Chairman, for cosponsoring this piece of legislation with me. As you can see it is a mere shadow of its original self. There are a lot of deleted amendments within this bill. It was one of those casualties of trying to revamp the system, sending the information to Legal, getting back a bill that was not really what we had intended, but having to introduce it that day so we could take a second swing at it.

What you have before you is the compromise legislation, which I believe addresses a couple of the issues that we heard during testimony in Senate Commerce and Labor. This is a public information bill. If there is a fatality at a work site, an investigation would be launched, and a citation would be issued. After the citation and before the informal conference, we are asking the Division of Industrial Relations (DIR) to sit down with the family and walk through the process of what is about to happen with that particular case, so they are well informed. What has happened in the past, and the concerns we heard in Committee, was that the family went to the informal conference with the contractor and the citation was changed, abatements were made, fines were lowered, and the family was not aware and did not understand what the process was. This bill gives individuals who have lost a loved one, through a fatality because of an industrial accident, all the information ahead of time, and then they are walked through the process so they can understand what is going on. Knowledge is the power that drives everyone.

Since this bill passed out of the Senate there have been strong indications from Washington, D.C., through our new Labor Secretary, that there will be monies coming to the state to deal with some Occupational Safety and Health Administration (OSHA) issues. I respectfully request that this Committee add the standard boilerplate American Recovery Investment Act language that would allow the DIR to accept gifts and grants so that when that money does come, they can accept it and use it for training and enforcement. I believe that will benefit every working person in this state.

Chair Conklin:

Are there any questions from the Committee? There are none.

Danny Thompson, representing the AFL-CIO, Henderson, Nevada:

We are 100 percent in favor of this bill. One of the concerns that was noted in the hearings that Senator Carlton held regarding OSHA was that families of the deceased workers who had been killed in Las Vegas felt they were left out of the system and did not have any information, only to find out in some cases that fines had been reduced. This bill has been drastically changed from its original form, and this is the least we can do for the families of deceased workers.

Chair Conklin:

Are there any questions from the Committee? There are none.

Gary Milliken, representing the Las Vegas Chapter of the Association General Contractors, Las Vegas, Nevada:

We are in favor of this bill.

Chair Conklin:

Are there any questions from the Committee? There are none.

Steve Redlinger, representing the Southern Nevada Building and Construction Trades Council, Las Vegas, Nevada:

We concur with everything that Mr. Thompson said and we support this bill fully.

Chair Conklin:

Are there any questions from the Committee? There are none.

Donald E. Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:

We are very supportive of the bill as amended. It has no fiscal impact and is certainly something we want to do for those families that are affected. We appreciate the mention of the enabling language that allows us to accept grant money. In the last two weeks we were notified by OSHA that there is money available and we have prepared our initial request, which will support everything from OSHA 10- and 30-hour courses to the training of inspectors through the OSHA Training Institute (OTI). I was unaware of enabling legislation or appropriate language, but I appreciate that being added to this bill.

Chair Conklin:

It is not only enabling language, it is language that allows us to make sure you are spending it in the right way. Are there any questions from the Committee? There are none. We will close the hearing on S.B. 288 (R1) and open the hearing on Senate Bill 195 (1st Reprint).

Senate Bill 195 (1st Reprint): Revises provisions governing workers' compensation. (BDR 53-1077)

Raymond L. Badger Jr., representing Nevada Justice Association, Carson City, Nevada:

This bill was originally in Assembly Bill 178. The only change to this bill is that it is effective upon passage and approval. We asked for a separate bill because there is a time issue that is of the essence and we thought making it a bill without any other proposals in it would help speed it along. The present law requires that the Division of Industrial Relations (DIR) adopt the sixth edition of the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment* no later than 18 months after it is published. That deadline is July 1, 2009. For the DIR to properly do that they need to open public regulation hearings prior to July 1, 2009, for which they would have to give

public notice and then deliberate before they issue regulations, all of which means the clock is ticking.

