

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

**Seventy-Sixth Session
February 25, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 11:58 a.m. on Friday, February 25, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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 Kelvin Atkinson, Chair
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 John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

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:

Brett J. Barratt, Commissioner of Insurance, Division of Insurance,
Department of Business and Industry
Karen Z. Schutter, Executive Director, Interstate Insurance Product
Regulation Commission, Washington, D.C.
Fred L. Hillerby, representing the American Council of Life Insurers
C. Joseph Guild III, representing State Farm Insurance
John Mangan, Regional Vice President, American Council of Life Insurers,
Washington, D.C.
Jack H. Kim, representing United Health Group
Helen Foley, representing National Association of Professional Employer
Organizations
Tim Tucker, Vice President, Government Affairs, National Association of
Professional Employer Organizations, Alexandria, Virginia
Jeanette K. Belz, representing the Property Casualty Insurers Association
of America
Marie D. Holt, Chief Insurance Examiner, Property and Casualty Section,
Division of Insurance, Department of Business and Industry
Lisa Foster, representing American Family Insurance, Allstate Insurance,
and St. Mary's Health Plans
James L. Wadhams, representing Nevada Independent Insurance Agents,
American Insurance Association, Anthem Blue Cross and Blue
Shield, Nevada Association of Health Underwriters, Nevada
Association of Insurance and Financial Advisors, and Nevada
Surplus Lines Association
Matthew Sharp, Board Member, Nevada Justice Association

Chair Atkinson:

[The roll was taken, and a quorum was present.] We have two bill draft requests for introduction today.

BDR 54-1016 — Revises provisions concerning the disbursement of escrow money in real estate transactions. (Later introduced as [Assembly Bill 214](#).)

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE INTRODUCTION OF BDR 54-1016.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HORNE, KIRKPATRICK, AND OCEGUERA WERE ABSENT FOR THE VOTE.)

BDR 58-593 — Revises provisions governing public utilities. (Later introduced as [Assembly Bill 215](#).)

ASSEMBLYMAN CONKLIN MOVED FOR COMMITTEE INTRODUCTION OF BDR 58-593.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HORNE, KIRKPATRICK, AND OCEGUERA WERE ABSENT FOR THE VOTE.)

We will put those bills on our agenda. I want to remind members that if you voted in favor of introduction of the bill draft request, it does not indicate that you are voting for the bill.

[Assembly Bill 23](#): Enacts the Interstate Insurance Product Regulation Compact. (BDR 57-473)

Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:

Assembly Bill 23 adds a new chapter to Title 57 of the *Nevada Revised Statutes* and enacts the Interstate Insurance Product Regulation Compact. A compact is an agreement between states to cooperate on a multistate or national issue while retaining state control. Compacts are specifically mentioned in the *U.S. Constitution*, and this Compact provides an excellent alternative to federal regulation in the area of insurance. The mission of this Compact is to promote and protect consumers while developing a streamlined review process of specific insurance products under uniform standards that the member states develop. The Compact currently has jurisdiction over four types of insurance. These are asset-type product lines—life insurance, annuities, disability income,

and long-term care insurance. In an increasingly mobile society, these types of products often travel with consumers as they move across state lines and through their lives. These products are not generally as sensitive to local costs and conditions as products such as automobile and health insurance.

The Compact is funded by insurers who pay filing fees and an annual registration fee to the Compact. There is no fiscal impact on state budgets. Insurers continue to pay state filing fees in addition to the Compact fees. The Compact includes one member from each of the member states and is designed to facilitate transparency and accountability. The activities of the Compact are governed by bylaws, rules, and procedures that have been developed through extensive consultations with the member states, state legislators, consumer advocates, and industry representatives. The meetings of the Compact are required to be open to the public except in very limited situations which are detailed in the bylaws.

The process of setting uniform standards is conducted through a collaborative, comprehensive public notice and comment procedure that allows all interested parties the opportunity to provide input. Another important feature of the Compact is its voluntary nature. If product standards created by the Compact are not adequate, states can opt out of the standards. These features promote a consensus-based approach to decision making, which should produce higher product standards to benefit consumers across all states in exchange for an effective single point of contact for filing for insurers.

