

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

**Seventy-Seventh Session
May 6, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:38 p.m. on Monday, May 6, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settlemeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Assembly District No. 41
Assemblyman Paul Anderson, Assembly District No. 13
Assemblyman Skip Daly, Assembly District No. 31
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wayne Archer, Committee Secretary

OTHERS PRESENT:

Robert Ostrovsky, Employers Insurance Group; Nevada Resort Association
Paul McKenzie, Building and Construction Trades Council of Northern Nevada
Pat Sanderson, Laborers' International Union Local 872

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Thoran Towler, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry
Michele Daugherty, Associated Builders and Contractors, Nevada Chapter
Kevin B. Christensen, Chair, State Apprenticeship Council, Office of Labor Commissioner, Department of Business and Industry
Jeanette K. Belz, M.B.A., Property Casualty Insurers Association of America
Adam Plain, Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry
Jon Sasser, Legal Aid Center of Southern Nevada
Mark Wenzel, Nevada Justice Association
John Sande III, Nevada Franchised Auto Dealers Association
Ron Dreher, Peace Officers Research Association of Nevada; Washoe School Principals' Association; Washoe County Public Attorney's Association
Priscilla Maloney, American Federation of State, County and Municipal Employees Local 4041
Herb Santos, Jr., Nevada Justice Association
Nick Vassiliadis, Capital Insurance Group

Chair Atkinson:

I will open the hearing on Assembly Bill (A.B. 36).

ASSEMBLY BILL 36 (1st Reprint): Makes various changes concerning apprenticeships for federal recognition of the Office of the Labor Commissioner as the Registration Agency for purposes relating to apprenticeship programs and apprentices. (BDR 53-357)

Assemblyman Skip Daly (Assembly District No. 31):

Pursuant to Title 29, *Code of Federal Regulations* (CFR) section 29.3, the states participating in the National Apprenticeship Act must conform their apprenticeship laws and regulations to the standards of apprenticeship set forth in section 29.5 to maintain federal recognition. The intent of A.B. 36 is to maintain the State's recognition as an approved agency for apprenticeship in Nevada. Without federal recognition, the State's apprenticeship programs would not participate in reciprocity with the federal government or other states.

The U.S. Department of Labor (USDOL) has expressed several concerns with A.B. 36. I am working with representatives from the USDOL to address their concerns. The federal government has requested the State to designate the Labor Commissioner, Office of Labor Commissioner, Department of Business

and Industry, as the single point of contact with the USDOL. While the Labor Commissioner is the director of apprenticeship, many of these duties have been transferred to the State Apprenticeship Council. For instance, requests for new apprenticeship programs are filed with the Office of Labor Commissioner but approved by the Council. The State's requirements parallel 29 CFR section 29.2.

Chair Atkinson:

Can you explain why the vote in the Assembly was so split?

Assemblyman Daly:

The split Assembly vote on A.B. 36 was due in part to a misunderstanding of a provision relating to workers' compensation in Amendment No. 476, which proposed that in section 12.5, subsection 3, a trainee in a program funded by an authorized training trust shall be deemed to be an employee of the trust, which entitles the trainee to the benefits of *Nevada Revised Statutes* (NRS) 616A to 616D, inclusive.

Section 1 of A.B. 36 proposes to conform the definition of terms in NRS 610.010 to the definitions of 29 CFR section 29.

Sections 2 and 3 of A.B. 36 would establish and assign the responsibilities and accountability of the State Apprenticeship Agency. Section 2, subsection 9 provides for the creation of State apprenticeship committees.

Section 4 relates to the duties of the Council. The Labor Commissioner will ensure State apprenticeship programs comply with federal regulations.

Section 5 addresses additional duties of the Council in relationship to the Agency.

Section 6 proposes to identify the Office of Labor Commissioner as the ex officio State director of apprenticeship.

Section 7 defines the duties of the Commissioner. For instance, the Commissioner will be required to audit state apprenticeship programs and conduct quality assurance assessments. Section 8 addresses the duties of the State apprenticeship committees.