I want to refer you to the fifth page of the exhibit I provided ([Exhibit J](#)), where the title of the page says, "5th Edition v. 6th Edition – Guides," which shows the difference in the impairment ratings if we adopt the sixth edition. What it will result in is the most drastic benefit cuts for very common injuries in the history of the Nevada workers' compensation system. These are not someone's opinions. I took these examples out of the book that is published by Dr. Christopher Brigham where he displayed case examples of the fifth edition versus the sixth edition. If someone wants a backup for the examples, I can give you the pages that explain the different percentages in the two editions.

If you notice in example number two, a lower back surgery with a fusion of two vertebrae goes from 23 percent to 6 percent, which is about a 380-percent reduction for that injured worker. Example number four is for a severe cervical spine injury which goes from 28 percent to 11 percent, which is one-third of what they would get two weeks before this book becomes law. Why does the author cut the percentage by three-quarters for a fusion and by one-third for a neck injury? There is no answer. Another common injury indicated on the chart is a total knee replacement, which is reduced from 20 to 12 percent. A total hip replacement goes from 15 to 9 percent. Those are 40-percent reductions to an injured worker requiring those procedures by the changes in this book. Dr. Brigham testified in front of the Senate Commerce and Labor Committee and was asked if the percentages were accurate. He said they were taken out of context and, yes, they were taken out of the book and put on another page, but he did not question the numbers. One comment he made was he thought that a total hip replacement was getting 40-percent better results. I do not think any of my clients who had a hip replacement six months ago would agree it has changed 40 percent for the better.

Additionally, under our law, the amount of retraining an injured worker can get is determined by the percentage of disability. If the sixth edition becomes law in a month, not only will they take the benefit cuts, they will also have less retraining. For instance, example number two concludes if you are a carpenter with a lower back injury, and had a fusion, your retraining benefits are now reduced from 18 months to 12 months. We are not the only state debating this issue. I have included studies conducted by blue ribbon panels from Iowa and Kentucky. A cross section of people from the workers' compensation arena, such as doctors, judges, and attorneys from both sides, read their reports. The bottom line is an overwhelming majority of people from both states said that we do not know enough about the sixth edition and we are not ready to adopt it in our state.

If you pass this law, you will maintain the status quo. We have been using the fifth edition since 2003 and our premiums in the State of Nevada have gone down overall. Mr. Jayne from DIR can tell you what time constraints he is under with the present law if action is not taken to adopt the sixth edition. Ultimately that was brief, concise, and kept some of you awake.

Vice Chairman Atkinson:

Are there any questions from the Committee? There are none.

Danny Thompson, representing the AFL-CIO, Henderson, Nevada:

Mr. Badger explained our opposition to the sixth edition. We are currently talking with all the parties concerned about a number of workers' compensation issues, but this particular bill is time-sensitive. If we do not pass this bill, on July 1 the sixth edition is automatically adopted and every rating doctor in Nevada has to be trained to the sixth edition. I would submit to you that never in our wildest imaginations would we have thought that this book would make such draconian changes for workers. Especially with the current state of workers' compensation in Nevada, we are opposed to see these kinds of drastic reductions in benefits for workers and we urge you to pass this bill.

Vice Chairman Atkinson:

Thank you, Mr. Thompson.

Assemblyman Settlemeyer:

I have had friends who have had vertebrae fusion surgeries, and I believe the sixth edition is going on the concept that the technology has changed so much over time that they have had better results with the new technology than they did under the fifth edition. Under the sixth edition, after having the vertebrae fused, they were back to pre-injury status. Do you not think the technical differences create changes in the law?

Raymond Badger:

I think as a general principle, as medicine improves, hopefully the new edition of the book would accept that. I am assuming they are using the latest medical knowledge, but when they adopt numbers that change drastically, I know what it is going to do to injured workers, because I represent them. I know people who have done well with fusions, but if anybody thinks they are 100 percent after having fusion surgery, I would think they did not listen to their doctor very well. No matter how well they are doing, the back and neck are not in the normal form the way the Lord made it. I would agree that some people do very well with fusion surgery.

