

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

**Seventy-Sixth Session  
April 29, 2011**

The Committee on Commerce and Labor was called to order by Vice Chair Marcus Conklin at 12:01 p.m. on Friday, April 29, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/76th2011/committees/](http://www.leg.state.nv.us/76th2011/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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Marcus Conklin, Vice Chair  
Assemblywoman Irene Bustamante Adams  
Assemblywoman Maggie Carlton  
Assemblyman Richard (Skip) Daly  
Assemblyman John Ellison  
Assemblyman Ed A. Goedhart  
Assemblyman Tom Grady  
Assemblyman Crescent Hardy  
Assemblyman Pat Hickey  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Kelly Kite  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Kelvin Atkinson, Chair (excused)  
Assemblyman John Ocegüera (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Valerie Wiener, Clark County Senatorial District No. 3  
Senator Sheila Leslie, Washoe County Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Committee Policy Analyst  
Sara Partida, Committee Counsel  
Andrew Diss, Committee Manager  
Earlene Miller, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

K. Neena Laxalt, representing Nevada Cattlemen's Association and Nevada State Board of Veterinary Medical Examiners  
Fred Hillerby, representing Nevada Veterinary Medical Association and State Board of Nursing  
Teresa Serratt, Ph.D., R.N.; Cochair, Legislative Committee, Nevada Nurses Association  
Susan S. VanBeuge, DNP, APN, FNP-BC, Representative, Advanced Practice Nurses Special Practice Group, Nevada Nurses Association  
Robert Ostrovsky, representing Employers Insurance Group; Chairman, Advisory Council to the Division of Industrial Relations  
Evan Beavers, Nevada Attorney for Injured Workers  
Don Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry  
George Ross, representing Nevada Self-Insurers Association and Las Vegas Chamber of Commerce  
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO  
Randy Waterman, representing Public Agency Compensation Trust

**Vice Chair Conklin:**

[The roll was taken, and a quorum was present.] We will open the hearing with Senate Bill 17.

**Senate Bill 17:** Establishes provisions relating to the reissuance of certain drugs for certain animals. (BDR 54-22)

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

This is a measure of great passion and heart for me. Senate Bill 17 is a next step to a bill based on legislation I sponsored several years ago that allows

certain agencies to take back medications in pristine condition and reissue them in the same facility under very strict governance by the Board of Pharmacy. That is now state law. I realized that many of us have strong attachments to our animals and their medicine is very expensive. I spoke to my veterinarian about people who could not afford to buy medications for their pets. I worked with the Board of Pharmacy and the Nevada State Board of Veterinary Medical Examiners to develop language that would allow us to assist people who cannot afford to purchase medicine for their pets. This measure contains some significant safeguards for allowing unused medications for pets to be returned to a veterinary facility under regulation and licensure.

We are very careful about which medicines are allowed to be reissued. My cat, to live, has to have two heart medications and a medication for his pancreas. If he were to die, I could take them back unopened or opened if they were manufactured and it would be at the veterinarian's discretion, with careful record keeping, to give them to someone in need. I could not recycle a compound medication. If it were manufactured and unopened, it could be recycled. These could not be given to people to administer to animals that directly or indirectly would be consumed by humans. I hope the Committee will support this bill. There are some veterinarians who do this now, but it is not legal. There is also an immunity protection on page 3, lines 10 through 22, which is a reasonable care standard. This immunity is modeled after the law for institutions, a later bill for nonprofits, and a cancer drug donation program. This is modeled after *Nevada Revised Statutes* (NRS) 639.2676 and NRS 457.490. There was no opposition to that protection in the Senate.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Hickey:**

I see there is immunity for the manufacturer. What about the veterinarian?

**Senator Wiener:**

That is built into that section as well.

**Assemblyman Ellison:**

Is this just for small pets?

**Senator Wiener:**

If you think about animals that are not consumed by other animals or humans, it would probably include only domestic pets. It is also up to the veterinarian as to what animals receive the reissued medications. The medication has to be given, not sold to the pet owner.

**Vice Chair Conklin:**

Are there any other questions from the Committee?

