

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

**Seventy-fifth Session
April 1, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:48 p.m. on Wednesday, April 1, 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)

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblyman Marcus Conklin, Assembly District No. 37

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Carol Allen, Committee Secretary

OTHERS PRESENT:

Helen A. Foley, National Association of Professional Employer Organizations

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Todd J. Cohn, Assistant Director of State Government Affairs, National Association of Professional Employer Organizations
Andrea C. McHenry, Assistant General Counsel, Government Affairs, Administaff
Matthew T. Richards, Director of Operations, AdvanStaff HR
Robert A. Ostrovsky, Employers Insurance Group
George Ross, Nevada Self-Insurers Association
Jack Jeffrey, Laborers' Union Local No. 872; Operating Engineers Union, Local No. 12
NancyAnn Leeder, Attorney, Nevada Attorneys for Injured Workers, Department of Business and Industry
Craig Coziahr, BA, CDMS, Disability Management Specialist/Return to Work Coordinator, Pro Group Management
Bill Rosado, President, Managed Pay
Mark St. John
Barbara Gruenewald, Nevada Justice Association
Veronica Meter, Las Vegas Chamber of Commerce
Magda (Maggie) Karpuk, State Relations Executive, National Council on Compensation Insurance, Inc. (NCCI)
Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15
Cindy Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Donna Clark, Chief of Contributions, Department of Employment, Training and Rehabilitation

Chair Maggie Carlton opened the meeting with Senate Bill (S.B.) 361.

SENATE BILL 361: Revises provisions relating to employee leasing companies.
(BDR 53-1125)

Helen A. Foley, National Association of Professional Employer Organizations, in support of S.B. 361, said she believes there are opportunities for employers to take advantage of workers' compensation in a competitive environment, while making sure everyone has compensation with safeguards in place. She explained many amendments have been added to the bill since it was first submitted.

Todd J. Cohn, Assistant Director of State Government Affairs, National Association of Professional Employer Organizations, submitted written testimony in favor of the bill ([Exhibit C](#) and [Exhibit D](#)). He said the bill represented important modernizations to improve the regulatory environment for employee leasing companies. He said the largest element of the bill is workers' compensation. Since 2001, employee leasing companies have been operating under the National Council on Compensation Insurance, Inc. (NCCI), limiting the type of coverage for leasing companies. He described how the cumbersome rules lead to lack of competition in the marketplace. He said this bill would increase the chances for small businesses to have competitive access, and ensure that everyone in the State has workers' compensation coverage. He added the bill will do three things for workers' compensation: (1) clients with their own policy can take their policy into the leasing arrangement; (2) it permits insurers to issue a master policy, which includes efficiencies for carriers, leading to lower prices; and (3) provides for proof of coverage, no matter what type, and the State will have full knowledge of that coverage.

Mr. Cohn said two other important provisions were in the bill; one being a standard to include a financial health and welfare section for the industry. He noted there were 26 states enacting this provision and another 12 states considering it. It would require leasing companies to file an annual financial statement with a positive working capital. He said leasing companies are handling other people's money, including wages, premiums, tax dollars and 401k contributions, and they want to ensure the money is protected. The second provision gives additional compliance tools to the Division of Industrial Relations (DIR), Department of Business and Industry, should they need the authority. He concluded the amendments defined the intent and clarified the types of workers' compensation coverage.

Ms. Foley said they had met with Don Jayne, Department of Business and Industry, and Scott Kipper, Insurance Commissioner, Division of Insurance (DOI), to discuss the responsibilities of the DIR and any need for a fiscal note. She said they indicated they are monitoring this hearing and would get back to the Committee regarding same. She added there has been a minimal charge for the licensing of leasing companies and they do not oppose a modest increase to cover the cost of the DIR review. They would not want the bill to fail due to a fiscal note.