Vice Chairman Atkinson:

Are there any questions from the Committee?

Assemblywoman Gansert:

Has the state consistently adopted the new edition over the years or have we run into this problem before where you wanted to stay with an older edition?

Raymond Badger:

We have not run into this before. In the past we took the second edition but did not adopt the third edition. We only adopted the fourth edition after the AMA said they would sue Nevada if the workers' compensation system kept using the second edition, because in their minds it was copyright infringement because they did not recognize that book anymore. That is why we went from the second to fourth edition. When the fifth edition came out, DIR was charged with choosing whether we would adopt a new book or not. They held hearings and did not make a decision about the new book, so we brought it to legislation. It certainly has not been automatic.

Vice Chairman Atkinson:

Are there any questions from the Committee? There are none.

John E. Jeffrey, representing the Laborers' International Union of North America Local 872 and International Union of Operating Engineers Local 12, Henderson, Nevada:

The drastic changes that are in this bill have a huge effect on injured workers. To make the kind of reductions that are in the new book, along with the cuts in vocational rehabilitation tied to permanent partial disability (PPD) awards, is too much for an injured worker to take, in my opinion.

Vice Chairman Atkinson:

Is there anyone else wishing to testify in favor of S.B. 195 (R1)?

Dean A. Hardy, representing Nevada Justice Association, Carson City, Nevada:

I would like to add that no one has ever walked into a committee meeting and asked for an increase or reduction in benefits that would mirror the types of percentages that would come about as a result of the adoption of the sixth edition. It does not make sense in any integrated system to absorb the reductions of percentages that Mr. Badger outlined. Some are as great as 350 percent. In the 25 years that I have been coming here, no one has come into this Legislature and said that premiums are skyrocketing and we need dramatic reductions in benefits. It is not reasonable or fair to the injured workers to have a parallel increase or other type of benefit increase if we are going to adopt a book that dramatically reduces benefits.

Vice Chairman Atkinson:

Are there any questions from the Committee? Is there anyone wishing to testify in opposition of the bill?

George Ross, representing the Nevada Self-Insurers Association and the Las Vegas Chamber of Commerce, Las Vegas, Nevada:

I would like to point out that S.B. 195 (R1) is part of the package of workers' compensation bills: Assembly Bill 178, Assembly Bill 511, and Senate Bill 366. From the business community's point of view we know we are going to be asked to pay a large amount of taxes. When we look at the package of workers' compensation bills, it is almost revolutionary in scope. It is a complete change from the way workers' compensation has been approached in the past 16 years. We see another piece of the package that adds to the burden of expense that the business community will be facing at this time.

The first word in workers' compensation is "worker." Some people work for themselves when they own their own business and are a tax target. Other people work for employers. The last I knew, you do not get workers' compensation when you are unemployed. I think it is very important to take into consideration the state of the economy, the state of profitability, and the viability of companies whose workers get workers' compensation. We hope for those companies to survive in a viable way so they can continue to have workers who can receive workers' compensation instead of unemployment insurance. We see this as part and parcel of the same package and extent of the expenses we are being asked to bear.

Having said that, we are in negotiations and have had positive exchanges with the individuals who have preceded me here today, and we are hopeful those negotiations will be fruitful. It has been made very clear to us by both legislators and those individuals that there are certain areas that do need to be reformed. We agree and have made some attractive and meaningful proposals. In the meantime, we are very concerned about the package of bills that are still alive, still being heard, and still under consideration.

It is interesting as to what one would call the status quo. One might call the status quo the existing state of the law. The existing state of the law is that the state will move to the sixth edition by the end of June. We think that is the status quo. The sixth edition has a newer understanding of medical science and is more empirical, replicable, and objective. A worker in this state could get the same kind of benefits he is getting today because the Legislature can otherwise change some of the calculations from which one derives the percentage of the ultimate payment to the worker. It is not totally a function of the edition.