**Assemblywoman Bustamante Adams:**

How is the economic need determined?

**Senator Wiener:**

It would be someone who could not afford to buy the medication for his pet. Facilities could do this also, but usually the veterinarian will have a sense of the need.

**Assemblyman Daly:**

If we are not intending for this to be given to livestock, we should include that definition.

**Senator Wiener:**

Part of the discussion we had in drafting this bill was to protect humans because there may be a medicine that would come through the animal and have an adverse impact, so we wanted to keep that clarity. I think of livestock as something that would be consumed or have a product such as milk or eggs which would be consumed.

**Vice Chair Conklin:**

Are there any more questions from the Committee for the bill sponsor?  
I see none.

**K. Neena Laxalt, representing Nevada Cattlemen's Association and Nevada State Board of Veterinary Medical Examiners:**

The Nevada Cattlemen's Association looked at this bill very carefully, and there were no concerns. The Board of Veterinary Medical Examiners fully supports this bill. We think it is so well written that we might not need regulations to implement it.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Daly:**

Large animals that are not consumed could still be eligible for the program.

**Neena Laxalt:**

They would be eligible the way I read the bill.

**Assemblyman Daly:**

I am not against it. I wanted to know what is included.

**Vice Chair Conklin:**

Are there additional questions from the Committee? I see none.

**Fred Hillerby, representing Nevada Veterinary Medical Association:**

We are proud to be in support of this bill. One of the veterinarians who we have supported over the years is an ophthalmologist, and he especially recognizes the importance of this bill, because some of the drugs he uses are very expensive and are many times not completely used by the patient. We think this is a very good bill.

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none. Is there anyone else to get on the record in support of this bill? I see none. Is there any opposition to this bill? I see none. Is there anyone to testify from a neutral position? I see none. I will close the hearing on S.B. 17. If the Committee members have questions, they should contact Senator Wiener directly. I will open the hearing on Senate Bill 205.

**Senate Bill 205: Requires national certification for a registered nurse to receive a certificate of recognition as an advanced practitioner of nursing. (BDR 54-84)**

**Senator Sheila Leslie, Washoe County Senatorial District No. 1:**

This is a bill that I am bringing forward on behalf of the Nevada Nurses Association and the advanced practice nurses (APN). This bill requires a national certification of the advanced practice nurses by professional specialty nursing organizations as a means of accessing the necessary skills and competence of a licensed registered nurse within established national criteria. The certification validates advanced practice nurses' specialized knowledge, skills, and abilities against national standards. It brings Nevada into compliance with the recommendations of the National Council of State Boards of Nursing regarding the regulation of APNs. Nevada is one of only four states that do not have this national certification. I will turn the presentation over to two nurses who are here today.

**Teresa Serratt, Ph.D., R.N.; Cochair, Legislative Committee, Nevada Nurses Association:**

Thank you for the opportunity to appear before you today as you examine the merits of Senate Bill 205.

[Read from prepared testimony ([Exhibit C](#)).

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

I do not see a grandfathering clause in the bill. Are there nurses in the state who will be affected by this?

**Teresa Serratt:**

This would become effective on June 1, 2014. Any person who has met the requirements for advanced practice nursing certification by that time would be required to submit proof to the State Board of Nursing for this national certification. Anybody who is applying for this certificate of recognition as an advanced practice nurse prior to this date would be grandfathered in.

**Assemblywoman Carlton:**

Will everyone have to have this certification by the effective date?

**Teresa Serratt:**

It affects only those who are applying for certification of recognition as an APN. Those who currently hold that certificate of recognition would not be required to have this.

**Assemblywoman Carlton:**

Will there be a significant difference between these two? We will have two different groups of licensed professionals at two different levels.

**Teresa Serratt:**

They both undergo the same educational requirements, and the curriculum has to be accredited by the state. The difference would be that the national certification would not validate their specific specialty area. The majority of the APNs in the state already hold the national certification in their specialty area.

**Vice Chair Conklin:**

Do you know specifically that there is language in the bill which allows for a grandfathering to take place?