Andrea C. McHenry, Assistant General Counsel, Government Affairs, Administaff, submitted written testimony in support of S.B. 361 ([Exhibit E](#)). She pointed out the cost savings with this bill could be passed on to the clients, they could implement safety programs and payrolls would be more accurate. Chair Carlton asked how injured workers would keep from falling between the cracks when working with a leasing company. Ms. McHenry said the employer clients she works with receive a written orientation as to what should occur if a situation comes up.

Mr. Cohn added small businesses are motivated to utilize leasing companies for their professional services. He said they offer handbooks instructing employees what to do in case of accident, and if this bill would require more notification requirements, they would support it.

Chair Carlton recalled that earlier in the Legislative Session S.B. 112, also dealing with leasing companies, came before the Committee and she wanted to be sure this bill had no impact on that bill. Mr. Cohn answered it had none; S.B. 112 was specific towards health insurance.

SENATE BILL 112: Revises provisions relating to the provision of health benefits by employee leasing companies. (BDR 53-622)

Matthew T. Richards, Director of Operations, AdvanStaff HR, spoke in favor of the bill. He said they represent about 250 client companies and it was their responsibility to voice their clients concerns for access to the same high quality, competitively priced workers' compensation. He said they were pleased with the flexibility this bill would allow.

Robert A. Ostrovsky, Employers Insurance Group, said they had no position on the bill; they were only concerned that employees know where to turn if injured. If someone did not pay their premium, and there was no coverage, it would end up in the uninsured employers claim fund, and everyone ends up paying for it. George Ross, Nevada Self-Insurers Association, said they were also neutral but saw some positive options in the bill. He said companies leasing employees can seek alternative insurance options available, including self-insured programs.

Jack Jeffrey, Laborers' Union, Local No. 72; Operating Engineers Union, Local No. 12, said he had a concern about the master policies. He was concerned about availability of service; who the employee goes to when filing a

complaint. He wanted to be sure they were properly regulated. He said the master policy may or may not be a Nevada policy, but should be addressed. Other than that, he was neutral.

NancyAnn Leeder, Attorney, Nevada Attorneys for Injured Workers, Department of Business and Industry, said they have had lots of cases where the worker, for one reason or another, cannot report to the leasing company, so he notifies the on-site supervisor. She said it would be better for the worker if his claim was valid regardless of which supervisor he reports to. Additionally, she said the reason for the reporting was so the situation could be corrected immediately, and the on-site company had better control of that than the leasing company. Chair Carlton asked if she saw that as part of the rule making. Ms. Leeder said the bill should have some clarity in it.

Craig Coziahr, BA, CDMS, Disability Management Specialist/Return to Work Coordinator, Pro Group Management, in opposition of S.B. 361, said he was representing the Nevada Transportation Network, Nevada Retail Network, Nevada Auto Network, Nevada Agricultural Network and the Builders Association of Western Nevada self-insured groups. He said his concerns were similar to those already heard. He said he believes it is a rule-making issue that can be resolved.

Bill Rosado, President, Managed Pay, in opposition of the bill, said the efficiencies a professional employer organization brings in terms of managing the disciplines for losses, is that nothing changes for the client in the workplace. He said what happens in their safety arrangement, is the client has all the paperwork and instructions, and the employees are advised to report to their work-site supervisor, where a claim is immediately started. He said perhaps some amendment needs to specifically address that, as employees are better served with immediate coverage. Mr. Cohn agreed with some of the criticism, saying they wanted to be sure everyone was covered at the worksite.

Chair Carlton closed the hearing on S.B. 361 and opened S.B. 324.

SENATE BILL 324: Revises provisions relating to industrial insurance.
(BDR 53-1064)

Senator Schneider introduced his bill, S.B. 324. He said the bill was not quite what he wanted it to be, but it addressed a problem with workers'

compensation. He said in catastrophic injuries there should be a mechanism in workers' compensation where a worker who is badly injured can have his claim pulled out of the regular system and handled differently. It should be agreed that their case and medical treatment will go on for years. He suggested a third party handle the case and work it through the system without all the challenges that go on. He said the injured worker would not need an attorney. He reasoned a catastrophic injury could be set by a dollar amount. For full disclosure, he would like some examples. He asked how many of these injuries happen per year. He said it seems like companies would want this kind of coverage so they do not have to hire attorneys either.

