

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

**Seventy-Sixth Session  
March 2, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:42 p.m. on Wednesday, March 2, 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/](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 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:**

Assemblyman Paul Aizley, Clark County Assembly District No. 41

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Dylan Shaver, representing Labor Management Cooperation Committee, International Brotherhood of Electrical Workers, and Southern Nevada Chapter of the National Association of Electrical Contractors  
Richard Leigon, representing Labor Management Cooperation Committee, International Brotherhood of Electrical Workers, and Southern Nevada Chapter of the National Association of Electrical Contractors  
Constance Brooks, Senior Management Analyst, Office of the County Manager, Clark County  
Lee Thomson, Chief Deputy District Attorney, Clark County  
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada  
Greg Esposito, Business Representative, Local 525 in Las Vegas and Local 350 in Reno, Plumbers, Pipefitters, and HVACR Technicians  
Jack Mallory, representing District Council 15, International Union of Painters and Allied Trades, and Southern Nevada Building and Construction Trades Council  
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO  
Randy Soltero, representing Sheet Metal Workers Local Union No. 88  
Keith Lyons, representing Nevada Justice Association  
Steve Holloway, Executive Vice President, Las Vegas Chapter, Associated General Contractors  
Warren Hardy, representing Associated Builders and Contractors of Nevada  
Michael Tanchek, Labor Commissioner  
Renny Ashleman, representing City of Henderson  
Ed Rathje, Private Citizen, Reno, Nevada

Jeanette Belz, representing Property Casualty Insurers Association of America

Eric Rosenberg, Director, State Government Relations, TransUnion, Chicago, Illinois

Jed Kincaid, Product Manager, Progressive Insurance, Rancho Cordova, California

Mike Doerfler, Product Development Manager, Progressive Insurance, Mayfield Village, Ohio

James Wadhams, representing American Insurance Association

Lisa Foster, representing American Family Insurance and Allstate Corporation

Robert Compan, representing Farmers Insurance Group

Michael Geeser, representing AAA Northern California, Nevada, and Utah

Rajat Jain, Actuary I, Property and Casualty Section, Division of Insurance, Department of Business and Industry

**Chair Atkinson:**

[The roll was called, and there was a quorum present.] We will start with the work session today.

**Assembly Bill 25:** Revises provisions governing certified court reporters.  
(BDR 54-505)

**Marji Paslov Thomas, Committee Policy Analyst:**

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

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

I apologize; this bill was heard when I was not here. You do not often see fines being reduced; we usually see them increased.

**Chair Atkinson:**

We are not lowering the fine. The limit was already \$5,000. They wanted to raise it to \$10,000, but the amendment leaves the limit at \$5,000.

I will entertain a motion.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 25.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS  
ABSENT FOR THE VOTE.)

**Chair Atkinson:**

Mr. Horne will make the floor statement.

[Assembly Bill 32](#): Revises provisions governing licensed contractors. (BDR 54-  
620)

**Marji Paslov Thomas:**

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

**Chair Atkinson:**

I will entertain a motion.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 32.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS  
ABSENT FOR THE VOTE.)

**Chair Atkinson:**

Mr. Ellison will do the floor statement.

[Assembly Bill 33](#): Revises provisions governing the Board of Psychological  
Examiners. (BDR 54-504)

**Marji Paslov Thomas:**

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

**Chair Atkinson:**

I will entertain a motion.

ASSEMBLYWOMAN CARLTON MOVED TO DO PASS  
ASSEMBLY BILL 33.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS  
ABSENT FOR THE VOTE.)

**Chair Atkinson:**

Mrs. Carlton will do the floor statement.

[Assembly Bill 55](#): Makes various changes relating to dentistry. (BDR 54-498)

**Marji Paslov Thomas:**

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

**Chair Atkinson:**

Committee members will remember that section 2 was causing some problems. During discussions I had with the proponents of the bill, it was discovered that they could list an amount. I was given assurances that they would not go beyond the \$2,500 requested and if the actual cost went higher, they would have to come back to the Legislature.

**Assemblyman Horne:**

So it will say no more than \$2,500?

**Chair Atkinson:**

Yes. Are there any questions from the Committee?

**Assemblywoman Carlton:**

With changing the language to "fee for administering a clinical dentistry examination" would the Board of Dental Examiners be able to charge the examinee for the time the Board's members spent at the exam, their travel costs, and things like that? When you go from actual cost to just a fee, I would like to know that they would not add more costs to the examination that would not have been included before.

**Assemblyman Horne:**

In my discussion, I was under the impression that they do have a set fee for the examination and they already put their time and other expenses into that amount. I asked why the amount that was charged for that exam, plus costs, could not have a hard fee.

**Chair Atkinson:**

That is the same discussion I had. I will entertain a motion.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 55.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS  
ABSENT FOR THE VOTE.)

[Assembly Bill 102](#): Revises provisions governing the requirements for licensure  
as a professional engineer or professional land surveyor. (BDR 54-767)

**Marji Paslov Thomas:**

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

**Assemblywoman Carlton:**

This is a friendly amendment. When the State Board of Professional Engineers and Land Surveyors asked for the bill, it was addressing the issue that would impact the 30 engineers who were caught within this licensing scheme, and the surveyors wanted to add their 24 surveyors to the bill. This addresses these 54 people being able to complete the mission they undertook.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Hickey:**

I believe that Mr. Gallagher from Summit Engineering had some questions. Have those concerns been answered to your satisfaction?

**Assemblywoman Carlton:**

Those concerns stemmed from legislation that was worked on in 1999. He had an overarching policy concern about the educational component related to becoming an engineer or surveyor. That had nothing to do with this particular bill. We had set in statute the educational requirements for engineers and surveyors. Because of the economic times in this state people are not able to complete the requirements; this bill takes those 54 people who are in the process and allows them to finish the process and get a job.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. I will entertain a motion.

ASSEMBLYMAN GRADY MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 102.

ASSEMBLYMAN HARDY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS  
ABSENT FOR THE VOTE.)

We will open the hearing on Assembly Bill 84.

**Assembly Bill 84:** Authorizes the commencement of a civil action against an employer under certain circumstances. (BDR 28-529)

**Assemblyman Tick Segerblom, Clark County Assembly District No. 9:**

This is a very simple bill. When an employee has not been paid prevailing wage when he should have been, it allows that employee the first right of action to go into court and sue for the difference between what he should have been paid and what he did receive. The law is not totally clear on this issue. Right now, if an employee complains, he would have to prove he had a right to be there. This bill would clarify that.

I have an amendment ([Exhibit H](#)). It clarifies that because the damages in these cases is just the difference between what you did make and what you should have made, we added compensatory damages to cover any other expenses and the attorney fees. Also it clarifies the standing for when an employee filed a suit improperly, where the employer could get attorneys' fees for what they had to face, and the standard I included in this amendment is "frivolous." That is the standard which is commonly used in the court system.

With me today I have Mr. Richard Leigon, who is experienced in these cases and can explain why they are necessary. Also, Dylan Shaver is here if questions come up.

**Dylan Shaver, representing Labor Management Cooperation Committee, International Brotherhood of Electrical Workers, and Southern Nevada Chapter of the National Association of Electrical Contractors:**

We have been working with Mr. Segerblom on this bill because there are workers not getting paid. There are great members of the corporate community, and we have worked well together in the past. But people still

come into the markets, bid on public works projects, cheat on the prevailing wage issue, and put those figures into their business models. They are building it into their bid. An honest bidder cannot compete in that market where people build this cheating into their models.

There are current remedies for employees who have not been paid what they needed to be paid, but this would be another tool in that fight. There are very few people in the same position, where workers would not get paid what the law says they should be and not have the right to reclaim the money. Mr. Leigon does this professionally. He works for the Labor Management Cooperation Committee. He helps people recover this money, and he is here to tell you what he has learned over the course of his work.

**Richard Leigon, representing Labor Management Cooperation Committee, International Brotherhood of Electrical Workers, and Southern Nevada Chapter of the National Association of Electrical Contractors:**

The taxpayers are paying top dollar for a skilled workforce and supporting community apprenticeship programs at the same time. Prevailing wage is a living wage. I would like to give you a few examples of some actual cases that are going on right now.

One example is an electrical subcontractor employer who hires only illegal workers. He has the workers sign time cards that say the workers worked four hours when, in fact, they worked eight hours. We have video of the person on the jobsite doing this. He pays the workers based on the time cards and submits certified payroll reports to match the false time cards. Unfortunately, the prime contractors are involved in this as well. This has been going on for three years that we know of. The workers are afraid to come forward for fear of losing their jobs.

The next low bidder on this particular project was one of the 57 contractors that I work for. However, the low bid went to the competition. Our contractor, who hired skilled, local, legal workers and registered apprentices and paid health, welfare, and pension, would have had that job had it not been for the cheating.

The same employer has had a wage claim filed against him on another project. The awarding body has filed a determination that was upheld by the Office of the Labor Commissioner. Right now, the employer refuses to pay. The general contractor is on the hook because the subcontractor will not pay.

Another current case involves an electrical subcontractor, an owner/employer, who listed himself as working eight hours a day, five days a week on as many



as five public works projects at the same time. The owner's private plane records show him traveling back and forth between here and Cabo San Lucas, Mexico. He filed a false time card with the Labor Commissioner, left some employees off the certified payroll report, violated apprentice-journeyman ratios, and basically manipulated the records to skim off the public money.

My final example is the public works project where this particular general contractor would get a check from the awarding body and cash it. He removed the cash he wanted, put the remaining cash in an envelope, and gave it to the electrical subcontractor. The subcontractor took out the cash he wanted, put the rest in envelopes, and handed out the envelopes to his employees.

There are no certified payroll reports, paycheck stubs, or other record of these transactions. Yet this same contractor decided after three jobs that he did not need to include the electrical subcontractor anymore, so he just used the subcontractor's license number and started more jobs. He paid the electricians cash, and that process was never interrupted.

The awarding body contacted the licensed electrical contractor to question equipment installation and abuse at a public industrial facility. The contractor was shocked because he did not know that he had a contract. This complaint is currently at the State Contractors' Board. That contractor has come forward.

These are just a few examples of what I have run into during the last eight years.

**Assemblyman Segerblom:**

I would like to add one thing. There is a proposed amendment from Clark County ([Exhibit I](#)) and we have no objection to that proposed amendment.