**Senator Leslie:**

There is not a specific grandfathering. I was under the same impression as Dr. Serratt. We were mostly concerned with new people, and that is why we put the effective date out to 2014 to give people plenty of time. It could go either way.

**Teresa Serratt:**

The mechanism is not to reapply unless you have allowed your certificate of recognition to lapse. It is to renew and therein is the language that applies only to those who are applying for that certificate of recognition. This was a clarification we had with Debra Scott, the Executive Director of the Board of Nursing.

**Vice Chair Conklin:**

We will ask our Legal Counsel to follow up on that to clarify.

**Assemblywoman Carlton:**

Can you do this within the state? What are the time frames in which you can accomplish this, and how much does it cost to get the certification? Is the course work available or is it through the Internet?

**Teresa Serratt:**

A person is eligible to sit for national certification upon completion of the curriculum that is accredited in his or her specialty area. I have heard it costs between \$250 and \$550.

**Vice Chair Conklin:**

Are there other questions from the Committee?

**Assemblyman Goedhart:**

Where are these tests administered and how often are they held?

**Teresa Serratt:**

Every certifying agency has its own way of doing it. A lot of these are held at testing centers across the nation. Many are held during national conferences that relate to that specialty area. Some are taken online with some security measures in place.

**Assemblywoman Kirkpatrick:**

Would this prohibit the nurses from going outside their scope of practice because they would have this certification? Once they have this certification, can they work independently in the state?

**Teresa Serratt:**

This does not expand or change their current scope of practice. This requires that they have to have national certification in their specialty area in order to gain the certificate of recognition as an APN in the State of Nevada.

**Assemblywoman Kirkpatrick:**

Will they be able to practice on their own?

**Teresa Serratt:**

This will not change the necessity of having a collaborative agreement with a physician to practice in the state.

**Assemblyman Daly:**

There are two organizations named in section 1, subsection 1(b): the American Board of Nursing Specialties and the National Commission for Certifying Agencies of the Institute for Credentialing Excellence. Is that who certifies the people who give certifications, or is that something that has to be done in the next three years?

**Teresa Serratt:**

I do not know what the Board of Nursing has done. I have provided an attachment ([Exhibit D](#)) which lists the major certifying organizations by specialty area that are nationally recognized and the major contributors of national certification for APN. I would assume that is what the Board of Nursing would be seeking when they determine what is an appropriate certification under each specialty.

**Assemblyman Daly:**

Is the Board going to be taking some action to recognize the certifying agencies? If it has already been done, we are good. If it has not been done, it has to happen quickly.

**Teresa Serratt:**

Unfortunately, the Executive Director of the Board of Nursing was not able to join us today, and I do not know where they are on that.

**Assemblyman Ellison:**

The nurses who work in doctor's offices will be exempt from this?

**Teresa Serratt:**

This applies only to nurses who are considered APNs. We have a large number of APNs who are very supportive of this bill. We have one of them here today.

**Vice Chair Conklin:**

To clarify for the Committee, an advance practice nurse is someone who is above a registered nurse (RN). This is a person who gets their RN certification and goes back for advanced training. In many cases they can prescribe and diagnose. They are between a RN and a physician. Is that correct?



**Teresa Serratt:**

They are a registered nurse and usually have a graduate degree in their specialty area. They practice as a clinical nurse specialist, certified nurse midwife, nurse anesthetist, or nurse practitioner ([Exhibit E](#)).

**Assemblyman Hardy:**

Does this create a classification of nurses that may cause competition to change jobs?

**Teresa Serratt:**

That is always a possibility. Those inherent biases probably do exist, and there may be some hiring preferences for those who have national certification versus those who do not. That may encourage those who have not been certified to become certified, and that would be a good thing for our profession. We want to meet national standards, and we want to make sure that we can validate that we provide safe care along national standards.

**Vice Chair Conklin:**

Are there any additional questions from the Committee?

**Susan S. VanBeuge, DNP, APN, FNP-BC, Representative, Advanced Practice Nurse Special Practice Group, Nevada Nurses Association:**

Thank you for the opportunity to testify in support of Senate Bill 205.

