

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

**Seventy-Fifth Session
February 16, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:37 p.m. on Monday, February 16, 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:

None

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:

Mendy K. Elliot, Deputy Chief of Staff, Office of the Governor
Brian T. Kunzi, Senior Deputy Attorney General, Workers' Comp and Insurance Fraud Units, Office of the Attorney General
Robert Compan, representing Farmers Insurance Group, Las Vegas, Nevada
Michael Geeser, representing American Automobile Association Nevada, Las Vegas, Nevada
Marlene Lockard, representing Nevada Collision Industry Association, Sparks, Nevada
John E. Jeffrey, representing Snap Towing, Henderson, Nevada
Troy Dillard, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles
Jeanette Belz, representing Property Casualty Insurers Association of America, Sacramento, California
Michael Spears, representing, Collision Authority, Las Vegas, Nevada
Tom Roberts, Lieutenant, Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Matthew L. Sharp, representing Nevada Justice Association, Carson City, Nevada

Chairman Conklin:

[The roll was called and a quorum was present.]
We will begin today on Assembly Bill 53.

Assembly Bill 53: Revises provisions governing operators of body shops and garages. (BDR 52-446)

Mendy K. Elliot, Deputy Chief of Staff, Office of the Governor:

In 2007 I had the pleasure of meeting with Assemblyman Ocegüera to discuss auto theft and insurance fraud. Unfortunately, because it was close to the end of session, the bill did not come to fruition. After the session was over, the Governor created the Nevada Auto Theft and Insurance Fraud Task Force, under the leadership of Judith Fitzgerald, Vice President of Government Affairs, from the National Insurance Crime Bureau. The task force has been meeting for the last two years. It is comprised of individuals in the industry and members of the Attorney General's office. We have two bills that we would like to present today, resulting from Mr. Ocegüera's leadership two years ago.

Chairman Conklin:

Are there any questions for Ms. Elliot? There are none. Thank you for coming.

Brian T. Kunzi, Senior Deputy Attorney General, Workers' Comp and Insurance Fraud Units, Office of the Attorney General:

I was also on the Nevada Auto Theft and Insurance Fraud Task Force that looked at many different issues, particularly involving insurance fraud and auto theft. The Committee has been provided a copy of the recommendations ([Exhibit C](#)) that came out of the task force. Hence, Assembly Bill 53 and Assembly Bill 57 were created. Assembly Bill 53 recognizes issues of tow companies that are paid by repair shops to divert customers to their repair shops. Many times a tow truck driver will be paid up to \$400. Those funds are fraudulently invoiced to insurance companies. There is also a substantial consumer issue when an insurance company is being charged for new parts, but used parts are being inserted instead. In some instances, a consumer has been told that an air bag was replaced, when it was not. Although, this has not happened in Nevada, I am aware of a case in Washington where a woman was killed in an accident because the air bag, which should have been replaced, but was not, did not deploy. That is directly linked to the problem of insurance bills being padded because of the added charges for repairs that were not actually done for the consumer. This is a major problem that we feel can be prohibited by Assembly Bill 53.

Chairman Conklin:

Who was on the task force?

Brian Kunzi:

The task force was comprised of 20 members: ten representatives from law enforcement agencies throughout the state, which included me, the District Attorney from Clark County and the District Attorney from Washoe County; three representatives from state agencies; six representatives from the

insurance industry; and the Chairman, who works for the National Insurance Crime Bureau.

Chairman Conklin:

Was the Bureau of Consumer Protection included?

Brian Kunzi:

I do not believe so.

Chairman Conklin:

Was there any advocate on behalf of consumers?

Brian Kunzi:

I feel that I am an advocate for consumers since I am the Director of the Insurance Fraud Unit at the Attorney General's office.

Chairman Conklin:

Were there any legislators?

Brian Kunzi:

There were no legislators.

Chairman Conklin:

Is there a standard fee set up for auto repairs?

Brian Kunzi:

It is not an issue of the cost of a tow truck. It is my understanding that most of the industry is going to have standard fees. The practice is whatever is paid as a tip is being buried in the bill that is given to the insurance company. Our concern is this creates an element of insurance fraud. An example of this is when a repair shop is submitting a claim to the insurance company for new parts, but putting in used or substandard parts. The consumer is not getting the services for which the insurance company is being billed.