Section 9 prescribes the proposed requirements for approval of State apprenticeship programs. The proposed changes will bring NRS 610.144 into compliance with 29 CFR, section 30.

Sections 10, 10.2 and 10.4 address standards required of apprenticeship agreements. Again, this would bring the State's program into compliance with federal regulations.

Section 10.6 addresses the process for appealing the decisions of the State director of apprenticeship. Section 10.6 also clarifies the separation of powers between the Council and the Agency.

Section 11 would stipulate that nothing in NRS 610 invalidates provisions related to collective bargaining agreements or apprenticeship programs for minorities and veterans.

Section 12, subsection 3 reiterates that the State Apprenticeship Agency has authority to approve apprenticeship programs.

With the exception of section 12.5, the remainder of A.B. 36 proposes to make technical changes, such as replacing "council" with "agency." Section 12.5 addresses workers' compensation benefits for trainees, which Robert Ostrovsky will discuss.

Chair Atkinson:

Why does A.B. 36 transfer regulatory authority from the Council to the Agency?

Assemblyman Daly:

The USDOL requires a single point of contact. We have designated the State Apprenticeship Agency as this contact. Assembly Bill 36 will not become effective until and unless the USDOL recognizes the State's apprenticeship program. While the State will not receive additional funding if the program is recognized, it will strengthen the program.

Chair Atkinson:

Are you saying A.B. 36 will not take effect if the USDOL does not affirmatively recognize the State's apprenticeship program?

Assemblyman Daly:

That is correct. If the federal government fails to recognize the State's apprenticeship program, A.B. 36 will not become effective even if it becomes law. However, section 12.5 would become effective upon passage.

The USDOL operates its own apprenticeship program. In the absence of a state apprenticeship program, private apprenticeship programs can participate in the program offered by the USDOL. States are not required to recognize such apprenticeship programs. Alternatively, states may operate their own apprenticeship programs. Nevada will maintain its own apprenticeship program regardless of federal recognition. If the State's apprenticeship program is not recognized by the USDOL, apprentices in Nevada would not achieve reciprocity in other states. Other states recognize apprentices from Nevada.

Senator Hutchison:

I am concerned about section 12.5 of A.B. 36. What benefit will be conferred upon the State if the apprenticeship program receives federal recognition?

Assemblyman Daly:

Individuals participating in apprenticeship programs are required to be covered by workers' compensation during classroom instruction. When in the field, apprentices are covered under a normal employee/employer relationship. Apprentices are not paid for classroom instruction, but compensation is based on a deemed wage of \$150 per month. It has been difficult for the State's apprenticeship program to obtain workers' compensation through an employer's insurance group. The premium is based on the number of people in a class regardless of whether they are apprentices or journeymen. Other carriers have ruled a premium can only be paid for an apprentice. The changes proposed in section 12.5 will allow coverage for journeymen and anyone else in a class. The language refers to the federal Employee Retirement Income Security Act of 1974. The Associated Builders and Contractors, Nevada Chapter (ABC), has indicated they only train apprentices.

Receiving federal recognition would also eliminate the competition between the federal and State programs because the standards would be the same.

Robert Ostrovsky (Employers Insurance Group; Nevada Resort Association):

Assembly Bill 36 includes an amendment I proposed on behalf of the International Alliance of Theatrical Stage Employees, Moving Picture

Technicians, Artists and Allied Crafts "IATSE Local 720 Apprentice and Journeyman Training and Education Trust," which is a Taft-Hartley trust organized under the Labor Relations Act of 1947. The Trust is operated by the Nevada Resort Association and the IATSE.

The State requires all employees to be covered by a policy of workers' compensation. While in training, apprentices and trainees are deemed to be employees of an apprenticeship committee registered with the State Apprenticeship Council at a wage of \$150 per month under NRS 616A.215. The narrow construction of NRS 616A.215 fails to consider other classes of employees. Although qualified carpenters, stagehands and journeymen often attend training, they are not covered by the provisions of NRS 616A.215. As a result, the Nevada Resort Association has been unable to purchase a policy of workers' compensation to cover these other classes of employees because insurers have determined the Trust does not have a reportable payroll. While attending training, these individuals are not working for an employer, and they do not receive a wage from the Trust.