[Read from prepared testimony ([Exhibit F](#)).]

This certification shows our patients, colleagues, and the citizens of the State of Nevada that value is placed on maintaining a level of educational preparation. Once certification is obtained, the holder is required to have current training and continuing education to maintain that licensure. This means attending classes, giving presentations, writing scholarly work, and continuing educational endeavors to stay current in clinical practice, which is important for any practitioner. Certification provides our patients with the knowledge that their nurse practitioners are staying current and maintaining their educational preparation beyond the formal academic preparation.

[Continued to read from prepared testimony.]

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none.

**Fred Hillerby, representing State Board of Nursing:**

We support this bill. We were involved in the process and came forward with regulations earlier. The decision was made that this was more appropriately a policy decision for the Legislature. We think this is the appropriate thing to do. We will be adopting regulations that will recognize the appropriate certifying agencies. Additional certifying agencies can also apply, and we do that through a very open regulatory process.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Sara Partida, Committee Counsel:**

The certificate of recognition may be renewed if the nurse chooses to renew her license. According to the regulations of the Board of Nursing, there are two things that they must include with the renewal. One is an attestation that she had not been named as a defendant in any malpractice suit or that she has not had clinical privileges limited, suspended, or revoked. The second thing that needs to be included with the renewal is proof that she has completed 45 hours of continuing education in a practice specialization and "any other information required by the Board." As written, this would not apply for the renewals, but if it is what the Committee wants, we could make it clear in the bill.

**Assemblywoman Carlton:**

So, this would not fall under "any other information required by the Board," which is fairly broad. As Boards change, I want to make sure that no one gets left behind.

**Sara Partida:**

We could make that clear in some transitory language if that is what the Committee wants.

**Vice Chair Conklin:**

Senator Leslie, are you all right with that?

**Senator Leslie:**

I would not object to that. I agree that it is always better to be clear.

**Vice Chair Conklin:**

Is there anyone else to testify in support?

**Senator Leslie:**

We had the benefit in the Senate of having this bill heard on Nevada Nurses Day with a room packed with nurses who were very strongly in support of this bill.

The fact that we have only a couple of people here today does not reflect the support this legislation has in the field of nursing.

**Vice Chair Conklin:**

Is there any opposition to this bill? I see none. Is there anyone wishing to get on the record in the neutral position? I see none. I will close the hearing on S.B. 205 and open the hearing on Senate Bill 21 (R1).

**Senate Bill 21 (1st Reprint):** Revises certain provisions concerning catastrophic injuries. (BDR 53-479)

**Robert Ostrovsky, representing Employers Insurance Group:**

This bill was originally proposed by the Nevada Attorney for Injured Workers. The bill was amended and does not now directly affect that office.

**Evan Beavers, Nevada Attorney for Injured Workers:**

I proposed a bill draft request last fall that resulted in Senate Bill 21 (R1), which I introduced in the Senate on February 14, 2011. It was stricken in its entirety, there was other language added, and what resulted is before you. Although it was not my original intent, I would speak in favor of this bill. It benefits injured workers. The substantive rights that are referenced in this bill were added in the 75th Legislative Session. This adds to the procedural remedies that the injured worker may use to make claims to these rights and allows the Division of Industrial Relations (DIR) to clear up some much needed regulations.

**Robert Ostrovsky:**

This bill now addresses an issue involving catastrophic injuries. Catastrophic injuries were never defined in the statute until 2009. We have determined over time that there are certain injuries that rise above common injuries that occur in the workplace. We had workers who needed medical management that went way beyond what we would normally see in a workers' compensation case. In some cases the administrators of the claims were not putting forth the effort required for the people. Most of these people are going to be in the workers' compensation system for a lifetime. Most of them will never be able to return to their pre-injury capacity or to the workforce in any capacity. These are the severest kinds of injury that you could imagine. In the 75th Legislative Session, it was the determination of the Legislature that we add language which addressed and recognized what a catastrophic injury is and required insurers to take special steps to manage those claims. The Legislature directed the DIR to adopt regulations which related to those types of claims.

