MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-Seventh Session
February 25, 2013

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:30 p.m. on Monday, February 25, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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. Settelmeyer
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Senatorial District No. 20
Senator Tick Segerblom, Senatorial District No. 3

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Elizabeth MacMenamin, Retail Association of Nevada
Tray Abney, The Chamber
Randi Thompson, National Federation of Independent Business
Robert Ostrovsky, Nevada Association of Health Plans
Fred Hillerby, Nevada Association of Health Plans

Rusty McAllister, Professional Firefighters of Nevada
Jennifer Lazovich, AFLAC
Elisa Cafferata, Nevada Advocates for Planned Parenthood Affiliates
Marla McDade Williams, Deputy Administrator, Health Division, Department of Health and Human Services
Robert Compan, Farmers Group, Inc.
Joseph Guild, State Farm Insurance
Lisa Foster, Allstate Corp.
Jim Wadhams, American Insurance Association
Scott Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
Renee Olson, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Kelly Karch, Deputy Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
Brian Reeder, The Associated General Contractors of America, Inc.
Jack Mallory, Southern Nevada Building and Construction Trades Council
Frank Woodbeck, Director, Department of Employment, Training and Rehabilitation
Jon Sasser, Washoe Legal Services; Legal Aid Center of Southern Nevada

Chair Atkinson:
I will now open the hearing on Senate Bill (S.B.) 156.

SENATE BILL 156: Requires certain policies of health insurance and health care plans to provide coverage for acupuncture treatments in certain circumstances. (BDR 57-602)

Senator Tick Segerblom (Senatorial District No. 3):
Senate Bill 156 requires health insurers to provide coverage for acupuncture treatments. It is unclear with whether such a mandate would be feasible under the Patient Protection and Affordable Care Act of 2010 (ACA). I have submitted two exhibits for the Committee. The first exhibit is a presentation detailing why acupuncture is an important, effective, efficient and inexpensive treatment (Exhibit C). The second exhibit is a fact sheet detailing why it should be a mandate (Exhibit D). Nevada has a significant Asian population, and it is discriminatory coverage if acupuncture treatments are not mandated. Small nonprofit health plans have asked to be exempted from this mandate.

Senator Hutchison:
The federal government has approved the State's essential benefit plan. Will the State have to cover the cost of acupuncture treatments since the essential benefit plan has already been approved?

Senator Segerblom:
The State would not pay for it, but the policies sold through health insurance plans would be required to provide coverage.

Senator Hutchison:
Would the State pick up the extra costs in the form of tax credits for low-income individuals who lack the means to purchase insurance coverage?

Senator Segerblom:
Acupuncture is a substitute. The State would save money. Acupuncture reduces costs because more expensive products are not consumed.

Chair Atkinson:
Would S.B. 156 take acupuncture out of the cosmetic category and force insurers to provide coverage?

Senator Segerblom:
Yes.

Elizabeth MacMenamin (Retail Association of Nevada):
Senate Bill 156 increases the cost of doing business in Nevada. Nevada has more health insurance mandates than most states. The State has 52 insurance mandates, but the national median is 38. Businesses will defray the increased costs by reducing wages, fringe benefits or labor or by dropping insurance. This is not the intent of S.B. 156, but the State needs to look at what it is going to cost businesses.

Senator Hutchison:
Has the Retail Association of Nevada evaluated the feasibility and cost of an acupuncture mandate under the ACA?

Ms. MacMenamin:
States would be required to cover the cost of acupuncture treatments for individuals who cannot afford them under the ACA.

Tray Abney (The Chamber):
The Chamber has a policy of opposing insurance mandates. We oppose S.B. 156.

Randi Thompson (National Federation of Independent Business):
I represent over 2,000 small businesses that will be impacted by this bill. These businesses and their employees will also be impacted by the federal mandates imposed by the ACA. Many health insurance carriers provide reimbursement for acupuncture. Acupuncture is not mandated, and that is how it should stay.

During the 76th Session, the Executive Officer of the Public Employees' Benefits Program testified the mandate would cost $5 per person per month for its 32,000 members. For a small business with 12 employees, the costs per person would be significantly higher. Nevada has more than 50 mandates, and another mandate will push small businesses not to offer health insurance.

Robert Ostrovsky (Nevada Association of Health Plans):
Due to the number of exemptions, health insurance mandates only affect a segment of employers. This is particularly true for small employers and individual policies. Most of the big employers in this State are self-insured. Many of these have union contracts which are also exempted from mandates. The Committee has also carved out firefighters. Additionally, my understanding of the exchange is that this mandate will not become an essential benefit. Acupuncture will be a mandated benefit outside the essential benefits plan, and anyone who purchases insurance will have to cover the additional cost. The State will have to subsidize 100 percent of the cost for individuals who cannot afford the cost, just like Medicaid. This bill exempts Medicaid, and I do not know if the State can do so under the ACA. There is quite a bit of uncertainty with regard to the ACA. My concern is not with the current requirements, but with future requirements. The U.S. Department of Health and Human Services (HHS) has not finalized regulations. I cannot tell you today whether the State can impose new mandates under the ACA in the future.

Although the cost of mandating acupuncture is minimal, an acupuncture mandate would further increase the total cost of the State's mandates. All health plans offer acupuncture riders, which means anyone who wants acupuncture coverage can get it.