Chairman Conklin:

Is not this already fraud?

Brian Kunzi:

Yes, that is fraud.

Chair Conklin:

If that is already fraud, how does this bill help? Does it create a new category of fraud?

Brian Kunzi:

It does not create a new category of fraud, but this practice is something that we see as a precursor for insurance fraud. There is not a legitimate business reason for them to be doing what they are doing. The legislature has banned similar types of activity. The problem is, in many cases you cannot detect what is going on. It is extremely difficult to detect and prosecute when someone is putting in substandard parts, but billing for new parts. The task force recommendation focuses on prohibiting the conduct that leads to insurance fraud.

Chair Conklin:

Are there any questions for Mr. Kunzi?

Assemblywoman Kirkpatrick:

Mr. Ocegüera's task force bill from the 74th Legislative Session only had 13 members for the task force, and one of them was from the Department of Motor Vehicles. How did you pay for your 20-member task force?

Brian Kunzi:

The state agencies who participated did so on their own time and budget. There was not a cost to the state. One of the three state agencies on our task force was also from the Department of Motor Vehicles.

Assemblywoman Kirkpatrick:

In section 9, page 5, how is this different from what we already have, when consumer advocates are getting complaints?

Brian Kunzi:

It is not different. The first paragraph deals with the tips and gratuities being paid to the tow truck driver as being a deceptive trade practice that can now be regulated.

Assemblywoman Kirkpatrick:

Are all the words in section 9, paragraph c, line 39, new?

Brian Kunzi:

The only change was, instead of saying "the director determines", it now says "the determination by the director". It was a grammatical change.

Assemblywoman Kirkpatrick:

I would like to see everyone getting together at the same time. This is the fifth bill we are changing the language for "deceptive trade practice." Is there not a better mechanism to do this?

Brian Kunzi:

We submitted the bill draft through the Governor's office. This was the form that was chosen to put in "deceptive trade practice." Our concern was to address the issue of tips and gratuities going to the tow truck drivers.

Chair Conklin:

Legal staff is informing me that we might be misinterpreting the deceptive trade practice portion of the bill. Can you help us with this, Mr. Yu?

Dan Yu, Committee Counsel:

I do not think it is accurate to interpret the bill as incorporating the provisions of this bill as deceptive trade practice. There are two distinct penalty sections that would apply to a violation of the new provisions of this bill as opposed to the provisions set forth in *Nevada Revised Statutes* (NRS) Chapter 598.

Chair Conklin:

Was there any discussion about a threshold? If a consumer provides a tip, is that insurance fraud?

Brian Kunzi:

This provision does not deal with the issue of a consumer giving a tip. The bill is intended for when a repair facility pays a tip to the tow truck company to bring the car into their facility. It is not the same scenario with the consumer paying the tip. The question with thresholds is that it is difficult to determine if it is a violation. I do not think we can write the perfect law. It will be determined in the administration of the regulation as to whether or not this provides a \$500 civil penalty for this type of violation. The Director of The Department Motor Vehicles (DMV) would make the determination if it would warrant that type of discretionary act on his part.

Chair Conklin:

Are there any other questions?

Assemblyman Horne:

How many garages in the last two years have been charged with this activity? Was there a sting done? Were there a number of garages that you found who were paying kickbacks and not putting in new parts?

Brian Kunzi:

We do not have any hard numbers because there has not been a violation of this before. There is no way of tracking it.

Assemblyman Horne:

If there has not been a violation, why are you bringing a bill for something that has not happened?

Brian Kunzi:

It is not a violation because the law does not exist.

Assemblyman Horne:

I think we are talking about two different issues. One is paying a tow truck driver to bring business to a garage. The other is whether or not the garage is putting in used parts, but reporting to the insurance company that they have put in new parts. I do not think that because you pay a kickback it means that you are going to cut your cost by putting in used parts. My first question is, how many of these shops have you found fraudulently submitting reports to insurance companies and put in used parts instead of new parts?

Brian Kunzi:

We have prosecuted a fair number of these cases. It is frustrating because we know this is going on, but we do not have the tools to fight this type of fraud.

Assemblyman Horne:

Using the bill as a tool, if you catch a repair shop paying a tip, would you use this as evidence to show that they are involved in fraudulent activity?

Brian Kunzi:

We use every bit of information we can to go after these types of frauds.