We have worked with the DIR during the interim on regulations which have not yet been adopted, partly because we had problems with the inability to adopt

regulations at the executive level of government. We took the regulation with some changes to be codified into S.B. 21 (R1). The provisions of the bill expand the definition of a catastrophic injury and indicate the ways a worker can have his claim classified as catastrophic. Under previous administrations, the insurer determined what was catastrophic. This bill says the medical provider will make the determination. A treating physician can indicate to the insurer that the claim should be treated as a catastrophic injury, and it would be. It gives detailed analysis of how those claims should be treated. It also provides a definition of a life care plan, which is a standard that is accepted nationwide. It covers issues such as treatment regimes and rehabilitation plans. The bill also tightens the requirements on who could provide vocational rehabilitation services. We added some language that adds a certification of a disability management specialist, which includes that providers with bachelor's degrees can still serve as vocational rehabilitation counselors. There are requirements to have a higher level counselor sign off on final programs. We previously tightened the marketplace too much by requiring rehabilitation counselors to have master's degrees.

The Nevada Justice Association supports these changes, and we worked them out with their approval. They support the bill as amended.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Hardy:**

Will section 1.5 relate to preexisting conditions?

**Robert Ostrovsky:**

Yes. It would take an existing claim and designate it as a catastrophic injury. These are not common injuries and do not happen often. They are the extreme claims.

**Vice Chair Conklin:**

Are there additional questions from the Committee?

**Assemblywoman Carlton:**

How are we categorizing catastrophic now?

**Vice Chair Conklin:**

If you look at page 2 of the bill, on line 4 in section 1.1, there is a definition provided. There are additional definitions added to the statutes at the end of the section.

**Robert Ostrovsky:**

We added to what we included in the definition last session, because we determined that the seven items we added last session were not enough. We had to broadly expand that so we did not miss anyone.

**Vice Chair Conklin:**

It is difficult to draft.

**Assemblywoman Carlton:**

Many doctors do not understand workers' compensation, and they do not want to become involved in it. What happens to a person if the doctor does not understand workers' compensation?

**Robert Ostrovsky:**

The treating physician is only one methodology. Another method is that if one of these claims occurs that fits into one of these categories, the insurer should be automatically treating it as catastrophic. If the injured worker requests the insurer to treat his claim as catastrophic, they can reach an agreement to do so. The treating physician has to include the one line that it is a catastrophic injury in his report. Once that is declared, we will put a team together who will have constant contact with the injured worker.

**Assemblywoman Carlton:**

We have a history of people being denied on a routine basis. I would hate to see someone in this condition be put through that ringer.

**Robert Ostrovsky:**

This bill does not change the law relative to the acceptance or denial of a claim. There probably will be disputes. It does not address whether the claim is workers' compensation related. We believe it is important that if there is a question whether it is a catastrophic injury or not, there is specific language in section 1.6, subsection 1(c), that says, "Pay benefits and provide the proper medical services to the injured employee during the entire period of the development and implementation of the life care plan." We wanted to make sure that no one used the language in this bill to slow down the delivery of services.

**Vice Chair Conklin:**

Are there additional questions for Mr. Ostrovsky? I see none.

**Don Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:**

The majority of the language in the bill was vetted during the interim. There were many meetings with interested parties, and there were some things built into the bill in the Senate that attempt to ensure that the benefits are paid. This section does not address whether the claim is accepted as a workers' compensation claim, but whether it is a catastrophic claim and, as such, should the industry be assigning the experts to the claim. Section 1.1, subsection 12, gives a relief valve for the injured worker so he can appeal for this to be included as a catastrophic claim as it cross-references to section 1.4, which allows the employee to make that appeal. In section 1.6, we have already discussed that we now have a medical provider involved who can perhaps make a more expert decision, rather than an emotional decision, on the acceptance or denial of a claim. That probably adds some protection, as does subsection 1(c), which directs payment and does not allow a "bad actor" the opportunity to use this section to delay the process.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Hardy:**

Could I get more clarification on lines 34 through 37?

