

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

**Seventy-Sixth Session
June 5, 2011**

The Committee on Commerce and Labor was called to order by Vice Chair Marcus Conklin at 3:48 p.m. on Sunday, June 5, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), and the Attendance Roster ([Exhibit B](#)), 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, 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 Ocegura (excused)

GUEST LEGISLATORS PRESENT:

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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Robert Ostrovsky, Chairman, Advisory Council to the Division of Industrial Relations, Department of Business and Industry; and representing the Nevada Resort Association
Samuel McMullen, representing Nevada Self Insurers Association

Vice Chair Conklin:

[Roll was called. Committee protocol and rules were explained.] We have a quorum. We will hear testimony from Senator Schneider, the Chair of the Senate Committee on Commerce, Labor and Energy. We will open the hearing on Senate Bill 164 (2nd Reprint).

Senate Bill 164 (2nd Reprint): Revises provisions relating to third-party administrators. (BDR 57-232)

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

This bill was originally a much larger bill than this. We deleted everything out of the bill except section 16.5 and tried to make it so we could get it passed and try to get some people licensed who deal with workers' compensation issues. I know, Vice Chair Conklin, you are aware of the case I am talking about, but it appears we could not get it through if someone had to buy a \$35 license. I backed away from that. Many—or all—of the people who are handling workers' compensation cases, especially catastrophic cases, are unlicensed. I tried to get a licensing component in because of how the session is going; I did back away from that. Mr. Ostrovsky, who is with me today, supports the bill either way. We deleted the fiscal note; as you know, in the Senate, it would need two-thirds of the votes, and I could not get that.

As this is my last session, I would suggest that my Assembly representative, Assemblywoman Bustamante Adams, or Mr. Conklin look at this bill and bring it back next session to give more protection for injured workers.

Robert Ostrovsky, Chairman, Advisory Council to the Division of Industrial Relations, Department of Business and Industry; and representing the Nevada Resort Association:

The problem we are attempting to solve is that of third-party administrators and their adequacy to perform services. Currently, the Division of Industrial Relations (DIR) audits insurers. Whether you are self-insured, fully insured, or an insurance company, they audit your practices and audit your claims handling. We discovered that the Division does not have authority to look at a third-party administrator. A third-party administrator might process claims for five or six different companies. The Division would audit one of the companies, but not audit the third-party administrators in total. This bill will now allow them the opportunity to schedule an audit of the third-party administrators, a separate entity, or if they audit an insurance company's files and discover problems, they can expand the audit to look at all of the files being handled by that third-party administrator. That is what this language does.

The Division Administrator indicated that, in his opinion, this would solve 95 percent of the problems we are having with the third-party administrators. As Senator Schneider pointed out, that if it does not, we need to take another look at it in two years. It has been an ongoing issue. This is a step in the right direction. If it solves the problems, that is great. If it does not, we will be back. We are in full support.

Vice Chair Conklin:

Senator Schneider, we have worked on this together for a third session now. We share a common passion and understanding of some of the problems through common associates. I recognize that nobody comes to this building and gets everything they want—ever. I also appreciate the fact that small victories are victories nonetheless, and if we keep making small adjustments to this over time, we will have a good program. I would consider this a good step.

Assemblyman Ellison:

Could you explain further about when the auditors could go beyond?

Robert Ostrovsky:

I am now giving second-hand information on what the Administrator told me, but if they go into a third-party administrator's office and discover considerable problems with one of their accounts, the Administrator stated it would be his intent to spread his view to see if those kinds of problems are occurring in other accounts that the third-party administrator may be handling. Maybe the people handling the claims do not have enough experience, enough staff, or appropriate computer systems to handle the total number of claims that they are trying to process. This would give him a chance to say to the third-party administrator,

"You are going to make these changes, or I am going to have these audit findings and you will be fined or you are going to have to come into compliance, so that we can make sure that an injured worker's claims get handled appropriately."

