

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

**Seventy-Seventh Session
April 10, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 1:59 p.m. on Wednesday, April 10, 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:

Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Jon Hager, Executive Director, Silver State Health Insurance Exchange
Randy Robison, CenturyLink
William Wright, Chamber Insurance and Benefits, LLC
Samuel P. McMullen, Las Vegas Metro Chamber of Commerce; Nevada
Self-Insurers Association
Barbara Smith Campbell, Chair, Silver State Health Insurance Exchange

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Josh Griffin, Health Services Coalition
Danny Thompson, Nevada State AFL-CIO
Kathleen Sigurdson, Nevada Justice Association
James P. Kemp, Nevada Justice Association
Kirk Gillis, Renown Health
Greg Ferraro, Employers Insurance Group

Chair Atkinson:

I will now open our work session.

Marji Paslov Thomas (Policy Analyst):

I will read the work session document for Senate Bill (S.B.) 94 ([Exhibit C](#)).

SENATE BILL 94: Revises provisions governing certain loans. (BDR 52-581)

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 94.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:

I will read the work session document for S.B. 180 ([Exhibit D](#)).

SENATE BILL 180: Requires a court to award certain relief to an employee injured by certain unlawful employment practices under certain circumstances. (BDR 53-561)

SENATOR WOODHOUSE MOVED TO DO PASS S.B. 180.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HUTCHISON AND SETTELMAYER VOTED NO.)

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Ms. Paslov Thomas:

I will read the work session document for S.B. 211 ([Exhibit E](#)).

SENATE BILL 211: Requires certain health care practitioners to communicate certain information to the public. (BDR 54-14)

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 211.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:

The Committee will not hear S.B. 253.

SENATE BILL 253: Revises certain provisions relating to insurance. (BDR 53-1056)

Ms. Paslov Thomas:

I will read the work session document for S.B. 266 ([Exhibit F](#)).

SENATE BILL 266: Requires certain policies of health insurance and health care plans to provide comparable coverage for orally administered chemotherapy. (BDR 57-879)

Senator Moises (Mo) Denis (Senatorial District No. 2):

During the hearing on March 27, the Committee heard testimony from a number of individuals in favor of S.B. 266 which will provide parity in patient costs for anticancer drugs. This bill establishes a fundamental fairness and justice in the treatment of cancer so that a patient's ability to receive the best treatment is not a function of his or her income. The Committee also heard from organizations that sympathized with the bill's objective but expressed some concerns. Subsequent discussions have resulted in the three proposed amendments. The effective date for plans outside of the Silver State Health Insurance Exchange has been moved to January 1, 2014. For those plans within the Exchange, the effective date will be January 1, 2015. Trust funds formed

under *Nevada Revised Statutes* (NRS) 287.015 have been exempted from the provisions of S.B. 266. Additionally, a cap of \$100 is placed on the amount a patient must pay for each oral cancer prescription. This provides price protection for patients while giving insurers flexibility.

The Committee also heard testimony regarding the costs to small health plans. Our research indicates no significant increases have been observed in the 22 other states that have passed similar legislation. Studies performed by other state agencies have shown the financial impact has been just a few cents.

Senator Settlemeyer:

I generally oppose health care mandates, but mandates are only effective if they include all plans. Why are certain trust funds exempted?

Senator Denis:

I was concerned about the cost to health plans. The cost of requiring coverage of oral chemotherapy treatments has been minimal. However, the impact on these particular trust funds has been greater because the pool of insurers is too small to absorb the cost. I want to be fair in providing this coverage, but I do not want a small trust fund to suffer disproportionately. Larger health plans have thousands of members to manage the cost.

Senator Settlemeyer:

Will all State employees be covered by S.B. 266? I understand the effective date has been extended, but is there enough time for the insurance companies to deal with this under the Affordable Care Act (ACA)?

Senator Denis:

All State employees will be covered. The insurance companies worked together to work out the effective date.

Senator Hardy:

I have tried to calculate the cost, but it does not add up. I will not support S.B. 266, but I will work with Senator Denis to address my concerns. I reserve the right to change my vote on the floor of the Senate.

Senator Hutchison:

The U.S. Department of Health and Human Services (USDHHS) verbally informed the Division of Insurance, Department of Business and Industry, that

the State will not be required to cover the cost of oral cancer drugs for individuals covered by the Exchange. This is because oral chemotherapy drugs are considered to be a new form of treatment and not new coverage. However, the Division of Insurance testified the USDHHS would not provide a written opinion. Has the USDHHS provided any further clarification with regard to this determination?