Fred Hillerby (Nevada Association of Health Plans):
The Nevada Association of Health Plans estimates mandates impact 30 percent of the population; 70 percent are not covered by statutory mandates. I share Senator Hutchison's concerns about the feasibility of including an acupuncture mandate under the ACA.

Rusty McAllister (Professional Firefighters of Nevada):
I want to remind the Committee that in 2011, the Legislature passed an amendment to *Nevada Revised Statutes* (NRS) 287, which exempted nonprofit health care programs from mandates.

Jennifer Lazovich (AFLAC):
We are submitting a proposed amendment to exempt supplemental coverage insurers from the mandate (Exhibit E). We propose to delete "policy of health insurance" on line 3, page 2 of S.B. 156 and insert "health benefit plan," since health benefit plans are defined in NRS 689A.540.

Senator Hardy:
What is the difference?

Ms. Lazovich:
Health benefit plans are defined under NRS 689A.540, but health insurance policies are not.

Senator Hardy:
Would union health plans or the Employee Retirement Income Security Act plans fall under the definition of a health benefit plan under NRS 689A.540?

Ms. Lazovich:
I do not know. Senate Bill 156 includes other types of insurance policies. We did not request changes to other policies. Our only position is that a policy for health insurance is not a legal definition, but a health benefit plan is clearly defined.

Senator Hardy:
Does that language trump language in any other section?

Ms. Lazovich:
No, it does not.

Senator Hutchison:
Does it include Medicaid?

Dan Yu (Counsel):
No, it does not.

Senator Hardy:
Senate Bill 156 lists which plans are covered, but there is no list of what types of plans are excluded. I would like more information on this after the meeting.

Elisa Cafferata (Nevada Advocates for Planned Parenthood Affiliates):
We do not have a position on the coverage of acupuncture. I attended many of the hearings of the Silver State Health Insurance Exchange, and I can provide information on the issue of mandates. The HHS required the State to select an essential health benefits plan to set the coverage within the exchange. The set of essential benefits may differ from those within the exchange. The State plan, which is called "Health Plan of Nevada, Inc. Point-of-Service Plan," includes all State mandates. Every mandate will be included in the pricing of coverage inside and outside of the exchange. The State can add additional mandates, but only for additional mandates would the State pick up the difference in the premium subsidy for benefits covered by the exchange. Whether the State has the most or least amount of mandates is now moot. The essential health benefits plan covers all of the State's mandates.

Chair Atkinson:
I will close the hearing on S.B. 156 and move to our work session documents.

Marji Paslov Thomas (Policy Analyst):
For the following bills, please refer to your work session documents. Senate Bill 35 (Exhibit F) was sponsored by the Committee on behalf of the Employment Security Division (ESD), Department of Employment, Training and Rehabilitation. It was heard on February 6, 2013. Senate Bill 35 removes references to the Unemployment Compensation Service and the State Employment Service as administrative subdivisions within the ESD. The measure prohibits county recorders from charging the ESD any fees in connection with civil actions to collect money owed to the ESD. Senator Settelmeyer has

proposed an amendment which is on page 2 of Exhibit F. Senator Settelmeyer's amendment would allow counties to charge the ESD for the recording of documents related to the release of judgments. It would also permit the ESD to charge the debtor or employer an additional fee in the amount established pursuant to NRS 247.305. The fees collected by the ESD would propose to be deposited into the Unemployment Compensation Administration Fund to defray the fees charged by county recorders.

SENATE BILL 35: Makes various changes concerning the Employment Security Division of the Department of Employment, Training and Rehabilitation. (BDR 53-372)

SENATOR DENIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 35.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:
Senate Bill 40 was sponsored by the Committee and heard on February 6, 2013. Senate Bill 40 eliminates the requirement that applications for licensing as a medical laboratory be made under oath. It requires individuals seeking certification as medical assistants to meet qualifications established by the State Board of Health, Health Division (HD), Department of Health and Human services (DHHS). Senate Bill 40 clarifies that licensed professionals may perform waived tests without obtaining certification as an assistant in a medical laboratory. Senate Bill 40 authorizes the HD to impose an administrative penalty of not more than $10,000 per violation. Senate Bill 40 provides criteria for determining the amount of administrative penalties to be imposed for each violation. On page 1 of Exhibit G is an amendment proposed by staff to delete references to the "National Certification Agency for Medical Laboratory Personnel" and replace with the "American Society of Clinical Pathologists."

SENATE BILL 40: Revises provisions relating to medical laboratories. (BDR 54-314)

Senator Hardy:
I want to note this would not adversely affect current laboratories, but it would give the HD the ability to increase penalties. This will not harm any laboratory currently in compliance. If such a laboratory were fined, it would be gradually imposed instead of a flat $10,000 amount.

Marla McDade Williams (Deputy Administrator, Health Division, Department of Health and Human Services):
Senator Hardy's statement is correct. This will not adversely affect existing laboratories which are in compliance with regulations and statutes.

Senator Settelmeyer:
Since the State has never fined a laboratory in the past, can you explain the sliding scale of fines?

Ms. McDade Williams:
Sanctions are progressive. There are four levels of violations. An example of a level one violation would be a paperwork violation. A violation resulting in patient harm would be an example of a level four violation. The severity of fines then progress based on repeated violations. Depending on the violations, fines could range from $1,000 to $10,000.

Senator Settelmeyer:
Would the HD or the Legislative Commission be responsible for establishing fines?

Ms. McDade Williams:
The HD will propose regulations, which the Legislative Commission would have to approve.

