MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fifth Session
May 20, 2009

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 5:31 p.m. on Wednesday, May 20, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Warren B. Hardy II

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Bob Ostrovsky, Employers Insurance
Steve Redlinger, Southern Nevada Building and Construction Trades Council
Lesley Pittman, Perini Building Company
Megan Jackson, Government Affairs Liaison, Associated Builders and Contractors, Sierra Nevada Chapter

CHAIR CARLTON:
We will start with Senate Bill (S.B.) 228. This is the nonprofit dental bill that was heard by this Committee. We found a technical problem which was corrected in the Assembly. I recommend to the Committee that we concur.

SENATE BILL 228 (1st Reprint): Revises provisions governing the ownership or operation of a dental office or clinic. (BDR 54-651)

SENATOR PARKS MOVED TO CONCUR WITH AMENDMENT NO. 781 TO S.B. 228.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

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CHAIR CARLTON:
Senate Bill 26 has been amended with Amendment No. 776. This is the chiropractic physicians' bill which I have reviewed. I recommend we concur.

SENATE BILL 26 (2nd Reprint): Revises provisions governing chiropractic physicians. (BDR 54-349)

SENATOR RHOADS MOVED TO CONCUR WITH AMENDMENT NO. 776 TO S.B. 26.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

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CHAIR CARLTON:
Senate Bill 128 has been amended with Amendment No. 732. This was Senator Parks' bill. He has reviewed it and is okay with the amendment.

SENATE BILL 128 (2nd Reprint): Requires certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time. (BDR 9-841)

SENATOR PARKS MOVED TO CONCUR WITH AMENDMENT NO. 732 TO S.B. 128.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

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CHAIR CARLTON**:**
We will go on to S.B. 195, the workers' compensation package. A number of workers' compensation bills have been combined into this one bill.

SENATE BILL 195 (2nd Reprint): Revises provisions governing workers' compensation. (BDR 53-1077)

BOB OSTROVSKY (Employers Insurance):
We had a number of people and organizations participating in the negotiations on S.B. 195. We reached agreement on nine major issues, all of which are found in this bill.

The first issue was in regard to the acceptance and denial of a claim. For example, if there is a claim acceptance letter for a body part, some administrators and insurance companies were using that as evidence not to accept a body part that might be added later to the same claim.

There is specific language in the statutes that talks about an injury to the shoulder which may later develop into a problem with the elbow. There is no direct statutory language about an injury to the shoulder and then an additional injury to the knee which is found later.

This language would assist claimants in making a claim for the knee injury. It does not say it will be automatically accepted, only that they have the opportunity to litigate the matter. Right now, workers' compensation judges

have not been allowing litigation for the additional injury because the issue was not raised at the time of the original acceptance letter. The change we have made will allow that to be litigated before a workers' compensation judge, a hearing or appeals officer or court, if necessary.

The second major issue was the agreement to use the Fifth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. The Sixth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* was controversial for both employers and injured workers. It was decided it would be best to pass on the Sixth Edition and stay with the Fifth Edition. There will be no additional cost to employers by staying with the Fifth Edition.

The third issue deals with light-duty work. Under the existing law, if someone returns to a light-duty job and is subsequently discharged for misconduct, temporary total disability payments can be terminated. By agreement, we have changed misconduct to gross misconduct. We have eliminated some abuses by doing this.

The fourth change is in the rules of evidence regarding examining physicians. Currently, the treating physician carries all of the weight in a hearing. There was consideration about what to do with third-party examination records. It was difficult getting the records to a judge in order to make a decision based on those records. We have made a change that says a judge may consider those records for medical issues when trying to adjudicate a claim. This helps level the playing field. It does not eliminate the language about managed care. It is just an evidentiary standard that can be argued in front of a judge. It can be used at both the hearing and appeals levels. It brings more fairness to the system.

The fifth issue is in regard to permanent partial disability (PPD) awards for stress. Currently, an injured worker receiving a PPD award for any injury is not entitled to any payment for stress. There is specific language in the statutes dealing with stress claims. There are stress claims that can be accepted under the *Nevada Revised Statutes* (NRS) 616C.180. They involve very specific circumstances. For example, having a gun pointed at you during a robbery. There may be no physical disabilities, but there may be stress-related disabilities. Those claims are accepted. With the language we have created, stress claimants will be permitted to apply for a PPD award. However, there is no guarantee such an award will be granted. It will allow for an examination by

a psychiatrist and an evaluation based on the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. If appropriate, a PPD will be awarded under the new language

Major change number six deals with death benefits. We are increasing the funeral benefit from $5,000 to $10,000. The funeral benefit was put in many years ago at a $5,000 level. With this bill, it will be $10,000 or actual cost. It is not a check for $10,000. If the burial service costs $7,000, that is what the insurer will pay, not to exceed $10,000. Plus, the transportation of the remains is in addition to the $10,000. That does not preclude any death benefits that a spouse or dependent child may receive. This is just for funeral expenses.