Section 12.5 of A.B. 36 makes it clear that "any person who is a trainee in a program funded by a training trust authorized pursuant to 29 U.S.C. section 186 shall be deemed for the purposes of chapters 616A to 616D, inclusive, of NRS to be an employee of the trust at a wage of \$150 per month while the person is attending a class for vocational training." Existing law permits an apprentice or trainee who is injured during the course of training to sue the trust. Now, employers are compelled to purchase liability insurance, which is much more expensive than workers' compensation and exposes them to other risks.

The Office of Labor Commissioner did not object to our amendment, and we have no indication any other entity opposes our amendment to A.B. 36.

Senator Hutchison:

Will A.B. 36 allow the Trust to purchase workers' compensation insurance?

Mr. Ostrovsky:

Yes, it will allow the Trust to purchase workers' compensation insurance.

Senator Hutchison:

Did the Republicans in the Assembly oppose A.B. 36 because of the amendment the Nevada Resort Association proposed to section 12.5?

Mr. Ostrovsky:

I do not know why any Legislator voted against A.B. 36. A few technical issues need to be fixed. Even the Labor Commissioner understands this problem needs to be fixed.

Assemblyman Daly:

Assemblyman Crescent Hardy suggested several changes to the amendment, and we accepted most of them. There may have been some other changes they wanted, but he indicated they did not take a caucus vote to oppose A.B. 36.

Senator Hardy:

My understanding is that the State can recognize apprentices from other states, but that other states will not recognize apprentices from Nevada. Do I understand the problem correctly?

Assemblyman Daly:

The State only recognizes apprentices who are registered with the Council. Under the federal program, apprentices have reciprocity and transfer rights. This is one of the provisions the State must change to receive recognition. If the State's apprenticeship program were recognized, the State would have the ability to recognize apprentices from other states.

Senator Hardy:

How many states participate in the federal apprenticeship program?

Assemblyman Daly:

Montana is the only state with federal recognition. Several other states are in the process of obtaining recognition. My understanding is that California abandoned its effort to receive recognition. Some of the apprenticeship programs in California register with the state program. Others register with the federal apprenticeship program.

We are attempting to balance the costs and benefits of federal recognition. This is why we are proposing to transfer authority from the Council to the Agency.

The existing system will remain in effect if the USDOL does not recognize the State's apprenticeship program.

Senator Hardy:

Can each apprenticeship program in California register separately with the federal government, or does the state's apprenticeship authority register?

Assemblyman Daly:

The statutes governing apprenticeship programs in California are similar to Nevada's. Each apprenticeship program can be recognized if it meets the standards set by California. To receive reciprocity in other states, those apprenticeship programs will register with the USDOL. Nevada will continue to experience this competition between the programs if the State's apprenticeship program is not recognized.

Senator Hardy:

Could you provide us with an organizational chart of the various components of the State's apprenticeship program?

Assemblyman Daly:

I will be happy to provide an organizational chart.

Senator Hardy:

Will the deemed wage be considered part of their actual wage, as is the case with complementary meals provided to casino employees?

Assemblyman Daly:

I do not believe so. The deemed wage for apprentices was added to the NRS 15 years ago, and we have never had a problem. This is similar to legislation that would increase the deemed wage for members of a recognized search and rescue organization.

Paul McKenzie (Building and Construction Trades Council of Northern Nevada):

I worked with Assemblyman Daly and the Labor Commissioner on A.B. 36. The Building and Construction Trades Council of Northern Nevada supports the bill. The nuances between the State and federal regulations relating to apprenticeships are very complex. The State's apprenticeship programs are self-sufficient and will survive without federal recognition. Assembly Bill 36 would allow apprentices to follow their employers on federal jobs in other states

without obtaining federal recognition for their individual apprenticeship programs.