Chair Atkinson:
I appreciate your answer, because I had concerns about the progression of fines. Your testimony leads me to believe fines will depend on the severity of the infractions.

Senator Hutchison:
I would like more clarification. Some members of the Committee received a personal letter from the HD identifying the specific progression of fines. Are you saying the progression of fines will be promulgated through administrative regulations?

Ms. McDade Williams:
Yes.

Senator Hutchison:
Chair Atkinson, will those documents be part of the record so the Committee knows exactly what we are talking about?

Chair Atkinson:
Yes.

Senator Hardy:
The Legislature has a responsibility to protect public health. We have an opportunity to ensure laboratories are in compliance. We have not had any problems, but this puts the State on a serious footing, and the Legislature will have input in this process.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS S.B. 40.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:
We will conclude the work session and open the hearing on S.B. 114.

SENATE BILL 114: Revises provisions relating to the filing of rates for insurance. (BDR 57-146)

Senator Michael Roberson, Senatorial District No. 20:
Senate Bill 114 streamlines insurance regulation, promotes price competition and recognizes the role of well-informed consumers. I have submitted a proprietary report from the Insurance Research Council (IRC), which found clear evidence of the long-term positive effects of rate regulatory reform in automobile insurance markets (Exhibit H). The IRC studied insurance markets in several states and found rate modernization led to a number of positive developments without price increases or reductions in availability of service quality.

Section 1 of S.B. 114 will change the current "deemer" period from 60 days to 30 days, which will ensure insurance products can be delivered to the market faster. Section 2 of S.B. 114 requires the Commissioner of Insurance of the Division of Insurance (DOI) of the Department of Business and Industry, to approve or disapprove of a rate proposal within 30 days. It also requires the Commissioner to send a written notice of disapproval within 30 days to the insurer or rate service organization that filed the proposal. The notice of disapproval must set forth the reasons for disapproval. Section 2 also provides that upon receipt of a written notice of disapproval, the insurer may request a reconsideration. Again, the Commissioner must make a determination within 30 days after receiving request for reconsideration.

Section 3 outlines the responsibilities and options to have the filing reconsidered, and provides for a possible extension. Section 4 requires the DOI to notify the insurer within 15 days of an incomplete filing.

Currently, the "deemer" period is 60 days, and the statute is unclear on the responsibilities. Senate Bill 114 will guarantee speed to the marketplace for insurers, thus providing a competitive price to the Nevada consumer.

Robert Compan (Farmers Insurance Group):
Under the State's prior approval rating system, insurers must file rates and rules with the DOI. The filings become effective within a 60-day "deemer" period. The Commissioner may disapprove a filing that is not in compliance at any time. Senate Bill 114 does not take away the regulatory authority of the DOI. Rather, S.B. 114 codifies the reforms the Commissioner has already put in place. Senate Bill 114 enhances the regulatory requirements to impose a "deemer" period of 30 days and replaces it with a modified file and use system, as outlined in the report from the IRC.

Under Section 2, subsection 6 of S.B. 114, the Commissioner must notify insurers within 15 days if the proposal is determined to be incomplete. If a proposal is determined to be incomplete, the "deemer" period is suspended.

As Senator Roberson mentioned, the Committee has been provided copies of the IRC's copyrighted report (Exhibit H), which states:

> There is substantial evidence that insurance market supply responds adversely to rate regulation. Studies have shown that the relative number of insurance providers is lower in stringently regulated states than in less regulated states, and that the nature of firms operating in regulated markets is distorted toward less efficient firms. Other research has found that when rate regulation significantly depresses automobile insurance rates below predicted levels, the proportion of drivers insured in the residual market increases.

In the past, the State has used a "flex rating" system, which gives a set amount of insurance an insurance company may either increase or decrease rates. Farmers Insurance Group supports S.B. 114 because it moves the State towards rate modernization while giving the DOI the regulatory oversight it needs to ensure "speed to market."

Senator Hutchison:
The Commissioner submitted a document indicating the average response time for the DOI is 17.5 days. While the response time is not a problem, it has been a problem in the past. The legislative intent of S.B. 114 is to codify in law that the State takes response time seriously and does not want it to become a problem in the future. Would you agree?

Mr. Compan:
I agree. The DOI is doing an excellent job. I have not seen your reference document.

Senator Hutchison:
It is a letter the DOI sent to several members of the Committee, and they indicate the response time for getting new products approved is currently 17.5 days. I want to make it clear that while the response time is not a problem now, we want to establish a 30-day deadline to prevent problems in the future.

Mr. Compan:
There have been long delays in getting insurance products to market under previous administrations. The purpose of S.B. 114 is to provide rate flexibility. The 30-day deadline is not intended to slow down the process. The purpose of the deadline is to prevent delays in the future. The deadline also ensures the DOI can give a thorough review to requests. It should reduce sticker shock for consumers.

Senator Hutchison:
Senate Bill 114 allows insurers to make a request for reconsideration of a determination. In legal proceedings, requests for reconsideration require new evidence or new facts to be introduced. Do you anticipate such a standard will be required for reconsideration in this venue?

Mr. Compan:
I anticipate insurance companies making such requests would review the approval factors and bring new information to justify a reconsideration.

Joseph Guild (State Farm Insurance):
Nothing in S.B. 114 changes any of the standards set forth in NRS 686B.050. The Commissioner can determine whether a rate is adequate or unfairly discriminatory. The standards do not change. The Commissioner would still have the discretion and authority to determine whether a rate is adequate under those standards. Senate Bill 114 only changes the period of time the Commissioner has to review the request.

