

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-sixth Session  
February 21, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 1:04 p.m. on Monday, February 21, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Michael A. Schneider, Chair  
Senator Shirley A. Breeden, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator James A. Settelmeyer  
Senator Elizabeth Halseth  
Senator Michael Roberson

**STAFF MEMBERS PRESENT:**

Scott Young, Policy Analyst  
Matt Nichols, Counsel  
Linda Hiller, Committee Secretary

**OTHERS PRESENT:**

Brett Barratt, Esq., Commissioner of Insurance, Division of Insurance,  
Department of Business and Industry  
Jesse Wadhams, Nevada Independent Insurance Agents  
Rhonda Bavaro, Administrator, Division of Central Services and Records,  
Department of Motor Vehicles  
Joseph Guild, State Farm Insurance  
Fred Hillerby, American Council of Life Insurers  
Jeanette Belz, Property Casualty Insurers Association of America  
Bob Compan, Farmers Insurance Group  
Samuel McMullen, Nevada Self-Insurers Association

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Bryan Wachter, Retail Association of Nevada; Nevada Retail Network  
Self-Insured Group; Nevada Motor Transport Association  
Donald Jayne, Administrator, Division of Industrial Relations, Department of  
Business and Industry  
Charles Nort, Nevada Alternative Solutions, Inc.  
David Oakden, President, S & C Claims Services  
Bob Ostrovsky, Employers Insurance  
Jim Wilcher, International Association of Rehabilitation Professionals

CHAIR SCHNEIDER:  
I will open the hearing on Senate Bill (S.B.) 62.

[SENATE BILL 62](#): Prohibits the establishment in certain locations of certain  
schools and facilities relating to insurance. (BDR 57-474)

BRETT BARRATT (Commissioner of Insurance, Division of Insurance, Department  
of Business and Industry):

This bill came about as a result of complaints to our office, the Division of Insurance (DOI), Department of Business and Industry (DBI). There were also complaints to the Office of the Governor, the director of DBI and the Office of the Attorney General. The previous DOI administration asked that this bill be drafted to address those complaints. In the Nevada Insurance Code (NIC), before producers or agents can become licensed to sell insurance, they must take 20 hours of pre-licensing education. The complaint in this case is that there was a pre-licensing education vendor located in the same Las Vegas strip mall as the State's testing vendor. The competing pre-licensing vendors complained, saying it was an unfair advantage for the closest vendor. This bill establishes a 200-foot radius within which both schools and testing facilities cannot be located. It also extends the prohibition to include offices of DOI from being within that 200-foot radius. A grandfather clause is included in the bill so existing businesses are not penalized. Enforcement provisions for violations include suspending or revoking the school's approved course of instruction, a \$1,000 fine and cancellation of the contract with the facility.

In the fiscal note, the bill "Increases or newly provides for term of imprisonment in county or city jail or detention facility," which I believe is an overstatement. All violations of the NIC are classified as misdemeanors unless specifically designated as felonies. Rather, a violation of S.B. 62 would result in an administrative action by our office.

There is no immediate impact on DOI from this bill, although future complaints may require enforcement action and investigation. Since the only situation which might violate the provisions of this bill is already established and grandfathered in, any future costs associated with investigation or enforcement would not accrue until a new facility is established. We do not think this would happen before the end of the biennium, June 30, 2013.

SENATOR SETTELMAYER:

It seems as if we are telling a private property owner whom they can and cannot have as a tenant in their own establishment. What is the issue that would necessitate the State telling a private property owner what to do with their land?

MR. BARRATT:

This may be more of a local-zoning or city-ordinance issue. The main problem was that the one pre-licensing vendor felt it was unfair for his competition to be close to the licensing office while his facility did not enjoy that advantage.

SENATOR SETTELMAYER:

That sounds like good business practice, to have a place, for example, to test for the Department of Motor Vehicles (DMV) close to the DMV.

MR. BARRATT:

In fact, the 200-foot radius actually came out of a DMV law that says a driving education facility cannot be within 200 feet of a DMV office. I added in the grandfather clause because it did not seem fair to penalize an existing vendor and make them break a lease or incur hardship.