Assemblyman Horne:

I would like more than anecdotal evidence of this conduct and how it is directly related. If a repair shop owner offers a free lunch at his facility for tow truck drivers who have brought cars to their shop, I do not think that they should be labeled as fraudulent operators.

Brian Kunzi:

We have representatives here today who can give you specific numbers that may address your concerns.

Assemblyman Manendo:

I want to disclose under Rule 23 that I work for a collision repair facility, and for full disclosure, I see one of the owners of that company from Las Vegas. I believe there is an amendment coming that will address the meals portion of Mr. Horne's comments.

Assemblywoman Gansert:

If you increase the cost for something other than the service itself, and it is a kickback, it should be illegal. I am surprised that we do not have that in our law already. We need this specifically to prohibit kickbacks from happening in the future.

Brian Kunzi:

I agree.

Assemblywoman Gansert:

Are there set towing fee schedules for certain distances? If there is a difference being charged from the set fee schedule, would not that be a kickback?

Chair Conklin:

I know we have multiple representatives from the insurance industry that are going to testify in support. Ms. McClain, do you have any questions for Mr. Kunzi?

Assemblywoman McClain:

Do we have the resources to pursue these incidents?

Brian Kunzi:

I do not believe there is a fiscal note. The vast majority of operators are legitimate. The design behind this bill is that if we put it on the books, maybe it will help straighten out those who are not operating legitimately. We are trying to restore a competitive balance.

Chair Conklin:

Is the contract between the repair shop and the towing company affected?

Brian Kunzi:

No. There was a discussion about a proposed amendment that was designed to address the confusion about that issue.

Chair Conklin:

Were tow truck drivers invited to any of the task force meetings?

Brian Kunzi:

There was no representative from the towing industry.

Chair Conklin:

Mr. Compan, welcome to the Committee on Commerce and Labor.

Robert Compan, representing Farmers Insurance Group, Las Vegas, Nevada:

I was also on the task force. We have seen many cases throughout the years regarding the fraudulent scenarios discussed. Prior to becoming a lobbyist, I was a professional in claims management litigation for 23 years. I have witnessed a tow truck driver, in order to get a rebate, take a vehicle to a shop that did not have proper diagnostic equipment. By the time the insurance company got to the shop to determine if the repairs are even covered by insurance and then assess the repairs, the vehicle had been disassembled and the cause of the loss was very difficult to determine. The result is, the consumer becomes the victim because his vehicle is in a shop that is poorly equipped to do the repairs, and the repairs are usually done in an untimely manner, and the car is released in an unsafe condition.

We have also gone to a body shop where a vehicle needed a frame rail, which is a safety issue for the vehicle. The body shop repaired the frame rail instead of replacing it, which makes it structurally unsound. A.B. 53 would give us an avenue to pursue these types of claims with the Attorney General's office. It also gives the consumer an avenue for redress should they be defrauded.

Chair Conklin:

Are there any questions for Mr. Compan?

Assemblyman Goedhart:

Do any other states have similar legislation on the books?

Robert Compan:

Thirty-four to thirty-six states currently have similar legislation on the books.

Chair Conklin:

Are there any other questions for Mr. Compan? Mr. Kunzi, is there an order in which you would like the guests to be called to testify?

Brian Kunzi:

I would like to suggest that Michael Geeser be the next guest to testify.

Michael Geeser, representing American Automobile Association (AAA) Nevada, Las Vegas, Nevada:

I too, was on the task force. We support the bill in front of you for the reasons Mr. Kunzi and Mr. Compan have stated. However, after the bill was drafted, we contacted our contract tow companies. We are requesting an amendment ([Exhibit D](#)), which I have proposed and distributed to the members. The amendment states that the operator or employee of a towing service is entitled to be paid by a repair shop. It is common in rural areas for repair shops to own

their own tow trucks. This bill was not meant to deny anyone payment for services they provide.

Where a consumer gets his car towed has become a major issue. For that reason the American Automobile Association (AAA) has rewritten our policy.

While the customer is still on the phone requesting a tow truck, we make every effort to determine where the vehicle is going to be towed. This eliminates any questions, tips, or rebates being exchanged before the tow truck arrives.

Chair Conklin:

Do you have a contracted rate for towing services?