Mr. Ostrovsky had some statistics. He said his company still manages some of the old State Industrial Insurance System (SIIS) claims. He said the total number of claims over \$100,000 currently being managed is 1,807; for claims over \$1 million, they manage 156 claims. He said with medical costs, time off from work or lump-sum payments, you can get to \$100,000 quickly. He calculated catastrophic was between \$100,000 and \$1 million. He suggested a senior claims examiner be assigned to these types of injuries.

Mr. Ostrovsky said it was not just a question of what you pay out, but also what you reserve. He said when the insurance company first gets a claim, they make a reserve decision identifying claims where expenses will go on for a long time. He offered to draft language for the bill and address the penalty phase.

Senator Schneider introduced Mark St. John from Las Vegas who has a catastrophic injury that will take years to improve, and is being pressured by his caseworker to leave the workers' compensation program.

Mark St. John, injured on the job in September 2006, said he has severe burn damage to his right leg. His first compensation check did not arrive until November. He said no one came to his hospital bed to show him how to handle his claim; he still struggles to understand it all. He said his life has been altered and he owes almost \$1 million in medical and attorney fees. The doctor workers' compensation assigned to him pulled him aside and said he needed to get out of there because the adjuster was calling the office every week. Mr. St. John said he felt he could not trust the system and hired his own doctors. He said he wants off his medications and wants to go back to work.

Chair Carlton said it sounds like case management, when you assign someone to a patient and walk them through the process because you hit a certain point where it is necessary. She asked Mr. Ostrovsky if such a program was in place with workers' compensation. Mr. Ostrovsky answered it varies by insurer. He said people injured on the job do not have the slightest idea what workers' compensation is about. He noted it is a very difficult transition for them and the State does not do a good job of handling it. He said there should be a caseworker for severely injured workers and perhaps legislation is the way to set it up.

Senator Schneider maintained Mark St. John's doctors basically said go away; his caseworkers were bothering them and his problems were out of their league. He added there should be medical consultants for special cases. Mr. Ostrovsky said maybe they could create some language that would solve the problem. He said otherwise, a dispute arises; the patient appears before an appeals judge who sends him out for an independent medical evaluation and then authorizes the surgery. He said the bill could speed up the process by removing the litigation. Senator Schneider said attorneys were not needed at that point; insurance companies must pay on the claims.

Chair Carlton asked Senator Schneider if he would like more time to work on the bill. Senator Schneider remarked that at the point of injury, the insurers know if the cost will be over \$750,000 and if they bought the claim. He said he would like more time to work on the bill.

Two exhibits were submitted by people not testifying ([Exhibit F](#) and [Exhibit G](#)).

Chair Carlton closed S.B. 324 and opened Assembly Bill (A.B.) 469 and Assembly Concurrent Resolution (A.C.R.) 17.

ASSEMBLY BILL 469: Revises provisions governing unemployment compensation. (BDR 53-1275)

ASSEMBLY CONCURRENT RESOLUTION 17: Accepts certain funds for unemployment compensation pursuant to the American Recovery and Reinvestment Act of 2009. (BDR R-1278)

Assemblywoman Barbara E. Buckley, Assembly District No. 8, spoke in favor of A.B. 469 and A.C.R. 17, and cited Nevada's unemployment rate as among the

highest in the nation. She said the figures are sobering, quoting the unemployment percentages as follows: Churchill County 9.2, Clark County 10.1, Douglas County 11.4, Lyon County 15.6, Nye County 12.9, Storey County 12.6, Washoe County 11.2 and Carson City 11.3. She said because we are in a recession, no jobs are available. She said in the meantime, the American Recovery and Reinvestment Act of 2009 (ARRA) can help Nevadans with extended unemployment benefits and expanded eligibility. She added A.B. 469 and A.C.R. 17 were passed unanimously in the Assembly.