CHAIR SCHNEIDER:

If no one wishes to testify for or against this bill, I will close the hearing on S.B. 62 and open the hearing on S.B. 143.

**SENATE BILL 143**: Revises certain provisions governing insurance.  
(BDR 57-723)

JESSE WADHAMS (Nevada Independent Insurance Agents):

This is our bill, and we have added some amendments. Section 1 of the bill is intended to remove the requirement of a Nevada resident producer of insurance to have a physical business address. In these modern times with wireless

Internet and cell phones, your independent insurance agent can come to you, to your place of business, or to a coffee shop and transact business there. We have two types of insurance producers in Nevada: resident producers and nonresident producers. Nonresident producers do not have this requirement, so this just equalizes the playing field. This bill does not undo any regulation. The insurance agent remains licensed and supervised by DOI.

Section 2 adds a policy statement to the NIC, specifying a certificate of insurance does not modify the contract of insurance. The contract of insurance remains the controlling document between the parties. This has been somewhat amended ([Exhibit C](#)). A certificate of insurance issued regarding a policy of property or casualty insurance does not constitute any part of the contracted insurance and cannot amend those terms. It does not amend a life- or health-insurance policy.

We propose to delete section 3 entirely since the bill proposal does not apply to life- or health-insurance policies due to our section 2 amendment.

Section 4 is an issue we are collaborating on with DMV. When a fleet registration is presented to DMV, it no longer goes through Nevada Liability Insurance Validation Electronically (Nevada LIVE), the Web-based verification of insurance site. Fleet vehicles operate under umbrella policies, or blanket policies, which do not capture the same information that DMV requires. It becomes an onerous component for our independent insurance agents, who then have to input the Vehicle Identification Number (VIN) for each vehicle into Nevada LIVE. It can become quite time-consuming. The original bill also exempted motortrucks and heavier vehicles. That was not our original intent, and we apologize for the clerical error.

SENATOR COPENING:

Can you walk me through section 2?

MR. WADHAMS:

The rationale is that the certificate of insurance, as separate and distinct from the contract of insurance, is really an abstract or "Cliff Notes" version of the policy. Sometimes, you will get people wanting different things on the certificate of insurance that may conflict with the contract of insurance. If that conflicts with the contract of insurance, you can potentially create unnecessary conflict.

SENATOR BREEDEN:

How many resident insurance producers are there in the State?

MR. WADHAMS:

Commissioner Barratt can answer that question for you.

MR. BARRATT:

The number of resident and nonresident producers in Nevada changes daily as licenses expire and people apply for new licenses; but roughly, we have more than 100,000 total resident and nonresident producers. Of that total, around 15 percent are residents, so approximately 13,000-15,000 insurance producers are Nevada residents.

SENATOR BREEDEN:

Do you have any idea how many resident producers would take advantage of this bill if it were to pass?

MR. WADHAMS:

No, but I suspect it might be attractive to the younger producers. The aim of the bill is more to level the playing field for our resident producers and give them the same options as our nonresident producers.

SENATOR BREEDEN:

When I was reading this bill, the first thing that popped into my head was that if this passed and insurance producers take advantage, it would leave a lot of vacant buildings and office space.

MR. WADHAMS:

I see your point, but the element of fairness between the resident and nonresident producers is the main component of this bill. I cannot imagine it affecting huge numbers of producers, but I do not know.

SENATOR PARKS:

Is it correct that right now individuals have to have a physical address to do business?

MR. BARRATT:

Yes, they are required to have not only a physical address in Nevada but a brick and mortar establishment so consumers have a place to go.

SENATOR PARKS:

How will this bill change that? How will a consumer then know how to get in touch with this individual?

MR. BARRATT:

We see more and more people using electronic methods for purchasing and resolving insurance issues, but there is no Internet or electronic substitute for dealing face-to-face with an individual. They would have to plan to meet and do business at a designated location. The way this proposal in S.B. 143, section 1 would change existing law is that it would remove the requirement that a resident producer of insurance in Nevada would need to have a brick and mortar establishment or building. I do support this section of the bill because it puts Nevada resident producers on equal footing with the nonresident producers who are not required to have a physical address for their business.