Senator Hardy:

Does this mean apprentices can only work on federal jobs in Montana?

Mr. McKenzie:

Since the State is operating under a provisional recognition, apprentices can work on federal projects in any state. There is no reciprocity between state programs. Without the joint recognition, each apprenticeship program would have to register for recognition separately from the USDOL.

Pat Sanderson (Laborers' International Union Local 872):

I support A.B. 36 because it will help contractors and apprentices. Every worker in Nevada deserves to be covered by a workers' compensation plan, and the proposed changes in section 12.5 will help accomplish this.

Thoran Towler (Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry):

Federal recognition will furnish many benefits to the State. As others have mentioned, federal recognition will allow apprentices to work in other states freely. It also lends more credibility to the State apprenticeship programs. Nevada is one of approximately 30 states that have been granted provisional recognition. The USDOL recognized state programs for many years, but its requirements have changed over the last 6 years. This has forced states to make significant changes to conform to federal regulations.

After I submitted the bill draft request for A.B. 36, I met with the Council to identify changes I needed to make. As amended, A.B. 36 is very different and includes many elements that were not included initially. I have no concern with section 12.5, and I have not heard from anyone who opposes it. The concern is that there have been many changes. The Council has many years of experience and has voted to oppose A.B. 36 as amended. That is not to say A.B. 36 cannot be further amended to address our concerns. Assemblyman Daly has committed to continue working with my office and the USDOL to improve it. I am concerned that the bill will not bring the State's apprenticeship program into compliance with federal regulations. I did not see the purpose of moving forward with it. Additionally, the Council was not consulted during the drafting process. I wish the Council had the opportunity to provide greater input,

especially since the chair of the Council has been working on this issue with the USDOL for 6 years.

Previous labor commissioners had strained relationships with some of the apprenticeship programs. This has caused some problems with A.B. 36. It is important to move forward. I am opposed to A.B. 36, but I am willing to work with the Committee to amend the bill further so we could agree to it.

Senator Hutchison:

I still do not understand why anyone would oppose this bill. Can you point to specific sections your office opposes?

Mr. Towler:

The USDOL identified numerous problems with A.B. 36, and Assemblyman Daly is continuing to work with them to address their concerns. Assembly Bill 36 makes significant changes to the Council and establishes the State Apprenticeship Agency. These changes are unnecessary, and I do not see value in moving forward since the USDOL has indicated this will not bring the State into compliance.

Michele Daugherty (Associated Builders and Contractors, Nevada Chapter):

I am the president of ABC, and I oversee all the apprenticeship programs for the State. The ABC supports the principle behind A.B. 36 and does not want to lose federal recognition. The loss of provisional recognition would create unnecessary conflicts between State and federal apprenticeship programs.

The ABC opposes A.B. 36 as written because the USDOL has indicated the bill is not sufficient to bring the State's program into compliance. We have not yet received the green light from the federal government.

Chair Atkinson:

The Legislature will not wait for the federal government to give its approval, and the Committee will proceed with A.B. 36.

Senator Hutchison:

Are you saying the ABC will not support A.B. 36 until the federal government gives its approval? Are you at a point where you can work with Assemblyman Daly to amend the bill and support A.B. 36 in the absence of federal approval?

Ms. Daugherty:

The ABC will continue to work with Assemblyman Daly to come to a final product upon which we can agree. A large part of that depends on the Council's agreement since they will have to enforce the bill.

Kevin B. Christensen (Chair, State Apprenticeship Council, Office of Labor Commissioner, Department of Business and Industry):

I have chaired the Council for the last 31 years. In addition to the changes proposed by the USDOL, I propose eight technical corrections to A.B. 36.

First, I propose to amend line 10 on page 5 of A.B. 36 to read "act in a regulatory capacity and to assist the State" This would preserve the Council's regulatory authority.

Historically, the Council has not been subservient to the Labor Commissioner, but language in section 3, subsection 1 would limit the Council's regulatory capacity to providing advice and guidance to the State Apprenticeship Agency. To preserve the Council's independence, I propose to delete "as directed by the State Apprenticeship Agency" on page 5, line 26.

