

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

**Seventy-sixth Session  
February 14, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 1:12 p.m. on Monday, February 14, 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:**

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

**OTHERS PRESENT:**

Susan Fisher, State Board of Podiatry  
Bob Ostrovsky, Employers Insurance  
Evan Beavers, Office of the Nevada Attorney for Injured Workers, Department  
of Business and Industry  
Donald E. Jayne, Administrator, Division of Industrial Relations, Department of  
Business and Industry  
Danny Thompson, Nevada State AFL-CIO  
Nancyann Leeder, Esq.  
Barbara Gruenewald, Nevada Justice Association  
Herb Santos, Jr., Esq., Nevada Justice Association

Senate Committee on Commerce, Labor and Energy  
February 14, 2011  
Page 2

Jeanette Belz, Property Casualty Insurers Association of America  
Samuel McMullen, Nevada Self-Insurers Association  
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General  
Kevin Benson, Deputy Attorney General, Office of the Attorney General

CHAIR SCHNEIDER:

Susan Fisher will continue discussion on Senate Bill (S.B.) 36, which we discussed February 11, 2011.

**SENATE BILL 36**: Revises provisions governing the State Board of Podiatry.  
(BDR 54-502)

SUSAN FISHER (State Board of Podiatry):

On February 11, we proposed an amendment to S.B. 36 to remove a fine because we thought it would trigger a two-thirds majority vote. We have required fingerprints for licensees since 1990. In September, the Nevada Department of Public Safety (DPS) notified us we needed to have this in statute rather than in regulation. We learned we do not need language about fee collecting in the statute because licensees do not pay us. They pay DPS, and some fees are sent to the Federal Bureau of Investigation from there. We have reworked this amendment ([Exhibit C](#)).

SENATOR COPENING:

Will this eliminate any fiscal note for the State Board of Podiatry?

MS. FISHER:

Yes. The fee for fingerprint processing has never been paid directly to the Board. The money goes directly to DPS. We already have language in our regulations to cover collecting fees for services that are paid directly to us.

CHAIR SCHNEIDER:

Committee, is there a motion on this amendment and bill?

SENATOR COPENING MOVED TO ADOPT THE PROPOSED AMENDMENT TO S.B. 36.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SCHNEIDER:

We will close the hearing on S.B. 36 and vote on it.

SENATOR COPENING MOVED TO AMEND AND DO PASS S.B. 36.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR SCHNEIDER:

I will now open the hearing on S.B. 20 and ask Bob Ostrovsky to give our new Senators and guests background on Nevada's workers' comp.

**SENATE BILL 20**: Requires insurers to provide certain information to survivors and dependents of deceased workers. (BDR 53-489)

BOB OSTROVSKY (Employers Insurance):

The Nevada Industrial Insurance Commission was created in 1913 to provide for the creation and disbursement of funds for the compensation and care of workers injured on the job. It was also intended to compensate dependents if the employee's injuries resulted in death. This insurance system was owned and run by the State for many years. Employers could only purchase the mandatory workers' comp from the State. In 1981, the Legislature created the State Industrial Insurance System (SIIS) which added a second option to employers. Larger companies could then opt to self-insure. About a decade later, a third option became available, allowing employers to buy insurance from a third party, a commercial insurance company.

In the early 1990s, SIIS fell on hard times financially, eventually incurring more than \$2 billion in debt. The Legislature was faced with the difficult decision of how to fund this deficit. Could this bankrupt the State? The 1999 Legislature decided to privatize the system, so SIIS spun off and became Employers Insurance Group (EIG) and they took the deficit with them. Then employers could insure through EIG, or self-insure through a third party. Later, EIG became a stock company called Employers Insurance, which I represent. It is still a no-fault system. If a worker gets injured on the job, you are obligated to provide them their statutory benefits regardless of fault.

One unusual thing about our State system is that we have lifetime reopening which means that claimants can reopen their claims at any time if their work-related health situation gets worse. We do have some watchdogs such as the Division of Industrial Relations (DIR), which regulates claims to make sure workers get their benefits. The Division of Insurance (DOI) watches over licensing of insurance companies and provides licenses to self-insurers.