The seventh change occurs in NRS 616D.120. This section deals with penalties. We added a new penalty provision for an insurer with a pattern of late claims payments. It would now subject the insurer to a benefit penalty. We increased the benefit penalty from $37,500 to $50,000 per occurrence. That $50,000 is the maximum, but there are lower penalties.

We added language for proportionality in determining the benefit penalty. The current law states that if there are three benefit penalties in three years, the highest penalty will be $37,500. We agreed to go to the $50,000. We asked the administrator of the Division of Industrial Relations (DIR) of the Department of Business and Industry, and all the parties have agreed, to adopt regulations that will bring in some proportionality.

If you are a large insurer, such as the one I represent with 7,000 claims, you are subject to making more human errors. If an insurer only has 100 claims and has as many mistakes as a company that has 7,000 claims, there is going to be credit for the company with 7,000 claims and the company with 100 claims, with a lot of mistakes, will be targeted by regulation.

We also increased the administrative fines from a maximum of $1,500 to a maximum of $3,000.

Third-party administrators (TPA) now put up a bond with the Division of Insurance, Department of Business and Industry. That bond is for the purposes of fraudulent acts. We have added language that will give the DIR access to that bond funding for the payment of benefit penalties and other fines. If a TPA who is assessed benefit penalties and fines never pays them and goes out of

business, this bond funding language will allow for the payment of the fines and penalties.

The eighth issue deals with TPAs. Currently, TPAs are licensed by Division of Insurance and the DIR has no input on those. This bill will change the law which will require licenses issued by the Division of Insurance be sent to the DIR for their approval of the TPA. We are trying to avoid the situation of a TPA going out of business and getting a new corporate name and starting business the next day.

The ninth issue deals with "continuous care." This is language which permits the Division of Insurance to issue a license to a life and health agent for the purposes of selling a workers' compensation product in combination with a life and health product. It has been a very successful program in California. We would discount the workers' compensation insurance portion. In California, if an employer buys health and workers' compensation insurance, the cost of workers' compensation decreases. However, this will require some regulations by the Division of Insurance.

Those are the nine major items that are in this bill.

SENATOR SCHNEIDER:
Mr. Ostrovsky, for those TPAs who shut down their business to avoid a fine and then reopen the next day, will this be retroactive? Will they have to pay their fines in order to be get back into the system?

MR. OSTROVSKY:
No, we did not even consider that. I am not sure that the Legislative Counsel Bureau would allow us to do that. The bonds for the particular TPA we were talking about were actually released by the Division of Insurance because they had no reason to hold the bond under the current law. Those bonds no longer exist. If we made this retroactive, there still would not be any bond money to go after. It is mistake we were able to fix going forward, but are not able to fix going back.

SENATOR HARDY:
Until I understand everything that has been rolled into this bill and whether or not anybody from my association or my sister association lobbied or testified, I will be abstaining on this.

MR. OSTROVSKY:
There are only two benefit increases in this bill. One is the funeral benefit and the other is in the penalty provision. Everything else in this bill is procedurally oriented to try to level the playing field for workers in a situation where there was a strong feeling that the pendulum had swung a little too hard in the employer's direction. This is an attempt to bring that pendulum back to a center, fairer position for workers.

CHAIR CARLTON:
Committee, you have before you the option to concur or not concur.

> SENATOR COPENING MOVED TO CONCUR WITH AMENDMENT NO. 717 TO S.B. 195.
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> SENATOR SCHNEIDER SECONDED THE MOTION.
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> THE MOTION CARRIED. (SENATOR HARDY ABSTAINED FROM THE VOTE.)

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CHAIR CARLTON:
We will not be dealing with Assembly Bill (A.B.) 523 today.

ASSEMBLY BILL 523 (1st Reprint): Implements the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. (BDR 54-773)

CHAIR CARLTON:
We will open the hearing on A.B. 148.

ASSEMBLY BILL 148 (2nd Reprint): Requires certain health and safety training for construction workers and supervisors. (BDR 53-276)

SENATOR HARDY:
I am going to abstain on this bill. I know the Sierra Nevada Chapter of the Associated Builders and Contractors (ABC) and the lobbyist from the Southern Nevada Chapter of ABC worked extensively on this. Although not required by Standing Rule 23, it has been my practice to abstain when our Association

actively engages in lobbying. I am going to abstain on this and not participate in the discussion.

CHAIR CARLTON:
You are excused, Senator Hardy.