Lisa Foster (Allstate Corp.):
Regardless of the size and specialty of insurance companies, all insurers are in favor of modernization. Rate modernization promotes consumer choice and a competitive marketplace. Regulatory policy should encourage innovation in product offerings and spur healthy price competition for the benefit of consumers. We support S.B. 114.

Jim Wadhams (American Insurance Association):
Nevada Revised Statute 686B.050 allows the Commissioner to disapprove rates if it is determined competition is not taking place. Senate Bill 114 does not take this authority away It only limits response time.

Scott Kipper (Commissioner on Insurance, Division of Insurance, Department of Business and Industry):
The DOI worked with the insurance industry on rate modernization. The DOI does not believe rate modernization necessitates a statutory change, but we do not oppose S.B. 114. The DOI has a good process in place to review rate filings. The DOI's average response time for rate filing is 17.5 days. The DOI is pleased staff can deliver new products to consumers while providing sufficient oversight. The new response time only applies to private passenger automobile insurance and home insurance. The DOI would have concerns if the deadline applied to health insurance.

With regard to Senator Hutchison's concerns about due process, there will certainly be a process for insurers to bring forth new information for an appeal.

Senator Hutchison:
Will the DOI promulgate regulations specifically addressing the presentation of new information or facts?

Mr. Kipper:
Insurers will be able to submit additional information for an appeal to the supervisory level or above.

Senator Hutchison:
Even though the DOI's response time is 17.5 days, do you have any concerns about meeting the 30-day requirement?

Mr. Kipper:
We would only be concerned if the DOI experienced a serious personnel issue.

Senator Roberson:
Although the DOI is meeting the 30-day deadline, S.B. 114 ensures Nevada is on the forefront of insurance modernization. We are clearly not at the forefront at this time. This is a step in the right direction.

Chair Atkinson:
I will close the hearing on S.B. 114 and open the hearing on S.B. 36.

SENATE BILL 36: Makes various changes concerning unemployment compensation. (BDR 53-371)

Renee Olson (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
The Employment Security Division (ESD) has requested an amendment to remove the work-sharing program from the bill. While the federal government funds the majority of benefit payments and administrative costs, the ESD estimates the cost of programming our system to handle the work-sharing program would total $650,000. The ESD has not received federal funding to cover the programming costs, and it is unlikely the federal government will provide funding in the future. Further, the potential Sequestration may eliminate the federal portion completely.

Pursuant to NRS 612.550, employers may transfer unemployment insurance (UI) experience ratings to successor employers. Section 24 of S.B. 36 amends NRS 612.550 to allow liability to be transferred to successor employers when experience ratings are transferred. This would allow the ESD to collect unemployment debt from the previous employer.

Senator Hutchison:
Has the transfer of employer ratings been a problem? Have there been instances where employer ratings are transferred and the successor employer goes out of business, leaving the State to assume the liability? What would prevent the State from pursuing legal action against the successor?

Ms. Olson:
The transfer of liability has been a problem.

Kelly Karch (Deputy Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):
When a business fails, the assets are liquidated and the ESD cannot pursue those tax collections. The debt is then transferred to all of the other employers in the program. It is not a great problem, but it is an issue of fairness to contributing employers.

Ms. Olson:
Section 28 of S.B. 36 amends NRS 612.695 to extend the assignment of liability to transfers of assets by means other than a sale. This change would require an employer to assume the UI debt when the purchaser acquires a company through any form of transfer. The statute only refers to the sale of a business and requires the seller of the business to pay remaining liabilities. This has created a situation where business assets are being transferred for the purpose of avoiding payment of those liabilities. Senate Bill 36 will eliminate this loophole and allow collection of all due taxes.

Mr. Karch:
The ESD has faced several integrity issues in recent years. The ESD was substantially underfunded prior to the recession. The federal government provided emergency funding for many of our programs throughout the recession. The additional funding allowed the ESD to staff our integrity operations sufficiently. In line with this, the ESD took advantage of federal supplemental budget requests to enhance its integrity operations sufficiently. The State and federal government both have fraud task forces to assist with modernization of our UI system. The U.S. Department of Labor's (USDOL) Treasury Offset Program assists states in recovering fraudulent payments through Internal Revenue Service refunds. This is the first year the State has participated in the program, and the ESD submitted seizure requests totaling $11 million. The State will recover a substantial portion of those funds. Recovered funds will be transferred to the Unemployment Trust Fund (Trust Fund).

In 2009, the Legislature authorized the ESD to recover overpayments of UI benefits through wage garnishments. The ESD engaged in a demonstration project in 2010 to verify the viability of the wage-garnishment process. The project targeted 37 fraudulent overpayments of more than $5,000. Sixteen of these overpayments were completely paid off, and another nine were voluntarily repaid after the garnishment lapse. Another nine were partially repaid before the garnishment lapsed.

Fraudulent overpayments accounted for 60 percent of all overpayments. Of those overpayments, 23 percent resulted in direct repayments. The federal government requires the ESD to collect at least 50 percent of fraudulent overpayments. The State has limited sources with which to recover overpayments. For instance, the ESD cannot recover overpayments using

resources available to other states, such as state income tax refunds or lottery winnings. Wage garnishment is an effective means of collection.