Senator Denis:

I have not received any additional information.

Senator Hutchison:

I will vote no on S.B. 266, but I reserve my right to change my vote on the floor of the Senate.

SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 266.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HUTCHISON AND JONES VOTED NO.)

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Chair Atkinson:

The Committee will not hear S.B. 267. We will now hear S.B. 324.

SENATE BILL 267 (1st Reprint): Establishes provisions governing tanning establishments. (BDR 52-958)

SENATE BILL 324: Revises provisions governing professions. (BDR 54-701)

Ms. Paslov Thomas:

I will read the work session document for S.B. 324 ([Exhibit G](#)). Additionally, Helen Foley has proposed an amendment on behalf of the Nevada Association for Marriage and Family Therapy, a Division of the American Association for Marriage and Family Therapy. Ms. Foley's amendment proposes to amend section 2 of S.B. 324 to require that a regulatory body issue a license by

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endorsement not later than 30 days following the receipt of all necessary background material and supporting documentation to evaluate the application.

Senator Hutchison:

Is the amendment proposed by Ms. Foley acceptable to Senator Hardy?

Senator Hardy:

Ms. Foley's amendment is acceptable.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 324.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:

I will read the work session document for S.B. 402 ([Exhibit H](#)).

SENATE BILL 402: Revises certain provisions relating to real estate. (BDR 54-913)

SENATOR HUTCHISON MOVED TO DO PASS S.B. 402.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:

I will read the work session document for S.B. 454 ([Exhibit I](#)). I want to draw the Committee's attention to the first amendment proposed by Jon Hager, Executive Director of the Exchange. This amendment proposed by Mr. Hager amends section 4 of S.B. 454 to allow the Exchange to offer contracts or policies providing dental or vision benefits to qualified individuals and qualified small employers, and supplemental coverage or services to qualified individuals.

The amendment states “contracts or policies offered through the Exchange and regulated under Title 57 of the NRS must be approved by the Commissioner of Insurance.” Please note this language is slightly different from the language in the original amendment proposed by Mr. Hager on April 5. Specifically, the phrase “contracts or policies offered by the Exchange” has been changed to “contracts or policies offered through the Exchange.”

SENATE BILL 454: Makes various changes relating to the Silver State Health Insurance Exchange. (BDR 57-1167)

Senator Settlemeyer:

I support the provisions relating to the appointment and removal of individuals from the Board of Directors of the Exchange, the submission of reports to the federal government, and the repeal of unused definitions. Given the uncertainty of the ACA, I cannot support the State’s right to retain the interest earned on Exchange reserves. Nor can I support the exemption of fees charged by the Exchange for premium tax. I also cannot support the authorization of the Exchange to offer supplemental products. These proposed changes should be codified through the *Nevada Administrative Code* (NAC) and not the NRS, because much of this could change once the ACA is implemented. I will vote no on S.B. 454 if these provisions are included.

Jon Hager (Executive Director, Silver State Health Insurance Exchange):

The ACA is in flux, but the Exchange is doing its best to ensure the statute complies with the ACA and its guidance. The Board of Directors has been given an exemption from NRS 233B, the Administrative Procedures Act, which creates additional authority for the Board. It is appropriate the Legislature put limits on that power.

I would like to address some of Senator Settlemeyer’s concerns. The Exchange will create an operational reserve account using a portion of the fees the Exchange charges to qualified health plans. To maintain a reserve, this will be done through the NRS and not the NAC. The provision granting authority to offer supplemental products is needed because the ACA requires the Exchange to offer dental products. State law prohibits the Exchange from offering supplemental products. There is no indication the ACA will change. No one knows what will happen in the future, but the regulations require the Exchange to offer a stand-alone dental product. The proposed amendment to section 4 of S.B. 454 would align the statute accordingly.

Senator Settelmeyer:

As I indicated, I support the last three proposed changes. I have serious concerns with the first three changes you have proposed. I am perplexed as to why the Exchange has the ability to promulgate rules without going through the NAC. Is the Board of Directors limited to the amount of fees it can charge?