Michael Geeser:

Our set rates are dependent on the level of membership. Some memberships allow you to get towed for free up to 50 miles, and our premier membership allows for towing with no charge up to 100 miles. If you want to be towed further than the allowed mileage, there is a contract rate to pay for the additional miles.

Chair Conklin:

Are there any questions for Mr. Geeser?

Assemblywoman Buckley:

In a past session, we heard concerns from body shops that insurance companies were recommending certain shops even though the consumer has the right to take his car to any shop he wants. It seems like the rule should apply to everyone. Any comment?

Michael Geeser:

I left out the first question we ask, which is, do you have a repair shop that you would like to go to? If the answer is, "no I do not, in fact I do not know the area." We can tell the customer where the nearest shops are within the approved AAA network. If they indicate that they do not want to go there either, it is up to the customer to determine where he wants us to take the vehicle.

Assemblywoman Buckley:

In some of the comments that we heard last session, that was not the case. The consumer was being communicated to in a way that he felt they did not have any other options. We need to weigh all the factors as we review these issues.

Chair Conklin:

Are there any other questions for Mr. Geeser?

Marlene Lockard, representing Nevada Collision Industry Association, Sparks, Nevada:

The association views any attempt to interfere with the consumer's right to select the professional collision repair facility of his choice inappropriate and illegal. Further, the Nevada Collision Industry Association (NCIA) supports any and all legislation that prohibits illegal interference by any party in the consumer's ability to make an informed decision with regard to obtaining a safe and professional repair after an accident. The NCIA fully supports A.B. 53.

Chair Conklin:

Are there any questions?

John E. Jeffrey, representing Snap Towing, Henderson, Nevada:

We support the bill.

Chair Conklin:

Thank you, Mr. Jeffrey. Are there any questions?

Troy Dillard, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles:

As a member of the Nevada Auto Theft and Insurance Fraud Task Force, we are in support of A.B. 53. We have not submitted any fiscal notes with regard to this bill. There is an impact on the Department but it is another sanction that is already on the list, so we do not anticipate any major impacts.

Chair Conklin:

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

Jeanette Belz, representing Property Casualty Insurers Association of America, Sacramento, California:

We also support this bill. Financial incentive tends to distort things. I am also submitting a letter ([Exhibit E](#)) to the Committee Secretary. We also support Assembly Bill 57 for the same reasons, included in the same letter.

Chair Conklin:

Are there any questions for Ms. Belz? There are none.

Michael Spears, representing Collision Authority, Las Vegas, Nevada:

Our belief is that the passage of A.B. 53 will help to reduce the fraud in the auto repair industry. We also believe that A.B. 53 can be improved with

additional language that includes others who have similar ability to sway work to unscrupulous shops. The proposed amendment ([Exhibit D](#)) for consideration would read as follows: "a body shop or garageman shall not pay or offer to pay to the principals, executives, or employees of any law firm or automotive dealership any tip, gift, gratuity, money, fee or other valuable consideration of any kind for referring a motor vehicle to the body shop or garage or inducing a customer to have their motor vehicle repaired at the body shop or garage." Exclusions would be meals and/or promotional items. We feel this added language will help close the door for kickbacks in exchange for referrals by certain law firms and auto service writers.

Assemblyman Settlemeyer:

Is there a monetary amount you can establish? We had a challenge in the 74th Legislative session with pharmaceutical companies giving people gift cards in lieu of cash. Is there any monetary threshold you think that would be appropriate for meals or promotional items?

Michael Spears:

I cannot answer that question.

Chair Conklin:

Are there any other questions for Mr. Spears? There are none. Is there anyone else wishing to testify in support of A.B. 53? Is there anyone in the neutral position wishing to testify? Is there anyone opposed? Then we will close the hearing on A.B. 53 and bring it back to the Committee. At this time we will open the hearing on Assembly Bill 57.

Assembly Bill 57: Prohibits certain activities related to the solicitation of an accident victim on behalf of a legal or health care practitioner.
(BDR 57-445)

Brian T. Kunzi, Senior Deputy Attorney General, Workers' Comp and Insurance Fraud Units, Office of the Attorney General:

It was brought to the task force's attention that legal practitioners were daily requesting copies of every accident report from law enforcement agencies. The concern is if the lawyers are not representing the individuals involved in the accident, the accident reports are being used to solicit new business. We are recommending that there be a delay of 60 days in which only those individuals involved in the accident and insurance companies obtain accident reports. There is a fiscal element for the law enforcement agencies. The issue is we want to protect the consumer from unsolicited legal services.