**Robert Ostrovsky:**

In section 1.6, line 35 speaks to the treating physician. The original bill required that within 90 days of injury, a life care plan had to be developed. There was a strong feeling in the industry that 90 days was too early in many of these catastrophic injuries. We tried to give a little more time by changing that to 120 days from the date the treating physician determines the injured employee has stabilized. If they were stabilized on the 45th day, that would trigger the 120-day period to start creating a life care plan. The life care plan is based upon the individual injured worker's medical condition. Then they can prepare a life care plan that is meaningful over the years, as the injured worker's situation evolves. We are trying to create a situation so the injured worker knows exactly what to expect.

**Assemblyman Hardy:**

What is the definition of "stabilized"?

**Robert Ostrovsky:**

That is a medical decision. It is basically that the injured worker's condition is not going to significantly improve and there is not a risk that he is going to get worse.

**Don Jayne:**

I am not sure the word "stabilized" is clearly defined in the workers' compensation statutes. I think the intent, as a regulator, would be the emergent care before you could put together a plan that addresses the rest of this individual's life. The early phase is the time to be sure the injured worker gets the medical care he needs and make sure the claim is being paid. As the injured worker becomes more stable, the medical professionals and the claims team can predict what kind of care he will need in the future. I will get an answer on whether the definition of "stabilized" is clearly defined in worker's compensation statutes.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Daly:**

In the existing language in section 1.6, on line 29, it reads, "if an insurer accepts a claim for a catastrophic injury . . . ." The language makes it sound as if they have an option to accept the claim or not. It is either a catastrophic claim or it is not.

**Robert Ostrovsky:**

That language is in existing law. I do not know why it was crafted that way.

**Vice Chair Conklin:**

This is an area of law where, in our quest for specificity, we will leave deserving people out. It is always a balance in the definition to allow enough space for lawyers and regulators to be sure people who should be are captured. The more definition we put in will surely leave us short.

**Evan Beavers:**

The practice is if an injured worker believes that he is entitled to a benefit and makes demand upon the insurer, the insurer has to take action. In section 1.4, subsection 2, if no action is taken by the 31st day, the injured worker can use the denial and go into the administrative hearing process to argue that one of these definitions fits his circumstances. It is no longer in the decision-making process of the insurer. The rules of evidence for these cases allow for both medical evidence from the treating physician and other available evidence. If the treating physician does not give the recommendation that the attorney wants for the injured claimant, the attorney takes the complete medical record to another doctor for review. It is not exclusively within the domain of the claims adjuster or the treating physician.

**Assemblyman Daly:**

I do understand the process. I understand we are dealing with extremes, but we need to have it right for circumstances where people are making it difficult for a justified case.

**Vice Chair Conklin:**

Are there additional questions from the Committee? I see none.

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

The Nevada Self-Insurers Association (NSIA) negotiated on Assembly Bill No. 24 of the 75th Legislature and the regulatory process which led to this bill. We wholeheartedly support this bill. The NSIA has every intention of this bill working and solving a problem. Subsections 11 and 12 of section 1.1 are there to make sure some of the situations that have been alluded to have a way to be resolved. We want to be absolutely sure that the people who deserve care of this nature are taken care of in the way they deserve. When we wrote this bill, a very strong intent in our mind was to try to eliminate, as much as possible, the ability of a "bad actor" to mistreat a deserving individual.

We added section 1.7 because you cannot have just anybody adjust these claims. You have to have people who know what they are doing. It is very important. Some people with catastrophic injuries can learn to do other things, and this includes this option. We feel this is a very good bill and support it.

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none.

**Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:**

We opposed an attempt to amend this bill in the Senate, but we did not oppose this portion of the bill. The original catastrophic language was added as the result of one of your constituents who had a catastrophic injury and did not get any care. It was a horrific accident. These types of injuries are not the norm. The most striking example was Officer Bobby Kintzel, who was a state highway patrolman. A perpetrator at McCarran International Airport had hijacked a car, which resulted in a high-speed chase and then struck the officer outside of his car at a speed of 95 miles per hour. Officer Kintzel had part of his brain removed and should have died. He was taken to University Medical Center of Southern Nevada (UMC) and was in the trauma center. He is alive today and has significant impairments. The highway patrol assigned him a work coach and ultimately he did go back to work. The language about if an insurer accepts a claim indicates what you do if you accept a claim. It is in the best interest of the insurer to assign special care to someone like that.