Mr. Hager:

I would not say our authority is unlimited. The Board of Directors has the ability to set regulations. This has been beneficial because it has allowed us to implement those regulations on time. The process of setting the fees has been very open and transparent. Carriers are charged a fee to offer their products on the Exchange. We have boundaries that are defined by State law and the ACA.

Senator Hutchison:

The ACA has injected a great deal of uncertainty into the world. The federal government is continuing to delay implementation of the ACA. It is unwise for the State to make important policy decisions like this while the ACA is still in flux.

Senator Hardy:

There is so much of the ACA that I do not understand. I am uncomfortable with the provision prohibiting the money deposited in the Silver State Health Insurance Exchange Account from reverting to the State General Fund. I admire what you have done personally, Mr. Hager, with the small staff you have been assigned. I will vote no on S.B. 454.

Chair Atkinson:

I support S.B. 454 because the State needs to move forward in light of the uncertainty about the ACA. Waiting any longer would be detrimental.

SENATOR DENIS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 454.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARDY, HUTCHISON AND
SETTELMAYER VOTED NO.)

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Ms. Paslov Thomas:

I will read from the work session document for S.B. 493 ([Exhibit J](#)).

SENATE BILL 493: Revises provisions concerning real property transactions.
(BDR 54-642)

Senator Hutchison:

Senate Bill 493 will help move the foreclosure process forward and get real estate back on its feet. Senate Bill 493 has wide support.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 493.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:

I will read the work session document for S.B. 498 ([Exhibit K](#)).

SENATE BILL 498: Revises provisions relating to telecommunications. (BDR 58-1097)

Chair Atkinson:

I want the Committee members to understand the Department of Health and Human Services (DHHS) will provide the list of eligible customers to eligible providers. The Committee wants to ensure confidential information is not shared.

Randy Robison (CenturyLink):

That is correct.

Chair Atkinson:

How will the list be provided to providers?

Mr. Robison:

Providers will be granted access to the list through the DHHS.

Dan Yu (Counsel):

I want to clarify that we did receive this amendment a little bit late. I want to understand the actual intent of this. The way the proposed language is submitted it seems to indicate that during that time until an administrator is actually hired and retained under these regulations that are mandated to be adopted, the provider would actually be able to access directly the database that is administered by DHHS. I think that is the question the Chair was actually trying to get an answer to. I wanted to provide some clarification.

Mr. Robison:

The DHHS provides the list to providers on a 6-month basis. The DHHS is developing a system that would allow providers to access the database electronically. Providers would only have access to verify that a customer's name is on the list. Providers would not have access to any confidential personal information. Providers would simply "ping" the database to identify whether a customer's name is on the list of eligible customers.

Chair Atkinson:

If I understand you correctly, providers would not actually have access to the list. Rather, providers would only have the ability to verify whether a name is on the list or not. Is that correct?

Mr. Robison:

That is correct. This would be done on a name-by-name basis. Providers would submit a name and the DHHS would run the search.

Senator Hardy:

The last sentence on page 2 of the amendment proposed by Cox Communications in the work session document, [Exhibit K](#), reads "... subject to the Department's rules and the rules of the Commission, including but not limited to confidentiality provisions." Those rules are posted somewhere, and you are alluding to the fact that all the information providers receive is subject to those confidentiality provisions.

Mr. Robison:

That is exactly why this language has been proposed. CenturyLink is not asking for any further authority than we currently have.

SENATOR JONES MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 498.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:

I will read the work session document for S.B. 506 ([Exhibit L](#)).

SENATE BILL 506: Repeals provisions governing certain employment practices concerning members of the Communist Party and related organizations. (BDR 53-574)

Senator Settelmeyer:

I support S.B. 506, which the Committee sponsored as a result of the Legislative Commission's review of outdated statutes during the interim. However, I understand the concerns of my former constituent, John Wagner, who testified during the hearing on April 6. Mr. Wagner testified about his friends who were killed in the Korean War. I appreciate Mr. Wagner's concerns, but S.B. 506 has nothing to do with the Korean War. Senate Bill 506 only removes obsolete statutes.

Chair Atkinson:

I am glad you put that on the record. You and I spoke after the hearing on April 6, and Mr. Wagner needs to know his concerns were addressed by the Committee.

SENATOR HARDY MOVED TO DO PASS S.B. 506.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Ms. Paslov Thomas:

I will read the work session document for S.B. 507 ([Exhibit M](#)).