I am proposing an amendment today that will require Nevada to opt out of any uniform standard that provides a lower level of consumer protection than is currently available under Nevada law. I believe it is important to include the higher level of assurance to Nevada consumers. We are going to continue to protect our consumers if a Compact standard is lower than what Nevada's current law requires. I propose that we opt out of the long-term care uniform standard because I believe it has been mispriced for many years and that we should retain control in Nevada until we see how that product line develops in the next couple of years.

The Compact was created in 2004 and could not become operational until at least 26 states joined or if its members had 40 percent of the national premium. In May 2006 the Compact reached both of those thresholds. As of today, the Compact has been adopted by 38 states or jurisdictions and represents more than two-thirds of the premium volume nationwide. I provided a map ([Exhibit C](#)) that shows the states in the Compact, the states not in the Compact, and the three states that are considering Compact legislation. Nevada, New York, and Oregon are considering Compact legislation. I have reviewed the Compact

uniform standards and found them to be detailed, objective, thorough, and generally comparable to Nevada law. In some areas, the uniform standards set a higher bar than Nevada's current laws. This will benefit Nevada because the Division will be better able to leverage our limited resources by focusing our staff's attention on higher-level tasks and on active participation as a member of the Compact's board. With expanded regulatory oversight required by health care reform, any resources we are able to free because of the Compact can be redeployed to health care reform and implementation. Nevada will retain its authority to regulate companies and protect our consumers without encroachment upon our sovereignty or our solvency oversight and market surveillance programs. Nevada will be in control of its participation in the activities of the Compact and can opt out of any new standard by regulation under certain conditions. Nevada can enact legislation to opt out of any standard for any reason and can opt out of the Compact if that is the Legislature's desire.

The Compact benefits the insurance industry by having a single clearinghouse for product filings using uniform standards nationwide. It will permit an insurer to have a product available in each Compact member state with a single filing. This greatly reduces the cost and time insurers have to spend in the current state-by-state approval process. The industry would see a much quicker turnaround and approval of products, which would allow new products to be available faster to consumers.

I do not expect any fiscal impact to the State of Nevada if this bill passes and Nevada joins the Compact. There is no downside for consumers. By reducing costs for the insurers, the marketplace should be more competitive with new products available faster to consumers. Nevada will have to participate in the activities of the Compact, including development of the uniform standards and monitoring the product filings to ensure that we agree with the decisions of the Compact and that the interests of Nevada consumers are well served. There will be a cost to insurers. In addition to the state filing fees that they are now paying, they will also have to pay Compact filing and registration fees. This additional cost is more than offset by the savings in production and time costs resulting from having to file in only one location for each of their products. It is efficient for the marketplace.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Hardy:

In Article VII, section 5, it gives us only 10 days to opt out. How do we deal with that if we only have a 120-day legislative session? Is that something the Division does, or how will that affect us?

Brett J. Barratt:

With me today is Ms. Karen Schutter, the Executive Director of the Compact, who will answer technical questions.

Karen Z. Schutter, Executive Director, Interstate Insurance Product Regulation Commission, Washington, D.C.:

Our membership includes 38 states. There are two ways to opt out to preserve the sovereignty of the state. A state's legislature has the ability to opt out at any time and does not have the 10-day requirement. The 10 days language applies to opting out by regulation. The state's department of insurance would have the ability to opt out of a uniform standard. Our rulemaking process is very detailed and transparent, and there are many opportunities to participate. Our members are the ones who drive the Compact. There is a protection before you get to the opt out period. Before a uniform standard can be adopted, it must be approved by at least two-thirds of the Commission members. If the state still feels the uniform standard is below its standard, it can opt out on the rulemaking side. By then it will know that it will be doing it. That is where the 10-day notice occurs. If you opt out by regulation, the department commences its regulation making process under the state's administrative procedure act. There are two forms of opt out, and the legislative opt out is unrestricted.

Chair Atkinson:

Are there any other questions from the Committee?

Brett Barratt:

Section 2 of the bill matches, without any modifications, the language of the Compact. Because this is a Compact and essentially a contract between states, the language needs to stay consistent from state to state to ensure its effectiveness. Articles III through VI are about the duties, powers, and organizational structure that govern the Compact. Article VII provides that member states may have the option to opt out of the uniform standard either by regulation or legislation. The state legislature retains the ultimate authority to enter into or withdraw from the Compact as well as to opt out of standards at any time. I recognize that I am not the policy maker here. I am the person who implements the policies that the Legislature passes. The Compact is your tool as well as mine.