We are, however, willing to change the law so the fifth edition could be used for two more years. If there are no other physical factors involved in the calculation, it would end the lawsuits regarding assisted daily living (ADL) which is a needless expense. We are also willing to delink the vocational rehabilitation from the sixth edition. We do not think that the Legislature should make a decision without hearing all the facts and both sides of the argument. To make sure you experience that, we have asked Dr. Christopher Brigham, M.D., Senior Contributing Editor of the *AMA Guides to the Evaluation of Permanent Impairment-Sixth Edition* to explain why the sixth edition is viable and why it is an improvement over the fifth edition.

Vice Chairman Atkinson:

Are there any questions from the Committee?

Assemblyman Anderson:

Is your primary objection to this bill that you believe the business community is going to be taxed so heavily and the injured worker should have to pay for that?

George Ross:

I do not believe that any workers should have to pay for it. I believe we can get the areas that are problematic into the current system and reformed without imposing the major costs upon the business community that are inherent in A.B. 178, A.B. 511, and S.B. 366.

Assemblyman Anderson:

Do you perceive this as part of the tax question and not as part of the injured worker problem?

George Ross:

It is both. There is no question that there have been significant problems in handling the injured workers' issues and there have been some major tragedies that no one could ever defend. We believe there are some reforms that could be implemented that do not involve some of the changes in those bills and which would directly address the injured workers' issues.

Assemblyman Anderson:

I was addressing your opening statement that the business community was concerned that there were going to be tax increases that were ultimately going to fall on them. As a result, they perceive this is as going to be part of their increased cost of doing business compared to the tax benefits they might gain as a result of utilizing the newer edition. If we use the new edition there is a cost benefit to businesses. Is that correct?

George Ross:

I did not mean for it to sound like we were anti-worker and we are putting the worker against the taxes. We believe there are some reforms that can be made on their behalf in the system that are not overly costly. The collection of bills, not just S.B. 195 (R1), would be a very large expense and we might as well have another major tax.

Assemblyman Anderson:

Is the new edition going to be a cost benefit to the business community as compared to the current one?

George Ross:

I am not sure if anybody knows. The new edition is newer science, is more objective, is believed to be more reputable, and attempts to be fairer to people with the same injury.

Assemblyman Anderson:

We heard testimony earlier that the injured worker would remain status quo if we stayed with the old book and he would be harmed if we moved to the new book. If we stayed with the old book, will business remain at the status quo or would they gain a cost benefit?

George Ross:

There is only one other injury in the sixth edition that gets less money for the injured worker. There are also injuries listed where the injured worker gets more money. It goes in both directions.

Vice Chairman Atkinson:

Are you on the line to give testimony or answer questions?

Christopher Brigham, M.D., Senior Contributing Editor of the AMA *Guides to the Evaluation of Permanent Impairment-Sixth Edition*, Portland, Maine:

I would be pleased to provide testimony and then be available to answer questions. I am speaking in opposition to S.B. 195 (R1). The passage of this bill and remaining with the fifth edition would not be an appropriate move. It would retain a system that has significant deficits and that would be significantly improved with the sixth edition, and it would not achieve our goal, which is to provide a more equitable and reliable process of defining impairment that would be fair for the injured worker and the system itself.

My testimony today is as an expert in the field, independent of the American Medical Association. I would like to clarify some of the examples Mr. Badger spoke about on the treatment of fusions where there have been corrections in the impairment. When we look at impairment we are trying to define the impact of an injury or illness; a physician's goal is to restore a function so there is no impairment. In the past, there were some problems the way the guides were developed, and these were fixed in the sixth edition. As physicians, we design medical or surgical treatment to improve the well-being and functioning of our patient, to improve their ability to perform activities of daily living, and therefore, we should decrease impairment.

The examples that were given of fusions were procedures designed to improve outcomes, but we mistakenly assigned high values for them. For example, the issue of the cervical fusion for somebody who did not have surgery, and had ongoing severe deficits of function, would actually receive a much lower impairment rating than they would with the treatment that was designed to improve their functioning, so that needed to be corrected.

There was also reference to joint replacement. The values that were in the fifth edition are the same values we had in the fourth edition that was published in 1993. For over 15 years there have been improvements in the technology; therefore the consensus involving 200 physicians in the use of the AMA guides was that those values needed to be adjusted. There are also many conditions that did not receive ratable impairment in the fifth edition that now need to receive ratable impairment. For example, nonspecific low back pain would not have received impairment in many circumstances in the fifth edition. It does receive impairment in the sixth edition, and there are other conditions that did not receive impairment, but now would. There is a significant change in the methodology, to offer a consistent approach throughout the book, and that did not occur before. There were independent and individual committees that developed chapters, so there was not an underlying consensus to that.

Last week I conducted a survey on the sixth edition, and I will present the findings next week at a symposium of the National Council of Compensation Insurance. We had responses from approximately 70 users of the sixth edition and the criterion for inclusion of their responses was that they must have performed or reviewed 10 or more reports. Of the 50 physicians' responses, 70 percent of them found the sixth edition to be a significant improvement.

There are certainly challenges and corrections that needed to be made, and we are currently reprinting the sixth edition with the corrections. We also asked which edition they preferred. Seventy percent of the physicians preferred the sixth edition, 28 percent preferred the fifth edition, and 2 percent preferred the

fourth edition. One stakeholder group did not agree that the sixth edition was an improvement, and that group was the plaintiff attorneys. The sixth edition was designed by physicians to assess the impact of an injury, and there were overwhelmingly positive responses and agreement that the statements were more reasonable on impairment values. Sixty-six percent of the physicians agreed it was a clearer process, it was more internally consistent and reliable, and errors were less likely.

The analogy I use with the sixth edition guide is with medical textbooks. Science moves forward and necessitates changes to the preferred approaches that we use. There are certainly many examples of things that we did in the past, like bloodletting with leeches, that we thought were appropriate and then we realized science changed. Trying to stay in the past when the science has moved forward is not appropriate and is not the fair and reasonable decision for everyone involved, including the injured worker.

Vice Chairman Atkinson:

Are there any questions from the Committee?

Assemblyman Anderson:

In light of the different nature and chapter set-ups of the fifth edition and your editorial development of the sixth edition, which apparently changes the overall procedures of the document, how will you go about making sure that medical providers and other users are aware of how it will impact their treatment? How are they going to know that this new book is available? Do you travel around the country and do a series of seminars?

Christopher Brigham:

That is a relatively minor aspect of what I do. We will do consulting, training, writing educational material, and reviewing impairment ratings to ensure they are accurate. I think it is similar to what we would do if we had a new medical textbook. We would need to alert people that the science has changed and that there is a new resource they need to make use of. From my experience in training, it is easier for physicians to learn how to make use of the sixth edition, because in the past when they would change from one chapter to another, they would have to learn an entirely different approach. In the sixth edition, there is an approach that is based on the International Classification of Functioning, Disability, and Health, which is more functioning oriented and is closer to the context of PPD. It will require them to learn that by reading books or other sources of education. From my experience and feedback from physicians, this edition will be easier to learn than was the fifth edition.

Assemblyman Anderson:

Because the fifth edition came out in 2003, would you anticipate that this one will have a life span of approximately five years?

Christopher Brigham:

The typical publication cycle of the guide is approximately six to seven years. Therefore, one could project that in another five or six years there will be a new edition, since the sixth edition reflects significant change and improvement in the process. Associated with that is when changes occur and corrections and clarifications are needed. I would not be surprised if a new edition came out a year or two earlier. I would not expect the seventh edition to be released for four to seven years. Because it is an intensive task with hundreds of physicians volunteering their time, we can do this only so often.

Assemblyman Anderson:

Is your organization compensated for the training programs that you generate?

Christopher Brigham:

We are compensated but it is not a major source of income. There are no royalties for the work that we do in terms of my training involvement with the sixth edition of the AMA guide. It is a volunteer position.