SENATOR ROBERSON:

It sounds like you would say this is a pro-Nevada jobs bill.

MR. BARRATT:

Absolutely.

SENATOR BREEDEN:

I see it as reducing jobs. If you relinquish your location and have your business in your home, and if you had employees, this is more like downsizing.

MR. BARRATT:

That is difficult to say. There may be some loss of back-office jobs if an insurance agency were to close its doors altogether and go to solely electronic. My perception is that section 1 will allow a resident mom-and-pop or smaller operation to conduct business and sell insurance in the State without needing to expend the additional cost of maintaining a brick and mortar place of business.

SENATOR BREEDEN:

Would this have any effect on the insurance providers' taxes?

MR. BARRATT:

It would not affect premium tax—the 3.5 percent tax that all insurance revenue in Nevada is charged. However, if an agency decided to close down its brick and mortar business, that may affect some payroll or property taxes.

SENATOR ROBERSON:

This sounds like a very populist bill. It is supportive of the small businesses that cannot afford to make the capital investment in a brick and mortar facility. This way they can work from their home and create income for themselves. Are we not all about small businesses here? I think it is great.

SENATOR SETTELMAYER:

Can someone explain the executive agency's fiscal note?

RHONDA BAVARO (Administrator, Division of Central Service and Records, Department of Motor Vehicles):

We submitted a fiscal note based on the bill as written, which includes the computer programming hours needed to comply with section 4 and the potential loss of revenue from the reinstatements of registration suspensions. Based on the amendments, we would have to submit a revised fiscal note since the programming hours would change. Also, some of the vehicles that were in the original bill would be excluded from the program and would no longer impact reinstatements.

SENATOR SETTELMAYER:

Do you think that this will make the fiscal note be for more or less money?

MS. BAVARO:

I would anticipate the amount of revenue loss from the reinstatements would decrease because there would be a smaller number of vehicles involved. There may be some computer programming hour reduction as well. Currently, 815 hours of programming are allocated. It is hard to say without talking to our information technology staff.

JOSEPH GUILD (State Farm Insurance):

With the amendments proposed by Mr. Wadhams, specifically amending section 2 of the bill, State Farm can support the bill.

FRED HILLERBY (American Council of Life Insurers):

I represent the American Council of Life Insurers, but this is not a life insurance issue. However, life insurers invest billions of dollars in commercial property. When a life insurance company is investing in property, they require the property be adequately insured. Our concern is with section 2, subsection 3, and we recommend an amendment to this bill ([Exhibit D](#)). When my client

decides to close on a \$50 million project, it must be insured with insurance that cannot be changed. This amendment covers that.

JEANETTE BELZ (Property Casualty Insurers Association of America):

My comments are about section 4 of this bill, relating to the fleet vehicles and Nevada LIVE. We represent many insurance companies that write auto insurance in Nevada, some of which also cover commercial vehicles, the fleet vehicles. There are many fleet vehicles getting caught in a verification trap because of not reporting to DMV the VIN numbers of each vehicle in policies. We have had many instances where fleet vehicles' insurance coverage was not able to be verified because of mismatches in the inputted information. We support the removal of fleet vehicles from Nevada LIVE.

BOB COMPAN (Farmers Insurance Group):

Regarding section 4, fleet vehicles, we have experienced the same problems and have brought our concerns to the new administration. We do not think the Nevada LIVE system can deal with named owners versus fleet. As long as the vehicles are registered as a fleet, it is difficult to capture all that data accurately and precisely through an online verification program.

MR. BARRATT:

The DOI is neutral on S.B. 143 if the amendments as presented by Mr. Wadhams are adopted. We support the amendments to sections 1 and 4.

MS. BAVARO:

We have been working with Mr. Wadhams to find a solution to section 4, the fleet registration. Our concern is that if we do not have fleet registration included with Nevada LIVE, we would not have a mechanism to ensure continuous liability coverage.

CHAIR SCHNEIDER:

I am closing the hearing on S.B. 143 and opening the hearing on S.B. 164.