Article VIII addresses public access to the records of the Compact and maintains the state's responsibility for market regulation and enforcement. Article X provides that a product approved by the Compact is automatically approved for sale in the member states. It addresses all public information access to information received by the Compact. Article XII discusses the financing of the Compact. Essentially the Compact is financed by insurers who must pay the Compact's annual registration fee, filing fees, and the state's existing filing fees. There will be no decline in revenue to the State of Nevada. Section 3 of the bill designates the Commissioner of Insurance as Nevada's representative to the Compact. The Compact has eight positions available for state legislators to participate. Generally, the participants are members of the National Conference of State Legislators (NCSL) or the National Conference of Insurance Legislators (NCOIL). Even though Nevada is not a member of NCOIL, I was assured by Ms. Schutter it would not preclude Nevada's participation on the legislative group that sits on the board of the Compact.

I have two amendments to the Compact language ([Exhibit D](#)). The first is that Nevada will opt out of the long-term care insurance product standards upon adoption of this act. The Division recently adopted regulation R028-10, which becomes effective on October 1, 2011. This regulation contains many protections that are not afforded to consumers under our current standards. The second change requires Nevada to opt out of the Compact's uniform standard if the standard fails to provide the same level of protection to consumers as current Nevada law. I do not anticipate ever needing to exercise this provision, but I believe it is an important placeholder to ensure that we continue to maintain a high level of protection for consumers and that we can continue to be proactive in protecting our consumers' interests consistent with the law.

I believe that A.B. 23 is good for Nevada. It is good for consumers, the state, and the insurance industry. It is a win-win. Nevada consumers will benefit from having timely access to innovative products while continuing to have their problems addressed quickly and locally at the state level. The Insurance Division will be better able to leverage our regulatory resources and expertise to help create high national standards, including strong consumer protections. By creating a central clearinghouse to receive, review, and approve these asset-based insurance products, the Compact will improve speed to market for insurers by creating a single point of contact for filing new and innovative insurance asset-based products that will ultimately result in reduced expenses for insurers and, I hope, lower premiums.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Conklin:

Is it correct that consumers have problems with their products and we need to retain total control to resolve those problems?

Brett Barratt:

That is correct. The consumers call our offices in Nevada, and we resolve their complaints locally, at the state level.

Assemblyman Conklin:

Will current regulations retain their position or take a second seat to any regulation brought forth by the Interstate Compact Commission?

Brett Barratt:

They would take a second seat to the regulations of the Compact unless the Compact standards are lower than current Nevada standards. Then the Nevada standards would prevail.

Assemblyman Conklin:

We would always have the opportunity to tighten our standards through regulation, but not weaken the standards below the Compact's standards. The Compact would create a regulatory floor.

Brett Barratt:

That is correct.

Assemblyman Conklin:

What are the asset-based products besides life insurance and disability insurance?

Brett Barratt:

They are annuities and long-term care insurance. These are products which people have for life or for many years.

Assemblyman Conklin:

The Compact does not regulate auto, health, homeowners, or professional liability insurance.

Brett Barratt:

Only life insurance products are long-term asset-based products. It is possible that the Compact may change in the future. At this point it is focused, and I do not know if there is any desire to extend its lines.

Assemblyman Conklin:

Where does the Compact stand regarding the Nevada regulations on issues such as viatical settlements, where the policy owner sells a life insurance policy before it matures?

Brett Barratt:

Viatical settlements would be outside of the jurisdiction of the Compact.

Assemblyman Conklin:

The settlement law itself is something that the Legislature would exclusively regulate even though it is a life insurance product.

Brett Barratt:

That is correct.

Assemblyman Conklin:

The life insurance industry is trying to address the issue of retained asset accounts. What is the Compact's position on that issue?

Brett Barratt:

I will have the Executive Director of the Compact address that.

Karen Schutter:

The retained assets accounts are also outside of the Compact. The Compact has a very limited jurisdiction in the asset-based arena. Retained asset accounts occur when a beneficiary is involved, so it is outside of the Compact jurisdiction, as are settlement issues. All market regulations regarding how products are sold or underwritten, or how claims are administered, are still under Nevada regulation.

Assemblyman Conklin:

Are there other Compacts for other consumer products that are a model for this Compact?