SENATE BILL 507: Repeals provisions relating to development corporations and corporations for economic revitalization and diversification. (BDR 55-575)

SENATOR SETTELMAYER MOVED TO DO PASS S.B. 507.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:

The Committee has pulled S.B. 495 from the agenda. I will now open the hearing on S.B. 359.

SENATE BILL 495: Authorizes an insurer and an insured to agree to conduct business through electronic transmission. (BDR 57-1094)

SENATE BILL 359: Revises the duties of the Silver State Health Insurance Exchange. (BDR 57-906)

Senator Michael Roberson (Senatorial District No. 20):

Senate Bill 359 clarifies the primary focus of the Silver State Health Insurance Exchange should be to those individuals who are uninsured and underinsured, as well as small businesses that do not provide health insurance for their employees. This is in keeping with the purposes of the ACA. I have proposed an amendment with Director Hager's concurrence ([Exhibit N](#)). The proposed

amendment recognizes much of the Exchange's marketing activity is and will continue to be directed towards uninsured individuals.

William Wright (Chamber Insurance and Benefits, LLC):

I represent Chamber Insurance and Benefits, a wholly owned subsidiary of the Las Vegas Metro Chamber of Commerce. The Chamber supports S.B. 359 because it has been our mission over the last 26 years to provide affordable health insurance to our small business members. We offer 10 health plans to our 2,700 members and 20,000 of their employees. There has been significant confusion regarding the Exchange's impact on private insurance companies, agents and brokers. We have worked with the Exchange's leadership to introduce S.B. 359, which will help the Exchange eliminate this confusion and help it offer affordable health care insurance for 550,000 uninsured Nevadans.

Samuel P. McMullen (Las Vegas Metro Chamber of Commerce):

Working with the Exchange has been excellent. The Chamber has added language included in the proposed amendment to clarify the Exchange's mission. The proposed amendment communicates to the rest of the world that the Exchange understands its purpose. The Culinary Workers Union Local 226 had raised their concern about the co-op option under the ACA. The Exchange is not chartered to focus only on the uninsured. The Exchange will be a full-service health plan. Senate Bill 359 will only apply to the Exchange, and will not apply to any other health plan.

Senator Hutchison:

The Exchange is extremely busy focusing on individuals without insurance. Has there been any effort to market the Exchange to employers who already offer health care insurance? It is clear to me that the Exchange and the ACA are supposed to focus on the uninsured. Why is S.B. 359 needed?

Mr. McMullen:

After the U.S. Supreme Court ruled on the constitutionality of the ACA, the Chamber received numerous calls from employers seeking guidance. There is a great deal of confusion related to the Exchange, particularly from employers who are concerned the Exchange will target employers who offer health care insurance. The Chamber has explained to them that this is not the focus of the Exchange. The Exchange is not intended to substitute one insured body for another. The Exchange is supposed to target the uninsured. The response was

so great the Chamber thought it would be helpful for the Legislature to clarify their mission.

Senator Hutchison:

Senate Bill 359 not only clarifies the mission but would actually narrow their focus in State law. Is that correct?

Mr. McMullen.

Yes, S.B. 359 will resolve the confusion and the Chamber can point to a specific statute.

Barbara Smith Campbell (Chair, Silver State Health Insurance Exchange):

The Silver State Health Insurance Exchange wants to reassure the insurance industry that the Exchange has no intent to be predatory with regard to individuals insured. Our charge is to help the uninsured and the underinsured. The Exchange supports S.B. 359.

Mr. Hager:

The Board of Directors of the Exchange voted to support S.B. 359 with the proposed amendment. The Exchange intends to direct its efforts towards uninsured and underinsured individuals, as well as qualified small employers that do not provide health care insurance to their employees. The ACA affords a small business tax credit for those employers with 25 or fewer employees that meet certain requirements. Beginning in 2014, small employers must purchase insurance through the Exchange to get the tax credit. Potentially, small employers who provide health insurance may come to the Exchange to get the tax credit. This is built into the ACA, and there is nothing the State can do about this provision. As a result, the Exchange's messaging will have to include information about the tax credit. With the proposed amendment, S.B. 359 provides sufficient direction from the Legislature for the Exchange to focus on our target population without preventing the Exchange from providing accurate information to the public. The Exchange will focus as much as possible on the uninsured, the underinsured and employers who do not provide health care insurance. There will be some spillover, and the Exchange will have to make it clear the only way employers can qualify for the tax credit is to participate in the Exchange. State law requires the Exchange to provide information on how employers can obtain small tax credits

Mr. McMullen:

I want to point out that S.B. 359 will not restrict sales. There will be employers that will use the subsidy or the availability of the Exchange. We do not want to deny that reality.