The apprenticeship committees are not required to seek approval from the employers or unions. On page 8, lines 18 and 19, I propose to remove the phrase "in an advisory capacity" and insert "make all apprenticeship training decisions and work with"

On page 12, at the end of line 22, I propose inserting "or action or approval by the State Apprenticeship Council." I have proposed this change because the Council will have the authority to perform this work.

Under section 10 on page 13, line 17, I propose to replace "sponsor" with "committee" before the phrase "for good cause." Sponsors establish the entity that creates an apprenticeship program, but the Committee has authority to terminate an apprenticeship agreement with good cause.

Section 10.2, subsection 2, identifies various individuals who must sign an apprenticeship agreement. I propose also requiring the Committee to sign the agreement. Similarly, I propose inserting the word "committee" on line 37 on page 14 to recognize the Committee's role in terminating apprenticeship agreements.

Decisions made by the Council may be appealed to the commissioner. In practice, apprentices are given 30 days to appeal to the commissioner. Assembly Bill 36 would require apprentices to file complaints within 10 days. I propose amending section 10.6, subsection 1 to increase this to 30 days.

Chair Atkinson:

Have you shared your proposed amendment with Assemblyman Daly?

Mr. Christensen:

The Council learned of the issue on Friday and developed these comments over the weekend.

Senator Hardy:

Do the changes you propose differ from what the USDOL has proposed?

Mr. Christensen:

Some of the changes I have proposed relate to the original comments from the USDOL. The USDOL proposed to make the Council an advisory body, but we would prefer to remain a regulatory body.

Senator Hutchison:

You indicated your testimony reflected your personal views. Do you have any reason to believe the Council would not adopt the same positions you have articulated?

Mr. Christensen:

I do not have any reason to believe the Council would oppose the changes I have proposed. The Council would likely have made the same recommendations if it had the opportunity to convene and take a formal position.

Senator Hutchison:

Did you have an opportunity to discuss your concerns with the Labor Commissioner?

Mr. Christensen:

I spoke with the Labor Commissioner on Friday. We both had similar concerns, but I did not have an opportunity to discuss the proposed changes.

Assemblyman Daly:

The Council testified that it wants to preserve its regulatory authority. Throughout this process, the USDOL has made it clear it will not recognize the State's apprenticeship program because the Agency and the Council are given equal authority to determine whether an apprenticeship program conforms to published standards. As long as the Council is given equal authority, the federal government will not recognize the State apprenticeship program.

I will work with all parties to balance and delegate the responsibilities of the Agency and the Council.

Chair Atkinson:

I will give you more time to work with them to get bipartisan support before the Committee brings A.B. 36 back for work session. I will close the hearing on A.B. 36.

Senator Hutchison:

I will open the hearing on A.B. 120.

ASSEMBLY BILL 120 (1st Reprint): Revises provisions governing information provided to insurance policyholders. (BDR 57-802)

Assemblyman Paul Aizley (Assembly District No. 41):

Some insurance companies use credit scores to develop an insurance score, which is then used to compute a customer's premium. Assembly Bill 120 would require the Commissioner of Insurance, Division of Insurance, Department of Business and Industry, to publish a list of insurance companies that do not use credit scoring in calculating insurance premiums for home or automobile insurance. The Property Casualty Insurers Association of America supports A.B. 120.

Senator Jones:

The Committee has considered legislation this Session that bars certain companies from using credit scores. Does this bill relate to that legislation?

Assemblyman Aizley:

I attempted to introduce a bill to require insurance companies to list their scoring mechanisms and to identify ways consumers could improve their insurance scores. The insurance companies claimed the scoring mechanisms

were proprietary and were not willing to divulge them. This bill is the result of a compromise.

Chair Atkinson:

Assembly Bill 120 does not prohibit the use of credit scores in computing an insurance premium. It only requires the commissioner of insurance to publish a list of the insurance companies that include credit scores for the benefit of the public. This will give customers an opportunity to purchase insurance from companies they know do not use credit scoring.