**Assemblyman Ellison:**

On your amendment, in subsection 4, it states that if the court finds the employer did not violate *Nevada Revised Statutes* (NRS) 338.020. . . . Would you like to explain what you are talking about there?

**Assemblyman Segerblom:**

It says that if an employee brings a lawsuit in bad faith against an employer, then the court can award attorneys' fees against the employee. The standard for bad faith is what is called "frivolous." That means that there was no legal basis for the lawsuit.

**Assemblyman Ellison:**

I was shocked to find out that on public work jobs there is no accounting. I would think that every penny would be accounted for. Why was there no audit?

**Richard Leigon:**

Just in Clark County, for electricians since 2008, we have identified claims well in excess of \$2 million in wage claims, and the same is true of fines.

**Assemblyman Daly:**

I like the amendments. I know for a fact that these sorts of issues are a problem in the industry, both north and south. Is it possible for other labor organizations or building trades to be included in this bill?

**Assemblyman Segerblom:**

Absolutely, unions should be allowed to be a part of this. I would not be opposed to a friendly amendment to that point.

**Assemblywoman Carlton:**

Let me see if I understand. Most employees, if they feel they are not getting paid the amount of money that they are supposed to be, have standing to go after those wages, correct? But in this case there seems to be doubt as to whether an employee who is promised one amount is actually getting paid the amount he was supposed to get, or whether the employer has promised the state to pay this employee a certain amount but has not followed through on that agreement. So this allows those two entities to double-check to make sure that the taxpayer money is being spent where they said it was being spent.

**Assemblyman Segerblom:**

The prevailing wage statute provides that you can file a claim with the Labor Commissioner, and then he or she would have standing to go after the money. But it is not clear whether they could go directly to the employer. Frankly, one of the reasons this has been brought is that the Labor Commissioner has been less than enthusiastic with some of these claims. This gives added "teeth" in the hopes that bad employers will do what is right.

**Assemblywoman Carlton:**

I am wondering about the taxes that are supposed to be paid on those dollars. This involves misclassification of employees workers' compensation premiums that should have been paid to the state, and other issues. If they are skating on those responsibilities, they are not paying the rest of the bills to the state.

**Assemblyman Segerblom:**  
Absolutely.

**Assemblyman Hardy:**

I will disclose that I have previously been a business owner and still have some businesses in construction. I appreciate the fact that, in section 4, I would be able to be compensated if the employee was found to have filed a frivolous complaint. I do not think this goes far enough. In subsection 3 you are giving the employee three possible awards; I believe the employer needs to have some of the same benefits. When an employer lays off or fires someone, that employee is not happy, and this would give him another opening to sue the employer. It is tough enough right now, and I know there are things going on that I have a problem with. But I would like to know who the labor management committee is. Those types of entities like to stir things up sometimes and get employees to say things that are not entirely correct.

**Dylan Shaver:**

The Labor Management Cooperation Committee (LMCC) is made up of equal numbers of appointees from the labor union and contractors in the same trade. These committees were created under federal law. I am not allowed to do anything on behalf of the LMCC unless labor and management both sign off on it. It makes it convenient for me, as a lobbyist, because sometimes they do not agree.

**Assemblyman Segerblom:**

Also, there is a 5 cent per hour contribution that funds this commission that is part of the union contract.

With respect to your second issue with damages, I hate to say it, but I would oppose any effort to award more than just attorneys' fees and costs. That is a pretty serious matter. That would make the employer whole, and maybe they are not being compensated for their pain and suffering for having been sued, but I do not believe you could ask the employee to pay that in addition to the reimbursement for attorney's fees.

**Assemblyman Hardy:**

I think it needs to be there to keep that frivolous lawsuit from happening. Why would they sue if they did not think they were on solid ground?

**Assemblyman Ohrenschall:**

You mentioned that the Labor Commissioner has been less than enthusiastic in bringing some of these actions. If your bill passes, do you think that these

wronged employees will be able to find attorneys who will take their cases? Will it be too cost-prohibitive for attorneys to take these cases?

**Assemblyman Segerblom:**

It is just speculation, but if the attorney knows he will collect attorney's fees, he would be willing to go for it.

**Assemblyman Goedhart:**

I appreciate the intent of this legislation. You want to compete on a level playing field. If you let people who are violating the rules go unpunished, it puts the "good guys" out of business. My concern is the amendment that adds compensatory damages. Could you give me a scenario showing what that would mean? If a gentlemen had been working for five or six months and was due \$20,000 in back wages, besides that amount and court attorneys' fees and costs, what would compensatory damages do to the award? Would it be awarded by a judge or jury, and how do you determine what that value is?

**Assemblyman Segerblom:**

Realistically, it would be for the ancillary costs, such as if you had to file bankruptcy, you lost your house, and you lost your car. There are things that flow from the fact that you were underpaid.

**Assemblywoman Kirkpatrick:**

I need some clarification. There are two amendments. One is from Mr. Segerblom and one is from Clark County.

**Assemblyman Segerblom:**

The intent of the Clark County amendment is that if an employee goes right to court, the government agency does not have to investigate. Right now, if a complaint is filed, they have to start an investigation. It saves the government money.

**Assemblywoman Kirkpatrick:**

So the employee would file a lawsuit and the government would be totally out of it?

**Assemblyman Segerblom:**

It could be that the local government does the investigation and then a lawsuit is filed. It depends on the timing. If the lawsuit is filed first, they do not have to do an investigation.

**Dylan Shaver:**

Following up on what Mr. Segerblom said, right now the public bodies are not the only investigative bodies. The LMCC conducts rather lengthy investigations into these matters. It is not as if once the lawsuit is filed, all investigation would stop. Obviously, they would still seek to prove their case.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in support of this bill?

**Constance Brooks, Senior Management Analyst, Office of the County Manager, Clark County:**

We are in support of A.B. 84. As the sponsor alluded to, we have an amendment, and at the Grant Sawyer State Office Building we have Mr. Thomson from the Clark County District Attorney's Office who will provide a greater context for that amendment and answer any questions that you have.

**Chair Atkinson:**

Are you going to allow Mr. Thomson to cover the entire amendment?

**Constance Brooks:**

Yes.

**Lee Thomson, Chief Deputy District Attorney, Clark County:**

The amendment we proposed, and Assemblyman Segerblom accepted, is to include an additional section that says if a wage claimant were one of these labor-management committees, and it files the lawsuit, the local government is not obligated to conduct the investigation as currently required under NRS 338.070. I think that it is self-explanatory and there should be no need to go through the Labor Commissioner's procedures. I can answer any questions you might have.

**Chair Atkinson:**

Does anyone have any questions about the proposed amendment? I see none.

**Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada:**

We support the concept of this bill. The issues surrounding enforcement of prevailing wage have been problematic for years. Several years ago, when Terry Johnson was Labor Commissioner, he introduced a lot of legislation to try to clarify, simplify, and help with the enforcement of prevailing wage by including the public bodies in the enforcement process. That has led to a couple of issues. The main issue is that when a public body signs a contract with the

contractor to do a public work, it feels it has become the advocate of that contractor. When prevailing wage violations are found, and that the public body did not catch them, the public body feels it has to defend that contractor, not investigate and prosecute.

Built into the legislation that Terry Johnson introduced were penalties for failure to pay wages for the amount of time they failed to pay wages. Once the complaint was forwarded to the Labor Commissioner, he had the right to assess fines. That does not occur. The solution is if everything is okay at the end of the day, then we do not assess any fines. As an example, on the Sparks Marina project we had wage complaints against one electrical contractor that had over \$650,000 worth of assessed penalties for failure to pay proper wages. About \$25,000 in back pay was owed for workers who were improperly paid. They were made whole, but there were no penalties assessed by the city. They requested the Labor Commissioner waive those penalties, and the decision was made that a clerical error had caused these underpayments.

This contractor had the same violation on a subsequent project. Complaints were filed again, they were found to have been in violation of the rate of pay again, and there were no administrative penalties assessed against them. They continue to do business the same erroneous way.

One way this bill will help to stop this practice is if a worker is underpaid and he gets compensatory damages, the courts can award penalties that the Labor Commissioner and the public bodies are avoiding.

I have many prevailing wage cases. There are three file boxes filled with prevailing wage complaints that were filed over the Cabela's project in Reno. We went to the Nevada Supreme Court a few months ago over the enforcement of prevailing wage on the project. We have not even reached the point of resolving any of the issues, or investigating them, because the City of Reno decided it did not want to investigate and the Labor Commissioner ruled that the law was vague on who should enforce it, and he did not want to take jurisdiction over it. The district court ruled that he needed to investigate those complaints. While he was ready to abide with that decision, the City of Reno appealed, and it is just now going to the Supreme Court. It has been over four years. Some of those workers still have not been made whole for the wages they were underpaid on that project.

There is another issue at the Tahoe-Reno Industrial Center. A public works complaint was filed on that project over two years ago. Storey County has refused to investigate, and the Labor Commissioner has not followed up on it. Those workers would have had a right of action under this provision of the law.

We applaud the Assemblyman for bringing this bill. We think that it gives the workers a course to follow when they are not given a just solution after being underpaid on public works jobs. We are not sure we agree with the amendment from Clark County. We are afraid that this will mean that the public body can say that, under the law, the employee has a right of action, but the public body does not need to investigate. I have a concern about that.

**Chair Atkinson:**

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

**Greg Esposito, Business Representative, Local 525 in Las Vegas and Local 350 in Reno, Plumbers, Pipefitters, and HVACR Technicians:**

It is difficult to count how many craftspeople come into my office every year, having been cheated out of the wages that the law promises to them on public works projects. They know, as a union, we stand for workers rights; we stand up for the little guy. They ask what we can do to help, and our hands are tied. We cannot do anything to help. They have to fight their own fight. We can help them fill out paperwork, we can help them compile their own evidence, but ultimately they have to take it down to the Labor Commissioner's Office themselves.

In good times, I am sure, the Labor Commissioner was overstaffed with investigators and everything was processed in a timely manner. Now that budget constraints have reduced staffs, I am sure the backlog of complaints is starting to grow. That backlog represents workers who have not been paid the appropriate wage. They are hoping to be able to pay their bills, and yet they cannot because they have no way to fight on their own. Lawsuits are expensive. Lawyers are expensive. As workmen they do not know how to proceed.