CHAIR SCHNEIDER:

That \$2 billion deficit was equivalent to our state budget at the time.

MR. OSTROVSKY:

Yes, the talk of the two Legislative Sessions was how to get out from under that debt.

CHAIR SCHNEIDER:

I want to go to S.B. 20 now and ask Evan Beavers to give us an overview of the Office of the Nevada Attorney for Injured Workers for our new Committee members.

EVAN BEAVERS (Office of the Nevada Attorney for Injured Workers, Department of Business and Industry):

I am the Nevada Attorney for Injured Workers (NAIW) by appointment from the Governor. When workers are injured, they go first to their employer and seek benefits under workers' comp through *Nevada Revised Statutes* (NRS) 616C and 616D. If they are not satisfied, they can ask for a hearing. The hearing officer makes a ruling, and if the injured workers are still dissatisfied, they can appeal to the next level, and if they require an attorney at that level, we provide that.

In the existing statutes, there are provisions for survivors of deceased injured workers to receive compensation during the survivor's lifetime. This includes the offspring and/or spouse of the deceased injured worker. There is a provision in statutes that defines compensation. It specifies who is entitled to compensation, how they must go about receiving it and what their filing deadlines and statutes of limitations are. However, there is nothing that puts anyone in a position of duty to notify the survivors of these provisions. As a result, some people are not aware of their rights as survivors and may not seek assistance until the one-year statute of limitations has passed. This bill requires the insurer to notify survivors within 30 days of the death of an injured worker. Section 2 states that the time line to take action on these rights is within one year of the death of the employee or within one year of the date of receipt of notice of potential benefits.

CHAIR SCHNEIDER:

If I am an employer and have someone working for me who is killed, who notifies all the survivors, my insurance company or me?

MR. BEAVERS:

The insurer notifies them, not the employer. This presumes the deceased worker had an open claim because I do not think the insurer would have a file on this person unless there was already a claim opened.

SENATOR SETTELMAYER:

I need to disclose that Mr. Beavers has been my attorney. How do we make sure the insurer knows the next of kin?

MR. BEAVERS:

The employee's file would identify who is entitled to notice upon their death.

SENATOR SETTELMAYER:

Would an amendment be appropriate, saying the insurer would notify whomever the employee has designated their next of kin?

MR. BEAVERS:

Yes, or it could be addressed in the *Nevada Administrative Code* in a regulation for DIR. It would not necessarily have to be in statute.

Senate Committee on Commerce, Labor and Energy  
February 14, 2011  
Page 6

SENATOR COPENING:

Is this notice to the survivors to be in writing?

MR. BEAVERS:

The intent is that it be in writing since the remedies riding on this information would be so important. Verbal notification would be tough to prove.

SENATOR BREEDEN:

Are there any consequences if the employer does not notify survivors?

MR. BEAVERS:

There is nothing in the bill that would impose penalty if notice was not given. However, at the bottom of section 2, it specifies that the statute of limitations would not start until survivors had been notified. This would make it in the best interest of employers to make sure the notice got out so they could stop the clock one year from that date.

SENATOR BREEDEN:

Can we put something in the bill to ensure notification is given?

MR. BEAVERS:

There are other statutes that DIR can use to impose penalties on insurers who fail to comply with this statute or with orders of the court.

CHAIR SCHNEIDER:

Would this apply also under NRS 617, people dying of occupational diseases?

MR. BEAVERS:

When we were drafting this bill, we thought there might be two ways it would apply. First, it applies when the employee dies on the jobsite and it is obviously work-related; and second, it applies when someone dies long after the industrial injury but that cause of death can be traced back to the original injury.

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

The NRS 616D.120, which DIR can use for penalties and fines, subsection 1 covers intentionally failing to comply with any provision or regulation adopted pursuant to this chapter, which gives us broad enforcement options. I have the Occupational Safety and Health Administration (OSHA) wing

in my jurisdiction also. We approved S.B. No. 288 of the 75th Session with provisions to notify family members upon a job-related death when OSHA is investigating.

SENATOR COPENING:

Are there examples or data on the kind of situation that inspired this bill?