Karen Schutter:

Our Compact is the first in the insurance area. There are several compacts, including a compact for the collection of sales and use taxes. Our Compact was modeled on the adult and juvenile offender compacts, which have similar provisions. Most states are participating in those compacts. Many of the key provisions are similar.

Chair Atkinson:

Are there any questions from the Committee?

Assemblywoman Bustamante Adams:

What is the fee for the dues to this Compact? Who would be the Nevada representative to the Compact?

Brett Barratt:

The Commissioner of Insurance would represent the State of Nevada as a member of the Compact. The dues would not be paid by the State of Nevada, but are charged to the insurers that utilize the services of the Compact.

Assemblyman Hardy:

Can you interpret Article V, section 2?

Brett Barratt:

Article V, section 2 is the organization of the Compact board, including who serves and in what capacity.

Karen Schutter:

All members are voting members of the Commission. Any action regarding adoption of uniform standards or rules needs Commission action. The Compact also creates a management committee similar to other compacts. Our Compact has a 14-member committee and was developed with consideration of the large and small states and different dynamics to make sure all states have representation. The Management Committee has six automatic members from the six states with the largest premium volume. Four states with 2 percent of premium volume or less are designated by geographical zones, and that would include Nevada. Nevada would be in the western zone and would have an opportunity to participate on the Management Committee. The State of Washington is our current western zone member on the Management Committee. Another safeguard regarding the uniform standards is that an issue cannot be heard by the Commission without a two-thirds vote of the Management Committee.

Assemblywoman Carlton:

Will the Compact recognize that we are a part-time legislature and allow our Legislative Commission to make those decisions and not the whole body?

Karen Schutter:

It is legislative action. In most states the legislature works closely with the department, and the department can also exercise its regulatory opt out if the legislature is not in session. There is another safeguard in the Compact, that once a uniform standard is adopted, it takes about 10 days to publish it, and it is not effective until 90 days after the date of publication. It is called "promulgation" in the statute. So there are at least 100 days between adoption

and becoming effective for the legislature to take action and the department to commence its regulatory making process. There is also an ability for the department to request a stay of effectiveness of the uniform standard while it is pursuing an opt out. To date we have had almost 70 uniform standards adopted, of which no state has opted out by legislation or by regulation. We have two other states that have opted out of long-term care by legislation and another which is pursuing an opt out by regulation. The process is working particularly in the area of long-term care.

Assemblywoman Carlton:

If the Insurance Commissioner can give us a comfort level that it can be done in 120 days, I do not see a problem.

Brett Barratt:

The fastest we usually complete a regulation is 45 days. We try to complete them in 60 days, so I am very comfortable that we will be able to do it in that period of time.

Assemblyman Conklin:

Have you spoken with the Governor or the Governor's staff regarding the executive order creating a moratorium on regulation?

Brett Barratt:

I have not spoken to the Governor and would have to apply to the Governor's Office for an exception to the executive order in the event that we need it during the period that the executive order is in effect.

Assemblywoman Carlton:

Would it be acceptable to the Compact if we gave the Commissioner the authority to adopt these regulations within statute, so he and the state will be protected?

Brett Barratt:

We will ask Ms. Schutter if we could add a regulation to the Compact language to give the Commissioner the ability to opt out in the event there is a statement with which we do not agree.

Karen Schutter:

My initial reaction would be yes, because it puts the obligation on the Commissioner and not on the other members of the Compact. It is similar to the proposed amendment, which puts an obligation on the Commissioner if any uniform standard is adopted that is below Nevada standards. He has the onus to opt out.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone wishing to testify in favor of A.B. 23?

Fred L. Hillerby, representing the American Council of Life Insurers:

We are in strong support of A.B. 23 and to have Nevada join the Compact. Our companies provide life insurance, annuities, disability income, and long-term care. This bill is very important to us. Most of our members are national companies, and their products are sold in almost every state. We had to go state by state to have products approved. It delays consumers' access to the market and to products. It delays opportunities for our agents and brokers to sell new and innovative products because of their delay to the market.

We would prefer that the Commissioner be in the Compact and test it before deciding to opt out on long-term care. There are national standards for long-term care and we think we would be better served to include it. We support the second amendment, which gives the Commissioner the option to opt out if it is discovered that our citizens are put in jeopardy. He has the option to opt out. We would rather see Nevada get into the Compact and see how it operates before we opt out.

C. Joseph Guild III, representing State Farm Insurance:

We are in support of A.B. 23.