**SENATE BILL 164**: Revises provisions relating to claims examiners for third-party administrators and vocational rehabilitation counselors.  
(BDR 57-232)



CHAIR SCHNEIDER:

This is a personal bill introduction designed to provide greater accountability for claims examiners and vocational rehabilitation counselors (VRC) who work for third-party administrators (TPA). I know someone with a catastrophic injury who has been trying to get workers' comp help and he keeps getting spun around and denied, denied and denied. It will take several decades to bring this individual back to a somewhat livable life. The TPAs keep abusing injured workers by looking at their bottom line and seeing how many people they can deny and spin out of the system. This is why I am calling for licensing. The way it is now, if TPA employees are terminated at their place of employment, they can just go across the street and work for someone else. There is no repercussion. You need a license to cut hair, but 30 days after a bad haircut you are alright. After spending a year with a TPA who works against injured workers, your life can be ruined.

Here is a brief overview of the bill as written. Section 5 defines a claims examiner. Section 6 defines a VRC. Section 7 prohibits a person from acting as a claims examiner or VRC unless licensed by the Commissioner of Insurance. Sections 8 and 9 specify the licensing requirements and grounds for refusing a license. Section 10 specifies a license is good for three years and then must be renewed. Section 11 specifies the disciplinary steps the Commissioner of Insurance may take after notice and hearing that a licensee violated the provisions for claims administration under NRS 616D.120. Sections 12 and 13 of S.B. 164 set out the penalties for a claims examiner, VRC or TPA who violate the licensing requirements. Sections 14-16 add the provisions of S.B. 164 to the existing sections of the insurance statutes. Section 17 requires the administrator of the Division of Industrial Relations (DIR), Department of Business and Industry, to adopt regulations prescribing the qualifications for licensure for claims examiners and VRCs. This is what the DIR administrator already does for TPAs.

There is a two-thirds majority vote required on this bill, which some people may think is a tough hurdle. Creating a new licensing area triggers the two-thirds requirement. I do not agree with this because I think this is in the best interest of the public. I would like to call on Legal Counsel to give me his brief view on this two-thirds requirement.

MATT NICHOLS (Counsel):

You did correctly state the reason why there is a two-thirds [majority] requirement on the bill.

CHAIR SCHNEIDER:

Is it because it starts a whole new category?

MR. NICHOLS:

Yes, anytime a provision and a bill would increase revenue to the State, there is a constitutional requirement that it requires a two-thirds vote to pass.

CHAIR SCHNEIDER:

Does that mean even if the revenue is just to support that system?

MR. NICHOLS:

Yes.

MR. BARRATT:

There will be two new licensures under this bill: one of a workers' comp claims examiner and the second under workers' comp VRC. There are enforcement provisions and administrative items that seem complex at this point, but I am confident DOI, along with the Chair's designee and DIR, can work through these issues. One concern I have about S.B. 164, sections 8 and 9, is licensing these individuals. I would like to work with your designee, Mr. Chair, to establish more objective criteria. It will be difficult for me now to determine if someone is competent to act as a claims examiner, or discern their personal or business reputation. I would like to try to work in some more objective criteria. The DOI is neutral on this bill and looks forward to working with the Committee.

CHAIR SCHNEIDER:

You said something that piqued my interest. You mentioned wanting to be able to determine if a person is qualified. Right now, there are no consistent qualifications.

MR. BARRATT:

This is something we can work on. It is more than just getting another license. We want to make certain the people who are doing this have a degree or some credentials, or something indicating to my office they will be good at doing the job.

SAMUEL McMULLEN (Nevada Self-Insurers Association):

I represent self-insurers as companies, self-insured groups and a number of affiliate members. Last Session, many of these testifiers indicated they thought the licensing of claims examiners was advisable. We appreciate this bill coming forward now, because it was on our legislative agenda for this Session. This bill takes precedence because it has a Senator as the individual sponsor. We are happy to support the bill.