Vice Chairman Atkinson:

Is there anyone else wishing to testify in opposition of S.B. 195 (R1)?

Jennifer Gomez, representing the Nevada Agriculture Network Self Insured Group, the Nevada Auto Network Self Insured Group, the Nevada Retail Network Self Insured Group, and the Nevada Transportation Network Self Insured Group, Carson City, Nevada:

We would like to go on record in support of the testimony presented by Dr. Brigham, and what we would also like to have on record is that it appears the proponents are asking for the PPD guides to be the status quo. However, medical technology has not remained the status quo. As technology advances, so must the guides used to measure those improvements. Technology is moving at an upward improvement and yet the measurement runs at a lateral flat line. So, it appears we have used the fifth edition for the last six years to measure technology that has been improving over the last six years. It makes sense to then progress to the next form of the guides that can appropriately measure that improvement.

Vice Chairman Atkinson:

Are there any questions from the Committee?

**Daniel Markels, representing the National Federation of Independent Business,
San Carlos, California:**

We are opposed to the bill. We are concerned about a number of the workers' compensation bills that are coming down the pike this session. Accumulatively these bills cause concerns that they could have an upward pressure on rates. Many of our members struggle, not only to maintain a safe workplace, but to also maintain a workplace at all. We have many members that may go out of business. The last speaker made a very good point that technology is always changing. There is not a status quo with technology. When some of the representatives from the Department of Labor were commenting on the decreases in percentages that workers would be compensated, they did not take into account the technology. If you had an injury ten years ago and the corrective procedure is so much improved today that it can get you up and running much better and quicker, I personally would rather have the better technology than the extra compensation. That is what makes us a wealthy country. I hope you consider that when you look at this bill.

Vice Chairman Atkinson:

Are there any questions from the Committee?

Assemblywoman Buckley:

Everyone is pleased that our technology continues to improve. But that is not what we are talking about. We are talking about when someone loses an arm, or when someone has an unsuccessful back operation necessitated by an industrial injury. Is their arm worth less than what it should have been compared to a month ago? That is what we are going to weigh.

Vice Chairman Atkinson:

Are there any other questions?

**Bryan Wachter, representing the Retail Association of Nevada,
Carson City, Nevada:**

If I may address the comment from Speaker Buckley, members of the Retail Association like workers' compensation. We want our workers to come back, we want them to get better, and we want them back on the job. We do not want to have to retrain new workers. We have invested money and training in those employees to bring them back and we do not think the arm is worth any more or any less. We are saying that maybe technologies evolved in such a way that the worker is able to come back, maybe not at 100 percent, but even if they are able to come back at 80 percent, that is better than 60 percent. There should be some consideration taken that they can come back at a greater percentage of ability than six years ago. Our mission is to get our employees

the best possible care so they can come back to work at their highest possible potential.

Vice Chairman Atkinson:

Are there any questions from the Committee? [There were none.]

Nicole Rourke, Director of Intergovernmental Relations, Community and Government Relations, Clark County School District, Las Vegas, Nevada:

We would like to echo the concerns of George Ross and others in opposition to this bill.

Vice Chairman Atkinson:

Are there any questions from the Committee? There are none. Is there anyone else wishing to testify in opposition to S.B. 195 (R1)? Is there anyone in the neutral position on S.B. 195 (R1)?

Robert Ostrovsky, representing the Employers Insurance Group and the Nevada Resort Association, Las Vegas, Nevada:

I rise in neutral to this bill. I gave testimony on A.B. 178 and was opposed to the change in this law. Since that time we have entered into active negotiations with the parties involved. I promised those parties that we would keep those negotiations in that room and not make them public. This is clearly one of the issues we discussed. Whether this Committee decides to process this bill in advance of the conclusions of those negotiations, hopefully by next week, is certainly, Mr. Chairman, your and your Committee members' decision to make. I am neutral at this time, hoping we can resolve this issue equitably amongst the interested parties.