We are in strong support of this bill. It would enable someone to speak on their behalf. When there are issues of civil rights, the American Civil Liberties Union (ACLU) can speak for a person, and other organizations can do the same. This bill would help associations like LMCC help the little guy.

To speak to Assemblyman Daly's comments, my union does not have an LMCC. We would appreciate having the ability to help these workers to get legal assistance so they can be paid the just wages they deserve.

**Chair Atkinson:**

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

**Jack Mallory, representing District Council 15, International Union of Painters and Allied Trades, and Southern Nevada Building and Construction Trades Council:**

I would like to draw a comparison to a similar area of law, which is wage and hour law. Under current statute there are two ways that an employee who has not been paid appropriately under wage and hour laws can pursue action. He can either pursue administrative action through the Labor Commissioner's Office or pursue civil action in district court against an employer for failure to pay overtime or minimum wage. We believe that this bill would effectively bring this section of law more in line with existing wage and hour laws in Nevada.

In the last five years, District Council 15 has pursued civil action against seven employers on behalf of workers for wage and hour violations, which would be failure to pay overtime and, in some instances, failure to pay minimum wage. These suits have been filed on behalf of several thousand workers, and to date we have paid approximately \$5 million in attorney fees on behalf of these workers. This is about fair competition in the market. There are many problems in the construction industry today. You will hear bills on worker misclassification. We believe that this area of law should be similar to the statutory remedies that are available to workers under current wage and hour laws.

**Chair Atkinson:**

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

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

This is nothing new. The prevailing wage in the county we are working in is supposed to be paid. One contractor would pay the same price for materials as any other contractor. The difference in the bids should not be that much. You can look at a bid that has a 5 or 10 percent difference, and you know the only way the contractor would make up that money is to cheat. This has been going on for too long. We have caught contractors building schools in Clark County using workers that do not speak English and paying them \$10 per hour. They tell those workers they have to pay back the contractor \$100 a week or they will be fired. Or they put those workers on a prevailing wage job, charging the entity the prevailing wage amount while having the worker work somewhere else.

I could fill this room up with complaints. One problem is that not enough is done to fine these employers once the money is recovered. Recovering the money is not enough. If you are going to allow a contractor to come here and cheat, and the only penalty has to do with what they were supposed to do, then no laws would be enforced.



Why are these contractors not fined? Good contractors are trying to compete with these cheaters. Once those fines start stacking up, that record goes with that contractor, and entities awarding these bids would be less likely to do business with those contractors.

Once you start fining, it would bring an end to this practice. We support this bill.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblywoman Bustamante Adams:**

When the contractor is caught, how long does it stay on their record?

**Danny Thompson:**

I do not know. The practice now is to recover the money, and there does not seem to be a follow-up fine against the contractor. Recovering the money is not enough. If the contractor is not fined at all, there is no record of anything. It puts the good contractor at a disadvantage when competing against the bad contractors.

**Assemblywoman Carlton:**

This is taxpayer dollars we are talking about. This is more than cheating. This is blatant misuse. The fact that no one goes after the contractor for misappropriation of public dollars surprises me. I always thought that fines were given out. A contractor could lose his license for offenses less serious than this. This is bothersome to me.

**Assemblyman Goedhart:**

You said that, the way it works now, the worst thing that can happen for the contractor is to have to pay what he should have paid anyway. You state this bill would act as a fine. Is that the compensatory damages? Are there not statutes in state law that provide for a fine, but administratively those fines are not being levied?

**Danny Thompson:**

That is correct. There is the ability to fine, but the practice has been that once the money has been recovered, everything is forgiven. If I am a contractor and I am competing against someone who is cheating, I am at an extreme disadvantage.

**Chair Atkinson:**

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

**Randy Soltero, representing Sheet Metal Workers Local Union No. 88:**

We are in favor of this bill for many reasons. I have been writing notes down with the various questions and will try to answer some of those with my testimony. The reason for this bill is because the Labor Commissioner has been less than enthusiastic about enforcing some of the complaints. There are laws in NRS Chapter 338 that will provide penalties and, if they were followed, could provide for disqualification. What generally happens, in my experience, is it never gets to the point of a hearing. The only way that it can go on the record is for the complaint to go to a hearing. Most are settled at a prehearing level where there is no record.

There was a case involving the Sheet Metal Workers Union on behalf of Washoe County School District. In that case a deputy labor commissioner came into the room, and a contractor who had violated the law was there. About \$120,000 worth of penalties had built up against this contractor. The deputy labor commissioner said, "Here is the deal." If you agree to pay the back wages that you owe these people, the penalties will go away. No harm, no foul. Well, the contractor was eager to do that. At this point all he had to do was pay what he was required to pay. There would be no record against the contractor.

I wish there was no need for this bill. I think there are vehicles in the current law that, if they were enforced, would stop these practices from happening. On the Labor Commissioner's website there is a mission statement that talks about the protection of workers. It is, however, the workers who are not getting paid or are being violated.

Our union has two members who do compliance investigations on a full-time basis. Part of our investigation entails going to contractors who are suspected of violating the prevailing wage laws. We tell them they have to make the workers whole and that we are ready to take the complaints to the Labor Commissioner. We have been told more than several times, "Who cares; go ahead, the Labor Commissioner is not going to do anything anyway." We have had contractors who had to pay their workers 50 cents on the dollar.

With all due respect to the Labor Commissioner's Office, I understand they are busy and overwhelmed with cases. That is because there are organizations like mine who pursue these issues. This is not a union-nonunion issue. Clearly, 95 percent of the people who ask us for help are not represented by our organization.

It seems the remedy through the Labor Commissioner's Office is not working. This bill would be a viable way for workers to get paid what they are owed.

**Chair Atkinson:**

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

**Keith Lyons, representing the Nevada Justice Association:**

We support this bill as it is written. We believe it will help individuals correct a wrong that they have suffered and give them a remedy where previously the remedies were not complete.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone wishing to testify in favor of this bill? I see none. Is there anyone wishing to testify in opposition?

**Steve Holloway, Executive Vice President, Las Vegas Chapter, Associated General Contractors:**

I do not see our representative from northern Nevada; I am authorized to speak for that chapter as well. Between the two chapters we represent approximately 800 contractors, both general contractors and subcontractors, both union and nonunion. We are adamantly opposed to A.B. 84. We think the intent is good, but we think this is a bad bill.

Several years ago, this Legislature addressed the problem that I see them trying to address with this bill. The problem appeared to be that the Labor Commissioner was short of staff, and proper investigations were not able to be done. The Legislature addressed this by requiring the public works agency to be responsible for the initial investigation. An employee or a union—most complaints are filed by unions representing employees—makes a complaint to the public works agency, which is then required to investigate the complaint in a certain amount of time. The agency then issues an initial determination. If the employee or the union is not happy with that determination, they may file an appeal with the Labor Commissioner. The Labor Commissioner must then investigate that complaint and make a determination. This is part of an administrative procedure. There is nothing to bar any employee or any union from filing a lawsuit once that administrative procedure is completed.

This bill will not speed up the process for the employee. The administrative procedure usually results in a finding that is satisfactory to the employee involved. I think the Labor Commissioner can address that better than I can. What it will do is make these matters much more costly. I would call this a full employment bill for trial lawyers.

There is another overwhelming problem with this bill. By the time these cases reach court, the subcontractor is gone and out of business, and the individual

who gets stuck with the problem is the general contractor. Many subcontractors are not in contractual relationship with the general contractor. We are speaking of several tiers of subcontractors. You might have a general contractor, a tier of higher-level subcontractors, another tier of lower subcontractors, and below them, a tier of suppliers. I think the present procedure is working well. There are always exceptions to a rule.

I would like to address another question that was raised. The contractor who is at fault in a prevailing wage complaint, if it is egregious, may be fined by the Labor Commissioner. If the transgressor is reported to the Nevada State Contractors' Board, the contractor may lose his license and may also be fined by that Board. This has happened.

There are a number of bills pending that address some of these bad actors. Some of these contractors use Internal Revenue Service (IRS) Form 1099-MISC which report miscellaneous incomes, and other means to avoid paying prevailing wage rates. When that happens you will find my organization on the other side of the table; that is, we will be supporting those bills.

No contractor wants to compete with somebody who will not be paying the prevailing wage rate on a public job. None of our contractors want to compete with somebody on a private job that will not be paying the minimum wage. This bill does not address the problem; it will only make it worse.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Daly:**

You are not denying that there are contractors who cheat; you are just saying that the procedure under NRS Chapter 338 or through the Labor Commissioner is adequate, is that correct?

**Steve Holloway:**

That is correct. I think other bills that are pending more adequately address these problems. I think the present procedure is working. I do not think this bill will improve that procedure.

**Assemblyman Daly:**

Having some knowledge of this process, I disagree with you that it works well. Part of the problem is that when an issue comes before the Labor Commissioner, he has the authority to adjudicate the complaint, and there is frustration because there are no fines levied. It is very difficult to bring these complaints to the Labor Commissioner.

**Assemblywoman Carlton:**

I would like to talk about what I see in the bill as far as gaining standing. If there was a dispute between one of your contractors and one of their subcontractors, would they have to go through the same hoops to get standing in court that an employee now has to go through? Is it a level playing field for everyone involved in this?

**Steve Holloway:**

Right now, most of the contracts would require that they go through arbitration or mediation if they could not resolve the issue directly before they could proceed to court. Then, if the lien law was involved, there would be . . .

**Assemblywoman Carlton:**

That is outside my question. I am just talking about the thresholds that people have to cross in order to have standing in a court case.

**Steve Holloway:**

No, the threshold is not the same. It is not as great. The threshold for a contractor to get to court is lower than the current threshold for an aggrieved employee to get to court.

**Assemblywoman Carlton:**

You had talked about the different levels and the possibility of an employee going to the general contractor because the subcontractor left. In this bill it specifically says that the employee can go "against an employer" so, the general contractor would not be considered the employer. We are talking about the person who cut the paycheck, not the general contractor, correct?

**Steve Holloway:**

That would help if it was on record. Yes.

**Assemblywoman Carlton:**

The way I read the bill, under section 1, subsection 1, it says, "The following persons may commence an action in a court of competent jurisdiction against an employer. . . ." So it limits it to the person who is signing that employee's paycheck.

**Steve Holloway:**

I agree.