Chair Atkinson:

Is there anyone to speak in support of this bill in Las Vegas?

John Mangan, Regional Vice President, American Council of Life Insurers, Washington, D.C.:

Mr. Hillerby is our representative and has described our strong support of the bill. I want to reiterate our strong support on behalf of our 300 members who do business in Nevada. I would like to compliment the Commissioner on his strong approach to consumer protection. Passing this bill will get products to market faster, which means more sales for agents and brokers in Nevada. Most of our agents and brokers are small businesspeople, and this is good for their business. The more products we sell will create more revenue for the state from premium tax. We would prefer to see the state become a member of the Compact with respect to long-term care products. I think the standards for those products are, in some cases, stronger at the Compact level because of the experience other states have had. We are supportive of the second amendment proposed.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to speak in favor of this bill? Is there anyone to speak in opposition? Is there anyone to speak from a neutral position?

Assemblywoman Carlton:

To make a decision about long-term care, we need to get the regulation from the Commissioner so we can compare it to the Compact.

Chair Atkinson:

If the Commissioner can get that to me, I will distribute it to the Committee members. Are there any other questions or comments on A.B. 23? Seeing none, we will close the hearing on A.B. 23 and open the hearing on Assembly Bill 74.

Assembly Bill 74: Revises various provisions relating to the regulation of the insurance industry. (BDR 57-472)

Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry:

Assembly Bill 74 is the Insurance Division's omnibus bill. I have provided an overview of the major areas of the bill ([Exhibit E](#)). This bill was developed in April 2010 and was distributed to the industry through meetings of the Commissioner's advisory committees, such as the Life and Health Advisory Committee, the Property and Casualty Advisory Committee, the Licensing Advisory Committee, and the Captive Insurance Advisory Committee. The bill has been heard, and concerns have been expressed.

The first area is the External Review Model Act. When a consumer of health insurance has an issue with a health insurer, the consumer has the right to go through an internal review process with the insurer. Once the consumer exhausts that internal review process, Nevada has a system for external review of the claim. That process takes place under the Governor's Office for Consumer Health Assistance (OCHA). The enactment of the Patient Protection and Affordable Care Act (PPACA) requires the states to do one of two things in regard to external review. We need to adopt either the National Association of Insurance Commissioners (NAIC) model or the Department of Labor model. If we do neither or do not meet the threshold of the NAIC model, the federal government will take over our external review mechanism. Because this bill was written in April, the commissioners have changed. One of the amendments I am presenting ([Exhibit F](#)) leaves the external review with OCHA. They have the people, including medical professionals, necessary to do external reviews. The amendments leave the external review there instead of moving it to the

Division of Insurance. These standards also apply to the Public Employees' Benefits Program (PEBP). The Center for Economic Justice has an issue with the federally mandated external review, which says the determination is final for both the consumer and the insurer. Certainly, people can still litigate after that final determination, but I am hesitant to change from the NAIC model and risk not being compliant.

The next topic is the group health rate regulation. The Division of Insurance reviews and has prior approval for all health maintenance organizations (HMO). With preferred provider organizations (PPO) the Division of Insurance has authority only to review individual policies. We do not have authority to oversee their group policies. This change would give us the authority to establish a rate review process for large group PPOs, which is a consumer protection. The State of Nevada applied for federal grants to enhance our rate review process. We received \$1 million, and that program is functioning in Nevada. Giving us more authority would not cost the state anything because we can continue to apply for this federal grant for five years. Yesterday, the federal government announced that it had an additional \$200 million available for this type of review opportunity for the states.

The next area is long-term care insurance. The amendments allow for the marketing of long-term care products in combination with other life insurance policies. Many insurance products, especially life insurance, continue to be more complex. This will allow insurers to combine product types into one policy. It preserves consumer protections in every way and allows the marketing of these products. The change would be consistent with what is in the Interstate Insurance Product Regulation Compact. This bill contains some consumer protection enhancements for annuities and life insurance. It aligns our laws with the national standards set forth by the Compact. We add consumer protection by providing a 10-day review and return policy for annuities. Current law does not provide for a "free look period" for annuity products. The bill allows a 10-day "free look period" for life insurance products which we have also been applying to annuities. There is a proposal in the bill to provide a 30-day review period for a new annuity contract or life insurance policy when replacing another policy. If the product is not what the consumer wants, he can return the contract and not lose any money or be locked into the policy. It strengthens consumer protection. Annuity policies usually take 10, 15, or 20 years to mature. There are surrender charges to an annuity before it fully matures. With this amendment, we clarify the language and the definitions of those surrender penalties.