**Vice Chair Conklin:**

Are there any questions from the Committee? I see none. Is there anyone wishing to get on the record in support of S.B. 21 (R1)?

**Randy Waterman, representing Public Agency Compensation Trust:**

We support this bill. Fortunately, there are relatively few cases that fall into the category of catastrophic claims. Because of the severity of these claims, the best adjusters and most qualified rehabilitation counselors deal with these injured workers.

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none. Is there anyone else in support? Seeing none, we will move to opposition. Is there anyone who wishes to testify in opposition to this bill? I see none. Is there any neutral testimony? I see none. I will close the hearing on Senate Bill 21 (R1). We will open the hearing on Senate Bill 63 (R1).

**Senate Bill 63 (1st Reprint):** Revises provisions relating to industrial insurance and the Uninsured Employers' Claim Account. (BDR 53-476)

**Don Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:**

This is an agency bill advanced by the Division of Industrial Relations. Our Division is funded by assessments, not through the General Fund. This bill is specifically targeted at one area of our responsibility, which is the fund to pay claims on behalf of injured workers who have the misfortune of being employed by an employer who did not have workers' compensation insurance. Everything we talk about on this bill involves the Uninsured Employers' Claim Account which is a fund we administer. There are three different ways that we raise funds. We have the ability to assess the insurers in the state for the funds we need, we impose premium penalties on employers who do not have the workers' compensation coverage, and we have the ability to charge them dollar for dollar for the claims expenditures that we make. We have not had to assess or reassess additional monies into our Uninsured Employers' Claim Account because we try to be diligent in effecting collections in those areas.

This bill gives us another tool to effect collection of monies owed to us by uninsured employers either in premium penalty or in reimbursement for direct expenditures. In any collection effort, speed is of the most critical importance. What we are looking for in this bill is the ability to file a summary judgment against the employer that would allow us to "perfect our lien." The earlier we get on record that we have a judgment and monies are owed to us, the more of a chance we have to effect collection. If we have an employer who did not

have insurance, we are already dealing with a difficult collection activity because they were opposed to our laws. This would allow us to file the summary judgment lien and to use it in our collection efforts for people who owe the state money. Our staff does a good job collecting money, and that is why we have not had to assess for the fund since 2006 or 2007. In three of the last four years there has been a negative drain on the fund. While it is still healthy, I am attempting to put another tool in the toolbox with that collection. Section 1 of the bill sets up our ability to file a summary judgment, and the remainder of the bill facilitates in *Nevada Revised Statutes* (NRS) Chapters 616 and 617 the ability to file them to effect collections.

**Vice Chair Conklin:**

Since before last session, we have had multiple discussions about the practice of some companies, particularly third-party administrators and other administrators. Sometimes those people have a large claim and are fined by your Division. When they find that it is a legitimate fine, instead of paying the claim or the fine, they close shop, file for another limited liability company (LLC) under a different name, file for a new license, and continue to do business. I want to be certain that having these tools will help you continue to pursue the money that people owe and prevent them from continuing to do business.

**Don Jayne:**

In section 4 of this bill, on page 8, starting with lines 18 and 19, what we chose to do about this issue was that, if the individual had 25 percent or more of ownership and folded up his shop because he owed the Division money, we would have the ability to follow him. We are attempting to address that in the bill with specifically that process in mind. We understand that some people use bankruptcy legitimately, but others may be using it as an artificial device to move on without paying claims or fines. We hope to track them by using that section.

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none.

**Robert Ostrovsky, Chairman, Advisory Council to the Division of Industrial Relations:**

We have statutory responsibility for writing off bad debt for the Division, and we have been upset in the past couple of years about the amount of write-offs we have seen. Something in the marketplace has changed. The state has grown, and we have had people who are trying to use the laws to their own benefit, which hurts the rest of us. These claims are paid by the employers who buy their insurance. We have worked with the Administrator to try to

create this bill to give him new tools. I personally and, I believe, the Board supports that.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Grady:**

Do you use the state as your second means of collection so you can turn your bad debt over to the State Treasurer to collect?