Assemblywoman Buckley said A.C.R. 17 states the ARRA can provide additional funds and resolves the Legislature will accept them; A.B. 469 changes two statutory sections needing change in order to mechanically implement the expansion and extension of unemployment benefits. She continued the first section of the measure changes the alternate base period. Currently, eligibility is based on the first four out of five quarters. She said it was set up that way to allow for processing time before computers did everything electronically. Now the alternate base period will consider the last quarter of the five, allowing approximately 4,000 more people to qualify for benefits. She declared extending the alternate base period will allow Nevada to receive \$77 million in incentive money from ARRA.

She mentioned Cindy Jones from the Department of Employment, Training and Rehabilitation has a chart that shows what we will receive from the ARRA money ([Exhibit H](#)). She estimated our unemployment fund will have a \$750 million deficit by the end of 2009 and that the infusion money will help capitalize the fund and put off the date when we have to secure a loan from the federal government to keep solvent. She added if you do a benefit analysis, it puts money in the hands of the unemployed. Nevada has a 2.1 economic multiplier on every dollar of unemployment funds we receive, helping the economy, noting businesses are less likely to pay increased rates.

She said the second portion of the provisions in A.B. 469 extend what is called the optional state extended benefit period. The federal government will pay 100 percent of the money if we extend our benefit period to coincide with money received from ARRA. She declared this was a great deal for Nevada and, it extends a lifeline for the unemployed and we can sunset it when the money runs out. Senator Hardy agreed this was great for Nevada. Chair Carlton asked Assemblywoman Buckley to point out the sunset provision in the bill.

Assemblyman Marcus Conklin, Assembly District No. 37, submitted written testimony in favor of A.B. 469 and A.C.R. 17 ([Exhibit I](#), [Exhibit J](#), [Exhibit K](#) and [Exhibit L](#)). He answered Chair Carlton's question saying with the exception of sections 2 and 3, the bill is permanent; sections 2 and 3 deal with the extended benefits and their trigger. He said the money provided is set by U.S. Congress to run out at the end of the 2009. The ARRA will also run out at the end of the year unless the federal government fully funds any extensions. He said this trigger was built into the bill so the State Legislature would not have to come back in special session and approve extensions. He advised that rumor has it, the government may be extending the deadline. Senator Hardy indicated the Senate Committee on Finance and the Governor were also concerned about the provisions not allowing a sunset, but even those did not bind the hands of the Legislature down the road, and that is what makes this a good decision in his estimation.

SENATOR HARDY MOVED TO DO PASS A.B. 469.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

SENATOR HARDY MOVED TO ADOPT A.C.R. 17.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Carlton opened the hearing on S.B. 363.

SENATE BILL 363: Revises provisions relating to death benefits paid to surviving spouses under industrial insurance. (BDR 53-1130)

Chair Carlton said this was a bill she sponsored. She said in the 74th Legislative Session, a marriage penalty was eliminated from a couple of job classifications within workers' compensation. She made the argument that it should apply to

all and that she would bring it back the next session, so this is that bill. She said everyone should be treated equally.

Barbara Gruenewald, Nevada Justice Association, spoke in support of S.B. 363, saying her client lost her husband in the late 1980s before the conclusive presumption went through, and has not been able to remarry without losing her wrongful death benefits under workers' compensation. Mr. Jeffrey spoke in favor of the bill, citing the case of a personal friend whose wife remarried on the rebound after her husband's death. He said even though the marriage only lasted three months, she lost all her benefits. Chair Carlton asked if there was any other benefit we gave to some classifications, but not to others. He said police and firefighters have had heart and lung coverage since about 1973; several attempts to cover others since then have been unsuccessful.