Josh Griffin (Health Services Coalition):

The Health Services Coalition is neutral on S.B. 359. We do have some concerns about the regulation and enforcement of the marketing restrictions. Marketing the Exchange will help broaden and improve services and drive down costs. I have discussed our concerns with Senator Roberson, and I will be happy to discuss them with the Exchange.

Senator Hutchison:

I suspect competing health plans will alert the State very quickly if the Exchange circumvents the law.

Mr. Griffin:

That is correct, but it may not be clear to the co-ops how to market to new members. The Exchange and private health plans both provide insurance to the uninsured. The challenge will be to determine whether the Exchange will be able to comply with some of the restrictions.

Mr. Hager:

My understanding is that the Exchange shall not market to individuals with health care insurance. This does not apply to the carriers that offer plans both within and outside the Exchange. By nature, insurance organizations are predatory. They want to provide coverage to as many people as possible. Whether providers provide coverage within or outside of the Exchange is up to them. The Board agrees the Exchange should market to the uninsured and underinsured, and it will not market to the insured. The provisions in State law specifically apply to the Exchange and do not apply to the insurance carriers.

Senator Denis:

I will close the hearing on S.B. 359 and open the hearing on S.B. 289.

SENATE BILL 289: Revises provisions relating to workers' compensation.
(BDR 53-903)

Senator Michael Roberson (Senatorial District No. 20):

Senate Bill 289 revises provision relating to workers' compensation. Since the privatization of the State's workers' compensation program in 1999, the issues involved have focused on fairness for workers while maintaining cost-efficiency for employers. Senate Bill 289 seeks to enhance the effectiveness of the State's workers' compensation by removing inefficiencies and opportunities for abuse. Senate Bill 289 recognizes that the objective of the State's workers' compensation program is to rehabilitate and return workers to the workforce as sympathetically and expeditiously as possible.

Samuel P. McMullen (Nevada Self-Insurers Association):

The Nevada Self-Insurers Association includes hundreds of public and private self-funded health insurance plans. Unlike other providers of workers' compensation, self-funded insurers cover their own employees. This is an issue of fairness and morale.

Senate Bill 289 revises various provisions of the Nevada Industrial Insurance Act, which provides for the payment of compensation to employees who are injured or disabled as a result of an occupational injury or disease. Section 1 of S.B. 289 makes accommodations for certain forms of incarceration, including house arrest and weekend incarceration.

Section 2, subsection 1 of S.B. 289 limits the number of days an injured worker has to file to receive medical treatment following an industrial injury. Existing law requires injured employees to file a claim for compensation within 90 days. Senate Bill 289 reduces this period to 30 days. We find that employees take too long to file a claim. It is in the best interest of both the claimant and the employer for injured workers to receive medical treatment as soon as possible. Injured workers who wait too long to seek medical treatment may experience complications or the employee's memory of the cause of the accident may fade.

Senator Hutchison:

Are you saying the intent of the proposed change in section 2 of S.B. 289 is to get injured workers treatment faster as opposed to a cost-savings measure?

Mr. McMullen:

That is correct. Employers can solve problems faster by getting injured workers to seek treatment faster. All of the treatments are paid for by the employer.

Section 2 of S.B. 289 recognizes the human condition. Injured workers often assume an injury will heal on its own.

Senator Hutchison:

How will this affect injured workers who do not seek treatment within 30 days?

Mr. McMullen:

This is a hard deadline. In previous sessions, we considered allowing more flexibility in instances where a worker was clearly injured in the workplace. We have not been able to agree on language, but we are open to such an option. It is unlikely S.B. 289 or other similar legislation will pass without such a compromise.

Senator Hutchison:

The point I am making is that I do not want to deny workers' compensation because someone tried to tough it out.

Mr. McMullen:

We do not want to take a benefit away. We are open to a procedure that would allow injured workers to receive workers' compensation beyond the period in proper circumstances.