**Chair Atkinson:**

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

**Warren Hardy, representing Associated Builders and Contractors of Nevada:**

I will try not to repeat what Mr. Holloway said. This bill comes from an appropriate level of frustration. We share that frustration. There are contractors who cheat, and they ought to be caught and prosecuted to the full extent of the law. It creates an unlevel playing field for those trying to do it properly.

The question today is not really should these allegations be pursued; I think we all agree that they should. The question should be what is the appropriate way to do that? How do we get a resolution for the worker as quickly as possible? I have never heard that going directly to court is a remedy to get a solution quickly.

Is this the best way to do this? We submit that it is not. I do not think the remedies in place have been fully vetted. I would like to provide one other bit of information for your consideration. We know there are contractors who cheat, but for every one of them there are many who are trying to do it right. Job classifications can be confusing. There is no direction. The contractor is left to determine which classification should be applied to that job. Contractors have even reached out to the Nevada State Contractors' Board and asked how they should classify this work. They were given a suggestion, they did it that way, and at some point a complaint was filed and they were found to be in violation. There is no clear direction. There should be something that contractors can rely on to be able to appropriately classify the work.

I would ask that you consider not only those who are cheating and doing it improperly, but those who are trying to do it properly. If a human resource professional at a construction company is doing his best to guess about what the classification should be, and they are not able to do it, is a jury really going to be able to appropriately do that?

My other concern is that it might lead local governments to say, take it directly to court. I think that would clog the courts and not meet the end goal of getting the workers their rightful compensation quickly.

This bill addresses an individual employee or labor-management committee. I would like to see that extended to an association like mine to be able to pursue serial offenders. In conjunction with this, if we really want to self-police the way the unions do, we would be willing to consider having an allowable 5 percent contribution be applicable to the nonunion side, so that we could go after those violators.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblywoman Carlton:**

This bill is about employees being able to have standing. You said you do not want people to run to court first. Nobody wants to go to court first. Because it is more difficult for employees to have standing—that is what this bill is about.

Your organization represents contractors, so you are not advocates for employees; you are advocates for the contractors, right?

**Warren Hardy:**

We like to believe that we advocate for all those that we employ.

**Assemblywoman Carlton:**

Is there anything now that prohibits the Associated Builders and Contractors Association from policing itself and dealing with those cheaters who are misusing tax funds?

**Warren Hardy:**

No, there is not. We have the latitude to revoke their membership. We do not have the ability to collect the allowable contribution that the unions currently collect in order to police prevailing wage.

**Chair Atkinson:**

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

**Michael Tanchek, Labor Commissioner:**

I was not going to testify today, but after listening to the testimony, I thought it would be a good idea to try to clarify some of the testimony.

You heard a laundry list of complaints from Mr. Leigon; I could give you a list that is ten times longer. In the past seven months, I have issued final awards on 151 investigations. That is a rate of about one every eight hours. I have collected about \$719,000 in back wages since last July. About one-third of that amount was a contractor who had his benefit package for his employees in the wrong place. The money was there and it was secure. We told him he could not do it that way, the money came out of the account, and the employees were immediately paid.

In addition, you hear there was never any action taken against these employers. I went to the Supreme Court on one issue that concerned the question of fines and disqualification of contractors. If a contractor is issued a fine on a

prevailing wage job, he must be automatically disqualified from having any public works contracts for a period of three years. During the past two sessions I have tried to work to get some relief from that, so I can issue administrative fines against these evil-doers who are doing bad things that do not rise to the level of having to put them out of business. I cannot do that. My choice is putting them out of business or not fining them.

In the past six months I have disqualified six contractors. These six were subcontractors who left their prime contractors and the bonding companies holding the bag on the wages for those employees. We were able to recover all the wages for those employees. I did not punish the bonding company or the prime contractor for the sins of the subcontractor.

I have collected \$134,000 in forfeitures. Those are not technically fines. The previous testifiers did not mention that. The fines work similarly to liquidated damages. The contractor violates the provisions, sometimes on purpose and sometimes not. I take that amount of money and it goes directly to the public body as a form of punishment for violating the prevailing wage laws. It is wrong to say that the Labor Commissioner does not punish anybody or fails to take any punitive action.

Most of the recent complaints are still under review, and they are complicated cases. One case involves 11 different projects being investigated by three different public bodies. They are trying to coordinate everything so they can determine what the contractor did. It has not been directed to me yet. It does not look good for that contractor.

I looked at the last 25 final orders that I have issued on prevailing wage projects, most of which deal with complaints that were filed by labor-management groups. Out of those 25, 6 had to do with late filing of paper reports. From the remaining 19 claims, there was a total of \$1,686.56 in back wages owed on 11 claims. That averages \$153 per claim. Some might think it would be cost-effective and beneficial to take those claims into court, but at that average claim amount, it would not be worth it. The remaining ones were significant claims that were investigated, and we did recover the wages from those contractors.

Mr. Esposito brought up the issue of his union not being able to bring claims. I think that might be a misunderstanding on his part. We do have the unions themselves, not just the management committees, that do step up and file complaints on a regular basis.



There was some testimony that this should be treated like a fair labor standard approach. The problem would be that in a wage and hour context you generally have an employer and an employee. The types of prevailing wage problems are more like a third-party beneficiary situation. You have the contract between the public body and the contractors rather than the contract between the public body and the worker. It would not lend itself to the fair labor standards action type of approach.

**Assemblyman Ellison:**

How many of these filed cases do you feel were disgruntled employees?

**Michael Tanchek:**

Are you speaking about the complaints that were filed by the employees themselves? It would not be very many. Most come from the LMCCs.

**Assemblyman Ellison:**

Of the complaints from management groups, how many are thrown out for no merit?

**Michael Tanchek:**

Very few have no merit. For example, the average \$153 claim denotes that there is some merit to their claim.

**Assemblyman Ellison:**

There are a lot of good contractors. Most are not out to beat the system.

**Assemblyman Grady:**

It used to be that the payroll was certified, that the entity could ask a certain number of people if they were classified correctly and if they were getting paid correctly. Is this done anymore?

**Michael Tanchek:**

I hope it is. I used to train local government bodies how to investigate and monitor these types of situations. The public bodies should be reviewing and looking for red flags. I am guessing that most of them do that, to some extent. Some agencies, like the Nevada Department of Transportation (NDOT), have complete staffs that review these issues. With some of the smaller entities, that duty might be delegated to the assistant deputy city clerk. The Clark County School District and Washoe County School District have staff members who deal with the investigations.

**Assemblyman Daly:**

Could you give me a ballpark figure on how many determinations have come back to you from awarding bodies?

**Michael Tanchek:**

I do not know. I would have to check with my deputy and the investigator. I know there is a backlog. I am in the process of getting final orders on 23 cases. Eight cases are on my hearing calendar.

**Assemblyman Daly:**

How many of those backlogged cases have not been acted upon within the 30 days, as called for in the *Nevada Administrative Code*?

**Michael Tanchek:**

I could not give you a good number. Obviously, the ones that are set for hearing are not going to make the 30 days. Many of the cases have been sent back for action by the public bodies.

**Assemblyman Daly:**

Is 30 days an adequate time for dealing with these cases?

**Michael Tanchek:**

The time is adequate for some cases. There are some cases that are beyond 30 days.

**Assemblyman Daly:**

This is where some of the frustration is. When the Labor Commissioner gets the complaint, it goes to the awarding body. The awarding body does its investigation and makes a determination, and it is sent back to the Labor Commissioner. The Labor Commissioner's Office does not do the investigation. It just has to review the determination and do one of five things: send it back to the awarding body for further investigation, modify it, confirm it, set it for hearing, or decline jurisdiction. I think you would find that you have over 50 percent of the cases not remedied in 30 days.

**Chair Atkinson:**

Are you suggesting, Mr. Tanchek, that there are a few problems and perhaps they are not being addressed with the different remedies? Also, what are those remedies?

**Michael Tanchek:**

I am not sure I understand your question.

**Chair Atkinson:**

Reading the bill and what the bill is proposing to do, there are perceived issues. I know you cannot go in depth on the cases, but are they involved in the same type of issues, or are they totally separate?

**Michael Tanchek:**

We have many issues to deal with. It could be a case of someone being paid as a laborer who should have been paid as a carpenter. Sometimes there has been a problem with the apprentices, and the workers are really not apprentices and should be paid as journeymen. Nevada is one state that has an eight-hour overtime requirement on its prevailing wage projects. We have issues where a contractor walks away. No one was paid, at all. We see a variety of cases. Sometimes the problem is people who did not know any better, and other times it is just stupid mistakes. In some cases it is people who are bad actors. We need to treat them all differently.

**Chair Atkinson:**

I was just trying to get a couple of examples.

**Michael Tanchek:**

May I follow up on that? There is a tool that I could use that might help address some of these issues. That would be disconnecting my ability to levy administrative fines instead of being disqualified from future public works projects. In other words, I could levy a \$5,000 fine without having to put them out of business. I think that is a tool that I do not currently have and which would be useful.

**Assemblyman Hardy:**

I am surprised that is not in place for you. I know with the Nevada Department of Transportation those fines can be levied against the contractors if they do not make their reports on time or meet certain goals.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in opposition? I see none. Is there anyone wishing to testify in the neutral?

**Renny Ashleman, representing City of Henderson:**

The Clark County amendment is something that we do support. If this bill is to be processed, I am hoping there will be a subcommittee that will work on language. We think it might need some tweaking to handle the relationship between the lawsuit and the investigations. We would like to be included in any such subcommittee. One piece of information that the Committee might

find interesting is that I think Mr. Holloway and Mrs. Carlton might have been talking about two different purposes. What happens under the present scheme is that the money that is paid comes out of the "withholds" by the prime contractor; then he does have to pursue the subcontractor. Under the proposed language, the lawsuit would be directly against the offending employer. I hope that is of some help to the Committee.

**Chair Atkinson:**

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

**Assemblyman Segerblom:**

All we are saying is that we are offering employees an alternate route. The Labor Commissioner is there, and if they feel that is acceptable, they can go that way. But there is a lot of frustration because the process is slow. Lawyers will not take a case if there is only \$100 involved. These are mostly the larger cases where the employee-management committee has done the investigation and it is easier to go right to court.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Mr. Segerblom, we will give you some time to work these issues out. We will close the hearing on A.B. 84.

We will open the hearing on Assembly Bill 162.

**Assembly Bill 162:** Revises provisions governing the use of consumer credit information by an insurer. (BDR 57-910)

**Assemblyman Paul Aizley, Clark County Assembly District Clark No. 41:**

I am the sponsor of this bill. Mr. Rathje is here to add his comments after my testimony. [Read from prepared testimony ([Exhibit J](#)).]

**Ed Rathje, Private Citizen, Reno, Nevada:**

I am retired and I teach instrument flying part-time. The Highway Patrol is my occasional customer. I teach their single-engine pilots how to fly in the clouds. My education includes an engineering degree from Stanford and an M.B.A. in quantitative methods from the University of California, Los Angeles. When I was in graduate school I worked as a programmer on the Surveyor, the first spaceship to land on the moon. During the 1960s, I worked on the first Air Force spy satellite which was classified until 1995. [Submitted additional testimony ([Exhibit K](#)).]

My first experience with insurance scoring was six or seven years ago. I had been a customer of Amica Insurance, one of the highest-rated companies in the country. After 40 years with that company, they started using insurance scoring, and my premium went up \$70. On the front of my policy it said, your premium is up and here are the four comments. The first comment was "excessive or unknown amount of car financing." I called the company to ask what that meant. They stated they could not explain it. That comes from insurance scoring. I asked if I could ask the insurance scorers. They told me, "No." It took me two years to find out what that was. I did have two car financing items on my credit report. One of them was six years old, had a zero balance, paid as agreed. Unfortunately, the magic word "closed" was not on the report. The insurance scoring computer assumed that if it was not closed, it was still active. That is what led to the "excessive or unknown amount of car financing." That statement, on its face, is ridiculous. If it is not known, how can you use it for a rate change in your car insurance? But they did.

The next year it went up even more, and I left that company and started doing a lot of research. I have six years of research. The problem is that insurance scoring is not transparent, in spite of what you may be told by the industry. The inscrutable comments that a consumer gets on his quote do not relate directly to the raw data on your credit report. I have my credit report, but nowhere did the scoring say that that particular account was still open. The insurance company could not explain it; the insurance scoring company would not explain it.

For those of you who are not familiar with statistical correlation, let me give you a brief example to show you how much it is worth. I was first exposed to it in seventh grade when I read my first Tarzan novel. Page 1, Tarzan is lying on the jungle floor looking up at the trees and the blue sky. All of a sudden the trees start to move back and forth and the wind comes up. He logically assumes that the trees caused the wind. That is statistical correlation.

Thanks to the federal Fair Credit Reporting Act, anyone can get access to the raw data on his credit report. You cannot get access to your insurance score report. There is no federal law protecting consumers, and most consumers do not have six years of college and the stubbornness that I have to pursue this, to protect themselves against the abuses from what I consider to be a stealth industry. People know about credit reporting, but if you ask 100 people on the sidewalk, 99 will have no idea that there is an industry such as insurance scoring.

I got a verbal quote from another company, and when I asked for the details, was told that I could not get the best rate because at the age of 63, with 41 years of great credit history, I did not get a credit card at age 18. Therefore, I would never get the best rate. The bottom line is, it is a stealth industry. It is not transparent, and it is not easily correctable. There is no federal insurance score reporting. A leading company said, "The predictive power of the scores is not claimed to be based on a causal relationship; rather it is based on empirical correlation."

I would be glad to elaborate on lots of examples and lots of research.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Hickey:**

This question is for Dr. Aizley. I assume that there are other factors beside this raw credit data that go into deciding rates and, of course, the market plays a role, since there are a number of companies that people can access. You do not dispute the notion that there can be, and almost always is, certain criteria. Do you have a problem in general or just in particular with this method?

**Assemblyman Aizley:**

I am a mathematician, not a statistician. Mathematicians prove things without an error factor; statisticians have error factors in almost everything they do. There are other factors. I do not know how important they are. I do not think you can prove that credit scores affect the way you drive. I do not think you can prove that credit scores cause your house to have damage. In my mind they do not connect. One is not the function of the other.

I have read some of the material. Yes, there is a correlation, but as Mr. Rathje pointed out, lots of things correlate but they do not, necessarily, cause what is going on.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. I am concerned about the correlation. We have seen this bill in a few different sessions. I continue to be concerned. I think this is credit profiling. People's credit ratings are suffering today. It was explained to me yesterday that I should not worry; it is just a component of the rating. There could be ten factors and this is only one of them. If it is only one factor, why use it? My credit does not tell you what kind of driver I am. I agree with you, Mr. Aizley. I think something should be done.

**Assemblywoman Kirkpatrick:**

My insurance went up because I had rented a place here in Carson City and they did a credit check on me. My question is, did anyone give us information on what particular criteria are used? I wonder if it has changed.

**Assemblyman Aizley:**

I do not have any knowledge of what they are using. I did not do an extensive investigation. I did ask what is being used. I know they consider it proprietary. They do not want to talk in front of each other about what they are using. One company does not want another company to know how they are doing the credit scoring. It certainly is not transparent. I would like to know what I could do to improve my score, which you are unable to do without knowing what the rules are.

**Assemblyman Ohrenschall:**

Are students who are applying to the University of Nevada, Las Vegas (UNLV) required to give their credit history?

**Assemblyman Aizley:**

No.

**Assemblyman Ohrenschall:**

Why are they not required? Why does the university not care about their credit history?

**Assemblyman Aizley:**

I can only speculate that it is irrelevant to what they are doing.

**Assemblyman Ohrenschall:**

So there is no causal connection between someone's potential success at the university and their credit history?

**Assemblyman Aizley:**

Most of the students do not have a credit history. The average student at UNLV graduates at about age 27, so there would be some, but I do not know anyone on the campus who ever did that study.

**Assemblyman Goedhart:**

I know there are a lot of different insurance providers. Do they all use credit scores? It seems to me that there would be a marketplace of enough different providers that if one made a mistake in judging your profile, there must be other companies that got it right.

**Assemblyman Aizley:**

I think that is a better question for one of the other people. I did not know if my own insurance company was using credit scoring, but I was told during this process that they are doing so. I was unaware it was being done.

**Chair Atkinson:**

Most people pay in advance. There is no application for credit. I do not see why credit scores are needed. The insurance company cannot place anything on your credit report for not paying the premium.

**Ed Rathje:**

I think I have an answer to your question. When I first learned of this in 2003, it was the first year that my insurance company started using it. I spoke to a vice president who was very helpful, but his hands were tied because it was a corporate policy. The leading purveyors of insurance scoring sell it. The philosophy from their white paper, which they sent to me, basically guarantees that the insurance company will give a good quote to the top 5 percent of the risk factor, and it will help guarantee that they give a poor rate to the bottom 5 percent. The middle 90 percent is where the mistakes take place. It is like a technical college admitting students only from the verbal SAT score. It is a cheap, easy way. It is not transparent and very difficult to correct. There is no fair insurance score reporting.

The web page of that insurance scoring company bragged about going after the biggest insurance company, which could now shed the bottom 5 percent of the worst risks, leaving it for other insurance companies. I fled from company A to company B and so on. I have been alert enough to keep ahead of it, but the average consumer cannot do that.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else in the audience wishing to testify in favor of A.B. 162? I see none. Is there anyone wishing to testify in opposition?

**Jennette Belz, representing Property Casualty Insurers Association of America:**

My client is a property casualty trade association whose companies represent about 39 percent of the first line of business sold here in the State of Nevada. I am going to make a few opening remarks and then turn the microphone over to Mr. Rosenberg from TransUnion.

I am glad you mentioned 2003 because I was there at that time when the concept was put into statute. You will see in current statute, which we have attached ([Exhibit L](#)), there are protections for consumers. It was very important



that consumers were protected with regard to credit scoring. For example, insurers cannot deny, cancel, or renew a policy solely on credit information. That is one of the factors that they use. Not all insurance companies use credit information. Insurers also cannot take any adverse action against a consumer solely because the consumer does not have a credit card. In Assembly Bill 74, section 30, you are considering some increased protections relative to extraordinary life circumstances, such as deployment overseas or illness. Those are measures that we strongly support. We encourage you to consider those as you consider the bill.

The second comment I would like to make is regarding what the Division of Insurance is doing with regard to consumers and consumer protection. I would like to refer you to a February 2011 document, "Report on the Nevada Insurance Market," that the Insurance Division produced [not provided as an exhibit]. I would like to read a paragraph from page 74 of that report:

Since mid-2009, Division actuaries have undertaken an in-depth examination of the [credit-based insurance scoring] CBIS models used by Nevada-licensed insurers. Insurers who submitted a rate filing were requested to submit their CBIS models as well. Each submitted model was closely examined by Division actuaries with several rounds of questions. If the insurers or third-party vendors were unable to justify a specific treatment in the model through statistical data, they worked with the actuaries to amend their CBIS models to remedy treatments that were found to be unfairly discriminatory, contrary to good public policy, or punitive toward responsible consumer choices. This process extended to each of the three well-known third-party vendors of CBIS models, with each vendor implementing consumer-friendly changes to its models.

I just want to make the point that the Division takes this very seriously. From, and in, my conversations with them, they appear to have worked very hard over the last couple of years, since this topic was addressed, to improve their understanding and analysis of credit scores.

**Chair Atkinson:**

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

**Eric Rosenberg, Director, State Government Relations, TransUnion, Chicago, Illinois:**

TransUnion is one of the three principal consumer reporting agencies in the nation. We have operations in 25 countries, where we provide not just credit

information but information to help businesses understand who they are going to lend money to or grant a policy to. We do not determine rates or premiums. [Presented additional written testimony ([Exhibit M](#)).] We do not accept or reject applicants. Our credit-based insurance scores, as well as our credit data, are used by carriers in Nevada and across the country.

For us, the security and accuracy of the information which we provide to our customers is our highest priority. We are opposed to A.B. 162. We think that the current law is very mature, and the marketplace is also mature. We find that 24 out of 25 top carriers are using credit information to make underwriting and rating decisions.

I want to address three major points. The first goes back to the issue of transparency. The second point is that the insurance scores do not contain anything that would be unfairly discriminatory against classes of consumers. The third point is what we see, and what consumers and regulators have told us, are the benefits of using credit-based insurance scores.

I would like to juxtapose my testimony with those before me by saying that credit-based insurance scores are completely transparent. After 2003, when credit-based insurance scores began being widely used, our customers found out just how predictive they were, and understanding policyholders' loss ratios, we decided to disclose scores to consumers upon request through our website, and I know other score providers do this. You can go on to our website at any time and get a copy of your TransUnion insurance risk score. We encourage consumers to do that when they are shopping around for a policy, much as when they are shopping for a mortgage or a credit card, to make sure they are getting the best rate and that they can correct any inaccurate information.

We have developed our insurance scores and the credit reports to be completely transparent at every stage of the policyholder's life cycle. If you have been denied insurance because credit was part and parcel in determining those rates, you can get access to the credit report and also the score that was used. Long ago, we disclosed all of our models in states that allow third parties to file on behalf of the carriers. This includes all of the information that goes into the models, how they were developed, the different weights, and how consumers can correct anything along the way. All that information is up on our website. If a legislator or a consumer were to request that information of us, we would be happy to disclose it.

The second thing I want to address is that insurance risk scores do not contain any variables that unfairly discriminate against classes of consumers. The Office of the Comptroller of the Currency has established a broad group of items

that cannot be included within either credit scores or credit-based insurance scores. None of that information is contained within the credit report; thus, it is not used as part of the credit score.

**Chair Atkinson:**

This is the second time you have said "classes of consumers." What do you mean?

**Eric Rosenberg:**

Classes being male, female, and age groups. In insurance we deal with classes, meaning groups.

**Chair Atkinson:**

So there is a group, a class of people, whose credit rating is in the tank now that might be affected by this? Are they in a different class as well?

**Eric Rosenberg:**

No. I guess I do not understand what you are asking.

**Chair Atkinson:**

We all view classes differently. I just wanted your definition of class.

**Eric Rosenberg:**

It would be a group. Class is part of the terminology used in our industry. For underwriting and rating it is the grouping of individuals.

**Chair Atkinson:**

You are referring to credit; we all get that part. We are more concerned about how it correlates with the rates for insurance purposes. We understand that people can fix their credit report. We are trying to correlate that to this topic. I am confused at the moment. I am going to let two of our members ask questions and then you can finish.

**Assemblywoman Kirkpatrick:**

Times are so different now. Neighbors of 20 years are losing their homes over a loss of a job and medical bills since they do not now have health insurance. I often check my insurance rates to make sure I have the best plan for myself. What happens is, companies will not talk to you without running your credit score. By the time those inquiries are done, there is a red flag because of all the inquiries. Nothing has changed in my life, but because I made those inquiries trying to find a better deal and lower my cost, my credit score is "dinged" by five points. I am still the same person; nothing has changed. What happens to the consumers? I understand the risk factor. People are concerned.

**Eric Rosenberg:**

We continue to study credit-based insurance scores and how they perform over time. But concerning your initial question, we develop the models to predict an outcome. They predict loss ratios. It does not mean that you are a bad person if you have a lower score. What it does is rank the order on risk. The higher the score, the lower the risk. It is used to provide objective information to carriers so they can make quick decisions that scale well. When we first built our models we did not understand some of the nuances of condensing inquiries within a 30-day period into one. Our models have developed over time so that if you shop around for a home mortgage within a 30-day period, all those inquiries would be condensed into one. They would have a negligible effect on your score. What we have found is, over a long period of time, if a consumer is habitually shopping for credit, taking out new lines, et cetera, that is a riskier behavior. That might weigh more heavily upon the behavior. Nevada requires that they be condensed into one.

We found over time that credit scores over the last few years have decreased. However, credit-based insurance scores, which are different, some using up to 25 variables, use only those factors that are correlated to loss ratio. We can throw out the 125 or 150 characteristics that might be valuable in understanding the credit score because they are not worthwhile for our purposes in understanding whether someone is a good insurance risk or not. We are talking about consumers who are opening up new lines of credit or have credit arbitrarily closed; we found that has very little impact to the scores. We also have found through our analysis that 30-day and 60-day late payments, which do impact the credit scores, are not highly predictive in insurance loss, and thus we do not include them as part of the credit-based insurance scores.

The economy has been in a downturn, but our models are such that we have taken into account those things that are meaningful only for insurance loss and not for credit loss. We need to differentiate those two paths.

**Assemblywoman Kirkpatrick:**

I understand. Maybe my question is better for the insurance people, but when you start taking those variables into account, they have a negative impact. Because of my location in North Las Vegas, I automatically pay \$100 more every six months for my insurance. Where is the positive?

**Eric Rosenberg:**

The positive is that the vast majority of individuals do pay all of their obligations as agreed to and thus have very good credit profiles. Over the last three years, even with the quality of credit eroding, we have seen the credit-based insurance scores are basically flat if not increasing over time. We think that is because

individuals are paying down their obligations and are saving more money. People are relying less upon credit. They are saving money and that is a good thing.

**Assemblywoman Bustamante Adams:**

I think you have answered my question, although I am not happy with that answer. You say repeatedly that the insurance scores do not have anything that is discriminatory in them, and you verify that by saying the scores have been flat. Did I understand that correctly? How do you verify that it is not discriminatory? Do you do it internally or use a third-party to verify that it is not having an adverse impact?

**Eric Rosenberg:**

The information that is part of a credit report, which in turn is used for the credit-based insurance score, does not contain any information that is discriminatory. It is only factual information that is reported to us. Those reporting to us are under obligation, under federal law, not to report information to us that could be deemed as discriminatory. I do not know about the application or if somebody uses it in a discriminatory manner; I cannot comment on something like that. I can tell you that the development of credit reports and scores does not contain any discriminatory information. It does not contain information on sex, ethnic origin, race, divorce status, marital status, or other protected items. When you are developing a score, it is based upon the facts. If there is something that is not factual, such as a missed payment that should not be there, we are under obligation to remove that. That is not a discriminatory effect. That is a data furnisher error.

**Chair Atkinson:**

I think the problem that I have is that the method, itself, is indirectly discriminatory. I know you say you do not keep numbers or use those factors, but the method indirectly discriminates. We all know that the individuals with lower credit scores are those who cannot help themselves.

**Assemblywoman Carlton:**

I checked on the Internet and found a report to Congress by the Federal Trade Commission (FTC) entitled *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance*. The study is a follow-up to the Fair and Accurate Credit Transactions (FACT) Act of 2003. A lot of what you are saying is delineated in this report, but toward the end, you talked about the benefits to consumers with better credit scores. The report says, "credit-based insurance scores are distributed differentially among racial and ethnic groups, and this difference is likely to have an effect on the insurance premiums that these groups pay, on average." It continues, "Non-Hispanic whites and Asians are

distributed relatively evenly over the range of scores, while African Americans and Hispanics are substantially overrepresented among consumers with the lowest scores." I think this describes the anecdotal feelings that the Chair has.

The report continues, "With the use of scores for consumers whose information was included in the FTC's database, the average predicted risk (as measured by the total cost of the claims filed) for African Americans and Hispanics increased by 10 percent and 4.2 percent, respectively, while the average predicted risk for non-Hispanic whites and Asians decreased by 1.6 percent and 4.9 percent, respectively."

Can you please explain to me how this portion of the report fits into some of the questions that the Chair was asking? I would love to believe that credit-based scoring is blind to race, sex, creed, even geography. We are trying to protect our consumers.

**Eric Rosenberg:**

You are quoting the Federal Trade Commission's report on the FACT Act. TransUnion provided the credit information, and we helped the Commission with their analysis. We have done this with a dozen different states. Our studies show there is an even distribution across five categories, or quintiles, of scores related to income and within ethnic groups. You cannot discount somebody because they are poor. Both sides of the spectrum pay their bills or do not. There is a fairly even distribution of scores across those arenas. What the FTC study did say was that you cannot substitute race as a proxy for the scoring methods.

The FTC in its analysis found that rates and income are not proxies for scoring. You can substitute anything and still get that outcome based upon the raw credit data.

**Chair Atkinson:**

No one is suggesting that everyone in the lower income level has a poor credit rating. What we are suggesting is that they are more likely to have lower scores. I would like to take a look at that study. We would like you to move forward since we have a number of people wishing to testify in opposition.

**Eric Rosenberg:**

I did not get to talk about some of the benefits of scoring. One is that the use of credit-based insurance scores by carriers has increased competition and helped them to reach out to areas that were previously underserved. That is a real benefit of using objective information. Back in the early 1970s barely 10 percent of all African Americans could get a credit card. Now that figure is

90 percent. Homeownership has increased. There is no longer a binary yes-no decision. You can do risk-based pricing, using a scale, and the individual—regardless of their race, creed, color, or ethnic origin—pays the amount he is supposed to pay based upon the risk he brings to the table. The company has to do less hedging when building the price of its financial instrument.

**Assemblyman Segerblom:**

Maybe 90 percent of African Americans can get credit cards, but the fact remains they are paying 20 to 25 percent for those credit cards whereas I am paying 6 percent.

**Chair Atkinson:**

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

**Jed Kincaid, Product Manager, Progressive Insurance, Rancho Cordova, California:**

I am here to tell you how our company uses credit report data for insurance rating purposes in the State of Nevada. My colleague, Mike Doerfler, is the Product Development Manager for Progressive and he is our expert on credit-based insurance scores. I am the Automobile Product Manager for Nevada.

Our business model is to offer accurately priced automobile insurance that provides the coverage consumers need along with, superior claims and customer service. We want to be the consumers' number-one choice for auto insurance. Progressive is the fourth-largest auto insurer in Nevada. We insure about 145,000 vehicles and employ about 90 people in the state. We offer insurance through independent agents by phone and online, and we advertise aggressively in all parts of the state and seek to provide insurance to as many Nevada consumers as we can.

Progressive was founded in 1937. In the 1950s the company made its name by offering insurance to high-risk drivers, but today we serve all segments of the auto market and offer a rate for virtually every driver. Our Nevada business has been steadily growing since 1997, the year we first introduced into our business model insurance scores based on credit report data.

We are here today to talk about some of the public policy issues related to the use of credit report data for insurance rating and underwriting. We have been using this data for many years. It is expressly permitted under the federal Fair Credit Reporting Act and the Nevada credit statute. We do not use this data simply because the laws allow us to; we use it because it is an accurate predictor of loss and using this data enables us to build a better pricing model.

Our use of credit report data allows us to use more accurate rates for Nevada consumers.

Without credit report data we would have to reallocate the premium we charge across our entire book of business in Nevada. This would result in substantial rate subsidization and cause rates to increase for over half of our Nevada customers. Others would, of course, see rate decreases, but our data indicates that they were being subsidized.

The ability to price accurately is critical to our business strategy. By definition an accurate price is a fair price, and the more accurately we price the better we can compete. In our experience more accurate pricing allows us to offer lower rates to more drivers who deserve them. Progressive data and member studies by independent third parties and governmental agencies have verified the predicted value of credit report data.

We are required to file our credit-based model and demonstrate that our use of credit report data is actuarially related to the risk of loss. Knowledgeable professionals at the Division of Insurance would not approve our filing without that demonstration. There is an overwhelming body of analysis establishing that credit report data is an objective and accurate predictor of loss.

Progressive has been a leader in the responsible use of credit report data for insurance rating and underwriting. We were among the first insurers to call for the enactment of state statutes that would provide reasonable consumer protections for the use of credit report data. Even before the statutes were enacted Progressive decided never to refuse to insure, cancel, or not renew a policy based on information contained in a credit report. We also decided not to consider any credit report data disputed by consumers. We were one of the first companies to disclose to consumers that their credit report data would be used in the rating process. We were the first company to file our credit models without confidentiality protection. We educated our agents so they could respond to consumers' questions about credit report data, and we established a special credit information team to assist consumers with credit questions. Our credit information team can provide a personalized report to African Americans explaining how their scores compare to the scores of other consumers who have received a quote from us. The report also includes an informative and useful explanation of how we use credit report data for underwriting purposes.

The credit information team is also empowered to make reasonable exceptions when a consumer's credit is unduly influenced by extraordinary life events such as a temporary loss of employment, death of a spouse, dissolution of a marriage, or a medical emergency. We voluntarily provide this service to our



customers despite the fact that it is not required by either federal or Nevada law. We support the language proposed by the Division of Insurance in Assembly Bill 74 that would require all insurers to provide reasonable exceptions when a consumer's credit information is negatively affected by . . .

**Chair Atkinson:**

We have already received that information. Please continue if you have any new information.

**Jed Kincaid:**

The only additional information I would like to point out is that a majority of our customers would receive a rate increase. We estimate that would average about a 17 percent rate increase if we eliminate the use of credit report data.

**Chair Atkinson:**

You do not think that would balance itself out?

**Jed Kincaid:**

There would certainly be a group of consumers who would receive a lower rate, but our experience tells us that the lower-risk drivers would have . . .

**Chair Atkinson:**

But you have never gone back to the old system and found out what that would be, have you?

**Jed Kincaid:**

Our analysis of the data indicates that, in our model, the people with lower scores are actually better, so the people with the better scores would present a lower risk of loss.

**Chair Atkinson:**

I agree with Assemblyman Aizley concerning the statistical information. You said that your insurance company does not deny insurance to anyone based on credit. Did I hear you correctly?

**Jed Kincaid:**

That is correct.

**Chair Atkinson:**

You do not deny them because you will charge them more. If you are keeping the lower scores in and they are paying a higher premium, others with better credit will pay a lower premium. I do not understand how you can say that there will be a 17 percent increase.

**Assemblywoman Carlton:**

One of my daughters had a credit card that I gave her. She ended up with my credit score. She was not necessarily a good driver. I do not think that a good credit score necessarily indicates a good driver.

**Jed Kincaid:**

We do consider age, and the use of your good credit did offset the adverse impact of your daughter's age.

**Mike Doerfler, Product Development Manager, Progressive Insurance, Mayfield Village, Ohio:**

Given your scenario, Assemblywoman Carlton, the rate we would have determined for you would have been based upon your credit information. The fact that you let your daughter use your credit card did not factor in for your rate. We know, based on data, that an 18-year-old woman is a higher risk. Earlier we talked about classifications, and that would be an example of a classification. I cannot speak to why she is a higher risk. I could make an argument that due to her age, she has better eyesight, better hearing, and better eye-hand coordination, showing that she should be a better driver. On the other hand, she would not have as much experience. That goes into the debate. I cannot speak to the correlation. However, I can tell you that when we analyzed both your daughter's age and credit-based insurance scoring, we adjust for each of those independently. That is, we are not going to double count or give an over benefit based on rating variables. What we would do is look at each of the many variables that we use independently. I heard the discussion earlier that if we have many variables that predict risk, why use insurance scores? It is additive risk assessment for us. It gives us another tool to use to more accurately price someone. We have already adjusted for everything else that we use in our modeling.

It benefits consumers because it gives us more knowledge and more comfort. Are we going to be able to provide a rate that is perfect for every individual? No, and that is why we do what we do. That is why we classify people into different groups. Most of our insureds do not have a loss. The vast majority do not have a loss. So, if I am trying to predict the risk using my loss data, I have a lot of people who do not have a loss. Therefore, we create these classifications. Each time we create a new classification we will not introduce it if it has no value.

**Assemblywoman Carlton:**

I guess this just goes back to the overarching policy discussion on what insurance really is. You are buying something to insure yourself as a whole

group, and when we start assigning risk to smaller groups, disproportionate people get hit in different ways.

**Assemblyman Conklin:**

I apologize for coming in a little late on this discussion, but I worked on a similar bill. I have a question and hope it has not been answered yet. I am sure you have heard of the term, spurious relationship. In the statistical world a spurious relationship is what happens when two items are mathematically correlated but in theory, and reality, they have nothing to do with each other. So as a statistician you are always mindful of the fact that just because you run the numbers and there appears to be a correlation, there is not. I would like to give you an example that we can all understand. Mathematically, the majority of sprinklers go on in Las Vegas in the summertime when the moon comes out. If I plug that into an equation, there is a serious correlation. The reality is there is no causation. The moon did not cause the sprinklers to come on. It just happens to be the time at which most people set their sprinklers because that is the time when the ground will absorb the water. For something to have a true statistical correlation there needs to be some theoretical reasoning why the correlation exists in the first place. Otherwise you might be dealing with a spurious relationship.

My question to you is, what is the theoretical reasoning that this is actually needed, other than the fact that you believe there is a mathematical correlation between the credit score of a person and the likelihood of a claim?

**Mike Doerfler:**

Any answer I could give to that question would be speculative. The fact is that I do not know, and we have not studied why credit is predictive. We use credit because it is predictive. That correlation we can show. We have analyzed and studied our loss data. Once we account for everything else we know is correlated, such as someone's age—again I cannot explain why a youthful person will have a higher propensity for risk—and I look at insurance scores based on credit, I know that my model is sound in its ability to predict by classifying individuals into different groups, that is, their level of risk.

**Assemblyman Conklin:**

That sounds disingenuous. When you use the example of age, obviously an 18-year-old female just getting her driver's license and a new car has no experience. Despite factors that lend themselves to better reaction times, such as better eyesight, she still has no experience. Drivers that age are going into a world where there is a lot of unpredictability, and they have not been in it before. We can understand that. The problem with credit scoring, as I see it, is

we have no theoretical basis to say why there is a correlation. That is what makes it problematic for many people.

**Chair Atkinson:**

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

**James Wadhams, representing American Insurance Association:**

American Insurance Association is a trade association of major property and casualty companies. I will not repeat anything that you have heard previously. I have been in front of this debate many times, including before former Assemblyman Bob Price, who told the body that traffic tickets were not an indicator of his driving. He was a very good driver, but he always drove fast. In a way, it is reflective of some of the comments and questions that have come from this Committee.

I want to read one sentence out of the current insurance law which has probably been on the books for 50 years. "One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses." Put in layman's terms, that means that Mr. Segerblom and I, who live in the same area and drive the same car, might not be charged the same premium because I am a much more dangerous driver than he is. That is what the law requires, that he be charged a more favorable premium than me, because my risky behavior is greater than his. As an old actuary told me many years ago, if we could pry open your head and figure out your attitude about your friends and neighbors and your obligations, we would not need any of this external information, but we are not allowed to do that and we cannot do that.

I think part of the issue, which some have struggled with, is what indirect data about me will fairly give the insurance company the ability to say I should pay more than the other driver because I am a more risky person. Right now, your motor vehicle record is one opportunity to do that. I think the point that is being offered is, do certain forms of insurance scoring predict outcome? Do they add to the ability to assess the relative riskiness, namely, the chance that I am going to have an accident as opposed to a more responsible driver? That is the point that is in the statute today. That is the way rates are supposed to be made, so that the bad driver does not pay the same rate as the good driver.

I would suggest that some of the handouts that are before the Committee would be helpful in answering some of the questions of the theoretical link to avoid the spurious connection. I want to testify that the purpose of this system is to try to give fairness so that the bad driver does not pay the same as the good driver.

**Chair Atkinson:**

I think that is where we are. Zip codes are considered in the insurance score. Where you live could also contain people with poor credit scores. That again is our argument.

**James Wadhams:**

I am in Assembly District 6, and I have a high insurance rate.

**Lisa Foster, representing American Family Insurance and Allstate Corporation:**

I do not want to belabor the point that you have heard from all my colleagues in the insurance industry. I would like to say that there are numerous studies, in Texas, in Iowa, and in Arkansas, that say over and over again that credit scores are a good predictor of risk. Even the Federal Trade Commission studied this just to make sure. That is why insurance companies use it and that is how we can compete with each other. The more data we use, whether it is your driving record or your zip code, allows us to price it properly. It helps reduce the cost of insurance for more people than it increases, and it increases competition inviting more companies to come to Nevada. When you get rid of something like credit-based insurance scores, fewer companies want to come to Nevada to sell insurance.

I have talked with Assemblyman Aizley, and we have had some good discussions on this.

**Chair Atkinson:**

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

**Robert Compan, representing Farmers Insurance Group:**

I would like to bring up some statistics that I think are relevant to the discussion. I provided some exhibits [a PowerPoint presentation ([Exhibit N](#))]. We are using some of the information from TransUnion that the gentleman from TransUnion did not mention today. On page 6 it talks about the correlation of 0.27, which tells us that insurance risk and credit risk move in opposite directions over time. On page 7 it talks about credit score deterioration and forecasting positive correlation that tells us that credit risk . . .

**Chair Atkinson:**

I do not want to go through the whole PowerPoint presentation.

**Robert Compan:**

I will just encourage you to look at this.

We use other variables that are more predictive than credit, like driving records. Insurance scoring allows us a more equitable distribution of premiums. Removing this rating option will result in higher rates for our consumers. We insure 280,000 households in Nevada. Without the use of credit-based insurance scores, 62 percent of our Nevada customers, approximately 170,000 will experience an increase. I ran the figures for Mr. Aizley's district. In his district alone, 53 percent of his constituents who are insured with Farmers Insurance are going to experience a raise in their auto insurance premium. In Nevada, 60 percent of Farmers' homeowner customers will experience an increase, and 53 percent will experience an increase in Mr. Aizley's district.

Insurance scores are predictive. It is not a credit score. When we first spoke about the use of credit-based insurance scores, Mr. Aizley asked us what we use. We are precluded from making this information public. Antitrust laws preclude us from giving out that information and data. They are predictors.

Lastly, I would like to add something that Ms. Belz left out of her presentation. Under *Nevada Revised Statutes* (NRS) 686A.680, an insurer using information from consumer credit reports shall not "Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status or nationality of the consumer as a factor, or would otherwise lead to unfair or invidious discrimination." It is not allowed, and if we are in violation of it in our scoring models, our charter could be pulled.

**Chair Atkinson:**

Did you hear me talking about the indirect discrimination?

**Robert Compan:**

I did. We pay close attention to it.

**Chair Atkinson:**

If you are paying close attention to it, then you would know that certain demographics are a problem. Do you disagree with that?

**Robert Compan:**

I cannot agree or disagree. It would take more of a study. In any of the studies that have been commissioned, including the FTC's study, that question, if it has come up, has not been proven or disproven.

The fact is that if there is a one size fits all, if this bill becomes law, do we have a shell product that we can use? Yes. The competitive nature of insurance in Nevada is really going to change. Insurance scores balance out. We will find other factors to try to be competitive. I can tell you now that 63 percent of

Nevadans on the auto side who we insure will have increases in their rates. We have to tell them it is because of this bill.

**Chair Atkinson:**

How can you say that? Where is that coming from?

**Robert Compan:**

It comes from our actuary staff, who uses the models.

**Chair Atkinson:**

I think sometimes people just throw out numbers. I want to know what that 63 percent is. On one hand you say you do not deal with these types of statistics, and on the other hand you just note that 63 percent are going to have an increase.

**Robert Compan:**

We do not profile. We see a score, not a person. I broke it down as far as districts, but I cannot tell you as far as people. We are precluded, by law, from doing that.

**Chair Atkinson:**

I did not say profiling. I am just saying that we know who will be more adversely affected. I do not think that profiling is occurring.

**Michael Geeser, representing AAA Northern California, Nevada, and Utah:**

I do not think this has been said yet. We, too, oppose the bill.

**Assemblyman Conklin:**

Mr. Compan, just so the Committee can understand the risk, on slide 3 of your presentation you cite a Texas Department of Insurance study. It reads, "For both personal auto liability and homeowners [insurance score] was related to claim experience even after considering other commonly used rating variables. This means that [insurance score] provides insurers with additional predictive information distinct from other rating variables." I am assuming that you are talking specifically about credit scores. Correct?

**Robert Compan:**

Credit score is defined as what is used in a credit-based insurance scoring model. It is not like a Fair Isaac Corporation (FICO) score.

**Assemblyman Conklin:**

I understand. The use of that term in that particular study is not risk; it is claims. That is something that this Committee needs to understand. When you

use the word "risk" you are saying whether somebody is risky or not. What you are actually predicting is whether or not somebody will file a claim. There is no correlation between credit score and accidents. The apparent correlation is between a person's credit score and the likelihood that they will file a claim.

**Robert Compan:**

In that credit scoring scenario, yes. It is the likelihood that somebody in that predictive model will file a claim, not the likelihood—and you are correct—that they will be in an automobile accident. I do believe that other studies show that the use of credit-based insurance scoring will correlate with the fact that they will more likely be in an accident. I will look into it and bring it back to the Committee once I have that information.

**Chair Atkinson:**

Are there any questions from the Committee?

**Assemblyman Kite:**

Do you still give discounts for good students?

**Robert Compan:**

We changed our filing with the Division of Insurance to a new product that takes those variables into it. It is not a straight-on discount as it used to be. It is figured into the scoring. We do not give a formal discount for being a youthful driver anymore.

**Assemblyman Kite:**

Do you give discounts, as in the past, where a female youthful driver would get a better rate than a male youthful driver? For many years discounts were given on things that do not appear to have any more correlation than the credit scores.

**Robert Compan:**

As insurance progresses, we give multi-car discounts; we give multi-product discounts for life, home, auto, and things of that nature. Other companies may give these discounts. Farmers does not.

**Chair Atkinson:**

I think I know where Mr. Kite is going. What you are saying is, if you had these other components, why not consider some of those instead of credit scores? We think there are other components that would get you to the same place.



**Robert Compan:**

The discounts are built into the rate. The Division of Insurance can tell you how our model looks. I know that it has been revised.

**Assemblyman Goedhart:**

We have been talking about two basic areas. Number one is should we all be charged the same rates and how closely should we break down different risk assessments to be sure that people who have the least amount of risk are the one getting the best rate.

The other question is what is the correlation between risky behavior/claims and your credit score? The insurance companies have many different models. If you have some insurance companies that are penalizing people with low credit scores, if that were above and beyond the predictive capacity, they would be losing those customers to other insurance companies that had correct risk assessments. This is an area that is taken care of in the free market sector, through different people working competitively with their different peers in the marketplace. Is that correct?

**Robert Compan:**

It is a competitive market in Nevada. There are over 150 companies that offer auto products. There are companies that offer products that do not use credit-based insurance scores. I have to compete with those companies. I think that in Mr. Aizley's example of his claim loss, or his increases in policy, were not germane to the credit score at all. It was just loss history or something else. You can open up the phone book and see the competitive nature in Nevada, and you can ask if they use credit-based insurance scores. People will shop around for price.

**Chair Atkinson:**

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in opposition? I see none. Is there anyone else wishing to testify in the neutral?

**Rajat Jain, Actuary I, Property and Casualty Section, Division of Insurance,  
Department of Business and Industry:**

I believe what we have witnessed in this hearing is a microcosm of what is going on at a national level, when it comes to the debate about credit scoring. I am not going to go over all the items that have been discussed.

For the record, the Division is neutral on this bill. I would like to comment, briefly, about the scrutiny that the Division has undertaken during the last couple of years with regard to these models. First of all, the scrutiny was

limited by the allowance of what we can and cannot stop from happening under Nevada law. As part of the scrutiny some of the things that have come up are troubling to me. I would like to provide some examples.

There has been very limited discussion on what exactly is credit-based insurance scoring. Assemblywoman Kirkpatrick provided a head start and I will build upon that to give you examples of why some items in these credit models troubled us. We review credit models from insurance companies and third-party vendors. What I will present is not limited to one model or another. It is our experience based upon our review of these models.

One credit scoring model penalizes consumers if they have no auto loan. At the same time it will penalize a consumer who has an auto loan which exceeds a certain set amount.

Another credit model will penalize with an increase in insurance premiums if a consumer has one or two inquiries on his credit report, which happens if you got a new department store account or a credit card within the last three years. I have seen increases in triple digits for some consumers.

In some models, if your oldest open credit card was not opened 400 months ago, you will be penalized; you will not get the best rate. If your total credit limit is below one eighth of a million dollars, you will not get the best rate.

There was a model where the consumers whose credit history could not verify whether or not they had foreclosures were penalized more than consumers who actually had foreclosures on their credit history. We were able to correct that error.

A popular example resulted when a department store in Carson City closed and all its charge cards were invalid. There were consumers who took the time to replace them by opening another charge card with another department store in Carson City. That action increases the insurance premium because it shows up on your credit report as new inquiries and new accounts opened.

These are some examples which trouble us. We have worked with the industry, and its members have been very forthcoming and helpful in providing us with data. As the discussion has gone on, the question comes back to the correlation.

We are not in the business of making public policy; the Legislature is. The question is, is there any reasonableness in the use of some of these items in terms of credit scoring as a predictor of insurance loss. We are limited by the

existing laws. We ask questions, and even though we were concerned about the causation, we approve of these rate vehicles.

I will answer any questions you might have.

**Assemblywoman Carlton:**

I wonder if you could answer some of our concerns and just share it with the members.

**Rajat Jain:**

I was one of the people who processed Mr. Rathje's complaint with the Division in 2007. The concerns that Mr. Rathje had expressed are still there, in the sense that there are certain variables in some models. In Mr. Rathje's example, his decision to obtain his first credit card at age 22, and not 18, is something that he cannot change. But the company had 40 years of his insurance history, and the question is what did they not know about him to determine what kind of insurance risk he was.

What has happened is that the models have evolved; they have become highly complicated. Most of the models used in the 1990s and even in 2003 were based upon the concept that if somebody had a bankruptcy or foreclosure on their credit report, it would indicate financial irresponsibility. At that time it made sense. Over the years some of these new items have been added, which is where the concerns become larger for us.

**Chair Atkinson:**

Mr. Jain, would you get us some of this in writing?

**Rajat Jain:**

I would be happy to do so.

**Chair Atkinson:**

Mr. Aizley, would you like to sum up?

**Assemblyman Aizley:**  
I have nothing to add.

**Chair Atkinson:**  
Are there any questions from the Committee? I see none. We will close the hearing on A.B. 162.

We will adjourn the meeting [at 5:36 p.m.].

RESPECTFULLY SUBMITTED:

---

Patricia Blackburn  
Recording Secretary

---

Earlene Miller  
Editing Secretary

APPROVED BY:

---

Assemblyman Kelvin Atkinson, Chair

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

## EXHIBITS

**Committee Name:** Committee on Commerce and Labor

**Date:** March 2, 2011

**Time of Meeting:** 1:42 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 25	C	Marji Paslov Thomas	Work session document
A.B. 32	D	Marji Paslov Thomas	Work session document
A.B. 33	E	Marji Paslov Thomas	Work session document
A.B. 55	F	Marji Paslov Thomas	Work session document
A.B. 102	G	Marji Paslov Thomas	Work session document
A.B. 84	H	Tick Segerblom	Proposed Amendment
A.B. 84	I	Constance Brooks	Proposed Amendment
A.B. 162	J	Paul Aizley	Prepared Testimony
A.B. 162	K	Ed Rathje	Additional Testimony
A.B. 162	L	Jennette Belz	Additional Testimony
A.B. 162	M	Eric Rosenberg	Additional Testimony
A.B. 162	N	Robert Compan	PowerPoint Presentation