Jeanette K. Belz, M.B.A. (Property Casualty Insurers Association of America):

I represent the Property Casualty Insurers Association of America, which has more than 1,000 member companies, including 364 insurance companies based in Nevada. Nevada has one of the most extensive consumer disclosure laws related to the use of consumer credit scores. Assembly Bill 120 would add one more piece of information for consumers to learn how their insurance premiums are calculated. Additionally, in section 1, subsection 3 requires the Division to post general information regarding the use of credit scores in underwriting and rating. Over the past 4 years, the Division has aggressively reviewed insurance score methodologies.

Chair Atkinson:

Where will the information be posted?

Ms. Belz:

Pursuant to section 1, subsection 2 of A.B. 120, the Division shall post this information on its Internet Website.

Chair Atkinson:

How will the public know where to obtain this information? Will the Division conduct advertising or public notification?

Ms. Belz:

The Division regularly airs public service announcements, and I can ask the Division if it is willing to do so in this case. The Division's Website has a page dedicated to consumer information. I do not anticipate the information would be difficult to find.

Senator Hardy:

As I understand A.B. 120, the Division will post on its Website a list of insurance underwriters that use the credit score in calculating the premium and may use the information to identify those that do not use the credit score. At some point, individuals will be able to identify from which insurance companies they are more likely to get better premiums, possibly because of their credit scores.

Ms. Belz:

There is a general assumption that credit scores negatively impact insurance scores. That may actually not be true. Assembly Bill 120 will provide a list of companies that do not use credit scores. Customers are encouraged to shop for the best premiums regardless of whether a credit score is used. A consumer's credit score is only one factor in the calculation of premiums.

Senator Hardy:

Is this bill a next step towards prohibiting credit scores from being used to calculate insurance premiums?

Ms. Belz:

I hope not.

Senator Settlemeyer:

I want to clarify that A.B. 120 only deals with an insurance score, so there should be no grey area.

Ms. Belz:

That is correct. In addition to general information about insurance, A.B. 120 only addresses insurance companies that use insurance scores.

Adam Plain (Insurance Regulation Liaison, Division of Insurance, Department of Business and Industry):

The Division of Insurance is neutral on A.B. 120. The Division of Insurance, Department of Business and Industry, is capable of undertaking the duty imposed on it by A.B. 120. Assembly Bill 120 would require the Division to post a list of insurers that do not use insurance scoring in their methodology. Due to the prevalence of insurance score usage, there are several hundred property casualty insurers licensed to do business in the State. It is much more effective

to provide consumers seeking to avoid credit-based insurance scoring with a list of companies that do not use an insurance score.

Chair Atkinson:

Could our decision only to publish a list of insurers that do not use an insurance score be construed as an endorsement of those companies?

Mr. Plain:

It really comes down to the manner in which the information is disclosed to the public. The Division could certainly list insurers that do use credit-based insurance as well. Again, the usefulness of that information is limited. The Division strives to provide information that does not benefit one company over another. The Division would strive for neutrality in this situation as well.

Chair Atkinson:

Are you saying it would be better to list both?

Mr. Plain:

Listing the exclusions is most useful, but the Division will comply with whatever policy the Committee determines is best. A data call must be performed to obtain the information anyway, so it would not create additional work for the Division.

Assemblyman Aizley:

As a mathematician, I am furious how insurance premiums are computed. I have been prevented from getting the information I wanted. If A.B. 120 becomes law, I will know which companies use credit-based premiums. The correlation between what a consumer does with his or her credit card and that person's insurance premium is baffling to me. I will continue to pursue it.

Senator Hutchison:

I will close the hearing on A.B. 120.

Chair Atkinson:

I will open the hearing on A.B. 326.