Chapter 31 of the NRS requires the ESD to refile garnishments every 120 days. Additionally, the ESD's garnishments are subordinate to existing garnishments against claimants. Garnishments must be served by a constable or sheriff, who then becomes custodians of the funds. Garnishments are not always immediately transmitted to the ESD. When funds are held in interest-bearing accounts, the accrued interest must be transferred to the ESD as well. The USDOL informed the ESD that failure to transfer accrued interest could lead to a conformity finding. Such a finding would jeopardize the state's Federal Unemployment Tax Act (FUTA) credits.

The garnishment process for one overpayment requires at least 6 hours of staff time, and the request must be refiled every 4 months. Senate Bill 36 will grant the ESD direct wage garnishment authority. Once the ESD obtains a civil judgment, the ESD will provide the claimant an opportunity to repay the fraudulent overpayment voluntarily. Should the claimant fail to adhere to a reasonable repayment schedule, the ESD would have the authority to compel claimants' employers to withhold wages in the same manner as child support. This would eliminate the need for repeated filing of garnishment documents. To comply with requirements of the FUTA, S.B. 36 would require the employer to remit recovered money directly to the ESD. Employers would be paid $3 per transaction. Senate Bill 36 would also give the ESD's garnishment precedence over other garnishments except for child support. Senate Bill 36 restricts garnishment actions to fraudulent overpayments.

Chair Atkinson:
You testified employers would be paid $3 per transaction. How would that work?

Mr. Karch:
We do not expect employers to do this for free. Employers could charge employees $3 per transaction.

Senator Hardy:
Can you tell us which section of S.B. 36 deals with garnishment?

Mr. Karch:
Garnishment is addressed in sections 12 through 19 and section 21.

Senator Hutchison:
How does the ESD garnish the wages of an individual who is unemployed?

Mr. Karch:
We garnish the claimant's wages upon their return to work.

Chair Atkinson:
Is there a statute of limitation on wage garnishments? With record unemployment rates, it may be a while before an individual returns to work.

Mr. Karch:
The statute of limitation is 5 years.

Senator Hardy:
What portion of wages does the ESD garnish? What incentive do individuals have to return to work if they would make less than unemployment?

Mr. Karch:
The ESD only garnishes wages in cases of fraud. Claimants subject to garnishment are thus prohibited from collecting benefits. The ESD can garnish up to 25 percent of wages.

Senator Jones:
When there are multiple garnishees, which claims receive priority?

Mr. Karch:
Under S.B. 36, claims for child support receive first priority.

Section 23 of S.B. 36 addresses penalties for fraudulent claims. Due to the statute of limitations in NRS 612.480, the ESD can only pursue fraudulent claims filed during the previous 2 years. The amendments to NRS 612.445 would extend this period of review to 4 years.

In 2009, the State passed the toughest unemployment fraud law in the Country. The State disqualified claimants from collecting unemployment

benefits for weeks in which they were otherwise eligible. In many cases, this exponentially increased the amount the person was found to have been overpaid. This was not the legislative intent. The inconsistency resulted from the language regarding the date from which an administrative disqualification took effect. Application of this law increased overpayments of benefits by several million dollars.

The changes proposed in section 23 of S.B. 36 would clarify that disqualification would become effective on the date the ESD determines the person filed the first fraudulent claim. This would be in addition to assessing a disqualification for the weeks the person actually fraudulently filed for UI benefits. This change will reduce the amount owed by the claimant and will trigger the administrative penalty intended by law. It will prohibit claimants from receiving benefits for future weeks as opposed to a retroactive disqualification. As interpreted, fraudulent claims render claimants ineligible for legitimate periods of unemployment. For example, assume a claimant files a fraudulent claim for a period of 6 weeks beginning in June 2011, and then filed a legitimate claim for a period of 2 months. When the ESD discovered the fraud, the claimant would become ineligible for the 6 weeks of fraudulent claims, as well as the 2 months of legitimate claims.

In instances where fraud was identified retroactively, the administrative disqualification period technically lapsed prior to the date the ESD determined fraud was first committed. This negated the effect of the administrative penalty. The proposed language will assess the administrative disqualification beginning the week the ESD determines the claimant actually committed fraud.

Using the previous example, the claimant would be ineligible during the 6-week period of fraud, as well as an appropriate period. The ESD could impose up to 52 weeks based on the length of the fraudulent claim. This change will reduce the amount of overpayments created for weeks properly claimed without fraud and will prevent the person from receiving future benefits for the period of time it takes to repay the amount improperly claimed.

Senate Bill 36 amends NRS 612.445 to impose a 15 percent penalty for fraudulent claims. The Federal Trade Adjustment Assistance Act of 2011 requires states to impose a 15 percent penalty related to fraudulent filings. Failure to implement the penalty will result in a conformity finding by the USDOL and jeopardize the FUTA tax credit. Existing law permits the State to

assess a 25 percent penalty on overpayments of $2,500 or more, and up to 50 percent on overpayments exceeding $5,000. The ESD does not currently enforce these penalties because the computer system cannot process these penalties. The DETR is in the process of completing a modernization project that will give it the ability to process these types of penalties.

Amounts collected from the conformance penalty will be deposited into the Trust Fund and will augment benefit payments. This amount must be assessed on any overpayment in excess of $1. These funds may not be used to support the administration of Nevada's UI program. Senate Bill 36 also adjusts existing penalties to account for the 15 percent that must be deposited in the Trust Fund. The remaining penalties and interest money must be utilized for the purposes of maintaining program integrity.