STEVE REDLINGER (Southern Nevada Building and Construction Trades Council):
We got together with Perini Building Company last year on the CityCenter project in Las Vegas. We started instituting mandatory Occupational Safety and Health Administration's ten hours (OSHA-10) of safety training courses for all of the construction workers on that job site. We had been experiencing a lot of safety concerns, specifically a lot of construction deaths. We were looking for ways to make the job site safer and increase the "culture of safety."

Working with Perini Building Company, we instituted the mandatory OSHA-10 training courses on the job site. Almost a year later, it has gone extraordinarily well. The safety record over the last year or so has dramatically improved. Last fall, we got together with Perini Building Company and started talking about bringing legislation to this Legislative Session to mandate OSHA-10 training statewide. The bill you have before you today is the product of those talks.

CHAIR CARLTON:
We did have a number of concerns. Can you point out the changes?

MR. REDLINGER:
One of the criticisms of the original bill was that it would be extremely difficult for people to implement. The implementation date was originally November 1, 2009. There was concern, especially from northern Nevada, that they would have a difficult time complying with the spirit of the bill in that short amount of time. We changed the implementation date to January 1, 2010, which alleviated a lot of those concerns.

There was also concern from smaller employers about the economic impact in trying to get their workers trained.

CHAIR CARLTON:
Did you ever deal with issue of the definition of contractor? That was one of the problems with the original bill. There is a generic definition of contractor which would have required a lot more people get this training than we intended.

MR. REDLINGER:
There were some concerns from gaming operators who thought the language was too broad and some of their maintenance staff would have been included in the bill as having to have an OSHA-10 training certification. Mr. Ostrovsky indicated to me their concerns on that issue had been met and they had no problem with it.

LESLEY PITTMAN (Perini Building Company):
We support A.B. 148. It is our experience that the OSHA-10 training strengthens construction workplace safety by increasing both worker knowledge and awareness of best safety practices. In fact, the program's success has prompted Perini to begin requiring mandatory OSHA-10 training for its workers at all of its construction projects in Nevada.

We have trained 11,000 workers through the OSHA-10 program. The construction safety record over the last 12 months proves the success of this program.

MEGAN JACKSON (Government Affairs Liaison, Associated Builders and Contractors, Sierra Nevada Chapter):
We support A.B. 148 as amended. A start date of January 1, 2010, gives contractors and employees more time to get the OSHA training completed. Also, a change made to this bill will allow an employer training program which is already in place to qualify as training until January 1, 2011. Then the employee must have an OSHA training card.

Our contractors are happy with that change and the definitions of contractor, work site, etc.

CHAIR CARLTON:
Those entities that have a training program in place now will have until January 1, 2011, and the employees affiliated with that entity will not have to have their card until 2011.

MS. JACKSON:
Our understanding is an employee, as long as they have taken an employer's training class, will not have to have their OSHA card until 2011.

CHAIR CARLTON:
Does the employer's training class have to be substantially equivalent?

MS. JACKSON:
That is how it is written in the bill.

CHAIR CARLTON:
How are they going to verify that?

MS. JACKSON:
Most of this is through the regulatory process.

We ask that you do give consideration to one aspect of the bill. The bill says that if an employee does not have their card within 15 days, they must be terminated. We are hoping that some consideration can be given to allow the employer to determine if termination is the best option, rather that putting one more Nevadan out of work. The employee may be able to be taken off of the construction project and put on leave or in an office position until they have had the training.

CHAIR CARLTON:
Would you point out the section that is in? I did not read it that way.

MS. JACKSON:
It is in section 11, subsection 1, paragraph (b).

CHAIR CARLTON:
Does that apply to everyone except supervisory employees?

MS. JACKSON:
That is my understanding.

CHAIR CARLTON:
Under the OSHA-30 provision, section 11, subsection 2, paragraph (b) reads " ... not later that 15 days after being hired, his employer shall terminate his employment." The OSHA-30 is for a supervisory employee so there are two sets of employees who could be put out of work.

MS. JACKSON:
The way this bill is written, certain sections will come into effect after 2011, so the language is probably in there several times.

We hope that components of this bill will be taken through the regulatory process such as the 15-day requirement. Not that we do not think safety should start on day one, but let those who are going to be affected by this determine if it is feasible to have those classes done within two weeks of employment.

I have also submitted written testimony in support of A.B. 148 (Exhibit C).

CHAIR CARLTON:
That is reasonable.

Having no other testimony, we will adjourn this meeting of the Senate Committee on Commerce and Labor at 6:06 p.m.

RESPECTFULLY SUBMITTED:

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Suzanne Efford,
Committee Secretary

APPROVED BY:

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Senator Maggie Carlton, Chair

DATE:_____