The next topic is the credit/extraordinary life events exemption. Because of the high unemployment rate in Nevada, home foreclosures, and the economic

difficulties that we all face, there is a provision in our bill based on a National Conference of Insurance Legislators (NCOIL) model to give our consumers a break regarding the use of credit scoring. If there is a life event over which the consumer has no control, such as death, loss of job, divorce, or serious illness, he can contact the insurance company and explain that one of these extraordinary life events has occurred. The insurer is then precluded from using credit scoring in the insurance rating model to determine its insurance rate. It is a consumer protection based on a NCOIL model. Some insurers in Nevada already have voluntarily implemented these exemptions for extraordinary life circumstances because they recognize our economic situation.

The next area relates to evidence of insurance cards. It allows for proof of insurance of fleet cars without having individual vehicle identification numbers. It makes business more efficient when dealing with fleets.

The next section deals with manufactured home valuation. Nevada law indicates that owners of manufactured homes are offered a policy that is a market value policy. The proposed change is to require insurers to offer replacement value coverage. The insured has the option of accepting the offer or requesting lesser or restricted coverage for a lower premium. We are not taking away any consumer rights, but are giving them options to purchase a more comprehensive policy.

The next section allows insurers to transact insurance-related business electronically with consumers. This does not mean that the insurance company can automatically start doing transactions electronically. Under the Uniform Electronic Transactions Act Code, there has to be an agreement with the consumer to accept electronic processes. It also allows for electronic transactions in the surplus lines area.

The next section allows fingerprints submitted with an application to sell, solicit, or negotiate insurance to be submitted electronically. This is an opportunity to enhance our efficiency.

Service contracts by definition are not insurance, and they do not pay premium tax. The Division of Insurance regulates them. In the last year, we have had four service contract companies go insolvent. They are companies in other states that are doing business in Nevada. Nevada law states that to do business as a service contract provider in this state, you must post a \$25,000 deposit or bond. If the company becomes insolvent, we would use that money quickly. The Division of Insurance is not set up to administer and handle claims for service contract entities. These provisions give the Division more authority to suspend, limit, or revoke a service contract license. It also

requires enhanced financial backing to limit the insolvencies. Solvency is enhanced because either the service contract company must have a contractual liability insurance policy or the company, or its parent, must maintain a net worth of \$100 million in stockholder equity. This will protect Nevada consumers because the company will be able to pay the benefit the consumer has purchased to cover items such as a vehicle or washer and dryer.

Nevada is a leader in the captive insurers market. Captive insurers are a special kind of insurer created by the federal government. Many other states are getting into the captive insurers market. Two provisions relate to captive insurers. The first clarifies that when calculating dividends based on capital and surplus, captive insurers must use certain statutes in the Insurance Holding Company System Regulatory Act. The second part updates the format used by captive insurers to submit their required reports. It would allow for fining in the amount of \$100 per day, of captive insurers who fail to file their financial reports in a timely manner.

I have some cleanups, clarifications, and amendments ([Exhibit F](#)) which I will explain. The first clarification updates the definition of a qualified actuary. It clarifies that a qualified actuary can sign an applicable statement of actuarial opinion across all lines. Current law is vague and makes it look as if it is allowed only for life insurance. The producer lines of authority adopt additional portions of the NAIC Uniform Licensing Standards Model Act. This is important because states must have reciprocity and it helps us to be consistent with other states.

The next section concerns adjuster licensing. We had a law in Nevada which said only residents of Nevada can adjust claims. My predecessor, Commissioner Kipper, was sued over that law. The Division and the State of Nevada lost. The U.S. District Court in Las Vegas declared that Nevada's law violated the privileges and immunities clause of the *U.S. Constitution* because it did not allow fair trade. We are updating our adjuster licensing laws to conform to the federal court decision.

The change related to the Nevada Insurance Guaranty Association, which applies to property and casualty insurers, clarifies that a member of that group is an "authorized insurer."

In regard to the viatical settlement, we want to add the word "provider" as it applies to proof of required financial responsibility to the language adopted in 2009 in Senate Bill No. 426 of the 75th Session.