The second portion of Assembly Bill 57 recommends that it be illegal, what is already an ethical violation, for an attorney to pay someone for a referral for repair work. If it is unethical, it makes sense to make it illegal. That is the design behind section 5 of A.B. 57.

Chair Conklin:

My interpretation of section 5, subsection 9, clearly identifies paying someone to receive a benefit as insurance fraud. What happens if you are paying someone where no benefit is received? You make the assumption that it goes only one way. What if an insurance company sends claimants to certain repair shops for the purposes of not limiting a claim value?

Brian Kunzi:

This provision is for a legal practitioner paying someone a referral fee for patients in order to receive a kickback or referral fee.

Chair Conklin:

I do not interpret this as referring to just medical. It does not say medical.

Brian Kunzi:

It is also legal practitioner, not just medical.

Chair Conklin:

Is it for legal and medical practitioners?

Brian Kunzi:

I think that "legal practitioner" needs to be clarified in A.B. 57. The task force recommended targeting practitioners who pay for referrals. The task force felt that this should be made illegal, not just unethical.

Chair Conklin:

Under section 3, line 12, who in the law enforcement office is going to determine whether or not they can release this information? If they release it and they are not supposed to, are they liable?

Brian Kunzi:

Since we have mandatory insurance in Nevada, I do not think it will be a major concern. It is not intended to be a penalty on the law enforcement agency. I think it should be up to the law enforcement agencies to determine how they want to administer it. This was an issue the law enforcement agencies wanted in order to have leeway for the report requests they were receiving.

Chair Conklin:

Do you have representation from a law enforcement agency here who will be testifying today?

Brian Kunzi:

I do not believe so. I can report that was the content of the testimony that was presented to the task force.

Chair Conklin:

Are there any other questions for Mr. Kunzi from the Committee?

Assemblywoman Buckley:

I know that many times attorneys accept liens on personal injury cases from practitioners. Ultimately, if the case settles, the lien is paid off from the practitioner. For some practitioners willing to take liens, the accident victim may not be able to receive a recovery. Would you interpret this to say that the attorney would get a pecuniary gain from ultimately settling the case, because they would get a contingency fee of a certain percent? So, if they refer their client to a doctor or give them a list of individuals willing to take liens, would that outlaw this common practice?

Brian Kunzi:

The task force specifically rejected any proposal that would have impacted the practice of the medical liens. It is not the intent for any legislation to impact the medical lien issue with this provision. Our interpretation focuses on the referral fee for the purpose of procuring clients, patients, or other persons to obtain services, but not on the performances of those services by the practitioners.

Assemblywoman Buckley:

Number 9 refers to direct or indirect pecuniary benefit. That is broader than obtaining a fee for a referral. In light of that question, I would ask that you reread number 9 to see what your thoughts are. The Nevada State Bar's obligation is to police ambulance chasing, capping, and other unethical behavior. Is there any other instance where we have by statute given that authority to prosecution?

Brian Kunzi:

I cannot think of anything specific on that same road. I think it is important that when the Supreme Court rules tell you what you are not supposed to do as a legal practitioner, there are sound policy reasons behind that. Paid referrals are a problem that we are trying to investigate from an insurance fraud standpoint in regards to medical shops that are being set up. There have been some high level publicity cases that have been prosecuted in federal court.

Assemblywoman Buckley:

I want to know why there is not a rule for everyone, which was the Chairman's original point.

Chair Conklin:

For the Committee's information, *Nevada Revised Statutes* (NRS) 686A.2825 defines practitioner for purposes of this statute. It is defined both as a practitioner of law and a practitioner of medicine. Are there any questions from the Committee for Mr. Kunzi?

Robert Compan, representing Farmers Insurance Group, Las Vegas, Nevada:

We are in support of A.B. 57. We receive many calls from our customers who do not know why they have been solicited. It is obvious that someone is obtaining their information by other sources that are outlined in this bill. It is clear who can obtain this information. Lines 18 to 23 say "The parties involved in the accident; the authorized legal representative of a party involved in the accident; the insurer of a party involved in the accident; and any other state or local law enforcement agency or other governmental entity." Section 3 is a concern for us since we do not want unsolicited representation of our clients.