Senator Jones:
In addition to the 15 percent penalty, subsection 6, paragraph (a) of section 23 of S.B. 36 authorizes the administrator to impose " ... such greater percentage as the administrator determines is appropriate ... ." While the State must comply with federal mandates, I am concerned this gives the administrator too much authority. The statute does not limit this penalty. Could the administrator under the current language impose a 500 percent penalty?

Mr. Karch:
No. In addition to the 15 percent penalty, the ESD is proposing the following penalty structure: 5 percent on overpayments less than $2,500; 10 percent on overpayments between $2,500; and $5,000 and 35 percent on overpayments over $5,000.

Senator Jones:
I do not understand the difference between the proposed changes to paragraphs (a) and (b), subsection 6, under section 23. Paragraph (a) says "shall." Paragraph (b) says "may." What is the difference between the two sections?

Ms. Olson:
Section 23, subsection 6, paragraph (b) gives the administrator the option of imposing additional penalties as follows: 5 percent on overpayments greater than $25 but not greater than $1,000; 10 percent on payments greater than $1,000 but not more than $2,500; 35 percent on overpayments greater than

$2,500. The proposed penalty increases reflect the 15 percent mandated by the federal government.

Senator Jones:
Paragraph (a) of subsection 6, section 23 reads: "shall impose a penalty equal to 15 percent," which is in compliance with FUTA. It also says "or such greater percentage as the Administrator determines." What is the difference between paragraph (a) and paragraph (b)?

Mr. Yu (Counsel):

> To help clarify on this subsection, this is on page 15 of the bill … subsection 6. I understand Senator Jones' concerns here. I am just going to provide clarification … my understanding of this provision is that it would allow you, as the administrator, essentially unfettered discretion when it comes to imposing that penalty above and beyond the 15 percent. The 15 percent would be the minimum standard that is required, but in addition to that you would have … quite a bit of latitude in determining how much additional penalties you would want to impose. The language here says, "to enhance the integrity of the system." So if in your discretion, you decided it was necessary to impose a higher amount to "enhance the integrity of the system" you would be authorized to do so under that provision.

Ms. Olson:
It is not my intent to have unfettered discretion to charge. The ESD's intent was to lay out specific percentages based on the amount of the overpayment resulting from fraud. I am at a loss, because my copy of S.B. 36 indicates the maximum penalty allowed is 35 percent for overpayments in excess of $2,500. Perhaps I do not understand correctly. I am willing to work with the Committee to work this out.

Chair Atkinson:
I see the 35 percent maximum on page 15, line 32, of S.B. 36. Senator Jones, would you like to ask your question again?

Senator Jones:
I will talk to counsel afterwards. I agree with counsel's opinion.

Mr. Yu:

> I would just like to maybe expand a little bit more on my previous explanation. Again, I do not know if this helps clarify the issue. There are two subsections ... . I am sorry I should say two paragraphs under subsection 6 on page 15 .... paragraph (b) is obviously discretionary authority to the extent that you may impose a penalty equal to not more than ... and then there is subparagraphs (1) and (2). And I think that is what you are talking about in relation to the $25, not greater than $1,000 the 5 percent. And then in subparagraph 2, the 10 percent in relation to a $1,000, but not greater than $2,500. I believe what Mr. Jones is actually questioning is with regard to paragraph (a) ... in subsection 6, which imposes a mandatory duty upon you, as administrator, to impose a penalty equal to 15 percent. So that would be a statutory minimum there is my reading and my interpretation. I believe that is correct. I am happy again to speak to you during or after this meeting to ... perhaps maybe come to a better consensus of our interpretation. But I believe that is an accurate interpretation of the provision.

Ms. Olson:
I agree with your description. I do not agree with your conclusion that I would have unfettered ability to set any rate.

Senator Settelmeyer:
Section 23, subsection 6, paragraph (a) indicates the lower threshold is 15 percent, but it does not seem there is a maximum threshold within the paragraph (a). It does not apply later until paragraph (b). Is there a maximum threshold within paragraph (a) that applies? The minimum is 15 percent. What is the maximum under paragraph (a)? I do not believe paragraph (b) applies.

Ms. Olson:
It is our intent to limit the mandatory minimum penalty to 15 percent. If we need to change language to make that intent clear, I will work with the Committee.

Senator Settelmeyer:
Are you saying you want the maximum penalty to be 35 percent?

Ms. Olson:
Yes, but in addition to the 15 percent.

Senator Hardy:
If section 23, subsection 6, paragraph (a) read: "shall impose a penalty equal to 15 percent, and may impose a greater percentage as below in paragraph (b)," subparagraphs (1), (2) and (3), would remove the administrator's authority to go ad infinitum.

Senator Hutchison:
Is there anything in this bill that changes the due process during the initial determination? The ESD cannot accuse someone of fraud and not give them a chance to defend themselves.

Mr. Karch:
Nothing changes the due process.

A 1-week waiting period will be added as a condition of UI eligibility under section 22 of S.B. 36. Claimants would need to be unemployed and otherwise eligible for benefits for a waiting period of 1 week within the claimants' current benefit year, during which no benefits were paid. All but 12 states currently include such a waiting period in their unemployment compensation laws.

Passage of this legislation will strengthen the financial health of the Trust Fund. The bill does not reduce total entitlement; it moves the first compensable week. The waiting period will allow the ESD to gather all information before the first payment is made. This will reduce the total payments made to claimants who do not exhaust eligibility before all benefits are paid.