MR. BEAVERS:

This bill came from an attorney handling a case where a surviving spouse was not aware of her benefits until she was past the one-year statute of limitations.

SENATOR SETTELMAYER:

Where it reads " ... receipt of the notice ... " could we specify in the bill that the statute of limitations do not begin until a year from the time the notice was mailed and that there has to be mailbox acceptance? When my dad passed away, it took two to three months before we even wanted to start dealing with letters.

MR. BEAVERS:

Yes, shortly after the death of a family member it is difficult to want to deal with something like this, which is why we did not want to start the statute of limitations until the survivors had received notice.

DANNY THOMPSON (Nevada State AFL-CIO):

Senator Settelmeyer is correct. When a death occurs, people are distraught and put their lives on hold. Right now, after 90 days, you lose your benefits. After that, you have to hire an attorney to go through that process.

CHAIR SCHNEIDER:

If someone from another country was working here and died, how would this work? The other country may have different coverage, and how would you find their survivors?

MR. THOMPSON:

That would be a rare circumstance. The more likely situation would be dependent children living in another home who need that financial compensation. It would be unfortunate for someone to have that 90 days lapse because they simply did not know they had benefits coming.

SENATOR SETTELMAYER:

Would the notification be to the survivors the employee designated? Finding next of kin can be complicated. What if there is a disowned sibling and yet the insurance company tries to find the individual without knowing this?

MR. THOMPSON:

That makes sense. I had a case once where a man had designated his first wife as his dependent. He remarried and failed to change that dependent, and the award went to the first wife.

NANCYANN LEEDER, ESQ:

I support this bill. In my 22 years with NAIW and its predecessor, we had situations that would have been helped by these changes. Dependent children were known to the employer but there was no requirement that their guardian be noticed.

MR. OSTROVSKY:

I am not totally opposed to this bill, but I do have significant problems with how the language is drafted. As insurers, we do not even know who we are insuring; we do not have a name. It is not until the injury is first reported to us that we know anything about the injured worker. We have a suggestion. The DIR should adopt some regulations to efficiently get information to us about who is the next of kin. Right now we can only get this information from the employer.

The way the bill is drafted, there could be dependents unknown to us, or a dependent could show up five or ten years later who might be eligible for payment already paid out to other survivors. This statute allows more latitude in the case of death than it does in a regular injury claim, which has a 90-day limit on making a claim. We understand deaths happen rarely, and that they have an enormous impact on the surviving spouse and/or children. We would just like to help with the language of the bill.

SENATOR SETTELMAYER:

What if, within 72 hours of the death, the employer had to give the insurer the last known address and next of kin of the deceased? That way the workers' comp could be a middleman to help remove some of the emotion from the situation. If a person passes away, the loved ones may not want to talk to the employer because they blame the employer.



MR. OSTROVSKY:

I would have to talk to other employers to see what kind of records they keep.

SENATOR SETTELMAYER:

What I am suggesting is that the employer would be responsible to give the insurer the information they have on file. If the employee did not give the information to the employer, that was the employee's decision.

MR. OSTROVSKY:

We also need language to clarify compensable claims. The majority of deaths on the job are not compensable through workers' comp; they result from heart attacks, suicides and other causes. The OSHA investigates every compensable claim—there were around 8 here last year, but there were actually more than 40 job-related deaths we had to investigate.

CHAIR SCHNEIDER:

Since employers insure everyone, they could have an irresponsible construction employee who might go up on the steel beams without belting up properly, and he might also be irresponsible at filling out paperwork. You are dealing with people at all different levels of responsibility, with all their different problems. If you had someone who was killed and five people are entitled to survivors' compensation and the fifth one does not appear until the next year, does he go back to the company, or to the other four who got the settlement? I can see there are problems and that we should refer this to a subcommittee to work it out. I will close the hearing on S.B. 20 and I will have the subcommittee chairman named tomorrow morning.

We will open the hearing on S.B. 21.