Mr. Ross, in opposition of the bill, said they were not objecting to the monetary objective of the bill, they wanted flexibility in the law allowing companies to explore using other financial ways to provide the same benefit. He said a more cost-effective example would be life insurance. Mr. Ross said there are some tricky situations one might want to consider; for example, a covered worker with children who divorces, then remarries, then dies; who protects the kids?

Veronica Meter, Las Vegas Chamber of Commerce, spoke in favor of the current law remaining as is. She was concerned about the large financial impact of the new bill. Chair Carlton called attention to the fact that most of the spouses stayed unmarried so they could keep their benefits. She said the numbers were small and we needed to look at the issue of fairness; there probably will not be that big of a difference. She added over the last eight to ten years in this Committee, she has heard a number of times, "as long as you let us know ahead of time, we can account for it in the rates and be able to cover the costs of that benefit." She estimated it could be addressed without a big financial impact. Senator Hardy added when this came up last Session, the Committee could not fully embrace the fiscal impact and he did not want this to happen again. He said he wanted to end marriage penalties.

Magda (Maggie) Karpuk, State Relations Executive, National Council on Compensation Insurance, Inc. (NCCI), said they were the appointed statistical rate-making organization for Nevada, working directly with the DOI and the DIR on data and rate filings, and proof of coverage. She said one of their duties is to review and price legislation pertaining to workers' compensation and the impact

on the system. Due to the time frame when they received the bill, and this hearing, NCCI was unable to price it, however the similar bill, S.B. No. 3 of the 74th Session, in its all-inclusive amended version, was priced at 0.2 to 0.6 percent, meaning \$1 million to \$4 million of additional costs. She said S.B. 363 is very similar with a few differences. One of the differences is the retroactive nature of the bill; it is tied to October 1, 2009, for remarriage. She explained should this bill pass, a policy that took effect in 2007 would be paid with the new 2009 Legislature, therefore the carriers would not have had an opportunity to price the policy accordingly. She said NCCI will address that in their review. She announced that they are totally neutral on the bill and will deliver their pricing through the DOI within one week. Chair Carlton requested the fiscal impact be presented to the Committee no later than one week. Ms. Karpuk agreed.

Chair Carlton then asked what impact the last amendment to the law had on the rate. Ms. Karpuk replied it was minimal, bearing out in subsequent loss-cost filings. She explained the population of firefighters and police in the marketplace was a small population, therefore the impact was not significant enough to make a specific adjustment to the rates in loss cost, but was realized through subsequent loss-cost filings. Chair Carlton wanted a guess at what percentage of folks she thought would remarry. Not wanting to guess, Ms. Karpuk offered a report on behavioral issues attached to her upcoming report.

Mr. Ostrovsky said this was wage replacement, not life insurance. He announced the way to do this was all or nothing. He said his company is managing 363 fatality claims, including old SIIS claims; today's value of those claims is estimated at \$85 million. They have reserved an additional \$5 million for future eligible fatality benefits, where they think the current claimant will probably die and the surviving spouse will get payments. He said between 1993 and 2003 there were 43 claimants who remarried, taking the two-year lump-sum payment, ending those claims.

Mr. Ostrovsky said his company has an issue they would like addressed. They have no problem with an effective date from today forward, but if the bill is retroactive, it will be too expensive. He recounted problems going back to July 1, 1995, when SIIS sold their claims to get out of \$2.2 billion debt. A re-insurer purchased the claims for about \$800-plus million and still administers those claims; his company has a sub-ligation agreement. He said if this bill is enacted, the re-insurer would pay out two years' worth of benefits on a

remarriage, then kick the clock back to the Employers Insurance Group. He said they could get 30 percent back from the re-insurer but the total cost, after recovery, would still cost them about \$14 million. He said they will support a bill that will provide these benefits for any injuries on or after July 1, 1995, which is almost 15 years. Prior to 1995, the State locked in the benefits and unless they can find a funding source, it is a heart attack opposed to heartburn for his company. He noted they still have claims going back to the 1940s with claimants ranging from 35 to 100 years old. He agreed the bill should pass so no spouse is treated unfairly. Chair Carlton asked that further detail be provided. Mr. Ostrovsky agreed.

Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15, said he was responding to Mr. Ross's testimony from a personal view. His mother was widowed in 1991. Her children received benefits from social security until they graduated from high school. He said he believes this bill addresses Mr. Ross's concern, but not those of public employees without social security. Chair Carlton said the Committee would have a work session after receiving additional information on S.B. 363.

Chair Carlton closed the hearing on S.B. 363 and opened the hearing on S.B. 386.

SENATE BILL 386: Provides for a change in the unemployment insurance tax rate methodology to allow for a joint account among business entities that have substantially common ownership. (BDR 53-1170)

Senator Hardy said since some of the unemployment and industrial relations bills may impact the construction trades, he wanted to disclose for public information that he was the president of the Associated Builders and Contractors of Las Vegas.

Cindy Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation, said for the record:

Senate Bill 386 provides for a change in unemployment insurance tax provisions to allow for joint experience rating accounts among businesses that have substantially common ownership. Unemployment insurance compensation benefits are financed based on quarterly assessments of taxes on employer payrolls. The tax system is an experience-rated basis and operates like an

insurance program. An employer begins with a standard new employer rate until eligible for a rate assignment, based upon the amount of benefits charged against the employer's account. The more benefit charges to the account, the higher the tax rate; the fewer claims against an employer's account, the lower the tax rate. The objectives of an experience-rated system are to ensure equitable distribution of costs amongst employers, to encourage employers to stabilize their workforce and to encourage employers to actively participate in the unemployment insurance program as charges to their account will directly affect their tax rate. Nevada's unemployment compensation law requires businesses with separate legal entities to establish separate rates, or accounts, for unemployment insurance taxes. Senate Bill 386 provides a voluntary option for businesses with substantially common ownership to combine their experience rating into a joint account and be treated as a single employer for the purpose of experience rating. There will not be an adjustment to the federally approved method of measuring the experience or the computation of experience rates currently in effect. By offering this option, businesses can select the methodology or the option to group rate their businesses if it best suits their business model. This change would not impact the amount of funds collected in whole by the unemployment insurance trust fund, the request just seeks to ensure equitable distribution of costs associated with unemployment insurance benefit payments. The proposed change to *Nevada Revised Statutes 612*, section 550 (sic), appears in section 1 of the bill, on the top of page 3, starting with line 3. The bill provides statutory permission for employing units under substantially common ownership, to apply to the Employment Security Division to merge their experience rates into a joint account and assign a single rate. Statutory authority is also provided for the administrator of the Division to prescribe detailed regulations for the establishment and maintenance of and dissolution of, joint accounts. If statutory authority is granted for experience-rating option, the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division, will be working with various employer groups and the U.S. Department of Labor to develop detailed regulatory guidelines which meet federal conformity standards for experience rating.

Chair Carlton requested the definition of substantially common ownership. Ms. Jones said it was not defined in the statute and would be developed in consultation with the U.S. Department of Labor and the business community through the regulatory process. Chair Carlton said the Committee would like to have some indication of what she might consider it to be. Ms. Jones turned it over to Donna Clark.