I would like to respond to Assemblyman Anderson's comment about who gains and who loses in this process over the years. You asked about why we change from one edition to another. The employers who were using the second and third edition thought they had the advantage. They did not want to move but were forced to move by the Legislature and there was a question about whether we should we go into the next edition. We tried to get politics out of it by creating an automatic movement. Now we are back to trying to decide what is best. I am not advocating one way or the other. Everyone has some interest in this. If we accept the fifth edition and that is the decision of this body, I can guarantee you in a few years down the road, we will be arguing about the seventh edition, or the third revised sixth edition. Maybe there is no end to this discussion about who has the upper hand. I understand the purpose is to make the worker whole, as Speaker Buckley has indicated, regardless of medical improvements. We have to decide what policy this state wants to use to treat its workers, and work that out together. Hopefully we will have something to

bring back to you that this Committee can review and then agree on a reasonable settlement for all parties.

Vice Chairman Atkinson:

Are there any questions from the Committee?

Assemblyman Anderson:

I am curious about Dr. Brigham's testimony that he used a different approach with the sixth edition, relative to its construction by the chapters, whereas this one seemed to be more of his work. It seemed to me that it would require a different approach to make the medical community aware of the new edition. My question was how would he explain to the medical community that the sixth edition was going to better reflect, or possibly change, what would take place. We naturally expect the medical profession to use the newest technology, and obviously there has to be a training program for that. If this reflects that intent, that is fine. The question is, what is the difference between the fifth edition and the sixth edition in terms of who is benefiting from it?

Robert Ostrovsky:

I do not know about the question of who gains in the fifth and sixth editions. We have a process and procedure in this state to train physicians to be rating physicians. When the Department of Industrial Relations (DIR) hires someone, they offer classes. Only trained rating physicians can do the ratings based on the fifth edition. They do that training. I think they have already scheduled a training session for doctors, for which they pay a substantial fee. They cancelled that due to the fact that the Legislature is reviewing this issue. I understand they will be posting those again because they need to move very quickly in order to meet the statutory guidelines they face. It is expensive for doctors and there are only a few statewide who do these ratings.

Assemblyman Anderson:

I see that as a simplistic point of view. There will be a seventh edition out in another couple of years and then there will be an eighth and ninth out. There will always be a new edition out because the medical profession is changing very rapidly. I am terribly concerned about the element of making sure the medical profession has the newest materials available to them because we want everybody to be treated fairly. I am concerned about the injured worker and businesses staying in business. I have never heard of a worker who did not want a business to survive because they need a job.

Robert Ostrovsky:

There are alternatives. Some states do not use the guides but use their own methods and schedules of payments to injured workers. That may be something we need to look at later. We could establish our own Nevada schedule of payments for injured workers. Negotiations would be tough, long, and hard, but it would eliminate this for the long term. We may want to look at that in the future.

Vice Chairman Atkinson:

Are there any questions from the Committee? There are none. We have a letter ([Exhibit K](#)) from Nancyann Leeder that was faxed to us from Las Vegas in favor of S.B. 195 (R1) and I want to make sure it is submitted for the record.

[Meeting was adjourned at 4:27 p.m.]

RESPECTFULLY SUBMITTED:

Karen Fox
Committee Secretary

Cheryl Williams
Editing Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 29, 2009

Time of Meeting: 1:46 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 227 (R1)	C	Senator Valerie Wiener	Letter
S.B. 227 (R1)	D	James Earl	Written testimony
S.B. 227 (R1)	E	James Elste	Written testimony
S.B. 339 (R1)	F	Paul Freeman	PowerPoint
S.B. 327 (R1)	G	Senator Michael Schneider	Written testimony
S.B. 327 (R1)	H	Senator Michael Schneider	Packet of articles
S.B. 252 (R1)	I	Lee Rowland	Written testimony
S.B. 195 (R1)	J	Ray Badger	Packet of documents
S.B. 195 (R1)	K	Nancyann Leeder	Letter