**Don Jayne:**

Yes, we do. Over the past couple of legislative sessions, there have been some bills from the Office of the State Controller and some consolidated efforts. We do have our own collection efforts. When those are exhausted, we no longer turn them over to a collection agency on our behalf, but to the Controller's Office. They consolidate the leverage and the buying power by consolidating that level of debt for the state. Once the debt has gone through that collection cycle, it will come back to the Division for the individuals on the Advisory Council to write off the bad debt.

**Vice Chair Conklin:**

Are there any questions from the Committee? I see none.

**Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:**

The Council does not like to write off these fines, and the Division under the leadership of Mr. Jayne has been diligent about trying to collect this money. At the end of the day, every other good employer in the state pays for these claims. Anything we can do to help them be able to collect this money will help everyone.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

This goes back to the issue of everyone having workers' compensation insurance coverage. Is there a new loophole, or is it just the few who will never comply?

**Danny Thompson:**

There is no mechanism to find someone who chooses not to operate under the rules.

**Assemblywoman Carlton:**

It frustrates me that they have a business license. Maybe we could find a way to be sure that someone who has a license or permit in the state has workers' compensation insurance.

**Don Jayne:**

It is an ongoing chess match. It is a relatively small percentage of employers who have been motivated to try to avoid the system to the point that they are going bare without workers' compensation insurance; they are already the type of people who will look for whatever device they can. We use the National Council on Compensation Insurance (NCCI) as a rating bureau. The NCCI sends us lists of policies that were not renewed or canceled. I have staff who will take the list and call to see if the people have renewed the insurance somewhere else. If they have not, they will visit with them and share my enforcement abilities to require them to provide workers' compensation. The employer who is flying under the radar and is consciously making these decisions, unless I get a tip or a claim submitted, I will not know. Regarding the Uninsured Employer Claim, by the time I am there, I have been noticed of a claim for which we have determined there was no coverage for an acceptable industrial injury. Then I attempt to go after the employer. We do everything we can to try to identify these people.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Ellison:**

When a person renews his contractor's license, he has to show proof of workers' compensation insurance. It has to be within a two-year period that they allow the insurance to lapse. A 25 percent owner is usually an investor and has nothing to do with a business.

**Vice Chair Conklin:**

If a person has invested more than 25 percent ownership in a business and that business owes money for violating the law in this state, he cannot file for a new business without paying the outstanding fine.

**Assemblyman Ellison:**

If a 25 percent owner does not file for a new license, he cannot be held liable. I disagree.

**Don Jayne:**

We modeled that language from other existing laws. In the existing law in section 4 on page 8, we are looking for the individual who, when he moves,

moves to essentially the same kind of business. I understand your concerns, but we are trying to narrow it to those people who would walk away from the debt and restart a similar business knowing they had the debt.

**Assemblyman Ellison:**

Still, language is there that could discourage people from investing in small businesses.

**Don Jayne:**

I understand your concern.

**Vice Chair Conklin:**

Are there additional questions from the Committee? I see none. Is there anyone else wishing to get on the record at this time in support? I see none. Is there anyone to speak in opposition? I see none. Is there anyone to speak from a neutral position? I see none. I will close the hearing on S.B. 63 (R1). Is there any public comment? [There was none.] Does the Committee have any other business? [There was none.]

The meeting is adjourned [at 1:48 p.m.].

RESPECTFULLY SUBMITTED:

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Earlene Miller  
Committee Secretary

APPROVED BY:

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Assemblyman Marcus Conklin, Vice Chair

DATE: \_\_\_\_\_

**EXHIBITS**

Committee Name: Committee on Commerce and Labor

Date: April 29, 2011

Time of Meeting: 12:01 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 205	C	Teresa Serratt	Prepared Testimony
S.B. 205	D	Teresa Serratt	Handout
S.B. 205	E	Teresa Serratt	Handout
S.B. 205	F	Susan VanBeuge	Prepared Testimony