The first thought from the Nevada Self-Insurers Association is that this licensing should be done across-the-board. If it is good for one, it is good for all. The bill would apply to insurers, self-insurers, self-insured groups, and anyone who hires claims examiners. I assume this will be referred to a subcommittee, and I will be bringing some thoughts to that effort. In the definition of claims examiner in section 5, the issue of what " ... administer claims for compensation ... " means in terms of who has to be licensed would need to be clarified. There are clerical people who administer part of the claim by sending out a check. That may not be what you intended to be a claims examiner who needs licensing.

Section 6 is for us a working anomaly. The definition of a certified vocational rehabilitation counselor as defined on page 10, line 19, " ... as defined in NRS 616A.080 or as a vocational rehabilitation counselor pursuant to NRS 616C.540 ... ", has left us in a position where the predominant requirement for a VRC is a master's degree. We do not think that is necessary, although serious experience and qualifications are certainly required. We will produce an amendment to allow certified disability management specialists, who are very similar but have a college degree, as the requirement. On page 10, line 41 of S.B. 164, it says "Is not competent to act as a claims examiner;" claims examiner is the same language as parroted for VRC. On line 42 of page 10, "Does not have a good personal or business reputation;" would be difficult to enforce. We agree this is important and that the issue is about qualifications, experience and competence, but we feel a need to discuss that in the context of making sure adequate training takes place.

Section 17, subsection 9 is an interesting collaboration between DIR and DOI, where DIR would be regulating the qualifications and the license would be granted by DOI with collaborative approval from DIR. This is an interesting structure we worked on last Session to increase collaboration between these two departments that have mutual responsibilities.

SENATOR SETTELMAYER:

I agree with the intent of this bill to go after the bad actors. But if we revoke someone licensed to be a claims examiner because they are a TPA, what will stop them from going down the street and working for another insurance carrier? Do we need to make sure we do not create 200 other loopholes?

MR. McMULLEN:

Yes, that is an issue, and I think this bill would address it. If a person has a role in administering claims, that person would have to be individually licensed, in addition to the current requirement that the business be licensed. What we solved last Session with legislation was that if you had a prior business license as a TPA and you dropped that business, walked across the street and opened another business, we now have some control over that. By licensing people who work on workers' comp claims, the same thing should happen. If those individuals have trouble and then try to move to another business, I think this is the solution.

SENATOR SETTELMAYER:

Would this create licensures for claims examiners and self-insurer employers as well?

MR. McMULLEN:

By the current language, yes, but we are planning to bring an amendment to this to make sure it applies across-the-board to all claims examiners.

SENATOR SETTELMAYER:

That makes sense. As it is now written, I am a little worried.

BRYAN WACHTER (Retail Association of Nevada; Nevada Retail Network Self-Insured Group; Nevada Motor Transport Association):

We support the intent of this bill but are against it as written. There should be a system that protects injured workers. We strive to return our workers to their jobs as soon as possible, as healthy as possible. We believe that under the current language, not all TPAs are required to be licensed. Under the current language, you could work for a TPA, become a bad actor, have the department take your license away, and then go down the street to an insurance carrier and do the same job with fewer qualifications, since you no longer would be required to have that license. We look forward to working in the subcommittee,

trying to figure out a way we can achieve the goal of helping all injured workers.

DONALD JAYNE (Administrator, Division of Industrial Relations, Department of Business and Industry):

I have been aware of the thought process for this bill for some time. We discussed it near the end of last Session. My understanding of the intent in section 17, subsection 9, is that after the licensure provision is started in DOI, ultimately it comes downstream to us for a final approval. If it does not get past DOI, it probably does not end up in my office at all. What we look for in TPAs is not just the business reputation; we also look at their operating plans. The way the bill is written, we do not see any fiscal impact to us, but we will work with the subcommittee to hammer out some language.

CHARLES NORT (Nevada Alternative Solutions, Inc.):

I agree with the Chair that there is a need for regulation on TPAs, and that bad apples should not be allowed to administer claims. I sympathize with the case you mentioned. My concerns are that the claims examiner definition in section 5 is too broad. With that definition the way I read it, "claims examiner" means a person employed by an administrator to administer claims for compensation filed pursuant to NRS 616C.020 and NRS 617.344. Most of the people in my organization administer claims in some way or another, so I am concerned that all 15 employees in my office would have to be licensed.