The change for countersignature is the result of another federal court case in which our countersignature requirement was struck down as being in violation of the *U.S. Constitution*. Therefore, we need to amend our countersignature blank for a surety bond template to eliminate "resident."

Under holding companies, this adopts additional changes from the model law. The 2000 NAIC model law read "the greater of" and our statute as approved stated "the lesser of." This will make it consistent with the model law, and the way we calculate dividends to our domestic insurance companies will not be changed in any way. It changes the definition of what are extraordinary and ordinary dividends. Our intent is not to change the way we calculate dividends, but we want to make our law consistent with other laws to help insurers do business across state lines.

Risk retention groups are a type of captive insurer. The Liability Risk Retention Act of 1986 states that to be insured by a risk retention group, you have to be a member of that group. This clarifies Nevada law and is consistent with federal law.

Medical discount plans file their paperwork on their anniversary. This would change the law so they would file their annual renewal paperwork on March 1 of each year, which is consistent with the other companies we regulate. It will help us with our efficiency and tracking.

The employee leasing companies change is consistent with the Nevada Supreme Court decision that Nevada cannot define an Employment Retirement Income Security Act (ERISA) term or a federal term with Nevada law. I know that the National Association of Professional Employer Organizations (NAPEO) has a proposed amendment to this language, and I have no objection to that amendment.

The last section is proposed amendments. The first changes language to clarify that qualified actuaries can sign actuarial opinions for all lines of insurance. The second proposes to return the responsibility for the independent external review process to the Governor's Office for Consumer Health Assistance. The next amendment proposes to amend *Nevada Revised Statutes* (NRS) 683A.261. This is a licensing statute to correctly reference the term "guaranteed asset protection." It is a technical change from "guaranteed auto protection." The next change amends the definition of "casualty" to include "surety," which was omitted in the drafting process. With regards to surplus lines in NRS Chapter 685A, we wanted to make changes to start collecting multistate revenue on surplus lines exposures. Then the Dodd-Frank Wall Street Reform and Consumer Protection Act came out, and based on that the Division of Insurance

wants some changes which will be addressed in a separate bill, but we wanted put the surplus lines language back the way it was.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Conklin:

For many sessions, we have had a division's omnibus bill, which covers many issues in one bill. If there is a way to bifurcate the bill so that it deals with minimal or related issues, it helps because you may not lose a whole body of changes because someone did not understand one piece. It also allows people to share the work. Omnibus bills take a lot of time and effort to understand how the whole thing fits together and what all of the changes are. If you could break that apart, you will probably have greater success.

Chair Atkinson:

Is there anyone else wishing to testify in favor of A.B. 74?

Jack H. Kim, representing United Health Group:

I have submitted a proposed amendment ([Exhibit G](#)). It is a friendly amendment and the Commissioner has helped me work on it. Under state law, two affiliated insurance companies cannot do certain functions for each other without getting an additional license. We propose to add language to indicate that if you are an affiliated insurance company, you would not be required to be defined as an administrator and would not have to get an additional license. There are no issues of solvency or consumer protection because both entities are regulated by the state.

Chair Atkinson:

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

Helen Foley, representing National Association of Professional Employer Organizations:

We have an amendment ([Exhibit H](#)) to section 128 on page 92. We have worked closely with the Insurance Commissioner and his staff, and they are in agreement. We support the concept of section 128 to clarify that employee leasing companies cannot be self-insured. We believe there was an unintended consequence in drafting. Employee leasing companies provide fully insured benefit plans to their employees and are in the large group market. We want to maintain that. The proposed amendment does that.

Tim Tucker, Vice President, Government Affairs, National Association of Professional Employer Organizations, Alexandria, Virginia:

I would like to thank the Commissioner and his staff for working with us on this amendment.

C. Joseph Guild III, representing State Farm Insurance:

I received a proposed amendment today that I did not have the opportunity to forward to the Committee or to discuss with the Commissioner, but I will do so. It refers to sections 16 and 17. The way the bill is written, it imposes a personal liability on adjusters. In section 17, on page 18, line 19 of the bill, it states that an adjuster is "any person who, for compensation as an independent contractor. . . investigates and settles. . . ." State Farm has its own employee adjusters, but occasionally its independent agents might adjust a small claim. Our proposal would be to add an exemption in section 17 for an agent of a company who occasionally adjusts a small claim. I will provide the information.