ASSEMBLY BILL 326 (1st Reprint): Revises provisions relating to arbitration.
(BDR 52-803)

Assemblyman Paul Aizley (Assembly District No. 41):

Users of licensed software applications are required to sign end user license agreements (EULA) when installing updates to software. Generally, EULAs cover the number and types of licenses an end user is entitled to use. Although most people do not read the entire EULA, they often contain material unrelated to the use of the software. For example, a EULA might require a person to submit to binding arbitration should a dispute arise. A person should not have to agree to binding arbitration or give up the right to join a class action lawsuit just so he or she can use the Internet. Under A.B. 326, agreements including such provisions must include specific authorization for the provisions which indicates that the person has agreed to the provision. Mere acceptance of the terms of an EULA would not be sufficient to enforce such provisions.

Senator Hutchison:

Does A.B. 326 require a separate acknowledgement such as an additional checkbox indicating a person is agreeing to binding arbitration?

Assemblyman Aizley:

Yes. I do not believe people read these agreements and do not realize they are agreeing to provisions unrelated to the issue at hand.

Senator Hutchison:

I am a lawyer, and I do not read the terms of the end user agreements because they are contracts of adhesion. I commend you for reading the terms.

Jon Sasser (Legal Aid Center of Southern Nevada):

I support A.B. 326. By purchasing certain products, consumers inadvertently sign away their access to the court system. Consumers should be informed they are releasing the other party of liability.

Mark Wenzel (Nevada Justice Association):

Mandatory arbitration clauses are often hidden in contracts and prevent consumers from making informed decisions when purchasing credit card services, automobile leases, telecommunications services and banking services. Informing consumers separately from the remainder of the contract will allow consumers to make meaningful, well-informed decisions. The Nevada Justice Association supports A.B. 326.

Senator Hardy:

How have other states fared that have passed similar legislation?

Mr. Wenzel:

I am not aware of any other states that have separated mandatory arbitration notification, but I will research the issue and report back to the Committee.

Senator Hutchison:

In the context of a software application, would A.B. 326 prohibit a software company from denying service if a customer did not agree to binding arbitration? My interpretation is that it would not.

Mr. Wenzel:

A company would not have to provide service to a consumer who does not accept the terms, but consumers must be informed pursuant to the provisions of A.B. 326. In the Assembly, Assemblyman Hansen testified that a mandatory arbitration clause on a software contract required him to dispute a bill in Bethesda, Maryland. Our position is that requiring consumers to provide specific, affirmative authorization will help them make informed decisions. For instance, if one telecommunication provider requires mandatory arbitration in Nevada and another provider requires mandatory arbitration be conducted in another state, the consumer can make a more informed decision.

John Sande III (Nevada Franchised Auto Dealers Association):

Under State law, contracts for the sale of motor vehicles by dealers are dictated by regulations. Assembly Bill 326 would require those regulations to be changed, and I want to be sure we have enough time to get this done before October 1.

Chair Atkinson:

I will close the hearing on A.B. 326 and open the hearing on A.B. 90.

ASSEMBLY BILL 90 (1st Reprint): Revises provisions governing representation of injured workers in hearings or other meetings concerning industrial insurance claims. (BDR 53-820)

Assemblyman James Ohrenschall (Assembly District No. 12):

Assembly Bill 90 makes a very small change to allow a labor organization or association to have a part-time union representative represent an injured worker

before an insurer or hearings officer. It would not change existing law, which requires an attorney to represent the injured worker before an appeals hearing. This would provide unions the flexibility to hire qualified representatives for their injured workers.

Senator Hutchison:

I am interested in the language related to independent contractors. Does this arise out of a particular concern?

Assemblyman Ohrenschall:

This was included because an independent contractor may not be as loyal to a labor organization as an employee would.