The economic downturn has hit us significantly. Many of my self-insured employers, especially in the construction industry, are down to very few employees. The administration of claims has consequently dwindled in that area. I do appreciate your concern that anyone who handles claims as a claims examiner should be competent. The TPAs are probably one of the most regulated entities in the State right now. As the bill points out, existing law requires that a TPA for an insurer must have a certificate of registration. That is not easy to come by. There is a significant fiscal impact, at least on my business. Most of the people working for me do not have a license right now. I perform claims examiner work. Would I, as the owner, have to get an additional license? I already have five licenses. I respect the view of the Committee and the Chair on this, and I am willing to work with the Committee and subcommittee on trying to resolve any of these issues.

CHAIR SCHNEIDER:

Thank you. This bill will be in subcommittee.

DAVID OAKDEN (President, S & C Claims Services):

I have been a licensed TPA for years and currently am licensed in four states: Nevada, Utah, New Mexico and California. After hearing the purpose of this legislation, I find little that is objective in the way it is put together. There is a difference between a TPA and a claims examiner. A claims examiner is an employee. The way things are now, all the fines, penalties and everything associated with administrative error either go to the TPA or to the insurance company we represent, whether it be a self-insured employer or a regular insurance company. So there is recourse in the way of fines against the TPA, and fines and penalties against the insurance company we represent. The workers' comp section of DIR audits all insurers at least once every five years. If I as a TPA have five clients, I could have multiple audits per year where they review my procedures and my compliance, and they go through claim files to make sure we are doing a competent job. Any mistake we make is subject to a fine or penalty. No one is regulated like that, where you have to be perfect. In addition to the audits, all of my insurance company clients conduct independent audits also. Someone mentioned a TPA being paid based on the amount of denials, or that denials pay more than acceptance of claims. This is just nonsense. We get paid for administering a claim, no more or less based on the determination.

CHAIR SCHNEIDER:

I hear you, sir, and we are going into subcommittee on this bill so you can vent there. I would say one thing, when you are dealing with health care, you should be perfect. There is no excuse for mistakes. You cannot hide behind all these licenses and complain. Just turn on the television and watch the assortment of trial attorneys advertising for people who are not perfect. You are going to get sued. We are just trying to help the workers. We are putting S.B. 164 into subcommittee and Senator Parks, Senator Roberson and I will be on that subcommittee.

BOB OSTROVSKY (Employers Insurance):

We are not opposed to licensing, but I would like to point out one concern with this bill. The effective date for posting this is January 1, 2012. My concern is if the bill passes, once we have regulations in place we will have to ensure that

everyone be tested or show enough work history to be licensed. We may have to extend that effective date. I would be happy to work with the subcommittee.

JIM WILCHER (International Association of Rehabilitation Professionals):

I have worked in Nevada as a VRC for 26 years. I have been in private practice for 21 years. I am a certified rehabilitation counselor, certified disability management specialist and certified case manager. I appreciate and respect this bill and understand the intent. I oppose it as written for a few reasons. One, we already have well-crafted language in our law regarding the qualifications for a VRC. Your intent is to flush out those VRCs who do a bad job or coerce injured employees into making decisions not in their best interest. I totally agree with that, and would want to work on that. I am the Legislative Chair for the International Association of Rehabilitation Professionals. We have not had a chance to examine this bill yet, but I look forward to working with the subcommittee.

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CHAIR SCHNEIDER:

I will close the hearing on S.B. 164. Senator Parks will let us know when the subcommittee can meet. We are adjourned at 2:12 p.m.

RESPECTFULLY SUBMITTED:

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Linda Hiller,  
Committee Secretary

APPROVED BY:

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Senator Michael A. Schneider, Chair

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



**EXHIBITS**

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

**Date:** February 21, 2011

**Time of Meeting:** 1:04 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 143	C	Jesse Wadhams	Amendment, Nevada Independent Insurance Agents
S.B. 143	D	Fred Hillerby	Proposed Amendment