The law now says that every insurance company will be audited at a minimum of every five years. There is no language in this bill about third-party administrators ever being audited, and we have had some serious problems in the past with third-party administrators to the extent that they have done so poorly on claims that they have closed up shop, moved across the street, created a new name, and became a new administrator.

We changed the law last session to stop that act from happening, but it goes to show you that there are bad practices in the field and that we need to make sure there is appropriate discipline by the appropriate authority.

Assemblyman Ellison:

That is what I was trying to understand. Thank you.

Vice Chair Conklin:

When you signed in, Mr. Ostrovsky, you noted your support on behalf of the Nevada Resort Association, and if I am not mistaken, they are a user of third-party administrators.

Robert Ostrovsky:

That is correct. Most of our members are self-insured. Some self-administer, but many use third-party administrators. They buy a product and a guarantee from someone, and this would give them some assurance from a regulator that they are getting what they pay for. We want to make sure we are getting good service from that third-party administrator. Now we get an independent view by a state agency that just wants to make sure that injured workers get their benefits.

Assemblyman Daly:

After looking up the definition of a third-party administrator in the Nevada Revised Statutes (NRS), I believe we are talking about the third-party administrator just for the management of workers' compensation claims. Some do other things, but you are just trying to get to the workers' compensation side of it, correct?

Robert Ostrovsky:

This would only apply under the provisions of NRS Chapters 616 and 617—only workers' compensation claims, not any other type of insurance claim.

Vice Chair Conklin:

Are there additional questions?

Assemblywoman Carlton:

We always have the debate about what to do with the third-party administrators. Hopefully, if problems are found, someone will come back and tell us so we can begin addressing what is really going on in that area. I would hope there would be some reporting back to us, even though it is not in the bill; I am going to put it on my list to make sure that I ask.

Robert Ostrovsky:

If they violate the law, they are going to become subject to the provisions of NRS 616D.120 which is a penalty provision that includes third-party administrators. There is a consolidated report that I receive as Chairman of the Division of Industrial Relations Advisory Council, so I am assuming it is a public document that tracks all of those people who get fines, the reasons for the fines, and their adjudication. That should be available to you.

Vice Chair Conklin:

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

Samuel McMullen, representing Nevada Self Insurers Association:

We have also worked on these bills for the past few years and consider this a step and additional progress on the issue of making sure this is a full system and that it is complete, with the right pieces to make sure that when people are not treated correctly as claimants, the world works to correct that.

An additional answer to Assemblywoman Carlton is that last year we tightened up the regulation of the third-party administrators (TPAs) and there is also an additional mechanism of communication back and forth between the Division of Insurance (DOI). When the Division of Industrial Relations finds an issue in an audit, or something that they think is of issue, they can refer it to DOI as the licensing agency and try to make that communication better.

We consider this a part of making this system stronger and better. It is akin to what you already moved as Senate Bill 21, which relates to industrial insurance and worker injuries. It is part of that effort regarding catastrophic injury. We fully support S.B. 164 (R2) as well.

Vice Chair Conklin:

Are there questions from the Committee? [There were none.] Is there anyone else wishing to get on record in support of the bill? [There was no one.]

Is there anyone opposed? [There was no one.] Is anyone neutral? [There was no one.] I will close the hearing on S.B. 164 (R2).

ASSEMBLYMAN ELLISON MOVED TO DO PASS
SENATE BILL 164 (2nd REPRINT).

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Are there any questions or concerns? [There were none.]

THE MOTION PASSED. (ASSEMBLYMEN ATKINSON,
BUSTAMANTE ADAMS, KIRKPATRICK, AND OCEGUERA WERE
ABSENT FOR THE VOTE.)

Is there any other business to come before the Committee? [There was none.]
Is there any public comment? [There was none.]

The meeting is adjourned [at 4:01 p.m.].

RESPECTFULLY SUBMITTED:

Sharon McCallen
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Vice Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: June 5, 2011

Time of Meeting: 4:01 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster