

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

**Seventy-Sixth Session  
April 1, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:18 p.m. on Friday, April 1, 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 Richard Carrillo, Clark County Assembly District No. 18

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Committee Policy Analyst  
Sara Partida, Committee Counsel  
Jordan Grow, Recording Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Graham Galloway, representing Nevada Justice Association  
Jan Gilbert, representing Progressive Leadership Alliance of Nevada  
Jack Mallory, representing the International Union of Painters and Allied  
Trades District Council 15 and Southern Nevada Building and  
Construction Trades Council  
Patrick Sanderson, representing Nevada Alliance for Retired Americans  
Michael Hillerby, representing American Council of Life Insurers  
John W. Mangan, Regional Vice President, State Relations, American  
Council of Life Insurers  
Todd R. Thakar, Vice President, Government Affairs, Prudential Financial,  
Sacramento, California  
Michael Hackett, representing Hartford Life Insurance Company  
Brett J. Barratt, Commissioner of Insurance, Division of Insurance,  
Department of Business and Industry  
Mark Dickinson, Actuary, Life and Annuities, Division of Insurance,  
Department of Business and Industry  
Sheila E. Walther, Supervisory Examiner, Mortgage Lending Division,  
Department of Business and Industry  
Kyle Nagy, Director, CommCap Advisers, Henderson, Nevada  
David Goldwater, representing Oasis Capital Management, Las Vegas,  
Nevada  
Fredrick P. Waid, General Counsel, Oasis Capital Management,  
Las Vegas, Nevada  
Robert Compan, representing Farmers Insurance Group  
Bill Anderson, Chief Economist, Research and Analysis Bureau,  
Department of Employment, Training and Rehabilitation  
Maria C. Sheehan, President, Truckee Meadows Community College  
Kyle Dalpe, Director of Institutional Advancement, Public Information  
Office, Truckee Meadows Community College

Deb O’Gorman, Director, Workforce Development and Continuing Education, Truckee Meadows Community College  
Rebecca Metty-Burns, Executive Director, Division of Workforce and Economic Development, College of Southern Nevada  
Debra W. Struhsacker, representing Midway Gold Corporation  
Erin McMullen, representing the Las Vegas Chamber of Commerce  
Andrew Clinger, Director, Budget Division, Department of Administration

**Chair Atkinson:**

[The roll was called, and a quorum was present.] We have four bills in front of our Committee this afternoon. I would like to welcome our audience here in Carson City and in Las Vegas and anyone who may be listening over the Internet.

**Assembly Bill 274:** Revises provisions relating to the payment of the proceeds of any benefits under a life insurance policy. (BDR 57-591)

**Assemblyman Richard Carrillo, Clark County Assembly District No. 18:**

I am here to present A.B. 274, which relates to life insurance and the payment of death benefits. Insurance companies often use retained asset accounts to pay the beneficiaries of life insurance policies. In these situations, the insurer retains the proceeds in an account and the beneficiary has access to the money by using a book of checks or drafts. The use of retained asset accounts takes place under the supplemental contract with the insurance company, typically not written into the insurance policy itself. Recently, these accounts have come to the attention of state attorneys, insurance commissioners, the Congress, and the Federal Deposit Insurance Corporation (FDIC) because of allegations that insurance companies are profiting from them, earning interest, and charging fees on assets that belong to the beneficiaries.

There are a number of potential problems with these accounts that beneficiaries may not be aware of, or they may not understand their options when they receive insurance proceeds. Insurers may automatically resort to retained asset accounts as the default option. The interest rates on these accounts are lower than those of other types of investment accounts that a beneficiary may receive. The accounts may not be as safe as an account with an FDIC insurer or institution. The marketing of these accounts may be deceptive and may not include appropriate disclosures. Lastly, there is an inherent conflict of interest on the part of the insurer who makes a higher rate of return on the combined accounts that pay the individual beneficiaries. They also charge maintenance fees. Critics of retained asset accounts say they are unfair. They are inconsistent with the insured person’s needs, and there is a need for more stringent regulation.

Assembly Bill 274 would require the insurer to pay the proceeds of the life insurance policy in one lump sum unless the beneficiary agrees to some other arrangement. If the insurer offers to pay through a retained asset account, it must provide clear, comprehensive disclosures on who will have custody of the account, if and/or when there are any limitations on access to the money in the account, what the fees and interest rates are, and whether the proceeds are insured by the FDIC. The insurer must also disclose that the beneficiary can access the entire proceeds by depositing a single check or draft from the account to an account with their own bank. If the beneficiary does not use the account in any three-year period, the insurer must return the entire balance to the beneficiary. Finally, the violation of these rules constitutes an unfair insurance trade practice.

This concludes my presentation. Thank you for your time, and I am happy to answer any questions you may have.

**Assemblyman Grady:**

In your testimony, you said that the insurance company is paying a lot less interest than the banks. Can you give us an example of what the difference is in these two rates?

**Assemblyman Carrillo:**

That is determined by the insurance company itself. It is not determined by the rate of return from the actual investment that the insurance company is using, that is, the money that should have been paid to the beneficiary to begin with. In that instance, the insurers are getting a rate of return of anywhere from 5 to 80 percent because they are investing it. They are not just putting it into a savings account for the beneficiary, and in turn, they pay whatever rate they feel is necessary because it is still in essence the insurance company's money, even though the company is holding it in a retained asset account for the beneficiary. So, the beneficiary is not getting the full access or full return.

**Assemblyman Grady:**

I understand that, but can you give us an example of what they are paying because, from what I understand, they are being paid a set amount. You know I do not want to argue if it is 1 percent or 3 percent or 10 percent, but what is the difference that the insurance company is paying the person versus what a bank would pay them?

**Assemblyman Carrillo:**

I apologize. I cannot give you specifics because that amount is based on what the insurance company would actually be giving from the rate of return. They decide that.

**Assemblyman Conklin:**

Mr. Carrillo, I want to commend you for bringing up the bill. I think this is a significant consumer issue and I just want to make sure that I understand everything correctly. I do not know how many people have been following this issue. I did a news piece last fall with one of the television stations down south because there was apparently a large carrier of insurance that was doing this as part of a program, and I will give you the specific example. The U.S. military has one insurer that does life insurance policies for all military personnel, and when certain spouses passed away in the service to this country, the monies were never actually delivered to the spouses, but instead were placed into an account that many spouses did not even know existed. So, I do think that whether the interest is more or less than a bank's is not necessarily the biggest issue, so much as having disclosure and a clear path for people to understand what their benefits are with respect to a life insurance policy they either receive as a result of employment or purchase on their own. So I, for one, commend you for bringing this issue forward and shedding some light on it. There was a court case recently in Reno about this issue. Do you know where it stands?

**Assemblyman Carrillo:**

The Reno court case was *Clark v. Metropolitan Life Insurance Company* [08-CV-158, United States District Court, District of Nevada]. The beneficiary had gone to make a payment at Target, but Target did not accept the check. It is not that Target does not accept checks; they just did not accept this "draft" on a life insurance company's retained asset account. The draft looks similar to a check, but Target would not accept it on the grounds that they did not know the "bank," which, of course, was not a bank at all, but a life insurance company. This resulted in the *Clark* suit being filed, because of the fact that the money was not accessible as the insurance company had stated. I am going to assume that if someone passes away, the money would be rolled straight into this account instead of delivered to the family member in a check form so that they could make a decision on their own. Then, when they went to write a draft against the account, the draft was not acceptable in the ordinary course of business. Is that correct?

**Assemblyman Conklin:**

That is correct.

**Assemblyman Horne:**

I think Mr. Conklin covered most of my questions, but, Mr. Carrillo, if I am understanding this correctly, a beneficiary is not getting the lump sum but instead is getting a draft or a series of drafts from an insurance company that basically says, "We are going to send you money periodically and we are going to pay you interest," while at the same time keeping the bulk of the award this

beneficiary has received. But, the insurance company, in keeping the bulk of the proceeds from the life insurance policy, is investing it and receiving interest on it. In effect, the life insurance companies are probably receiving a greater return on this money than if they were paying it to the beneficiary in a lump sum, or otherwise they would not be doing this. They must be keeping it in a lump sum for a reason. Is that correct?

**Assemblyman Carrillo:**

Yes, Assemblyman Horne, that is correct. Basically, they are getting a better rate of return because they are still holding on to the same money that they have been receiving from the insurance policy itself. As soon as it comes time to pay the beneficiary from the proceeds of the life insurance policy, they appear to be avoiding making a lump sum payment as would be expected, and that is the clarification part that was never there, and still is not there. Instead, the proceeds of the policy are automatically put into a retained asset account, and the beneficiary is not informed of the other option, which is, in effect, to request a check for the lump sum. The insurance companies know who they have to write the check to, but this is one way for them to hold onto that money and keep investing it. It is easy to see that it is the beneficiary who is not receiving the benefit in this instance, even though he still has access to the money. It is this gray area where the insurance companies are not telling the beneficiaries that they can write one check on this draft account and have the entire proceeds of the policy paid out to them in full. The insurance companies would rather keep that money for themselves because that is the money that they are investing continuously.

**Assemblyman Horne:**

So, we have an issue on whether or not the beneficiary is given adequate notice that he has a choice of receiving either one lump sum payment or to continue to get this monthly payment from the insurance company with interest?

**Assemblyman Carrillo:**

That is correct.

**Assemblyman Horne:**

And did I hear you say that these accounts are not protected by the FDIC or any other type of insurance? So, if the insurance company was to go belly-up and someone had money in these accounts, would the beneficiary be protected and be able to still get those monies that were rightfully his?

**Assemblyman Carrillo:**

From the information I have received, no, he would not. If the company went belly-up, he would lose the money that was in that account.

**Assemblyman Ellison:**

I have two questions that are related. When they issue the certificate, the insurance companies send a notice saying you can take it as a lump sum or the proceeds from the policy can be deposited into a retained asset account. Then, are they issuing vouchers to the beneficiary? Cannot the beneficiary take one of the vouchers and write out a draft for payment for the total amount and deposit that amount into their own personal bank account or money market account?

**Assemblyman Carrillo:**

Assemblyman Ellison, that is the gray area. The insurance companies are not telling them that. They want them to keep the money in a retained asset account. They might tell the beneficiary, "We are going to provide you with a draft account that will allow you to write checks on the account. We will basically make sure that the account is taken care of for you. We may not even charge you fees on that account." This gives beneficiaries who are grieving a false sense of comfort, believing that the insurance company is acting in their best interest, when, in fact, it is not. At the same time, the beneficiary is unaware that he has access to that full amount, that he can put that money into his own Individual Retirement Account (IRA) or any other place. The insurance companies are not giving the beneficiaries the benefit of a full and clear disclosure of their options, and even when they do disclose both options, they may overemphasize the benefits of one over the other. Furthermore, if you have just lost somebody who is very close to you, you would probably go along with this advice as you are not in a position to consider the matter objectively. In the meantime, you have not been informed sufficiently about your options in order to make that choice on your own, and you would not, therefore, be able to judge clearly the benefits of one option over the other for your particular situation.

**Assemblyman Ellison:**

I agree that that is a very trying time for the families and you are not thinking clearly. But, the way I looked at this was as a money market account. In this respect, the money would be transferred into a money market account, which would provide you with drafts or checks. This would allow you to fill out these drafts until you exhausted the account, and that would result in receiving the payment in full in due time. It is not still an interest-bearing account?

**Assemblyman Carrillo:**

That is correct.

**Assemblyman Ellison:**

It is like a money market account because a money market account is an account where you can write out a voucher just like a check, yet it is still an interest-bearing account.

**Assemblyman Carrillo:**

But it is the insurance company that is actually getting the majority of the interest on the amount, and as for the interest that they are paying to the beneficiary, there is nothing to hold them to a set amount. As Assemblyman Grady has stated, the insurance companies decide that. The monies are not deposited into a bank account, and these retained asset accounts are not FDIC-insured. These accounts are posed as money market accounts, but basically it is a ploy by the insurance companies to hold onto the beneficiary's money, receive interest on it at a rate that the insurance companies decide, and they give the account holder the interest rate that they decide, which might be 1 percent, or 0.5 percent. The insurance company may be making anywhere from 5 to 8 percent return on the investment of these accounts. If they were to give out that money with interest to the beneficiary, that would be great. But, they are in the business of making money, and that is how they make it.

**Assemblyman Goedhart:**

Now, this is all probably already being regulated or overviewed by the Department of Insurance, correct? Is not the State of Nevada checking out what the insurance companies are doing? Do we have any type of information from the Insurance Commissioner on how many complaints have been filed, or how many times people lose their money because the insurance company would not bail out the consumer because the account was not FDIC-insured? I am just wondering how extensive a problem is this.

**Assemblyman Ohrenschall:**

When a soldier or sailor passes away as a result of the War on Terror and the beneficiaries are confronted with this choice about picking the retained asset account or not, do you think that they have the same level of sophistication as the insurance company?

**Assemblyman Carrillo:**

The problem concerns whether they decide they are going to use that to pay initial bills from the lump sum payment that they would normally receive, or whether they decide to invest that money into their own IRA, or money market account, so that they, instead of the insurance company, get the interest. It is pretty much up to the individual to decide whether he has that capability.



**Assemblyman Ohrenschall:**

What I am trying to get at is, do you think that the average grieving beneficiary has the same knowledge of economics and is aware of the impact of signing up for one of these accounts, and the resulting probability of financial loss that they will most likely suffer in the long run? As for these insurance companies, they have all these accountants and economists working for them.

**Assemblyman Carrillo:**

I believe that is still up to the individual, because everybody's grieving process is different, and I do not think that anybody is really thinking that there is a windfall, because the fact is that they have lost a loved one. The important thing is that the individual is able to be in control of his own money.

**Assemblyman Hardy:**

Back to your comment on the insurance company making money through these retained asset accounts, is there a perception that the banks now do the same thing? Or am I misunderstanding what you are saying, because that is exactly what they do. You put your money in the bank, and they pay you interest. They also make loans using the money that you deposit into the account, so in effect they are making money based on the same situation. So, I kind of understand the difference between the two items you are bringing up here, as well as the concern about the lack of being FDIC-insured. We are all aware that you are insured only up to a certain amount by a bank. You would not be FDIC-insured if you had \$500,000 in a bank account, for instance, as that amount would surpass the limit for FDIC insurance on money deposited into each individual bank account.

**Assemblyman Carrillo:**

If you had multiple accounts in a bank, you are insured for up to the amount that they state for that account, so you could have multiple accounts covering the full amount. For example, if you had \$500,000 in the bank and the maximum that they were covering was \$100,000, you could essentially have five accounts of \$100,000 each, whereby each account would be covered in full by the FDIC. In regard to your statement concerning depositing money into a bank account, yes, you are right, the banks are also using your money, and you have full access to it just like in the life insurance companies' retained asset accounts, but the difference is that you know you have full access to your bank account. On the other hand, if you are receiving a draft account, you do not know that you have full access to that money, because that is not something that is obviously disclosed to you. That to me is the gray area, that the insurance companies are not letting you know that you do have full access to that money as if you had deposited the money in a bank account. This is the heart of the issue. If you are not aware that you can close the retained asset

account at any time—that is, write one check, close it, and take your money and run—then this is where the problem arises.

If the insurance companies were really taking care of their customers, they would give them the full interest rate that they are receiving themselves. We know that the banks are making a lot of money off our money anyway, but what is the general public's perception about life insurance? When somebody passes away and you are the beneficiary, you would expect to get paid for that full amount, not have it put into some special account so that you can write checks on it. I think that everybody on the Committee probably has a checking account and writes checks on a regular basis. In the same way, if you know you have access to that full amount of money, what is to keep you from wanting to invest it in other things, instead of somebody else investing it for you and they end up making profit from it.

**Assemblyman Hardy:**

Just to follow up, if I knew I had so many drafts, and I knew I had a checking account of both types, I am pretty sure that I would be able to draw a check for any amount the funds would cover, just as long as I did not go into overdraft. That is my perception.

**Assemblyman Carrillo:**

By the same aspect, if you know that you have a draft account and you know that you can withdraw all of that money and invest it from the time you receive it, that is the part that I have an issue with, that they are not letting you know that.

**Assemblywoman Bustamante Adams:**

Mr. Carrillo, I appreciate you putting this legislation forward, because I was in a similar situation with an untimely death and honestly did not know that I had that option of either receiving the lump sum or taking it in an account. This was never communicated to me as an individual. I really appreciate that this bill would give the opportunity for the beneficiaries to make that decision for themselves instead of being under the impression that they have to do it the way the life insurance company would like them to proceed.

**Assemblyman Conklin:**

I again want to commend Mr. Carrillo. I know that Denise Spidle on Channel 3 in Las Vegas did a news piece on this issue, and within the last eight months state insurance regulators from across the nation alerted consumers regarding these retained asset accounts. The Federal Reserve and the FDIC were very concerned that the insurance companies should have to disclose far more

information about these accounts due to the very simple fact that consumers are confused and do not know much about them.

As a business person, I must admit, if I am taking your money because I am insuring the life of your loved one, and while I am taking your money, I make money on it, that is, after all, what I am in business for. Then when your loved one passes away, I roll it over into another account, which I continue to make money from, and then that money is not available through the drafts or checks provided for it, I think that sort of scheme is a problem. Whether it is right or wrong, I do believe that there ought to be some oversight, some regulation and disclosure to consumers that this is how the money could be disbursed to them, and it should not be automatically done without the consent or knowledge of the consumer. And if you write a draft on money that you were guaranteed you would receive as a result of a loved one passing away, then the draft better work.

**Chair Atkinson:**

We will move to anyone in the audience who wishes to testify in favor of Assembly Bill 274.

**Graham Galloway, representing Nevada Justice Association:**

On behalf of the Nevada Justice Association, we wholeheartedly support this bill. We believe it is a great consumer protection bill as it requires more disclosure, more transparency, and greater accountability of the life insurance companies who are now withholding people's money. I would echo the comments that Assemblyman Conklin made. These accounts change the dynamics of life insurance. In the old days, people paid their premiums, the life insurance companies made money off of those premiums, and when you died, they paid the benefits out to the beneficiary. At that point, their profits ceased. That is how it has always been done. Now they have figured out a way, after you die, to continue to make a profit off your investment. We are not here to say that the retained asset accounts are something that should not exist. In the right format, with the right information, these accounts can actually be beneficial to some individuals. But the problem is that nobody knows anything about these accounts. I did not know about these accounts myself until a couple of days ago. I went to my life insurance agent this morning and asked him what the situation was. Here I was, thinking that when I die, my son will receive a nice little check, but I found out that apparently is not the case. My son will now have to request the check; otherwise it is going to go into a retained asset account, where the life insurance company makes a nice profit. We are not against profit, and I am not against these accounts. What we are against is that nobody knows about this, and if these accounts are so good, then these types of accounts should be able to sell themselves even with the

proper types of disclosures. But nobody is told what these accounts entail. Without the proper disclosures, there is no ability to make a meaningful choice. The consumer does not know the true nature of these accounts, which are essentially private hedge funds. As such, the insurers get to use the beneficiary's money as if it were their own. They make a handsome profit and, yes, they provide the beneficiary with some return, but not nearly as much as that of the insurance companies, according to my understanding. So we are interested that the Committee seriously consider this bill because it is good consumer protection.

**Jan Gilbert, representing Progressive Leadership Alliance of Nevada:**

I, too, am here because this is a consumer protection issue. When the insurance company makes a profit on your premiums, and then says you have to opt not to take the lump sum payment when a loved one passes away, that is just not the way it should work. It should be exactly the opposite.

I had a real life example in my own family. My father passed away very young. My mother took a lump sum life insurance policy and was able to live the rest of her life with that as her means of security. She still worked, but it made a huge difference in her life. She was able to choose what to do with the money. She was a conservative investor and did not make a lot of money, but it was her money. That is the whole point here. When someone dies, you are not in a position to make a decision like this. You make an assumption that it is your money. So I would urge you to pass the bill.

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

One of the unfortunate things that I do in my full-time position with Painters and Allied Trades is process claims through my administrative office staff. We definitely appreciate Assemblyman Carrillo bringing this bill forward to protect other consumers within the industry. We support the bill; however, there is one concern that we have, and I know I should have signed in as neutral. The 30 days after the death of the insured is potentially problematic because most insurance companies will not process a death claim without a death certificate. And if a death certificate is not issued because there is no known cause of death, there are going to be additional delays. I do not know if that was the intent of Mr. Carrillo, but, again, we support the intent of the bill.

**Patrick Sanderson, representing Nevada Alliance for Retired Americans:**

I was asked to come and testify in favor of this bill. It helps the regulation of the insurance companies and helps to pay the money out fairly the way that it

should be done. We understand that you will go through this and try to make it better. We appreciate Mr. Carrillo for bringing this forward.

**Chair Atkinson:**

Is there anyone wishing to speak in opposition?

**Michael Hillerby, representing American Council of Life Insurers:**

With me today is John Mangan from the American Council of Life Insurers (ACLI) and Todd Thakar with Prudential Financial. I will let John walk through how this actually works and try to deal with some of the misconceptions. Although we have some specific concerns and opposition to specific parts of the bill, as an industry we fully support strong disclosure, and we support the stronger disclosure elements that are in the bill now. Mr. Conklin mentioned the bulletin that was put out by the National Association of Insurance Commissioners. That is a bulletin we fully support and an exhibit ([Exhibit C](#)) that we provided for the Committee. We would be happy to work with you and the sponsors of the bill moving forward. I would like to see those stronger consumer protections included. I will turn it over to John and Todd to talk about it from an industry perspective.

**John W. Mangan, Regional Vice President, State Relations, American Council of Life Insurers:**

The American Council of Life Insurers represents 300 life insurance companies that write over 90 percent of the life insurance policies and annuities in Nevada and nationwide. My residence is in Las Vegas. I am speaking today in opposition to the bill as currently drafted. We believe that if this bill passes, you will actually be taking away from consumers a very valuable benefit, and consumers will suffer harm over many years because of this bill. However, one thing we would agree with is that the key to this is good disclosure.

However, I want to tell you today that disclosure is (1) already being provided, (2) already fully regulated, and (3) we would like to enhance it, if possible. The bill itself, we think, is actually rolling back current disclosures required under Nevada law. In 1994, the Commissioner of Insurance issued a bulletin requiring disclosures regarding these accounts, and we have been operating within these specific guidelines for many years. As Michael said previously, the National Association of Insurance Commissioners (NAIC) drafted a new disclosure bulletin last December, and we fully support these disclosures. However, most of these disclosure requirements are not in this bill. With that said, I am concerned that the information you just heard is misleading and inaccurate. The stories that ran last summer, and the story that ran in Las Vegas on Channel 3 in particular, are so inaccurate, misleading and, frankly, irresponsible that we have created a line-by-line rebuttal to that article. No one from our industry was

contacted to talk about the accounts or what they do. That story also said that these contracts were not covered or insured by any financial institution, which is not true. They are fully covered by the Nevada Life and Health Guaranty Association. In fact, they are covered for up to \$300,000, which is 20 percent higher than the FDIC limit. In answer to the comment that came up earlier, in our experience since the early 1980s, when these products were first introduced, there has never been a case where a life insurance policy owner, or a beneficiary with these funds, has ever lost one cent because of an insurance company's insolvency, and that is nationwide. So those facts simply indicate that that story was off-base.

I am going to tell you what these accounts really do. These accounts were invented about 25 years ago by our largest life insurance company, which found that over the course of 150 years of paying death benefits, a lump sum check in the mail was always delayed to some extent in being deposited, and beneficiaries were in a very fragile state of mind when this check arrived. Many were so preoccupied that they probably did not even look at the check for weeks or even months. Furthermore, even when they looked at the check, they did not know what to do with it. They were not in a position to make good choices. So our companies invented these accounts with consumer input and extensive focus groups as the best option, if another had not been chosen, for the person's money. It would be placed in a guaranteed interest account with a minimum interest rate credited the moment the claim was approved. The company would send the claimant a checkbook, which they had full and immediate access to. The claimant could liquidate the entire account on day one or hold it for a week, a month, or three months while he decided what to do with it. In the meantime, we guaranteed a minimum interest rate that was not only competitive with other financial institutions but a bit more favorable.

I want to go back to a comment that was made about a couple of the cases in this arena. One had to do with a Target check. That actually did not have to do with the Nevada case at all. That was the case of a person who had already accessed \$380,000 of her death benefit account through the checks, but she took one check over to Target to buy a large purchase and Target would not accept the check. It turns out that Target is very strict about accepting checks, and they just did not accept it. But the fact is that this person had cashed most of the account by that time. The Nevada case was a claim that a person had been harmed by receiving this account. The *Clark* case was recently dismissed on summary judgment. It is currently on appeal. However, the federal trial court found that there was no harm done to the person who received this account because the person had full and immediate access to all of the funds. It is the person's funds, not our funds. We are holding them for the person, just like a bank would do, but the person has full and immediate access to the

funds. Also, the interest rate she was earning was between 3.8 and 4.2 percent guaranteed. In the research that was conducted during that trial, the best money market rate anyone could find was about 1 percent. So if the damage is that we are guaranteeing an interest that is two, or three, or four times what a person can get in a bank or a money market account, that does not sound like damage.

A couple of other statistics you should know is that since the origination of these accounts in the early 1980s, the regulators, who we report to, have reported virtually zero complaints about these accounts. In the State of Nevada, the Commissioner has told us, he has never seen a complaint on these accounts. There have been a few lawsuits against our companies—that happens—but we are not aware of any consumer complaints in this regard. In fact, our customers love these accounts. My mother received a checkbook from Metropolitan Life when my father died in 1992, and she kept that checkbook and that account open for 17 years because she was earning over 4 percent on a fully liquid checking account, and she never could find a better way to put her money to work. So those are the facts. These accounts are very popular and they have generated virtually no complaints. If you have concerns about people not knowing about them, we want to make sure that the disclosures are better, and we are willing to work with you on that. I will tell you that all claim forms for death benefits state that you can have your benefit as a lump sum check in the mail, or you can have it as an annuity. We can set up one of these accounts, and if you do want that, here is the interest rate and here are the rules. If we do not hear back from you—which happens, because people are in grief—as a default, we put the money into a guaranteed interest retained asset account, so that the person is earning interest from minute one, and does not have to decide that particular day. When they get this account they can decide to completely liquidate the account at any time.

**Assemblyman Ellison:**

If I received a money market account, would I not receive a statement in the mail periodically saying what the full balance of that account is, and what the interest rate is, just like with a regular bank account? It is that the same thing?

**John Mangan:**

That is exactly correct. Once the account is set up, our companies provide a periodic report, a statement. Some do it monthly, most do it quarterly, showing the entire balance, and the amount of interest credited in that quarter, reminding the person that he has the ability to write a draft, liquidate the account, or spend the money as he sees fit at any time. I would like to mention there is a mandated provision in the bill that we would need to close these accounts after three years of inactivity, whether the person wants to or not. So we are very

concerned about that. The bill also creates a fiduciary relationship between the insurer and the checking account holder, which we think is completely unjustified, and even the Department of Labor agrees that it is unjustified. This is no different than a bank account. It is a contract for us to pay minimum guaranteed interest to you, and that is it. If we invest the money and we earn 1 percent and pay you 1 percent, great. If we earn 0.5 percent, we still owe you the full extent of our guarantee. It is our loss and our risk if we do not earn that money.

**Assemblyman Ellison:**

What guarantee is there in it? I have heard testimony from both sides that that money is not guaranteed, as under an FDIC-insured account. I think that is important. If you are looking at a money market account, what kind of guarantee is out there on these accounts for our soldiers?

**John Mangan:**

That is a very good question. These accounts, when they are offered directly by insurers, are not FDIC-insured, and that fact is fully disclosed in our disclosures and in the disclosures that we are recommending from the national regulators. We do disclose, however, that the account is fully insured by what we have as a backstop, which is the State Guaranty Association mechanism, and that mechanism exists in every state, including Nevada. Nevada covers these accounts for up to \$300,000, not \$250,000, and that is fully disclosed to the person who receives this account as well. Now, the bill does not require us to make that disclosure. It is actually a lesser disclosure in the bill than what we would prefer to do, which is to disclose fully to the person that it is not FDIC-insured but is insured fully with the State Guaranty Fund, because I think people need to have that peace of mind. That is another reason why we support the model disclosure.

**Chair Atkinson:**

I have a quick question. You said that this bill requires that they close the account after three years. I am reading the section referring to this, and I do not think it does that. Section 2, subsection 4 reads: "If a beneficiary chooses to receive payment of the proceeds of any benefits under a policy of group life insurance in the form of a retained asset account, the insurer or other third-party administrator of the retained asset account shall return any balance in the retained asset account to the beneficiary if the beneficiary does not use the account during any 3-year period." So it does not have that requirement. You spoke earlier about something being misleading, so I just want to make sure that you are not being misleading, because it is saying that if they do not use it in a 3-year period.



**John Mangan:**

Thank you, Mr. Chairman. That is what I meant to say, and I apologize if that was unclear. If it is not used in three years, it must be "returned to the beneficiary."

**Chair Atkinson:**

So can they use it, and then, in 28 months, use it again, and I would assume that the amount of time the account was considered inactive would begin again.

**John Mangan:**

Yes, Mr. Chairman, it could.

**Chair Atkinson:**

I just wanted to make it clear that it does not just happen and then you close the account and send them a check. Something has to happen beforehand.

**John Mangan:**

Yes. If it is not used anytime in a three-year period, we return the money, although that concept does not make any sense because the person owns the money already. It is his money and in his account, so by returning it, I think this means we liquidate the account, close it, write a check, and mail it. The person then waits, loses that interest, and deposits the check somewhere else. That is our concern.

**Chair Atkinson:**

Yes, but now you are making a different argument concerning the three years. I just wanted to make sure that everyone was clear and that the Committee saw that there was a difference.

**Assemblywoman Carlton:**

I want to get this whole process straight in my mind, and I understand what we are trying to do. I was a little concerned about the "irresponsible" comment, but I will let that go. I think people have the right to express how they view a bill. I would like to go back to where you said these instruments were started in the 1980s; is that correct? How did your industry handle folks who already had a policy when these accounts came into being? Did you reach out and sell these accounts to folks who currently had policies?

**John Mangan:**

Assemblywoman Carlton, I think the company went to its current policy owners and said, "We are seeing a lot of checks delayed, misplaced, and lost, and we are getting a lot of calls from beneficiaries saying they do not know what to do

with this money." They did national focus groups to try to figure out a better way.

**Assemblywoman Carlton:**

I understand that. I have a life insurance policy that definitely predates 1980. I do not remember ever being contacted about this retained asset account being an option for that policy. My parents gave it to me as I got older, which they did for each one of the kids. I guess I am going to need to make a phone call when we get done today to make sure that my husband gets the money when I do go, but I am curious how you handle that particular issue. Did you proactively go out and say, "This is available to you. It was not encapsulated in your policy when you bought it. Would you like to do this?"

**John Mangan:**

I am not completely sure on the facts on what they did to roll this out back then. Whoever the beneficiary was in 1980 or 1982 is still the beneficiary.

**Assemblywoman Carlton:**

I understand that.

**John Mangan:**

Then what happens is the company will mail a claim form to the person post-1982 and say, "Here are your options. It used to be that we would just send you a check, but now you have another option, and it is this account."

**Assemblywoman Carlton:**

I am just trying to understand the disclosure that was given to the current customers. I would like to know that if I buy a policy now for hopefully a future grandchild, when I sit down with the insurance agent to go over this, will this provision be fully disclosed when I purchase the insurance policy?

**John Mangan:**

Again, I think that that disclosure does take place when the policy is issued to new policyholders, and it most certainly takes place when there is a death and the claim form is sent. That is where we have been focused. This is really a decision for beneficiaries at the end of the day, so that disclosure is aimed at them.

**Assemblywoman Carlton:**

I understand that, but I think we have heard many statements about a person's state of mind when something like this happens. If you had come to me right after my mother's death, and as the oldest, I had to make some of these decisions, I am not sure I could have made them. I think if my mother had sat

down with me when she purchased the policy, or explained to me what was going on, it would make it easier to make that decision. So if we are going to talk about disclosure, it needs to be when the policy is purchased, so people are making a decision for their families in that business-like frame of mind.

I would like to go to the fiduciary discussion that evolved. The statement was made that these accounts are not really different from a bank account. Did I hear correctly?

**John Mangan:**

Yes, you did.

**Assemblywoman Carlton:**

Okay. What type of fiduciary responsibility is there between myself and my bank, and how are you different? You are not a bank; you are an insurance company, but in essence, you are acting like a bank. I want to make sure that I understand that component.

**John Mangan:**

I would be happy to address that. The checking account you have with the bank is essentially a contract. You put the money in, you may be charged for checks, and you are paid a certain amount of interest, and that is the contract you have with your bank. The contract with us is a separate contract for these accounts. The contract says that the money goes into this account and you own it. It sits there, it earns a guaranteed level of interest as long as you keep it there, here are the rules on the checks, and that is it. If we do not make investment income or we make bad decisions, it does not matter; we still owe that person the 1.5 percent, which is the current average guarantee, and that is what we are going to pay. In that sense, it is exactly like a checking account. The only thing that is different, as I have mentioned before, is this Guaranty Fund coverage, which is analogous to coverage by the FDIC, that we have as an industry.

**Assemblywoman Carlton:**

If I take that money and invest it with a private investment firm, would there be a fiduciary responsibility upon that investment firm to make sure that my money was safe and guarded?

**John Mangan:**

I believe there would be if you gave it to somebody who was actually making investment decisions with your money, and putting you at risk. In essence, yes, the fiduciary requirement applies. But in this case there is no risk to the individual. We take the risk. We guarantee the interest, and that is the

contract, just like a checking account. If you took all this money out, gave it to your stockbroker to invest for you, and they do not do a good job, there is a fiduciary problem. But, in these accounts, current Nevada law says there is no fiduciary relationship between a checking account holder and the bank, or between this account and an insurance company.

**Assemblywoman Carlton:**

Thank you very much.

**Assemblyman Horne:**

I take exception that these beneficiaries are grieving and oftentimes do not know what to do with the money, so the company is here to help, and therefore we have created these accounts. I want to go back to the statement that it is just like a bank account. Do you provide the same protections as a bank does for its checking accounts, because I see evidence that that is not necessarily true. You do not provide the same protection. You keep saying that the interest rate is guaranteed, but what about the principal?

**Mike Hillerby:**

*Nevada Revised Statutes* (NRS) 686C.210 is part of the Nevada Life and Health Insurance Guaranty Association Chapter. The Legislature establishes the level of protection, and that currently is \$300,000 per life insurance policy. It is guaranteed, like with the FDIC, but by a different entity, the National Organization of Life and Health Insurance Guaranty Association (NOLHGA). The FDIC has raised its level to \$250,000.

**Assemblyman Horne:**

Last session, some of my colleagues may remember, somebody hacked into my checking account, and the bank gave me the money back. Regarding these checks or drafts that you send to people, if somebody got ahold of their checkbook, would you honor those checks and give them that money back?

**John Mangan:**

I think you are getting at the issue of whether there the same consumer protections with this type of account as with a bank. The fact is that these accounts and our activities around them are all regulated by the State of Nevada and by every other state where we do business. It is my understanding that if a check or a whole checkbook was stolen and there was fraudulent activity on it, we would make that person whole just like the bank would.

**Assemblyman Ohrenschall:**

I have two questions. First, is there any data from the insurance companies as to how much additional revenue these attained asset accounts produced for the industry?

**John Mangan:**

I do have some data. It is for our largest company and may be a good example for the rest of the industry. In national testimony before the regulatory body in December, Metropolitan Life Insurance reported that 50 percent of their outstanding accounts are paying a minimum interest guarantee of 3 percent, and their earnings on all the money that was outstanding in those accounts across the country was roughly equivalent to the amount of interest they paid out in the prior year. That means that whatever interest rate they were paying, and however much they were crediting to beneficiaries, they were earning roughly the same amount on the other side of the ledger. The conclusion is that, of course, they have to invest the money and earn interest in order to pay interest, but they were not earning an exorbitant amount; it was basically a break-even amount. We think that is legitimate and fair. It is the only way we are able to pay the interest rates that we pay, and we do believe that they are higher on average than you can get at any bank, and you have to earn interest.

**Assemblyman Ohrenschall:**

I asked the sponsor about the sophistication of the beneficiaries. You mentioned that this is a contract. I am particularly interested in the disclosure provisions of this bill. Do you have any problem with that, since I assume you would agree that most of the beneficiaries are not as sophisticated legally, or in terms of the economics, as the insurance companies are?

**John Mangan:**

We wholeheartedly agree with you. We think that disclosure is the key to this. It is why we recommend a much more robust set of disclosures than are in this bill. The disclosures in the bill are okay, but they go only partway to what we are currently doing. We recommend something that is more significant because, in the end, the beneficiary is not only in a tough time, but it is a complex world out there. We want to make sure that the beneficiaries have all of the disclosures they need in order to make the right decisions. So we are completely in support of that portion of the intent of this bill; we would just like to see the more robust disclosures used.

**Assemblywoman Bustamante Adams:**

I would welcome those increased disclosure requirements if we can make this bill even stronger. Mr. Carrillo mentioned the fact that a lot of military families were put in these circumstances, so I want to use myself as an example. When

my husband went over to Afghanistan, he bought a life insurance policy. From what I hear you saying, if we did not make a decision to get the lump sum, it would default to this retained asset account and, as a beneficiary, I would get a return on that money of about 3 percent interest. I believe you said that the life insurance company would make additional interest off the money if I left it in that account. Is that correct?

**John Mangan:**

I do not think that is quite what I said, and if it was confusing, I apologize. If you make no election, in many cases we put the money in an interest bearing account immediately, so you are not losing any interest. Then we send you the account material with all the disclosures and say that you can use this check, liquidate it, spend it, or deposit it in your bank account, and while you are doing that, we specify clearly what the guaranteed interest rate is. This varies across the industry, but what I was saying is that MetLife, as one example, has a minimum guaranteed interest rate for individual policies ranging from 1.5 to 3 percent. You would be earning that interest as long as you wanted to hold that account. But the minute you do not want it anymore, you can simply liquidate it and write a check to a bank or money market account or whomever you would like to write the check to. That is the way it is supposed to work.

**Assemblywoman Bustamante Adams:**

I think that you said that the earnings on the other side of the ledger book would be an equal amount, but there is no cap for what you can make off my life insurance policy, is that correct?

**John Mangan:**

I would simply say that is not likely, because this is a fully liquid account. It is money we need to find short-term. In other words, you can cash it out anytime, so we cannot invest that money in anything but short-term, liquid investments, most of which yield a much lower rate of return. The rate of return we heard earlier, 5 to 8 percent, is just completely, I believe, inaccurate. We have money for 30 days, and what kind of interest rate can we get on that? It is not much more than what we would guarantee. And we have to have that money available, whenever you want it, so it is whatever we can earn in the short-term investment. We really are limited in that sense.

**Assemblyman Conklin:**

Just out of curiosity, what happens to the money if the beneficiary passes? If somebody does not know that this money has been moved into a retained asset account, is there documentation? For example, there are two elderly people, and when one of them passes away first, the life insurance award gets moved

to a retained asset account. Then the second one passes. What happens to the money?

**John Mangan:**

I believe that this would be the same approach as you have with a checking account. The money would go to the beneficiary designated by the account holder or account owner. It could go to their spouse, their next of kin, or whomever they designate, according to their will. This is an asset that they own. We hold it, but they own it. It would be treated like any other asset such as a checking account or money market account.

**Assemblyman Conklin:**

How does anyone know that they own it? If you sign up for a bank account, you have documentation. This is not necessarily signed up for, so what sort of documentation is there that proves that you are the owner of these types of accounts?

**John Mangan:**

There is documentation in the form of a supplementary contract that says it is your money. Just as when you open a checking account, you get a little flyer, which is your contract. Our contract tells you that you own it, and it tells you all the rules and how it is protected.

**Assemblyman Conklin:**

Is it signed by the beneficiary?

**John Mangan:**

It is issued to the beneficiary and they own it.

**Assemblyman Kite:**

If you would bear with me, I have two yes or no questions and one follow-up question. Are the death benefits from the life insurance policy taxable?

**John Mangan:**

Under federal law, life insurance benefits are not taxable to the beneficiary.

**Assemblyman Kite:**

Is the interest gained on the account for the beneficiary taxable?

**John Mangan:**

Yes, just like any other interest.

**Assemblyman Kite:**

If a couple in Indiana buy life insurance policies from MetLife, and one of them dies, and the survivor/beneficiary moves to Nevada, how is this bill going to affect that person?

**John Mangan:**

As a resident of Nevada, the person, I believe, would be subject to this bill, and therefore the rules that are in this bill, such as the disclosures, the issue about the fiduciary, and the three-year inactive period provision, would apply. Most laws apply to the place of residency.

**Chair Atkinson:**

You can follow up, but I am going to remind the Committee that we have three other bills and one of them is Mr. Conklin's, so please be aware of the time constraints.

**Assemblyman Kite:**

I will talk to them off line. I have 13 miles before I get home.

**Chair Atkinson:**

Consider the rest of us who have 435. Any other questions? Mr. Thakar, did you have something to add?

**Todd R. Thakar, Vice President Government Affairs, Prudential Financial, Sacramento, California:**

The only thing that I will add is on the Veterans Administration accounts. The Veterans Administration looks at the lump sum payment as something you can get either as a check or as a retained asset account. We disclose on the claim form the various options, so the consumer has the choice. We also disclose on the claim form what we will do if you do not make an election. The Veterans Administration has asked us to do this because it believes that it is in the beneficiary's best interest to have an interest bearing account that preserves all his options while he decides what to do. We are big advocates of disclosure. We do make clear that you can liquidate the account immediately, and the evidence is that about 30 percent of our accounts are closed within 30 days.

To answer your question about the statements, at Prudential we send quarterly statements to everyone who has an account, and for any month there is activity, we send a statement in that month, too.

**Chair Atkinson:**

So you send monthly statements. I am not sure you said that earlier.



**Todd Thakar:**

We will send a statement in a month where there is activity on an account. Alternatively, if there has not been activity, we will do it every quarter.

**Chair Atkinson:**

Are there any other questions from the Committee?

**Mike Hillerby:**

Thank you for your time. I will be happy to work with the Committee again. We support an even more robust set of disclosures, and we have given those to the Committee through Nevada Electronic Legislative Information System (NELIS) as an exhibit ([Exhibit C](#)), and that is the National Association of Insurance Commissioners' (NAIC) model. We can do that by statute or as it has been done by the Commissioner in the regulatory process.

**Michael Hackett, representing Hartford Life Insurance Company:**

We are in opposition to the bill for many of the same reasons that have been stated, but our primary opposition is in regard to the fact that we feel that this would be a better bill if Nevada was in compliance with the amendment put forward by Mr. Hillerby to make it consistent with the NAIC model. For example, if this bill were to pass as is, Nevada would be the only state in the nation that would require the insurer to be put into the role of the fiduciary, so that is something that would be very concerning to us. The only other thing I would add is that I do not see in the amendment put forward by Mr. Hillerby and his group an opt-in provision for those who wish to have their assets put into this retained asset account.

**Chair Atkinson:**

Would anyone who is neutral like to speak to the bill?

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

I will be very brief. I think that this bill has been discussed adequately already. From my point of view, this is a simple bill. It is a bill that is all about disclosures. I agree with the industry in this instance that we can do even more than what is in this bill. We can use some of the information from the bulletin from the former State of Nevada Commissioner, Terry Rankin, issued in 1994, and again some of the information in the consumer bulletin and consumer work that I issued last September to perhaps make even more disclosures. You may want to consider is requiring that all disclosures should be in 14-point type. We all know how lengthy insurance contracts often are, so to make certain that they are read, we could require them to be printed on the front page with the signature block so that consumers see them up-front and have the information

they need to make informed decisions. I completely support additional disclosures and giving consumers tools to make informed decisions. In regard to the fiduciary term, I would like some clarification on what additional burden or responsibilities may be put on my office through marked conduct examinations, if that term remains, and I would certainly be willing to discuss that with the Committee or with the interested parties.

I did want to respond to Assemblyman Goedhart's earlier question. In the State of Nevada, we have not received any specific complaints with regard to retained asset accounts. I need to qualify that by indicating that we do not have a complaint field set up individually for retained asset accounts. That would fall under the claims handling piece of our database, and a review of our claims handling complaint database has not revealed any complaints in the State of Nevada. However, that does not mean that there are not consumers who do not have the information that I would like them to have.

**Assemblywoman Carlton:**

Regarding the questions I had asked about disclosures upon purchase of the policy, can you tell me whether those disclosures are made clearly upon purchase of the policies now, or does this not really get discussed until we talk to beneficiary?

**Brett J. Barratt:**

Mark Dickinson, who is here next to me, is one of our actuaries and gets to spend his days reviewing these forms. My understanding is that these elections would be made by the beneficiary at the time of the life insurance policy holder's death.

**Mark Dickinson, Actuary, Life and Annuities, Division of Insurance, Department of Business and Industry:**

That is correct.

**Assemblywoman Carlton:**

Mr. Commissioner, do you see any problem with making sure that these disclosures are available to the person who actually purchases the insurance, so that he can make a sound decision and be sure that the beneficiary has all the necessary information?

**Brett J. Barratt:**

No, I do not. It is their money.

**Assemblyman Ellison:**

I have a question on subsection 4 of section 2, where it says that at the end of the three inactive years they have to send that money back. Is there any other policy in the State of Nevada with such a provision?

**Brett J. Barratt:**

I am not aware of another such policy. However, if I may go one step further, I read this the same way; that is, if there is no activity, that would trigger the mandatory immediate distribution of the funds.

**Assemblyman Ellison:**

That is what scares me. The check is then written and sent out in some ungodly amount, and it might be lost or cashed by the wrong people. It would be better to have the money secured until the rightful owners got it, because they are still getting statements. I was hoping that subsection 4 could be looked at with the intention of being amended.

**Brett J. Barratt:**

I am not sure if that is a question, but I would love to make a comment, if I may.

**Chair Atkinson:**

He made it sound like a statement, but ....

**Assemblyman Ellison:**

No, a little of both. If there has been no activity whatsoever, and a check is sent out, that check could go to no-man's-land. It seems to me it would be more secure where it is, and the company would keep sending statements.

**Brett J. Barratt:**

I would tend to agree with you, at least with regard to the death. If on the one hand, a consumer may be required to make an affirmative election, whether to get a lump sum at the beginning or to set up a retained asset account, it may make sense to have a consumer make a similar affirmative decision whether, for that three-year period, if he has not used the account, to either keep the retained asset account or elect a lump sum distribution.

**Assemblyman Ellison:**

I agree.

**Assemblyman Conklin:**

I think I understand where Mr. Ellison is coming from. If there is a possibility that a person would lose a check, is not there the same possibility that he may

lose the checkbook that comes in the mail? I think that is the issue we are trying to get at. It is possible, upon the passing of a loved one, unbeknownst to the insurance company, that a person moves to another location, moves in with another family member, or moves into a retirement home or out of the country. Somehow there has to be a way to identify the rightful owner of the money, and there has to be a responsibility to get the money to that beneficiary.

**Assemblyman Grady:**

Very briefly, I would rather see the beneficiary get a statement every three months, or whatever period, so there is a paper trail, rather than automatically sending a check which may be lost. And if it is lost and no one else knows about it, it would be sent to the State of Nevada, and the beneficiary's people would never see that money unless they looked in the unclaimed property. Maybe after the three years it would be better to simply send a memorandum asking, "Do you wish to continue this investment that you have? If you do, please sign this acceptance." I think that would be better than just sending them a check.

**Assemblyman Conklin:**

I understand what my colleague is getting at, but I have this small problem. The testimony from the industry is that they do not, or at least they did not, answer affirmatively my question. They do not have a signed contract by the beneficiary. They have a signed contract by the person who is taking out the policy. And when the person passes, the beneficiary gets a letter in the mail saying, "You now own this." So, if you send them a letter and say, "Please sign," you have never met the person, you have never seen an ID, you do not know who that person is. Let us say the person moves away, and here is a new, less than honorable person living at that same residence who gets that letter and decides to send it on. Then the only signature on file is the signature of somebody who is not the beneficiary. Do you see what I am saying? I just would like to close that loop. I agree that there is maybe a better way to do it, but it really needs to be secure, and we need to make certain that the beneficiary gets the money. There are a lot of holes.

**Assemblyman Grady:**

I do agree, except I would rather send them a nonnegotiable instrument, rather than a negotiable instrument that an unscrupulous person could take to a bank and say this is mine.

**Assemblyman Conklin:**

I understand but I think there is potential on that nonnegotiable instrument as well. Somehow we are going to have to clean that up.

**Chair Atkinson:**

Are there any other questions or comments for the Commissioner? Anyone else wishing to speak in neutral? [There were none.] Do you have any final comments, Mr. Carrillo?

**Assemblyman Carrillo:**

When you have a loved one who passes, and you realize that they might have left something to you, you know they wanted to take care of those people who are left behind. I am no different. In the same aspect, when it comes to letting my loved ones decide what they should do with that money, and not anybody else, transparency is the most important thing. Whether they put it in their own account or not, let them decide what to do with that money. Thank you.

**Chair Atkinson:**

We will close the hearing on Assembly Bill 274 and allow Mr. Carrillo and interested parties to work out their differences, and hopefully bring it back to Committee. We will now open the hearing on Assembly Bill 283.

**Assembly Bill 283:** Revises provisions relating to registration with the Nationwide Mortgage Licensing System and Registry. (BDR 54-830)

**Assemblyman Marcus Conklin, Clark County Assembly District No. 37:**

You have before you Assembly Bill 283. Last session, out of this Committee, we passed a compliance act with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (S.A.F.E. Act), which created a mortgage lending licensee registration—a nationwide database that registers all mortgage lending professionals so lending activity could be tracked. The compliance bill, Assembly Bill No. 523 of the 75th Session, was a required piece of legislation for us to maintain control over our own mortgage lending practices. Had we not complied, it would have been turned over to the Department of Housing and Urban Development (HUD).

In the process, a group of lending licensees got caught up in the language of the bill. Those licensees are folks who are making certain kinds of loans that are commercial in nature. It is a very small group of people, but they are not required under federal legislation to comply with this act. Now, A.B. 283 exempts them from the provisions of our own S.A.F.E. Act compliance bill, although it does not exempt them from licensure, requirements to follow our laws, or regulations of the Mortgage Lending Division. This is necessary because (a) they were not required to be caught up in the 2009 bill in the first place and (b) there are some educational requirements and certain testing requirements associated with being in the mortgage licensing system and

registry that these folks do not know, and in many cases they may not even be able to pass, for the simple fact that they do not practice the type of lending that the registry was supposed to capture in the first place. So we are trying to carve them out of the S.A.F.E. Act from last session and have in place, not a new regulatory scheme, but at least a way to cover the Mortgage Lending Division so that it still can enforce all other provisions associated with lending that are in its field. Mr. Chairman, that is, in a nutshell, all that this bill does. I do recognize that the Mortgage Lending Division has an amendment, which I believe they will come and testify to. The commercial lenders I have been talking to, as far as I can tell, are in support of this bill. I also have spoken with former Assemblyman David Goldwater, who has an amendment, and I will let him cover this on his own.

**Chair Atkinson:**

In this Committee, before we take amendments, we would like to take the people who are willing to testify in favor of this bill. No one? Anyone against the bill? Anyone in opposition? Now we will take the people who are neutral, and that means the people who have amendments.

**Sheila E. Walther, Supervisory Examiner, Mortgage Lending Division,  
Department of Business and Industry:**

The Division supports A.B. 283. However, we are proposing an amendment ([Exhibit D](#)), which expands the intent of the bill. As Assemblyman Conklin explained, due to the way our language was written, last session we incorporated all of our licensees in a requirement to participate on the registry. This bill would amend that language into our statutes so it would exclude those people from that one requirement, the registration on the registry. However, the bill would not exclude them from many of the other concerns that they had, such as passing a test related to the federal law requirement or doing continuing or pre-licensing education related to residential lending. So our amendment would address some of these additional concerns. It would exclude the requirement for them to pass any federal test that was related to federal laws for residential lending, continuing education, pre-licensing education, and some of the other concerns that were expressed to the Division. We worked with the few licensees who do strictly commercial lending. We tried to incorporate those ideas and give them some reprieve from some of the requirements by addressing them within our amendment.

We did have a few of our commercial lenders and licensees who expressed that they would like to stay on the registry. It was a lot of work to get on the registry, and they want the availability of the registry if they happen to have a residential loan. So we want the Division to provide the opportunity for them to

declare whether they do or do not want to participate if this bill were to pass, and have the option to be on the registry if they wish.

**Kyle Nagy, Director, CommCap Advisers, Henderson, Nevada:**

We have worked with Sheila Walther over the last six months on the amendments and the bill. We are in favor of the amendment in the bill as it is.

**David Goldwater, representing Oasis Capital Management, Las Vegas, Nevada:**

An issue has come up concerning trust deeds. I spent a long time in this Body looking out for the rights of investors and Nevada's unique opportunity to invest in trust deeds, an investment secured by real property, where people can get the benefits of rather high interest rates secured by land. These companies, like Goldwater Capital, Clayton Mortgage, and Aspen Mortgage, were doing a very robust business for 30 to 40 years in Las Vegas. This activity has been decimated by the recent economic downturn, which has produced a host of other problems. The sponsor of this bill, Assemblyman Conklin, has long been an advocate for consumer protection in the mortgage area and should be commended for this. He has been doing it for many sessions, and it continues with this proposed amendment.

Mr. Fred Waid, who is a colleague of mine in this industry, is going to tell you some of the problems that arise when investors no longer hold a trust deed but now own the land. In cases where there is some sort of lender liability, sometimes the mortgage broker is no longer there. The mortgage broker is the person, such as the person at Goldwater Capital or Aspen, who was the conduit for the loan, or brokered the loan. He did all the underwriting and all the research, and then handed the loan over to the investors, who either had their principal returned or became owners of the property. In many instances, they have become owners of the property, but, in addition, they are being held liable for the duties of the lender. So, if the lender had done something wrong, the people in bankruptcy court now are suing the multiple beneficiaries, that is, the investors in the loan. I am going to have Mr. Waid, in the interest of brevity, take you through an anecdotal story so that you can better understand what is going on.

**Fredrick P. Waid, General Counsel, Oasis Capital Management, Las Vegas, Nevada:**

As General Counsel, my responsibility is to manage 132 separate trust deed investors who today are main defendants in actions for activities that they were never involved in. They were among the thousands of individuals who invested in trust deeds in Nevada in the booming economy and where the holder of the license—the company issued a license by the Mortgage Lending Division—either surrendered that license or that license has been revoked. These trust deed

investors are now being looked at by the borrowers who may have legitimate claims against mortgage brokers that have failed or whose licenses have been returned. These investors are now looked upon as the only remaining individuals, so our purpose is to protect these individuals and seek your help and assistance by defining and clarifying the previous intent of the Legislature. These individuals are innocent trust deed investors. It is an eclectic group, ranging from senior citizens to sophisticated investors managing money on behalf of other people, pension funds, and other groups. They did not participate in the underwriting or in any negotiations. In most cases, they probably never met the borrower, but now, after a license is revoked or surrendered, they are on the front line.

As I indicated, we are representing and defending these individuals against these claims. Our purpose here is to seek your assistance in protecting them against this very measure, and we can do so simply by clarifying the intent. One of the ways that we do this is by outlining that the duties, the responsibilities, and those things which are licensed mortgage broker activities are non-delegable to any of the trust deed investors as defined by the current statute. We appreciate your help and want everyone to understand that this was a vital part of Nevada's economy. It is not just that the thousands of trust deed investors are Nevada citizens, but also that this drew economic activity from across the nation. We believe that correcting these issues, and clarifying the intent of the Legislature, will not only be beneficial to the 132 currently named defendants, but as the economy rebounds, it will ensure that we have a system in place that will foster additional investment in Nevada.

**Chair Atkinson:**

Questions from the Committee? Does anyone else wish to speak as neutral on Assembly Bill 283? Any other comments from the Committee members? We will then close the hearing on Assembly Bill 283.

[The Chair turned the hearing over to Vice Chair Conklin.]

**Vice Chair Conklin:**

We will open the hearing on Assembly Bill 299.

**Assembly Bill 299:** Creates the Low-Cost Automobile Insurance Pilot Program.  
(BDR 57-178)

**Assemblyman Kelvin Atkinson, Clark County Assembly District No. 17:**

I am here today to introduce Assembly Bill 299. This measure creates the Low-Cost Automobile Insurance Pilot Program in Clark County. Nevada law requires that all drivers be insured. It is impossible to estimate exactly the



number of Nevada drivers without insurance. However, a 2010 report by the Spending and Government Efficiency (SAGE) Commission estimated that 19 percent of Nevada drivers are without auto insurance, and the number is growing because of the bad economy. As we know, our constituents are making choices on which bills they should pay in difficult times like these, and we are hearing that one of the bills they cannot pay is their automobile insurance. I have heard firsthand that too many low-income drivers remain uninsured because the cost of standard auto insurance premiums is beyond their financial reach. Walking my district this past summer, my constituents told me that they are having a difficult time paying for their auto insurance, among other things, even though they are great drivers with no driving convictions on their records. In addition, since 2010 the unemployment rate in Nevada has continued to soar. Lately the numbers have been dropping a little bit, but they are still up there and our people are still suffering.

The number of uninsured motorists has likely risen significantly as people, in the current economy, struggle to choose between providing food and shelter for their families or driving without auto insurance. I believe this problem exists particularly in southern Nevada. I believe there is a solution. If affordable liability insurance were available, many uninsured drivers would choose to purchase it. Therefore, the primary goal of Assembly Bill 299 is to provide an affordable automobile insurance option to low-income citizens who have unblemished driving records. I have been working closely on this with the Insurance Commissioner and his staff since last summer. However, the Division of Insurance has expressed concerns about the measure as introduced. Together we have developed amendments that would allow the Division to enact a low-cost auto insurance pilot program within its current organizational structure ([Exhibit E](#)). These amendments will also reduce the fiscal note, which I will discuss in a few minutes. The Insurance Commission and the Insurance Commissioner's Office are actually neutral on the bill, but they were able to provide some very helpful advice on how to go about instituting this program based on some other programs, in particular, the California program that is doing this currently.

I would like to point out the highlights of this pilot program, which will be available to qualifying persons only in Clark County. Section 10 establishes the requirements that a person must meet in order to purchase a low-cost auto insurance policy under this program. In order to qualify, a person must have a gross income which is at or below 250 percent of the federal poverty level, be at least 19 years of age, and have been continuously licensed to drive an automobile for the past three years. The person must be a good driver, which is defined as having no more than one at-fault property damage accident, or no more than one demerit point for a moving violation, but not both in the

immediately preceding three years. The person must not have been involved in an accident involving bodily injury or death in the past three years. Additionally, a college student applicant cannot be claimed as a dependant of any other person for federal income tax purposes. I will like to stress that an applicant for the pilot program must meet all of the aforementioned criteria in order to be eligible for the program. Section 8 of the bill sets the financial responsibility limits for the pilot program, and Section 9 establishes the factors that must be considered in setting the rates for the low-cost auto insurance policy.

As I mentioned, I have been working with the Division on proposed amendments for Assembly Bill 299. As originally proposed, the bill would require the Division of Insurance to provide underwriting policy insurance and claim services for the Low-Cost Automobile Insurance Pilot Program. Typically, these services are provided by an insurance company. The Division indicated that it would require several additional high level staff positions and need to invest in sophisticated information technology (IT) systems in order to provide these functions. The Division has submitted a fiscal note reflecting the cost. If these costs are passed on to the program, we could not afford to offer this low-rate automobile insurance. I am proposing to amend the bill to use service carriers to issue policies, collect premiums, and administer claims. Policies must be issued by an insurer, not a producer of insurance. I also believe it is important to use an administrator to receive and process applications, including determining eligibility. This will be accomplished through the request for proposal (RFP) process in the next year to ensure that the program is operational by the effective date.

Another concern expressed by the Division with the original language in A.B. 299 is regarding uninsured motorists and medical payment coverage. Current law requires automobile liability insurance to offer uninsured motorists coverage up to the bodily insurer limits and medical payment coverage of at least \$1,000. As introduced, the bill excludes this coverage. The Division researched this issue and informed me that the uninsured motorist coverage is available only as a supplemental coverage on an automotive liability insurance policy. It is not available as a stand-alone coverage. I propose to add uninsured motorists, underinsured motorists, and the medical payment coverage to the program. It was noted by the Division that Nevada's financial responsibility statutes have been interpreted to state that any permitted driver is covered by the motor vehicle policy, with the notable exception of coverage that is issued under the operator's policy. The measure excludes coverage from permitted drivers who do not fit within the pilot program's strict underwriting guidelines. I propose to amend the bill to cover permitted drivers.

Finally, section 16 requires that the Insurance Commissioner assess each insurer who issues a policy or renewal of a motor vehicle liability policy 30 cents for each policy issued or renewed, and that the Commissioner allocate 25 cents of each assessment collected to fund the program, and 5 cents to be used for advertising the pilot program. The Division has prepared a fiscal note, which is on the Nevada Electronic Legislative Information System (NELIS). I propose to assess 50 cents per vehicle per year, not per policy. In discussing this with the Commissioner, he has indicated that the State General Fund will not be used to start this pilot program. Instead the start-up money will come from the Division, and the Division will be reimbursed in the same fiscal year. The Committee can see on NELIS the proposed amendment by the Division of Insurance, which is quite lengthy. The fiscal note is there as well, and there may be some comments from the Commissioner. I also will note that six other members of this Committee have signed on to this bill, so you should not have too many questions.

**Assemblyman Horne:**

In section 10 at the bottom of page 4, pertaining to "a garaged vehicle," I was wondering if that meant literally a "garage." The population you are trying to reach here may not have a garage, or is not likely to have a garage, and whether your car is garaged or not sometimes affects the insurance rates.

**Assemblyman Atkinson:**

On page 4, lines 42 and 43, it reads: "The person resides in, and the motor vehicle would be garaged. . . ." We can certainly correct it, but I believe that it just refers to the house where the car is kept.

**Assemblyman Horne:**

I know when I have bought motor vehicle insurance and they are giving me a quote, they have asked, "Does your house have a garage or not?" I have a question on how the person cannot claim a college student as a dependant on federal taxes. Could not a person be a college student who is below that 250 percent below poverty level, and being claimed by parents who are 250 percent below poverty level?

**Assemblyman Atkinson:**

I would assume that could be the case. We did research where that did come up, and that was brought to my attention. I believe that language directly came from the California law. It was actually for the reverse, in case you have parents who are claiming you and who potentially could pay for a policy outside of this. It could be that your family was not low-income, and you were going to college and then getting a low-cost insurance that you were not really eligible for because your family could financially take you out of the program. That is

really why the language was there. But certainly, I would assume someone could go to college, and the family could be qualified as low-income according to the program's parameters, and the student would be considered low-income and therefore within the parameters of the program's designated group of drivers.

**Assemblywoman Carlton:**

I am very proud to have my name on this bill. My concern is that the 250 percent of poverty level can change. How do you envision dealing with that? It could change in the middle of someone's policy year, so I am not sure if that could be handled by regulation. And it changes depending upon the size of your family, too. If you have a mom, a dad, and two kids, and they fit within that poverty level, but then one kid falls out because he goes to college or ages out, or you become divorced and lose a spouse, then your rate could be affected. I would want to make sure that they could benefit from this policy for the whole year and not lose it and have to readjust later. How would you envision that?

**Assemblyman Atkinson:**

Mrs. Carlton, either you could do it based on this, or you can do it based on the state's definition of a low-income household in *Nevada Revised Statutes* (NRS). I would believe that at any rate you are absolutely right. Any one of our situations could change overnight. I do not know if the Commissioner's Office can answer it later, but I would assume once you had that policy for six months, because that is what normal policies are written for, you are in there. If your circumstances change after three months, you are still in the program until that policy expires, just like you are with your insurance now.

**Assemblywoman Carlton:**

That is what I want to guarantee for the people, because they are banking on their car insurance payment to be a certain amount every month, and I would hate to see it get changed partway through.

**Assemblyman Atkinson:**

I agree with you on that.

**Assemblyman Ellison:**

One of the questions I have with the bill is what is meant by "property damage," and I will explain why. Property damage is when somebody is going down the road and runs into someone else, and if he does not have enough insurance, our insurance pays, and we have to go back and sue that individual, which puts him in a worse predicament. This happened to me a couple of weeks ago. Are we setting up something to create more problems, or is there

something in here that you can address property damage with? I do not see where the bill strictly addresses property damage as an issue and the amount of money that would be charged or collected.

**Assemblyman Atkinson:**

You are right, Mr. Ellison. Property damage, the way I see it, is similar to how you have explained it but also includes the contents of the vehicle. It did not get addressed and maybe we can address it. It is better that a person has some insurance, as opposed to no insurance, so this gives the people the opportunity to purchase it. Let us face it—people who do not want to buy insurance are not going to buy it, no matter what we do. As Mrs. Carlton has said, some folks who are struggling have dropped to a certain level where they cannot afford auto insurance, so they are in this category today. The family's circumstances may change in a month or two, but this gives people the ability to have insurance. We certainly can look at that issue. This amendment is not going anywhere today.

**Assemblyman Ellison:**

Maybe there could be a rate from the insurance group that provides a supplemental X amount of money. I will give you an example. My daughter parked our car on the street, and a woman driving down the street was not paying attention and plowed into our new Mustang. The Mustang was totaled. They are good, honest people. They did not mean to have the accident, but they were insured for property damage for only \$10,000. Now our insurance is suing them for the \$25,000 that they are short, which was no fault of theirs, but it still puts them in a bad situation. Now they are faced with a lawsuit, and that is my concern.

**Assemblyman Atkinson:**

Mr. Ellison, you are saying that your neighbors hit a parked car?

**Assemblyman Ellison:**

No, they hit my car that was parked on the street, and the woman ran down the street.

**Assemblyman Atkinson:**

That is another issue.

**Assemblyman Ellison:**

But the property damage was not addressed. She did not have enough coverage, and it ended up in court.

**Assemblyman Grady:**

If I may, I have two questions. Is the same fiscal note going to apply to the pilot program and for the whole program?

**Assemblyman Atkinson:**

I do not understand the question.

**Assemblyman Grady:**

There is a fiscal note?

**Assemblyman Atkinson:**

Correct.

**Assemblyman Grady:**

By establishing a pilot program just in Clark County, will there still be the same fiscal note?

**Assemblyman Atkinson:**

Yes, because the fiscal note is for establishing it in Clark County.

**Assemblyman Grady:**

My other question is, if it will only be for Clark County, will everyone be paying the surcharge, or just the people in Clark County?

**Assemblyman Atkinson:**

Everyone; it will be prorated. But you have to remember that if people are driving without insurance, it affects everyone. If they are getting into accidents, that affects all of us. It is just a pilot, although it can be expanded if we find that the program is working. That is the reason that we are doing it that way.

**Vice Chair Conklin:**

Are there any additional questions? There are none. Mr. Chairman, do you have an order of people to testify in support of this bill?

**Assemblyman Atkinson:**

Mr. Vice Chair, as I mentioned earlier, I recognized we were hearing this bill on a Friday and I did not want to take too much of the Committee's time, so I asked the folks I had in mind to testify in favor to stay home today.

**Vice Chair Conklin:**

You are going lone wolf.

**Chair Atkinson:**

Yes, exactly.

**Vice Chair Conklin:**

Anyone wishing to get on the record in support of this bill at this time?

**Jan Gilbert, representing Progressive Leadership Alliance of Nevada:**

I would like to go on record in support of this bill. We will be putting this on our racial equity report card, and hope to be scoring it for this legislative session. We think it is an excellent way for low-income people to get a chance to make sure they are legal and have automobile insurance.

**Assemblyman Goedhart:**

Do we know how much 250 percent of the federal poverty level is for, say, a household of two or four people?

**Jan Gilbert:**

I just pulled up the chart, I felt so proactive. One person is \$26,000, and it goes up from there. I think it was \$40,000 for a family of three. It is not exact; I will have to go look.

**Assemblyman Goedhart:**

Is that the federal level, or is that the 250 percent?

**Jan Gilbert:**

That is 250 percent of poverty.

**Vice Chair Conklin:**

Are there any additional questions? Anyone else wishing to get on the record in support of A.B. 299? [There were none.] We will move to opposition. Anyone wishing to get on the record in opposition to Assembly Bill 299? There is none. Anyone wishing to testify in neutral to this bill?

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

I support and commend the Chairman's efforts on this bill. Like some of my colleagues whom we spoke with, we do have some concerns regarding some of the language in the bill. First, section 16, subsection 1, reads, "The Commissioner shall assess each insurer who delivers, issues for delivery or renews in this State" . . . "30 cents for each such policy. . . ." I am not clear on that, because I go back to section 9, subsection 1, paragraph (b), where it states, "Except as otherwise provided in section 16 of this act, the rate would not result in a subsidy of the Program by policyholders of the producers of insurance. . . ." I understand that the Commissioner has put forth an

amendment. We just would like to get a little clarity on who is actually financing the program. We would be willing to work with the Chairman on this bill.

**Vice Chair Conklin:**

Mr. Compan, did you bring the concern to the Chair prior to this meeting?

**Robert Compan:**

Yes, I sent it to the Chair in an email about five days ago.

**Vice Chair Conklin:**

Have you seen the amendments proposed by the Division and the Chair?

**Robert Compan:**

They are quite lengthy and I have been looking at them today. The amendments were available on NELIS probably only about an hour before the hearing itself, so I have looked at them in just a cursory way, but I still have the same concerns.

As a side note, people in Nevada are still choosing not to buy insurance because the cost of insurance is more expensive than paying the \$250 fine for uninsured motorists that you are assessed for by the Department of Motor Vehicles. I think that this program would definitely give the opportunity to lower-income people to afford insurance in the state, and for that I commend the Chairman on this bill.

**Vice Chair Conklin:**

Are there any questions for Mr. Compan? [There were none.] Are there any additional folks wishing to get on the record in the neutral position on this bill? [There were none.] We will close the hearing on Assembly Bill 299. We will open the hearing on Senate Bill 219.

**Senate Bill 219:** Requires certain assessments of unemployed and employed workers to determine the available workforce in Nevada and makes appropriations for performing skills assessments for unemployed persons. (BDR 18-936)

**Assemblywoman Marilyn K. Kirkpatrick, Clark County Assembly District No.1:**

Senator Horsford, who is my Senator, and I worked on S.B. 219. I want to give you a bit of background before I go into the details of the bill. We have been talking about economic development for the last seven to ten months. We know that there is a short-term problem, and we know that there is a long-term problem. I am in the food industry, and I walk the back of the hotels every



single day. When I do that, I see people from all the conventions that come to our state, whether it is the Consumer Electronics Show (CES) or the pharmaceuticals or plastics conventions. I always try to ask them, "How do we get you to bring your business to Nevada?" They usually say that they will be glad to follow up with us on that. Then I call them back and they say, "You do not have a trained workforce." What exactly does that mean? I need some details on what a trained workforce means. About 27 other states have worker assessments, so that if you go to their business development sector they can give you a list and say, "These are folks you can contact who might be within your industry." Businesses will tell you that they are buying very expensive equipment. I spoke with one gentleman on recycling, and he told me that one piece of equipment cost about \$23 million, because things have gone digital. When a machine shuts down, not only do they lose the business for the day, but their customers lose, too. Being in the food industry, I know it is very hard to go back to your customer and say, "Sorry, there are no more olives today. They did not get on the container. The machine broke down." It has a trickle-down effect.

So we have invited companies to come to the State of Nevada to work with us. We had a meeting in the beginning of session with the Governor, the Lieutenant Governor, Economic Development, the Minority Leader from the Senate, and the Minority Leader from the Assembly. We also had the Speaker and the Majority Leader. In this meeting we had people from Maine, Ohio, and other states. We picked one group of people from information technology (IT) because IT is so important nowadays. They asked about our workforce. They said, "Texas and Wisconsin can give us a list and place people to us." They asked us for a list, and it was pretty embarrassing to say that we did not have that type of list available at this time, because in the past we have worked in silos. They said that within the IT sector, certifications are very important to them. We have not done that in the past. So we have a skills gap. We have about 175,000 people who are out of work today. Most of them, about 91,600 are construction workers, but I can you tell you that those construction workers have many other skills. Plumbers have to know about math, laws, and cash systems in their regular day of work. They and other workers have great skills that would fit IT and other industries.

This bill calls for an assessment, for the short term, in regard to these workforce categories so that we can sell that for our state, and for our existing businesses that are trying to expand but say they do not see where the job pool is. For the long term, we are collecting the data and creating the curriculum that works for certification programs for the future. We have to have this information.

Section 1 of S.B. 219 requires the agencies that receive money from economic development programs to perform a workforce inventory to determine whether or not there are qualified workers for out-of-state businesses when we are seeking to establish them in Nevada. Currently, we have 11 economic development programs within our state, so this bill would require all of them to do that. Section 2 of the bill provides for the administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation (DETR) to coordinate with the partners in DETR's Workforce Investment Act. There are many partners who will implement skills assessments for persons who applied for unemployment benefits. These assessments are to be conducted and recorded throughout the state. The Workforce Investment Act is a national program. In Nevada we have the Governor's Workforce Investment Board and two local boards, the Southern Nevada Workforce Investment Board and Nevadaworks in northern Nevada. We currently have 11 vacancies on those boards, and that program should be moving fast. Minnesota has a great workforce investment program. They are changing direction every two years to stay up-to-date with the needs of businesses, and I believe our state needs to work a little harder on the workforce investment program. We have made some improvements, but we need to keep making more.

Sections 3 and 4 of S.B. 219 make appropriations from the State General Fund to the College of Southern Nevada (CSN) and Truckee Meadows Community College (TMCC) to perform these skills assessments for unemployed persons, to determine the type of training needed to help those individuals become employed in industries that have the highest potential for growth in our state. The colleges would be required to perform the skills assessments on individuals chosen from a random sampling of applicants. Many of the unemployed have tremendous skills they can offer the private employment sector. We need to identify what these skills are and match unemployed persons with employers. I am a policy person, not an Assembly Committee on Ways and Means person, so the policy of this is perfect, in my opinion. However, Senator Horsford testified in the Senate that it was his intent that funding come possibly out of the Interim Finance Committee (IFC) dollars. I know that this bill must go to the Assembly Committee on Ways and Means. As far as the policy goes—that's the important part—the goal of this bill is to utilize existing money that we have available today within our current budget, whether it is IFC or General Fund money. I know we need to adjust that in the Assembly Committee on Ways and Means, so come July 1, as we make changes to our economic development structure and as businesses are participating, we actually have this assessment done.

I am happy to take any questions.

**Vice Chair Conklin:**

Are there any questions from the Committee?

**Assemblyman Atkinson:**

Do we have Senator Horsford's testimony? I would like to read through it, because I know that he presented it on the Senate side.

**Assemblywoman Kirkpatrick:**

Correct, and I copresented with him. It is four pages. I will get it to your Committee Secretary shortly.

**Assemblywoman Bustamante Adams:**

Mrs. Kirkpatrick, are the 11 vacancies on the Workforce Investment Board at the state level or on the local Workforce Investment Boards?

**Assemblywoman Kirkpatrick:**

There are actually three boards—the state board and the two regional boards—so there are 11 vacancies total. That is a separate issue and I believe there is a future bill on that. If you look at the website of Wisconsin, they have a great skills assessment package. They work hand in hand with their Workforce Investment Board. They also work very well with their community colleges.

**Vice Chair Conklin:**

Are there any additional questions? There are none. Thank you, Mrs. Kirkpatrick. Is there anyone wishing to get on the record in support of this bill?

**Bill Anderson, Chief Economist, Research and Analysis Bureau, Department of Employment, Training and Rehabilitation:**

I am here on behalf of my Director, Larry Mosely. In conjunction with the introduction of this piece of legislation, we began working with our partners, especially with CSN and TMCC, to provide the bill's sponsors with the appropriate technical information as necessary to draft this legislation. I can commit today that we are ready to continue working with the legislative staff, with the bill's sponsors, and with other partners in this legislation, and to move forward with this, through implementation, in the event that it is passed and approved. Our role at DETR will be to provide an adequate supply of clients, who would go through the assessment process in conjunction with the higher education community.

**Maria C. Sheehan, President, Truckee Meadows Community College:**

I am here in support of S.B. 219. Four weeks ago, Senator Horsford approached CSN and TMCC, and President Richards and I both spoke to the Senator about his desire to have an assessment that would allow us to identify the skills of the unemployed. That is a role and responsibility of the community colleges, and both of us are ready to take on that task. With me today are my colleagues Deb O’Gorman, who is Director of Workforce Development, and Dr. Kyle Dalpe, who is Director of Institutional Advancement at TMCC. We stand ready to assist with the particular job assessment vehicle, called WorkKeys, that we utilize at both community colleges.

**Assemblyman Hickey:**

Dr. Sheehan, as you say, this is a role and responsibility of the colleges, and I imagine you are already looking at what courses or services you could apply. My only comment is related to the Assembly Committee on Ways and Means. I believe you were there when Senator Horsford was talking about this issue. That was also the day that we heard from the Commissioner about all of the licensed private schools in this state that prepare people for certain career paths. My question is, have you looked closely at those schools that are not part of the public system, and can we offer things that they do not, bringing some support for what we are trying to do as a state?

**Maria C. Sheehan:**

Certainly community colleges are ready to respond to workforce training needs. We have a very close partnership with DETR, and as community colleges we can respond very quickly. That is what we do. When we determine that there is a need, we can put a program together quickly. This is about a two-week process to determine what the community colleges could bring to the table to resolve the issue.

**Kyle Dalpe, Director of Institutional Advancement, Public Information Office,  
Truckee Meadows Community College:**

We serve 20,000 students each year in state-supported, accredited programs. Our job is to respond to the community, and this is important because right now our communities, both north and south, need jobs. It is not just, “Come and take classes.” It is rather, “Take classes that will get you back into the workforce.” This is a process of skills assessments that can train people, assess them, and put them into programs that will take their skills to the next level, and at the same time, provide workforce data to aid the state in encouraging viable industry to move here.

**Deb O’Gorman, Director, Workforce Development and Continuing Education,  
Truckee Meadows Community College:**

Very briefly, I want to clarify what we are suggesting we will do with this particular assessment. This is an assessment that is done nationwide. It comes to us through American College Testing (ACT), and individuals who take these three assessments, if they achieve a certain level, could be awarded the National Career Readiness Certificate. The level of competency achieved would be at a bronze, silver, gold, or platinum level. I have a brochure ([Exhibit F](#)) that can be added to the materials.

**Rebecca Metty-Burns, Executive Director, Division of Workforce and Economic Development, College of Southern Nevada:**

Thank you for the opportunity to speak in support of Senate Bill 219. The College of Southern Nevada is pleased to provide assistance on efforts to put our community back to work, and we see this as an opportunity to provide meaningful data to the state on the current skills level of our workforce. Through our partnership with Truckee Meadows Community College and DETR, 3,850 unemployed workers from southern and northern Nevada would receive these skills assessments. The information we obtain from these assessments will help identify jobs our workforce members are qualified for, as well as training they might need to prepare for future employment opportunities in high growth industries. Both CSN and TMCC would be using a nationally recognized assessment. We have worked with this assessment in the past, and have been using it effectively currently with some health care clients. The assessments have been a valuable tool to help unemployed workers understand any knowledge gaps that need to be filled, so that they can prepare to successfully complete training programs. They also provide a snapshot of the worker's skills and whether those skills were obtained from previous education or employment, as well as that nationally recognized certificate previously mentioned.

**Debra W. Struhsacker, representing Midway Gold Corporation:**

I am here today to present some remarks from Ken Brunk, President and Chief Operating Officer of Midway Gold Corporation ([Exhibit G](#)). Mr. Brunk cannot be here due to his travel schedule, but he and I want to express our support for S.B. 219 and to compliment the sponsors, Assemblywoman Kirkpatrick and Senator Horsford, for developing this bill. I can provide you with a bit of case history of a program that Mr. Brunk did about 25 years ago, which proves that a program like this can actually work. In the early 1980s, Mr. Brunk worked for Newmont Mining Corporation, and he was one of the executives in charge of developing what was then a one-mine company into a multiple-mine company. Back in the 1980s there was a workforce shortage, and Mr. Brunk was responsible for recruiting individuals to Elko, Nevada, and training them to work in the mines. He started out with skill assessment testing, exactly like the program proposed in S.B. 219. With the appropriate skill set assessment,

Newmont was able to identify people and train them in ways that best fit their skill set. This was a big program, because the workforce shortage at the time was about 2,000 people, so there was a great need to classify people's skills and train them in a hurry. Mr. Brunk took people who came from all over the country to Elko and trained them. Once he had assessed their skills and ability to perform a variety of jobs, he could then put them to work in the mines. It involved a wide range of skill sets and was done at Great Basin College in Elko. He worked very closely with former Regent Dorothy Gallagher to make this happen at Great Basin College, and they trained people to work as diesel mechanics, plumbers, electricians, and technicians. Although they were there as mine workers, their skills could easily be applied to other types of industries.

I just want to say that we are very much in support of this bill. Mr. Brunk has "been there, done that," and this bill will, I think, be similarly successful.

[Chair Atkinson resumed the chair.]

**Chair Atkinson:**

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

**Erin McMullen, representing the Las Vegas Chamber of Commerce:**

We are very supportive of measures that are intended to put Nevadans back to work. We believe that this is the right step in the right direction, helping people get the education and skills that they need to get those jobs.

**Assemblyman Ellison:**

There are many different programs out there right now, like Nevadaworks and DETR. Are we not supposed to be using these for workforce development? I used to sit on the Nevadaworks Board, and we did all kinds of different projects. Are we not adding another layer onto this?

**Assemblywoman Kirkpatrick:**

We do have all those programs out there, but what we are saying is let us put all the data in one spot, let us create a new plan to train and put people back to work, and let us learn what our gaps are and go after those certifications. For instance, many construction workers are quite talented, but we offer no certificates for IT. You must have a certificate for a large company to even look at you. This assessment will give us a rough draft of our workforce capabilities so that we can sell ourselves to out-of-state companies and also to our existing companies that are afraid to expand. We have learned from businesses, and from these working groups, that they work at the state level, as a whole, and not on one particular aspect. We need to have these lists available because companies have told us that when they look at the state as a whole, before

they make a second trip out, they are not able to tell if Nevada workers have the skills they need to work in these industries.

**Chair Atkinson:**

Is there anyone else wishing to testify in favor of Senate Bill 219? Any other questions? How about opposition to Senate Bill 219? Neutral?

**Andrew Clinger, Director, Budget Division, Department of Administration:**

Mr. Chairman, the Governor's Office supports the goals of S.B. 219. I am only here to point out that section 3 contains a General Fund appropriation of \$350,000, and section 4 a General Fund appropriation of \$60,000, which are not covered by the Governor's executive budget. At this time, there has not been a source identified for those appropriations. Based on Assemblywoman Kirkpatrick's testimony, however, if this bill gets to the Assembly Committee on Ways and Means and is amended that these funds would come from the Interim Finance Committee contingency fund, that would negate the impact on the executive budget. This is a policy committee, but just for your information, the IFC contingency fund currently has \$6.8 million in it. The executive budget appropriates another \$5 million, so if that appropriation is approved, there will be \$11.8 million in the IFC contingency fund.

**Chair Atkinson:**

I know that this bill did pass in the Senate 21 to 0, so this same testimony, what you just stated here, was given over there?

**Andrew Clinger:**

Mr. Chairman, I did not testify on this bill on the Senate side. It did not come to my attention until earlier this week.

**Chair Atkinson:**

Are there any questions from the Committee members? Anyone else who is neutral for Senate Bill 219? Mrs. Kirkpatrick, did you have any closing remarks?

**Assemblywoman Kirkpatrick:**

I will meet with Senator Horsford once this goes to the Assembly Committee on Ways and Means in order to make that determination. On the Senate side, it went through the Senate Select Committee on Economic Growth and Employment.

**Chair Atkinson:**

We will close the hearing on Senate Bill 219. Is there any other business before the Committee? Is there any public comment in Carson City or Las Vegas? [There was none.] We are adjourned [at 4:09 p.m.].

RESPECTFULLY SUBMITTED:

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Jordan Grow  
Recording Secretary

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Diane O'Flynn  
Transcribing Secretary

APPROVED BY:

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Assemblyman Kelvin Atkinson, Chair

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



**EXHIBITS**

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

**Date:** April 1, 2011

**Time of Meeting:** 1:18 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B.274	C	Mike Hillerby	NAIC model for "Retained Asset Accounts Sample Bulletin"
A.B.283	D	Sheila E. Walther	Statement and Proposed Amendment
A.B.299	E	Assemblyman Kelvin Atkinson	Memo and Proposed Amendment
S.B.219	F	Deb O'Gorman	Brochure
S.B.219	G	Debra W. Struhsacker	Written testimony by Kenneth Brunk