Mr. McMullen:

Section 4, subsection 2, paragraph (b), subparagraph (2) of S.B. 289 relates to situations where employers do not request a drug test for prohibited substances after an employee is injured. Often, a doctor will order a blood test in the course of treating an injured worker who is transported to a hospital immediately after an injury occurs. To the extent an examination includes testing for the use of alcohol or a controlled substance, the results must be provided to the insurer or the employer upon request.

Section 4 also addresses the efficacy of medical treatments. In many cases, medical treatments for workplace injuries may interfere with existing nonindustrial conditions. Section 4, subsection 5, paragraph (b) of S.B. 289 suspends compensation if a nonindustrial illness interferes with the ability of a physician or chiropractor to treat, test or examine the employee.

The proposed changes to NRS 616C.232 in section 5 relate to misconduct in the workplace. Existing law provides that an insurer may deny compensation for

temporary total disability to an injured employee in certain circumstances if the injured employee is discharged from his or her employment as a result of misconduct. Also, Senate Bill 289 would allow insurers to deny compensation for vocational rehabilitation services when an injured employee is discharged or voluntarily resigns from his or her employment as a result of misconduct.

The proposed changes in section 6 of S.B. 289 amend NRS 616C.375 which addresses appeals. If an insurer, employer or claimant appeals the decision of an appeals officer, that decision is not stayed unless a stay is granted by the appeals officer or the district court. When a decision is appealed to the district court, the court must rule on the stay within 30 days. The courts have in many cases indicated they are not able to rule within this period. Consequently, S.B. 289 permits employers to be granted a stay while they contest the ruling. The decision of the appeals officer is stayed until the appeals officer or the district court issues an order granting or denying the request for a stay. This decision must be made within 30 days after the request for a stay is requested. This change would allow employers to receive a stay while protecting the rights of injured workers.

Senator Hutchison:

Are you saying NRS 616C.375 requires courts to rule on requests for stays within 30 days, but the courts are not doing so?

Mr. McMullen:

No, I am not. Courts are not required to answer within 30 days. We would appreciate such a requirement, but the 30-day period is just the standard for the request for a stay.

Senator Hutchison:

My experience has been that courts are unable to answer within a shorter period because they do not have the docket space. If the State mandates courts to answer within 30 days, it might indicate to the court that the State does not care about their dockets or time pressures.

Mr. McMullen:

I agree. This is why S.B. 289 does not go so far as to require courts to answer requests for stays within 30 days. Under S.B. 289, a temporary stay is granted once a request is made, and it is valid until the court answers the request. If a stay is not granted, the employer or insurer would then implement the order. If

the stay is granted, the employer or insurer would go through the appeal process until there is a final determination.

Senator Hutchison:

Pursuant to Section 6, on page 8, line 22 of S.B. 289, the appeals officer or district court "shall issue an order granting or denying the request for a stay within 30 days after the date on which the request was submitted." I interpret that to require the courts to answer within 30 days. Is my interpretation incorrect?

Mr. McMullen:

No, you are not. I stand corrected.

Senator Hutchison:

Is that your intent? Perhaps the Committee can address this with an amendment if this is not your intent?

Mr. McMullen:

I will make sure I clarify this before we get to work session.

Section 7, subsection 5, paragraph (a) of S.B. 289 revises provisions related to temporary total disability. Existing law allows an injured worker to reopen a claim within 1 year after the date on which the claim was closed if the worker was "off work." Senate Bill 289 would replace "off work" with "did not receive benefits for a temporary total disability."

Section 8 provides for recovery by an insurer of the amount of any lump sum paid to an injured employee for vocational rehabilitation services when an injured employee is determined, subsequent to the payment of the lump sum, to be permanently and totally disabled. Quite frequently, an insurer or employer will provide a lump sum payment to an injured worker for vocational rehabilitation. The employee can spend it as he or she wants, but it is intended for vocational training. Under S.B. 289, the lump sum payment for vocational training would be credited towards compensation for total permanent disability if the injured employee is subsequently awarded total permanent disability.

Section 9 relates to situations where an employee is offered light-duty employment after an industrial injury. If the employee is unable to perform light-duty employment, the temporary total disability will be adjusted

accordingly. Pursuant to line 29 on page 13 of S.B. 289, "An offer of temporary, light-duty employment pursuant to this subsection may be effective as soon as the next scheduled work shift."