Donna Clark, Chief of Contributions, Department of Employment, Training and Rehabilitation, said there were a variety of ways of defining it; about 15 states have similar options to this. She said in some states it is defined as a majority interest and in some states it is substantial financial interest. She said those were parts of what they would like to work out in their workshops going forward. Chair Carlton asked what type of businesses could take advantage of this in the future. Ms. Clark cited the gaming industry. Gaming law in Nevada requires separate properties owned by the same company to have separate legal entities, and then they fall into the unemployment insurance taxation system where each separate casino has to have a separate rate for unemployment insurance taxes. She noted another example is someone owning several restaurants but choosing to set them up as separate legal entities. She said this would provide the option for those types of businesses with substantially common ownership to meld their experience rates under their ownership and control, to have one rate. Chair Carlton reasoned businesses would only want to combine if the rate was going to go down, so this bill could decrease the overall contribution.

Ms. Jones said it would not reduce the overall contributions because the overall contributions are a result of our rate setting mechanism. The way the rates are set is we determine how much money we need to collect and then by that we set the average tax rate for contributory employers and which tax strata different employers will fall into. What it could result in is some cost shifting, but the idea is to ensure that there is an equitable distribution of the costs based on the business models that are being utilized in businesses in Nevada today, as opposed to when the statutes were first implemented.

Chair Carlton said when she hears cost shifting and equitable rates and some of these other terms, she goes back to when she learned about a zero-percent increase in car insurance. She asked who would pay more and who would pay less. Ms. Jones said it would be difficult to measure since they do not know what businesses will choose to opt in. She agreed those businesses opting in

would be those receiving a better rate. Ms. Clark said it was still an experience-rated system in which the records of all the entities are still considered; those that have a predominance of entities with a better experience record and the smaller member with a worse experience record will see some decrease. She said it goes broadly across all spectrums of industry.

Chair Carlton asked if, with all the modifications, it would lower the unemployment checks of the workers of those different entities. Ms. Jones said absolutely not, it has no impact on the benefits unemployed workers are eligible for. Senator Hardy expressed his support. He requested the Committee help all businesses affected by the financial crisis.

Chair Carlton asked Senator Hardy if he was concerned it might be more expensive for small businesses. He said no, he understands the liability is spread across the common ownership. Ms. Jones said she believed that was correct but any time you make changes, there will be some impact. Senator Hardy restated the importance of not impacting the unemployed workers. He said we needed to provide some regulatory, red-tape relief to businesses and he thinks this is the way to go about it.

Ms. Clark pointed out if a company chooses to set itself up as a single entity and open a new business, they could immediately get the experience rate that existed, unlike those in the gaming industry that are required to set up a new legal entity. Chair Carlton said if the idea behind an experience model was that you had already proven yourself and now a new company could receive it, why was there no concern about that. Ms. Clark answered they have proven themselves if they have substantially common ownership.

Chair Carlton said she was trying to understand how one group can do something that allows their rates to go down, with no overall adjustment to the rest the employers. Senator Hardy said what we are potentially impacting here is the surplus in the account. He said allowing a modification factor to exist across company lines, assumes there will not be a need if a new company starts fresh; the money they are talking about taking away from, is really just taking away the surplus. He said they reduced the unemployment rate in 2007 because they had such a high surplus. He said it brings it more in line with daily practices; they are not overcharging businesses on a false premise that they do not have any experience when in fact, they do. This bill will allow them to use their experience.

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Chair Carlton asked for more details about the surplus being gone or almost gone. Ms. Jones said it is quickly dwindling; it will be at zero by late December or early January. They expect the deficit to be approximately \$750 million by the end of January 2010. She said changes will be made in the future. She explained we have the ability to borrow from the federal government, but will have to pay it back, so tax changes are forthcoming regardless of this bill. Senator Hardy added that we will have to use some of the ARRA money. He said we have to eliminate the unemployment tax deduction of 2007. Ms. Jones said it only delays the inevitable.

Two exhibits were submitted by people not testifying ([Exhibit M](#) and [Exhibit N](#)).

Chair Carlton closed the hearing on S.B. 386. There being no further business, the meeting of the Senate Committee on Commerce and Labor was adjourned at 3:38 pm.

RESPECTFULLY SUBMITTED:

Carol Allen,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____