The ESD seeks to reduce the amount of money overpaid to UI recipients by virtue of false statements. The waiting period would allow the ESD to conduct initial fact finding and help identify situations not reported by the claimant that impact payment of claims. With a waiting week, an individual would receive their first benefit payment approximately 18 days after filing an initial claim. The ESD estimates a savings of $66 million in Trust Fund savings would have been realized if the State had a waiting week provision over the last 4 years.

As all people do not exhaust unemployment benefits, a waiting week would have further saved the Trust Fund $25.5 million from October 1, 2011, to

October 1, 2012. Historically, 39 percent of UI claimants exhaust their benefits during a benefit year. Pursuant to the federal Omnibus Reconciliation Act of 1980, states without a waiting period would lose 50 percent of the federal share for the cost of the first week of extended benefits. In this case, the State would have been responsible for an additional $21 million in benefits from February 2009 to May 2010.

Nevada had a 2-week waiting period in 1939. The waiting period was reduced to 1 week in 1945, and finally eliminated in 1949. Many states find the waiting period helps them collect information. It would ensure the ESD receives a response from employers, and help the State verify vacation and separation pay. Although claimants have to wait longer for benefits, we do not change the benefit scenario. Claimants are still eligible for 26 weeks. Many states have reduced eligibility and benefits, but the ESD believes this is a more conservative approach to help preserve the Trust Fund.

Senator Hardy:
Does the ESD's removal of the $650,000 fiscal note also remove the $104,000 fiscal note from the Department of Taxation?

Ms. Olson:
The fiscal note was related to the work-sharing program. Since the program will be amended out of S.B. 36, the fiscal note will no longer be needed.

Senator Hardy:
Would it go away completely if the program were amended out? I do not see a $650,000 fiscal note, but I do see a $104,000 fiscal note.

Ms. Olson:
The ESD was confused about the amendment process. The fiscal note we submitted indicated we would be submitting an amendment. I have not spoken with the Department of Taxation. I assume the fiscal note would not apply if the program is eliminated.

Mr. Karch:
To help maintain the integrity of the UI program, the DETR has made the prevention of improper payments a high priority. The USDOL requires new statutory amendments to reduce improper UI payments. One of these requirements is that an employer's unemployment account will not be relieved

of charges when the employer fails to provide adequate separation information or fails to provide a response in a timely manner. An employer is not entitled to be relieved of charges for the amount of any benefits erroneously paid to a claimant if the employer failed to submit timely all the information as required or if the employer has established a pattern of such failures. This change is required to comply with the Trade Adjustment Assistance Extension Act of 2011. States can no longer relieve an employer's unemployment account of charges when it is determined that it was the employer's fault for the improper payment. This new rule goes into effect for any improper overpayment established after October 21, 2013.

When insufficient information is provided or when employers fail to respond in a timely manner, the ESD's adjudicator will issue an eligible determination granting the claimant UI benefits. This may not be the correct decision. Once employers provide the requested information, which usually occurs once they receive a billing statement, the claimant may subsequently be found ineligible. At that point, prior payments become overpayments. Claimants are loathe to repay benefits in situations where they were overpaid through no fault of their own or the fault of the ESD. Even though many have returned to work, claimants' incomes are often far below their wages. The changes will require much communication with employers, especially third-party administrators.

The proposed changes to section 25 of S.B. 36 will reduce overpayments and prevent employers from receiving credits for overpayments for which they were responsible. This change is required by the federal government, and the State's unemployment program will be decertified if the proposed changes do not pass. If the program loses certification, employers could lose the FUTA offset credit. A loss of certification would also impact the state's ability to borrow funds under the Social Security Act Title XII to pay state unemployment compensation.

Senator Hutchison:
Since the ESD has never penalized employers for late responses, how will you communicate with employers if S.B. 36 passes?

Mr. Karch:
We have an obligation to our employers to let them know what is going on. We will include an announcement in the quarterly reports we provide to employers and will include information in those reports. We can send out fliers or include

information on our Website. They will receive the information electronically when the new computer system becomes operational.

Senator Hutchison:
According to your testimony, many of these changes are required to maintain certification. How immediate is the need? Has the State received a letter from the federal government?

Mr. Karch:
We often receive communication from the USDOL, and that is why we have requested S.B. 36. The changes must be implemented by October 21, 2013.

Ms. Olson:
The federal government would identify noncompliance during a regular audit. At such point they could suggest decertification.

Brian Reeder (The Associated General Contractors for America, Inc.):
We support the work-sharing program, but we now take no position since the ESD has indicated they plan on eliminating the program.

Jack Mallory (Southern Nevada Building and Construction Trades Council):
We appreciate the removal of the work sharing program.

We oppose the waiting period in section 22, particularly for individuals in the construction industry. It is our understanding the waiting period will only be imposed once during the 26-week benefit cycle, but we do want to remind the Committee about the challenges construction workers face. On average, a construction worker will work for five employers over the course of a year. Ordinarily, those individuals would be entitled to unemployment compensation during the interim.

We are concerned with some of the garnishment provisions. We do not support fraudulent activity, but we hope the ESD will not garnish wages if an individual voluntarily agrees to repay benefits received fraudulently, since garnishments tend to reflect negatively on employees. We would support an amendment to subsection 6 of section 23 of S.B. 36 to limit the administrator's authority to impose penalties.

Senator Hutchison:
The ESD testified the State's UI program would lose certification if the waiting period is not implemented. What are your thoughts on decertification?