**SENATE BILL 21**: Revises the requirements for reopening a claim of compensation for a permanent partial disability. (BDR 53-479)

MR. BEAVERS:

This bill is an effort to clean up some language in the existing statute. From time to time, the injured worker's case gets closed before there has been a permanent partial disability (PPD) evaluation. When the injured worker discovers this at a later date, the worker cannot go back and get the case reopened to get a PPD evaluation without satisfying the requirements of NRS 616C.392, which has three requirements. The third requirement, in paragraph (c) of subsection 1,

is what we seek to strike with this bill. It almost requires proof that we show some violation or neglect on the part of the insurer, the third-party administrator. This requirement has proven to be a hurdle preventing injured workers from receiving their benefits.

BARBARA GRUENEWALD, (Nevada Justice Association):

I am in favor of this bill. In 2005, we added paragraph (c), subsection 1, to NRS 616C.392, which refers to NRS 616D.120. We call this subsection the "bad boy statute," because we have to prove an insurer intentionally did something wrong or neglectful if we want to reopen a claim to get a PPD evaluation. Paragraph (c) is contrary to the public policy of workers' comp, which is a no-fault system. We do not want to fight the insurer; we want to work with them.

HERB SANTOS, JR., ESQ. (Nevada Justice Association):

I support this bill. With this statute the way it is, subsection c makes it difficult for injured employees to receive the benefit the Legislature has granted them. By taking it out, we still have safeguards.

MR. THOMPSON:

I support this bill.

MR. OSTROVSKY:

I am opposed to this bill. We already give claimants adequate information regarding their rights. We are required to do this when the claim is filed. The language in this subsection was aimed at opening a single claim, but now it is coming back at us to open all claims going back decades. We think the existing law already protects workers.

JEANETTE BELZ, (Property Casualty Insurers Association of America):

I am against this bill.

SAMUEL McMULLEN, (Nevada Self-Insurers Association):

We are against S.B. 21.

CHAIR SCHNEIDER:

I have received a letter from Robert Osip, Risk Manager for the City of Henderson who opposes this bill ([Exhibit D](#)).

CHAIR SCHNEIDER:

I am going to assign this to the same subcommittee as S.B. 20 because all the relevant people will be present. I am closing the hearing on S.B. 21. I am opening the hearing on S.B. 58.

**SENATE BILL 58**: Makes various changes relating to an employer who knowingly misrepresents or conceals a material fact relating to a person's eligibility for industrial insurance benefits. (BDR 53-287)

BRETT KANDT (Special Deputy Attorney General, Office of the Attorney General): This bill comes from the Office of the Attorney General ([Exhibit E](#)) to improve the ability of the Attorney General's Worker's Compensation and Insurance Fraud Unit to prevent fraud and protect Nevada's workers. The bill makes it a crime for an employer knowingly to misrepresent or conceal a material fact concerning an employee's eligibility for industrial insurance benefits.

KEVIN BENSON (Deputy Attorney General, Office of the Attorney General): Under current law, it is a crime for an employee to make a material misrepresentation to obtain benefits, but it is not a crime for an employer to make material misrepresentation or to conceal material fact regarding an employee's eligibility for benefits. This bill would put employers and employees on the same footing by making it illegal for an employer as well as an employee to make misrepresentations regarding an employee's eligibility for workers' comp.

MR. KANDT:

Most employers play by the rules, but our fraud unit sees enough of these instances involving material misrepresentation by employers that we thought it merited your time and attention.

SENATOR SETTELMAYER:

I appreciate the concept of "same footing," but making it a felony is such a huge step. Felons lose their parental rights, gun rights and voting rights. If an employee lies, is it a felony also?

MR. BENSON:

Yes, these penalties are already in the law for the employees.

SENATOR SETTELMAYER:

Does the employer also get the attorney's fees if the employee lies?

MR. BENSON:

This is a criminal prosecution statute, so it is not as if they are getting attorney's fees for prevailing in a civil action. This gives authority to the fraud unit of the Attorney General's office to prosecute these cases. The costs involved are the unit's costs incurred in the process of the investigation and the prosecution.

SENATOR SETTELMAYER:

You said the employer has to pay the fees. Does the employee pay them if they are at fault?

MR. BENSON:

Yes, that is correct for both employee and employer in this bill.