Section 10 of S.B. 289 revises provisions concerning the payment of a lump-sum award for permanent partial disability when it has been determined a certain part of the whole person has been lost as a result of an industrial injury. Senate Bill 289 adjusts the threshold for a lump-sum payment from 25 percent to 30 percent. This allows a lump sum to be triggered by the claimant earlier. For example, a cervical injury typically exceeds 28 percent. In such a case, a lump sum could be utilized for 25 percent of total compensation, but the balance would have to be paid out over the lifetime of the individual. As a result of S.B. 289, all of the compensation can be included in the lump-sum payment. This usually benefits the employee, who can then make the choice to receive payment in a lump sum or over a period of time.

I had intended for this section to include language that would prevent awards from exceeding 100 percent disability, but I do not see such a change. I will work with the Committee to include this in an amendment.

Section 12 of S.B. 289 addresses situations where an employee is entitled to receive temporary total disability compensation and then returns to light-duty work. Under section 12, subsection 6, paragraph (a), subparagraph (1), an employee who receives an adjustment for the light-duty work must provide the insurer with documentation substantiating that he or she has been retrained in another occupation and employed in such occupation. In these cases, injured employees would still be able to receive temporary total disability payments.

Danny Thompson (Nevada State AFL-CIO):

I do not agree with any provision in S.B. 289. Ignoring every Nevada Supreme Court ruling in support of injured workers, the State cut workers' compensation by 50 percent in 1993. The AFL-CIO fought to increase workers' compensation in every subsequent session. Senate Bill 289 negates many deals the AFL-CIO has made with stakeholders. Senate Bill 289 denies compensation and drags out the process. Permitting employers to deny temporary total disability and vocational rehabilitation services to injured employees discharged for simple misconduct is objectionable. The reason the term "gross misconduct" was added to NRS 616C was because unscrupulous employers would fire injured employees for misconduct. Gross misconduct is a higher standard under the

law. There is nothing in this bill I can support, and I urge the Committee to oppose S.B. 289.

Kathleen Sigurdson (Nevada Justice Association):

I am a nonpaid lobbyist on behalf of the Nevada Justice Association. The Nevada Justice Association opposes S.B. 289 because it is stifling to injured workers.

James P. Kemp (Nevada Justice Association):

Senate Bill 289 contains many bad ideas, including the provisions relating to incarceration. The purpose of house arrest and weekend incarceration is to give individuals the ability to work. There is no need to tie temporary total disability compensation to incarceration.

With regard to section 2 of S.B. 289, there is no sound public policy reason to reduce the amount of time injured workers have to file a workers' compensation claim. This will play on workers' ignorance.

Section 3, subsection 5, paragraph (b) of S.B. 289 would allow insurance companies to go after injured employees and make them repay compensation if they have been provided health care during the litigation process. This provision could force injured employees to declare bankruptcy. Health insurers could be concerned about whether they should help an injured worker prove an injury was industrial to prevent workers' compensation workers from going after health insurance companies. It also provides for recovery under the fee schedule regardless of what was actually paid. If a health insurance organization has negotiated a lower fee with doctors, that group could actually have a windfall benefit by going after the fee schedule portion of this.

Section 4 of S.B. 289 adds the term "prohibited substance" to NRS 616C.230. The term "prohibited substance" is not defined in the NRS. Section 4 also gives employers the right to inspect medical and biological test results, which invites employers to engage in discrimination.

The Nevada Justice Association opposes the removal of the term "gross misconduct" because it will lead to more litigation.

Senator Hutchison:

Is gross misconduct defined anywhere in NRS 616C?

Mr. Kemp:

Gross misconduct is not defined in NRS 616C. It is a defined term in other chapters of the NRS, and it is also referenced in case law. Gross misconduct would not include things like breaking a dish in a restaurant or being 3 minutes late to work.

Senator Hutchison:

The misconduct has to be a substantial deviation from an employer's policies and procedures. Is that correct?

Mr. Kemp:

The violation has to be quite serious, such as fighting, stealing or doing drugs.

The Nevada Justice Association also opposes the proposed changes related to automatic stays of decisions in section 6 of S.B. 289. This will harm injured workers by creating additional delays in compensation. This will also encourage injured workers to file appeals automatically so they get that benefit.

While we do not oppose section 10 generally, we are concerned specifically with the ambiguity regarding the disability ratings. We do support increasing the cap for partial disability rating to 30 percent.

We also oppose section 12 of S.B. 289 because it could result in injured workers having to repay compensation to insurers. Insurers encourage workers without representation to accept lump sum payments so the injured worker will have to repay compensation for temporary total disability if he or she goes on total disability. This could force injured workers into bankruptcy.