Mr. Mallory:
It is not my interpretation the federal government would revoke certification. There are additional implications when it comes to extended benefits and the federal matching funds.

Senator Hutchison:
Do you believe your concern is superior to the concern the State may have as an adverse consequence if the Legislature does not implement the waiting period.

Mr. Mallory:
It is not my interpretation that there is a punitive impact if the waiting period is not implemented other than the extended benefits match. Also, the ESD testified the waiting period would save $21 million, but that savings come from 60 percent of claimants not exhausting their benefits without the lag week. It is based on people working and earning a benefit and not using the benefit.

Senator Hutchison:
Do you dispute the duration of the benefit is not going to change? Is it not just the timing of the benefit that will change?

Mr. Mallory:
Yes. The ESD has indicated 39 percent of claimants exhaust their benefits during a benefit year; 61 percent do not. The 61 percent would effectively be shorted a week.

Senator Hutchison:
Perhaps the ESD can address this issue.

Chair Atkinson:
I agree. I am looking at the handout given to us by the ESD (Exhibit I), and it sounds like the waiting period is already in effect. Does the ESD currently have a waiting period?

Mr. Karch:
No, we do not.

Chair Atkinson:
Yet, the paragraph on page 3 of Exhibit I says:

> "In the absence of a waiting week and during a traditional extended benefits period, Nevada would be liable for the cost of the first week of extended benefits paid. From the period of February 2009 to May 2010, the Division would have been responsible for an additional amount of $21 million of benefits paid."

I want to point out to Mr. Mallory that section 12 indicates the garnishment is not mandatory.

Frank Woodbeck (Director, Department of Employment, Training and Rehabilitation):
I want to clear up some confusion the DETR may have caused. We will submit clarification on each clause of NRS we are proposing to amend.

It is important to note the proposed waiting period is to avoid overpayments, which are difficult to collect. There will be no other consequences for claimants. Claimants will still be paid. Also, the waiting period is not a federal mandate.

Jon Sasser (Washoe Legal Services; Legal Aid Center of Southern Nevada):
Obviously, many of our low-income clients rely heavily on UI benefits. I am concerned about the 1-week waiting period. Under a normal 26-week benefit year, a person unemployed for 26 weeks would get all 26 weeks with the delay. On the other hand, individuals who do not exhaust their benefits will lose a week of unemployment as a result of the waiting period. The 61 percent of claimants who do not exhaust their benefits will lose a week of benefits.

Nevada has had a tradition of not having a 1-week waiting period. Even though 38 other states have imposed waiting periods, the State has stood in solidarity with its workers. The provision transferring 50 percent of the cost of the first week of unemployment went into effect in the 1980s. After it was implemented, 16 states adopted a waiting period. Nevada did not; the State accepted the consequence because it believed it was worth it. Historically, we

have stuck with our workers. There is also a great suffering during a delay period. Claimants are already waiting 18 days to get benefits, and they did not save for this event. The unemployment check is half of what they were getting. They are in economic crisis. If you pass this bill, recognize it will have negative impact on low-income workers.

Further, in the garnishment section of the bill, I want to point out that the ESD is not asking for direct authority to garnish wages. They do not want to go to the constable or the sheriff process, which limits garnishment to 25 percent of wages. The ESD is asking for the authority to compel employers to send the DETR the check outside of the garnishment process, just as the Division of Welfare and Supportive Services, DHHS, does. That works fine in child support because the garnishments are for a specific dollar amount. In the case of UI, the amount varies. It is a wage withholding and not a garnishment. There would be no limits? This section needs to be reviewed.

Mr. Ostrovsky:
Under section 25. employers are required to provide all information at the initial hearing. My concern is employers may not have all the facts. I would suggest changing this to include all "relevant facts," so that a judge cannot prohibit employers from introducing additional information at a later date.

With regard to repeat offenders, employers still cannot recover payments made in error to an account. That is a huge penalty when we have not defined an established pattern. This is particularly difficult for large employers that use third parties to handle UI claims.

Mr. Karch:
I want to clarify that the 1-week waiting period is one time during a benefit year. We realize many workers go in and out of work.

To address Mr. Mallory's concerns about the extended benefits issue, the State only receives funding for the administration of the program. The only reason the State has not been paying the full share is because the new laws passed during the recession exempted us from doing so.

The garnishment only takes effect in cases of fraud. We give claimants every opportunity to repay before we garnish wages.

Chair Atkinson:
There is quite a bit of information in S.B. 36 that still needs to be addressed, and I want the ESD to work with the Committee and interested parties.

I will close the hearing on S.B. 36, and we will adjourn at 4:05 p.m.

RESPECTFULLY SUBMITTED:

_____
Wayne Archer,
Committee Secretary

APPROVED BY:

_____
Senator Kelvin Atkinson, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
S.B. 156	C	4	Senator Tick Segerblom	Presentation on Acupuncture
S.B. 156	D	1	Senator Tick Segerblom	Fact Sheet on Acupuncture
S.B. 156	E	1	Jennifer Lazovich	Proposed Amendment
S.B. 35	F	2	Marji Paslov Thomas	Work Session Document Proposed Amendment
S.B. 40	G	3	Marji Paslov Thomas	Work Session Document Proposed Amendment
S.B. 114	H	68	Senator Michael Roberson	Insurance Research Council report
S.B. 36	I	5	Renee Olson	Handout, Department of Employment, Training and Rehabilitation