SENATOR SETTELMAYER:

Is that the authority, or is it automatic?

MR. BENSON:

It is the authority to seek the fees, so through the process of the court system, when we do a prosecution, we can ask for the costs.

SENATOR HALSETH:

How pervasive a problem is this?

MR. KANDT:

I do not have numbers, but it is pervasive enough that we felt it was necessary to bring this proposal to you. Our fraud unit in southern Nevada sees these situations more frequently than in the rest of the State.

SENATOR HALSETH:

Why are the current penalties insufficient?

MR. KANDT:

They are only civil in nature; there is no criminal penalty for the employer committing fraud. The Legislature recognized that it was appropriate for an employee committing this type of fraud to be faced with a possible criminal

sanction. The employer should face that same possible criminal sanction for the same type of fraudulent conduct.

MR. THOMPSON:

I support this bill. When someone does business in our State without providing workers' comp and their employees are injured or killed, every other good-faith employer in the State has to pay for that claim.

MR. OSTROVSKY:

We support this bill, but feel the \$250 misdemeanor level is a very low standard. You cannot go to a "Doc-in-a-Box" for \$250, so almost everything is going to be a felony.

MR. KANDT:

That threshold amount of \$250 is established in statute for a misdemeanor versus a felony. We would defer to the Legislature as to what an appropriate amount should be.

CHAIR SCHNEIDER:

We will close the hearing on S.B. 58 and open the hearing on S.B. 63.

**SENATE BILL 63**: Revises provisions relating to industrial insurance and the Uninsured Employers' Claim Account. (BDR 53-476)

MR. JAYNE:

This bill is intended to enhance DIR's ability to enforce collections, primarily for uninsured employer claims accounts. We want this bill to improve our ability to enforce collections and it is the speed of getting to those collections that makes us most effective. We also want to resolve inconsistencies between some sections of statute by providing the Division with the ability to use summary judgment on an uncollected debt.

A section of this bill would discourage owners or officers of a corporation from availing themselves of bankruptcy privileges. Now, if they have 25 percent ownership in a business, they can bankrupt it, move to a new location and restart the business again with the same principals involved. With this bill, we would be able to follow that person if they had a principal interest in the subsequent business, and enforce collection on them.

We also have some proposed amendments for the bill ([Exhibit F](#)). In section 2, subsection 14, we removed wording about a fine amount of \$10,000, because the fine is \$15,000 in a different section. We want to insert this bill's intent into NRS 616 and NRS 617.

MR. THOMPSON:

We support this bill. One of our duties is to write off uncollected claims that the Division incurs. We thoroughly investigate these claims because every employer who is doing the right thing ends up picking up this tab. We think this will be another tool to enable the Division to collect the monies owed the system.

MR. OSTROVSKY:

As chair of the DIR advisory board, I can tell you we write off these cases and the amounts can range up to hundreds of thousands of dollars, even into the millions. The good guys pick up all the costs. This bill helps the DIR go after the bad guys, so we support it.

MR. MCMULLEN:

We heartily support this bill.

CHAIR SCHNEIDER:

We will close the hearing on [S.B. 63](#).

SENATOR SETTELMAYER:

I would appreciate another day to read this amendment more thoroughly.

Senate Committee on Commerce, Labor and Energy  
February 14, 2011  
Page 15

CHAIR SCHNEIDER: We will hold it until the next session. The first two bills, S.B. 20 and S.B. 21, we have put into subcommittee. We will hold the other two bills, S.B. 58 and S.B. 63, until our next hearing. This meeting is adjourned, 2:50 p.m.

RESPECTFULLY SUBMITTED:

---

Linda Hiller,  
Committee Secretary

APPROVED BY:

---

Senator Michael A. Schneider, Chair

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

**EXHIBITS**

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

**Date:** February 14, 2011

**Time of Meeting:** 1:12 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 36	C	Susan L. Fisher	Amendment
S.B. 21	D	Robert A. Osip	Letter in opposition
S.B. 58	E	Brett Kandt	Letter of introduction for Senate Bill 58 from Attorney General Catherine Cortez Masto
S.B. 63	F	Donald E. Jayne	Proposed amendments