Senator Hutchison:

Mr. McMullen testified that the Nevada Justice Association supported the proposed changes in section 11 of S.B. 289. Is that correct?

Ms. Sigurdson:

That is correct.

Kirk Gillis (Renown Health):

Renown Health is neutral on S.B. 289, but the language in section 4 related to prohibited substance does concern us. The vast majority of injured workers receive post-accident drug testing. We do thousands of examinations and drug

tests each year. Workers' compensation insurers and third party administrators deny compensation for those drug tests, arguing that it is outside the scope of the claim. Renown is forced to write off those charges or to bill the employer with whom we have almost no relationship. If Renown would be required to provide drug testing, we would request the testing be considered as part of the workers' compensation claim and be reimbursable through the medical fee schedule. It is obviously part of a workers' compensation claim under S.B. 289.

Chair Atkinson:

I will close the hearing on S.B. 289 and open the hearing on S.B. 479.

SENATE BILL 479: Revises provisions governing credits against the insurance premium tax. (BDR 57-1200)

Senator Debbie Smith (Senatorial District No. 13):

I support S.B. 479.

Greg Ferraro (Employers Insurance Group):

I have submitted written testimony to the Committee ([Exhibit O](#)), as well as an administrative law decision from the Department of Taxation in *Employers Insurance Company of Nevada v. Nevada Department of Taxation* issued on March 2012 ([Exhibit P](#)).

The purpose of S.B. 479 is to codify legislation passed during the 70th Session that permitted private insurance carriers to carry forward excess credits from the payment of Division of Industrial Relations (DIR), Department of Business and Industry, assessments into subsequent years and apply those excess credits to subsequent year premium tax liabilities. This was consistent with the language in NRS 680B.036, which provides private carriers with a credit that is "equal to" the DIR assessments. The Department of Taxation ended this practice in 2009, following the issuance of an unpublished opinion from the Attorney General. As a result, there have been multiple administrative appeals, and litigation is pending.

When the Department of Taxation changed its policy, the carriers sought a judgment from an administrative law judge. The administrative law judge ruled the companies could continue to carry forward excess credits, but the order did not indicate how long carriers may carry the credits forward, nor does State law

speak to the issue. After the ruling, both parties agreed to a stay of the decision so that the Legislature could provide long-term resolution.

The purpose of S.B. 479 is to resolve the litigation among the parties and make it clear a private carrier may use DIR assessments that have accrued since July 1, 1999, against its premium tax liability until those amounts are exhausted.

Senator Hutchison:

Did either party in the administrative law case ask the court to address how long carriers could carry the credits forward? Could you have appealed to the district court?

Mr. Ferraro:

The administrative appeal process would require relief from the Nevada Tax Commission, Department of Taxation. We appealed to the Tax Commission, and that is where the stay was reached last summer. Judge Zunino's decision is effectively a split decision. The credit is allowable, but imposed a different timeline, and that was one of the reasons we appealed the decision. Both parties agree S.B. 479 is a better solution.

SENATOR HUTCHISON MOVED TO DO PASS S.B. 479.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Atkinson:

I will close the hearing on S.B. 479. The meeting is adjourned at 3:56 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	6		Attendance Roster
S.B. 94	C	1	Marji Paslov Thomas	Work Session Document
S.B. 180	D	1	Marji Paslov Thomas	Work Session Document
S.B. 211	E	7	Marji Paslov Thomas	Work Session Document
S.B. 266	F	7	Marji Paslov Thomas	Work Session Document
S.B. 324	G	6	Marji Paslov Thomas	Work Session Document
S.B. 402	H	1	Marji Paslov Thomas	Work Session Document
S.B.454	I	6	Marji Paslov Thomas	Work Session Document
S.B. 493	J	4	Marji Paslov Thomas	Work Session Document
S.B. 498	K	4	Marji Paslov Thomas	Work Session Document
S.B. 506	L	1	Marji Paslov Thomas	Work Session Document
S.B. 507	M	1	Marji Paslov Thomas	Work Session Document
S.B. 359	N	1	Senator Michael Roberson and Jon Hager	Proposed Amendment
S.B. 479	O	1	Greg Ferraro	Written Testimony
S.B. 479	P	25	Greg Ferraro	Administrative Law Order