Ron Dreher (Nevada Peace Officers Research Association; Washoe School Principals' Association; Washoe County Public Attorney's Association):

We support A.B. 90. The intent of A.B. 90 is to clarify that both full-time and part-time employees may represent our members in initial discussions with their employers and third-party administrators. This helps workers understand the workers' compensation process, facilitates the care process and reduces delays. The experts would assist our members in workers' compensation matters. This change would also allow full-time or part-time labor union association employees to represent members at the initial workers' compensation level appeal process. A number of claims have been denied arbitrarily, and this will help clarify the appeals process. Assembly Bill 90 does not replace attorneys. Under existing law, employees are entitled to retain an attorney who is provided at no cost if their claim is denied, and A.B. 90 does not change that. Additionally, A.B. 90 clarifies that part-time employees can assist in this area. There is no requirement for a volunteer of a labor union to possess errors and admissions insurance. As such, A.B. 90 provides for labor union associations to provide initial representation to our members using our employees to make this process economically feasible for our members.

Senator Hutchison:

I am curious as to how other law enforcement organizations view this change.

Mr. Dreher:

I speak for some other law enforcement organizations that support A.B. 90, such as the Las Vegas Police Protective Association and the Southern Nevada Conference of Police and Sheriffs.

Priscilla Maloney (American Federation of State, County and Municipal Employees Local 4041):

We support A.B. 90.

Herb Santos, Jr. (Nevada Justice Association):

The Nevada Justice Association supports A.B. 90. We want to ensure injured workers are always protected. State law allows for representation at all levels up to the appeals level. We felt it was important to allow employees to be employed by their associations rather than by independent contractors. As an employer, there is some form of supervision that would be absent with an independent contractor. There are so many situations where a conflict of interest could arise with an independent contractor.

Mr. Sanderson:

Workers' compensation has turned into an issue where injured workers are not treated as a result of decisions made by third-party administrators. We support A.B. 90 because it will help injured workers get fair treatment. Third-party administrators know that if they deny all claims, 50 percent of the claimants will not appeal, and they will only have to pay 25 percent. This is a small step, but it will help injured workers get the care they need to return to their jobs.

Assemblyman Ohrenschall:

As far as I know, there is only one labor organization that has a full-time representative appearing at these hearings.

Chair Atkinson:

I will close the hearing on A.B. 90 and open the hearing on A.B. 322.

ASSEMBLY BILL 322: Revises provisions concerning casualty insurance.
(BDR 57-1038)

Assemblyman Paul Anderson (Assembly District No. 13):

Assembly Bill 322 amends NRS 690B.042, which was added to the NRS by S.B. No. 300 of the 68th Session. It removed the open discovery between two parties involved in a motor vehicle accident. The intent of S.B. No. 300 of the 68th Session was to allow the involved parties to obtain medical records in a timely manner. Under NRS 690B.042, a party against whom a claim is asserted for compensation under an insurance policy for a private passenger car

may require the plaintiff to provide all medical records to the other party not more than once every 90 days.

Although “passenger car” is defined in the NRS, the term private passenger car is not defined. As a result, process for the discovery of evidence and release of medical records is unclear when an accident involves a commercial vehicle. The intent of A.B. 322 removes the word private from NRS 690B.042. Accordingly, the statute would cover all passenger cars as defined in NRS 482.087.

Senator Hutchison:

Can you explain the legislative history of S.B. No. 300 of the 68th Session with regard to discovery?

Assemblyman Anderson:

The extensive legislative history of S.B. No. 300 of the 68th Session indicates the intent was to give both individuals access to medical records to speed up the discovery process.

Nick Vassiliadis (Capital Insurance Group):

There was virtually no opposition to A.B. 322. It passed in the Assembly 39 to 1. This bill will close a loophole and ensure the protection of all parties involved in a personal injury claim.

Mr. Plain:

The Division of Insurance is neutral on the A.B. 322. The term private passenger automobile is not defined in statute, but rather is a term of art in the insurance industry and is used by the National Association of Insurance Commissioners. Historically, the term refers to the type of insurance policy issued and not necessarily the type of vehicle insured. The Division has no reason to believe the proposed change would affect us.

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Chair Atkinson:

I will close the hearing on A.B. 322. The meeting is adjourned at 3:44 p.m.

RESPECTFULLY SUBMITTED:

Wayne Archer,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	2		Agenda
	B	4		Attendance Roster