Chair Atkinson:

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

Jeanette K. Belz, representing the Property Casualty Insurers Association of America:

We submitted a letter of support ([Exhibit I](#)). We are in favor of section 30, which is the extraordinary life circumstances as it was adopted by NCOIL. It helps in catastrophic events and also applies to military personnel deployed overseas. We will continue to meet with the Commissioner regarding our concerns about the section on manufactured homes.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Ellison:

Most units are now on permanent foundations. How will this affect those?

Marie D. Holt, Chief Insurance Examiner, Property and Casualty Section, Division of Insurance, Department of Business and Industry:

You are correct in your understanding that when a manufactured housing unit is placed on a foundation, it would be real property, and a manufactured home owner's policy can be written for that unit. That is where the replacement cost endorsement would be used.

Lisa Foster, representing American Family Insurance, Allstate Insurance, and St. Mary's Health Plans:

All of the companies I represent are in favor of this bill. American Family Insurance has had concerns about the manufactured housing part of the bill and will be working with the Commissioner.

James L. Wadhams, representing Nevada Independent Insurance Agents, American Insurance Association, Anthem Blue Cross and Blue Shield, Nevada Association of Health Underwriters, Nevada Association of Insurance and Financial Advisors, and Nevada Surplus Lines Association:

We are in support of this bill and would like to review the mock-up as the Committee moves toward the work session with the amendments that are being considered.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone to speak in opposition to A.B. 74?

Matthew Sharp, Board Member, Nevada Justice Association:

We are in opposition to the changes that have been made regarding the external review process, which is contained in sections 71 through 112. Our opposition is that this bill significantly takes away existing consumer rights. As I understand the requirements from the federal government, there need to be minimum standards that each state is free to provide benefits in addition to the minimum standards, no different than the Uniform Building Code for contractors has minimum standards. There is nothing preventing a contractor from providing greater standards than the Uniform Building Code provides.

The whole process, which is included in NRS Chapter 695G, was something in which former Speaker Barbara Buckley was heavily involved. A series of issues resulted from that. One concern is the application of the term "medical necessity" and the other was the responsibility of both the external review organization and the insurance company. These review processes take place in situations where the insurance companies tell the insured that what their doctor is recommending is not medically necessary. These typically involve life and death situations where people are deprived of transplants or necessary surgeries. If the review is beneficial to the insured, it is binding on the insurance company, and if it is not favorable to the insured, the insurance company has the option to disregard what the review organization says. The reason this exists is that one of the things bought by the premium is a fair investigation from an insurance company. This bill would change the law so if the independent review organization says something is not medically necessary, both the insured and the insurance company are bound. Effectively, you have

taken away a consumer right. If the independent review organization makes a mistake, and it happens, the reviewer has extensive immunity. The insured has no way of holding anybody accountable. I do not think that is the intent of the federal law.

This bill is confusing as to what constitutes medical necessity and what should be reviewed. It is very slanted against the consumer. When you are a consumer asking for a decision for medical necessity, you are working with your treating physician. The physician is not being paid to argue with the insurance company. The insurance company people are paid to do these reviews. They have more time and resources. This bill will put the consumer in a very difficult situation when he is in a dispute over medical necessity. I do not think that is the intent of the federal law. Nobody has demonstrated to me in discussions from the Commissioner's Office that anybody has gone through our existing statutes to compare them to the required minimum standards to see where we are deficient, if at all. I think passing these changes would be very detrimental to the consumer.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else in opposition? Is there anyone to testify from a neutral position? I see none. I am going to ask the Division to work with Assemblywoman Carlton, Assemblywoman Bustamante Adams, and Mr. Sharp and bring this back to the Committee. Are there any other questions or comments on A.B. 74? [There were none.] We will close the hearing on A.B. 74. Is there any public comment or anything else to come before the Committee? [There was none.]

The meeting is adjourned [at 1:31 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 25, 2011

Time of Meeting: 11:58 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B.23	C	Brett Barratt	Map
A.B.23	D	Brett Barratt	Proposed Amendments
A.B.74	E	Brett Barratt	PowerPoint
A.B.74	F	Brett Barratt	Proposed Amendments
A.B.74	G	Jack Kim	Proposed Amendment
A.B.74	H	Helen Foley	Proposed Amendment
A.B.74	I	Jeanette Belz	Letter of Support