Chair Conklin:

The difficulty of being in our position is there is a balance to be struck. The balance is, on one hand, soliciting when there is not a problem, and on the other hand, when there is a problem. The consumer has nowhere to go because he does not know what is available to him. I am not commenting positively or negatively about Section 3, but it is always a concern of most people as to how we create a fair playing field for everybody. No one here would condone the behavior of insurance fraud, but at the same time we would not condone an insurance carrier taking advantage of a client because he did not know what the rules were and what he was entitled to in the first place. I know you would not either. Are there any questions for Mr. Compan? There are none.

Michael Geeser, representing American Automobile Association Nevada, Las Vegas, Nevada:

I was a member of the Nevada Auto Theft and Insurance Fraud Task Force and we, too, support the bill.

Chair Conklin:

Are there any questions for Mr. Geeser? There are none. Is there anyone else wishing to testify in support of A.B. 57? Is there anyone wishing to testify neutral on A.B. 57?

**Tom Roberts, Lieutenant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada:**

We were involved in the Nevada Auto Theft and Insurance Fraud Task Force. However, when the bill was written, it appears that some of the language would hold some of our employees accountable for misdemeanors for releasing information as there are not clear guidelines on who to release the information to. If the language were changed, we would be in support of the legislation. We have difficulty with the bill as it is written.

Chair Conklin:

Are there any questions for Mr. Roberts? Anyone else wishing to testify for the neutral position on A.B. 57? Any opposed?

**Matthew L. Sharp, representing Nevada Justice Association, Carson City,
Nevada:**

We do not support the idea of capping or solicitation of injured people. I am not sure that those activities should be regulated by the chapters relating to insurance fraud. The bill is drafted relating to the intent, which is to avoid solicitation. Capping is hopelessly over broad. I think it would have an extremely negative effect on consumers and the practice of the law. I would also note something that has always been a concern to our organization is, whenever we talk about insurance fraud, it seems like the only people we talk about are consumers. I continually find it ironic that the insurance commissioner is vested with regulating the insurance industry, yet insurance fraud is defined by our statute, which does not include any act by an insurance company that constitutes fraud. I think that the members of the industry would agree with me that damage from insurance fraud by insurance companies is equally damaging to consumers.

I believe that the idea of anti-capping or anti-solicitation language should be coordinated into insurance fraud is because there is no cause and effect. Because someone is soliciting business, does not mean that he is asking for insurance benefits that are not due. I would be in favor of full disclosure to the consumer, but that is a deceptive trade practice that should be regulated by the Nevada State Bar. It is not necessarily insurance fraud. For example, a lawyer could be engaging in solicitation and still get a good case. If you have a good case that is meritorious, the consumer is not committing insurance fraud. There may be fraud by the attorney towards the consumer, but not towards the insurance company.

Secondly, when you have such a high number of people without health insurance, and they need legal assistance, it is often times done on a lien basis. The doctor agrees to bill the patient's injury file. The doctor is paid out of the

settlement when the case is closed. This routinely occurs and is in the interest of the consumer because without it, the consumer cannot get health care. The way the bill is currently written, that would become insurance fraud.

Thirdly, before we make a decision to accept a particular case, we often have a meeting with the treating physician and pay him for his time. I suppose that could be considered a way of stepping over the edge. Often, medical practitioners will refer patients who are having a difficult time getting their insurance companies to pay their benefits to my office. Is it considered solicitation because our lawsuit is trying to get that doctor paid?

I think this bill as written, would not accomplish what the intent is. The intent should be that the consumer is fully aware of any kickbacks, solicitation, or improper conduct on the part of the attorney.

Chair Conklin:

Are there any questions from the Committee? Is there anyone else wishing to testify in opposition to A.B. 57? There is none, so we will close the hearing on A.B. 57. Is there anyone wishing to make public comment at this time? Is there any other business to come before the Committee?

We are adjourned [at 2:48 p.m.].

RESPECTFULLY SUBMITTED:

Karen Fox
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 16, 2009

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>A.B. 53/ A.B. 57</u>	C	Brian Kunzi	Recommendations of the Nevada Auto Theft and Insurance Fraud Task Force
<u>A.B. 53</u>	D	Michael Geeser	Proposed Amendment
<u>A.B. 53/ A.B. 57</u>	E	Jeanette Belz	Supportive Letter